

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 15 December 2005

SUBJECT: Approval of order from quasi-judicial hearing – River Stone
Subdivision PUD

ATTACHMENT(S): Draft order

SUMMARY OF REQUEST:

Attached is a draft Order from the quasi-judicial hearing this Board held in the matter of the application for a special use permit for the planned unit development for River Stone subdivision.

IN THE MATTER OF THE APPLICATION OF WINDSOR-AUGHTRY, INC.,
Applicant

TO THE

HENDERSON COUNTY BOARD OF COMMISSIONERS,
Permit Authority

JEAN HARKEY,
Additional Party

**ORDER GRANTING APPLICATION SP-05-01
SPECIAL USE PERMIT FOR PLANNED UNIT DEVELOPMENT**

The Henderson County Board of Commissioners held a quasi-judicial public hearing on 17 November 2005 and 30 November 2005, to consider the application (#SP-05-01) for a Special Use Permit submitted by Windsor-Aughtry, Inc. The following additional person was made party to this proceeding, without objection by any other party: Henderson County Planning Department staff (Autumn Radcliff and Matt Card); and Jean Harkey. Having heard all of the evidence and arguments presented at the hearing, the Board of Commissioners makes the following findings of fact:

1. A quasi-judicial public hearing was held by the Henderson County Board of Commissioners on special use permit application #SP-04-01 (as revised) on 17 November 2005, and continued and concluded on 30 November 2005. All members of the Board of Commissioners were present and participated in this hearing.
2. This Order, and the approval of the special use permit granted herein, was moved by Commissioner McGrady and approved by a majority of the Board of Commissioners as attending the 17 and 30 November 2005 hearing, with Commissioners Baldwin and Young voting in opposition.
3. Windsor-Aughtry ("the applicant") owns certain real property located in Henderson County, North Carolina, being known by Henderson County parcel identification number 9642-90-5138 and 9651-19-1553 ("the subject property"). The applicant applied for a special use permit, pursuant to the Henderson County Zoning Ordinance, Section 200-1 *et seq* of the Henderson County Code ("the Ordinance"), to allow a planned use development ("PUD") on the subject property. As a result, the applicant was made a party to this proceeding.
4. Autumn Radcliff and Matt Card are planners in the Henderson County Planning Department. As agents for Henderson County, Ms. Radcliff and Mr. Card were made parties to this hearing.
5. Notice of a quasi-judicial public hearing, pursuant to the Ordinance, the Henderson County Code, and the Rules of the Henderson County Board of Commissioners was duly and timely given.

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This notice included legal advertisement in *The Times-News* newspaper, notices sent by certified mail to the applicant and property owners within a 100-foot diameter of the boundary of the subject property, and the posting of notice on the subject property.

6. Jean Harkey ("Harkey") sought to become a party to this hearing. As no other party objected, the Board of Commissioners in its discretion made Harkey a party to this hearing.

7. Upon inquiry by the Chair of the Board of Commissioners, no party objected to any of the other persons or entities made parties to this action being a party to this action.

8. All parties, and all witnesses presented by any party, were sworn as witnesses in this proceeding on 17 November 2005.

9. Without objection from any party, the Board of Commissioners received into evidence a memorandum from Autumn Radcliff, Planner, on November 17, 2005 consisting of 3 pages and 17 attachments, on November 23, 2005 consisting of 3 pages and no attachments, on November 28, 2005 consisting of 1 page and 5 attachments, and on November 30, 2005 consisting of 2 pages with no attachments. No party disputed any of the information contained in this memorandum or these attachments, and the Board of Commissioners finds all the information contained in the memorandum and its attachments to be credible and to be fact for the purpose of this hearing.

10. The subject property consists of approximately 175.52 acres, located near the intersection of Butler Bridge Road with North Rugby Road, having frontage on both such roads. Both roads are "state-maintained" roads, maintained by the North Carolina Department of Transportation.

11. The subject property is located within two zones, one a R-15 Medium Density Residential zoning district, the other a R-10 High Density Residential District, as both are defined by the Ordinance. Approximately 69 acres are located in a R-15 district, and approximately 106 acres are located in a R-10 district.

12. As zoned, not taking into account areas encumbered by either flood way or flood hazard area, the subject property could be subdivided into 661 lots.

13. Under the Ordinance, a PUD is allowed as a special use in R-15 and R-10 zoning districts. The Ordinance provides specific site standards for a PUD, as well as general site standards applicable to all special uses.

14. The applicant, in the application for a special use permit as revised (the application, its supporting documentation and all revisions to it collectively "the application"), proposed a PUD to be sited on the subject property. The application proposes a PUD with 524 lots, averaging 7,150 square feet (0.16 acres) in area.

15. As the proposed PUD would contain the same number of single-family residences or fewer as would be allowed in a non-PUD development in the applicable zoning districts for the subject property, there would be no additional increment to traffic caused by the approval of the PUD (as opposed to non-PUD development of the subject property).

16. The proposed PUD would utilize three types of single-family dwellings: traditional house, cottages, and villas.

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17. The proposed PUD would be served by public water, from the City of Asheville. The application shows 23 fire hydrants to be located on the subject property.
18. The proposed PUD would have public sewer, served by the Cane Creek Sewer District of Henderson County.
19. The proposed PUD would have approximately 45 acres of open space, and approximately 130.52 acres in residential lots.
20. A pre-application conference was held between the applicant's representative, the Henderson County Planning Department staff, and the Henderson County Planning Board on August 16, 2005. The applicant caused to be filed a special use permit application (#SU-05-01) on August 22, 2005. On September 6, 2005, the Board of Commissioners referred the application to the Henderson County Planning Board, pursuant to Sections 200-56 and 200-70 of the Ordinance.
21. As the PUD includes the division of land into lots for sale, the same falls within the Henderson County Subdivision Ordinance, and the applicant applied for approval of a nonstandard subdivision under the Subdivision Ordinance. This approval was granted by the Henderson County Planning Board, subject to certain pre-conditions, one of which was the grant by the Board of Commissioners of this special use permit.
22. The applicant, through land planner William Lapsley and Associates, submitted Master and Preliminary Development Plans for this project to the Henderson County Planning Department on September 6, 2005. These revised plans are a part of the application, and are included in attachment 8 to the Memorandum that Autumn Radcliff referred to in finding 9., above.
23. Under §200-56 of the ordinance, certain general site standards apply to all uses requiring a special use permit.
24. The general site standards referred to in 23., above, are all satisfied in this development as proposed (with revisions to the application as found herein), except as otherwise found in paragraph 31., below.
25. Under §200-33A of the ordinance, certain land development standards apply for all planned unit developments.
26. The land development standards referred to in 25., above, are all satisfied in this development as proposed (with revisions to the application as found herein), except as otherwise found in paragraph 31., below.
27. The conveyance of open space, recreational areas and communally owned facilities in a PUD are mandated as follows in §200-33D of the Ordinance:
 1. Common open space, recreational areas and communally owned facilities shall be guaranteed by a restrictive covenant describing the areas and facilities and their maintenance and improvement, running with the land for the benefit of residents of the planned unit development or adjoining property owners or both.
 2. The applicant must submit to the Board of Commissioners the legal documents which will produce the aforesaid guaranties and, in particular, will provide for restricting the use of common areas and facilities for the designated purposes.

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28. The provisions on the conveyance of open space listed in 27., above, are all satisfied in this development as proposed (with revisions to the application as found herein), except as found in paragraph 31., below.

29. Pursuant to the Ordinance, a PUD shall be approved subject to the submission of an instrument or instruments setting forth a plan for permanent care and maintenance of permanent open spaces, recreational areas, easements, rights-of-way and communally owned facilities which would be legally enforceable. The developer shall create a homeowners' association and submit bylaws and rules and regulations governing the association. The developer shall be required to include in every deed the developer makes that membership be mandatory for each home buyer.

1. The provisions shall include, but not be limited to, the following:
 - i. The homeowners' association must be set up before the homes are sold.
 - ii. The open space restrictions must be permanent not just for a period of years.
 - iii. The association must be responsible for liability insurance, local taxes and the maintenance of recreational and other designated facilities.
 - iv. Homeowners must pay their pro rata share of the cost; the assessment levied by the association can become a lien on the property.
 - v. The association must be able to adjust the assessment to meet changed needs.

2. No such instrument shall be acceptable until approved by the County Attorney as to legal form and effect and the Board of Commissioners as to suitability for the proposed uses.

30. The provisions on the maintenance of the PUD listed in 29., above, are all satisfied in this development as proposed (with revisions to the application as found herein), except as found in paragraph 31., below.

31. The application (as revised) does not satisfy at present the Board of Commissioners as to meeting the general site standards, land development standards applicable to this PUD, the conveyance of open space, recreational areas and communally owned facilities, and maintenance, in the following:

a. The restrictive covenants proposed for the subject property do not yet provide sufficient lawful provisions to insure the permanence of dedicated open spaces (including a provision regarding the assessment of lien on lots in the PUD and the collection of the same to allow for homeowners' association payment of the costs of repairs, improvements, and any common area property taxes).

b. No articles of incorporation or by-laws of a homeowners' association for the PUD has been provided.

c. There is currently no provision as to when the common area is to be conveyed to the homeowners' association.

d. This special use permit granted should be conditioned on the applicant receiving all approvals required by the Henderson County Subdivision Ordinance, and on the applicant remaining in compliance with the Subdivision Ordinance.

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e. The Applicant must submit to the Henderson County Planning Department plans and other documentation to ensure that the water system has been designed by a professional engineer and that such system has been approved by appropriate local and state agencies, and must construct the system as designed.

f. The Applicant must submit to the Henderson County Planning Department plans and other documentation to ensure that the sewer systems have been designed by a professional engineer and that such systems have been approved by appropriate local and state agencies, and must construct the system as designed.

g. The Applicant must submit to the Henderson County Planning Department documentation of approval of the sedimentation and erosion control plan for the project prior to beginning any construction.

h. The Applicant must provide a twenty (20) foot undisturbed buffer along the perimeter boundary along lots 551,584,585,586,587,588,589, & 590 with the potential of a 3-4 foot swale being constructed that shall not be located within the 20 foot undisturbed buffer area.

i. The Applicant will provide a 5-foot berm on both sides of all entrances as indicated on the plans entered into evidence on November 30, 2005 to the Board of Commissioners.

j. The Applicant shall install a construction fence prior to beginning any construction.

k. The Applicant shall satisfy all requirements imposed by DOT and all requirements as stated on the Street Access Permit.

l. Setbacks within the project must be established as follows:

Front: 10 feet from the edge of rights-of-way, for all lots

Rear: 10 feet, for all lots

Side: 5 feet, for all lots (10 foot separation)*

Height: 35 feet, for all buildings and structures

No buildings may be closer than 10 feet and the construction of adjacent walls shall conform with the North Carolina Building Codes and that area between buildings shall remain open and unobstructed. The restrictive covenant's shall state the setbacks and requirements for the 10 foot separation.

m. The Applicant shall provide two parking spaces for each dwelling unit.

n. The Applicant shall disclose to the buyer that the River Stone subdivision is in the flight path of the Asheville Regional Airport.

32. The items listed in finding 31., above, may be cured by the imposition of conditions upon the approval of this application by the Board of Commissioners, as stated below.

From the foregoing, the Board of Commissioners concludes as follows:

1. All parties were properly before the Board, and all evidence presented herein was under oath, and was not objected to by any party. All evidence relied upon in this Order was credible and reliable.

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2. Sections 200-7B, 200-33 and 200-56 of the Henderson County Code govern the grant or denial by the Board of Commissioners of a special use permit for a planned unit development.
3. The Board of Commissioners has jurisdiction to hear this matter.
4. All parties, and all persons entitled to notice, have been given proper notice of this hearing and afforded the right to be heard.
5. The application meets all the standards of the Ordinance, subject to the conditions set forth below, and the application should be granted, subject to the conditions set forth below.

IT IS THEREFORE ORDERED by the Henderson County Board of Commissioners that Henderson County special use application number SP-04-01 is hereby granted, subject to the following conditions:

1. Any conditions set herein shall apply to the applicant, and to any bulk transferee of lots from the applicant.
2. The restrictive covenants for the subject property shall be made legally sufficient, in the opinion of the Henderson County Attorney, to lawfully insure:
 - a. The permanence of dedicated open spaces.
 - b. The perpetual maintenance of common areas (including a provision regarding the mandatory assessment of a lien on lots in the development on a prorated basis, and the mandatory collection of the same to allow for homeowners' association payment of the costs of repairs, improvements, and any common area property taxes).
3. Articles of incorporation and by-laws of a homeowners' association for the PUD (or other documents lawfully and irrevocably establishing the same) shall be made legally sufficient and, in the opinion of the Henderson County Attorney, and lawfully made of record under North Carolina law.
4. All property designated as common area, open space, roads or the like shall be irrevocably conveyed to the homeowners' association established for the PUD prior to sale of any lots in the PUD.
5. The Applicant must submit to the Henderson County Planning Department plans and other documentation to ensure that the water system has been designed by a professional engineer and that such system has been approved by appropriate local and state agencies, and must construct the system as designed.
6. The Applicant must submit to the Henderson County Planning Department plans and other documentation to ensure that the sewer systems have been designed by a professional engineer and that such systems have been approved by appropriate local and state agencies, and must construct the system as designed.
7. The Applicant must submit to the Henderson County Planning Department documentation of approval of the sedimentation and erosion control plan for the project prior to beginning any construction.

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8. The Applicant must provide a twenty (20) foot undisturbed buffer along the perimeter boundary along lots 551,584,585,586,587,588,589, & 590 with the potential of a 3-4 foot swell being constructed that shall not be located within the 20 foot undisturbed buffer area.

9. The Applicant will provide a 5-foot berm on both sides of all entrances as indicated on the plans entered into evidence on November 30, 2005 to the Board of Commissioners.

10. The Applicant shall install a construction fence prior to beginning any construction.

11. The Applicant shall satisfy all requirements imposed by DOT and all requirements as stated on the Street Access Permit.

12. Setbacks: Setbacks within the project must be established as follows:

Front: 10 feet from the edge of rights-of-way, for all lots

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Side: 5 feet, for all lots (10 foot separation)*

Height: 35 feet, for all buildings and structures

No buildings may be closer than 10 feet and the construction of adjacent walls shall conform with the North Carolina Building Codes and that area between buildings shall remain open and unobstructed. The restrictive covenant's shall state the setbacks and requirements for the 10 foot separation.

13. The Applicant shall provide two parking spaces for each dwelling unit.

14. The Applicant shall disclose to the buyer that the River Stone subdivision is in the flight path of the Asheville Regional Airport.

15. All above conditions shall be required prior to the approval and recordation of the final plat unless specifically stated otherwise.

16. The Order granted this permit is expressly conditioned on the applicant receiving all approvals required under the Henderson County Subdivision Ordinance, and upon the applicant remaining in compliance with the Subdivision Ordinance.

Announced 30 November 2005, and approved in final form, this the 15th day of December, 2005.

THE HENDERSON COUNTY BOARD OF COMMISSIONERS

By: _____
WILLIAM L. MOYER, Chairman

Attest:

Elizabeth W. Corn, Clerk to the Board of Commissioners

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ACCEPTANCE BY THE APPLICANT

I, _____, do hereby on behalf of Windsor-Aughtry, Inc.,
acknowledge:

- (1) the receipt of this order on behalf of Windsor-Aughtry, Inc., the owner of the property which is the subject of this Order;
- (2) that nothing may be done pursuant to this Order except in accordance with all of its conditions and requirements; and,
- (3) that this restriction is and shall remain binding on Windsor-Aughtry, Inc., and its successors in interest.

This the ____ day of _____, 2005.

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, _____, Notary Public for said County and State, certify that
_____, _____ of Windsor-Aughtry, Inc., personally came before me this day and
acknowledged the due execution of foregoing instrument on behalf of Windsor-Aughtry, Inc.

THIS the ____ day of _____, 2005.

Notary Public

My Commission Expires: