

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

**Meeting Date:** March 21, 2007

**Subject:** Set Public Hearing on Vested Rights Application (VR-2007-03) for the development known as “Biltmore Farms Hammond Tract”

**Attachments:**

1. Vested Rights Application (VR-2007-03) and Supplemental Materials
2. Project Narrative
3. Master Plan – Biltmore Farms Hammond Tract

### SUMMARY OF REQUEST:

On March 2, 2007 Mr. Thomas A. Williamson, Vice President of Biltmore Farms, LLC., applicant, with permission from current property owners Mr. John T. Hammond and Mr. James W. Hammond, and with Mr. Will Buie of William G. Lapsley and Associates, agent to the applicant, submitted a Vested Rights Application (VR-2007-03) and accompanying site specific development plan in order to seek the establishment of development vested rights for the development known as “Biltmore Farms Hammond Tract” (see Attachments 1, 2 and 3).

Chapter 189 of the Henderson County Code (Vested Rights Ordinance) provides a landowner the ability to establish a development vested right through the approval of a site specific development plan. An established vested right allows a property owner (or his/her successors in ownership) to proceed with specific development plans regardless of zoning changes that might affect such development.

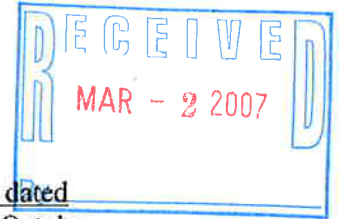
Before taking action on the application, the Board of Commissioners must hold a quasi-judicial public hearing. The hearing must be held within 45 days of the application for a development vested right. Staff recommends that the Board of Commissioners schedule the public hearing for vested rights application (VR-2007-03) for an appropriate date between April 23, 2007 and May 4, 2007, to fulfill this requirement. Due to the quasi-judicial nature of the hearing, staff comments on the development will be presented at the public hearing.

### BOARD ACTION REQUESTED:

Planning Staff requests the Board of Commissioners accept vested rights application (VR-2007-03) and schedule a quasi-judicial public hearing for an appropriate date between Monday, April 23, 2007 and Friday, May 4, 2007.

**Suggested Motion:** I move that the Board accept vested rights application (VR-2007-03) and schedule a quasi-judicial public hearing for an appropriate date between Monday, April 23, 2007 and Friday, May 4, 2007.

Application for Vested Right  
Pursuant to N.C.G.S. 153A-344.1



CERTIFICATION

The undersigned, trustees of the Grattan Hammond, Jr. Trust (under agreement dated October 10, 1994) and the Annette P. Hammond Trust (under agreement dated October 10, 1994), hereby certify that we are seeking to acquire a vested right pursuant to N.C.G.S. 153A-344.1 and the Henderson County Vested Rights Ordinance. We understand and agree that our application will be considered by the Board of County Commissioners following notice and a public hearing and that we are under a duty to provide complete and accurate information to the Board of Commissioners.

**NAME** John T. Hammond  
James W. Hammond

**ADDRESS** 1230 West Central Boulevard  
Orlando, Florida 32805

**PROPERTY ADDRESS** 205 McKinney Road  
Etowah, NC

**PROPERTY PIN NUMBERS** 9529767505, 9529838232, 9539037259,  
and 9529916743

This 23<sup>rd</sup> day of February, 2007.

John T. Hammond  
John T. Hammond

James W. Hammond  
James W. Hammond

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-----OFFICIAL USE ONLY-----  
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DATE RECEIVED: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**BILTMORE FARMS, INC.**  
Established 1897



February 28, 2007

Mr. Anthony Starr, Planning Director  
Henderson County Planning Department  
213 First Ave. East  
Hendersonville, NC 28792

RE: Request for Vested Rights  
Hammond Property

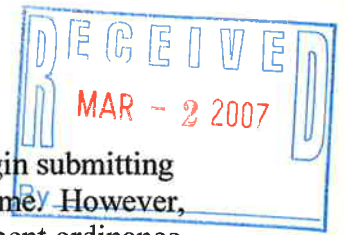
Dear Mr. Starr:

As we discussed in our previous meetings, Biltmore Farms, LLC has entered into a contract with the Hammond family to purchase their property in Etowah. This contract was executed in October 2006, following extensive negotiations and preliminary due diligence which commenced in May 2006. Since that time, we have been completing our due diligence on the property to confirm that this is a viable project. That work has included preparation of an ALTA survey, an aerial topographic survey, a conceptual master plan, legal fees for contracts and title work, as well as various environmental and engineering studies to determine the feasibility of the project. To date, Biltmore Farms has invested more than \$150,000 in the project.

As you know from the documentation presented to you, the Hammond family also has a significant economic expectation based on the zoning in place for this property when they signed the contract in October 2006. A failure to acknowledge their vested rights would likely cause significant economic harm to them.

Based on the conversations between you and Will Buie, our consulting engineer, we understand that the County may adopt a new land development code that would provide zoning and development standards throughout the County. While we applaud the County's efforts in this endeavor, Biltmore Farms has invested significant amounts of time and money in the Hammond property based on the current Henderson County subdivision ordinance, and the Hammond family has entered into a substantial contract based on the current subdivision ordinance.

At this point, Biltmore Farms cannot move forward with this project without the assurances that this project would be considered for approval under the existing zoning ordinance. We understand that if we submit the master plan for review and approval by the Planning Board, they can only offer approval of the roads and lots. Approval by the Planning Board would not offer vesting of the proposed use of the property.



Further, Biltmore Farms contract with the Hammonds requires that we begin submitting plans for approval in March 2007. We are in a position to do that at this time. However, not knowing if or when the County may adopt the proposed land development ordinance or some modification places us in an awkward position.

Therefore, we are requesting that the County Commissioners consider this project under the Vested Rights Ordinance. Enclosed are copies of the proposed master plan, the vested rights application and a check for the review fee. We respectfully request a vested period of five years, with vesting to lapse if we do not commence construction within two years.

We will be submitting this same master plan for review by the County Planning Board under the current subdivision ordinance.

If you have any questions or need additional information, do not hesitate to contact me or my colleague, Paul Szurek at 209-2000. You may also contact Will Buie at 697-7334.

Thanks, and I hope all is well.

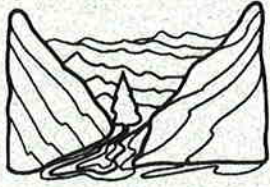
Cordially,

BILTMORE FARMS, LLC

A handwritten signature in black ink that reads "Thomas A. Williamson". The signature is written in a cursive style with a long horizontal flourish at the end.

Thomas A. Williamson  
Vice President

Cc: Will Buie



# William G. Lapsley & Associates, P.A.

Consulting Civil Engineers and Land Planners

William G. Lapsley, P.E.  
William R. Buie, P.E.  
G. Thomas Jones III, P.E.  
Donald L. Hunley, P.E.

March 8, 2007

Mr. Matt Cable  
Henderson County Planning Department  
213 First Ave. East  
Hendersonville, NC 28792



RE: Hammond Property  
Additional Information Request

Dear Mr. Cable:

We are in receipt of your email from March 7, 2007 requesting additional information on the Biltmore Farms Hammond Tract. Please find enclosed 10 large copies and one reduced (11"x17") copy of the updated master plan. To address your comments/questions:

1. All utilities including potable water will be located in the proposed road rights-of-way. The only exceptions are the gravity sewer lines which will follow contours. The masterplan has been modified to show the approximate location of the proposed gravity sewer lines. At this time, sidewalks are proposed on one side of the road in the areas of the attached single family units. Sidewalks may be provided in other sections of the project to provide connects to the trail network.
2. The square footage for the duplex, three-plex and four-plex units will range from a minimum of 1,000 SF to a maximum of 3,270 SF. The maximum height for these units measured from the ground level at the main entrance (front of the building) to the top of the roof will be a maximum of 40 feet. Minimum and maximum square footages for the single family lots have not yet been established, however, the maximum height will be 40' as described above for the attached units. The square footage of the clubhouse is estimated to be between 6,000 SF and 14,600 SF. The maximum height of this building is estimated to be 45 feet from the main entrance to the top of the roof.
3. The setbacks for the single family lots are as indicated on the masterplan. The setbacks for the attached units will be a minimum of 15' from the road right of way to the building line. As indicated on the plan, each attached unit will have a "lot" established. This lot will likely be a minimum of 5' from the front and back of the unit. For the end units, the lot line will be 5' from the side.
4. The clubhouse is envisioned to be an amenity for the overall community. Activities at the clubhouse may include a restaurant or catering facilities, gathering space, meeting space, banquet facilities, workout and recreational facilities, real estate sales and marketing, etc. Some merchandise associated with Biltmore Farms and the project might be sold at the clubhouse.
5. Each of the attached single family units will be associated with individual lots as described above. These units would best be described as townhomes with some property begin transferred fee simple with the unit. These units are not anticipated a condominiums.

Mr. Matt Cable  
March 8, 2007  
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Please note that the masterplan enclosed with this letter has been modified slightly. To provide a better transition between the existing residential homes in the Etowah community, we have revised the masterplan to show single family lots adjacent to McKinney Road. The revised masterplan is included with this letter.

I hope this letter and the revised masterplan addresses your questions and comments. Feel free to contact our office if you need further information.

Sincerely,  
WILLIAM G. LAPSLEY & ASSOCIATES, P.A.



William R. Buie, P.E.

CC: Mr. Tom Williamson, P.E.; Biltmore Farms



Applicants:  
**Biltmore Farms LLC**  
 One Town Square Blvd., Asheville, NC 28803 (828) 209-2000  
**Landscape Architecture - Land Planning**  
**Cloos Landscape Architecture**  
 22 Ravenwood Lane, Horse Shoe, NC 28742 (828) 243-1070  
**Consulting Engineers & Land Planners**  
**William G. Lapsley & Associates**  
 1635 Asheville Hwy, Hendersonville, NC 28791 (828) 697-7334  
**Land Surveyor**  
**Webb A. Morgan & Associates**  
 96 Central Ave Asheville, NC 28801 (828) 252-1530

# Biltmore Farms Hammond Tract

Community Master Plan March 7, 2007

This site specific development plan establishes a development vested right pursuant to N.C.G.S. 153A-344.1. Unless terminated at an earlier date the development vested right shall be valid until \_\_\_\_\_.

Chairman, Board of Commissioners

RECEIVED  
 MAR - 8 2007  
 BY

### PROJECT SUMMARY

41 Single Family Lots 70'-80' wide	469.96 Ac. - Overall Property Size (Excluding Retained 50 Ac.)
118 Single Family Lots 85'-95' Wide	240 Ac. - Total Open Space Area
75 Single Family Lots 100'-125' Wide	51% - Open Space as Percentage
84 Duplex Units (Big House Style)	46,946 LF - Total Roadway Length or 8.89 Mi.
147 Attached Units in 3-Unit Buildings	45,662 LF - Total Trail Length or 8.65 Mi.
188 Attached Units in 4-Unit Buildings	
653 Total Residential Units	

Current Owner: Annette P. Hammond Trust,  
 Grattan Hammond Jr. Trust  
 1230 W. Central Blvd. Orlando, FL 32805 (407) 849-6060

Current Zoning: Open Use Zoning

Water System: Public, (City of Hendersonville Water System)

Sewer System: Community (Etowah Sewer Company)

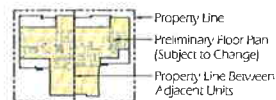
Henderson County Property ID Numbers: 9529767505, 9529838232, 9539037259, and 9529916743

### TYPICAL LOT DIAGRAMS

#### Single Family Lots



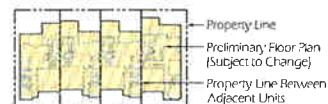
#### Duplex Buildings



#### 3-Unit Buildings



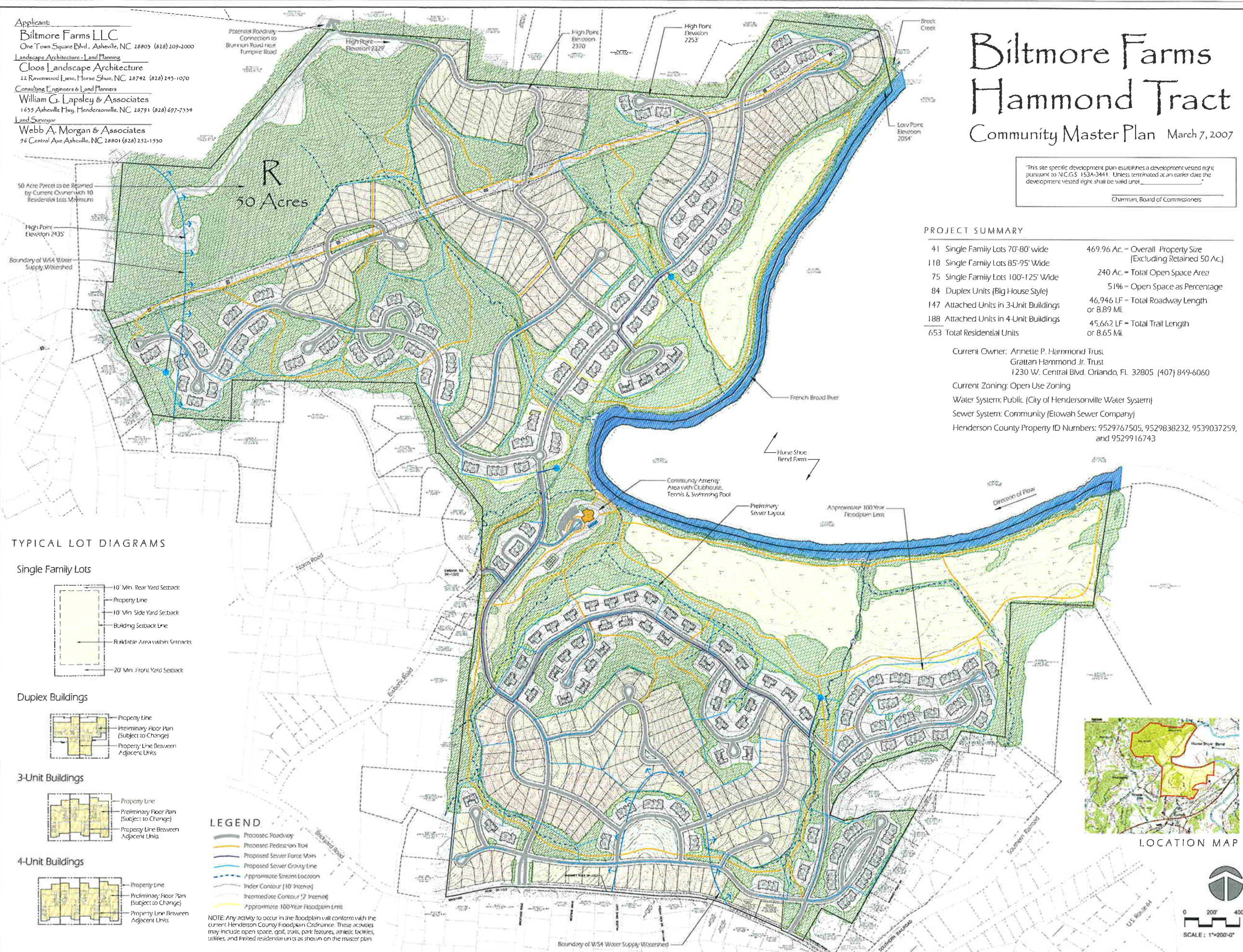
#### 4-Unit Buildings



### LEGEND

- Proposed Roadway
- Proposed Pedestrian Trail
- Proposed Sewer Force Main
- Proposed Sewer Gravity Line
- Approximate Stream Location
- Index Contour (10' Interval)
- Intermediate Contour (2' Interval)
- Approximate 100-Year Floodplain Limit

NOTE: Any activity to occur in the floodplain will conform with the current Henderson County Floodplain Ordinance. These activities may include open space, golf, trails, park features, athletic facilities, utilities, and limited residential units as shown on the master plan.



LOCATION MAP

