

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
NOVEMBER 30, 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, Assistant County Manager Justin Hembree, County Attorney Russ Burrell, and Deputy Clerk to the Board Amy Brantley.

Also present were: Budget and Management Director Selena Coffey, Planning Project Director Lori Sand, Zoning Administrator Natalie Berry, Subdivision Administrator Matt Card and Planner Autumn Radcliff.

CALL TO ORDER/WELCOME

Chairman Moyer called the meeting to order at 6:30 p.m. and welcomed all in attendance.

DISCUSSION/ADJUSTMENT OF AGENDA

Chairman Moyer – “Alright this is uh, the continuation of a quasi-judicial hearing on River Stone’s Planned Unit Development. Before we start I’d like to uh, mention the agenda and have an adjustment to the agenda. There’s an item we need to add for this evening with respect to setting a public hearing on economic incentives, and then we’ll continue the hearing. *And I make a motion that we approve the adjusted agenda. All in favor say aye.*”

Aye in unison.

Chairman Moyer – “Opposed? Okay. *I move that uh, we set a uh, hearing for economic incentives for December 15th, what would we have it for 11:00? Is that? At 11:00 on uh, December 15th.*”

Commissioner McGrady “That’s our regular meeting date.”

Chairman Moyer – “That’s our regular meeting date. Well our revised date.”

Commissioner McGrady – “Our, yeah I, I understand. That’s fine.”

Chairman Moyer – “*Alright all in favor of that motion say aye?*”

Aye in unison.

Chairman Moyer – “Alright that passes unanimously. Thank you.”

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

Chairman Moyer – “We’ll continue the um, now the quasi judicial hearing and uh, I think we’re gonna start with uh, Planner Autumn Radcliff to uh, bring us up to date on the information that was submitted and the background and, and uh, how you wanna proceed. So Autumn.”

Autumn Radcliff – “I’ve got a sheet here um, this’ll be the only thing at least from me tonight that you’ll be receiving that you haven’t seen.”

Commissioner Messer – “I didn’t think we could see anymore.”

Commissioner McGrady – “Thank you.”

DATE APPROVED: _____

Chairman Moyer – “Autumn to start would you indicate what was distributed to the Commissioners and all the parties and what was involved in that so that we have on the record everything that was done and everybody’s in agreement. I know it’s in your memo but if you’ll cover that I’d appreciate it.”

Autumn Radcliff – “Okay, yeah sure. Um, the first thing that the Board would have received on um, Wednesday, November the 23rd, would have been um, a checklist that the Board directed staff to go and do which um, took um, all the different sections in the ordinance and all the required findings and made a checklist of that so it’d be easier to go through. Um, this was also uh, reviewed by all the parties prior to the Board receipt of that to make sure that they were all in agreement that the Board could get that outside of the hearing. In addition on um, uh, November the 28th which was um, Monday, the Board received uh, a memo from me um, with a staff attachment. There was a staff memo that referred each of the finding facts from the checklist to exactly where they could go in the previous material that you received during the hearing and actually find the answers to those questions. Hopefully to satisfy that the Board’s extent. You also received some um, attachments that the applicant had sent over they wanted the Board to receive ahead of time. Um, some various letters from uh, the City of Hendersonville, City of Asheville, the Utilities Department, um, and then you also received a table of the acreage calculation that was discussed last time as far as how much area was in the floodplain and, and that broke that down. And that was also, all that information that you received uh, was received by all the parties and approved prior to that.”

Chairman Moyer – “So the applicant, you’re satisfied, everyone, Ms. Harkey are you satisfied you got all the information. Had a chance to.”

Jean Harkey – “Yes.”

Chairman Moyer – “Alright thank you. Thank you Autumn.”

Autumn Radcliff – “Um, this that I just passed out, and also passed out to the parties, um, real briefly is basically what I was directed um, via the Planning Director to put together a list of issues that Staff still felt were outstanding issues that the Board needed to either address or resolve or put, if it approved the special use permit, as a condition of that approval. And seeing as how you just now got this, if you want to take a few minutes to look over it that’ll be fine. I’m gonna go through it um, pretty well in depth though also.”

Commissioner McGrady – “Okay.”

Autumn Radcliff – “Uh, the first item is the buffer issue. And um, course based on the development plans and everything, no buffer was proposed for the development um, as far as along the perimeter boundary or between the existing residential uh, developments. Uh, this was also an issue that was brought up by uh. Ms. Harkey as a party to the proceedings. Although a buffer is not required as far as uh, Planned Unit Development or a special use permit application goes, measures to ensure the privacy and screening of the development and existing neighbors is stated for one of the findings of fact. Staff feels that the buffer should be required if topographical or other barriers within 200 feet of the perimeter of the development do not provide reasonable privacy um, or if the Board feels that a buffer should also be present. Staff support feels that this should be a condition of the permit if approved.

The second is the water and sewer issue. This was um, based on the additional information that you would have received on Monday. Um, those attachments were uh, labeled attachment B and also attachment D in that packet. There was an e-mail from Mike Brookshire, which is the Engineer for the City of Asheville and it stated that a revised Letter of Commitment for the Water Availability was modified to reflect a total of 523 residential units. I know that the proposed development right now has 524, which is one additional unit than what was required. Um, that additional unit was added prior to the Planning Board meeting um, due to a slight shift in the parcels. I do not believe that that would make um, you know a really significant change though with the one unit. But everything was fine as far as the, the City of Asheville was concerned with the water. The sewer however, originally the, the subdivision was proposed for 400 units instead of the 524. And the original letter to the Utilities Department indicated the 400 units which they received preliminary approval from. There was a letter in that packet that was dated November the 22nd from Lapsley & Associates office

asking their revision in the number of proposed homes to 524 um, be submitted. At this time, Staff has no information from the Utilities Department whether or not the sewer is approved for 524 units. Um, approval of these plans should be a condition of the special use permit.

The third thing was the Erosion Control Plans. Um, we have no formal approval of the Sediment and Erosion Control Plans. Um, these plans will be submitted, according to the applicant, to the State for its review. If the PUD is approved, um, basically the reason behind this was uh, that if the development changes for any reason based on the Boards decision, or any conditions that are implied, then they would send those final plans to the State for their approval. Um, regardless it is a finding of facts that they have to comply with any State, Federal and local laws which is where this would come into play. And um, we assume that they probably would not be able to do their subdivision without the approval of DENR first. And we also feel that this should be a condition of the permit if approved.

The fourth is the NC DOT requirements. Um, I had two meetings that I attended last Monday and last Tuesday which was November 21st and 22nd with DOT that I was invited to attend. The first meeting was a meeting held with DOT staff representatives, um, a couple of re, representatives of the TAC, uh, there were some representative of Mills River there also. They discussed not only River Stone Subdivision, but they also discussed the other subdivision that was going on um, on down Butler Bridge Road in the Town of Mills River. Um, the second meeting was actually just between the DOT representatives and um the consultant, who handled the traffic impact analysis study. Based on that um, what I gather from the meetings. Uh, DOT feels that it will require the developer to install three left turn lanes at each one of the entrances as opposed to one turn lane that was proposed in the Traffic Impact Analysis. Also DOT may request a Conceptual Design be done to see if a left turn lane on North Rugby um, Road is required at North Rugby Road and Butler Bridge Road intersections. Also there was some question about right-of-way acquisition. Um, it may be necessary or possible due to the proximity of I-26. Apparently there may be some right-of-way that's already under the control of DOT that falls within the interstate right-of-way. If that happened to be the case then the developer was going to have to take advantage of that. It's my understanding that that has to go through DOT through a special committee to, to release that right-of-way to the developer so that they can install some of these improvements. Also, DOT may request that a Signal Warrant Analysis be done to determine if a signal will be required by the developer at the intersection of where North Rugby intersects um, Butler Bridge Road. Um, it was my understanding um, from hearing DOT that they were very concerned with the subdivision going in and particularly with regard to off-site improvements by the developer. And it's also my understanding that it sounded that these discussions would probably take place well into the first of the year before any decisions were gonna be made. It was my understanding also by the consultant that um, they would have to speak with their clients first. That they could do some of these other analysis that DOT was asking for if it was required, but that was something else that they would have to take up and, and take care of later. Um, staff feels that a condition of the special use permit should be that the development and/or developer comply and satisfy all requirements imposed by DOT.

Also the final thing on that is a formal staff recommendation of this project. Basically staff, after reviewing the special use permit application materials for River Stone, feel that it, it meets the proposed general standards that are laid out in our Henderson County Zoning Ordinance and it's in general in compliance with the County Comprehensive Plan. If the Board approves the PUD application, Staff recommends that the approval um, be based on conditions that have been addressed above. Other condi, conditions that have been addressed previously during the hearing including the Planning Board's recommendations, and any other conditions that the Board may impose or any other issues that arise during the Board's consideration of the application. Staff also recommends that if the Board approves the special use permit, that it sets time frames within which these conditions need to be um, satisfied. And for example, a time frame condition could be that the developer shall provide um, the required documentation such as sewer and water, um, or DOT prior to beginning construction. Some conditions, could be prior to um, final plat approval."

Commissioner McGrady – "If I can ask a question on that last."

Chairman Moyer – “Let me just clarify. So for the record you’re, you’re putting into evidence then the, your November 28th record, letter with all the attachments, some from staff and some from the applicant. And also your November 30th letter. Now do the other parties have copies of your November 30th letter.”

Commissioner McGrady – “Yeah she just.”

Autumn Radcliff – “They received those just tonight.”

Chairman Moyer – “Does any party have any objection to these being admitted? Ms. Harkey? Okay. Commissioner McGrady.”

Commissioner McGrady – “Um, with respect to the last comment you made, and that is with respect to specified time frames.”

Autumn Radcliff – “Um hum.”

Commissioner McGrady – “Is, is that a reference back your earlier memo? Um, where you set out a time frame for satisfaction of certain conditions?”

Autumn Radcliff – “Yes.”

Commissioner McGrady – “And, or what you’re recommending then is uh, what you earlier recommended with respect to erosion and conveyance of open space, maintenance and all these various issues is that right?”

Autumn Radcliff – “Correct.”

Commissioner McGrady – “Okay.”

Autumn Radcliff – “Correct.”

Chairman Moyer – “Other questions from Commissioners first? Alright, the other parties? The applicant have any questions of staff on this new evidence they’ve admitted?”

Bill Lapsley – “No sir.”

Chairman Moyer – “Ms. Harkey do you have any, any questions?”

Jean Harkey – “No sir.”

Chairman Moyer – “Okay. I would then ask the applicant do you have any uh, I know you have submitted some additional uh, attachments. Would you like to comment on those to the Board and any issues raised by staff in their November 30th letter?”

Bill Lapsley – “Yes sir, Mr. Chairman. Uh, appreciate the opportunity to meet again with you tonight, again for the record my name is Bill Lapsley uh, I’m an agent for the applicant. Uh, the Windsor-Aughtry Co, uh, Company. Uh, we have a, a couple of, we, you have some of the things that we have produced since your last meeting to answer some of your questions and we brought a couple of more, uh, items to address uh, in conjunction with this November 30th uh, letter from staff. Um, the, the first thing uh, what we’ve done to try and assist you uh, I’ll wait till you get this package.”

Chairman Moyer – “Thank you.”

Bill Lapsley – “What we’ve done is, is taken the uh, checklist that uh, that staff has provided and kind of added all of the, the comments that staff made in their first submittal and then their second submittal and then we added our

comments in red. Uh, I don't know that we need to go through those but I, we just wanted you to know that we have reviewed all of these and, uh, we have no particular problem with any of them. We just wanted you to, to know that we had read all of them and were familiar with them. Uh, I think more specifically I'd like to, to go over this November 30th memo because there's a few things in this packet that I think would answer some of these questions uh, or concerns that you may have.

Uh, with regard to the buffer, uh, if you'll recall at our, our uh, last meeting uh, we talked about several things. Uh, buffer issues especially with regard to Ms. Harkey's property. And what, we've done two things since our la, since the last meeting. Uh one in the packet you'll see it's kinda towards the back, there are some small reduced copies, some pl, preliminary plats, and what we've shown on those if you can look at the uh, kinda the footnotes, uh, the first one is a single sheet that's not stapled together and it, and it references, if you'll see the lot numbers 58, 57, 56, uh, what we've done uh, since our last meeting uh, we have met with Ms. Harkey and talked about a buffer along that border. And we have reached an agreement uh, to leave an undisturbed buffer a maximum uh, if you will of 20 feet it, it actually gets wider than that down at lot 588, 589 again because of topography it just gets wider. But we've agreed to leave a minimum of 20 feet uh, undisturbed there except for a drainage swale at the top of the uh, slope. Uh, so that was one issue that was discussed at the last meeting. In the."

Chairman Moyer – "I'm not gonna stop you on each of these."

Bill Lapsley – "Sure."

Chairman Moyer – "But for, for purposes of uh, any order we, we make later, you would agree to that as a condition of the uh."

Bill Lapsley – "Yes, yes and that's kinda why we prepared this exhibit so if, if Commissioners wanna do that you have something to put in the record."

Chairman Moyer – "Alright."

Bill Lapsley – "Uh, the second group is a stapled sheet and there's uh, three sheets there. Again these are the preliminary layouts, the same that has been in the record. Uh, what we're showing here are the entrances, the three locations, uh, with the berm, proposed berms, earth berms, at those entrances to show you where we propose that those be placed. Uh, those are areas that uh, uh, we feel like some screening for privacy is, is uh, certainly good for, for the community as well as the lot owners that are there. So wanted you to have that.

Uh, the other issue with regard to that, you should have a, some pictures. And what I've done um, I, I took some pictures out at the Livingston Farms project, which is very similar to what this one would propose to be. Uh and the, the num, pictures are numbered in the upper left hand corner. Picture three is the entrance to uh, Livingston Farms off Jackson Road. Uh, and I guess the point I'd try to make here is if you look right over the top of the fire hydrant there, which is kinda in the center of the picture, the yellow post, uh there's a green berm behind it. Uh, and that acts as a screen from the road and the, and the houses. And this is similar to what we'd propose to build uh, at this facility. Uh, picture four is a little close, uh, a more close up view of the earth berm uh, that we'd propose to build. And again this is Jackson Road. And I guess the point that I'd make here is that you can't see the houses that are on the other side of the berm. Um, certainly at street level, you have to get up about 15 feet in the air to, to see those. Uh, so that, I wanted to point those out. The other pictures in this packet, uh, there was some discussion uh, kinda focused around Ms. Harkey's location where we tried to describe to the Commissioners the relationship when you grade uh, a site and you have a slope uh, behind the houses, uh as it, as they relate to adjacent properties. Uh, picture five and seven uh in particular show uh, the rear view of houses in the Livingston Farm area with the graded slope behind it. And uh, there were two issues that I was trying to depict here. One, the house setback, uh you know we had discussed the uh, uh, condition of a, of a ten foot setback. Well I think you can see in the picture obviously the, the houses here are set back probably as much as 50 or 60 feet from the rear property line, and it's due to the slope uh, that's created. Uh, there, the houses are about 25 feet from the back of the house to the toe of the slope. Uh, so I wanted to uh, make that picture clear to you. And picture seven shows somewhat the same relationship so you can see a rear patio and, the back yard, and then the slope uh, behind the

house. And then picture eight uh, one of the questions was the uh, front set back, uh, and the uh parking area in front of the units. And this picture shows uh, what the typical house looks like and the parking area in front of the house for two cars and the garage uh, in front of the house. So we just wanted to show you what, what those actually look like.

Uh, the other attachments, uh, you have previously seen the table. Uh, so I'd, if you have any questions I'd be glad to try and interpret that for you."

Commissioner McGrady – "Is that the attachment E?"

Bill Lapsley – "Uh yes. I think we gave that to, to staff about a week ago."

Commissioner McGrady – "I, I found this really useful but let me make sure I understand it. Um, line one is the PUD allowance under the most uh, liberal interpretations assuming no, no uh, flood or plain or anything, just if it were somewhere in the County."

Bill Lapsley – "That's correct."

Commissioner McGrady – "Um, then, then, assuming you're gonna fill the, the maximum possible would give you that number."

Bill Lapsley – "Well I, could I interrupt?"

Commissioner McGrady – "Yeah go ahead."

Bill Lapsley – "We'll as we read the ordinance under uh, under the flood ordinance, the Commissioners have the right to allow under whatever conditions the Commission feels like is acceptable, you have the right to fill 100 percent of the flood fringe. We wanted you to know that if you, we're not asking for that, but if you were to approve that, then that's the hundred percent flood fringe fill."

Commissioner McGrady – "And then, the third one is your request, the second is, the under the present ordinance, and the fifth is assuming that there is no fill at all. Um, the, the total developable acres there um, I guess I just hadn't focused on this but um, you are proposing to develop less than what our flood ordinance would allow by six acres or so."

Bill Lapsley – "Right, that's correct."

Commissioner McGrady – "Um, but just put more units on it."

Bill Lapsley – "That's correct."

Commissioner McGrady – "Okay. I hadn't thought about..."

Bill Lapsley – "... on the, on the area that we're actually developing."

Commissioner McGrady – "I, I really appreciate you're uh, putting this together and actually showing the whole thing. It uh, puts it in, in uh, real perspective. I appreciate that."

Chairman Moyer – "Anybody have any questions for Mr., Bill I'm sorry..."

Bill Lapsley – "No I just uh, wanted to mention the last uh, you, there was some questions about the lot dimensions and where the house sits and how the setbacks may work and we tried to give you a typical lot and where the house goes uh, and, and how it relates to those set backs. Uh, tho, that's the handout package. Mr. Chairman whe, if it's appropriate we'd just comment about the November 30th letter."

Chairman Moyer – “Let me uh, just for the record, all of what you’re, being submitted, I’m not sure how we’re gonna identify Russ but all of this information will be part of the record. Uh, do any of the parties have objection?”

Autumn Radcliff – “No.”

Chairman Moyer – “Ms. Harkey do you have any objection to this being part of the record?”

Jean Harkey – “I have a question for Mr. Lapsley.”

Chairman Moyer – “Do you have an objection to this being a part of the record, what he just?”

Jean Harkey – “No.”

Chairman Moyer – “Okay, well we’ll admit it as part of the record, and go ahead and ask your question Ms. Harkey.”

Jean Harkey – “Uh, you said that you agreed to a 20 foot setback along all the properties, uh, lots seven, eight and nine of Is that correct?”

Bill Lapsley – “I think we uh, you, you.”

Jean Harkey – “20 foot setback.”

Bill Lapsley – “You’ve seen this.”

Amy Brantley – “Mr. Chairman? Could ask Ms. Harkey to come to the microphone so I can pick this up on tape?”

Chairman Moyer – “Alright.”

Amy Brantley – “Thank you.”

Chairman Moyer – “The question was with respect to the buffer at the backs of lots, 588, 89, 87, 86, etc..”

Jean Harkey – “Correct. 20 foot setback.”

Bill Lapsley – “Un, undisturbed.”

Jean Harkey – “Undisturbed. With the exception you said of a swale. Now how can you construct a swale on top of that if you’re not gonna disturb it.”

Bill Lapsley – “Well we, what we have to do is right at the edge of the 20 foot section we’ve got to do a drainage.”

Jean Harkey – “Well now how wide is that gonna be?”

Bill Lapsley – “Three or four feet. So, enough to catch any water so that it doesn’t spill over the slope to the house.”

Jean Harkey – “Now I can’t see how you can do a three or four foot swale up there on the top of that. I would request, and this is what I thought we.”

Chairman Moyer – “Wait a minute. It’s not at the top is it Bill?”

Bill Lapsley – “Yes it’d be the top of the slope to, to control storm water...”

Chairman Moyer – “Top of the slope and.”

Bill Lapsley – “Yes.”

Chairman Moyer – “Okay. Okay I see what you’re saying now.”

Bill Lapsley – “Go ahead.”

Drew Norwood – “So we gotta pick up, your water’s coming that way. We gotta pick that water up.”

Jean Harkey – “Well I thought we understood that it would be a 20 foot setback with no disturbance to the vegetation or the trees in that 20 foot setback.”

Bill Lapsley – “Well we, we could certainly attempt to do that if the trees are two feet away from that 20 foot. Uh, what, what I’m concerned about is I don’t have an exact count of the trees right at the 20 feet and, and we need to be able to control the runoff as it hits that 20 foot edge. Uh, I understand Ms. Harkey’s concern but we, we just.”

Chairman Moyer – “You couldn’t agree to put the swale in, outside the 20 feet so it wouldn’t interfere with the 20 feet she’s concerned about? I think what she’s afraid your gonna take part of all of that 20 feet once you start digging.”

Jean Harkey – “...will go into a swale if you make a swale.”

Drew Norwood – “Just about three feet though.”

Jean Harkey – “Well that’s then, how many feet?”

Drew Norwood – “30 feet.”

Jean Harkey – “You gave me.”

Drew Norwood – “So we got, excuse me it’s 20 feet from your property line to the edge of the, of the no-disturbed area and we might have to run a three foot swale across there. 60 feet.”

Jean Harkey – “Well I understood we’d just, we came to the co, decision that you would give me...”

Drew Norwood – “Can we just let the water sheet over?”

Bill Lapsley – “Well we’ll deal with it.”

Several people talking at once.

Jean Harkey – “And I would like to request that the applicant uh, put a construction fence back there prior to their cutting trees and starting the grade so there’s no mistake as to where the set back line is.”

Drew Norwood – “And I’ve agreed to that.”

Chairman Moyer – “So for purposes of the, of the record, the diagram we have, the ones you referred to showing the undisturbed buffer is that you will agree to what has been given to us as a 20 foot undisturbed buffer.”

Jean Harkey – “Right. Thank you.”

Chairman Moyer – “I’m saying to the applicant. Now I understand you agree to it but, but does the applicant agree?”

Drew Norwood – “Yeah, that, that’s what she and I agree to out there last week.”
Jean Harkey – “Right.”

Bill Lapsley – “Alright. So we would ask, we would agree on this exhibit if you would strike in the box on the top of the page where it says except for drainage swale, strike that.”

Chairman Moyer – “Okay.”

Bill Lapsley – “And I think then it’s, states what Ms. Harkey.”

Chairman Moyer – “Alright.”

Bill Lapsley – “Has requested.”

Chairman Moyer – “Alright. Staff uh, do you have any questions for the.”

Drew Norwood – “Can I add one comment?”

Chairman Moyer – “Certainly.”

Drew Norwood – “Uh, I, I, what we additionally decided to do if Bill, it’s on those drawings, but was to come along here and add berms in every area around here where we’re not, due to slope, significantly below the neighbors.”

Chairman Moyer – “I think Bill gave us diagrams showing...”

Drew Norwood – “Yeah he showed you where there were. Those are basically kinda right in here, around here, and then up in here. They’re on there but he didn’t...”

Chairman Moyer – “And you all agree to that again as a condition to the.”

Drew Norwood – “We will.”

Chairman Moyer – “Special use permit. Alright and this has been en, admitted into the record Russ so you have, however you wanna identify it.”

Russ Burrell – “We need copies of the pictures. We don’t have copies of the pictures. We have copies of all the other exhibits but not the photographs.”

Commissioner McGrady – “I ended up with two copies of them that may have been what happened.”

Chairman Moyer – “That’s probably what happened then.”

Commissioner McGrady – “I couldn’t figure out why.”

Chairman Moyer – “Here Bill there’s an extra.”

Russ Burrell – “Alright staff. Before we get to the November 30th letter, do you have questions for Mr. uh, Lapsley or the applicant on this handout.”

Autumn Radcliff – “ Uh, I do, I just have one, one question as a clarification. And um, Natalie Berry’s also here which is our Zoning Administrator and was sworn in last time and may want to address this. Um, since from an enforcement standpoint, and that was just um, the layout that actually showed the lot lines, and everything else,

um, I just wanna make sure, my, my question always comes back to the 10 foot from the front setback as far as where that front setback is from the property line. Just because I know from an enforcement standpoint it's very hard for, when someone comes in to pull a permit, to um, to make that clear to whoever's pulling the permit exactly where their setback is from. Um, I would just suggest that either say that the front setback, the 10 foot front setback is to the edge of the right-of-way and have that really specified on the plans, and/or up the front setbacks to include to the center line of the right-of-way."

Chairman Moyer – "You're gonna have to clarify for me, I'm looking at a document that Mr. Lapsley handed out which seems to me shows the 15 foot from the right-of-way line."

Bill Lapsley – "Which is also the property line."

Autumn Radcliff – "Okay. So that would be the, the edge of the right-of-way then."

Bill Lapsley – "Yes."

Autumn Radcliff – "Okay. I just wanted to make sure and ask that that be specifically set, um, stated instead of a 10 foot front setback, 10 foot front setback from the edge of the right-of-way just for enforcement purposes."

Chairman Moyer – "Alright. So you'll put in there from the edge of the right-of, Bill, so we have that?"

Bill Lapsley – "Yes, that's fine."

Chairman Moyer – "Any other?"

Autumn Radcliff – "No, that was it."

Chairman Moyer – "Alright, you wanna go to the?"

Drew Norwood – "May I ask her one question just, just from..."

Chairman Moyer – "Sure. Go to the microphone though so we please pick it up."

Drew Norwood – "I just wanna ask you if, is it, I assume we're submitting this so anything we do that's within this framework will be the zoning guy will approve it."

Autumn Radcliff – "Correct, correct."

Drew Norwood – "Alright."

Autumn Radcliff – "Just clarification for when it comes to the Zoning Department."

Chairman Moyer – "Okay, we'll move to the, the November 30th letter and you comments, staff's admission to evidence November 30th Bill."

Bill Lapsley – "Uh, we, we'd just like to just run through these uh, we've been discussing the buffer and we have no problem with the staff recommendation there. Um, we talked about the pictures so we have no problem with that. The uh, water and sewer issues we had no problem approval, making this a condition uh, that we have the final approvals on that. Uh, the erosion control plans is same issue uh, once we know what is accepted by the Commissioner we will submit those plans to the State and get the required permit."

Chairman Moyer – "And you will put the fence along that."

Bill Lapsley – "Yeah, yes."

Chairman Moyer – “Going back that Ms. Harkey asked for.”

Bill Lapsley – “To protect those trees that, I think that’s a good idea. Contractors sometimes have a tendency to get carried away so that’s, that’s fine. Uh, NCDOT uh, we have no problem uh, with the comments that Staff had made. I think we would just go to the end result and that is that whatever DOT decides in the end that’s, that’s what we have to abide by. Uh, we do expect to have some continued dialogue and we’re not exactly sure where it’s gonna end up at the moment but we think the key is what DOT tells us we have to do. And so we would have no problem with the Staff recommendation that the permit be subject to DOT’s final decision.”

Chairman Moyer – “What will you ultimately get from DOT, a letter or?”

Bill Lapsley – “We, we have applied for what’s called the street access permit at the three locations uh, for the development and they have it under review. And uh, as part of that they came, their review, they came back to us and said we would like a traffic impact analysis. So we’ve done that, we’ve submitted that, and there’s now discussions between our consultant, DOT and ourselves and uh, I’m sure Staff and others so, uh, once that all plays out DOT will make a final decision and whatever that is that’s.”

Chairman Moyer – “...what you have to do.”

Bill Lapsley – “That’s what we’ll have to, to do to get approval to, to access the road.”

Chairman Moyer – “Our, our uh order could reference the letter from DOT.”

Bill Lapsley – “I think that’s appropriate, or issuance of a street access permit, whatever conditions DOT put on that permit.”

Chairman Moyer – “Alright.”

Bill Lapsley – “And uh, and last would be uh, the staff’s recommendation uh, we uh, had no problem with, with their uh, uh, recommendation that these permits be uh, issued uh, uh, our, our only comment would be that the permits would all be issued prior to plat approval. What, what happens, there’s a sequence. Uh, we usually get the grading permit first then the water and sewer permits take 30 to 90 days after that so there’s a time lag and we would like to, to be pursuing the other permits while we have started work on the site. So we would ask that all the permits must be in hand before any plat is recorded. Or, or we have you know, come to staff to record a plat. Uh those would be our only comments if you’d like us to go through the checklist we’ll be glad to do that but uh, we appreciate all the effort the staff has gone to on the project. Be glad to answer any question.”

Chairman Moyer – “Autumn would you comment on the last statement made by Mr. Lapsley.”

Commissioner McGrady – “Yeah I was wondering if there’s a gap here.”

Autumn Radcliff – “Okay. Uh, yeah my only comment is um, I have no problem with the conditions being satisfied um, at the time, the time line being at the time of the final plat approval. The only one that I feel is pertinent that should be done prior to beginning construction, that’s the sediment and erosion control plan being approved and the permit in place from DENR before grading begins.”

Chairman Moyer – “Well I think the applicant will agree to that because you have to do that by law right?”

Bill Lapsley – “That’s State law.”

Chairman Moyer – “That’s State law. Okay. That’ll be fine we can clarify that.”

Commissioner Messer – “Bill I’ve got a couple of questions I guess going back to the water issue.”

Bill Lapsley – “Yes sir.”

Commissioner Messer – “Uh, the information we had a couple weeks ago is there was a difference between, Asheville had a 24 inch, Hendersonville had a 16 inch line. We have a current letter from Hendersonville that says that they have adequate water uh, for the subdivision of 524 homes. Uh, is there any difference in running the lines from the north end, I’m talking about Asheville end to Henderson, Hendersonville line. How much farther would you have to run the line for the 16 inch line compared to the line for the 24 inch line.”

Bill Lapsley – “The distance is, is very similar. I mean it’s very close. We checked it out in the beginning and, and uh, there’s, there’s probably not 200 feet difference one way or the other. I can’t recall to be honest with you which was longer. I think Hendersonville’s was but it was, it was very close. Uh, my, my biggest concern is not the availability of water for this project alone, my concern is the availability of water for additional properties that others may want uh, to get water for in the future. And, and uh, I think that long term subject to, to City of Asheville and they’ve given us approval uh, my, my concern is, my recommendation is that, that we get the water for this project and make it available for other properties from the Asheville system. We, we did go ahead and get approval from both because at the time, if you’ll look at the dates on the letter uh, from both parties it’s back in the spring. Uh, and at that time we didn’t know uh, which might be available. Uh, and which the Commissioners might felt, feel like uh we should go. Uh, but, it, it, it’s our recommendation that uh, that we deal with the City of Asheville system. But that’s certainly something that you could decide.”

Commissioner Messer – “Well you know water best because you’ve sat on that Board, and of course I think Mr. Baldwin’s sat on it, I think Bill’s sat on it and maybe I don’t know if Chuck’s sat on it or not but I, but that’s one thing because there is so much growth in the northern part of the County. And with no water agreement, no water authority and it doesn’t look good for the future of, of settling that uh, disagreements with the water. Uh, and uh, you know the nor, well really all over Hendersonville City with the uh, plant out in uh, Mills River. Uh, course we’ve also heard of some more developing or, developers happening, you know, apply out there. And I just wonder if that would be a kind of opening up an avenue for Asheville just to tie on to residents of Henderson County and you know we read, or it was on the news a couple weeks ago that they were possibly gonna look at repairing a lot of lines and their water in, uh, water rates were going to increase quite a bit. Now we, of course I live in the northern end of the County, I’m not on city water at my home but I am at my business. And you know it’s, you know we’re paying you know quite a bit of revenue for water now. In my business there I hear a lot of the customers that like these homes and so forth, talk to ‘em every day uh, but you know some of them has some problems with some of the water rates. And I, you know, you know my main goal is not to get locked down or tied down to Asheville City to where we’re obligated to you know do, I mean, once these developers come in and run these lines and give ‘em to the Hendersonville or Asheville, I mean it’s just fair game. And you know the rates could uh, you know really sky rocket over, you know the next 10 or 20 years. And uh, capacity is, is something that I think uh, you know I’d personally like to look at if, if, but like I say you know if you lookin’ at long term uh, but you know that’s, I mean I’ve given it some thought and that’s you know, I mean that’s basically where I’m at.”

Bill Lapsley – “I, I share your concern and I guess I’m, I’m trying in my role to keep the technical view and, I’m, I’m aware of some con, some major concerns in the Fletcher area with uh, low pressure in a number of areas and uh, all of Fletcher’s served off this 16 inch line and, my concern is that uh, without some major improvements to the Hendersonville system in that area this, these homes tied to the system um, may, well they will, they’ll impact Fletcher more and I’m concerned about it. And uh, uh, understand though that political and uh, economic issues resolve, uh, involve with whichever source. But from a technical standpoint I, I think it’s a better source not only for this project but the future of other properties in the area. But I understand your concern.”

Commissioner Baldwin – “I had a few questions. Bill, you said that the uh, I think you guys stated in the record that um, the product that you’re offering, there’s a 30/70 uh, percent mix. The 30 percent being. Could you just go over that marketing mix one more time for us.”

Drew Norwood – “Yeah um. We’ve got approximately of the uh, 100, is somewhere right around 150 houses will be our, uh, a patio home community. Which based on the, on the actual experience in Livingston Farms, there was

about 95% with no children. Either uh, young professional couples, professional single people, empty nesters like myself or retirees. Okay and then probably of the balance, another 10 percent of those will be those kind of people. They won't buy in the patio homes but will want one of the bigger homes or of the other smaller homes. They'll wanna be in the uh, cottage things. So we end up with 30 to 40 percent of the people when it's done will be people without children. Is that what you were?"

Commissioner Baldwin – “Yeah. That, that's where I was going. Okay. So 30 to 40 percent of, will not have children.”

Drew Norwood – “Yeah. And you know I can't, that's not.”

Commissioner Baldwin – “Yeah, but that's, yeah.”

Drew Norwood – “That's based on the Livingston Farm experience.”

Commissioner Baldwin – “Okay. Uh, what's the, do you know the distance from the proposed development to the elementary school?”

Bill Lapsley – “To the Marlow Elementary School? Uh, probably about a mile to a mile and a half. I don't think it's any more than a mile and a half.”

Drew Norwood – “That's right, yeah, close.”

Bill Lapsley – “It's probably a mile and a half.”

Commissioner Baldwin – “Okay. In, looking at the impact on the community have, have you guys considered uh, the capacity there at the school, um one. And, and two I'd like to kinda get an idea from you, your projected build out for your, your development.”

Drew Norwood – “I had talked to the uh, Superintendent of the schools, and you and I talked to the, the, um, the head of the Board, some of the Board members. And their, their comments to us that is that, they're looking at it as an overall impact. These people are coming somewhere in the County and they're gonna have to be shifting around, they're gonna have to be building more schools anywhere, any way, and they don't see that this is a, is a particular problem. Uh, to answer your second question, I think we'll be talking about building out six to eight years on that. Now that, interest rates go to 15 and we'll go to 15 years. They go to two we'll go to a couple of years but that, that should be about what it is.”

Commissioner Baldwin – “Okay. That, I think you know, and it, it's, it's a tough issue to deal with because of the rate at which we're, we're growing. We, you know we are. And um, um, certainly the type of product that you're offering is a lure to young families with children and, and we do need housing that hits that market. And uh, and that's a good thing but also, we're also in a, in a situation where um, we, you know we have to pick up the tab for the construction of the schools. Um, the general tax payers do and, and so I was trying to get a feel, you're saying six to eight years build out and you're probably looking at um, well if 60 or 70 percent of the 524 are gonna be with children then you kinda get an idea how many children that, this particular development with its um, marketing um, niche is, is gonna place as far as pressure on that particular school. Um, do you have any other additional thoughts beyond what you've already stated?”

Bill Lapsley – “No we, in anticipation of this development uh, as Mr. Norwood said we went, Livingston Farms is the best example we had and, and we actually counted up families in that development to, to get a better feel for, for that so we, we feel pretty comfortable with the statistics and we shared those with the School Board and the staff so uh, they're aware of it and, and indicated no serious objection but they said yeah, there'll be more kids and we'll have to deal with it. But understand your concern.”

Commissioner Baldwin – “I had a question for staff.”

Chairman Moyer – “Go ahead.”

Commissioner Baldwin – “Autumn did we receive anything from the uh, Board of Education or Dr. Paige or any other staff persons in planning for the school system? Did they send us anything? Express any concern about the development whatsoever? I know we used to send out a request for feedback from various agencies. Did they respond at all?”

Autumn Radcliff – “No the schools are um, one of the things that’s down as our um, letter of references to go out. The letters of references went out, when in reference to the major subdivision as required by the ordinance. Um, I know there’s been a lot of talk about this subdivision going on, except for basically Ms. Harkey coming here we really haven’t heard anything for or against the subdivision out there um, except for the individuals who are directly involved such as Mills River and the TAC and DOT.”

Commissioner Baldwin – “But, but you did not, we did send requests to various agencies, the School Board being one, and they did not respond back to.”

Autumn Radcliff – “No, no, the School Board did not receive anything.”

Commissioner Baldwin – “Okay, so they were not asked to respond to this.”

Autumn Radcliff – “Correct.”

Commissioner Baldwin – “Did they receive a set of plans?”

Autumn Radcliff – “No.”

Commissioner Baldwin – “They did not.”

Matt Card – “They did.”

Autumn Radcliff – “Oh they did? Oh I’m sorry, I’m sorry. Matt Card’s our subdivision administrator, he can probably answer that better because.”

Commissioner Baldwin – “Okay, could I ask Matt a question?”

Autumn Radcliff – “That was something that he handled. Yeah.”

Commissioner Baldwin – “Yeah. That’s where I was going I, I remember we used to do that. Matt, what did we send to the School Board?”

Matt Card – “We sent them review agency letters.”

Commissioner Baldwin – “Okay.”

Matt Card – “That’s basically a summary of the project and then a comment sheet, and then a copy of the plans. And we did not receive any comments back from them.”

Commissioner Baldwin – “Okay.”

Chairman Moyer – “Commissioner Baldwin do you have additional questions at this time? Are there other?”

Drew Norwood – “Can I ask, I just want to get a clarification. When we’re talkin’ about this, we, we can’t get a recorded plat till we get all our permits. I, I, what I plan to do Autumn, is I wanna make sure when I come to you,

assuming these gentlemen approve us, if I wanted to come to you and say I've got my grading done and my water and sewer permits are all in process and everything and I wanna record a plat, I put up a letter of credit, bond all those improvements I can go, can I go ahead ahead and do it?"

Autumn Radcliff – "Again, that's a question for Matt."

Drew Norwood – "Can I, based on the, what, condition that we agreed to with the Commissioners I wanna make sure I can do that."

Matt Card – "Right, that's a part of a subdivision process is you can bond your improvements."

Drew Norwood – "That's my only question then."

Chairman Moyer – "Alright."

Drew Norwood – "Thank you."

Chairman Moyer – "Additional questions at this time? Do any of the parties, um, starting with the applicant have any additional information they'd like to put on the record?"

Bill Lapsley – "No sir."

Chairman Moyer – "Ms. Harkey do you have anything additional that you'd like to put on the record?"

Jean Harkey – "No sir."

Chairman Moyer – "Okay. Staff, do you have anything additional."

Autumn Radcliff – "No."

Chairman Moyer – "Alright, what is the Board's pleasure? We can continue our discussion, um, I think maybe it'd be helpful to get some advice from Counsel. We, we have discussed the requirements in the Code that we are obligated to meet. We have documentation from staff and the applicant with respect to each of those matters. Um, how do you see the best way for us to proceed?"

Russ Burrell – "Uh, with the, the one idea we had in terms of this uh, checklist, is to enable the Board if it chose to do so to go down the checklist yes or no. Do we, do we have a finding, do we have enough information to make this finding. Yes, yes, yes, no, no, whatever. Um, they, they'd all come in yes or you don't, you don't grant the approval. Um, if that's the way, the way the Board chooses to do so. You can proceed more generally, though I would as, as a person who would be involved in the drafting of an order, obviously prefer more guidance rather than less guidance from uh, the Board for which I'm drafting it. Um, you have tonight to decide it and you can wait, you can make your decision at a later date if you choose to. Uh, you have received a great deal of documentary evidence, you have 45 days from the end of the hearing. Uh, that begins tonight. That 45 days is the time by which a final order must be signed so obviously the decision would have to be quicker than that."

Chairman Moyer – "What is the Board's pleasure? We have the general additions and we have, which are in our package, and there's also the uh, the uh, I got the right page here, 17."

Commissioner McGrady – "Mr. Chairman I, um, I'm prepared to vote to uh, support the application. Um, I think between the materials provided to us by staff and the applicant um, I now have a pretty good sense that I can run the checklist um, giving yeses um, all the way down. And, but I, I really would prefer not to try to craft that motion tonight um, um but I think by referencing um, I, I find the document that the applicant gave us with all the red in it and then the, the uh, um, Planning Staff's, both their memo and the chart, um, I think I can go through that and say yes for, some of them are real se, ob, self evident reasons. Obviously this is a larger tract than 1 1/2 acres, and is easy. Some of the rest um, that are not as easy though I think there are facts sufficient to support the, the applicant,

uh approving the application. Um, I think the, the tougher part comes with um, making sure that we capture all of the various conditions that are here. And the condition um, that, I mean we need to capture not simply the conditions that have, we just recently discussed um, well tonight back and forth, but the Planning Board also had a series of, of conditions that no one has had any problem with as best I can tell. And I would want those conditions reflected um, there. Um, but there's a whole checklist of them and again I wouldn't propose to try to shuffle through all this paper and figure out ever one of those conditions tonight but my sense is that no one has any concerns regarding those conditions. And then the, the last one which uh, um, um, Ms, uh, Harkey um, we, we had a lot of dialogue on, again we just need to clean it up so that it's really clear by reference to um, the map um, it's, it's a fairly simple thing again. So with that, all that stated, if Counsel can craft an order that reflects that I'm certainly prepared to, to, to make a motion to approve this thing."

Chairman Moyer – "Well, I'd like to try to be a little more specific and take it in, in uh, bites. Uh, in the package that we had from staff at the first on attachment 17 on page 159 there were some listings of uh, conditions, findings that the Board had to make. And then on, starting on 149, page 149 that same attachment."

Commissioner McGrady – "But that's the same chart is it not Mr. Chairman."

Chairman Moyer – "They are the same on the conditions."

Commissioner McGrady – "Yeah."

Chairman Moyer – "Uh, does any, I personally feel they've also been complied with too. We have enough information to say we have met those tests. Is there any Commissioner that would like to go through those, or can we direct staff to come up with the finding that each of these has been found based on the evidence on the record. We certainly can review the writing and see whether we're satisfied, but do we need to go through all of these conditions?"

Commissioner Messer – "I don't think we need to go through all these conditions. I think we've been uh, taught uh."

Chairman Moyer – "The findings I should say."

Commissioner Messer – "The findings the last two weeks and, you know I agree with Mr. McGrady I think we need to uh, uh, there is some concern that I've got that, you know, that we, that I've stated and of course Mr. Baldwin's stated with the schools. I have some concern over that. DOT has provided us, us information and everyone. The Planning Board has, you know we got their strong recommendation, not a member opposed. Uh, and then when the staff came back with the latest and most information uh, uh, like I said it's, I mean, you know, it's uh, so I really wouldn't have a problem with it."

Commissioner Baldwin – "Well I, I uh, I would not mind, I, I think it probably would be appropriate if we just went through it quickly. And as a Board let uh, let the Chairman go through the, the findings and take the pulse of the Board on any of these issues. But I will tell you specifically which one that I have some heartburn over. Um, I don't mean that in a terribly negative way, but it's um, the um, this is from the Zoning Ordinance section 200-33(F).(4)(c) and basically it says the Board of Commissioners may request additional information required "to evaluate the impact of the proposed Planned Unit Development." And you've heard me express concern. Uh Commissioner Messer has expressed concern over the impact of the development on the, on the school. And it um, it really surprises me that we send information to the School Board and give them an opportunity to evaluate the impact of a subdivision on the school system and we don't receive anything back. Not one word, letter, a verbal comment, nothing. And I do think if, if the School Board doesn't do it, it's incumbent upon this Board to see that uh, either um, an impact analysis is conducted or that we go back to the School Board a second time and say take a position and give it to us, because we want to see it. Because we're often in situations where uh, every budget cycle we're in a situation where we have to build new schools and fund new schools and if we don't do it we're bad guys. Now we have an opportunity to ask them to take a position on this subdivision uh, with respect to the impact on schools and I would like to know where they stand on this particular issue."

Chairman Moyer – “I can tell you, excuse me, I’m sorry I thought you were finished.”

Commissioner Baldwin – “As far as I’m concerned with the other issues, I feel that uh, the company has done a, a good job, uh, basically meeting the letter of the law. I think they’ve, they have uh, met most of the requirements but I think this is one that I would like to have a response back from the School Board on. And seems to be the only issue, the only hang up that I have. The rest of it seems to be taken care of.”

Chairman Moyer – “Well let me. I can’t give evidence but let me tell you um, and Autumn, phrased it uh, correctly. The school system on all of these has without exception taken the position that they deal with the overall numbers. And as you saw in the paper recently they have their estimates of, by school, of what the growth is gonna be, what the impact is gonna be on the area, and then the State also comes up with estimates and they take those into consideration. As you saw in the paper they’re significantly higher than what our local uh, estimates are at the, the uh, the present time. So they as, as Autumn indicated, and this is their position. They plan for what they look as the overall growth and what they can demonstrate in history. They’ve been under, over, and it’s been a little higher sometimes but they plan on that and they design their system to meet what they anticipate is gonna be the growth for next year, five years out. And we had a joint facilities meeting today where they were talking about what their needs are gonna be in five and ten years. They do not worry about a specific subdivision. They do not even look at it. They say we know it’s gonna take place somewhere in this County. We think it’s gonna be somewhere in this area, and we start to plan on it. But they do not get into specific subdivisions or areas or what uh, other than saying what we think the growth is gonna be in that area. And they don’t care whether it comes from subdivision x or y or, or z. Uh, but, that’s the way they look at it. I can tell you also uh, specifically they know there’s growth in that area, and they are planning as I think the Board’s been told and we discussed in the past, an addition onto the Mills River Elementary School so they can adjust a line out there to deal with the growth as it occurs, and they may have to, uh, as they bring in another school on-line. As you know the one we’re talking about uh, now, uh, Sugarloaf, uh, what, may have to adjust the lines again. So they, they look at the overall, they plan for the overall, but they don’t try to do it by subdivision.”

Commissioner Baldwin – “Well it, it just, it just seems like to me that it’s a, a process that’s somewhat out of control when you take uh, Clear Creek Elementary School that was built three years ago that was constructed and is already uh, full and has no more capacity. That, that’s poor planning in my opinion. And I want to see the School Board take a position um, as these developments go in. We give them an opportunity. If there’s no reason for them to evaluate these uh, subdivisions then we should not be including them in the process, but we are. And we’re asking for input, and I would like to see the school system take a position on the subdivisions. And, and I would like to have them do so on this particular one.”

Commissioner McGrady – “I don’t think um, Mr. Chairman, that this applicant should be um, put at detriment because the School Board hasn’t responded um, to um, our request for their opinion. Um, my experience as Chair of the Planning Board, as was yours I think, was that the School Board never responds, um, to these requests. And as, as you noted I mean we’ve spent, you and I spent the better part of the afternoon at one of the Joint Facilities meetings and I think you fairly stated how the School Board tends to look at the enrollment issues. They, they, rightfully or wrongfully, um, you know, are not looking at them in terms of the impact of any one development. Um, they’re well aware of the growth in the north end of the County. Um, they’re planning um, to add capacity um, at Mills River and in, in other places, um in the north end of the County but they’re, they just, they refuse, and I don’t know whether that’s a good or a bad thing Commissioner Baldwin, but they refuse to, to look into the impact of any one subdivision that might occur because they assume that it, if it doesn’t occur there it’s gonna occur somewhere else. Um and we, we just can’t get into that calculus. So I, I’m just not supportive of, of, of uh, sort of holding things up um, with respect to this applicant um, because the School Board didn’t respond to our letter.”

Commissioner Baldwin – “Well again it says it gives us the authority, it says we have basically the authority to evaluate the impact of a proposed uh, PUD. And we can request additional information. I, I simply would like to see the School Board take a position on this particular application and, uh, all the others that come before them as well. But I, I think this one is a good one to start with. If, if they’re coming back to us within six, eight years and

ask that we build a new school to absorb growth, then I think the School Board needs to be on the record. Um, saying that they evaluate um, the growth and that uh, they take a position, uh, on what's occurring. And they seemingly are not doing so. And I would like to see them do that."

Commissioner Messer – "Mr. Chair I'd like to know if we're gonna vote it up or down. I mean."

Chairman Moyer – "Well know I wanna go a little further. I think we have Mr. Baldwin's comment on the record. We can take that into consideration in voting. But what I do want to get more clarity on, we have these, the check list with a list of conditions. But I think as Commissioner McGrady indicated, there are, there were conditions that staff would like in this. There are conditions that came out tonight and I would like you to go down those so it's clear to the Attorney what the conditions are you're looking for and the Board can say yes or no, that we, that's our same understanding that you have."

Autumn Radcliff – "You want me to do that now?"

Chairman Moyer – "Yes, I want you to do that now. So we'll have findings with respect to what's required by the code, but there's some, there's conditions outside the code. Obviously the first one while you're getting your record was the, was the buffering in the back that the applicant has agreed to. There's the berm which they gave us diagrams on. That is a condition. We have all the conditions in your November 30 letter. I'm not looking to go back over all the ones we clearly covered tonight, but you indicated in your comments and I think there were others from the Planning Board, and I wanna be sure this Board is in agreement as to what they are."

Commissioner McGrady – "Well I'm assuming Mr. Chairman um, that we then just simply go back to the November 17th memo um, that um, Ms. Radcliff gave us where she went through the Planning Board recommendations with respect to height, distance between buildings, off-street parking, emergency services, maintenance, setbacks, and a range of other things. Um."

Chairman Moyer – "All those are not covered by the, are superseded by the November 30th letter."

Commissioner McGrady – "Um, well they're not completely superseded, they're, they're, referenced, they're, they're referenced specifically in her um, her memo of this date. Um."

Chairman Moyer – "Of course we had the modification one tonight. Obviously the soil and erosion control will be required before um, what's the right wording, before uh, any construction will start I guess."

Autumn Radcliff – "Yes."

Chairman Moyer – "And the rest of the permits would be before any plat is filed. So that's an agreed upon condition."

Autumn Radcliff – "Correct. Um, just to make it real simple, just from first glance the November 17th memo that outlined the Planning Board recommendations, all those would still be recommendations that needed to be conditions of the permit with the exception to number three, the sewer plans, number five erosion control, number nine the setbacks and number 10 access management. Um, all of those with the exception of the setbacks were outlined in the memo that you received tonight with staff's additional comments. I think that um, staff would prefer that you went with conditions from tonight's memo that you received, handed out. The set back with the comments was made verbally uh, with the applicant as far as the drawing that was showing the setbacks. Um, otherwise all of those other uh, requirements would, would stand as a condition. Um, in addition to that would be um, on the November 17th memo staff comments, one additional thing that was brought up at that time that was not brought up tonight was the fact that um, the developer disclose to the buyer that the subject property is in the flight path of the Asheville. Um, the Board may want to consider that as a condition. Um, staff is suggesting that it be um, disclosed to the buyer."

Chairman Moyer – “On uh, that 17th letter, on number eight I think we also made a change cause I, I think we changed the wording on the Board of Commissioners not approving as suitable for a uh, a proposed use. I forget what the, the change was on that but, or whether we just deleted that.”

Russ Burrell – “We, that the, used the, basically just used the exact language that’s used in other um, orders in this regard that um, the, the letter will be acceptable to preserve open space according to the County Attorney’s Office. There’s, there’s language now we use in the order that we have used in previous orders.”

Chairman Moyer – “Alright. Are there any other conditions that you can think of uh.”

Autumn Radcliff – “Um, the only other conditions is those that were covered tonight as far as what was brought up with Ms. Harkey about the 20 foot buffer being there and being undisturbed with the potential of a three to four foot drainage swale being on the top. That needs to be outlined in the condition. Um, also about the construction fence being put up prior to construction beginning uh, for safety reasons I’m assuming on the residence. Um, also that uh, in addition to staff’s comments with DOT that it’s added in there what the applicant brought up that this would be um, um, in consideration with the final decision of the street access permit and any conditions that DOT would apply when they, when they issue the street access permit. And I think that’s it.”

Chairman Moyer – “Alright.”

Commissioner McGrady – “Mr. Chairman I agree with all of that. With respect to the flight plan I think the disclosure issue, that’s an easy one, just include it as a condition.”

Chairman Moyer – “Alright.”

Commissioner McGrady – “I mean any dis, disclosure’s the buyer beware. Um.”

Chairman Moyer – “Alright. Did you make, I forget did you make.”

Commissioner McGrady – “I were, we were both talking. I mean I. I, *I think where, we need to do at this point is, is just a motion to direct staff to um, draft um, the necessary order um, reflecting um, the appropriate findings um, that are, need to be made consistent with the ordinance.*”

Commissioner Messer – “...the last two meeting.”

Commissioner McGrady – “*Um, finding in each case that the um, conditions have been met. And uh, um, stating the conditions that have been I think fairly clearly um, uh, summarized by Ms. Radcliff and um, agreed to by the applicant. Um, and I think with staff’s, that would be my motion.*”

Chairman Moyer – “Alright.”

Commissioner McGrady – “And then speaking to it I think with, with, with the record that we’ve composed here and we seem to be largely on the same page, that we can get an order back rel, at one of our next meetings relatively quickly so we can put this thing in place.”

Commissioner Messer – “Can we just do it on the Consent Agenda?”

Commissioner McGrady – “Well that’s what I would assume, yes Charlie.”

Chairman Moyer – “I don’t know whether Russ can make the 5th, but certainly we’ll make the 15th if uh. Questions? Further discussion or, or comments on that motion?”

Commissioner Baldwin – “So we’re not gonna have the, any consideration by the Board from what uh, I asked us to, to consider?”

Chairman Moyer – “Yeah, what I was gonna do next Commissioner Baldwin was ask the Board’s uh leave to, to uh, to send a letter to the school system indicating, Chairman Bazzle, to indicate that this question uh, has come up before and come up again tonight as to uh, a com, that we send these and we don’t get comments on specific, and that we would like to know whether there’s a way we could get their comments and, and whether they would be willing to take individual subdivision planning and approval into their process somehow. And see what the response is. But I share Commissioner McGrady, I don’t think we should hold this up, but I think we shan, we shall pursue, I shall, if the Board’s desire, pursue that and try to get an answer back. And if appropriate invite them to a meeting for discussion.”

Commissioner Baldwin – “Well I think all those are, are good. I mean I, I think that’s what ought to be done. But, uh, we’ve done this before in the past and we’ve asked and we’ve complained and, about their planning process and it doesn’t seem to make a difference. And I don’t know how we do it unless we start holding their feet to the fire. And um, I’m not willing to separate what I’ve requested from, from the evenings uh. Cause it says here that we can ask for additional information about the impact of a PUD on a neighborhood and that’s what I’m requesting we do.”

Commissioner McGrady – “The, the only problem I, I, you know philosophically Commissioner Baldwin I agree with you but we’re not holding their feet to the fire, we’re holding the applicant’s feet to the fire for something that the School Board hasn’t provided and not likely to provide within a time frame that, that uh, would allow this project to move forward. So.”

Commissioner Baldwin – “Well I, I personally would accept uh, a, a letter from Dr. Paige or the Chairman of the School Board that says uh, we received it. Um, we took a look at it, and we either have no opinion uh, at this time or something of that nature. But for us to send the information uh, that has a, a large impact on the taxpayers of this County, and we let it slide through, is not something I’m willing to do. They need to take a position. Because later on we’re gonna build schools, six to eight years from now, because we know what the projected build out is, we know we’re talking about young families uh, with children, and it’s gonna overwhelm the school and the neighbor. And we’re doing nothing to, to rectify the issue except continue to build new schools.”

Chairman Moyer – “Alright we have uh, the motion on the floor. All in favor of the motion.”

Commissioner Young – “Restate the motion if you will.”

Chairman Moyer – “I’m sorry?”

Commissioner Young – “Restate the motion if you will.”

Commissioner McGrady – “*The motion was to direct staff to uh, basically um, uh give us an order with findings um, that show that the applicant has met the, the various requirement um, of the ordinance. And in uh, including all of the um, conditions um, that were summarized by the planning staff with the agreement of the applicant.*”

Chairman Moyer – “*The motion is to approve Special Use Permit application...*”

Commissioner McGrady – “That’s right.”

Chairman Moyer – “Subject to the...”

Commissioner McGrady – “That’s right.”

Chairman Moyer – “Okay Commissioner Young? *All in favor of that motion say aye.*”

Chairman Moyer, Commissioner McGrady and Commissioner Messer – “Aye.”

Chairman Moyer – “*Opposed?*”

Commissioner Baldwin and Commissioner Young – “*Aye.*”

Chairman Moyer – “Okay, it passed three to two. Um, do we need to do that out of public hearing, is part of public hearing alright? *Alright motion to close the public hearing?*”

Commissioner Messer – “*So moved.*”

Chairman Moyer – “*All in favor say aye.*”

Aye in unison.

Commissioner McGrady – “*Motion to adjourn.*”

Chairman Moyer – “*All in favor say aye.*”

Aye in unison.

Chairman Moyer – “We are adjourned.”

Attest:

Amy R. Brantley, Deputy Clerk to the Board

William L. Moyer, Chairman