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MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
NOVEMBER 6, 2006

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

Those present were: Chairman Bill Moyer, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner Shannon Baldwin, Commissioner Chuck McGrady, County Manager Steve Wyatt, Assistant County Manager Selena Coffey, County Attorney Russell Burrell, and Clerk to the Board Elizabeth W. Corn.

Also present were: Planning Director Anthony Starr, Fire Marshal Rocky Hyder, Finance Director J. Carey McLelland, Research/Grants Coordinator Amy Brantley, Library Director Bill Snyder, County Engineer Gary Tweed, Building Services Director Sam Laughter, Public Information Officer Chris Coulson, and Code Enforcement Services Director Toby Linville. Deputy Clerk to the Board Terry Wilson was present through nominations.

CALL TO ORDER/WELCOME

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

PLEDGE OF ALLEGIANCE

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

INVOCATION

Commissioner Shannon Baldwin gave the invocation.

INFORMAL PUBLIC COMMENTS

1. Dick Baird – Mr. Baird explained that he had followed the Alternative Task Force proceedings closely, attending four of their five meetings. They are honing in on a local bill sales tax increase of 1/2 % and a local option bill land transfer tax up from 1/2 to 1%. Each is estimated to generate approximately \$4.5million. He mentioned three revenue sources available, if the Board has the courage to examine them: “1. stop assuming the state’s responsibility by hiring teachers above the state’s requirement. With 63 county funded teachers at \$42,000 per, the available revenue is around \$2.6million this year and it’s growing. 2. access a user fee on every child utilizing our public schools. One hundred dollars per child would yield revenue of around \$1.3million this year and growing. Those opting to not use public schools are paying double. Why should those attending public schools not pay a nominal user fee? 3. get rid of the illegal aliens. Efforts are underway and I urge you to aggressively press forward. Conservative estimates place direct taxpayer support of illegal aliens in the county at around \$5million each year. Their departure would free that revenue to be applied against legal citizen needs. The additional synergistic effect would be that school construction needs would be delayed and spread out so that they are more easily managed. Totaled up both proposals yield around \$9million annually. That is a property tax rate equivalent of about ten cents. The difference is that my proposal does not impose additional taxes on anyone.”
2. Fred Roane – Mr. Roane spoke to the issue of sedimentation and erosion control ordinance that is on the agenda today. He had reviewed the latest draft ordinance and the summary memo. He stated that it appeared that staff had done an exemplary job to produce the latest draft to incorporate the public comments from the last meeting on the issue. “The slope issue has been addressed in detail with explanations and drawings sufficient for most to understand. I think the additional language yet states the average slope will be calculated only for disturbed areas is very helpful and reflects the purpose of the ordinance. The addition of requiring a sketch plan

DATE APPROVED _____

for all projects is also a part of this step and I think the staff, again has done a real good job in details in that ordinance. As a member of ECO I think we appreciate the work that the staff has done. The two areas that still need clarification, if you please, are under the mandatory standard section 200-105e which is on page 12, refers to an approved express permit program and it's kinda left hanging. There's no explanation what that means or a definition of what that program is about and so I'm not sure how that stands. And ECO still contends that a 25 year storm standard should be used instead of the 10 year provision. Other local governments are using a 25 year standard and it would appear our county would be lax in accepting water quality and/or erosion control standards less than our neighbors. So I respectfully request these two points be considered prior to the ordinance being finalized."

DISCUSSION/ADJUSTMENT OF AGENDA

Commissioner Baldwin requested an adjustment. He had asked staff to pull the minutes regarding the meeting that took place Sept. 17, 2003 regarding tax software. "I think we all are privy to some information that we ought to have at least a brief discussion about this evening so I'd like to add that under discussion items, if it pleases the board."

Chairman Moyer stated that it had been arranged for that item to be on the agenda for the next meeting and Stan Duncan would be present for it. He had requested some additional information and staff should have it all by the next meeting, the board can have a thorough discussion and resolve the issue at that time.

Commissioner Baldwin – "Well just let the record show that I asked for it to be placed on the agenda this evening."

Commissioner McGrady moved the adoption of the agenda, striking the update on pending issues, part 2 which is all of the proposed ordinances related to illegal immigration and all of the resolutions related to illegal immigration.

There was some discussion, for and against. The question was called on the motion. *A vote was taken and the motion carried three to two with Commissioners Baldwin and Young voting nay.*

CONSENT AGENDA

Commissioner McGrady moved the adoption of the consent agenda. All voted in favor and the motion carried.

The Consent Agenda consisted of the following:

Minutes

Draft minutes of the following meetings were presented for the Board's review and approval:

- August 2, 2006, regular scheduled meeting
- August 16, 2006, regular scheduled meeting
- October 26, 2006, special called meeting

Tax Collector's Report

Terry F. Lyda, Henderson County Tax Collector, had provided the Tax Collector's Report dated Nov. 2, 2006 for the Board's information and consent approval.

Financial Report – September 2006

Cash Balance Report – September 2006

The two above reports were presented for the Board's information and consent approval.

The high percentage of budget used in Elections is due to the payment of invoices for the new voting equipment in the current fiscal year. This budget will be increased by a budget amendment to be approved

by the Board of Commissioners which will appropriate fund balance for the \$560,000 in financing proceeds received in the previous fiscal year.

The current YTD deficit in the emergency 911 Communications Fund is due to the purchase of new technology and equipment during the first quarter that was budgeted in the current fiscal year.

The YTD deficit in the CDBG-Scattered Site Housing Project, the Crisis Housing Assistance Program, the Mills River Watershed Protection Project and the Lewis Creek Restoration Project is temporary due to timing differences in the expenditure of funds and the subsequent requisition of Federal and State grant funds to reimburse project expenditures.

The YTD deficit in the Balfour Elementary Automotive Training Center Project will be reimbursed from the drawdown of Public School Building Capital Funds (ADM) that were approved for this specific project.

The YTD deficit in the Mills River Elementary School Project, which was pulled from the 2006A COPs financing, includes architectural fees that have been paid on the project that will be reimbursed from a future financing debt issue.

Henderson County Public Schools Financial Report – September 2006

The School's report was presented for information and consent approval.

Budget Amendment

The Board approved an installment contract financing loan for \$560,000 in the previous fiscal year (FY 2006) for the purchase of new voting equipment for the County. The invoices for this new equipment were not received from the State nor the vendor and paid until the current fiscal year (FY 2007). Therefore, the \$560,000 in loan proceeds was included in the General Fund's Fund Balance at June 30, 2006.

The proposed budget amendment for the Board's review and approval appropriates the \$560,000 from the General Fund Balance and increases the Board of Elections accounts for the purchase/payment that has occurred for the new voting equipment in the current fiscal year.

It would be appropriate for the Board to approve the proposed budget amendment to pay for the new voting equipment since the total loan proceeds for this purpose were included in the General Fund's Fund Balance at June 30, 2006.

Non-Profit Performance Agreement

Subsequent to the approval of the FY 2006-07 Budget, staff has distributed the funding agreements to the non-profit agencies receiving County allocations. Staff will be including signed funding agreements on the Board's consent agendas as we receive them from the agencies.

Staff recommended that the Board authorize the Chairman to execute the funding agreements and, in doing so, authorize the release of the first of the aforementioned agencies' quarterly allotments.

Soil and Water Operational Agreement Amendment

Included in the agenda packet was a proposed amendment to the Operational Agreement for Henderson County's Soil and Water Conservation District, along with a copy of the 1998 agreement. The proposed amendment changes the classification of the Soil & Water department head from a federal position to a County position.

The 1998 agreement named a U.S. Natural Resources Conservation Service (federal) employee as the department head for the District. A County employee has served in this position since 2004. This amendment serves to appropriately reflect this employee's status as a County employee and results in no financial impact for the County.

The Assistant County Manager recommended approval of this amendment.

Water line Extension – Summit Springs

The City of Hendersonville has requested County comments on proposed water line extension for Summit Springs.

The City of Hendersonville Project Summary sheet, with backup documents and County review sheet with staff comments were included for Board review and action.

The County Manager recommended approval of this water line extension and directs staff to convey the County's comments to the City of Hendersonville upon Board approval.

Sewer line Extension – Kenmure Phase 6

The City of Hendersonville requested County comments on proposed sewer line extension for Kenmure, Phase 6.

The City of Hendersonville Project Summary sheet, with backup documents and County review sheet with staff comments were included for Board review and action.

Offer to purchase tax foreclosed property

Leon G. Bass offered to purchase, for the sum of Five Hundred Dollars (\$500.00), certain real estate which was subject to a tax foreclosure by the County. The property is described as 0.12 acres in Hunters Crossing subdivision, with Henderson County PIN 9559270793.

It is believed that this lot was originally reserved for a utility easement of some sort by the developer, and never conveyed. As best as can be determined, it is not used for any purpose at this time, and was foreclosed by the County in 1993.

If the Board agrees to provisionally accept this offer, it would be subject to advertisement and upset bid pursuant to the Board's policy, adopted June 29, 2005. Although not required, as a courtesy it is the custom of the County to also give regular mail notice to adjoining property owners.

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

I move that the Board provisionally accept the offer of Leon G. Bass to purchase the property described in this agenda item, subject to the procedures required by this Board for tax foreclosure sales.

Appointment of Delinquent Tax Collector

William Lee King has been recommended to be appointed as Delinquent Tax Collector, the position formerly held by Darlene Burgess, the new County Auditor. He has functioned in this office since September 18, 2006.

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

I move that William Lee King be appointed as Delinquent Tax Collector, with an effective date of September 18, 2006.

Proclamation – Human Rights Day

The Human Relations Council of Henderson County requested that the Board of Commissioners read and adopt the prepared Proclamation proclaiming December 10, 2006 locally as Human Rights Day.

A copy of the Proclamation is attached and incorporated as a part of these minutes.

NOMINATIONS**Notification of Vacancies**

The Board was notified of the following vacancies which will appear on the next agenda for nominations:

1. Criminal Justice Partnership Program – 6 vac.
2. Fire and Rescue Advisory Committee – 2 vac.
3. Henderson County Zoning Board of Adjustments – 2 vac.
4. Laurel Park Planning Board – 1 vac.
5. Library Board of Trustees – 1 vac.
6. Nursing/Adult Care Home Community Advisory Committee – 2 vac.
7. Planning for Older Adults Block Grant Adv. Comm. – 5 vac.
8. Travel & Tourism Committee – 4 vac.

Nominations

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

1. Apple Country Greenway Commission – 1 vac.

Commissioner McGrady nominated Colette Summitt. There were no other nominees. *Chairman Moyer made the motion to accept Ms. Summitt by acclamation. All voted in favor and the motion carried.*

2. Child Fatality Prevention Team – 1 vac.

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

3. Downtown Hendersonville Inc. – 2 vac.

Commissioner Messer nominated Lawrence Winson to position #2. There were no other nominees. *Chairman Moyer made the motion to accept Mr. Winson by acclamation. All voted in favor and the motion carried.* One vacancy remains open.

4. Environmental Advisory Committee – Chair

Chairman Moyer stated that Mr. Lowles has already been appointed chair.

5. Henderson County Zoning Board of Adjustment – 1 vac.

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

6. Hendersonville City Zoning Board of Adjustment – 1 vac.

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

7. Hendersonville Planning Board – 1 vac.

Commissioner Young nominated Mike Greene to position #2.

Commissioner McGrady nominated the incumbent, Edward J. Fortaw, to the same position.

This was rolled to the next meeting for a vote.

8. Historic Preservation Commission – 1 vac.

Mayor Roger Snyder had notified Chairman Moyer that he will be the representative for Mills River.

Chairman Moyer made the motion that the Board appoint Mayor Snyder as Mills River's representative to the Historic Preservation Commission. There were no other nominations. All voted in favor and the motion carried.

9. Juvenile Crime Prevention Council – 3 vac.

Terry Wilson informed the Board that there is an interim standing in for the Chief of Police of the Town of Fletcher, Steve Morgan.

10. Nursing/Adult Care Home Community Advisory Committee – 1 vac.

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

11. Transportation Advisory Committee – 1 vac.

Terry Wilson explained that this vacancy was filled previously by someone in the Police Department. Rick Davis would like to recommend Captain Steve Carder to that position. Commissioner McGrady nominated Cpt. Carder. There were no other nominations. *Chairman Moyer made the motion to accept Cpt. Carder by acclamation. All voted in favor and the motion carried.*

ETOWAH LIBRARY BIDS

Gary Tweed introduced John Pendergraff, the architect on this project. Gary explained that we received three bids on the project with the low bidder being Cooper Construction. He asked John Pendergraff to review those bids with the Board.

John Pendergraff explained that on September 28, three bids were received for the proposed Etowah Branch Library. The high bid was \$1.435million and Cooper Construction was the low bid at \$1.215million. There was a fourth bid received but was not received in time so it was thrown out. The low bid from Cooper is within budget, including four alternates on the project. The four alternates and the base bid are all still within the budget for the project. The budget for the project was \$164 square foot. With all the alternates the low bid comes in at \$156 square foot. He recommended that the Board enter into a contract with Cooper Construction to perform construction of the project as is on the construction documents.

Bill Snyder was asked to explain the reasoning behind this project. Mr. Snyder explained that the Etowah Library is currently in what used to be the Grange Building. It is a site that they have had numerous problems with over the years, primarily due to flooding of the site. They expanded the building some years ago and alleviated some of the flooding problem but after a couple of days of rain, they still have problems. Mr. Snyder explained that there is an estate of which the Community Foundation is handling the trust fund, the Scott Estate. The Scott Estate is many millions of dollars. The Friends of the Library is designated to receive 2.5% of the proceeds from that Estate. The current Etowah Library is 4,000 sq. ft. Based upon usage and growth in the community, Mr. Snyder thinks that a facility in the neighborhood of 8,000 sq. ft. is much more appropriate. Using the proceeds of the Scott Estate over a 15 year period, with a similar amount of money from the County, in addition to money that the Friends already have in hand from the Scott Estate, they have funds available to construct an 8,000 sq. ft. facility on a site that was purchased by the Board of County Commissioners last year. There is adequate room for all the parking as well as room for growth. Mr. Snyder felt that this would be a good site, very visible, and would serve the community well for a number of years.

Commissioner McGrady stated that the Library Board is fully supportive of this project and has recognized this as a need.

Start of construction would be as soon as a contract is negotiated and signed and the contract would run for 12 months. Completion of the project is planned for December 2007.

Carey McLelland stated that he would be working on an installment loan for this project. We have debt service budgeted for this year in the current year budget, for half the year. He will be working on getting bids for an installment contract loan. We will have to have Local Government Commission (LGC) approval since this project involves real estate. We have a reimbursement resolution in place so we can begin with the project. He will bring forward an application to the LGC in the near future. Half the loan payment is coming from the Trust Fund. Some county funds will have to be involved in making the debt service payment.

Steve Wyatt stated that this is consistent with the County's Strategic Plan. The county commitment for the next fifteen years is \$75,000 per year for the debt service for a total of \$800,000 which will have to be budgeted in the regular budgetary process as debt service.

Commissioner McGrady made the motion to authorize the negotiation of a contract with Cooper Construction, the low bidder for the Etowah Library project. All voted in favor and the motion carried.

SEDIMENTATION AND EROSION CONTROL PROGRAM REDRAFT

Anthony Starr reminded the Board that in their packets was the draft Soil Erosion and Sedimentation Control Ordinance. The draft reflects the changes requested by the Board of Commissioners at the last meeting regarding this issue. Staff considered the direction given by the Board as well as public comments. Many of the public concerns were already addressed or have now been addressed with the draft ordinance.

The current draft implements the 10 year storm option as opposed to the 25 year storm option, at the direction of the Board from the last meeting. It also includes, in section 200-104-C-1 and attachment 2 (page 9 of the ordinance) provisions for a sketch plan, the same provisions discussed previously regarding thresholds for slope, and also anytime someone disturbs more than 100 sq. ft. staff would have to obtain a sketch plan. The sketch would not be designed by a professional. Someone could simply print off something, staff could print it off for them at the Planning office (a map from GIS of their property) and they could draw in the areas where they might put the building with dimensions, driveway, areas to be disturbed and indicate what measures they might have put in place such as silt fencing. There was also a clarification that was added in the ordinance as to how the average slope was calculated under C-1-B&C. It says that the average slope shall be calculated only for the disturbed area as opposed to the average slope for the entire lot. That addressed some of the concerns that were expressed. It also includes the penalties provisionally discussed before with penalties up to \$5,000 per day. Each day is considered a separate violation. It also allows for the revocation or suspension of other county issued permits which would probably be used before such a steep fine. Section 200-111 has a provision for a "mud mat". A mud mat has to be an appropriate size, depending on the site. Larger sites would have to have a larger mud mat area. It allows the mud to come off the tires of the vehicle so it isn't tracked out onto the main roads. The current draft includes an effective date of April 1, 2007 which is probably the soonest that staff could handle. Staff needs at least four months in order to set up the program. It is possible that we will get a grant for the 2007-08 budget year beginning July 1, 2007 that would cover any costs, that would reimburse us up to 40% of our costs after July 1, 2007 or when the state budget is adopted, whichever occurs later. It would cover things such as purchase of vehicles, computers, furniture, and personnel costs for the first twelve month period. Because there is a good chance in any given year that the state budget won't be adopted July 1, and the fact that we have to have someone hired at least two months before the effective date of the ordinance to allow them to set up forms, procedures, and do training and public education, if the Board wanted to maximize the grant's reimbursement, an effective date of October 1, 2007 would be appropriate. By delaying the effective date of the ordinance it will create an issue of waiting longer to address the problems but it could save us up to \$33,000 of county funds.

Steve Wyatt informed the Board that the City of Hendersonville has expressed a great deal of interest in this program.

Chairman Moyer made the motion to adopt the Soil and Sedimentation Erosion Control Program as presented with an effective date of October 1, 2007. A vote was taken and the motion carried four to one with Commissioner Baldwin voting nay.

Chairman Moyer thanked Anthony Starr and Sam Laughter for their work on this major accomplishment.

ADEQUATE PUBLIC FACILITIES ORDINANCE RFP

Chairman Moyer reminded the Board of discussions on several occasions of an adequate public facilities ordinance (APFO). At the Board's meeting on August 2 a thorough discussion was had and staff was directed to proceed to prepare an RFP but asked that it be brought back to the Board with an overview before sending it out. It was on the agenda today for that purpose.

Anthony Starr referred to the RFP which was attachment 1. It lays out the process we would use to move through the development of an adequate public facilities ordinance. This process would involve the use of a task force and staff suggests that the task force would include the following persons: the county attorney, the planning director, the finance director, assistant county manager and a public school official. It would also be appropriate for the Board to appoint three other individuals to serve on this task force to serve as a sounding board.

The draft RFP indicates a proposal deadline of December 15, 2006. The project would start in February 2007 after selection of the firm and execution of a contract with the firm. It is anticipated that the draft ordinance would be available October 2007.

Anthony Starr explained that under state law and recent court rulings, we don't have authority to impose impact fees as it relates to school construction. An APFO is different in that the fee is not mandatory. It simply says that we measure the capacity of our existing schools, take into account our capital improvement plan, and we have a certain capacity available. If capacity exists for your development then you proceed. If capacity does not exist then we would not allow you to proceed with the development. You could choose to wait until capacity becomes available or you could choose to pay a voluntary fee and proceed with your project. That fee would be used to move along that school project or move it up.

There was discussion to move the proposal deadline up to January 15, particularly due to the up-coming holiday season.

Commissioner McGrady made the motion to approve the submittal of the RFP for the adequate public facilities ordinance with the proposal deadline date of January 15, 2007. All voted in favor and the motion carried unanimously.

NUISANCE ORDINANCE ENFORCEMENT REPORT

Chairman Moyer explained that one of the accomplishments of the year was the adoption of the nuisance ordinance. Toby Linville was recognized to update the Board on enforcement of this new ordinance.

Toby Linville explained that the Public Health Nuisance Ordinance has been enforced since September 1, 2006. Henderson County has received approximately 130 new complaints since this ordinance was adopted. Our database has 463 complaints which include historic complaints from as early as July 2001. Some of these older complaints were resolved but are now in violation of the new ordinance so staff is reviewing each of those complaints. He explained that staff has issued 40 Notifications of Violation (since September 1) and are following up with those properties to ensure that they are cleaned up within the time given to remediate the violation.

Toby Linville explained that the first thing they do when they receive a complaint is check the database to see if it was a repeat complaint. If it's a new one they add it to the database and they go out and investigate and take pictures and hopefully meet a resident there. If no-one is home they leave a note informing them they have a violation and asking them to call. That's the beginning for many of the properties. The owner calls and staffs meets with them and explains the violation and the property owner begins to work to clean it up. If the property owner is belligerent or they don't do anything, then staff issues the NOV (notification of violation) and typically gives them 30 days to get everything cleaned up or show significant progress. If they are showing progress, staff issues an extension, if not staff gets a warrant. They were using the criminal process more in the beginning.

Toby Linville shared some of the success stories with the Board. Some of them had been building for 10-20 years and it will take longer than the few months the ordinance has been in place to get them completely cleaned up.

Chairman Moyer told Toby Linville that he and his staff had made tremendous progress in the time that we've had the ordinance. He encouraged them to keep it up. It will make a tremendous difference.

UPDATE ON PENDING ISSUES

Mental Health Update

Steve Wyatt reminded the Board that at their last special called meeting the Board awarded eight contracts to providers. We have two of those documents signed by vendors and are working with the other six vendors. Our plan is, upon the signing of the performance agreements (which are designed around the proposals that they made), that they would receive 50% of the money that the Board committed and then after a 90 day performance time, the county will hold a progress meeting with each of the vendors and if substantial and sufficient progress is found then the rest of the funds would be released. Two issues remain of some concern: one is the records issue which the New Vistas/Mountain Laurel has committed to maintaining a skeleton staff through the end of this calendar year to maintain those records. There has been much discussion at the LME level of Western Highlands about those records. Those records are still a point of concern for the eight county region so it is definitely on the radar screen. It will be revisited again by the LME Board. The options within the realms of law and liability are being pursued at the LME level because those records are very important. In regards to the emergency services of walk-in and triage level, Mr. Wyatt has had a meeting with Parkway Behavioral and that is one of the areas of service that is absolutely critical but it also has a very low reimbursement rate. There continues to be discussions about their business plan and their ability to sustain those services. It might be that he will have to come back to the Board to discuss some additional MOE (maintenance of effort) money which proves the wisdom of the Board holding in reserve some of that funding.

Steve Wyatt also stated that obviously the issue of the Sixth Avenue Clubhouse is a complex issue that remains very much in all our minds. The Board and the community are strongly committed to that issue.

Illegal Immigration

This item had been pulled from the meeting, early in the meeting.

STAFF REPORTS

County Attorney's Report

There was nothing further.

County Manager's Report

There was nothing further.

PUBLIC HEARING – Community Development Block Grant (CDBG)

2006 Housing Development Program

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

Anthony Starr informed the Board that Henderson County is eligible to receive funds for a Housing Development Program in 2006 through a Community Development Block Grant (CDBG) from the Division of Community Assistance. In keeping with the Citizen Participation Plan, two public hearings are required. This is the second public hearing in accordance with CDBG regulations. The purpose of the first public hearing was to give citizens the opportunity to express their views and proposals prior to the formulation of the application.

Henderson County will consider an application for infrastructure to 13 new homes for Habitat for Humanity's Shuey Knolls subdivision which offers affordable housing for low-income families. The requested funding is \$234,000.

The Board received a copy of the Public Hearing Notice.

Karen Kiehna, Housing Specialist with the Land of Sky Regional Council was present to answer any questions as was Mr. Watkins from Habitat for Humanity.

Public Input

There was none.

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

No action was required at this time.

PUBLIC HEARING – Entry Gate Ordinance

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

Rocky Hyder stated that on October 2, 2006, the Board designated this date as the Public Hearing for the purpose of receiving public comment on the proposed ordinance regulating entry gates. Notice was provided in the legal notice section of the Times News on October 20 and October 23, 2006.

Staff had surveyed the County and had identified eight existing gated communities and four more under construction. Some of the existing communities will not meet the requirements of Section 2 paragraphs A and B (setback and turnaround distances.)

Rocky Hyder recommended the following amendments (changes in italic):

Section 2, Design

- A. All subdivision or community entry gates *constructed hereafter* shall be setback sufficiently far from public road or street access to allow for the stacking of at least three vehicles out of the public travel lanes on the public road or street.
- B. *All entry gates hereafter constructed* shall have an additional setback between the point of the access control device and the entry gate to allow a vehicle which is denied access to safely turn around and exit onto a public street.

Public Comment

There was none.

Chairman Moyer stated that there was discussion of this item at the Fire and Rescue Advisory Committee meeting and of the Fire Chiefs in attendance there was unanimous support for these amendments recommended by Mr. Hyder.

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

Commissioner McGrady made the motion to adopt the ordinance with the recommended amendments recommended by Rocky Hyder. All voted in favor and the motion carried.

QUASI-JUDICIAL PUBLIC HEARING

Special Use Permit Application SP-06-01 for the Planned Unit Development known as Vistas at Champion Hills

Mr. David Phillips, Applicant for Kasey-Phillips Development, LLC, Owner

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

Chairman Moyer – “This will be a quasi-judicial proceeding. It is not near as informal as the last. By law, in certain situations like this, we’re required to have a quasi-judicial proceeding. It’s very much like a court proceeding and a lot more rigid. We have to follow a lot more rules. So this will be a quasi-judicial public hearing on the following petition: Special Use Permit SP-06-01 for the Planned Unit Development known as The Vistas at Champion Hills where David Phillips and Kasey Phillips Development, LLC, represented by Chris Day are the petitioners.

A quasi-judicial proceeding, as I mentioned, is very much like a court proceeding, and is one in which ones individual rights are being determined under specific rules of procedure. As such, not every person has the right to give evidence in a quasi-judicial proceeding. Under the Rules of Procedure for Quasi-Judicial Proceedings, only persons who can demonstrate that they will be affected by the outcome of the decision are allowed to participate in the proceeding. All persons who are allowed to speak and participate in this hearing, including all witnesses, must be placed under oath and that will be done by the Clerk to the Board in a few minutes. The petitioner is an automatic party to the proceedings so they don’t have to apply. The staff is automatically a party to the proceeding. Others who desire to become parties must come forth, explain how they would be affected by the proceeding, such as if you live next to it or across from it or traffic will affect it, whatever your reason for wanting to be a party to it. You need to come forth and state that. The Board then will vote as to whether or not to make you a party to the proceeding. If you are a party to a proceeding, you can call other witnesses to speak. They don’t have to be a party. You can call other people to speak. They have to be sworn in as well but they don’t have to be made parties to the proceedings. Are there people in attendance here that would like to become parties to this proceeding? OK, Mam would you please come forward, state your name, your connection to this matter and then the Board will decide.”

Martha Hills – “Martha Hills and we own the property across the little Willow Circle and it would affect traffic on our road and our view in front of our property.”

Commissioner McGrady – “Mr. Chairman, she’s an adjoining property owner on the map that we’ve got and I believe she’s properly a party here.”

Chairman Moyer – “Any objection from the Board?” There was none. “Alright Ms. Hills, you are a party to the proceeding.”

William Camp – “William Camp. I own property beside this project.”

Chairman Moyer – “I’m sorry, your name again sir.”

William Camp – “William Camp, C-a-m-p. And my property adjoins this property.”

Commissioner McGrady – “Again on the map that we have Mr. Chairman, it shows his property right adjoining it.”

Chairman Moyer – “Any objection to Mr. Camp being made a party?” There was none. “Alright, Mr. Camp you are a party to the proceeding. Thank you.”

William Camp – “Thank you.”

Chairman Moyer – “Next?”

Jim Barnette – “Jim Barnette. I have adjacent property and also Mr. Verne Snyder who owns property adjacent to it and who is presently in Germany asked me to check on a couple of items, too, for him.”

Chairman Moyer – “Well you can check em on your own.”

Jim Barnette – “OK, fine.”

Chairman Moyer – “That’ll be fine. No objection to Mr. Barnette?”

Commissioner McGrady – “He’s also an adjoining property owner.”

Chairman Moyer – “Alright Jim, you’re a party. Thank you. Next?”

Michelle French – “Thank you. Hans and Michelle French and we’re also adjoining property owners.”

Commissioner McGrady – “Yeah.”

Chairman Moyer – “French? OK. Any objection to Mr. French?” There was none. “OK, you’re a party to the proceeding.”

Michelle French – “Thank you”

Chairman Moyer – “Is there anyone else that wishes to be a party to the proceeding? Alright, then I’ll have to ask that all parties including anybody you want to call as a witness, please come up to the Clerk to the Board, including the petitioner and staff. Everyone has to be sworn in that will be giving testimony. This is where you learn which is your right hand and which is your left. It gets tough.”

Elizabeth Corn – “Place your left hand on the Bible.”

Chairman Moyer – “Or the shoulder of somebody you can reach.”

Elizabeth Corn – “That’s right or touch someone who is touching the Bible. Raise your right hand. Do you swear or affirm that the testimony you shall give to the Board of County Commissioners shall be the truth, the whole truth, and nothing but the truth, so help you, God.?”

In unison – “I do.”

Elizabeth Corn – “Thank you”.

Chairman Moyer – “The way we will proceed now is the Planning staff will summarize the petition and what is sought and the Board may have questions, then we’ll have the petitioner or petitioner’s attorney or a representative present their evidence and again the parties will have a chance to ask questions as we go along. Good evening.”

Matt Cable - “Good evening. I would first like to enter into evidence the Board Action Form and”

Chairman Moyer – “I think you better identify yourself for the record.”

Matt Cable – “Matt Cable, Planner. I would first like to enter into evidence the Board Action Form and the attachments that you have already received with that, which we can refer to as exhibit A as well as a copy of the PowerPoint presentation which can be referred to, for our purposes as Exhibit B. Due to the number of exhibits and their attachments, we have included the bulk of the reference materials in the PowerPoint presentation to try to make it easier tonight. Mr. Chris Day with Civil Design Concepts, on behalf of Kasey-Phillips Development, LLC and Mr. David Phillips, the applicant, has submitted a special use permit application SP-06-01 for the planned unit development known as Vistas at Champion Hills. Notices of the hearing and SP-06-01 were published in the Times News on October 12 and October 19 of 2006. Signs were posted at the project site and notices of the public hearing by certified mail were prepared and sent to the

applicant and adjacent property owners on October 19 of 2006. I would now like to enter exhibit C which Anthony is going to pass out for me, that includes excerpts of the application materials and additional materials that have been provided by the applicant.”

Chairman Moyer – “Did you give copies to the other parties?”

Staff distributed those.

Matt Cable – “The PUD is proposed to be located on approximately 12.9 acres of land and that’s located along Willow Road and Little Willow Circle. The PUD has approximately 1,000 feet of frontage along Willow Road and 1,250 feet of frontage along Little Willow Circle. The PUD is proposed to be located in an R-20 (low density residential) zoned district and an open use (OU) zoning district. Approximately 1.09 acres are located in the R-20 district and approximately 2 acres are in the open use district. The maximum number of units permitted, based on our twenty acreage and requirements is a total of 23 units. The portion of the property in the open use district is proposed to be in common area and was not used in density calculations. As you all are aware there is not a minimum lot size in the open use district. The PUD is proposed to contain 20 dwellings. These dwellings will be Town-home/Duplex dwellings and are, according to the applicant, to be single story with basements. They are proposed to be a minimum of 1600 square feet with a maximum footprint of 3600 square feet which is determined by the lot size that’s been established. The applicant has further indicated that no structure within the PUD will exceed 20 feet in height and that the minimum separation between all duplexes will be 20 feet, in accordance with the ordinance. The PUD is proposed to contain 20 lots on which the dwellings will be placed. The lots are to be zero lot line lots indicating that buildings can be placed up to the lot line. The lot size appears to be 3600 square feet for each lot and that’s a reduction from the standard minimum in the R-20 district of 20,000 square feet. The R-20 district requires that structures be set back 50 feet from streets and 25 feet from any rear property line. The lots and units do appear to meet or exceed those set-back requirements from exterior street and adjacent properties. The PUD is proposing approximately 8.5 acres of common area. From our determination it appears that anything that isn’t within a lot would be common area, including the road. The PUD is proposed to contain a 20 foot undisturbed buffer which is indicated there in the green. That is intended to serve as a perimeter treatment for the development and provide a buffer between that and adjacent properties. The applicant is proposing that they will limit the disturbance area to 5.8 acres. They show where silt fencing will be located and again a portion of that would be within the common area but they have proposed to limit that and all of that would be for grading purposes to locate the dwellings and that internal street. They are proposing a private road with a 45 foot right-of-way and a sidewalk on one side of the proposed street which is indicated in the yellow. The PUD’s internal street is proposed to have a 20 foot travelway and they are also proposing a 5 foot concrete sidewalk with a 4 foot separation by a landscaping strip to keep it away from the actual street. The PUD is proposed to be served by the City of Hendersonville Water. The waterline is depicted there in blue and it’s proposed to be serviced by Champion Hills Community Sewer. Both of those are primarily located within the right-of-way of the road. That’s where they are proposing to run those lines.

I would now like to enter exhibit D which Anthony is gonna pass out again for you. This includes the Planning Board and staff recommendations regarding the application.”

Chairman Moyer – “Is this different than what’s in exhibit B that you gave us.”

Matthew Cable – “Yes. Exhibit B just kind of summarizes. This gives a little bit more detail and has a little bit more background information on the Planning Board’s recommendation. On August 15, 2006 the Planning Board undertook it’s first consideration of the application. They continued consideration of the application to it’s September 19, 2006 meeting and at that time voted 7 – 0 to send a favorable recommendation to the Board of Commissioners based on a number of conditions that they had recommended.

Should the Board of Commissioners approve the application, the Planning Board recommends that such

approval be subject to the following conditions in addition to any other conditions that are discussed during the hearing and any conditions that the Board of Commissioners may impose.

The Planning Board recommended conditions are as follows:

- As related to density requirements and the permitted flexibility to create lots which do not meet the minimum dimension requirements of the zoning district, the applicant has proposed lots with units that do not appear to meet the minimum 50 foot set-back from the center line of internal streets. While that can be reduced, the Planning Board does recommend that no structure should be placed closer than 40 feet to the center line of that internal street and that would be a 20% reduction in the set-back. I believe that the applicant – it appeared that one of the units might have come up as close as 38 feet so they were fairly close in compliance with that recommendation.
- As related to height limitations the applicant proposed structures which would not exceed 20 feet in height and that all the structures would be single story. The Planning Board recommends that those just be conditions that are stated in the order and this relates, of course, to privacy and perimeter treatment purposes. They evaluated those based on the height restrictions they had proposed.
- As related to the perimeter treatment, the applicant has proposed the 20 foot buffer which I showed you earlier to serve as that screen in transition between the development and the adjacent property. The applicant has indicated that a portion of the buffer will need to be disturbed but has proposed that the area will be re-vegetated after the grading in that area is complete. The Planning Board made it's recommendation that the 20 foot undisturbed buffer be a condition except where indicated as necessary for grading in the vicinity of the Snyder property and that such buffer in that vicinity be re-vegetated in accordance with the harmony of the existing vegetation which the applicant did propose themselves. This slide shows you the small area in the south portion, there in red, that was going to be disturbed by grading to put in that road.
- As related to water and sewer systems, the Planning Board recommends that the applicant submit plans and other documentation to insure that the systems are designed by a professional engineer, approved by local and state agencies and constructed as designed prior to final plat approval.
- As related to the control of signs, the Planning Board recommends that the Board of Commissioners may want to request more information with regard to the type, size and lighting of the proposed sign in order to determine if there will be any adverse influences. As noted on this side there is one proposed sign and it gives you a general idea of the location but they have not provided any detail about the sign, it's size or any lighting related to that sign.
- As related to the conveyance of open space, the Planning Board recommends that the applicant grant to the PUD residents all common open space by restrictive covenant and that they submit guarantees of that restriction to the county attorney. And that would be just in accordance with the zoning ordinance.
- And as related to the maintenance of open space, they recommend that the applicant submit instruments that would set forth permanent care, create a homeowner's association with by-laws, and in each deed make membership mandatory for the home buyer and that the county attorney and the Board of Commissioners would approve the Declaration of Covenants and Restrictions as well as the by-laws of that association.
- The Planning Board, in regard to documentation of erosion and sedimentation control plan, recommends that they submit said documentation prior to beginning any construction on site as a condition.
- And as related to a worsening traffic congestion, the Planning Board recommends the applicant provide the Planning Department with a copy of the driveway permit that was

issued by NCDOT, at such time as it is issued. Again, that's just to insure traffic congestion and safety issues.

I'd like to enter now exhibit E which includes additional staff comments which did not result in any additional conditions from either staff's perspective or the Planning Board. I'm also going to get Anthony to pass out exhibit F which includes photos of the subject area just so that you can get an idea of what that subject area currently looks like from both Little Willow Circle and Willow Road and I would certainly be happy to answer any questions as those are being passed out or afterwards."

Chairman Moyer – "Well I guess one of the questions that jumped out at me in respect to your comments on condition D say the Board of Commissioners may wish to request. Has this information been requested? It seems to me a little late to say the Commission should be asking for this stuff."

Matt Cable – "We did ask the applicant to provide us with information about the sign. They had not determined what sign that they were gonna do. At the initial point they had not indicated a sign was going to be done at all. We asked that they indicate that to us and details of that sign. The Planning Board was aware that that wasn't provided to us and they just recommended that that be something that you may want to look."

Chairman Moyer – "You still have not received it then I guess?"

Matt Cable – "No I haven't received any details about the sign."

Chairman Moyer – "Are you going to go through exhibit E now?"

Matt Cable – "Exhibit E, these are simply the rest of the materials that we reviewed to make sure compliance with the ordinance, that did not result in any additional suggested conditions. They complied with those sections of the ordinance we felt and I can go through those if you'd like."

Chairman Moyer – "No that's alright if there's no issues there, that's fine."

Matt Cable – "None that we identified."

Chairman Moyer – "Do you have – the Board have questions for Matt at this – none. OK Matt, thank you."

Commissioner McGrady – "The other parties?"

Chairman Moyer – "I think I'm gonna wait till we do the petition."

Commissioner McGrady – "OK"

Chairman Moyer – "Mr. Phillips, you speaking on behalf of the"

David Phillips – "I probably would default to start with my engineer, Chris"

Chairman Moyer – "Alright when you come up just identify yourself and who you're speaking for and go from there.

Chris Ehler – "Mr. Chairman, fellow Commissioners, my name is Chris Ehler, actually not Chris Day with Civil Design Concepts. Chris Day is here today. He is also an engineer in our office but I just wanted to touch base briefly on a couple of the conditions. We concur with the majority of the conditions that have been issued on the project and feel like that this planned unit development allows us really to develop this property in a very respectable way. We could develop it with the R-20 zoning but we've asked for the

planned unit development to try to cluster the units within a fashion that we can preserve the majority of the perimeter vegetation and so we hope that by the granting of this planned unit development we can do so and preserve a lot of the integrity of the green that's on this property 'cause it is currently vegetated from end to end. As far as the signage, we are working with a project architect to try to coordinate and we've given him the direction to keep the architectural standards within the Champion Hills community and to uphold the integrity of what – of the existing and surrounding signages in that area so we've not got into the details specifically 'cause they're working on the facades of the actual units and they want to blend that in with the signage as well so but we feel it will be fairly mild in nature because the sign is directly below one of the units and we don't want to light it up too much, but it will be subtle enough to recognize and identify it as the Vista's community. I'd be glad to entertain any specific questions you may have. One of the things I did want to point out is that the actual – we are identifying the parcel to the left of the entrance as an out parcel, not to be included as open space and there was some contradictory identification in some of the reports here tonight that indicated that it might actually be considered open space and it is identified clearly as an out parcel and with no direction as to what we intend to do with that at this time."

Chairman Moyer – "Matt is that alright with you?"

Matt Cable – "The Planning Board's recommendation appeared to have been made based on that being an out parcel – I mean being part of the common area even though it was identified as an out parcel. We weren't sure what the intent of that – that subdivision of that land was. The buffering – it doesn't appear to affect it. The adjacent property owners to that area would still be buffered and if they're not proposing anything be done on that, I don't, you know, see any problem with that."

Chairman Moyer – "But they're basically reserving the right to come back and do something in the future. Well if you – open space – then – I mean there's quite a difference there."

Commissioner Baldwin – "Sure there is."

Matt Cable – "Right, again that was what the Planning Board's assumption was is that that was common area and that would be what staff's recommendations were based on."

Chairman Moyer – "Mr. Ehler, these other conditions, you say you're generally in agreement. Are there any that – that cause you a problem or that you do not agree to?"

Chris Ehler – "Not at this time. Again the reason we've asked for the variance and the set-back length of the unit to the road is again to cluster them up closer to the road to try to preserve that vegetative buffer along the perimeter so we would ask that consideration be given but as far as the remainder of them, we feel after reviewing the plans that we can – can meet the rest of the conditions that have been given."

Chairman Moyer – "So you're telling me the 40 foot set-back is a problem for you?"

Chris Ehler – "It is not. If we can get it to 40. We've got one that's within 38 and I think we can adjust that out to 40, 50 is a problem without cutting quite a few more trees down so we would ask that the 40 be considered."

Chairman Moyer – "If we came up with language that the sign had to be in keeping with the character but subject to approval of the Planning Department staff, would that be something that you could work with?"

Chris Ehler – "Most definitely."

Chairman Moyer – "Board have questions for Mr. Ehler or. I'm sorry, does anybody else from the applicant want to make the comment now?"

David Phillips - "Well good evening Mr. Chairman and Board, David Phillips on behalf of Casey Phillips Development. We just really are kinda playing off of what Chris just said – want to do a real nice development that disturbs the least amount of space and really fits in nice, has a lot of cover around the extremity and each unit be on a basement. That wasn't mentioned earlier but just by the topo of the project but I think the single level and height restrictions are something that will probably keep it very nice for the area as well and I would be open to any questions which you might have too."

Chairman Moyer – "The Board have questions for Mr. Phillips or Mr. Ehler at this time?"

Commissioner Young – "I've just got to get a clarification on these pictures that you all handed out. Or maybe the staff handed out."

Chairman Moyer – "Actually I think staff handed them out. Matt."

Commissioner Young – "This top picture looks like it drops considerably and it's low in there, is that right?"

Matt Cable – "Uh yes, there's uh"

Commissioner Young – "It looks like it's a pretty good grade going up?"

Matt Cable – "The upper photo is actually the southern portion. There aren't any units identified in there. That's actually where a creek had run."

Commissioner Young – "Green space, is that what would be?"

Matt Cable – "That's proposed to be in common area. And then this upper – the lower photo is actually the upper portion of the property and that is a fairly sizable knoll and the units would be behind that, would be my understanding based on"

Steve Wyatt – "Represented on the map – appears – are these locations represented on the drawing here?"

Matt Cable – "Yes uh"

Steve Wyatt – "Just go up and point to your photo."

Matt Cable – "The bottom photo would be representative of this area here, that's actually the entrance to Champion Hills and that ridge comes up there and this is actually – you can see the creek there and it's I could not tell what he was saying. He had stepped away from the microphone."

Steve Wyatt – "And that would be the top photo?"

Matt Cable – "Yes this is the bottom photo and that's the top photo."

Chairman Moyer – "Now the way – the way this will work as part of the – Matt you can sit down for a moment. Each of the parties now will have the opportunity to ask questions of the - the applicant, Mr. Ehler or Mr. Phillips. This is not the time that you make statements or put in – you know what your position is but if there's anything that they said that you think needs – you have a question on or needs clarification, you have the right to ask them a question. I'll go down the – the list and ask each of you. You can just pass but you will have a separate time at the end of this where you'll be able to make your statement and share your concerns but this is your chance to ask the applicant any questions that you have and I'll start. Ms. Hills, do you have any questions? Come up to the microphone please."

Martha Hills – "Could the piece of property that's being held out be identified up here?"

Chairman Moyer – “Certainly. Mr. Ehler or Mr. Phillips, you wanna?”

David Phillips – “Sure, I don’t know what the best way to point to this is but”

Chairman Moyer – “Why don’t you stay there and talk and Matt why don’t you come up and let him – you help identify which it is for him.”

David Phillips – “The property is actually currently split zoned and the parcel Matt is pointing to right now is actually zoned open use and that’s the parcel that we’re preserv – saying will not be a part of this development.”

Commissioner Baldwin – “Matt, come around and show us as well.”

Chairman Moyer – “After you’re finished there, show us, alright? We can’t see that. I guess where we stand on that piece is – it wasn’t clear. The Planning Board may have thought that was open use but the applicant is saying it was always intended as”

Commissioner McGrady – “Open space you mean.”

Chairman Moyer – “Open space yeah. But it is open use isn’t it?”

Commissioner McGrady – “It is open use but.”

Chairman Moyer – “But I meant open space.”

Matt Cable – “It appeared to be common area and because they had provided the perimeter buffer treatment in there as well it was assumed that ...” Two people were talking, I couldn’t make it out.”

Chairman Moyer – “Some of it was open space. Alright, do you have any other questions at this time Ms. Hills? Mr. Camp, do you have any questions?”

William Camp – “Pass.”

Chairman Moyer – “Alright. Mr. Barnette?”

Jim Barnette – “I do.”

Chairman Moyer – “OK”

Jim Barnette – “I’m real concerned about that out parcel there because I thought it was going to be open use. My property is adjacent to there and I would like to know exactly what they intend to do in the future for that piece of property. They must have some plans if they’re gonna keep it as an out parcel.”

Chairman Moyer – “Well, let’s give them a chance to answer that question. What are your plans for that – what will you share with us with respect to your plans for that space, Mr. Phillips?”

David Phillips – “Thank you. It’s just a natural out parcel by the way that this other piece develops and we strictly said for future development that it would have to meet any guidelines or requirements – you know once that was determined but we really don’t have any specific plans right now – just for – just wanted to reserve the right for - for future development.”

Commissioner Young – “But is that part of the green space that you’re talking about?”

David Phillips – “No sir. It wasn’t outlined by our engineers as part of the open space but it would just remain as is until – you know some future time that we propose.”

Chairman Moyer – “Matt if they proceeded under this special use permit to want to develop that, would they have to come back – go to the Planning Board, submit their plan, get approval, get conditions, just like they’re doing with the rest of this?”

Matt Cable – “If that was included as part of this planned unit development, that would be an amendment if they were to want to develop that out parcel in any other way and so it would actually go through the process again.”

Chairman Moyer – “Through the whole process. So I guess the answer, Jim, they could – if it stays as the out parcel it could be developed but there would have to be an amendment to the special use permit, they’d have to come back and submit a plan and go through the same process with respect to that parcel.”

Jim Barnette – “Can I ask another question?”

Chairman Moyer – “Yeah, certainly.”

Jim Barnette – “Well, it’s just a small parcel and about three fourths of it’s almost straight down, just what other purpose could it be used for other than maybe one residence?”

Chairman Moyer – “Mr. Phillips, do you want to comment – answer that?”

Jim Barnette – “I’d just like to get it clarified.”

David Phillips – “Without having been engineered for what it could be used for – I mean that potentially could be one – you know like you say. It just hasn’t been studied for what it could be used for so.”

Commissioner Young – “How many acres is in that parcel?”

David Phillips – “A little over two acres there and actually all the documentation – we actually excluded that PIN from the actual application so it’s not – it was just – it was shown as a parcel because it was surveyed and shown as two parcels on one survey but as part of our initial application it was not – it was requested to be excluded as part of the application as an out parcel so that was documented in our initial submittal and it’s roughly – I think it’s 2.64 acres.”

Both Mr. Phillips and Chairman Moyer are talking and I can’t make out what they’re saying.

Chairman Moyer – “... the buffering that went around the outside of it – it made it look like it was included in the”

David Phillips – “Correct again in the survey but there is enough internal room to provide the required buffer from within. The buffering that was shown on the out parcel was done by staff but internally there is enough to get the 20 foot buffering within the parcel in question.”

Both Mr. Phillips and Chairman Moyer are talking and I can’t make out what they’re saying.

Chairman Moyer – “... outside the buffering then?”

David Phillips – “Correct.”

Commissioner Baldwin – “I’ve got a question.”

Chairman Moyer – “Alright Mr. Baldwin.”

Commissioner Baldwin – “Yeah. I may need to ask Matt as well but I’ll ask you too. You’re asking for twenty units on the acreage that’s there and your total – total acreage is 12.65 or more?”

David Phillips – “Actually it’s”

Commissioner Young and David Phillips are both talking and I can’t make out what they said.

Commissioner Baldwin – “OK, does the 12.89 include the out parcel?”

David Phillips – “10.9 acres is what we’re actually – the 12.89 yes does. So it’s 10.9 that actually holds the twenty units that we’re asking.”

Commissioner Baldwin – “10.9?”

David Phillips – “Correct.”

Commissioner Baldwin – “Well with the twenty units now – I saw on there it said that the density would require three more units. Is that three more units on the 10.9 acres? Because someone had to”

Matt Cable – “The uh – the density calculations were done based solely on that 10.9 acres. They would be allowed twenty-three units on that 10.9 acres. Open use, again, doesn’t have a minimum lot size so you really can’t calculate that. It would be based on what they could get with septic or water.”

Commissioner Baldwin – “I didn’t ask about open – minimum lot size.”

Chairman Moyer – “I think the issue”

Commissioner Baldwin “I’m asking about density. And so you’re saying that – that on a 10.9 acres, they can put twenty-three units?”

Matt Cable – “Yes”

Commissioner Baldwin – “If they chose to.”

Matt Cable – “Yes.”

Commissioner Baldwin – “They’re asking for twenty?”

Matt Cable – “Right.”

Commissioner Baldwin – “OK”

Chairman Moyer – “Thanks Matt. Jim, additional questions at this time?”

Jim Barnette – “No, I’m still concerned about it. I just hate to see it in the future some time.”

Chairman Moyer – “Well you’ll have a – you can make your statement later and raise your concern and lay out your issue.”

Commissioner Baldwin – “I’ve got one last question. The 10.9 acres and the 12.6 or whatever it was. Are those two separate PIN numbers?”

Matt Cable – “This may be part of what the confusion was as well. When you pull it up they are both under one PIN number.”

Commissioner Baldwin – “They’re under one PIN?”

Matt Cable – “They are.”

Commissioner Baldwin – “They’ve never been separated? They’re under one PIN.”

Matt Cable – “They show up almost as two separate lots but they have the same PIN number within the GIS system. And on the application materials which were submitted, it does indicate that this parcel is one single parcel within the R-20 and Open Use District and that was what we based that.”

Commissioner Baldwin – “And one more time, the total acreage was 12.”

Matt Cable – “12.89, approximately 12.89.”

Commissioner Baldwin – “In one PIN?”

Matt Cable – “Yes.”

Commissioner Baldwin – “OK, thank you. Matt, one last question. How many units can you get on the 12.89?”

Matt Cable – “It would be twenty-three plus however much you could get in open use which is unlimited. Again we don’t have minimum lot size in open use so they could do as much as they wanted there.”

Commissioner Baldwin – “So where did you – how did you conclude twenty-three on the 10.9 if there are no density requirements?”

Matt Cable – “I’m sorry”

? – “There is R-20.”

Chairman Moyer – “That’s R-20. The other piece is just open use.”

Commissioner Baldwin – “Across the road is open use?”

Matt Cable – “Yeah.”

Commissioner Baldwin – “That’s confused open use and open space.”

Matt Cable – “It’s split zoned there.”

Commissioner Baldwin – “Yeah, alright.”

Chairman Moyer – “Ms. French do you have questions? Larry, do you. I’m sorry.”

Commissioner Young – “I had a question of Matt and their engineer about the sewer system that they’re planning to put in and Matt talked about the creek. Would you point to where the creek runs up there on that map and then I guess the next question – does that creek run through other people’s properties?”

Matt Cable – “This is the creek, located here and feed-ins. The large portion of it ends in that south parcel, open-use parcel and everything I believe is storm drainage here as well.”

Commissioner Young – “Does that creek run down through other people’s properties that’s here to witness at this hearing?”

Matt Cable – “Just”

Commissioner Young – “Adjoining properties I guess”

Matt Cable – “I do believe that it continues into adjoining properties both to the north and the south there. The applicant may be able to better answer that question just because they’re more familiar with that creek.”

Chairman Moyer – “Let’s ask the applicant. Mr. Ehler?”

Commissioner Young – “I guess the question that I’ve got to ask him is are you going to put a pack plant in? Is that what you’re gonna put in cause you’re gonna have to run it to a creek, right, if it?”

Chris Ehler – “Actually no. There’s an existing pump station for Champion Hills directly across the street and we have permission from them and a copy of that is in – and signed by Champion Hills within your package here allowing us permission to extend a gravity line across the street and tie into that pump station that we pump back to the City for treatment so the creek”

Chairman Moyer – “Anything else?”

Commissioner Young – “No”

Chairman Moyer – “Anybody else? Ms. French, now your chance to ask your questions.”

Michelle French – “Yes, may I ask if they will be selling memberships to Champion Hills? Will they be offered or sold with these properties?”

Chairman Moyer – “Mr. Phillips, you want take that one?”

Michelle French – “Will memberships to Champion Hills be offered or sold with these properties?”

David Phillips – “That is my understanding.”

Chairman Moyer – “Well, you gotta come up to the microphone. That’s the only place we can pick you up and you’ve gotta be on the record.”

David Phillips – “That is my understanding that memberships could be obtained, is that your question?”

Michelle French – “Uh huh.”

Chairman Moyer – “If you bought a property, you can get a membership to Champion Hills?”

David Phillips – “To Champion Hills.”

Chairman Moyer – “Ms. French, do you have other questions?”

Michelle French – “Uh, I do have a concern about the stream. I just myself, my husband and I paid about \$2,000 to clean up silt from.”

Chairman Moyer – “You’ll have a chance to make a statement. Do you have any questions?”

Michelle French – “Uh where is their entrance in reference to the Willow Preserves? Right directly on the same circle which is under construction right now and then my next question would be what is – what would be the timing of – will they wait till that project is finished or will this be going on consecutively?”

Chairman Moyer – “Fair question, we’ll ask Mr. Ehler or Mr. Phillips, which – who wants to deal with that?”

Chris Ehler – “I’m familiar with the adjacent development but I’m not familiar with their schedule as far as construction. I think our intentions, and David you may want to talk – would probably be – you may want to talk a little bit more about this but I think our intentions are to be starting sometime the first of the year in construction so we’ll put in all the necessary measures to preserve and you know protect the integrity via all the erosion control measures as much as possible. We will have one – we minimized our crossings in the creek and again with the natural buffer preserved between the – the denuded area and – or the disturbed area and the streets and the creeks. We feel like there’s gonna be a good natural buffer to protect a good portion of that but we’ll also have required measures in place that will be maintained on a regular basis to prevent erosion from leaving the site.”

Chairman Moyer – “Ms. French, does that answer your question?”

Michelle French – “Thank you. Just one more question.”

Chairman Moyer – “Am I to understand there’s one ingress and one egress to the development and how many lanes will that be?”

Chairman Moyer – “Mr. Phillips or Mr. Ehler.”

? – “That is correct. There is one point of entry and it does create a loop internally and it is a – a two-way ingress and egress so it’s 20 foot wide – twenty foot wide. Thanks.”

Chairman Moyer – “Other questions from any other people? Staff, do you have questions? Matt, do you have any questions for Mr. Ehler or Mr. Phillips at this time? No? Alright, well then this is a time when each of the other parties will have a chance, not to ask questions but to make a statement, raise your concerns, whatever you want and then all the other parties will have the right to ask you questions for clarification. So we’ll go right down the list. Martha Hills, would you like to make a statement? This is your chance to express your concerns or any issues you have, don’t have to be questions, just to make a statement.”

Martha Hills – “I have a concern for the traffic. You’re coming out of a sharp curve there and you know how would the entrance be made so that it’s safe for cars stopping in Willow Road and turning in, just also would like to see less units put in.”

Chairman Moyer – “Alright, don’t go too far. I’ll run down the list. Mr. Camp, do you have any questions for Ms. Hills?”

William Camp – “No sir, I don’t.”

Chairman Moyer – “Alright. Mr. Barnette, do you have any questions for Ms. Hills?”

Jim Barnette – “No other questions.”

Chairman Moyer – “Alright. Ms. French, do you have any questions for Ms. Hills? Applicant, do you have any questions or respond to any way to what Ms. Hills said?”

? – “The only thing I would like to say is regards to the placement of the entrance – we did place it in a location we felt like would be safe enough and far enough into the curve. It’s about 150 plus feet which is more than what DOT would require for sight distance. Also we placed it in a location that allows for a relatively flat entry into the existing roadway there which – allowing for a safe stop condition to be obtained before making a turn in or out. The steepest portion of the road is on back into the site which is about a 10%, just slightly above 10% so the roads are fairly mild and we tried to work with existing topography as much as possible and make it as safe as possible of an entry.”

Chairman Moyer – “Staff, do you have any questions for Ms. Hills? Is that a no, Matt?”

Matt Carble– “Yes.”

Chairman Moyer – “Alright, Mr. Camp, this is your opportunity to make a statement, if you would like. You don’t have to.”

William Camp – “Well I don’t have anything to say. I’m for it.”

Chairman Moyer – “Alright. Well, you can come up and say that if you want. I mean you’re a party so you can come and make whatever statement you want at this time. Alright, Mr. Barnette?”

Jim Barnette – “Well, I’m still concerned about that out parcel there. I think initially I thought it was gonna be open use and I think it should be some kind of designation placed on this before it’s completely approved, exactly what it’s gonna be used for. I mean somebody could put a barn down there or dance hall or whatever. It is open use. I just think that’s a very critical point to make sure that we know what’s gonna be in that out parcel and speaking for Mr. Snyder who is in Germany. I told him I would mention his concern – is for the – he has a well and a septic system where his house is located and it’s almost within the same perimeter of these units here and he’s concerned. You know, it might mess up his well and his septic system, any kind of grading that might take place and I don’t know if that’s something that you need to address as a Board but I was just thinking a minute ago – I mean I haven’t talked to him about this, he talked to my wife about it but it would seem to me that it might be a nice gesture for them to include him for the City water and the City sewer right there. He’s in the same perimeter as those folks are. Other than that it seems like a nice project but I’m really concerned about that open use out parcel there and that’s my main concern here. I’d like to see something designated specific for that property there before we allow this thing to be approved.”

Chairman Moyer – “Ms. Hills, do you have any questions for Mr. Barnette? Mr. Camp, do you have any questions for Mr. Barnette?”

William Camp – “No sir, I don’t.”

Chairman Moyer – “Alright. Ms. French, do you have any questions for Mr. Barnette? Applicant, Mr. Ehler or Mr. Phillips, do you have any questions for Mr. Barnette? Staff? Alright, then we’ll move to Ms. French. This is your opportunity to make your statement.”

Michelle French – “Thank you. I just have real sentimental concern for the waterfall. My property is right on a seventy foot water show and it’s been disturbed from the other development that is in progress right now, Willow Preserve, and has cost us \$2,000 in cleaning out silt because the screening wasn’t properly done and in fact we had to bring in city water because of some issues with the pond that is at Champion Hills. We’ve turf sprayed when we were fed off of a spraying firm many years prior so I’m just concerned about –

ecologically about the stream there and the water and just wanted to voice that and I forgot to ask a question whether they intend to pave that whole circle?"

Chairman Moyer – "Alright, we'll get the answer. Alright does any – Ms. Hills, do you have any questions for Ms. French? Mr. Camp, do you have any questions for Ms. French? Mr. Barnette, do you have any questions? The Applicant, do you have any questions for Ms. French? I wish you'd address the issue of the paving of the road since she raised that."

? – "Our intentions are to pave the – the road that we're proposing within the community but not the existing perimeter road that bisects the property cause it will not serve the units that we're proposing so it – they'll stay as they are."

Chairman Moyer – "Staff, do you have any questions for Ms. French? Now what we'll do. Jim, do you have another question?"

Jim Barnette – "Can I make one more comment?"

Chairman Moyer – "Yeah, come on."

Jim Barnette – "I think we should all be concerned about the water run-off and I'm not sure that's been addressed here tonight completely so, if somebody could educate me a little bit on that, I'd appreciate it."

Chairman Moyer – "OK. Mr. Ehler, do you"

Chris Ehler – "Again, we're trying to preserve as much of the vegetation as possible to slow the water down. We hope it will control the velocity. Currently what we're proposing would just be a conveyance system to convey the water off the top of this knoll and to the existing drainage basins that are out there. And so we'll try to – try to minimize that as much as possible but it will go back into its drainage basin as it currently falls to currently."

Commissioner Young – "That – let me ask a question about that. The way it is now though it's sort of a gentle flow back to the – when you put storm sewers in and collect it and then run it into those, you're gonna put it in at a greater force. Are those existing storm sewers gonna be able to carry that velocity?"

Chris Ehler – "What we'll try to do is again – we tried to design it to where it doesn't concentrate too much. We're not gonna try to put a stormwater collection system that will put an entire pipe system that will outfall in one concentration point. We will try to disperse it as much as possible again back into its natural areas, put velocity dissipaters at the end of the pipes to where it slows the water down and then dissipates back through the natural vegetative buffer as it currently does."

Chairman Moyer – "Thank you. Now each of the parties is gonna have a chance to make closing remarks. You don't have to repeat anything you said. That's already on the record. This is only if something else has come to mind and you'd like to make closing remarks or highlight but I think you've all done a good job laying out your concerns. But I will go down the list starting with the petitioner, do you have any closing remarks you'd like to make?"

? – "Thank you, I know that you know any time a new development goes in, there are always concerns about the land that's disturbed and proper erosion control measures put in place to contain that disturbance and hopefully you know what we'll be able to do with this project is disturb a minimum amount of land, by the way we're proposing putting it in, and that's really important in a situation and an area like this and then we're committed to working with the erosion control folks here in Henderson County in making sure that you know we put the measures in first before we disturb anything and maintain em and do a real good job

with that and I'm sure that as we go into that that the folks here with erosion control you know will make sure and hold us to that fire, so we plan on that. Thank you."

Chairman Moyer – "I'm gonna run down each of the parties again and you'll have a chance to make a closing statement or closing remarks if you like. Ms. Hills, any further statement to make?"

Martha Hills – "Just one comment that the developer for the Preserve on Willow spoke to us and told us that they were planning to pave the outer perimeter road in conjunction with this group wanting to do that and I just wanted them to confirm or not that that's gonna be done or they're wanting that to be done."

Chairman Moyer – "Do you want to comment on that, Mr. Ehler?"

Chris Ehler – "I'd say that the developer is not opposed to it. We've not got any agreement to participate in it because there's no benefit to – to the development we're proposing but I know that we would not be opposed to it being – being paved if that was the adjacent developer's desire, to make it a part of that."

Chairman Moyer – "Mr. Camp, do you have any closing remarks? Thank you. Mr. Barnette, do you have any closing remarks? Ms. French, do you have any closing remarks?"

Michelle French – "No"

Chairman Moyer – "Staff? Now the evidence has all been presented and everybody has had their closing remarks and a chance to ask questions, it would be appropriate for the Commissioners to discuss the issues presented today. I think as you all know, we can either vote today, direct staff to bring back findings of fact and conclusions consistent with the decision to a future meeting of the Board for our review, or we can continue our discussion and decision until a later date. The Board knows the Board must issue a written decision within 45 days of the conclusion of this hearing. Russ, do we go out of public hearing now? Fine. Discussion of the Board. I'll leave it open in case some issue comes up that we need to get."

Commissioner Baldwin – "I've got a few concerns. Some of the other Board members may want to help me out on this. One is that we've made a finding that the county recognizes those as one parcel because there's one PIN. There's one site plan that was submitted and the site plan shows the buffer around the entire 12.89 acres, that's a finding. There is a stream on site that has already been affected by development up stream. I think it probably would be prudent for us to add a condition that the soil and sedimentation control plan be designed to contain a 25 year storm event, simply because we've already heard as a matter of fact that development has impacted the stream. Also as Commissioner Young, through a series of questions, established that there is an issue of storm water. There is more roof top, there is more driveway, there's more paved area, there are a number of issues that's gonna add storm water volume and increase velocity unless measures are taken to dissipate the storm water as the applicant has said that they would do. I think we ought to make that a condition that they design the plan, submit the plan for staff approval. Those are my concerns and that's what I learned from the presentation as a matter of fact."

Chairman Moyer – "Alright, let me be sure as we build this, we get it. Working backwards would be dispersion of storm water run-off as a condition, right?"

Commissioner Baldwin – "Yes in accordance with a plan that's designed and submitted for staff approval."

Chairman Moyer – "I'm not sure what your finding was with respect to – true it's one PIN, it's buffer goes around the outside?"

Commissioner Baldwin – "Well in that when we approve this application, we approve this application for the entire 12.89 acres and that any further development that would take place would have to come back before

the process and the special use permit would have to be amended to allow for any additional development, which would give adjoining property owners the opportunity to address proposed development at that time.”

Chairman Moyer – “And was there a third one, Mr. Baldwin?”

Commissioner Baldwin – “Erosion control.”

Chairman Moyer – “Got that. Later development.”

Commissioner Baldwin – “We – 25 - designed to contain a 25 year storm event on site because there was a finding that development, which would be under the jurisdiction of the state and they mandate a 10 year storm event, didn’t contain the sediment that actually made it into the stream so I think we add the condition that they design to a 25 year storm event.”

Chairman Moyer – “Alright, discussion by other Commissioners? Commissioner McGrady ready?”

Commissioner McGrady – “I’d love to understand what the difference between 10 and 25 years here, before we condition it, means.”

Chairman Moyer – “We could certainly ask and have it brought back.”

Commissioner Baldwin – “I think one of the defining differences is that the State had jurisdiction of development that’s taking place now and the State mandates only a 10 year event and that wasn’t enough to contain the sedimentation that made it’s way into Mrs. French’s stream.”

Commissioner McGrady – “Yeah but that – that may be true but it also might be true that we have a development that – you know is in compliance or didn’t maintain it’s sedimentation control and – and storm water devices because of a laxity of enforcement that – you know is just as plausible that you know there’s another cause for the problem that – that is being complained of here.”

Commissioner Baldwin – “Well I would say that’s – that’s merely conjecture and what we’re doing is we’re adding a performance standard that has to be met to ensure that the sediment doesn’t make it’s way into the stream.”

Chairman Moyer – “Other Commissioners want to raise”

Commissioner Young – “Well the question that Commissioner Baldwin raised about soil and sedimentation, we are in the process of passing that ordinance and I – I think that they ought to be bound to that ordinance.”

Chairman Moyer – “They won’t be, it’s not effective you know until”

Commissioner Young – “Well that’s where Commissioner Baldwin is going, that they need to be bound by that ordinance even though it’s”

Commissioner McGrady – “The ordinance we adopted was only 10 years.”

Commissioner Young – “10 years – that’s - you know the difference between 10 year and 25 year I understand from a civil engineer is a 10 year is 7 inches of rainfall in a 24 hour period, a 25 year is 8 inches of rainfall in a 24 hour period. That’s the definition that a civil engineer give me, I don’t know. I’m not.”

Commissioner Baldwin – “But you just have to design your retention basins to accommodate the volume that comes with the 25 year standard and that’s all I’m saying, is a matter of a condition to address sedimentation issues.”

Commissioner Messer – “Well let me say that that – that parcel that Mr. Barnette talked about is definitely some concern. But if they had to back through the procedures then this would be on record that this night occurred. Speaking on the storm water – you know I think that the applicant has proven himself, said that you know he’s willing to work with the county and we don’t even have an ordinance yet. We, the County Commissioners voted on this ordinance an hour, hour and a half ago, for ten years and if he’s gonna participate, be the first participant to work with our planning staff and so forth, you know I think that’s good. I think that that sets the standard for the community up there. We know what kind of community is there and this parcel is just gonna be really add to it and the fact that they’re gonna get – I guess golfing or privileges in the property across the street tells you something – that this is, in my opinion, that this is a state of the art you know development that is going to go hand in hand. So I really don’t – you know do not have a problem with it.”

Chairman Moyer – “Well let’s take these one at a time. I think the – it appears, at least judging consensus that the feeling of the Board is that the two plus acre piece should be considered as part of the special use permit so that if it’s developed, they’d have to come back to this – to the Planning Board and this Board to state what’s gonna happen and we’d have a chance to – to be reviewed. Am I reading the Board correctly? So we would want that as an additional condition. The other one that was brought up”

Commissioner McGrady – “I don’t know whether that’s conditional and I think it’s – the application is the application.”

Steve Wyatt – “It’s a matter of fact.”

Commissioner McGrady – “But but yeah, it’s a finding of the facts that we set forth there. That would be fine.”

Chairman Moyer – “Well, there are certainly several statements on the record that they view it as not part of the – of the”

Commissioner McGrady – “They view it as an out parcel but that doesn’t mean it’s not part of the special use permit.”

Chairman Moyer – “Well, they’re gonna move the buffer in and put that piece entirely out. I think it’s gotta be very clear that that’s part of”

Commissioner McGrady – “I guess I didn’t understand that.”

Chairman Moyer – “Yeah, Mr. Ehler stated they were gonna move the buffer inside that piece so it would be outside entirely. Well, be that as it may. If it’s clear, if it’s not. I think it needs to be stated. I think there is an issue of the dispersion of storm water. The commitment was to do that. I think Commissioner Baldwin was suggesting that we have a condition specifically related to that, some type of plan to be approved by staff so that there would be a clear dispersion of storm water to eliminate the – not eliminate, alleviate the affect of it all being put in at one time. Is that the consensus of the Board?”

Commissioner Baldwin – “Yes.”

Chairman Moyer – “Matt, I’m gonna give you your chance after I’m finished, to come back and tell me what- if anything is not clear. I think the other one, a little trickier to deal with – the signage situation. I don’t know exactly how to deal with that other than – which Mr. Ehler I think, maybe Mr. Phillips indicated would be satisfactory- that if there is a condition or finding condition that the signage would be in keeping with the character of it and that the – their plan and signage would be submitted to staff for their approval, I got the

impression that would be satisfactory to the applicant. Is that agreeable to the Board as a way to deal with the signage issue and what staff has raised?"

Commissioner Baldwin – "I think it's very difficult for staff to determine what's in harmony and what's not in harmony in the absence of some type of standard or some type of plan that's actually reviewed. I mean it seems like we're giving a lot of discretion to staff."

Chairman Moyer – "Well, I realize that but the applicant said"

Commissioner Baldwin – "I mean basically staff would be bound to approve whatever is submitted and in not having standards I don't think we could ask for a whole lot more. I think we could place a condition that any lighting associated with the sign would be down lighting to deal with glare."

Chairman Moyer – "... specifically but I want them to be able to prove the signage as well."

Commissioner Baldwin – "OK."

Chairman Moyer – "Is that agreeable to the Board that that be a condition? And then the last one – 25 year storm, I don't believe we have agreement at all on this one. I think the – we've talked about the 10 year tonight and that they would be subject to the same as everybody else is in the county and I think that's where I am. I think there's probably three votes for that so I'll put it to a vote if you want but we've not required a 25 year storm."

Commissioner Baldwin – "Let's put it to a vote."

Chairman Moyer – "Alright. Then my recommendation is that they would have the same requirement as everybody else in the county with respect to 10 and 25 year and the storm water soil erosion and they would be part of the state program until we get our program adopted. All in favor of that motion, say aye."

In unison – "Aye" Commissioners Messer, McGrady, Young, and Chairman Moyer.

Chairman Moyer – "Opposed?"

Commissioner Baldwin – "Aye"

Chairman Moyer – "OK. I believe I've covered all the conditions I heard raised by the Board. Matt, would you like to comment and see if there's any clarity or anything I've confused you or the Board has confused you on?"

Matt Cable – "I just wanted to clarify with the sign, what was the statement about the lighting, the condition"

Several people answered at once – "Down lighting"

Matt Cable – "OK and uh"

Chairman Moyer – "And there was a concern there that the – Mr. Baldwin raised which is certainly valid that it's very wide open just to say it has to be subject to the – in keeping with the character and subject to the approval of the Board, that puts you in a very difficult position. If you can tighten that up in any way, we'd be happy for that."

Commissioner Baldwin – "Such as color"

Matt Cable – “We do – do not really have anything that would regulate signs in the current zoning ordinance. Within the Land Development Code there are proposed regulations for residential development signage. We could use something along those lines and – and I could provide you with what those generally are now.”

Commissioner McGrady – “I think what we’re thinking about is in terms of colors, materials, that sort of thing. I mean you don’t want to – you know. You don’t want a big purple sign – you know in the entrance to this – this neighborhood. Unless all the houses turn out to be purple which would surprise me.”

Commissioner Baldwin – “I mean I would – I think we probably could even ask the applicant to come back to the podium and simply give general type of parameters with respect to size, color could be earth tone, materials could be natural or whatever they would propose. I think we could lock them into some general things that they may propose and then just make that a part of it. That would give at least Matt something to go by.”

Chairman Moyer – “Mr. Phillips or Mr. Ehler, are you willing to do that, help us with that? We’re trying to make this a little more objective in fairness to you as well to us so that it’s not wide open.”

Commissioner Baldwin – “Well, Matt may have a bad day and say forget it, we’re not going”

? Mr. Ehler or Mr. Phillips – “I’ll try. I think our real intent is to play off of the entrance way to Champion Hills. And to be in keeping with that with those earth tones, those type of elements that are used in that signage so that would be our intent so maybe you can – you know base the approval off of did we – did we kind of meet that”

Chairman Moyer – “Is it in keeping with the color”

? again – “Right, scale”

Chairman Moyer – “Well that’s awfully big.”

? again – “It would be appropriately scaled down – you know”

Chairman Moyer – “Yeah, I would hope so.”

? again – “For our development for sure.”

Commissioner Baldwin – “OK, alright, well.”

Chairman Moyer – “Let’s use that then. We’ll do that. Matt, anything else you want to raise issue on?”

Matt Cable – “With regard to the storm water plan, I know that you discussed the sedimentation and erosion control as a 10 year event. In regard to the storm water plan, would that be related to the preconstruction velocities or how would you want us to proceed with that issue?”

Commissioner Messer – “Well ours don’t go into effect until October so as long as they abide by the state rules and get Mr. Beck or whoever comes out then I think – I mean that’s the rule.”

Chairman Moyer & Commissioner McGrady – “No he’s on storm water, not soil erosion.”

Anthony Starr – “I think the issue is that we have no standards in place and we were – what standard would we evaluate it by when we got a plan?”

Commissioner Baldwin – “And would you know the difference if you saw it.”

Anthony Starr – “And that would be the next thing, is I’m not sure that we have the expertise to evaluate engineering details for a storm water plan.”

Commissioner Baldwin – “Well, we have engineers here – on staff here with the county and they can tell the difference between a dissipater and straight piping when you’re funneling everything from one central location – now that’s”

Anthony Starr – “I mean beyond – beyond counting the number of out-falls from their proposed system I wouldn’t suggest that planning staff evaluate any further than that, I mean determine a minimum number of out-falls.”

Chairman Moyer – “Yeah, we’re not there yet anywhere in the county so.”

Anthony Starr – “I mean – you know whether determining whether – you know it has – what should be the velocity after construction, whether it’s – you know a velocity that’s pre-construction velocity. I mean we have no way to – to evaluate that at a staff level so I’m hesitant about suggesting that we have any kind of provision to that effect because we – we don’t have the expertise or the ability.”

Chairman Moyer – “What would you be comfortable with, Anthony?”

Anthony Starr – “I mean – you know beyond – beyond just a basic requirement that they – they provide multiple out-falls to dissipate you know for storm water run-off, I don’t know what else we would feel comfortable in evaluating.”

Commissioner Baldwin – “Well and I’ll – you know we’ll try to work with staff in trying to find some broad enough parameters that they can use. I think that’s one possibly but this thing of we don’t have any standards therefore throw the door open and let them do as they please didn’t wash with me and that’s what we’re saying. But if we can set some parameters that they have the technical expertise to – to evaluate, I’m OK with that. Again, we may want to ask the applicant to come forward and tell us what it is that they’re proposing and if that generally sounds acceptable, then we can make that as a condition.”

Anthony Starr – “I mean you could say, for example, that the post-construction velocity does not exceed – you know what it was before they started and require their engineer to certify to that effect or be 110% of it or 120% of it but beyond them providing that certification we couldn’t do anything else as staff so.”

Chairman Moyer – “Let’s hear from Mr. Ehler and see what he.”

Commissioner Baldwin – “He may have some proposals.”

Chris Ehler – “This is a controversial subject all over western North Carolina. I’ve been helping Buncombe County rewrite their storm water ordinances and”

Commissioner Baldwin – “So Buncombe has one?”

Chris Ehler – “In the process of it. And they’re right in the same steps you all are, they’re trying to pass things. But basically, currently what we’ll be having to adhere to is the North Carolina Department of Environmental Health and Natural Resources, Land Quality Division’s standards for erosion control and sediment. They also do have storm water velocity requirements and so velocity dissipation is not an easy calculation and the way that we typically do it is based on the out fall of the pipe there’s a certain amount of water that can come out of that pipe and therefore you put a certain volume of stone, length, depth, and width to accommodate the maximum amount of water that will come out of that pipe. So velocity control that we’ll put in place will meet Department of Environmental Health and Natural Resources’ requirements. The

advantage that we have here, where you typically have controversy is is where your out fall directly at a property line directly at an adjacent property where there's a structure there and it eats out and you don't have the room to maintain it. Fortunately here we've got a lot of room between and around this perimeter site because of this planned unit development design that enables us to put a lot more velocity dissipation and control and slow the water down before it actually exits the property. So I feel confident and the Department of Environmental Health and Natural Resources have really tightened down because of all the complaints. It's a lot more difficult, they get out there a lot more frequently and I feel like – I feel fairly confident that we're gonna have good controls even from the state level. In the past 3-6 months I've seen them out more than I've seen them in probably the past five years combined, on sites, getting out a lot more so I feel confident that we'll have measures in place that will definitely control - control the velocity of the water as it out falls out of the pipes. And again it's our – our company's policy to try to put as many in as possible because again concentration out-falling into one location is where you typically have your most problems."

Commissioner Baldwin – "Well short of having them submit a plan for staff to take a look at, I think we're looking at multiple outlets and dissipaters at the end of the outlets. Beyond that we've gone beyond our expertise and I think it would."

Chris Ehler – "It's to our advantage too. They become maintenance – if you don't put enough velocity dissipation on it, it becomes a maintenance issue for Homeowner's Associations and they're calling us a year and a half later - 'Can you help us come up with something'? If we have steep out-falls that the pipes come down at angles, we put bins typically on the bottom to dissipate it before it actually ends up in the stone dissipater at the end so we'll be as creative as we can to maximize dissipation as much as possible because I think it's mutually beneficial, both from a developer and a – and a neighbor standpoint."

Chairman Moyer – "Tony, can you write up a condition based on what Mr. Ehler just said? I think that's as far as we can go right now."

Commissioner Young – "Let me ask Mr. Ehler a question or two."

Chairman Moyer – "Mr. Ehler, we've got another question here."

Commissioner Young – "These storm sewers and storm water run off junctions that you're gonna be running into, are they owned by the state? Is that who put those in?"

Chris Ehler – "These will actually be private so they'll be maintained by the Homeowner's Association."

Commissioner Young – "But I mean the ones that you're gonna eventually run into, is that state or Champion Hills. Is it DOT or is it"

Chris Ehler – "DOT maintains from right-of-way line to right-of-way line and I'm not exactly sure what it is out there on that state road but once the water traverses into the right-of-way then and it gets into a pipe network system or a cross pipe in the DOT right-of-way that is maintained by the DOT. The ones that we're proposing are private and will be maintained by the Homeowner's Association."

Commissioner Young – "So does their engineers and the storm water environmental engineers and you, do you all work together to see that this does not cause damage further down?"

Chris Ehler – "Yeah, typically the DOT designs to a 25 year storm and again so a lot of the private developments that are designed to a 10 year storm, on cross pipe, on cross drainage only."

Commissioner Baldwin – "... pounce on you"

Chris Ehler – “But this being an old property, we don’t – we’re not contending with 100 acres up-stream that’s coming through our site like you typically do but – yeah typically as an engineer you’d analyze from an entire drainage basin. Fortunately our’s is very small on this site”

Commissioner Baldwin – “You said basically DOT sizes to a 25 year event to accommodate that.”

Chris Ehler – “Accommodate future development in a lot of cases, on cross drainage. On a typical subdivision though we’d get away with a 10 year- their requirements are a 10 year design on a standard subdivision too.”

Chairman Moyer – “Mr. Ehler thank you. *I’m gonna move that we approve the special use permit application SP-06-01 with the conditions that are listed on exhibit D, A through I, I believe it is, with the – the three additional conditions that we made with respect to signage. Of course, that really gets blended into E, condition E from the Planning Board and then we have the – the – what I’ll call condition that the out parcel is really part of the special use permit and the dispersion language that we just talked about Anthony. I think they’re the conditions that I have written down. Russ, is that clear to you?”*

Russ Burrell – “I just want to make sure that you’re incorporating the ones suggested by the Planning Board, you did that so that was the only comment I had.”

Chairman Moyer – “*Plus the couple additional. Alright, all in favor of that motion, say aye.*”

In unison: “*Aye*” Unanimous.

Chairman Moyer – “And you’ll bring that back to the Board then, it will be brought back, it will be written up – the findings and have a chance to look at it, it will come back to the Board for a final approval.”

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

Chairman Moyer – “*Motion to go out of public hearing. All in favor, say aye.*”

In unison – “*Aye*” Unanimous.

Chairman Moyer – “OK, thank you very much. We’re at the end of our public hearing.”

IMPORTANT DATES

Set Public Hearing on Special Use Permit Application – Leoni’s Mountain Lake Homes

Chairman Moyer expressed concern regarding this planned unit development known as Leoni’s Mountain Lake Homes. He asked Steve Wyatt to speak to the issue before him.

Steve Wyatt stated that the issue was whether or not to try to do this in conjunction with a regular meeting.

Chairman Moyer stated that that would be the organizational meeting.

Steve Wyatt stated that staff is looking at the first meeting in December, that will also be a new Board with less familiarity with the situation, or is this something that perhaps a special meeting would be a better idea.

Commissioner McGrady stated that the new Board member is coming from the Planning Board so he will have seen this.

Anthony Starr stated that this is an amendment to an existing and he felt that the nature of the request was fairly simple and just administrative. He wishes that they had the ability just to amend this at the staff level but they don’t. It would be the Board’s discretion as to when they want to handle this.

Commissioner McGrady moved that the Board schedule a Quasi-Judicial Hearing on the special use permit amendment for Monday, December 4 at 7:00 p.m. All voted in favor and the motion carried.

ADJOURN

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

Attest:

Elizabeth W. Corn, Clerk to the Board

William L. Moyer, Chairman