

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 4 December 2006

SUBJECT: Approval of order from quasi-judicial hearing "Vistas at
Champion Hills"

ATTACHMENT(S): Draft order

SUMMARY OF REQUEST:

Attached is a draft order from this Board's 6 November 2006 quasi-judicial hearing. By this Board's rules, the Board has 45 days from 6 November 2006 to enter an order.

County staff will be present and prepared if requested to give further information on this matter.

PROPOSED BOARD ACTION:

If the Board is so inclined, the following motion is suggested:

I move that the Board adopt as its Order the proposal attached to this agenda item.

IN THE MATTER OF THE APPLICATION OF
KASEY-PHILLIPS DEVELOPMENT, LLC
Applicant

to the

HENDERSON COUNTY BOARD OF COMMISSIONERS,
Permit Authority

and

MARTHA HILLS, WILLIAM CAMP,
JAMES BARNETTE and MICHELLE FRENCH,
Additional Parties

**ORDER GRANTING SPECIAL USE PERMIT APPLICATION
FOR PLANNED UNIT DEVELOPMENT**

The Henderson County Board of Commissioners held a quasi-judicial public hearing on 6 November 2006, to consider the application (#SP-06-01) for a Special Use Permit, submitted by David Phillips on behalf of the Kasey-Phillips Development, LLC.

The following persons were made parties to this proceeding: Kasey-Phillips Development, LLC ("the Applicant"), through Chris Eller and David Phillips; Henderson County Planning Department staff (Anthony Starr, Director, collectively "Staff"), Martha Hills, William Camp, James Barnette and Michele French. Having heard all of the evidence and arguments presented at the hearing, the Board of Commissioners makes the following findings of fact:

1. Present for the hearing of this matter were all members of the Henderson County Board of Commissioners.
2. Notice of this quasi-judicial public hearing was given by means of advertisement in *The Times-News* newspaper on 12 October 2006 and 19 October 2006, as well as by certified mail to all adjoining property owners and by the posting of the subject property.
3. This Order, and the approval of the Special Use Permit, was moved by Commissioner Moyer and approved by a majority of the Board of Commissioners.
4. The Applicant is the owner of a certain parcel of land, identified by Henderson County parcel identification number 9557-37-2300 ("the subject property"). The subject property is approximately 12.89 acres, of which approximately 10.90 is classified in an R-20 district under the Henderson County Zoning Ordinance ("the Ordinance"), with the remainder classified in an Open Use

district under the Ordinance. No units are proposed on the portion of the subject property classified in an Open Use district, and such portion is indicated as possible future development.

SPECIFIC SITE STANDARDS (Hend. Co. Code §200-33)

5. The 10.90 acres classified in an R-20 district under the Ordinance would allow, should a planned unit development special use permit be granted, the development of 23 dwelling units. The Applicant's proposal is for a planned unit development of 20 townhome dwelling units.

6. The lot lines proposed by the Application do not appear to meet the minimum 50 foot setback from the centerline of the proposed internal street; and appear to be as close as 38 feet from the centerline of the proposed street. Each set of townhome lots appear to be separated a minimum of 20 feet from any other set of townhome lots (See Exhibit C, Attachment 4, Statements of Objectives and Intentions). The Applicant, in its application, requests a 12 foot reduction in the front yard setback from the center line of the internal street (from 50 to 38 feet) and a 30 foot reduction in side yard setback (from 50 to 20 feet). Staff suggests that a reduction in setback from the internal street may be appropriate in this development, given the inclusion of common space which will give the appearance of a low-density development. The Planning Board recommended that this Board condition its approval on a requirement that no structure be placed closer than 40 feet to the centerline of the internal road (a 20 percent reduction in setback). This Board finds such condition to be reasonable.

7. The Applicant has indicated that no structure will exceed 20 feet in height (as measured from the peak of the roof to the highest ground surface around the building) and that the units will be single story homes with basements. The Planning Board recommended that this Board condition its approval on a requirement that a 20 foot height restriction and the single story with basement description be a condition of approval. This Board finds such condition to be reasonable.

8. The Applicant is proposing a minimum 20 foot perimeter area of existing vegetation to serve as a screen and transition between the development and all adjacent property. The Applicant has indicated that an area of grading in the 20 foot perimeter strip is necessary due to topography constraints along the boundary between the project area and the Snyder Property. The Applicant has further indicated that the area will be re-vegetated in accordance and harmony of the existing vegetation to provide and maintain a transition and privacy for both parties. The Planning Board suggests, as a condition of this Board's approval, that a condition be required that a 20-foot undisturbed perimeter be provided by the Applicant, that such remain undisturbed except in the area adjacent to the Snyder property, and that where such perimeter area is disturbed that such be re-vegetated in accordance with the harmony of existing vegetation. This Board finds such condition to be reasonable.

9. The Applicant proposed, in the application materials, that the development be served by the City of Hendersonville Water and Champion Hills Community Sewer System. The Planning Board suggests that the Applicant must, as a condition of this Board's approval, submit to the Henderson County Planning Department plans and other documentation to ensure that the water and sewer systems have been designed by a professional engineer, that such systems have been approved by appropriate local and state agencies, and that the systems must be constructed as designed prior to final flat approval. This Board finds such condition to be reasonable.

10. The Applicant proposes to provide landscaping, signs and lighting that complies and is similar to the standards set forth in the Champion Hills Community. The Applicant has indicated the placement of a sign but has provided no other information regarding the sign. The Applicant has not proposed any parking areas, service areas, entrances/exits, landscaping, or lighting which would pose a

potentially adverse influence on the residential character of the PUD or its surrounding property. At hearing, the Applicant agreed that any signage must be approved by Staff, and any lighting of the sign must be "down-lighting". The sign must be in keeping with character of the community in the area, in terms of colors, materials, etc. Colors will be "earth-tones", and small in scale (smaller, for example, than the sign for "Champion Hills" development due to the smaller development size). This Board finds this condition to be reasonable.

11. In order to insure the conveyance and maintenance of open space, the Planning Board recommended that the Board condition any approval on the following conditions: (1) the Applicant must indicate that they will grant by restrictive covenant all common open space, recreational and natural areas and communally owned facilities to the owners of property within the development, describing the areas and facilities and their maintenance and improvement, running with the land for the benefit of owners of property within the development or adjoining property owners or both; and (2) the Applicant must submit to the Office of the County Attorney in a form satisfactory to the County Attorney the legal documents that will produce the aforesaid guaranties and, in particular, must provide for restricting the use of common areas and facilities for the designated purposes (so long as such are also in accordance with any specified conditions identified by any special use permit issued therefore). This Board finds such condition to be reasonable.

12. The Planning Board recommended that the Board condition any approval on the following: (1) the Applicant shall submit to the Office of the County Attorney in a form acceptable to the County Attorney an instrument or instruments setting forth a plan for permanent care and maintenance of permanent open spaces, recreational areas, easements, right-of-way and communally owned facilities which would be legally enforceable; (2) the Applicant shall create a homeowners' association and submit to the Office of the County Attorney in a form acceptable to the County Attorney bylaws and rules and regulations governing the association; (3) the Applicant shall be required to include in every deed within the development a provision that membership be mandatory for each homebuyer. This Board finds such conditions to be reasonable.

13. The Applicant indicated that the erosion and sedimentation control plans have been submitted to the North Carolina Department of the Environment and Natural Resources for approval. The Planning Board suggests that the Applicant must submit documentation of approval of the sedimentation and erosion control plan for the project, as a condition, prior to beginning any construction. This Board finds such condition to be reasonable. In addition, this Board finds it reasonable to require multiple outfalls to attempt to dissipate velocity of stormwater discharge.

GENERAL SITE STANDARDS (Hend. Co. Code §200-56)

14. The Applicant's proposal does not appear to be located or developed in such a manner as to seriously worsen the traffic congestion so as to endanger the public safety. The Planning Board recommends that the Applicant, as a condition, provide Staff with a copy of the driveway permit issued by North Carolina Department of Transportation (for the entrance along Willow Road (SR 1191)) to ensure that such point of access does not endanger the public safety. This Board finds such condition to be reasonable.

15. The Applicant's proposal:

- a. Does not appear to result in noise, glare, odor or have a detrimental effect on solar access to those persons residing in its neighborhood.

- b. Appears to comply with all applicable Federal, state and local laws, rules and regulations.
- c. Is located and would be developed in a manner consistent with the Henderson County Comprehensive Land Use Plan.
- d. Is located in a manner consistent with any approved Official Thoroughfare Plan.
- e. Is located and would be developed in a manner to minimize environmental impact on the community, based on the conditions required herein.

REQUIREMENTS FOR SPECIAL USE PERMITS (Hend. Co. Code §200-70(6))

16. The Applicant's proposal provides satisfactory ingress and egress to the property and the proposed structures to be located thereon.

17. The Applicant's proposal requires no additional provisions regarding off-street parking, buffering, open spaces or conditions on structures beyond that proposed (as modified by any conditions imposed herein).

18. The Applicant's proposal has public water, community sewer and other utilities available to it.

From the foregoing, the Board of Commissioners concludes as a matter of law as follows:

- 1. The Board has jurisdiction over this hearing under the Henderson County Code.
- 2. All parties were properly before this Board, and all evidence was presented under oath, without objection from any party.
- 3. The grant of a special use permit under the Ordinance is governed by the provisions of sections 200-7B, 200-33 and 200-56.
- 4. All parties, and all persons entitled to notice, were given proper notice of this hearing and afforded the right to be heard.
- 5. That the Applicant's proposal meets the requirements for the grant of a special use permit, subject to the conditions imposed herein.

IT IS THEREFORE ORDERED by the Board of Commissioners of Henderson County that special use permit number SP-06-01 is hereby granted, subject to the following conditions:

- 1. No structure may be placed closer than 40 feet to the centerline of the internal road.
- 2. All structures shall be a single story (with a basement), and no structure may exceed 20 feet in height (as measured from the peak of the roof to the highest ground surface around the building).
- 3. A 20-foot undisturbed perimeter surrounding all structures within the project to the exterior boundary of the developed portion of the parcel shall be provided by the Applicant, and that

such shall remain undisturbed except in the area adjacent to the Snyder property, and that where such perimeter area is disturbed that such be re-vegetated in accordance with the harmony of existing vegetation.

4. The Applicant must submit to Staff plans and other documentation showing that the water and sewer systems have been designed by a professional engineer, that such systems have been approved by appropriate local and state agencies, and that the systems have been constructed as designed prior to final flat approval.

5. Any sign for the development must be approved by Staff, and any lighting of the sign must be "down-lighting". The sign must be in keeping with character of the community in the area, in terms of colors, materials, etc. Colors must be "earth-tones", and the scale of the sign must be appropriate to the scale of the development.

6. The Applicant must indicate that they will grant by restrictive covenant all common open space, recreational and natural areas and communally owned facilities to the owners of property within the development, describing the areas and facilities and their maintenance and improvement, running with the land for the benefit of owners of property within the development or adjoining property owners or both.

7. The Applicant must submit to the Office of the County Attorney in a form satisfactory to the County Attorney the legal documents that will produce the aforesaid guaranties and, in particular, must provide for restricting the use of common areas and facilities for the designated purposes (so long as such are also in accordance with any specified conditions identified by any special use permit issued therefore).

8. The Applicant shall create a homeowners' association and submit to the Office of the County Attorney in a form acceptable to the County Attorney bylaws and rules and regulations governing the association.

9. The Applicant shall be required to include in every deed within the development a provision that membership in the homeowners association be mandatory for each homebuyer.

10. The Applicant must submit documentation of approval of the sedimentation and erosion control plan for the project prior to beginning any construction. Further, the Applicant shall provide proof to Staff of design (and build in compliance with design) of a stormwater control system with multiple outfalls to attempt to dissipate velocity of stormwater discharge.

11. The Applicant shall provide Staff with a copy of the driveway permit issued by North Carolina Department of Transportation (for the entrance along Willow Road (SR 1191)) to ensure that such point of access does not endanger the public safety.

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Adopted this the _____ day of _____, 2006.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: _____
WILLIAM MOYER, Chairman

Attest:

Secretary

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ACCEPTANCE BY THE APPLICANT

I, _____, do hereby on behalf of Kasey-Phillips Development, LLC., acknowledge:

- (1) the receipt of this order on behalf of Kasey-Phillips Development, LLC., 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 Kasey-Phillips Development, LLC., and its successors in interest.

This the ____ day of _____, 2006.

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

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

THIS the ____ day of _____, 2006.

Notary Public

My Commission Expires: