

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
NOVEMBER 17, 2005

The Henderson County Board of Commissioners met for a special called meeting at 6:30 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 Chuck McGrady, Commissioner Shannon Baldwin, County Manager David E. Nicholson, County Attorney Russ Burrell, and Deputy Clerk to the Board Amy Brantley.

Also present were: Planning Director Judy Francis, Zoning Administrator Natalie Berry, Subdivision Administrator Matt Card and Planner Autumn Radcliff.

CALL TO ORDER/WELCOME

Chairman Moyer called the meeting to order at 6:35 p.m. and welcomed all in attendance.

QUASI-JUDICIAL PROCEEDING – Special Use Permit Application #SP-05-01, River Stone PUD

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

Chairman Moyer – “This is as I think you all know, a quasi-judicial proceeding in the matter of the application for a special use permit for River Stone Subdivision, wherein Windsor-Aughtry Company is the petitioner. As I think many of you know, a quasi-judicial proceeding, much like a court proceeding, is one in which one’s individual rights are being determined under specific rules of procedure. So we have to be much more strict and formal than we really would like to be, but we have no choice. As such, for those of you in attendance, not every person has a right to give evidence in a quasi-judicial proceeding. Under our Rules of Procedure for Quasi-Judicial Proceedings, only persons who can demonstrate to this Board that they will be affected by the outcome of the decision are allowed to participate in the proceeding.

All persons who are allowed to speak and participate in the ceding, proceeding, including all witnesses that will be called, must be placed under oath. We’ll be asking for, uh, those that wish to be parties to the proceeding in uh, in just a few minutes. You do not have to be a party to uh, to be, to give testimony. Obviously any one of the parties can call somebody they want as a witness. So if you’re just going to be a witness, you don’t have to be a specific party to the proceeding. Staff could call witnesses, obviously the applicant can call witnesses. But if they are themselves parties we don’t need to, to consider those as parties.

Are there any persons in attendance who wish to be considered to be made parties to this proceeding? The applicant obviously is an automatic party to the proceeding so you don’t have to do that. Is there anyone here other than the applicant and staff, who’s an automatic party to the proceeding, wish to be made a party to the proceeding?”

Jean Harkey – “I have a question.”

Chairman Moyer – “Yes mam, please come to the microphone. Please give your name and address and then ask your question.”

Jean Harkey – “My name is Jean Harkey. I live in 839 Jupiter Road, Weaverville, North Carolina. I own property on 8 Tennis Ranch Road, adjacent to this uh, petition property, so I don’t know whether I’m gonna be affected or not. I just would like information, but I, I don’t want to relinquish my right to speak.”

Chairman Moyer – “Alright. Do you own, do you have any objection to this person being made a party?”

Bill Lapsley – “No.”

DATE APPROVED: _____

Chairman Moyer – “How about the Board. Does anybody? She owns, you own property adjacent to the property in question?”

Jean Harkey – “Yes.”

Chairman Moyer – “Alright we will, we will make you a party to the proceeding. You can participate and ask your questions at the appropriate time.”

Jean Harkey – “Thank you.”

Chairman Moyer – “Thank you. Is there anyone else here that desires to be a party to the proceeding? Okay then I will ask that all the parties to the proceeding and any of your witnesses come up to be sworn in by the Clerk of the Board.”

Amy Brantley – “If everybody will try to reach, I need left hands on the Bible, or your left hand touching somebody who’s touching the Bible.”

Chairman Moyer – “You can do it in groups Amy, if you have a problem.”

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

In unison – “I do.”

Chairman Moyer – “Amy what was that last name again please?”

Amy Brantley – “Harkey, Jean Harkey.”

Chairman Moyer – “We will begin with having the uh, the Planning Staff summarize the petition and what is sought, sought by the petitioner. And Autumn Radcliff will do that this evening, not April, Autumn.”

Commissioner McGrady – “Mr. Chairman before we start I just wanna state for the record that I did uh, attend the Planning Board meetings, since I’m a liaison to the Planning Board, and do have some amount of information regarding the application coming forward based on that. Um, my decision at the end of the night will be based on the evidence that’s presented to us though.”

Chairman Moyer – “Any Board members have any objection to Commissioner McGrady continuing to participate? Alright, let the record show that he indicated that participation.”

Autumn Radcliff – “What I just passed out um, I’m gonna enter in later on as evidence also, but I thought this would be helpful for um, the overview. You’ve got a copy in front of you of the Board Action Form which also includes um, the first six attachments that are listed there. We’ll be passing out the rest of the attachments later on tonight. Um, the first attachment of course is the public notice. There’s a site map in there. Uh, the special use permit application with attachments as they were submitted by the applicant. A site and current zoning map, and also um, the 2020 County Comprehensive Plan future land use map. And uh, photos of the subject area.

Uh, Mr. Don Hunley with William Lapsley and Associates, on behalf of Windsor-Aughtry Company, property owner, and Drew Norwood, the applicant, has submitted an application to develop a planned unit development to be known as River Stone near the intersection of North Rugby Road and Butler Bridge Road. The development is proposed on two parcels of land totaling approximately 175.52 acres. Approximately 106 acres are located in the R-10 zoning district, and approximately 69 acres are located in the R-15 district. Under normal circumstances, not taking out for um, right-of-way, the maximum number of single family dwellings allowed in the PUD on 106 acres in the R-10, which would be 10,000 square foot lots, is approximately 461

units, and on 69 acres in the R-15 which is 15,000 square foot lots, is approximately 200 units. The PUD is proposed to contain 524 single-family detached dwellings on individual lots. Um, the single family lots would be smaller than the traditional 10,000 and 15,000 square foot lots. Um, they'd be approximately 65 by 110 feet each. The PUD also allows the Applicant the flexibility to create lots that do not meet the minimum dimensional requirements, lot sizes, setbacks, etc. of the zoning district to which um they are located in. Um, also the Applicant has to compensate for the lot size reduction with common/open space areas. The Applicant has proposed 45 acres of open space, recreation and natural areas.

The Special Use Permit was submitted to the Board of Commissioners and referred to the Planning Board. Um, the Planning Board did review this at their September 6, 2000, um, I'm sorry September 20th, 2005 Planning Board meeting. I will be entering in their recommendations and comments later on. Also um, this meeting was originally scheduled for Monday, November 7th at 7:00 P.M., and was rescheduled to tonight. Um, in accordance with the Henderson County Zoning Ordinance, notices of the rescheduled hearing on the Special Use Permit application were published in the Times-News on Wednesday, November 2nd and Wednesday, November 9th. On October 25th the Planning Department posted notices on the project site to advertise the rescheduled hearing. On October 31st the Planning Department sent notices of the public hearing via certified mail to the applicant and all adjacent property owners."

Chairman Moyer – "Thank you. Any questions for Ms. Radcliff at this time?"

Commissioner Baldwin – "Yes I, I have one. You said that uh, you said that the total was 175 acres. 45 acres was being set aside as open space?"

Autumn Radcliff – "Uh huh."

Commissioner Baldwin – "Okay. So his 524 units are being placed on the remaining acreage."

Autumn Radcliff – "Yes."

Commissioner Baldwin – "Okay, thank you."

Chairman Moyer – "Any further questions? Petitioner will now present his evidence. Mr. Lapsley are you gonna kick off? Or Mr. Aughtry?"

Drew Norwood – "Uh, My name is Drew Norwood, I'm President of Windsor-Aughtry Company's residential division. I appreciate, uh, the counsel uh, Commissioners takin' their time out to uh, hear our presentation tonight. I'm gonna be rather brief and turn the, just give you an overview of what we're trying to do and then for the tactical part turn it over to Mr. Lapsley. Uh, as you, as the, well people in the Planning department just said we've got approximately 175 acres here. We're asking for a Special Use Permit to get to a PUD so that we can reduce, go to smaller lots, and have the open space. And then the, and use the open space for recreation, for uh, walking trails, and for uh, we'll have a pool and a clubhouse and so forth. And uh, uh, we're gonna end up with basically three different neighborhoods, about a third, a third, a third. We'll have a third of the homes will be for affordable homes in the \$120,000 to \$170,000 price range. We'll have one third, approximately one third of the unit will be what we call cottages. They'll be uh, patio homes for uh, retirees and empty nesters. Again they'll be about a third of the people. And then the balance will be what we call first move up which will be bigger houses in the 1,800 to 2,500 square foot range which will be in the \$180,000 to \$250,000 price range. Um, that pretty well covers it all from my stand point. If you've got any questions of me, I'd be happy to answer them."

Commissioner Baldwin – "I do. Of your 45 acres that uh, 45 acres that you've set aside out of the 175, how much of the 45 is impervious and how much is actually green space?"

Drew Norwood – "All of it's green space. What, what do you mean by impervious? What, what we, it's all gr, it's all open space. What we're gonna do is try, we're talkin' with Carolina Land Conservancy, the land bank, about putting a uh, land, a uh, conservation easement over all this area. Then we're gonna, we have some watered areas,

wetland areas down in here we're gonna do walking trails, wooden trail paths to them so that people can get in. There's a lot of interesting wildlife in there, and create all that, that area down here for, for the walking paths and so forth for that, that part of it. If that ans, I don't know whether that answers your question or not."

Chairman Moyer – "Well what I would consider impervious is where you have roads or driveways or blacktop or roofs of things like that where water cannot, uh, that's my understanding of that term as Commissioner Baldwin."

Drew Norwood – "That does count, doesn't count..."

Bill Lapsley – "No, I."

Drew Norwood – "That's a better question for Bill to answer, yeah."

Bill Lapsley – "For the record my name is Bill Lapsley, consulting engineer. Uh, inside that 45 acres as Mr. Norwood mentioned, the only impervious area would be that associated with a parking lot uh, in front of the, the amenity. Uh, which is located here. Uh, off the top of my head it may be uh, a tenth of an acre out of the 45 acres. That parking lot, I mean it's not a Walmart parking lot by any means it's probably 10, 20 parking spaces in front of the, the pool facility. The rest of it's all, uh pervious, open grassed areas, walking trails that are pervious, that are not."

Commissioner Baldwin – "So the nu, so the number of spaces Bill is, how many spaces, parking spaces?"

Bill Lapsley – "It, it's uh, I don't remember the exact number but my guess is it's small, it's 20 spaces, something in that, that neighborhood, uh."

Drew Norwood – "19."

Bill Lapsley – "19."

Commissioner Baldwin – "19 spaces? So, 10 by 20 is your parking space, that's 200."

Bill Lapsley – "Nine by 18 is the standard parking space so you can multiply that out and then, and then there'd, between, if it's a lot with parking on either side there's a 24 foot space in between. So 24 feet times 10 spaces, 90 feet. You can calculate that square footage. Add them together and that's pretty close to."

Commissioner Baldwin – "Okay as, as far as uh, but the conservation easement, you're just in negotiations, you haven't secured a conservation easement?"

Bill Lapsley – "We, we've done a number of things and I, that's uh, related to the development and I'd like to go through those if I can, and that, that being one of them."

Commissioner Baldwin – "Sure."

Bill Lapsley – "Uh, my role here is to kinda go through the technical issues related to the development. Uh the first thing that we did uh, with the property is we uh, contacted a consultant to work with us and the Corps of Engineers and the State Department of Water Quality, Division of Water Quality, to identify wetlands and, and, uh, other areas that should be preserved and protected. Those have been delineated and, and they, the Corp and the State have been on site, and we now know exactly what areas we need to protect. Once we knew that uh, and we also knew we, we waited as you may know this, this project uh, really has been in the discussion stage for about a year. We waited until the Commissioners decided on how you wanted to address the flood plain issues. Uh, once the Commission decided how that uh, was to be addressed, we then proceeded to combine the two. The flood plain restrictions that you've imposed plus wetland issues and uh, we at that stage probably in August, uh started discussions with several uh, conservancy land, uh, conservancy groups. And more recently Carolina Mountain Land Conservancy about, uh, the natural areas. Uh, but to answer your question about that, there's no signed

document at the moment. Uh, but it is certainly our intent and I believe the intent of the conservancy to work us to, to assume that responsibility.”

Commissioner Baldwin – “Bill you may have, you may have answered the question maybe I missed it, but how, what percent of the 45 acres is either in a flood plain or is not developable?”

Bill Lapsley – “Probably all, uh, all of it. Um, 99% of it.”

Commissioner Baldwin – “Okay.”

Bill Lapsley – “Uh, again, probably just a small area where the uh, pool and the little parking lot is, is, would be inside that 45 acres common area open space.”

Commissioner Baldwin – “So when you say pool you’re talking about a pool for swimming.”

Bill Lapsley – “Yeah.”

Commissioner Baldwin – “For like, okay next to...”

Bill Lapsley – “That’s planned right in, right in this area.”

Commissioner Baldwin – “Okay, I got you. Okay.”

Bill Lapsley – “Again uh, I wouldn’t call it an Olympic pool for uh, people outside of the community, I mean it’s limited size.”

Commissioner Baldwin – “But as, as far as uh, your plan for the 45 acres, as far as recreation goes it’s limited to passive recreation, walking.”

Bill Lapsley – “Walking, probably some soccer fields, open space, uh, some storm water control measures, grassed areas, uh, you know, common open space area.”

Commissioner Baldwin – “Will there be any storm water vaults in that area taking the storm water runoff?”

Bill Lapsley – “Yeah, yes.”

Commissioner Baldwin – “There will be?”

Bill Lapsley – “We have storm water management uh, facilities planned.”

Commissioner Baldwin - “For the, on the 45 acres itself.”

Bill Lapsley – “Um hum.”

Commissioner Baldwin - “Okay. For those in the, is, is all that uh, surface or is any of that underground storm water vaults, or is it.”

Bill Lapsley – “It’s surface.”

Commissioner Baldwin – “Surface.”

Bill Lapsley – “Um hum.”

Commissioner Baldwin – “So you’re lookin’ at retention basins? Basically swells?”

Bill Lapsley – “Wide, large, shallow basins. Uh, that would act to uh, as a storm water management feature.”

Commissioner Baldwin – “Okay. Uh, is it recreation proposed for those particular areas or are those to be set aside and not to be.”

Bill Lapsley – “Uh they’re set aside.”

Commissioner Baldwin – “Are they.”

Bill Lapsley – “Uh, we’ve got the 45 acres is much, much more than we need for storm water management.”

Commissioner Baldwin – “Okay.”

Bill Lapsley – “The, the other technical issues that we’ve been addressing for the last several months. Uh, as I mentioned first step was wetland issues, flood plain issues. Uh, the next step was uh, DOT and street access. Uh, these roads would be built to DOT standards, County standards, and then turned over to DOT for maintenance under their secondary roads maintenance program. There are three proposed entrances and exits to the, to the project. Uh, two of them on Butler Bridge Road. One here, one here, and the third on North Rugby Road. Uh, we have met on several occasions with DOT staff uh, during the summer and the early planning stage to show them what we had in mind and, and uh, their initial reactions were fine. Uh, they did come back to us and suggest a traffic impact analysis uh, that was also discussed at the Planning Board. Uh, we have had that done, uh, Staff I think is gonna give you a copy uh, of that report. Uh, basically uh, the, the uh, consultant uh, took the information of the anticipated traffic count from this development and then coupled with that other existing developments down North Rugby Road, existing developments uh, Glenn Marlow School, other facilities on Butler Bridge Road. Put those traffic numbers into the model and came out with recommendations uh, for traffic improvements. Uh, as they relate to the impact of this project onto the existing roads. Uh, the summary of that uh, is in this document. Basically what has been recommended is uh, the, the two accesses on uh, on Butler Bridge Road would not require a left hand turn lane if you will, but widening the road to come in on, on Butler Bridge Road. But they did recommend a turn lane on North Rugby Road. The traffic count suggested that. One of the other interesting points that’s brought out in the report uh, indeed this consultant suggests that based on the existing traffic count there today, disregarding this project, that there appears to be a warrant for a traffic light at this intersection. And that DOT should consider that irrespective of this development. Uh, so that’s something that uh, that they need to consider. Uh, but the uh, the only improvement if you will that this development is suggesting uh, is a turn lane on the North Rugby Road uh.”

Chairman Moyer – “Bill are you introducing this as part of your evidence? I thought I heard you say Staff, yet you’re using all of it that’s what.”

Bill Lapsley – “Well Staff has it. I don’t necessarily want to steal their thunder but I’ve got it and I can give it to you uh. It’s your pleasure Mr. Chairman.”

Chairman Moyer – “Autumn do you have any objections? Since he’s referring to it I think you ought to introduce it as his uh, evidence.”

Bill Lapsley – “This is in the executive summary.”

Commissioner McGrady – “We’ve got it here.”

Bill Lapsley – “The next piece of the technical puzzle uh, was water supply. Uh, this development will require public water service. Uh, we discussed the needs for water supply with the two suppliers that are in this area. Uh, the City of Hendersonville uh, and the City of Asheville, formally the regional water authority. Uh, both those suppliers have issued a notice to us in writing of water availability. Uh, so we really have a choice. Uh, the recommendation that we have at the moment is to extend water from the uh, City of Asheville system. Uh, the main reason for that is the large volume, uh, that’s available from that 24 inch supply line on Jeffress Road

uh, as compared to the line that Hendersonville has on US 25, uh, roughly at where Butler Bridge Road intersects into 25. But there are two options and the one we're pursuing uh, at the moment is the City of Asheville supply. The uh."

Chairman Moyer – "What is the distance between the points you have to connect to?"

Bill Lapsley – "Uh they're both, the distance is almost identical to extend, it's about 2,000 feet if memory serves me correct. I mean it's about a half a mile."

Commissioner Messer – "What's the difference in the, in the water line from Henderson County? You said that Buncombe County was, or Asheville City was 24 inches and what's Henderson County?"

Bill Lapsley – "Henderson, City of Hendersonville's line is 16 inch diameter. And uh, the volume, uh, mainly due to the, the demand in the Fletcher area. Uh, as you know there's a lot of development in Fletcher and this supply, this 16 inch supply line is the principal feed from the Hendersonville system to Fletcher. And so the uh, during the peak demand periods during the day the available supply and pressure comes down some. It's not enough to, to uh, cause a dramatic problem but it's, it's nothing near the available supply off the 24 inch line on Jeffress Road that is currently just serving the Broadpoint Industrial Park, Marlow School, and a relatively small number of houses.

Uh, the next issue is uh, waste water. Uh, with a housing development of this size uh, obviously they cannot be served by a septic system. On site sewers or public sewer is involved. Uh, it is proposed that there'll be a uh, collector sewer system within the development. It would all be collected to one location. Uh, the lines will be built to the Cane Creek Water and Sewer District standards and would be turned over to the District uh, for operation and maintenance and uh, and those will be customers of the district. Uh, roads and water or sewer, power is available. Uh, and gas has an interest in this location. Uh, I think that."

Chairman Moyer – "Sewer will be handled which way? Through MSD?"

Bill Lapsley – "It will be handled by the Cane Creek Water and Sewer District and then pumped from this site to MSD, to the, to the main uh, MSD interceptor that goes through Fletcher, uh, through the Broadmoor golf course right in that, in that area."

Chairman Moyer – "And Gary's certified the allocation to you so that"

Bill Lapsley – "Yes sir."

Chairman Moyer – "it's alright."

Bill Lapsley – "Yes sir. I think those are the technical highlights. I'll be glad to answer any questions that you may have, uh, about the development."

Chairman Moyer – "Any Commissioners have any questions?"

Commissioner McGrady – "Not yet."

Chairman Moyer – "Mr. Baldwin?"

Commissioner Baldwin – "Yes I, I do. As far uh, as far the uh, site itself, uh, have there been any uh, discoveries with respect to anything that may be historically significant on the site?"

Bill Lapsley – "Uh no sir, not, not to our knowledge. We, we haven't had uh, an archeologist on the site. We've had the State Water Quality folks and all uh, Clear Water Environmental consultant that deals with wetlands and those sorts of things. Uh, to the best of my knowledge."

Drew Norwood – “We, we’ve had a Phase I environmental study and they check the entire site for hazardous wa, any kind of hazardous materials and these sort of things. And, and, any kind of uh, historical sites and anything that might uh, be a problem with the title.”

Bill Lapsley – “Yeah I, that’s a good point. In the en, in the Environmental Assessment the standard is to go to the database for any historical sites that the State may be aware of and to put that in the Environmental Assessment and there were none uh, recorded so.”

Commissioner Baldwin – “Okay. Thank you.”

Chairman Moyer – “The way this will work in a quasi-judicial proceeding, now each of the other parties will have a chance to ask the petitioner any questions they want. That will include you. Not to make testimony, Ms. Harkey, but to ask any questions that you might have. We’ll start with Staff. Ms. Radcliff, do you have any questions at this time?”

Autumn Radcliff – “Um, just one. Uh, jus, I just wanted to clarify one thing. In the open space area, I know Mr. Lapsley said that the parking area would be in there, and the pool. But there would also be the clubhouse in that area. Correct?”

Bill Lapsley – “That’s correct.”

Chairman Moyer – “And how large will the clubhouse be? How much space is that going to...”

Drew Norwood – “1,800 square feet.”

Bill Lapsley – “1,800 square feet. It’s.”

Chairman Moyer – “You keeping your list Mr. Baldwin?”

Commissioner Baldwin – “I am.”

Chairman Moyer – “I thought you were...”

Commissioner Baldwin – “We’re up to 5,800 so far. That’s the parking lot, the clubhouse and, the walking trails, were they impervious?”

Bill Lapsley – “Impervious. I meant pervious, excuse me. They would be mulch or.”

Commissioner Baldwin – “Okay.”

Bill Lapsley – “Something of that type that would allow water to go through.”

Commissioner Baldwin – “What’s your pool size.”

Drew Norwood – “Uh, I think it’s 40 by 60, or 30 by 60 I’m not sure. Use 40.”

Chairman Moyer – “Ms. Harkey do you have any questions you’d like to ask at this time?”

Jean Harkey – “Yes I do. I would like to know if there are any provisions for setbacks on uh, properties a, adjacent to those that are not in your project? Any, any green belts or anything around the periphery of your project.”

Drew Norwood – “No mam.”

Jean Harkey – “So, so.”

Drew Norwood – “Where’s your property?”

Jean Harkey – “Oh, I own uh, Tennis Ranch Road, right here.”

Drew Norwood – “Okay.”

Jean Harkey – “So the setback li, what would be the property setback line?”

Chairman Moyer – “Ms. Radcliff would you, obviously that’s not gonna be in the record. Can you clarify where her property is for us and, and help with that?”

Autumn Radcliff – “Yeah, I can um. You don’t have a copy of it yet, I haven’t passed it out but you’re going to be getting um, the adjoining property owners.”

Jean Harkey – “It’s on this, it’s on this.”

Russ Burrell – “Can you show on the big one?”

Autumn Radcliff – “It’s kinda hard here. Right through here, the, these properties that are right through here, tennis Ranch Road runs right through here and then there’s properties on the other side too.”

Chairman Moyer – “Um hum.”

Autumn Radcliff – “I’m not real sure which side of Tennis Ranch Road though, that’s she’s located on but, but this is right here the general area. So she could have property that, that butts right up to this or at least that is across the road.”

Chairman Moyer – “Sounds like she does because she’s asking whether there’s any setback requirements.”

Matt Card – “It’s this piece right here. You can see on that master plan.”

Drew Norwood – “...I can’t promise you that, but see how long of a...”

Chairman Moyer – “We’ll get it all on the record here because we’re not getting any of this. I think we’ve identified the property and I think the question is whether there’s any setback or other requirements between that edge of the subdivision and your property.”

Jean Harkey – “That’s correct.”

Chairman Moyer – “And let’s have an answer on the record.”

Bill Lapsley – “The building of course is set back uh, and the, and the suggested setback of the building from the lot line. Can’t remember what.”

Drew Norwood – “Well, if, if, if we could use a scale we could, you could see where she’s talking about right there is the, you’ve these extra long lots as compared to others. And the house is gonna be settin’ back about 25 feet from the curb, and house’ll be about 50 feet deep so it looks to me like there’s gonna be considerable distance and we can scale...”

Chairman Moyer – “Instead of what it is, what is the mandatory. What is the minimum you. That’s what I think.”

Jean Harkey – “That’s what I asking. And if there’s any provision relative to the cutting of trees or anything like that or clear cutting the lots.”

Chairman Moyer – “There’s no restrictions with regards to cutting but what is the, the set back there Ms. Radcliff?”

Autumn Radcliff – “Um, the set backs that are proposed are 10 feet in the front from the property line, 10 feet in the rear from the property line and a five foot, um, from the property line on the side there’s ten foot separation between the units.”

Chairman Moyer – “So 10 feet basically is the set back.”

Commissioner Young – “And what’s the normal setback? What, what is the?”

Commissioner Baldwin – “That’s required. That’s what it.”

Commissioner Young – “The required, is that the required? Or is that what they’re asking?”

Autumn Radcliff – “No that, that would be the reduction that they were gonna get. Um, that would, that would a part of the uh, PUD requirements that they get a reduction in the setbacks. If it happened to fall within the R-15 District, the normal setbacks would have been um, 15 feet from the side and rear yards. If it’d been in the R-10 it would have been 10 feet from the side and rear yards. So, if it was in the R-10 District um, 10 feet would have been what was allowed by right.”

Commissioner Young – “What would be the front and rear?”

Autumn Radcliff – “I’m sorry?”

Commissioner Young – “The front and rear set back?”

Autumn Radcliff – “Um, in R-15 front setbacks would be from the center line of the street, uh it would be 50 feet, and the same thing for R-10.”

Jean Harkey – “50 feet from the front and 10 feet from the back?”

Bill Lapsley – “From the center line of the road.”

Autumn Radcliff – “Yeah, 50 feet from the center line of the road.”

Jean Harkey – “So that moves the home way deep into the lot then doesn’t it?”

Drew Norwood – “But that’s not what we’re asking. We’re, we wanna be up close to the street, you know where these lots that are extra length and depth, yeah it keeps them away from your property.”

Jean Harkey – “Well, I understood he just said that it was 10 feet from the rear of the.”

Drew Norwood – “I know but I’m not gonna, I’m not gonna, gonna go set a house back on the back of that lot. That lot, Bill, have you got a scale? When that lots there’s 150 feet deep.”

Jean Harkey – “But the law says you can if you wanted to. I mean you could cut the trees back to the property line.”

Drew Norwood – “Yeah, but I’m not going to because it, it’s just not practical. I don’t want 50 foot, 60 foot driveways on these little houses.”

Jean Harkey – “But you’re gonna move ‘em 50 feet from the center of the road back into the lot.”

Drew Norwood – “No. No I’m gonna set ‘em 25 feet from the curb.”

Jean Harkey – “I mean that’s what the regulation says.”

Commissioner Baldwin – “Do we have a.”

Drew Norwood – “That is if, if you don’t have a PUD isn’t that right? Yeah, if you don’t have a PUD it’s 50 feet but under this one, we’re asking for 10.”

Autumn Radcliff – “Correct. Under, under normal circumstances with R-15 and R-10, they had the setbacks and that would be the 50 feet from the centerline. But um, if they get the special use permit one of the conditions would be you know, these would be all conditions outlined and they’re proposing a reduction in their lot sizes which also would mean a reduction in their setbacks so that they can cluster the lots closer together. And then by clustering them they’re gonna offset a certain percentage of this with open space, as opposed to doing a traditional cookie cutter design with the traditional setbacks. So it’s a trade off.”

Chairman Moyer – “Are there any other questions for the petitioner at, at this time?”

Jean Harkey – “I do have one other question. On this map you uh, you said there were uh, there’s one entrance off of uh, Butler Bridge?”

Bill Lapsley – “There’s two off of Butler Bridge and one off of North Rugby.”

Jean Harkey – “Is this an entrance here?”

Bill Lapsley – “No, that’s an existing drive that comes in. That’s, if you were to drive out there today, we’re talking about...”

Jean Harkey – “That just shows the position.”

Chairman Moyer – “Bill, can you identify that Bill?”

Bill Lapsley – “We we’re talking about, the question is, is this a drive into the development. No, that’s an existing driveway that goes to some existing houses that are on the property, that dashed line, that we’re proposing a cul-de-sac here. There’s only one entrance on North Rugby that’s right there.”

Chairman Moyer – “Okay.”

Bill Lapsley – “You see where that is? Okay.”

Commissioner Baldwin – “I have a question for Mr. Lapsley. Of the 45 acres, what’s, what is the uh, what’s the vegetation like on the property. Is it, is it pasture, is it wooded, is it.”

Bill Lapsley – “Most of it’s pasture. Uh you know, it’s farm land. It’s a big pasture and has drainage channels in it and uh, it’ll, that’ll be grassed. That’ll remain.”

Commissioner Baldwin – “Your, your retention uh, basins are, are sized on what event. Size event?”

Bill Lapsley – “They’re based on a 10 year storm, to retain the excess runoff from a 10 year rainfall event.”

Chairman Moyer – “I need some, Commissioner Baldwin if you’re finished I have a. I need some clarification on the numbers. Um, as I heard it said we have 106 acres R-10, which would equate to 461 units. 69 R-10 which is 200 units, so you could have 661 units.”

Bill Lapsley – “As we understand, the applicant could very well come in and ask for a PUD to put 661 units on this same area outside of the floodplain. What the applicant’s asking for is not 660, asking for 524.”

Chairman Moyer – “Well that’s my question. Is any of the flood plain in that 106 and 69. Is the floodplain in the 106 and 69.”

Bill Lapsley – “Yes.”

Commissioner McGrady – “Yes.”

Chairman Moyer – “So you can’t build 661.”

Bill Lapsley – “But we could if.”

Chairman Moyer – “...flood plain requirement.”

Bill Lapsley – “Now we, as I understand the PUD, we could, we, under your floodplain ordinance we have to stay out of the flood plain area.”

Chairman Moyer – “Right.”

Bill Lapsley – “But also under the ordinance, the acres that are in that flood plain can be counted towards the total number of units that are allowed on the property.”

Chairman Moyer – “Well we’ll get to, you, I wanna see that evidence...”

Bill Lapsley – “So what we’re, as we read the ordinance, you could conceivably make even smaller lots if the Commissioners approve it, subject to the Commission’s approval, but you could meet the same density for the entire tract of land, cluster them together and put 660 on here. The applicant doesn’t want to do that. The applicant wants to put 524 meaning a reduction of 140 units from what they understand, we understand could be applied for.”

Chairman Moyer – “I guess we’ll have to get to that interpretation a little later.”

Commissioner Baldwin – “Was my understanding correct that some, the one category of lot size was 10,000 and the 15,000?”

Chairman Moyer – “Give or take, yeah.”

Bill Lapsley – “The port, the, the property, this area here was zoned R-10.”

Commissioner Baldwin – “Yes.”

Bill Lapsley – “And this area was zoned R-15.”

Commissioner Baldwin – “Uh, alright. And, I, well, is, is Autumn, can we ask Autumn a question?”

Chairman Moyer – “No she, she’ll give her evidence next.”

Commissioner Baldwin – “Oh, okay.”

Chairman Moyer – “Any other questions for the petitioner at this time? We’ll have a chance later but. Okay thanks Bill, thanks Drew. Ms. Radcliff will now have Staff’s evidence.”

Autumn Radcliff distributed handouts to the Board.

Chairman Moyer – “You’re getting as bad as Ms. Becker.”

Commissioner Baldwin – “I thought you missed law school.”

Chairman Moyer – “Goodness gracious.”

Autumn Radcliff – “I’m sorry for the amount you just got. That was um, one of the reasons that they got divided up into two sections. The first section that I passed out, the cover sheet, the Board Action Form, with all the attachments on it, that is the next set of attachments, attachments 7 through 17, um, but in order. Just, I thought it would be more helpful to split it up. I would like to enter in the first packet that I passed out as my evidence also, and this packet that I just passed out also. Um, the first uh, cover sheet on this, on this second packet I just passed out which would be attachment 7, is um, just briefly goes over the Planning Board recommendation and Staff comments underneath.

At its September 20th meeting, the Planning Board discussed the Special Use Permit application for River Stone. After reviewing the application and hearing comments, the Planning Board voted unanimously, 8 to 0 to send the Board of Commissioners a favorable recommendation on the application um, provided that certain recommended conditions were satisfied. The recommended conditions are as follows. The first was the height limitations. In the framework of a PUD, the Zoning Ordinance requires that no building or structure shall exceed 35 feet in height as measured from the highest ground elevation of the building or structure. The Applicant should specify any height restrictions for the proposed single-family units.

The second was the required distance between the buildings. The Applicant has proposed minimum side-to-side separation between structures of 10 feet. The Zoning Ordinance allows the Board to permit the minimum separation between single-family detached buildings to be reduced below the minimum specified, um, which in normal case is 20 feet, provided that the buildings are not closer than 10 feet, that the construction of adjacent walls conforms with the North Carolina Building Codes and that area between the building remains open and unobstructed. The Planning Board recommends that the restrictive covenant states and has enforcement capability regarding that no obstructions exist between buildings that are less than 20 feet apart.

The sewer plans, the Applicant has submitted a letter from the Henderson County Utilities Department, that is also included as attachment 9, um, and documents from the Applicant's agent indicating that sewer will be provided by a new lift station, collection system, and force main as part of the proposed um, Mud Creek Interceptor Project for the Cane Creek Sewer District, and the Applicant is working in cooperation with Hender, Henderson County to finalize lift station construction agreements. The Planning Board recommended that the Applicant must submit documentation to ensure that a professional engineer has designed the sewer system and that such system has been approved by appropriate local and state agencies prior to beginning construction. Off-Street Parking. The Applicant's preliminary.”

Chairman Moyer – “Before you leave the sewer, is there any letter other than that from the Utilities Department?”

Autumn Radcliff – “No, none that we’ve received.”

Chairman Moyer – “But this doesn’t deal with the allocation uh, from MSD at all.”

Autumn Radcliff – “No. Um, the Applicant’s preliminary plan shall include parking provisions for all proposed uses within the planned unit development in accordance with Section 200-40A which requires for single-family dwellings two parking spaces for each dwelling unit. The Applicant indicated that they would provide language specifically identifying the two parking spaces um, per dwelling unit. Uh, the Planning Department just asks that that was a condition.

The erosion control, as part of the application materials, the Applicant indicated that the erosion and sedimentation control plans will be submitted upon completion and are awaiting the final recommendation from the environmental consultant. The Planning Board asks that the Applicant must submit documentation of approval of the sediment and erosion control plans for the project prior to beginning any construction.

Emergency Services. The Planning Board questioned the fire flow at 500 gallon per minute, which is typical for a residential subdivision, uh, this is due to the narrow separation of 10 feet between the buildings for the proposed PUD, and recommended that the Henderson County Fire Marshal's Office would comment on this. Uh, the Fire Marshal's office had previously submitted um, comments to that. That's also included as attachment 8. I did have um, the Fire Marshal's Office review this again. Um, they still conferred with their first original comments. And you can see those comments in attachment 8.

Conveyance of Open Space. The Applicant has indicated that they will grant by restrictive covenants through conservation easement all common open space, recreation and natural areas and communally owned facilities to the PUD residents describing the areas and facilities and their maintenance and improvement, running with the land for the benefit of the residents of the PUD or adjoining property owners or both. The Planning Board asked that the Applicant must submit to the Board of Commissioners the legal documents that will produce the aforesaid guaranties and, in particular, will provide for restricting the uses of common areas and facilities for the designated purposes.

The developer shall create a homeowners' association and submit bylaws and rules and regulations governing the association. The developer shall be required to include every deed he makes that membership be mandatory for each homebuyer. The County Attorney must approve the Declaration of Covenants and Restrictions for River Stone, the Bylaws of the River Stone Property Owner's Association as to form, and the Board of Commissioners must approve the same document as to their suitability for the proposed uses. That's a condition of the special use permit.

The setbacks again, I know we talked about that a few minutes ago. Um, the Applicant did propose on their plans that it will be 10 feet from the property line um, for the front. 10 feet from the property line on the rear, and five feet from each property line on the side. The Applicant should specify if the property line for the front setbacks will be from the centerline of the street or from the edge of the right-of-way.

Access Management, uh, I've already touched on this a little bit. The Planning Board did not feel that it had adequate information to address the site standard that states, shall not be located or developed in such a manner as to seriously worsen the traffic congestion so as to endanger the public safety, and the Traffic Impact Analysis should be completed and presented as evidence to the Board of Commissioners before they make their decision on the Special Use Permit. The Applicant suggested that the Planning Board make a recommendation to the Board of Commissioners that a condition of the Special Use Permit for this project indicate that the PUD be subject to NCDOT approval of the Traffic Impact Analysis, and the developer shall comply with the recommendations and requirements of NCDOT. Um, I know that was passed out earlier. There is an attachment that I passed out in this which is attachment 15. I think that's probably the same thing that you got, um, from the petitioner. There may be a few extra sheets in there, I wasn't real sure if that was gonna get passed out or not. So you had duplicate information there."

Chairman Moyer – "Autumn I have a question for you before you leave this section."

Autumn Radcliff – "Yes."

Chairman Moyer – "Or maybe a question for you and for Russ, but in, in number 8, I'm uh, concerned about the language that the County Attorney must approve the Declaration of Covenants, bylaws, etc, not just as to form, by as to their suitability for the proposed uses. Russ what."

Russ Burrell – "In the past we have only reviewed them to make sure that a, a Dec, a uh, a dedication of land

as common open space could never be built upon. That's the only review that the County Attorney's Office has done."

Chairman Moyer – "This sounds like it goes much further than the statement. I, it certainly would concern me if I was the County Attorney and, to make that statement."

Russ Burrell – "That's the only review we've done in the past is a, is a much more limited in scope review."

Chairman Moyer – "Alright."

Autumn Radcliff – "And I think that that meant not to go above and beyond what we've done in the past. Just to make sure that that was a condition of this permit, that that is done as it has been done in the past so. And that's just a recommendation. You may want to reword that."

Chairman Moyer – "Alright."

Autumn Radcliff – "Staff comments, um, time lines for satisfaction of certain conditions. Staff suggests that the Board of Commissioners consider imposing a condition regarding timeframes within which the Applicant must satisfy some of the conditions recommended by the Planning Board or during tonight's meeting. Specifically, Staff recommends a condition such as the following: The Applicant shall satisfy conditions 3, the sewer plans, condition 5, erosion control, 7, conveyance of open space, 8 maintenance, and 10 the access management prior to recording final plats of lots in the project.

General site standards. As a result of amendments to the Zoning Ordinance adopted May 16, 2001, there are now additional general site standards that must now be evaluated during a Special Use Permit review. The full set of General Site Standards is included in Section 200-56 in the excerpts from the Zoning Ordinance. Um, if you'll see attachment 17 there is a copy of those in there, that the Board may want to review. With the above list of conditions you, we suggest that there are many outstanding issues regarding the PUD application, a number of them are items that the Applicant should be able to satisfy fairly easy. In addition, um, Staff also would like to suggest that the Board may re, may want to make a condition of the Special Use Permit that the developer disclose to the buyer that the subject property is in the flight path of the Asheville Regional Airport, although there are no requirements for notification for single-family homes in the vicinity of the location of the airport. Staff would also like to note that the Applicant, on the preliminary plans, identified the placement of signs and some model homes that were gonna be used for um, showing and then, and then would be sold off um, throughout the subdivision. The Board may want to address this, with any conditions, in the Special Use Permit, if approved. Questions?"

Commissioner Baldwin – "Yes. What um, as far as uh the PUD goes, what's, what's the uh, requirement for open space on a."

Autumn Radcliff – "Um, there's not really any requirements for how much open space has to be set aside, um, it's pretty strict on the requirements for how they actually calculate the density that they could get. Um, in here in our ordinance uh, with the conveyance of the open space, recreation areas and commonly owned facilities, all that our ordinance says is that the common open space, recreational areas and commonly owned facilities shall be guaranteed by restrictive covenant describing the areas and facilities and their maintenance and improvement running with the land for the benefit of the residents of the Planned Unit Development or adjoining property owners."

Commissioner Baldwin – "Okay, So, there's, that, that's what I was after."

Autumn Radcliff – "There's no set amount."

Commissioner Baldwin – "...percent of, of the property that has to be dedicated to open space if certain um, things like lot sizes are relaxed or clustering is allowed."

Autumn Radcliff – “No, it’s just an understanding that with the PUD, because they’re going to relax the lot size and set backs, that they are in turn gonna set aside open space. No set amount that they have to set aside. If they do show on their plans that they are going to set aside 45 acres, then that is what we hold them to.”

Commissioner Baldwin – “Okay. Thank you.”

Chairman Moyer – “On your staff comment number one, where you say that you’re recommending that the applicant shall satisfy these following conditions, you have the wording ‘prior to recording final plats.’ Now you are saying prior to recording the first final plat, or any final plat? What do you mean by that?”

Autumn Radcliff – “The final plats will be when they actually have completed the phase, the Subdivision Administrator has come out, examined the roads, everything are in order and signs the name for them to actually go over to the Register of Deeds and record it for the sale.”

Commissioner Baldwin – “Then they can convey lots after...”

Autumn Radcliff – “Yes.”

Chairman Moyer – “But you don’t think you need sewer plans or erosion control prior to that point?”

Autumn Radcliff – “The Board may see it otherwise.”

Commissioner Baldwin – “Do we have uh, do we have anything in the regs that uh, do we specify standards for uh, water and sewer as far as material type, um, joint specification valves, any of that? Is any of that specified in our regs? Mr. Lapsley, you may want to.”

Bill Lapsley – “As I understand your question, uh, who determines or who sets the standard for spacing of valves, meter services, when it comes to water and man holes, sewer pipes, etc.”

Commissioner Baldwin – “Construction standards.”

Bill Lapsley – “Con, construction standards for the sewer is set by, is set by the Cane Creek Water and Sewer District which is basically the same as MSD, Buncombe County.”

Commissioner Baldwin – “Okay.”

Bill Lapsley – “Uh, in fact the plans are submitted to Cane Creek and then they submit ‘em to MSD for a, a complimentary I guess is the right word, review uh, on sewer. Uh, with regard to water it’s the entity tha, who’s gonna be taking it over. In this case there, the one that we have selected is the City of Asheville. So it would be built to the City of Asheville standards which specify valve type, pipe types, etc., spacing, so on and so forth.”

Commissioner Baldwin – “Okay, I understand. That answers my question.”

Commissioner Messer – “Is it a lot different from Henderson County, on that water?”

Chairman Moyer – “Wait, we, we’re technically questioning Staff with respect to uh, what Autumn.”

Commissioner Messer – “Well that’s, that’s.”

Chairman Moyer – “We can get back to Mr. Lapsley but do we have any other questions for uh.”

Commissioner McGrady – “Let me go back to the comment that you make uh, regarding the general site standards and the adoption of amendments to the zoning ordinance.”

Chairman Moyer – “Where are you Chuck?”

Commissioner McGrady – “Um, the second staff comment. Explain to me, I, I guess, explain to me the import of, of what you’re saying there. Cause if you go back then to the attachment itself, I mean for example to pick up on the point that um, was Ms., Ms. Harkey raised perimeter requirements. Um, how would, we have the ability to establish perimeter requirements do we not under the, the general site standards as adopted um, back in May of 2001.”

Autumn Radcliff – “Correct. There are, there are several thing in there in addition that the, the Board can look at and um, Russ can probably answer this a little bit better than I can. Um, there’s a couple of sections in there. One section um, is actually in the PUD. Another one um, is in the section, it’s about, it’s about three pages back on that attachment 17 which actually falls under, just double check.”

Commissioner McGrady – “What page is it at the bottom, do you know?”

Autumn Radcliff – “It is, page 159. One of those, which is also, falls under the.”

Commissioner McGrady – “...right near the end of that.”

Autumn Radcliff – “Yeah. The powers and duties of the Board of Commission, this is actually 200-70. Um, when you get on that six, before any special use permit is issued the Board of Commissioner shall make um, written findings, certify compliance with the specific rules governing the individual special use and the satisfactory provision and arrangement has been made concerning the follow. Um, of course ingress and egress is on there, off-street parking, utilities, buffering is down here and that, that was probably one of the perimeter things that is, goes into a little more detail in the actual PUD section. Um, playgrounds, open space, and buildings and structures.”

Commissioner McGrady – “Okay to use that, now again I’m trying to understand you comment, to, to use the, the um, not buffering, there’s another term for it, but um, uh, perimeter requirements issue. Um, we sort, we had this uh, interchange here. You’re saying here that, the general site standards uh, um, would, must now be evaluated and the special permit, use permit review, but that, and then using this one as an example, um, and the discussion that occurred um, it would appear that you know the applicant is saying, well we’re gonna move our houses up close to the front of the lot and away from the back thus um, is that an example of where um, many of the outstanding issues regarding this thing would be se, able to be satisfied easily. Is that, is that what I’m understanding?”

Autumn Radcliff – “Yes. Um, let me find the section I wanna refer to. One of the, the major things that outlines, which is in section 200-33 on page 93.”

Commissioner McGrady – “Yeah.”

Autumn Radcliff – “Of that attachment 17. That’s the privacy and of course the perimeter requirements.”

Commissioner McGrady – “Yeah.”

Autumn Radcliff – “Each one of these things was um, something that the Planning Board, it was brought up at the Planning Board meeting. They went over, they did not feel it was an issue. Um, the applicant can probably speak a little bit better on that if you have questions. I know that they got up during the Planning Board meeting and actually said why they did not feel that a buffer was needed there. And it doesn’t really state that there has to be a buffer, just as long as there’s some protection to adjacent property owners and to the public.”

Commissioner McGrady – “I wasn’t trying to hone in on this, I was trying to understand the context of your, your broader”

Autumn Radcliff – “Yes.”

Commissioner McGrady – “context. Since that was the, the most recent example. Okay, thank you.”

Autumn Radcliff – “You’re welcome.”

Commissioner Baldwin – “Autumn I have a question. Uh, erosion control, um, basically does our ordinance flip it back to the State and they have to submit it to the State and, and you have to uh, receive certification from the State that it’s been approved. Their erosion control plan has been approved by.”

Autumn Radcliff – “Yeah. Our erosion...we just go with the state rules, if you’re disturbing more than an acre you have to have it. Um, some of the erosion control questions and some of the standards that probably fall more into the subdivision realm of it, and not necessarily in the zoning, Matt Card’s here, our Subdivision Administrator, he can probably answer things a little bit for that.”

Commissioner Baldwin – “With respect to erosion control?”

Autumn Radcliff – “Yes.”

Commissioner Baldwin – “So basically, what Autumn just said, is that correct that we have, we have adopted the State’s regulations with respect to erosion control?”

Matt Card – “That’s correct. If they disturb over an acre, you know, they are required to get an erosion control plan approved by the State. And then what we’re requiring is that they show, they provide evidence that they have been approved. So usually what we get is, is the actual you know documentation.”

Commissioner Baldwin – “Okay.”

Matt Card – “Um, that is you know, proving that.”

Commissioner Baldwin – “Well what, what I wanna clarify is that Henderson County does not have erosion control uh, regulations. We, we’re depending on the State to do the job. And what we’re saying is, we’re, we’re asking that they submit their plan, grading plan, soil erosion control uh, um, plan to the State. They are to approve that and then we want to ensure that, that uh, the approvals are then sent back to Henderson County. Is that.”

Matt Card – “That is correct.”

Commissioner Baldwin – “The process?”

Matt Card – “That is, that’s the process.”

Commissioner Baldwin – “Is that what you mean by Item #5?”

Chairman Moyer – “Item #5, on which.”

Commissioner Baldwin – “It’s uh, on uh, Planning Board recommendations. Or is this what they meant, applicant indicated that the erosion and sedimentation control plans will be submitted upon completion and are awaiting the final recommendation from the environmental consultant? I, I don’t hear DENR in this.”

Autumn Radcliff – “Yeah. They actually, from our understanding, hired an environmental consultant that was actually preparing their plans, and taking care of. That’s how it was presented at the Planning Board, and uh, most of the stuff came st, directly from the Planning Board minutes. Um, whether you know, Lapsley and Associates did it or an environmental consultant does it, it still has to go through the same process and go through the State. So we just want some certification back from the State that they have been approved and everything was okay.”

Commissioner Baldwin – “Is that stated in here?”

Chairman Moyer – “No. The wording is not there, you’re right.”

Autumn Radcliff – “No.”

Commissioner Baldwin – “I see submit and I see review, but I don’t see the requirement that they have to submit, and it gain approval, and we receive the, the certification from the State.”

Autumn Radcliff – “No, uh, the only thing is underneath that in italics, was the actual Planning Board’s recommendation that the applicant submit documentation of approval prior to beginning any construction.”

Commissioner Baldwin – “By DENR, that’s what the intent is?”

Matt Card – “That’s correct.”

Commissioner Baldwin – “Okay.”

Autumn Radcliff – “Yeah, we can include that in there by DENR.”

Chairman Moyer – “Are there other questions for uh, staff at this time from the other parties? Bill what, Bill do you have any questions for uh.”

Bill Lapsley – “No I don’t have any questions. I’d, I’d like to support the answer that was given. Uh, we’re uh, the applicant’s obligated under State law to submit the plan, get it approved, and because there are water quality issues with the wet lands uh, our consultant on those issues is working with us on the actual submittal to the state. But we, the applicant can’t touch the ground without that permit in hand. And once we get it then we give ... a copy to the Staff uh, for their records. So that’s certainly not a problem.”

Chairman Moyer – “Ms. Harkey do you have a question for staff?”

Jean Harkey – “Yes. Uh, I have a comment.”

Chairman Moyer – “No, we don’t, we don’t, your comment now.”

Jean Harkey – “Alright.”

Chairman Moyer – “...questions for staff. You have a ques, you’ll, you’ll have a chance in just a minute.”

Jean Harkey – “Pardon me?”

Commissioner McGrady – “To comment.”

Chairman Moyer – “You’ll have your chance to make comments in just a minute.”

Jean Harkey – “Well I would question the Board, if it is possible to request the petitioner to put a buffer zone along the property adjacent, those uh, properties that border Tennis Ranch Road and the, the proposed project, that a buffer zone be considered to be established along this area since it seems to be the only one that has residential properties along the periphery.”

Chairman Moyer – “So your question is has Staff considered requiring a buffer along that back line.”

Jean Harkey – “Yes. Now this is the only, this is the only one I see that, that has residential property adjacent to the periphery, and I think it should be considered.”

Chairman Moyer – “Well let’s ask Staff whether they’ve considered it.”

Autumn Radcliff – “Um, we can’t actually ask them to put the buffer there. Um, it was a concern of Staff that got brought up at the Planning Board meeting. Um, seeing as how the Planning Board is sort of the advisory in this, and they did not feel, you know, that that was one of their comments, we, we strictly take their comments to pretty much follow it on, you know, for the public hearing. Um.”

Chairman Moyer – “I don’t understand what, what you just said.”

Autumn Radcliff – “Um, well, we can’t ask them to put the buffer in.”

Chairman Moyer – “Why?”

Autumn Radcliff – “It, it, there’s no requirement that says they have to have the buffer. There’s only the test in there that, you know, to ensure that they’re um, have some, something for the perimeter, that they’re offering some sort of protection to the adjacent property owners. Um, their protection that they’re, they’re doing with has to do with the par, uh, the topography, um, the applicant explained and especially on um, North Rugby Road that there was an embankment that was gonna be um, their sufficient buffer. Um.”

Chairman Moyer – “The provision that Commissioner McGrady asked you on page 159 puts a very specific obligation on the Board of Commissioners to consider all appropriate uh, buffering.”

Autumn Radcliff – “Correct.”

Chairman Moyer – “So why wouldn’t Staff make a recommendation to the Commission to do something if you thought it was the right thing to do? I’m, I’m missing a piece here.”

Autumn Radcliff – “I’m not saying that it’s right, I’m not saying that it’s wrong. I’m not even saying that the buffer that they have proposed, the buffer that they don’t have proposed is sufficient or not. Um, it’s just strictly because staff comments um, just reflect it back to the general site standards to put that back at the Board’s feet to decide whether or not they feel it’s sufficient. The Planning Board felt it was sufficient. So now in turn it is this Board’s turn to decide whether or not they feel that’s sufficient.”

Commissioner Baldwin – “And, and, and just one more time, what provisions are being made for um, a buffer. Are we talking about a berm, are we talking about uh, an, uh, what width and what height is the berm. Are we talking about evergreen trees. Are we talking about uh, what, what are, what are we talking about, I’m lost.”

Autumn Radcliff – “I think, I think um, Bill can probably answer that a little bit better as far, I believe it’s a berm though.”

Bill Lapsley – “Mr. Chairman?”

Chairman Moyer – Um hum.”

Bill Lapsley – “May I respond? It uh, we appreciate the question and the concern. The area uh, that, that has been discussed on the map here, is, does abut some existing residential units. The way the topography lays here, on this, on this particular area of the property, when it’s developed this area will be cut down and there will be a cut slope along here, and that’s what’s dictating the longer lots because the back portion, maybe as much as 50 feet, will not be available as part of the flat house site. It’ll be a slope that will be grassed, and uh, and that’s why these lots are longer, to accommodate that slope. As far as that being a buffer, uh, to some extent it is, vertically. Horizontally it’ll be planted but there, there was no intent to construct a berm because the, these new houses will be substantially lower than, than these lots here. These houses will look over the top of.”

Commissioner Baldwin – “And, and so in essence what they see is the roof top.”

Bill Lapsley – “Oh I think they’ll, they’ll see over, I mean if they look down they’ll see the rooftop. They’ll look out, they won’t see that.”

Chairman Moyer – “No mam, please. We’ll, you’ll have your chance. But the answer to the question is there’s not planned berm or vegetation buffer in you plan at that location.”

Bill Lapsley – “No. Uh, but as, I talk with Mr. Norwood if this, these particular home owners in that area have a concern we can certainly plant some trees or do some things there if that’ll make them feel better. Uh, but it is, the topography’s gonna dictate that the houses will be substantially lower uh, than, than the adjacent property.”

Commissioner Baldwin – “I, I have a follow up question. Uh, for uh.”

Chairman Moyer – “You gonna change the subject? I wanna just pursue that.”

Commissioner Baldwin – “No.”

Chairman Moyer – “Okay, go ahead.”

Commissioner Baldwin – “Yeah. Um, as, as what, what is your, how, how much are you going to be taking out? How much elevation is gonna drop from where it is now to where the new houses will be?”

Bill Lapsley – “As I recall.”

Commissioner Baldwin – “At the foundation.”

Bill Lapsley – “As I recall it’s about 20 feet or more. Maybe 25.”

Don Hunley – “It, it really varies, uh.”

Chairman Moyer – “You wanna come up to the microphone please.”

Bill Lapsley – “Uh, this is Mr. Don Hunley who’s uh, also in our firm working on this project.”

Don Hunley – “Uh, Don Hunley, also with Lapsley and Associates. Uh, basically, this’ll all be on a lower level and the houses up here on the ridge will look over the top of it. The amount of cut at any particular location uh, will just depend on the height at that particular location because this is not consistent. There’s ridges like this, and then basically it’ll stair set down, as it goes down until it get to the uh, to the lower levels in the 100 year flood plain.”

Bill Lapsley – “What’s the”

Chairman Moyer – “In that specific section.”

Bill Lapsley – “particular area. Do you know? How much does it drop? Yeah, how much does it drop where these units are here?”

Don Hunley – “You talkin’ about this area?”

Bill Lapsley – “Yeah.”

Don Hunley – “I would say anywhere from 20 to 40 feet in that area.”

Commissioner Baldwin – “Okay. So, so it is a possibility if you, if you built, the houses in that area, are they gonna be at the 35 foot height uh, limitation or, they gonna be lower.”

Several people speaking away from the microphone.

Chairman Moyer – “Wait a minute, let’s.”

Drew Norwood – “Um, the largest house we have is a two story house with two, with a nine and 18 foot ceiling, say 20 feet and a eight foot roof so you’re talkin’, be under 30 feet.”

Commissioner Baldwin – “Under 30 feet. Will those houses be on that side?”

Bill Lapsley – “They, they could be. I don’t know that we’ve identified a pos. specific footprint at, at each lot yet.”

Drew Norwood – “We have, we have ranches and two stories, and the customer will pick the lot and which house plans, so for that house. We don’t know which one’s gonna be there.”

Bill Lapsley – “But again to, to address possibly this lady’s concern and maybe four or five of the houses that are existing there, we could leave somewhat of a flat piece and then plant, plant some white pines or whatever there to create a buffer. It would restrict their view out, but we could do that if that was desired.”

Chairman Moyer – “Ms. Radcliff I wanna come back to you because I’m still, wanna pursue this question. Um, you told me what the Planning Board did, but I don’t think you’re telling me what Staff recommends. And I think you’re trying to avoid that, to be very honest.”

Autumn Radcliff – “I’m not trying to avoid it. The lack of the buffer is a concern of Staff. The fact that there is no buffer along the road, there is no buffer for adjacent property owners especially for the property owners that abut right up to this is definitely a concern. And it was definitely a concern that we, we raised at the Planning Board level. You know, due to the fact that they did not feel that was a concern, it was not raised again as a Staff comment. But that was why it was pointed out to go back to these tests, for this Board to decide whether or not there is sufficient perimeter protection.”

Chairman Moyer – “So you think it’s a concern...Planning Board, but they didn’t carry through on it to the extent you, you think.”

Autumn Radcliff – “It, it is definitely a concern. It is definitely a concern um, for me along North Rugby Road that the lots are going to abut right up to the road with a ten foot setback off of Rugby Road. For any future widenings or anything else that could possibly take place.”

Commissioner Baldwin – “But had this been developed under the regular subdivision ordinance it would’ve been a 50 foot setback from the center of the road. Is that.”

Autumn Radcliff – “They would have had a 50 foot setback unless they design their subdivision to where they had some sort of a buffer common area that was running however wide it was through there. That would have got em’ out. But yes, had this been developed under R-10 or R-15, the buffer requirement would not exist anyway.”

Chairman Moyer – “But on North Rugby Road they’re gonna be 10 foot back from which line?”

Autumn Radcliff – “Um.”

Chairman Moyer – “The right of way line or the, can’t be the center line.”

Autumn Radcliff – “Uh, North Rugby, right through here runs. The lots are gonna butt right up to the back. There is no proposed buffer. I’m not real sure how long these lots are, where the house’ll actually be placed, but if the special use permit goes through, they would only be required, this’ll be considered a fair property line and they would have to have ten feet.”

Chairman Moyer – “Only be required to, okay. Alright.”

Commissioner Baldwin – “I don’t know I’m just, just conjecturing but is it kinda like what you see up and down uh, Hooper’s Creek Road as far as the way the houses are laid out on this particular section of your subdivision?”

Bill Lapsley – “Yeah I think, I think that’s a fair statement. I mean I, there’s a back yard to these houses. I mean we’re, they’re not gonna put the house ten feet from the edge of the right of way on North Rugby Road. Uh, although that’s, that’s what the setback allows. Uh, there’s a back yard but there’s, very similar to the houses that’re off Jackson Road that back. They have a fence and there’s, there’s a buffer, there’s a back yard.”

Chairman Moyer – “Ms. Harkey did you have other questions for staff?”

Jean Harkey – “I’m not sure it’s staff or not. Maybe the petitioner.”

Chairman Moyer – “Well we’ll come back to that in a minute. Um, do you have any more questions Bill for staff at this time?”

Bill Lapsley – “No sir.”

Chairman Moyer – “Ms. Harkey, this is your chance now to make your statement or whatever evidence you wanna put into the record. Then the parties have the right to cross examine you.”

Jean Harkey – “Okay.”

Chairman Moyer – “Okay, would you come to the microphone and, and make.”

Jean Harkey – “Well I, I don’t mean to make a, you know.”

Chairman Moyer – “Presen, well this is your chance to present your, and it’s not trouble, this is your chance to present your evidence.”

Jean Harkey – “I’m concerned that uh, that uh, you’re not focusing on Tennis Ranch Road. What I’m concerned about is the, the residential area on Tenni, Tennis Ranch Road that now exists. And that is, is shown on this first map of the first uh, exhibit I had.”

Chairman Moyer – “Is that not the area that we’ve been focusing on for the last half hour?”

Jean Harkey – “I don’t think he was pointing to the correct area. Because the property behind uh, my property is a very gentle slope. It is wooded, and it just needs a setback to me, larger than ten feet. Kind of a green belt in there so that you’re not really coming in there and slaughtering trees and bring it right up to the, the residents that are already in there.”

Chairman Moyer – “So you don’t see behind your place a twenty foot drop to where.”

Jean Harkey – “No. There’s no drop, it’s a very gradual slope. But it, you know, way down toward the front, I don’t know how deep these lots are shown on this map.”

Commissioner McGrady – “You’ve actually got some topographics. See where her’s is, it’s right here. So what she’s saying is, is probably right. But look at everybody else, has got significant...”

Jean Harkey – “The Tennis Ranch Road area is the only one that I’m concerned about having a, you know, having a greater setback. Or at least a provision so that the trees aren’t cut right up to the ten.”

Chairman Moyer – “Well let us take a look at that.”

Jean Harkey – “Okay.”

Chairman Moyer – “Commissioner McGrady did, looking at topographicals, saying at one end of this road it may have the drop but the, the end that uh Ms. Harkey lives on.”

Commissioner McGrady – “If you look at attachment 3 to, I guess what you originally gave us, Autumn, and you can clearly see Ms. Harkey’s piece there. And I’m again assuming the topographical features are as suggested, you’ll see I, I guess both, it would appear that both Ms. Harkey and Mr. Lapsley are sort of right. Some of these lots really drop off quickly. The one that doesn’t, would appear to be hers. To you see what I mean? The gradients aren’t anything like what the gradients are on an, any, any of the other ones. Um, unless I’m misreading this map which is quite possible.”

Several people talking at once.

Bill Lapsley – “Could I comment on that?”

Several people talking at once.

Bill Lapsley – “If you look, if you look at this map where Ms. Harkey’s property.”

Chairman Moyer – “Bill, get us to the...”

Commissioner McGrady – “Get us to the right, the same one.”

Bill Lapsley – “Attachment 3.”

Chairman Moyer – “I’ve got a bunch of attachments 3’s.”

Commissioner McGrady – “To which set of documents?”

Bill Lapsley – “To the first set of...”

Commissioner McGrady – “Great.”

Chairman Moyer – “Alright I have about.”

Russ Burrell – “... with a general overview of...”

Several people talking at once.

Autumn Radcliff – “...attachment 3, if you look down at the bottom, some of them I know are cut off, I apologize. It’s sheet 9 of 10. So it’s the next to last one.”

Several people talking at once.

Commissioner Young – “9 of 10?”

Autumn Radcliff – “I drew that.”

Chairman Moyer – “Oh, you drew it. Okay. That’s her property.”

Autumn Radcliff – “Yeah, her property’s just right in here.”

Chairman Moyer – “What number is it Autumn, for the record? 589, 588?”

Several people talking at once.

Chairman Moyer – “Alright Bill for, we’re looking at 9 of 10.”

Bill Lapsley – “I agree, that’s the ... map.”

Chairman Moyer – “And we believe her lot is 588 and you, 589, 588.”

Bill Lapsley – “I think that’s the, uh, well I think, it may be closer to 586.”

Commissioner McGrady – “No, according to the first one it’s 586.”

Chairman Moyer – “586. Alright.”

Bill Lapsley – “What, what happens in that particular location, uh, as, as Ms. Harkey has mentioned, the land is flat there. But it is the top of the hill. And these contour lines go down the hill. So, as this, as this uh, as these lots would be developed, that would be the highest cut if you will, the highest slope vertical distance, would be there. As you got to the left and right away from that then the slope goes down. It’s still cut but the drop off is not as severe. Uh, and the question that Ms. Harkey just asked me is, do we need to cut the trees all the way back to the property line. In order to grade this site and, and have the flat pad available for these home down near the road, we need to cut the dirt back there. And so that means the trees would go and the, what we would offer is that after it’s cut, we can have a flat spot right at the back of the property line and plant some trees back uh, so that she wouldn’t see any of the houses that are here on these lots.”

Chairman Moyer – “Okay. Ms. Harkey, you were presenting your evidence. Do you have anything else you would like to present at this time?”

Jean Harkey – “I would like to make a statement that it’s a wooded lot now. And it does slope and, and that uh, it will certainly be, not, it won’t be any enhancement to those people that are living right there or the property owners that own right along there to have a cut. And he says it’s gonna drop 20 to 50 feet, was that what he said?”

Commissioner Baldwin – “40.”

Chairman Moyer – “20 to 40, yeah.”

Jean Harkey – “20 to, I mean just a.”

Chairman Moyer – “What you’re asking the Board and, to consider is some type of buffering.”

Jean Harkey – “Right, to maybe leave the.”

Chairman Moyer – “Between the development and your property or the, not just yours, those in the back.”

Jean Harkey – “Tennis Ranch Road.”

Chairman Moyer – “To soften in here.”

Jean Harkey – “Right, so that maybe they could leave a tree, you know, some trees at the back, back of those lots or something so that it, they started their cut further down into their property.”

Chairman Moyer – “Okay. You’d like some type of protection. Wait a minute.”

Jean Harkey – “A green zone.”

Chairman Moyer – “Staff, do you have any questions for Ms. Harkey while she’s here.”

Autumn Radcliff – “No.”

Chairman Moyer – “Mr. Lapsley, would you like to ask Ms. Harkey any questions?”

Bill Lapsley – “No sir.”

Commissioner McGrady – “If I can now come back to Russ just a second so I know if I need to ask a question.”

Chairman Moyer – “Sure. We’re going around. Go ahead.”

Commissioner McGrady – “Coming back to our statute, before we issue a special use permit Russ, we have to make certain written findings certifying compliance. Um, and uh, that satisfactory provision arrangement’s been made concerning a number of different things. Satisfactory ingress and egress, um, I, I have a hard time with 6B there. Um, it’s on page 159 or what we have. Um, trying to understand.”

Commissioner Baldwin – “Which one, which, which one do you have?”

Chairman Moyer – “The second.”

Commissioner McGrady – “It’s right at the very end of the second set.”

Russ Burrell – “Of our ordinance, 200-70 uh, (A)(6)(b) is that correct?”

Commissioner McGrady – “Yeah. Tell me what that means. I know I’m a lawyer too, but I’m.”

Russ Burrell – “Uh, you’re you are asking, well you’re asking a difficult question because of the way that it reads. They have to find, you have to find, that their plans, or your, their plans as you require that they be modified.”

Commissioner McGrady – “Yeah.”

Russ Burrell – “Provide uh, a sufficient amount of off-street parking and loading area, and that whatever kind of off-street parking and loading area that, that you have required or that they have planned that you find to be sufficient, does not um, adversely affect uh, the adjoining properties in terms of economic value.”

Commissioner McGrady – “Okay.”

Russ Burrell – “Noise, glare, or what have you.”

Commissioner McGrady – “Okay, thank you.”

Chairman Moyer – “We have put quite a burden on ourselves here I’ll say that.”

Commissioner McGrady – “Then, I’m not gonna ask a question. I’m not gonna go there.”

Chairman Moyer – “Any ques, further questions at this point? Then this will be the chance for Planning Staff to put any additional evidence or anything else they’d like to say based on anything that’s been said so far.”

Autumn Radcliff – “Staff has nothing to add at this time.”

Chairman Moyer – “Then we’ll go back to the rebuttal evidence by Petitioner if there’s anything, and I, there may be some questions I know I have one. Bill do you anything you’d like to put back on the record.”

Bill Lapsley – “I would just one, one uh, final comment for the Board to consider. Should the Commission decide to approve this project with whatever conditions you so decide, we would ask that you uh, recognizing the fact that DOT is reviewing the traffic impact analysis and may require some change to what is recommended in that report, uh, and that the wetland issues and, and other things that we uh, the applicant has to abide by, may require tweaking of the plan. Not to increase numbers of lots, but may require some minor change to the layout that’s before you. We would ask that you consider delegating to Staff the ability to review that uh, and uh, allow them the ability to approve it if it’s minor so that we don’t have to come back and have another Public Hearing. So we would ask that you consider that.”

Commissioner McGrady – “If I can ask a question.”

Chairman Moyer – “Yeah. Go ahead.”

Commissioner McGrady – “Well because, relating to the traffic impact analysis. Um, there were a set of improvements um, which are, I guess being recommended to be made by Windsor-Aughtry. Is it my understanding that the applicant is willing to make the improvements that are reflected in this draft at this point in time?”

Bill Lapsley – “Yes sir, to the extent that the recommendations indicate those improvements are directly related.”

Commissioner McGrady – “Well that’s what I’m looking at, page 3 of it, um, there’re three sets of improvements I believe. Yeah. Um, that are said, improvements by Windsor-Aughtry, three of them are construction apparently on your site and one of them is construction related to the specific left turn lane off of North Rugby Road I guess. Um.”

Bill Lapsley – “I, I agree and again, the D, NCDOT District Office has this report, Has submitted it to Division. Uh, we have a meeting with them scheduled for next week. Uh we, we can’t uh, assure you that the plan as this document is submitted will be accepted. DOT may require something other than this. And, and so that’s why we ask that, we have to do whatever DOT tells us, uh, and so it may be some additional work beyond this.”

Commissioner McGrady – “You, you noted, and I mean I, I think that what’s striking was that according to the study under the no building conditions um, all of four intersections in the area failed to operate at an acceptable level of service as of 2010. So, we don’t do anything here and the four are already awful. And obviously you know on the one hand that suggests that well, the applicant shouldn’t be responsible for any of these other improvements. But the flip side of that is well, we’re putting in all of these other units and it’s only gonna get a hell of a lot worse.”

Bill Lapsley – “And that, and that’s why we’ve, feel like we need to meet with DOT and see how they feel about this and, and uh see if they’re, have some interest in, in doing some of this work and maybe they’ll wanna do something, joint venture. I, I don’t, I’m not sure. But we, we’re closer to understanding what may need to be done, but we don’t have a final approval yet.”

Commissioner McGrady – “Um, Russ, while I’ve got Bill up here, I mean, we I guess could condition our, the special use based on things that the other agency um, sets forth recognizing their expertise in the area of roads and all of that yes?”

Russ Burrell – “That’s correct. Um, if you’re going to allow minor changes you’re gonna need to set out those parameters pretty specifically. Staff could a, could approve minor changes having to do with traffic access if those are mandated by a DOT plan affecting this property for example. Uh, but you’re gonna need to set out those parameters that Staff would be allowed to, to give, um.”

Commissioner McGrady – “Okay.”

Commissioner Baldwin – “But if we, but if we do it, uh with a condition that it meet um, recommendations uh, from DOT all then Staff would be doing would be to make sure that their plans reflect the changes that DOT recommends.”

Russ Burrell – “To the extent then that it doesn’t change some other conditions you placed on it. If you, if you should place a condition for example, if you place a condition regarding uh, buffering along uh Rugby Road.”

Commissioner Baldwin – “In the recommendations to the point out.”

Russ Burrell – “Exactly.”

Commissioner Baldwin – “Okay.”

Russ Burrell – “So that it could change some other condition that put on, so you need to set those parameters up that way.”

Commissioner McGrady – “Bill how much of the, the proposed subdivision is in the, the uh, 100 year flood zone? I mean I, and I guess we, I don’t wanna get into the whole discussion of what’s the zone and what’s not, I mean we’ve had that discussion in other contexts.”

Bill Lapsley – “Once, once the Com, the Board ap, adopted the, the current Flood Plain Ordinance.”

Commissioner McGrady – “Yeah.”

Bill Lapsley – “As we understood it we were allowed to build into.”

Commissioner McGrady – “Into 20 percent.”

Bill Lapsley – “20 percent. So once we knew that was the approved ordinance we recognized where that 100 year flood line is, and we made sure that we did not exceed that 20 percent.”

Commissioner McGrady – “And, and that’s where I’m going. How, what percentage is.”

Bill Lapsley – “It’s probably 19.5 percent.”

Commissioner McGrady – “Okay, we’re right at the edge.”

Bill Lapsley – “We used what the law allowed us to use.”

Chairman Moyer – “But then the issue I have is then you counted the rest of it for determining the remainder of your density and I still do, don’t know the justification for that.”

Bill Lapsley – “Well I, I think uh, I’ll have to defer to the County Attorney. My understanding under the current ordinance is uh, we could use that but again, uh, if you were to, and I haven’t done the calculation. If, if we use that basis the number of units was 660. What the applicant’s requesting is 524 so you can back the uh, 524 into the acreage that they’re actually using uh, it may be less than, than uh, than the total density if, if, if you’re following me that.”

Chairman Moyer – “Yeah I would and I would like to see that figure. That’s, that’s, I would very much like to see that.”

Bill Lapsley – “I don’t have my calculator with me.”

Commissioner Baldwin – “What’s 175 times 20 percent and you subtract that out of it, then you calculate your density is what we’re saying right?”

Bill Lapsley – “Well, well.”

Chairman Moyer – "...the way I was looking at it. But, I don't if they would agree but that's what I was looking for."

Bill Lapsley – "We took, uh, the 45 acres that are left and, and then there was an additional the 20 percent is added to that, that would be the total flood plain area. So I, I don't remember how many acres uh, was in that 20 percent. Eight acres, ten acres, something in that, that range. Along this fringe here."

Someone speaking away from the microphone.

Commissioner Baldwin – "Well your, your 45 acres is, represents 25 percent of the total parcel. The 45 acres."

Bill Lapsley – "Okay, 45 of 169."

Commissioner Baldwin – "That's flood plain. Or no your green space. Your green space is 45 acres and that's, that's uh, 25 percent of the 175."

Someone speaking away from the microphone.

Chairman Moyer – "See the figure I'm looking for is what your density would be if you took your buildable land, the 20 percent, looked at the R-10, R-15 and how many units could you put on it like that. And if it's more than 524 then, then that's fine. But that's the figure I'm looking for."

Commissioner Baldwin – "Alright then, so you'd take 135 acres, calculate the density at 135 acres is what you're doing. And I don't know what percentages are."

Bill Lapsley – "Here's, there's 119, if my number's right, 119 acres out of the flood plain. Working backwards now."

Chairman Moyer – "Um hum, it's 119."

Bill Lapsley – "And, and so you have 524 units divided by 119, that's units per acre. That's 4.4 unit's per acre which is."

Commissioner McGrady – "R-10."

Chairman Moyer – "Don't you have to go the other way? You have to know how much R-10 and R-15 you have."

Bill Lapsley – "I was just trying to average it..."

Commissioner McGrady – "He just trying to average..."

Chairman Moyer – "...average it alright."

Bill Lapsley – "...between por, portions."

Chairman Moyer – "Alright, well if it's more R-10 you'd be at a benefit, if it's more R-15 you're."

Commissioner Baldwin – "Well is, is the ordinance written so that you, you do not have to subtract out uh, non-buildable, I mean you look at the entire parcel and calculate the density and you can use things like wetlands or flood plain as part of your green, open space. Is that how it's currently written?"

Russ Burrell – "Remembering that your ordinance, your Planned Unit Development Ordinance was written far before your flood plain ordinance ever came into uh, being. Uh, 200-33, which is Planned Unit Developments, uh,

Section A(2), um, the second sentence of that reads “the density ‘dwelling units per acre’ of any proposed Planned Unit Development shall be determined by dividing the total number of square feet in the property by the minimum lot requirement of a single family dwelling”. In the district in which that particular area is...”

Chairman Moyer – “But it’s also a Special Use Permit where we have great flexibility to uh, determine those things. Bill, the other area I wanted to get into was sewer allocation. Uh, I thought I’d see something about uh, uh, MSD.”

Bill Lapsley – “We, we do have an allocation letter from MSD that was obtained via the Cane Creek Water and Sewer District.”

Chairman Moyer – “It’s just not in this packet.”

Bill Lapsley – “Yeah. We, we have it.”

Commissioner Baldwin – “Do you have it with you?”

Bill Lapsley – “I mean I’ll be glad to get it for you but we do have.”

Chairman Moyer – “Cause there’s different allocations, different costs based on certain allocations, and I’d be very interested to see what, where that is.”

Bill Lapsley – “We submitted an, a request through Cane Creek Water and Sewer District who in turn submitted to MSD, and came back for this number of units times the average calculated flow and, and they gave us the allocated.”

Chairman Moyer – “They gave you the allocation.”

Bill Lapsley – “Yes.”

Commissioner Baldwin – “So we have, if we had the letter, we wouldn’t be particularly interested in the numbers but in the fact that they gave it to you and approved it. And you’re under oath and you’re saying you received the letter.”

Bill Lapsley – “Yes sir. Yes sir.”

Commissioner McGrady – “We can always have him submit that at a later date as part of what we’re doing.”

Chairman Moyer – “With respect to uh, water. How did you submit your application?”

Bill Lapsley – “We uh, we submitted, during the due diligence period before Windsor-Aughtry Company purchased this property, uh, we did a number of things and with, with regard to water and sewer we uh, calculated what we thought would be the maximum number of units and submitted a water availability request to uh, at that time the uh, the Regional Water Authority via the City of Asheville, who actually issued, uh, a letter of commitment for water availability uh, for this development based on extension of the water line from the intersection of Butler Bridge Road and Jeffress Road to the site. At the same time we submitted a uh, request for water availability to the City of Hendersonville uh, with the same information indicating uh, an extension either down North Rugby Road from the end of an existing eight inch line, or from Highway 25 from the 16 inch line we talked about before. And the reason we submitted to both at the time, uh, we weren’t sure whether the Regional Water Authority would exist and whether the City of Asheville would honor uh, any commitments. Uh, but uh, so that’s why we pursued both sources. And we have a letter from both sources indicating whichever one that, that we choose to pursue.”

Chairman Moyer – “You have a letter from uh, Asheville with respect to water availability.”

Bill Lapsley – “Yes sir, we do.”

Chairman Moyer – “I, I would like that to be part of the record.”

Bill Lapsley – “I, uh, I apologize for that. We do have that, and we have the same from City of Hendersonville.”

Commissioner Baldwin – “I have a, when you’ve finished Bill, I have a question.”

Chairman Moyer – “No, go ahead.”

Commissioner Baldwin – “Um, 524 units is what you’ve asked for.”

Bill Lapsley – “That’s correct.”

Commissioner Baldwin – “I saw in the, there’s a statement in the application that said that uh, based on the um, sales at the Livingston Farm Development, uh 30 percent of the sales went to empty nesters. And that uh, s, and, and I, is it safe to then infer from that, that the 70 percent are non-empty nesters. Is your housing market really targeting those young families with children and you, you’ve talked about affordable housing. What’s that other 70 percent like?”

Drew Norwood – “Uh, if you, if you use the number that uh, apply that, like you said the Livingston Farm number you, your, your village, your patio home, homes will be um, what I call empty nesters which are people like me that are still working and their children are gone, and retirees, and some professional couples that have no children.”

Commissioner Baldwin – “And that’s 30 percent?”

Drew Norwood – “And that’s about 30 percent of this project.”

Commissioner Baldwin – “So that’s about a hundred, that is 158 units of, of, that category.”

Drew Norwood – “...that’s close, I don’t know exactly what it is. So you will have, out of those you’d probably have five to six percent will have, will be people with children that’ll buy there. And then the other third will be um, this is where we do the, the about 1,300 to 1,900 square foot house. And that’s where the starter, starting out families usually buy.”

Commissioner Baldwin – “Young families.”

Drew Norwood – “Young families. And then typically what’s happened is, as they, as their house increases in value or their job income increases, they move up to that next neighborhood. And uh, buy the next level up house.”

Commissioner Baldwin – “So I, it’s probably safe to assume then, I, I just did the math, there’s 158 that would be in the category of empty nesters, five or six percent of those uh, maybe having older children and then the last two thirds being families with children.”

Drew Norwood – “Right.”

Commissioner Baldwin – “And that’s 366 units.”

Drew Norwood – “Right.”

Commissioner Baldwin – “With families with children. Okay.”

Drew Norwood – “And probably, to be quite honest, probably about ten percent of those will be retirees. For some reason they buy, they don’t want to buy in the patio home and they buy in, in the other houses. The bigger houses.”

Commissioner Baldwin – “Thank you.”

Chairman Moyer – “I think we’ll now have, unless there’s other questions, we’ll have closing remarks um, and we’ll start with the petitioner. Bill, do you have any closing remarks you’d like to make?”

Bill Lapsley – “Just like to say we appreciate you uh coming tonight and, and your questions, and uh, we obviously believe this is a worthwhile project. Uh, and uh, we hope you’ll see it uh, with a favorable decision.”

Commissioner Baldwin – “Thank you.”

Chairman Moyer – “Ms. Harkey, this is your chance to make any closing remarks. This will be the last time anybody other than staff will be asked. Do you have any closing remarks, anything you wanna add to what you’ve already sta, stated?”

Jean Harkey – “I would just like to reinstate my request for a buffer zone along Tennis Ranch Road.”

Chairman Moyer – “Alright.”

Jean Harkey – “Thank you.”

Chairman Moyer – “Thank you. Staff, any closing remarks by staff?”

Autumn Radcliff – “Um, Staff has really no closing remarks other than just urging the Board to go through those tests and really look at those in depth before making their um, decision on the special use permit.”

Chairman Moyer – “Well I guess I, my response to that was, we need to look at evidence on the record to look at those in depth and that’s staff’s obligation to give us the stuff to look at.”

Autumn Radcliff – “Well uh, everything, everything that you’ve got is, is everything that was um, required for the special use permit application and that was submitted by the applicant. Um, the few things that were sort of left hanging uh, that was recommendations, was the things that, that staff wanted to make sure a copy was on record before, prior to construction or prior to recording the lots.”

Chairman Moyer – “Is there any other than, there’s no other documents, any other evidence anybody needs to put on record for the Board to consider.”

Drew Norwood – “Could I make one, one last comment.”

Chairman Moyer – “Yes, Mr. Norwood.”

Drew Norwood – “Uh, I, I just felt like there was some confusion about having water and sewer and getting the plats recorded and that sort of thing. We can’t, you know typically the way we do it, and it’s the way I understand ya’ll do, we’ll, we’ll put up a, we’ll do a particular phase. We get all these approvals for our water and sewer. Our permit to construct, our water and sewer, our erosion control plan. Before we can start grading, we’ll do, get some step through there. We’ll put up a letter of credit for a 125 percent of the balance, and then we’ll record a plat and begin construction of houses. But we can’t get a CO on the houses till all those thing are in and we have a permit to operate from the water and sewer people. So that’s how it’s all, made sure that it happens. Cause no.”

Chairman Moyer – “...the tricky piece to me, particularly the way you have laid out your subdivision is when you dedicate your open space. And you did not mention that see, that’s, that’s one of the things that...”

Drew Norwood – “We can, we can dedicate the open space from the go go.”

Chairman Moyer – “Alright.”

Drew Norwood – “That’s not a problem. Once, well once we know what we got and where it is, and, and what plan’s approved and then we say okay here’s the subdivision, here’s the open space. We can, we can have it described and dedicated.”

Chairman Moyer – “So you would not object to a condition to dedicate the open space at the outset.”

Drew Norwood – “No sir. Just, we have to know what, what it is and.”

Chairman Moyer – “Yeah. I understand.”

Drew Norwood – “There were some other confusing things but I can’t remember what they were. At least I was confused.”

Chairman Moyer – “Based on uh, I do have to go back to the parties now and staff do, do you have any questions based on what Mr. Norwood has added to the record.”

Autumn Radcliff – “No.”

Chairman Moyer – “Ms. Harkey do you have any? Okay, fine. Alright, I’ll throw it open uh, to the Commissioners uh, for discussion. We have not closed the record and we have not closed the hearing at this point.”

Commissioner McGrady – “The question I guess that I’ve got is sort of where we go from here. Um, I, I think we need to leave the record open for purposes of the applicant providing the two or three documents that you specifically asked for. Um, so I’d want to have that happen. Um, we’ve been buried in paper tonight. Um, and I actually have a head start on it because I’d seen the Planning Board discussion but I’m still feeling uh, um buried. And I, I would say Mr. Chairman I’m not ready to make a decision tonight till I’ve gone through some of what has been laid on us. Um, and I don’t know what our procedure ought to be, because my concern is I get into the, the paperwork that we’re, I’ve asked the questions I know to ask, but I just haven’t had enough time to, to look at the various maps and all the paper we’ve gotten, Um, to, to make sure that I’ve asked all the, the questions, um, that I might ultimately have. And then finally I, I just uh, uh, I’m gonna need um, a bit of a tutorial here Russ on, you know the, the types of findings that we need to make. Um, many of the decisions that we’ve had I’ve felt really comfortable sort of making the decision and then saying lets come back with a, um, a draft order and we throw it on the Consent Agenda and it’s easy. Uh, this one is more complex in my opinion than most of the one’s I, at least I’ve addressed up to the point. And so my preference actually would be to sort of see a draft of what it is um, we, um, might find and, and you know start out with a set of findings that are, are clearly required under the statute. Um, and make sure that I feel real comfortable that I’m, I’m, I’m there with respect to each of those finding. So, um.”

Chairman Moyer – “I guess my concern with respect to that going to page 159, is I don’t know how you can ask a Attorney to come up with these written findings unless we give him direction.”

Commissioner McGrady – “Direction on.”

Chairman Moyer – “On each of those items.”

Commissioner McGrady – Yeah.”

Commissioner Baldwin – “And that’s, I, I concur with that. I’ve, I’ve written rulings, I’ve been on this side of it, and I know often times uh, quasi-judicial bodies will hear what’s presented and they will approve it and they will somehow expect staff to come up and pluck from the testimony, from the record, all those items that satisfy this.

And I don't wanna do that. I think it's up to us to make the findings. And so that we get it in the record and we consense on yeah, we find that glare for instance, uh, is taken care of because of what's presented. That's, that's our duty, that's what we have to do."

Chairman Moyer – "I, I think so, that, you're right. Well Russ let me broaden uh, the previous two comment and see. If you go to page 159, it puts a very specific obligation on us to come up with written findings in, in A through F. Are there other areas that, generally, not generally speaking, but specifically that we have to have the same test to direct you to make written findings?"

Russ Burrell – "There are also conditions that you must find have been met regarding uh, general site standards. They are found in uh, ordinance section 200-56."

Commissioner McGrady – "Yeah."

Russ Burrell – "Under special uses, subsection D(1)(a-g). I believe that's a part of what you have..."

Commissioner McGrady – "It is, it's."

Chairman Moyer – "What page is that?"

Russ Burrell – "Page 149 and 150. D(1)(a-g)."

Commissioner McGrady – "Right in front of, right in front of the section we were, we were looking at, a page or two."

Chairman Moyer – "Yeah. Alright, so we have, in addition we have those general ones."

Russ Burrell – "Those are general site standards that must, you must have determined that, that those have, have been met uh."

Commissioner Baldwin – "Are those site standards for PUDs Russ, specific to."

Russ Burrell – "That's for, for special uses that must be complied with in any kind of special use including PUDs."

Commissioner Baldwin – "Okay. Are there specific PUD standards?"

Russ Burrell – "Then we go back to the, the PUD ordinance and it is less, it is far less specific. The PUD ordinance basically says here are the general outlines of property. From that you determine how many lots they can have. Then you get a lot of discretion in determining how to arra, rearrange those within that general outline of the, of the property. So long as certain very general requirements are met. And they are even more broadly drawn than those in the special use."

Commissioner Baldwin – "It, it would be helpful to us if we had a worksheet bulleted out of the items that we need to look at and make findings on rather than have to comb and flip back and forth so that we can specifically either pull from what's been given as testimony or we actually ask them to present evidence based on those findings. And, and each bullet referencing the section that it's coming from. That would make our job so much easier. And it would help if we did this twice a month, but we don't so, that's another issue."

Chairman Moyer – "And it's uh, particularly the ones on 149 that puts uh, a burden on us but they, they can rebut the uh, the burden we uh, it's very in. But I mean at the other, well, I guess I'm getting to the same point that uh, Commissioner Baldwin just raised that, you know when we have a variance you go one two three and you can, but how, how long is our checklist gonna be? We have 159, we have 149 and 150. What other."

Russ Burrell – "Your orders have averaged about eight or nine pages in these um, special use grants of PUDs."

Commissioner Baldwin – “But, but we’re looking at just a checklist.”

Russ Burrell – “And, but each, each think of a single spaced paragraph dealing with a item you’re gonna need to deal with on a checklist. So maybe, it’s gonna be three or four pages of check list easy.”

Chairman Moyer – “So without the checklist how do we know that we’ve considered all these item that’s, that’s where I am.”

Russ Burrell – “I understand that and I’ll be happy to...”

Commissioner Baldwin – “I can’t hold that many variables in my head.”

Chairman Moyer – “No.”

Commissioner McGrady – “And see that’s why I was, I, I talk in terms of a draft order, but we’re, the checklist concept actually fits better. I just uh, I don’t see any way that we can make these findings um, without having more time to go through the paperwork first. Um, and then comin’ back and if there are holes, um, just because we didn’t ask the question, or it’s not self evident, um, filling, either filling in the gap or finding that we, we’re not in a position to, to make that finding.”

Chairman Moyer – “Autumn I’ll ask, direct it to you, did, did the Planning Board go through each of these tests and consider each one of these separately?”

Autumn Radcliff – “Um.”

Chairman Moyer – “And is there minutes that reflects that we, could put in the record?”

Commissioner McGrady – “There are, there are minutes.”

Chairman Moyer – “That would help deal with this?”

Autumn Radcliff – “There are minutes. There, there are minutes um, of going, them going through most of the tests. I can um, provide, it’s on record that was um, submitted at the Planning Board meeting which was actual Staff memo that went through a lot of these for them initially. Um, it also gave them an option to look at some of the general site standards that are specific for the Board of Commissioners if they opted to. They didn’t.”

Chairman Moyer – “Alright. Is any of that in the packet you’ve already given us or is that not in the packet.”

Autumn Radcliff – “No, those standards is just the attachments, that very end attachment that has the sections.”

Chairman Moyer – “Okay, so we don’t have that information.”

Commissioner Messer – “Bill I’ve got a question I guess uh, going back to the water and sewer that I, I guess I’d want to ask Mr. Norwood, probably Bill. Uh, would there be a problem, other than the fact that the water flow, the water capacity from 1 24 to a 16 inch line, uh, doing a deal with Hendersonville City other than the City of Asheville. Cause you, I mean, you, you know, you’ve been on that Regional Water deal and it was TV as late as two or three night ago that uh, the water lines are being replaced in downtown Asheville, a lot of the people in Henderson County are gonna have to pay for those lines that are using water, you know, that turns on the taps and get those. I mean I’ve, you know, I know it’s a problem, but I, and, and then you, you read in here where uh, Mr. Mul, Mr. Norwood has to buy each tap for each house. And we know that there’s a big revenue uh, in water. You know, so,...everyone has it to you know, provide so, you know. Of course it is close to Buncombe County I understand but like I say if Hendersonville City has the water capacity I’d rather see it uh, being bought and used from Hendersonville City. I mean like I said that’s my personal opinion.”

Chairman Moyer – “Is there any pressure issue in that area Bill, I know in some of those areas uh.”

Bill Lapsley – “Yes sir um, I believe there is. Uh, I’m also concerned uh, with , based on my knowledge of both water system uh, the availability of water for other properties in the, in the neighborhood to this one, uh, that may be considered for other uses. Uh, it’s imperative that we have the highest volume at the highest pressure available. And there’s no question in my mind that that’s the line that’s owned by the City of Asheville at the moment. And I guess I’m optimistic that the Chairman will be able to negotiate some final outcome to.”

Chairman Moyer - “Which Chairman? Some other Chairman.”

Commissioner McGrady – “He or she’s not even here today.”

Chairman Moyer – “Uh, going back to wh, where we were.”

Commissioner Baldwin – “Good luck.”

Chairman Moyer – “I don’t know how we get there but it seems to me we need the checklist, and we need all the information that’s been generated with respect to compliance and uh, what staff has done with respect to these so that we don’t have to duplicate it all. And certainly the, then the petitioner would have the chance to comment on it or reflect that, or, or rebut it or whatever. But for, for us to meet the test that’s put on us I don’t see any other way for us to do that. I don’t see how we can do it based on what we have in front of us.”

Commissioner Baldwin – “Well the other thing that, that I, may be another time another issue but, but this does not say that a, a uh, unless I’ve missed it that a, that an application has to be complete. And I think that’s one of the things that ought, that we ought to make a finding on is that the application’s been submitted and it’s been complete. It just says that written application for special use permit is submitted.”

Chairman Moyer – “I don’t think staff accepted them though unless they’re complete do they? You wouldn’t.”

Commissioner Baldwin – “What measure do you use to decide whether or not they’re complete. We’ve just had a lot of information that we’ve been told is not part of the record, and we want it, um, but that’s really a procedural issues and I don’t want to bring that up now.”

Chairman Moyer – “Yeah. Alright.”

Commissioner McGrady – “The, the, the memo that best gets us to the checklist is not something that, that most of you have seen but it, it is as, Ms. Radcliff suggests, there was a memo that she and Mr. Card put together for the Planning Board members um, for their hearing dated September 20th that sort of runs through the general standards. Um, it, it’s sort of the check list and uh, um, we backed into some of those issues here but they, they weren’t as, as explicitly highlighted in the materials as they came to us as they were in the materials that came to um, the, the Planning Board. But I think that’s the checklist, or at least a significant piece of it. Um, again I just, Mr. Chairman, where do you wanna go?”

Chairman Moyer – “...use that unless it’s submitted into the record.”

Commissioner McGrady – “Well I understand but it, it’s just a, as I disclosed I was part of that process so I have all those documents.”

Commissioner Baldwin – “I tell you what I would like to do, what I think would help clarify it, would be that if we, if we had a check list and we gave the applicant an opportunity to look at the checklist, uh, and for them to decide whether or not they have submitted everything they would like to submit in order for us to make a, a decision. They want us to make an informed decision, and if they have the checklist as well as we, they’ll know

whether or not everything has been submitted to record. And if it hasn't, I'm sure they would like for it to be before we make a decision."

Chairman Moyer – "Let me um, just go through what needs to be said and then we can go from there. We can either vote today directing staff to bring back findings of fact and conclusions consistent with the decision at a future meeting, or for review, or we can continue our discussion and decision until a later date. The Board however, has, must issue a written decision within 45 days of the conclusion of the hearing. So if we continue this meeting to a future date, my understanding would be the 45 days does not start to run. And it certainly seems to me some way that we can get that information, give it to the applicant, have them respond to us uh, and have a uh, hearing in the relatively near future to try to conclude this. I mean not a, continue this hearing to a certain date so that we can wrap this up would be the way to go."

Commissioner McGrady – "I don't wanna put off a decision but, I think we do need to continue it."

Commissioner Young – "That's what I was gonna suggest that uh, I agree with Commissioner McGrady that I don't have the knowledge and the information right now to vote on this and that we continue this hearing to another date where we do have a chance to absorb all this information and to get the findings of fact that we need on the checklist and everything else so that we can make a decision."

Chairman Moyer – "Alright I think it sounds like we're close, close in agreement, that we would um, direct, that we will continue this meeting to a date certain. We will get to that point."

Commissioner Messer – "Let me say something Bill. I, you know I think uh, I mean uh, the Planning Board has done a eight, is it eight to zero recommendation. Sure there's some questions that has to be answered, but we've got the petitioners say that they're willing to do all this uh, and the Planning Board has heard the case uh, like I said I, you know I had a problem, or basically have a problem with the water but to, to say that uh, you know, to put this thing on hold for another 45 days or whatever I, you know, I don't think it's right."

Commissioner McGrady – "Mr. Chairman I'm not suggesting 45 days uh, I would wanna get this out as quickly as possible."

Commissioner Messer – "I mean you can read, you can read the numbers and compare the numbers and by our laws, that they've went and follow our laws from a flood ordinance. You know they could you know, could've asked for 600 and something homes in there."

Commissioner McGrady – "Commissioner Baldwin there's just a mass of materials that are here and we're being asked to make some very specific finding about."

Chairman Moyer – "We're being required, not asked, we have to make them."

Commissioner McGrady – "Well. We need to make specific findings um, and at this point I'm not capable of, of, of making those finding which would make an order that uh, of uh, that uh, would pass legal muster. Um."

Commissioner Baldwin – "Well I've got a, go ahead, I'm sorry."

Commissioner McGrady – "I'm done."

Commissioner Baldwin – "I've got a question for, for Russ and even Autumn. If we were to go ahead and vote and they didn't secure the full fifths necessary to secure the permit, how much time then is left for them, I mean, how much time do they need or would be required in order for them to reapply?"

Russ Burrell – "If an application for special use is denied?"

Commissioner Baldwin – "Yes."

Russ Burrell – “The reapplication period I don’t believe there’s a required period of, of turnover. There, there’s not a, unli, unlike rezo, unlike rezoning when you must wait for a year I don’t believe there’s a required period from you have to wait to reapply.”

Commissioner Baldwin – “Well if, if we’re clamoring for, for, for a decision if that would put this issue to rest we could do that and the start afresh.”

Commissioner McGrady – “Oh my gosh, that would set it back.”

Chairman Moyer – “...whole new record Commissioner Baldwin .”

Commissioner Baldwin – “I I think we need to take the time to get it right.”

Commissioner Young – “Exactly. And, and I don’t think the Planning Board did what we’re trying to do tonight. You know we got this stuff tonight and that’s the first time I’ve seen it. Uh, and if uh, we’re trying to make a decision on, on the spur of the moment. I. I’m sure the Planning Board had several.”

Commissioner McGrady – “Well Planning Board didn’t have to deal with it a quasi-judicial setting I don’t believe.”

Commissioner Young – “But they had the information.”

Commissioner McGrady – “That’s right.”

Commissioner Young – “A lot ahead of time.”

Commissioner McGrady – “That’s exactly right.”

Commissioner Young – “And they, they were able to research it and, and get into it.”

Chairman Moyer – “...we cannot do that.”

Commissioner Baldwin – “The other reason I don’t think it would be judicious on our part to over rely on the outcome of their meeting is, is they didn’t have a checklist either. They were faced with the same issues we’re faced with, trying to juggle all these variables. And so I don’t think their, their hearing was any more organized than, than what, how our has been.”

Commissioner McGrady – “Well to be fair, to be fair, if you, when see the September 20th memo you’ll see that uh, Ms. Radcliff and Mr. Card actually led them through um, a whole series of discussion items that we’ve sort of backed into in a, in a little, little less organized fashion here.”

Commissioner Messer – “And that’s one reason why uh, I mean if it was, if it was five to three or something when we, but when you have an eight zero coming out of the Planning Board and that’s who it, we rely on doing our research uh, I mean where do we go? Are we gonna second guess them on everything that they come through and.”

Bill Lapsley – “Mr. Chairman, could I make a comment?”

Chairman Moyer – “Sure Bill.”

Bill Lapsley – “Uh, I certainly understand that the questions and concerns have been raised and the checklist would be a good thing. We uh, uh, with all due respect we submitted everything that we understood you required. If there’s something missing we’re not sure what it is, but a checklist would certainly help us. I guess we would ask that if, if the Board chooses to table it if that’s the right word at the moment and, and discuss it after you get the

checklist we would ask that that be done as quickly as possible. I mean the applicant's been in the process since really August when we had our first pre-submittal meeting and, and started the discussion. So if we could get the checklist within a few days, and we could meet you know, at your first meeting in December and, and uh, if not sooner, then to, to go over it, that's what we would like to do."

Chairman Moyer – "I understand. And I think we owe you that and uh, I think we'll have to work procedurally how we're gonna address this in the future cause we have to do it in a better fashion that we're doing it this evening."

Autumn Radcliff – "Mr. Chairman?"

Chairman Moyer – "Yes."

Autumn Radcliff – "I just wanted to point out one thing though. Um, you didn't get the memo that the Planning Board got, but attachment 14 is an excerpt from the minutes. Um, it goes through what staff presented as a Special Use Permit, and it also gives an excerpt of what Matt went through um, from the subdivision process. And in those minutes is actually outlined everything that was in that memo. All those tests, what the Planning Board discussed and how it was presented. I just wanted to make sure that was pointed out."

Commissioner Baldwin – "Well I, I am, I'm, I'm willing to put it off until we can get our checklist and give them an opportunity to submit additional information based on that checklist and give us an opportunity to use this to review to make sure that we can make the finding of facts that we're required to do. The alternative would be, we make a decision on it this evening and I don't think that would be fair to them. I don't think it would be in anybody's best interest to do that."

Commissioner Young - "I agree with that."

Chairman Moyer – "So I think that's the, what we would like you to do is to come up with a check list, get advise of council if necessary on items that we have to find with respect to findings of fact and conclusions of law. That we're required by, those pages you gave us. Now this attachment 14 certainly will help but I'm sure none of us have had a chance to read it or even saw it until you pointed out uh, that it was there. And that, that's unfortunate. Um, and to give us that uh checklist and give it to the applicant at the same time so that they can see the items and I would hope they could pull out of the record and help us focus on the information that's already in the record, it may well be there, that's related to each of those items. And then what we'll do in return is to set a date as soon as we can after this uh, and I think we have to shoot for that um, if we can possibly the week of, I will be back Sunday, what is that the 20."

Commissioner McGrady – "The 28th is Monday."

Chairman Moyer – "28th? Yeah I'll be back the 28th. That week's alright for me. How about anybody else. Is anybody gonna be away that week? You gonna be deer hunting Charlie?"

Commissioner Messer – "I need to look at the calendar."

Commissioner McGrady – "Yeah they've got a Planning Board 29th, Comprehensive Plan issue. And we, you and I've got the Joint Facilities meeting on the 30th."

Chairman Moyer – "Well but that's 4:00. We could do it at 6:00, right after that be fine with me."

Commissioner Young – "Yeah, or 6:30."

Chairman Moyer – "Or 6:30."

Commissioner Messer – "Talking about November 30th?"

Chairman Moyer – “30th, yeah.”

Commissioner Messer – “On Wednesday?”

Chairman Moyer – “Yeah, that alright?”

Commissioner Messer – “That’d be good with me.”

Chairman Moyer – “Shannon, how about you?”

Commissioner Baldwin – “I’m sorry, what was the time?”

Commissioner McGrady – “Wednesday, November 30th at 6:30.”

Commissioner Baldwin – “Yes, that’ll be fine.”

Chairman Moyer – “*Alright, I move that we continue this meeting until Wednesday, November 30th at 6:30. I think that’s the best date we can get Bill. Um, at this location, might have to check.*”

David Nicholson – “We’ll, we’ll.”

Chairman Moyer – “We’ll take care of it.”

David Nicholson – “Amy’ll take care of it.”

Chairman Moyer – “*And that the uh, uh, intent is to conclude, decide, the hearing at that time with the information that we have asked staff to provide to us and to the applicant and then we’ll go through that checklist and uh, the record remains open now. Uh, Ms. Harkey do you understand what, what I’m doing.*”

Jean Harkey – “Yes sir.”

Chairman Moyer – “We’re continuing the meeting, we haven’t voted yet, November 30th, to get more information on some of these items, one of which is buffering.”

Jean Harkey – “Alright, thank you.”

Chairman Moyer – “Alright motion on the floor. Drew, did you wanna speak to that before?”

Drew Norwood – “When are we gonna, when are we gonna get the list cause we got, so we can get it answered we need to get the list pretty quick don’t we.”

Chairman Moyer – “Yeah.”

Commissioner Baldwin – “Yes we do.”

Chairman Moyer – “Well I think hopefully eve, Bill said everything’s in the record. It’s just helping us focus on what is, on what we need to focus on.”

Commissioner Baldwin – “Have we specifically directed staff to comb through.”

Chairman Moyer – “Yes.”

Commissioner Baldwin – “The record and pull out and bullet what is we that we need to...”

Chairman Moyer – “Yes, absolutely. They’ve been directed to complete checklist.”

Drew Norwood – “Well as soon as you get that list we’d like to get a copy of it.”

Chairman Moyer – “Well let me get through the motion and then we’ll get to the schedule. All in favor of that motion say aye.”

Aye in unison.

Chairman Moyer - “Opposed? Okay now staff, uh, you do have your memos I think most of the work is done. I don’t wanna push you. What, what’s a reasonable date to get it to the Board and to the applicant so they can focus on. Now I, don’t wanna push you because we want a complete check list so that we know the items that are there, what we have to file findings of fact on, and I would suggest you run it by the County Attorney to be sure that, because he may have some legal things that he wants to be sure are addressed.”

Commissioner McGrady – “But for Thanksgiving it might be easy but, oh my gosh.”

Chairman Moyer – “Well how about the close of business Wednesday before Thanksgiving.”

Autumn Radcliff – “I think that’s reasonable.”

Chairman Moyer – “Let’s shoot for noon on the Wednesday before Thanksgiving.”

Drew Norwood – “And we’ll work over Thanksgiving to make sure we have everything final.”

Chairman Moyer – “No no, you have a couple of days. You have Monday, Tuesday, and then Wednesday the following week.”

Drew Norwood – “Then we need to get it to, to you or to staff?”

Chairman Moyer – “No no, you can just come prepared at the hearing.”

Drew Norwood – “Okay.”

Chairman Moyer – “To uh, obviously, because we can’t take it beforehand. Basically separate anyway.”

Commissioner Baldwin – “And just, just a reminder that this is still on going so let’s not.”

Commissioner McGrady – “Yes.”

Commissioner Baldwin – “Make sure we don’t break.”

Chairman Moyer – “There cannot be any discussion between the parties, the hearing is open, it’s quasi-judicial so there can be no discussions or anything as long as the record remains open other than what we’ve directed staff to give to each person, including, you better get you address Ms. Harkey to staff so that they can get you a copy of what we’re doing. Alright, the meeting has been continued to the 30th at 6:30.”

Attest:

Amy R. Brantley, Deputy Clerk to the Board

William L. Moyer, Chairman