

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

Meeting Date: July 2, 2007

Subject: Consideration of the draft development agreement for Seven Falls Golf and River Club

Attachments: 1. Staff Memorandum
2. Draft Agreement

SUMMARY OF REQUEST:

Mr. Jay DeVaney, attorney for the developer of Seven Falls Golf and River Club, has requested that the County create a mutually acceptable development agreement. State Law explicitly authorizes local governments to enter into development agreements. Planning and Legal Staff have negotiated a draft agreement for consideration by the Board of Commissioners. There is no obligation to enter into such agreements but such agreements can prove to be mutually beneficial to the developer and the public. The attached memorandum explains the key points about the agreement and process should the Board decide to proceed. A public hearing is required prior to approval of any development agreement.

BOARD ACTION REQUESTED:

Planning Staff requests the Board of Commissioners provide direction on whether to proceed with the development agreement.

Suggested Motion: I move that the Board set the public hearing required by law for the date and time discussed by the Board.

Alternative Motion: I move that the Board table the matter until the July 18 meeting to allow for further discussion of the agreement.

MEMORANDUM

TO: Board of Commissioners

FROM: Anthony Starr, Planning Director *AS*

DATE: June 22, 2007

SUBJECT: Seven Falls Golf & River Club Development Agreement

The developer for Seven Falls Golf & River Club has requested to create and execute a development agreement with the County. The project is located on Pleasant Grove Road in Etowah and proposes 900 homes on 1,400 acres with a golf course. The developer anticipates that the project will develop over several years and desires to establish vested rights for the project. North Carolina General Statute 153A-349.1 authorizes counties to enter into such agreements. The main advantage for the developer by using this option as opposed to the traditional vested rights ordinance is that vested rights may be granted for 20 years. The vested rights ordinance provision is limited to 5 years. The developer has already received subdivision approval for the project.

Planning and Legal Staff have negotiated a draft agreement for your consideration. The agreement is attached and key points are listed below about the project and the draft agreement.

Seven Falls Development Agreement – Key Points

- The developer requested that the County enter into an agreement to establish vested rights.
- State law gives Counties permission to enter into such an agreement (GS 153A-349.1).
- The project includes 1,400 acres, 875 homes, and an Arnold Palmer Golf Course in Etowah off Pleasant Grove Road. It will also include some commercial uses.
- The developer indicates the project will have a tax base value of \$1.2 Billion at build out.
- The developer wishes to obtain vested rights for 4-unit residential buildings and some commercial uses. The agreement will give vested rights for all of the project but these two points are the main reason for the agreement in addition to the extended time of vested rights.
- The developer agrees to construct 48,000 feet (9+ miles) of sidewalk and walking trails (see section 5 on page 4).
- The developer agrees to comply with North Carolina Phase II Post-construction stormwater control requirements (see section 12 on page 5).
- The developer requests vested rights for 20 years (see section 14 on page 6).
- The developer agrees to construct a new fire station to county specifications and donate the land for the station to the County (see section 16b and 16c on page 7). Building plans used by Etowah Fire Department for a previously built sub-station will be the guiding design.
- The project will use City water and community sewer (not septic tanks). See section 17a on page 8.
- The developer agrees to convey all sewer infrastructure to the County for \$1 should the County decide to establish a county operated sewer system for the area. Until such time the system will be owned by the developer/home owners' association. See section 17c on page 8.
- The developer agrees to provide land for a water storage tank for the City of Hendersonville water system (see section 17f on page 8).
- The developer proposes to re-align Pleasant Grove Road and Pleasant Grove Church Road. Pleasant Grove Road floods periodically and the new alignment would lift that road section above the floodplain. This would be a significant improvement to public safety. Approval by NCDOT and the Board of Commissioners will be required for this issue at a future date. This is not mentioned in the agreement but is indicated on the master plan approved by the Planning Board.

Based on the improvements agreed to by the developer, the fact that the project will likely proceed with or without this agreement, and the overall positive impact of including the options in the agreement that are not otherwise required by law or county ordinance, Planning Staff recommends approval of the agreement. The developer proposes to construct \$13.2 million dollars in infrastructure and improvements as part of this project.

If the Board wishes to enter into such an agreement, a public hearing is required by state law. Once the public hearing is held the Board may adopt the agreement. This process will allow the County and the developer to work out any differences prior to holding a hearing. Once the hearing is held additional changes to the agreement may be made to reflect any concerns of the public or Board. If this option does not work out the developer may use the Vested Rights Ordinance to seek approval.

Anthony Starr

m: William Lapsley [wlapsley@wgl.com]
Sent: Tuesday, June 12, 2007 2:45 PM
To: Anthony Starr
Subject: Seven Falls Development Agreement

Anthony: I got your voice mail message – see if this outline will help:

- 1. Sidewalks and trails 48,000 LF @ \$ 40.00 = \$ 1,920,000
- 2. Fire Substation 2 acres @ \$ 75,000 = 150,000
- 3. Fire Substation Building 250,000
- 4. Water Tank Site Land 0.75 acre @ \$500,000 = 375,000
- 5. Contribution to City Water Project 330,000
- 6. Community Sewer System (sewer lines, treatment plant,etc.) 7,536,500
- 7. Pleasant Grove Road Relocation (above 100 year flood plain) 2,712,780

Total Improvements above minimum Subdivision standards \$ 13,274,280

William G. Lapsley, PE
Principal Engineer



William G. Lapsley & Associates, P.A.
Two Town Square Blvd.
Suite 320
Asheville, NC 28803
828-687-7177
wlapsley@wgl.com

The information in this email is confidential and may be privileged. It is intended solely for the addressee(s). Disclosure to other parties is prohibited. If you are not the intended recipient, any disclosure, copying, distribution or action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful.

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

**Return to: M. Jay DeVaney
Nexsen Pruet Adams Kleemeier
701 Green Valley Road, Suite 100
Greensboro, NC 27408**

**Development Agreement by and between the County of Henderson, Seven Falls, LLC and
Mountain Development Company, LLC
Relative to the Development Known as Seven Falls Golf & River Club**

This Development Agreement (the "Agreement") is made and entered into this ____ day of June, 2007 by and between SEVEN FALLS, LLC and MOUNTAIN DEVELOPMENT COMPANY, LLC, each a North Carolina limited liability company (collectively "Developer"), and the COUNTY OF HENDERSON, a North Carolina body politic ("County").

STATEMENT OF PURPOSE

Section 153A-349.1(a)(1) of the North Carolina General Statutes provides that "large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources."

Section 153A-349.1(a)(3) of the North Carolina General Statutes provides that "because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development."

Section 153A-349.1(a)(4) of the North Carolina General Statutes provides that "because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development."

Section 153A-349.1(a)(5) of the North Carolina General Statutes provides that "because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas."

Section 153A-349.1(a)(6) of the North Carolina General Statutes provides that "to better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments."

In view of the foregoing, Section 153A-349.1(b) and 153A-349.3 of the North Carolina General Statutes expressly authorizes local governments and agencies to enter into development agreements with developers pursuant to the procedures and requirements of Sections 153A-349.1 through 153A-349.13 of the North Carolina General Statutes, which procedures and requirements include approval of the development agreement by the governing body of the local government by ordinance after a duly noticed public hearing.

Section 153A-349.4 of the North Carolina General Statutes restricts the use of a development agreement to "property that contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of the application)." G.S. 153A-349.4 further provides that "development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years."

Developer is the owner or has under contract certain parcels of land containing in the aggregate of approximately 1,398 acres, located in the County of Henderson, North Carolina (the "Property"), such Property being more particularly described on Exhibit A attached hereto and incorporated herein by reference.

On April 19, 2007, the Henderson County Planning Board received and reviewed a major residential, subdivision preliminary plan (the "Master Plan") that contemplates the Property to be developed as a single family residential subdivision containing approximately 700 single family lots, 164 townhomes, 24 lodge and Inn rooms, and 36 condominiums (the "Subdivision") known as "Seven Falls Golf & River Club". A copy of the Master Plan is attached hereto as Exhibit B and incorporated herein by reference. In general accordance with the Master Plan, Developer will submit preliminary development plans for the creation of a first phase of 176 units in May 2007. At its April meeting, the Henderson County Planning Board conditioned Master Plan approval upon the Developer making adequate provisions for water and sewer access and fire protection when Phase 1 is addressed. An additional condition for approval by the Planning Board mandated the development could not have individual septic or wells permanently due to the high density of the development.

Developer desires to continue to develop the Subdivision on the Property consistent with the Master Plan and as further defined and set forth by those terms and provisions that are more particularly set out below.

County recognizes that Developer has invested a substantial amount of money in the development of the Property (in excess of \$30,000,000.00 to date with an anticipated total investment in excess of \$180,000,000.00) and that the anticipated tax base of the completed subdivision will exceed \$1,250,000,000.00.

County desires that Developer continue to develop the subdivision in general accordance with the Master Plan and that the Subdivision, including its lot sizes, density, access, and circulation, is compatible with the existing and/or permissible future uses of adjacent property; that the Subdivision will not have detrimental impacts on the safety or viability of permitted uses on adjacent properties.

County has requested and Developer has agreed to donate a site for the creation of a future fire station from a portion of the Property to be selected by Developer and to create water storage that will be connected to the City of Hendersonville public water system, thus creating additional water storage available to enhance the Hendersonville public water supply. In addition, for the, County has requested and Developer has volunteered to provide the shell of a fire substation building on the Property for the benefit of Henderson County, specifically the Etowah community and Seven Falls residents.

Accordingly, Developer and County desire to enter into this Agreement for the purposes of coordinating the construction of infrastructure that will serve the Subdivision and the community at large; confirming the phasing of the construction of the lots to be located in the Subdivision and providing assurances to Developer that it may proceed with the development of the Subdivision in general accordance with the Master Plan and that zoning and subdivision standards imposed by County will remain stable throughout the period of development.

TERMS

NOW, THEREFORE, based upon the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, the parties do hereby agree as follows:

1. Public Hearing. Pursuant to Section 153A-349.5 of the North Carolina General Statutes, County shall conduct a public hearing to consider the approval and execution of this Agreement in accordance with the procedures set out in G.S. 153A-323. The notice of public hearing shall specify, among other things, the location of the Property subject to this Agreement, the development uses proposed on the Property and a place where a copy of the Agreement can be obtained.
2. Approval of Phase 1 Plats. At a regularly scheduled meeting on June 21, 2007 (continued from May 2007), it is anticipated that the Developer shall submit and the Henderson County Planning Board shall approve the Phase 1 development plan containing 176 units, ("Phase 1 Plan"). Upon the approval of the Phase 1 Plan by the Planning Board, the Phase 1 Plats shall be deemed to be an approved major subdivision plat under the Subdivision Ordinance for all purposes, and Developer will be authorized to proceed with the recordation of the Phase 1 Plat(s) in accordance with Chapter 170 of the Subdivision of Land Ordinance of Henderson County.
3. Permitted Uses. The Property may be devoted to single family residential attached and detached uses together with any incidental or accessory uses associated therewith (including a private golf club, tennis center, equestrian center, fishing instruction, and canoeing). As more particularly depicted on the Master Plan, a maximum of 900 single family units and 24 Lodge and Inn rooms including townhouses and condominiums may be developed on the Property.
 - (a) The only uses that this Agreement purports to allow are those established in the Project Narrative received by the Henderson County Planning Department on

March 5, 2007. This Narrative is attached as Exhibit C and incorporated by reference.

- (b) Quadraplexes as proposed by the Developer in the Master Plan are permitted under this Agreement but only to the extent included in the Master Plan.
- (c) Mixed Use development as proposed by the Developer in the Master Plan in the Village section of the subdivision are permitted under this Agreement but only to the extent included in the Master Plan and Project Narrative.

4. **Open Space:** The current Subdivision Ordinance states that “open space” is to be defined as “land that is generally left in its natural state and not developed”, all in a manner acceptable to the Office of the County Attorney of Henderson County. This includes all lands within the Subdivision not included within proposed road right-of-ways, fee simple lots, parking areas and drives, the foot print of any heated structure, or within the commercial parcel. For the purpose of this agreement and this agreement only, the proposed golf course and golf practice facility shall be included in the computation for open space for the Seven Falls development.

- (1) The entire Seven Falls development shall include no less than 20 % open space.
- (2) The Golf Course and golf practice facility shall be owned and maintained by the Developer with a right of first offer to the Seven Falls Club Members. The remaining open space shall be permanently dedicated to the property owners (or the Seven Falls Club Members) of the Subdivision and ultimately conveyed to the Property Owner’s Association of the Subdivision in such a way that it can never be voluntarily divided, or used in a way inconsistent with the definition of “Open Space” contained herein.
- (3) The Developer shall submit an instrument or instruments setting forth a plan for permanent care and maintenance of open space and buffers which would be legally enforceable; that the Applicant create a homeowners’ association and submit bylaws and rules and regulations governing the association. The Office of the County Attorney must review the Declaration of Covenants and Restrictions for Seven Falls Golf & River Club, the Bylaws of the Property Owner’s Association as to form, and approve the same as preserving in perpetuity the open space and buffers, and reasonably providing for their permanent care and maintenance.

5. **Pedestrian Facilities.** It is intended that reasonable pedestrian access is provided for larger subdivisions to promote healthy and safe walking environments in the neighborhoods of Henderson County. To this end, Developer agrees to provide one (1) linear foot of sidewalk or walking trail for every two (2) linear feet of improved or newly proposed roadway. The total length of trails will be approximately 48,000 linear feet in the common areas, roadways, and golf course.

6. **Setback Requirements.** All single family units must have a minimum fifteen (15) foot front yard setback, eight (8) foot side setbacks and a rear setback of twenty-five (25) feet. All structures in the development, including commercial structures, must have a minimum fifty (50)

foot setback from any adjacent property that is not part of the development. There is no internal setback requirement for non-residential buildings.

7. Bridge and Culvert Requirements. All culverts and bridges in the development must meet NCDOT standards and Henderson County Code requirements. In addition, the Developer must supply plans and certifications for all project bridges prepared by a NC registered professional engineer.

8. Development of the Property. The Property and the Subdivision shall be developed in general accordance with the Master Plan, Project Narrative, conditions for Master Plan approval established by the Planning Board, and the terms of this Agreement including but not limited to the size, placement and configuration of the lots, common open space, streets, and other improvements planned for the Subdivision. Any minor changes to the Master Plan must be reviewed by the Planning Director who may approve the changes administratively but may with good cause, refer significant variations to the Planning Board. Minor deviations or amendments to the Master Plan may be necessary from time to time due to various circumstances (including, but not limited to, engineering issues, topographical concerns, and public safety) which deviations or amendments shall not be considered an amendment to this Agreement and shall not trigger the approval procedure set forth in Paragraph 17 of this Agreement.

9. Development Schedule. In addition to the 176 units comprising Phase 1 to be submitted in June 2007, Developer shall submit to the Planning Board applications from time to time for major subdivisions totaling 900 units of not less 150 units every three (3) years. See Schedule below.

Minimum Number of Units Submitted for Subdivision Approval Completed By Year

(Must be submitted and approved by 12/31 of completion year)

<u>Minimum Number</u>	<u>Year</u>
150	Yr 3: 2010
300	Yr 6: 2013
450	Yr 9: 2016
600	Yr 12: 2019
750	Yr 15: 2022
900	Yr 18: 2025

Developer must complete the infrastructure of each phase within two (2) years of phase development plan approval. The phases for the subdivision are included in Exhibit D. The Planning Board may, for just cause, grant extensions of development plan approval for a maximum of one year. Only one extension may be granted for each phase.

10. Required Right-of-Ways. Developer must provide in the restrictive covenants for Seven Falls an easement giving property owners and their guests legal access to all lots and units. The final plat must have a notation on it to this effect. This provision in the restrictive covenants must be approved by the Henderson County Attorney's Office before approval of the final plat.

11. Protected Ridge Ordinance. Developer must comply with North Carolina law governing development on protected ridges. Should Henderson County create standards differing from the state regulations, Developer must only comply with the state regulations provided Developer guarantees any and all structures built on an elevation of over 2400 feet as determined by the Mountain Ridge Protection Act will have a height limit of thirty-five (35) feet.

12. Post-construction Stormwater Control Requirements. This development shall be subject to the requirements of the North Carolina Phase II Post-construction stormwater control requirements as enacted and enforced by the N.C. Department of Environment and Natural Resources effective July 1, 2007. The developer, and their successors, shall seek and secure the appropriate approvals from the State.

13. Law in Effect at Time of the Agreement Governs the Development of the Subdivision. Developer shall have a vested right to develop the Property and the Subdivision in general accordance with the Master Plan, the terms of this Agreement and the Subdivision and Zoning Ordinances as they exist and were applied as of April 1, 2007 during the entire term of this Agreement. Developer shall only have vested rights for the uses specified in the Project Narrative and Master Plan as clarified by this Agreement. No vested rights are granted regarding any environmental ordinances including but not limited to any Stormwater Ordinance, Sedimentation and Erosion Ordinance, Watershed Protection Ordinance, or similar ordinances hereafter adopted by Henderson County. In addition, the project will still be subject to an Adequate Public Facilities Ordinance should the County adopt such an Ordinance during the term of this Agreement. Pursuant to G.S. 153A-349.7 and except as provided in G.S. 153A-344.1(e), County may not apply subsequently adopted Subdivision or Zoning Ordinances to the Property or the Subdivision during the term of this Agreement without the written consent of Developer. This Agreement does not abrogate any rights preserved by G.S. 153A-344 or G.S. 153A-344.1, or that may vest pursuant to common law or otherwise in the absence of this Agreement.

14. Term. The term of this Agreement shall commence on May 1, 2007 and expire on January 1, 2027 unless sooner terminated by the mutual consent of the parties hereto or their successors in interest, or unless extended by the mutual consent of the parties hereto or their successors in interest. However, the covenants and restrictions shall continue as herein provided to run with the land.

15. Local Development Permits. In accordance with G.S. 153A-349.6(a)(6), the following is a description or list of the local development permits approved or needed to be approved for the development of the Subdivision:

- (a) Erosion and Sediment Control Permit (NCDENR – Land Quality), and any successor or other organization enforcing any laws in effect regarding erosion and sediment control
- (b) Water Supply & Distribution System Permit (NCDENR – Public Water Supply), and any successor or other organization enforcing any laws in effect regarding public water supply and distribution systems.

- (c) Sanitary Sewer Collection System Permit (NCDENR – Division of Water Quality), and any successor or other organization enforcing any laws in effect regarding public sanitary sewer collection systems.
- (d) Wastewater Treatment System Permit (NCDENR –Division of Water Quality), and any successor or other organization enforcing any laws in effect regarding wastewater treatment systems.
- (e) NCDOT Street Access Permit, and any successor or other organization enforcing any laws in effect regarding access to NCDOT maintained roads.
- (f) Stream or Wetland Impacts (US Army Corps of Engineers& NCDENR), and any successor or other organization enforcing any laws in effect regarding streams and wetland areas.
- (g) Subdivision approvals (Henderson County)
- (h) Building Permits (Henderson County)
- (i) All other local, state or federal permits required for this development

The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve Developer of the necessity of complying with the law governing federal, any state or local jurisdiction the local permitting requirements, conditions, terms or restrictions.

16. Public Facilities. The following public facilities will serve the Subdivision:

- (a) Water shall be furnished by either the City of Hendersonville or any successor-to the city's system.
- (b) Developer will voluntarily provide land (not exceeding two acres) to locate a Fire Substation to serve the Seven Falls Golf & River Club development and the neighboring community. This property will conveyed to the County within two (2) years of the date of this agreement and will be at a location outside the entrance gate as selected by Developer.
- (c) Developer will voluntarily provide the shell of a fire substation building on the proposed property in partnership with the County who will provide the substation with equipment and personnel. At its option, the Developer may either provide the County with necessary funding to build the shell of the substation or may build the shell of the substation itself. Should the Developer choose to build the shell of the substation at a minimum the structure must consist of three truck bays and a staff area together totaling 4,500 square feet with the dimensions of 54x84. Exhibit E is a plan for a similar fire substation to the one described above and shall be the model for the substation specifications under this Agreement. It must be engineered, designed, and constructed in accordance with Henderson County Emergency Services Department specifications. The County will be responsible to upfit the interior of the substation upon the completion of the shell structure.

The Developer shall either complete construction of the shell of the substation or provide the County the funding for the substation within two (2) years of the date of this agreement.

17. Water and Sewer Lines.

- (a) The Subdivision, including both residential and commercial structures, must be served by a community sewer and public water system. These systems must be provided before any units may be sold or leased with the exception of clause (e) within this provision as stated below.
- (b) Developer, at its sole cost and expense shall engineer, design, permit, construct and install the water and sewer lines to be located within the Subdivision (the "Internal Water and Sewer Lines"). The Internal Water and Sewer Lines shall be engineered, designed, constructed and installed in accordance with all applicable federal, state, and local laws, regulations and policies, including but not limited to, those regulations promulgated by the North Carolina Department of Environment and Natural Resources (NCDENR). Said water and sewer lines must be constructed so that they may be connected to the public water system and the County sewer system in the future. The City of Hendersonville must approve the water line design and County must approve the sewer line design.
- (c) Developer agrees to sell the sewer lines to the County of Henderson for one dollar (\$1.00) at such time in the future as the County establishes or participates in a public sewer system. This sewer system cannot be conveyed to any other entity without permission of the County. The developer will not have to extend their sewer system in order to connect to any future sewer system established by the County. This provision will be preserved and recorded as part of the Seven Falls Homeowner's Association covenants and restrictions before the recordation of the first final plat.
- (d) Developer agrees to convey all water lines constructed within each Phase to the water system supplying water to the Subdivision (in a form acceptable to such system) upon the completion of each Phase. This provision will be preserved and recorded as part of the Seven Falls Property Owner's Association covenants and restrictions.
- (e) During the first twenty-four (24) months of the developing the project, the Developer may provide onsite water and sewer services for no more than fifty (50) units. These units must be connected to the permanent water and sewer systems as soon as the systems have been constructed but no later than twenty-four (24) months after this Agreement is entered into by all parties.
- (f) Developer shall create a water storage facility at Developers expense, storing no less than a two-hundred thousand gallon tank (200,000 gallon) in one or more water storage tanks to be located at Developers discretion on the Property which will at a future date, become part of the City of Hendersonville public water

system. Developer at such time as the City of Hendersonville agrees to extend its public water system to the Seven Falls development (at the City's expense), agrees that the water storage tanks and distribution lines will be conveyed to the City of Hendersonville system at the cost of one-dollar (\$1.00) . This provision will be preserved and recorded as part of the Seven Falls Property Owner's Association covenants and restrictions. This water storage facility will be conveyed to the City of Hendersonville within twenty-four (24) months of the date of this Agreement.

18. Amendment. The terms of this Agreement may be amended by the mutual consent of the parties hereto or their successors in interest. A major modification of the terms of this Agreement shall follow the same procedures as required for the initial approval of this Agreement. Minor deviations from the Master Plan shall not be considered to be an amendment to this Agreement. Minor deviations shall include, but not be limited to, the relocation or reconfiguration of lots and roads due to engineering issues, topography, and terrain. Any minor changes to the Master Plan must be reviewed by the Planning Director who may approve the changes administratively but may with good cause, refer variations to the Planning Board.

19. Recordation/Binding Effect. Within fourteen (14) days after County enters into this Agreement, Developer shall record this Agreement in the Henderson County Public Registry. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties hereto.

20. Periodic Review.

- (a) Pursuant to Section 153A-349.8, the Planning Director or other County designee shall conduct a periodic review, (the "Periodic Review") at least every 12 months, at which time Developer shall be required to demonstrate good faith compliance with the terms of this Agreement.
- (b) If as a result of the Periodic Review, County finds and determines that Developer has committed a material breach of the terms or conditions of the Agreement, County shall serve notice in writing, within a reasonable time after the Periodic Review, upon Developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing Developer a reasonable time in which to cure the material breach.
- (c) If Developer fails to cure the material breach within the time given, then County may unilaterally terminate or modify the Agreement; provided the notice of termination or modification may be appealed to the Board of Adjustment in the manner provided by G.S. 153A-345(b).

21. Default. The failure of Developer or County to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting party to pursue such remedies as allowed under applicable law, provided, however, that no termination of this Agreement may be declared by County absent its according to Developer the notice and opportunity to cure set out in G.S. 153A-349.8. The parties to this Agreement recognize that, in addition to other remedies that

may be available, County has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance with the terms of this Agreement. Subject to the terms of this Agreement, in the event that Developer or any user on the subject property violates the rules, policies, regulations or ordinances of County or violates the terms of this Agreement, County may, without seeking an injunction and after ten (10) days' notice to correct the violation, take such actions as shall be deemed appropriate under law until such conditions have been honored by the Developer. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement; or to obtain any remedies consistent with the purpose of the Agreement. Legal actions shall be instituted in the Superior Court of the County of Henderson, State of North Carolina, or in the Federal District Court for the Western District of North Carolina, and the parties hereto subject to the personal jurisdiction of such courts without application of any conflicts of laws provisions of any jurisdiction.

22. Notices. Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimiles or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. All notices demands, requests, consents, approvals or communications to the parties shall be addressed to:

County at: Planning Director
 Henderson County Planning Department
 213 1st Avenue East
 Hendersonville, North Carolina 28792

With a copy to: County Attorney
 213 1st Avenue East
 Hendersonville, North Carolina 28792

Developer at: Mountain Development Company, LLC
 32 Orange Street
 Asheville, North Carolina 28801

With a copy to: Nexsen Pruet Adams Kleemeier
 Attn: M. Jay DeVaney
 701 Green Valley Road, Suite 100
 Greensboro, North Carolina 27408

Or at such future addresses as County or Developer shall specify in a written notice to the other party in compliance with this Section.

23. Entire Agreement. This Agreement sets forth, and incorporates by reference all of the agreements, conditions and understandings between County and Developer relative to the Property and the Subdivision and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth or as referred to herein.

24. Construction. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

25. Assignment. After notice to County, Developer may assign its rights and responsibilities hereunder to subsequent land owners of all or any portion of the Property, provided that no assignment as to a portion of the Property will relieve Developer of responsibility with respect to the remaining portion of the Property without the written consent of County.

26. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.

27. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

28. Agreement to Cooperate. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending such action; provided, however, each party shall retain the right to pursue its own independent legal defense.

29. Agreements to Run with the Land. This Agreement shall be recorded in the Henderson County Registry. The Agreements, covenants and restrictions contained herein shall be deemed to be a lien upon, binding upon and run with the land and shall be binding upon and an obligation of all successors in the ownership of the Property beyond the term hereof in perpetuity.

IN WITNESS WHEREOF, the parties hereby set their hands and seals, effective the date first above written.

Developer:

SEVEN FALLS, LLC

By: _____
Keith A. Vinson, Manager

MOUNTAIN DEVELOPMENT COMPANY, LLC

By: _____

Keith A. Vinson, Manager

County:

HENDERSON COUNTY

By: _____
Steve Wyatt, County Manager

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that **Keith A. Vinson**, personally and voluntarily came before me this day and acknowledged that he is Manager of SEVEN FALLS, LLC, a North Carolina limited liability company, and that he, as Manager, being authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and official seal this the _____ day of _____, 20__.

NOTARY PUBLIC

Name typed/printed: _____

My commission expires: _____

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, _____, a Notary Public of the County and State aforesaid, certify that **Keith A. Vinson**, personally and voluntarily came before me this day and acknowledged that he is Manager of Mountain Development Company, LLC, a North Carolina limited liability company, and that he, as Chief Executive Officer, being authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and official seal this the _____ day of _____, 20__.

NOTARY PUBLIC

Name typed/printed: _____

My commission expires: _____

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

I, _____, a Notary Public of the County and State aforesaid, certify that **Steve Wyatt**, personally and voluntarily came before me this day and acknowledged that she/he is County Manager of HENDERSON COUNTY, and that she/he, as County Manager, being authorized to do so, executed the foregoing on behalf of the County.

Witness my hand and official seal this the ____ day of _____, 20__.

NOTARY PUBLIC
Name typed/printed: _____

My commission expires; _____

EXHIBIT A

Property Description

Lying and being in Henderson County and being those 1398 acres, more or less as described by the following Henderson County Land Records Parcels:

Parcels currently owned by Mountain Land Development Co., LLC –

9528-92-5631	9528-72-7552	9528-81-2803	9528-71-4607
9528-82-2259	9528-61-9654	9528-61-5884	9528-61-8120
9528-82-0255	9528-60-8532	9528-80-0455	9528-70-7141
9528-33-0047	9528-50-8340	9527-69-4830	9527-96-2819
9528-82-0687	9528-51-7177	9527-88-5823	

Parcels currently owned by others to be acquired by Mountain Development Co. LLC –

	NAME	DEED BOOK/PAGE
9528-73-5017	Rogers	681/445
9528-73-0252	Rogers	560/557
9528-72-0687	Liberty Plastics	544/078
9528-73-1034	Liberty Plastics	734/093
9527-84-7308	Hyder	956/099
9528-71-9809	Mills	946/045
9528-71-7921	Seay	940/703
9528-71-8561	Seay	990/769
9537-17-2260	Nicholson	909/473
9537-28-6359	Nicholson	909/473
9537-06-1544	Nicholson	909/473
9537-25-9910	Nicholson	909/473
9537-36-6275	Nicholson	909/473
9528-62-4876	McCrary	405/445
9528-62-3072	McCrary	386/189
9528-61-0790	McCrary	437/391
9528-51-6570	Pridmore	603/551
9528-71-7504	Campen Carolina Corp.	681/465
9527-66-2317	Jenkins	751/207

Exhibit B

Master Plan

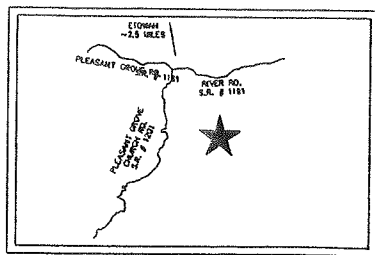


WILLIAM G. LAPSLEY & ASSOCIATES P.A.
 CONSULTING ENGINEERS & LAND PLANNERS
 HENDERSONVILLE, NORTH CAROLINA

SEVEN FALLS
 GOLF & RIVER CLUB
 HENDERSON COUNTY
 NORTH CAROLINA

MASTER
 DEVELOPMENT PLAN

sheet
 1 of 5



VICINITY MAP
 (N.T.S.)

Owner/Developer:
 Seven Falls, LLC
 P.O. Box 5778
 Asheville, North Carolina 28813
 Mountain Development Co., LLC,
 208 Folkstone Lane
 Arden, North Carolina 28704

Land Use Summary

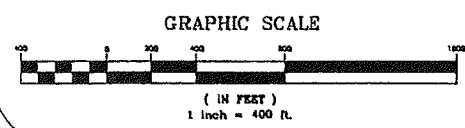
Phase	Area	Estate Lots	Town Homes	Total
I	217 ac.	126	40	166
II	127 ac.	63	14	77
III	231 ac.	92	70	162
IV	154 ac.	88	-----	88
V	111 ac.	52	8	60
VI	119 ac.	64	12	76
Village				
Single Family		191	-----	191
Town Homes		-----	18	18
Condominiums		-----	-----	36
	232 ac.	676	162	874
Golf Course				
	216 ac.	-----	-----	-----
	1397 ac.	676	162	874

Density: 1 Unit per 1.60 acres



ETOWAH SCHOOL ROAD
 (S.R. 1206)
 1.7 MILES TO
 U.S. HIGHWAY 64

1.3 MILES TO
 U.S. HIGHWAY 64



f & A ASSOCIATES P.A.
 f & Land Planners
 5 Highway
 Box 548
 CH Carolina 28706
 Tel 800-997-7222

date: 8/06
 job: 07108
 drawn: KHC

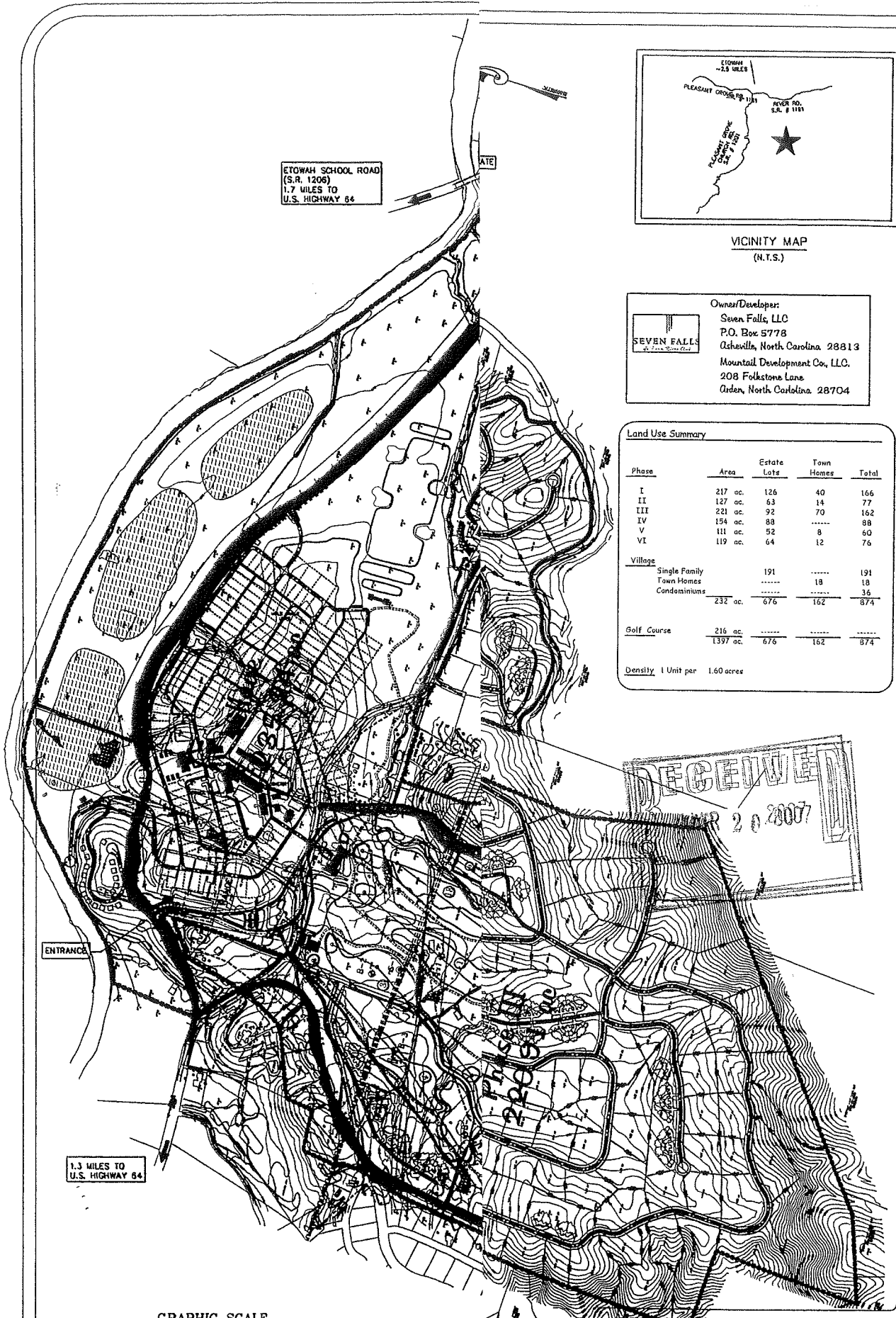


Exhibit C

Narrative

**PROJECT NARRATIVE
SEVEN FALLS GOLF & RIVER CLUB**

MAR - 5 2007

Project Description

The Seven Falls Golf & River Club is a planned residential golf course community located near Etowah, North Carolina. The development will encompass approximately 1,400 acres of land that includes 38 individual parcels to be acquired by the developer.

Existing Land Uses

The parcels included in this development are currently a mixed use of farmland, pasture land, dairy farm, creamery, industrial (plastics) plant, single family residential (including mobile home units) and woodland areas. Some of the woodland areas have been timbered in recent years.

Proposed Land Uses

The proposed development will include a mixture of land uses including:

Club Services	Golf Clubhouse (w/dining) Wellness Center Swim Club Tennis Center Golf Snack Shop Golf Learning Center
Community Services	General Store Chapel Bike Shop Sports Bar Inn (24 room) Nature Center River Outfitter Kids Activity Center Sales Center
Residential	Single Family Homesites (0.2 ac. to 2 acres+) Townhomes – Fourplex Units Duplex Units Condominiums – Single Family above community & club service buildings.

A land use summary table is shown on the Master Plan.

Development Schedule

The scope of this proposed project is such that a 10 year build-out schedule is anticipated. The tentative site development schedule is as follows.

	<u>Start Date</u>	<u>Completion Date</u>
Phase I	6/2007	6/2008
Village	12/2007	12/2008
Phase II	6/2008	6/2009
Phase III	6/2009	6/2010
Phase IV	6/2010	6/2011
Phase V	6/2011	6/2012
Phase VI	6/2012	6/2013

Building Descriptions

There are a variety of proposed buildings to be constructed within this development – briefly described as follows:

Single Family Residential

Village Lots – These will be two (2) story units varying in size from 1,400 to 3,000sf. constructed on a small 0.20 ac. Lot. Attached is a typical lot plan w/ setbacks.

Estate Lost - These will be large homes (1-3 story) varying in size from 2,500 sf to 10,000sf. Constructed on large lots varying in size from 1.0 – 3.0 acres. Attached is a typical lot plan w/setbacks.

Condominium Units – These will be single family units constructed on the 2nd Floor above the various community/club service buildings. The units will vary in size from 1,200 sf to 3,000 sf.

Multi-family Residential

Fourplex Units – These will be large single family homes constructed with common walls. The size will vary from 2700 sf to 3433 sf. Attached is a typical floor plan of the building. The buildings will be clustered at various locations within the development as shown on the Master Plan.

Duplex Units – These will be large single family homes constructed with a common wall (2 units per building). The size will be 3,433 sf. Attached is a typical floor plan of the building. The buildings will be clustered at various locations within the development as shown on the Master Plan.

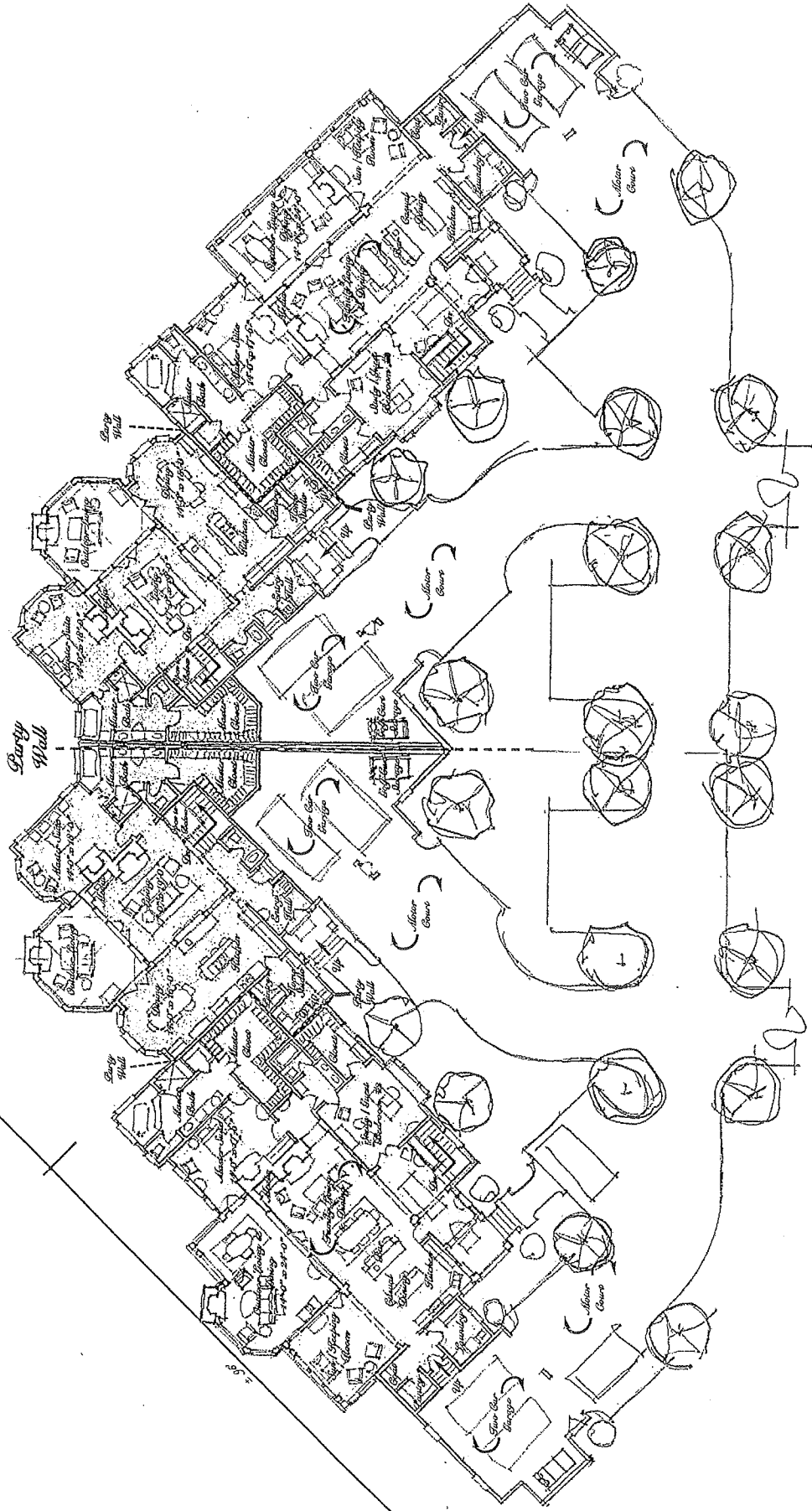
Club Service Buildings –

Golf Clubhouse –	3 story/30,000 sq ft.
Wellness Center –	2 story/10,000 sq ft
Swim Club –	1 story / 4,500 sq ft.
Tennis Center	2 story / 2,500 sq. ft.
Golf Snack Shop -	1 story / 1,500 sq ft.
Golf Learning Center	1 story / 2,000 sq ft.

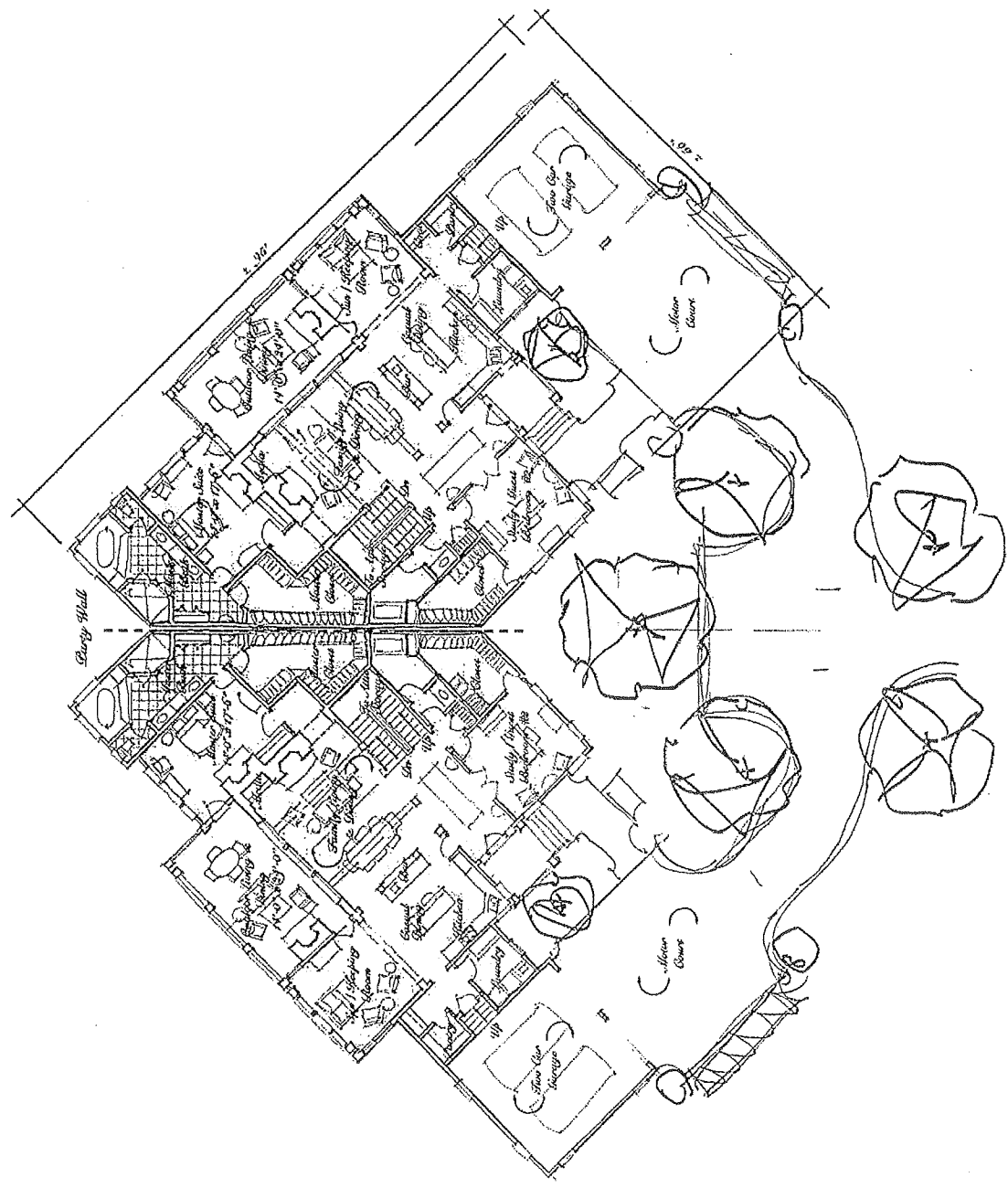
Community Service Buildings

General Store	2 story / 3,500 sq ft
Chapel	1 story / 1,500 sq ft
Bike Shop	2 story / 2,000 sq ft
Sports Bar	2 story / 6,000 sq ft.
Inn	2 story / 24,000 sq ft.
Nature Center	1 story / 1,500 sq ft.
River Outfitter	1 story / 4,000 sq ft.
KidsActivityCenter	1 story / 2,500 sq ft.

4 UNIT BUILDING MAIN LEVEL FLOORPLANS



2 UNIT BUILDING MAIN LEVEL FLOORPLANS

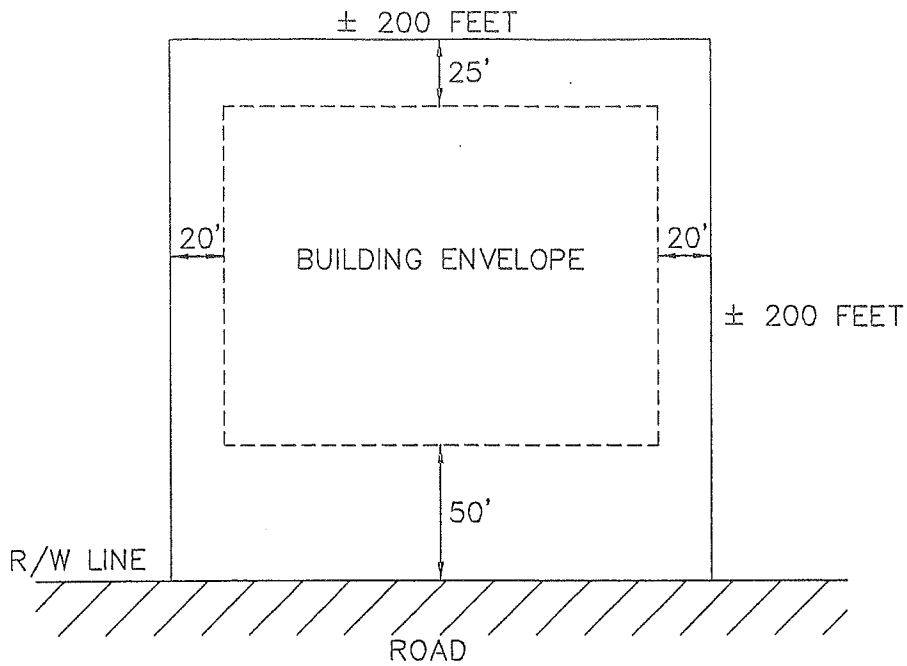


PLAN "AL"

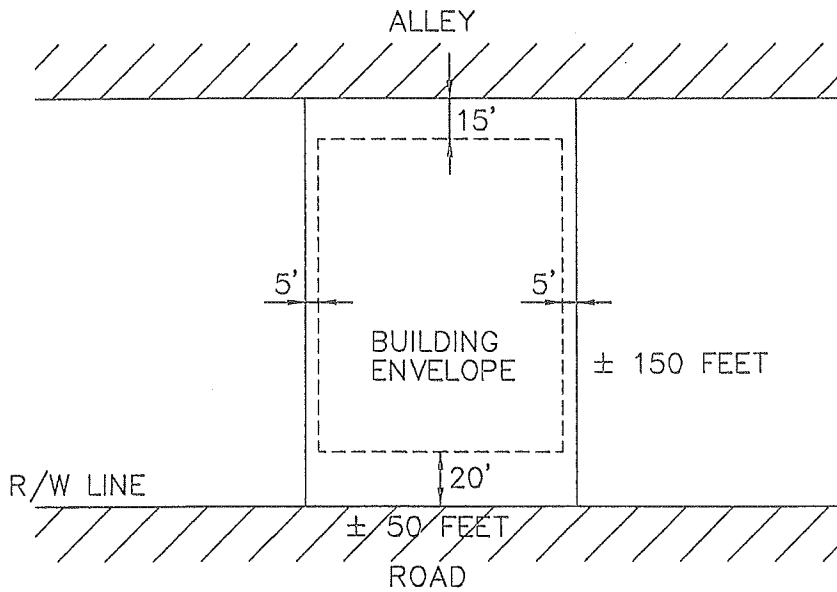
HEATED SQUARE FOOTAGE	
Main Level	2,413 sq.ft.
Upper Level	1,020 sq.ft.
Total	3,433 sq.ft.

PLAN "AR"

HEATED SQUARE FOOTAGE	
Main Level	2,413 sq.ft.
Upper Level	1,020 sq.ft.
Total	3,433 sq.ft.



TYPICAL ESTATE LOT
N.T.S.



TYPICAL VILLAGE LOT
N.T.S.

SEVEN FALLS GOLF & RIVER CLUB
SINGLE FAMILY RESIDENTIAL HOMESITES

EXHIBIT D

Phases for Subdivision by Number of Units and Time Period

<u>Minimum Number of Units Submitted for Subdivision Approval</u>		<u>Time Period</u>
Phase 1	176	4/1/2007 to 12/31/2009
Village	246	9/1/2007 to 12/31/2010
Phase 2	77	1/1/2010 to 12/31/2012
Phase 3	168	1/1/2013 to 12/31/2015
Phase 4	88	1/1/2016 to 12/31/2018
Phase 5	65	1/1/2019 to 12/31/2021
Phase 6	81	1/1/2022 to 12/31/2024
Total	900	

EXHIBIT E
Proposed Plan for Fire Substation Shell

Etoah Fire Sub-station

Exhibit E

54x83

