

MINUTES

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS  
MAY 22, 2007

The Henderson County Board of Commissioners met for a special called meeting at 6:00 p.m. in the Bo Thomas Auditorium at Blue Ridge Community College.

Those present were: Chairman Bill Moyer, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner Chuck McGrady, Commissioner Mark Williams, County Manager Steve Wyatt, Assistant County Manager Selena Coffey, County Attorney Russell Burrell, and Deputy Clerk to the Board Terry Wilson.

Also present were: Research/Grants Coordinator Amy Brantley, Planners Matt Card and Matthew Cable, Planning Director Anthony Starr, and Associate County Attorney Sarah Zambon.

CALL TO ORDER/WELCOME

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

**QUASI-JUDICIAL PROCEEDING – VESTED RIGHTS APPLICATION VR-2007-01 for the Proposed Continuing Care Retirement Community Development Known as The Glen and Highlands at Flat Rock**

*Commissioner Messer made the motion to continue the vested rights proceeding. All voted in favor and the motion carried.*

Chairman Moyer – “I’m going to start with – just to let you know that the College insisted we be out and the door be closed behind us at 10:00 which gives us four hours. Uh, so we will be stopping things at 9:45 to give everybody a chance – so that the staff here can finish what they have to do and lock up the building. I thought that we were going to have a little more time but that’s the rule and that’s what we’ll have to follow. As probably most of you know, this is a vested rights proceeding being held today for petition VR-2007-01, The Glen and Highlands at Flat Rock, where Jerry Grant and Jimmy Edwards are the petitioners. The petitioners are seeking vested rights under Chapter 189 with the Henderson County Code which allows a landowner to establish a vested right for a development project for the approval of a site specific development plan. A vested rights proceeding is a special hearing where the petitioner’s application is determined under specific rules of procedure which have been adopted by this Board. A vested rights proceeding is one where an applicant seeks to lock in rights which they presently possess to develop land. This Board cannot grant the applicant rights greater than they have to presently develop the land. However, the Board can, if it sees fit, and upon certain limited conditions set by the Board grant the applicant the right to develop land under the zoning and subdivision rules as they exist today based upon what the law calls a site specific development plan. If the Board grants such rights the site specific development plan cannot be modified thereafter after its approval without the approval of this Board. But the applicant can move forward with the development even if zoning or subdivision laws change which later might make it not possible. Under the Henderson County procedure or hearing on vested rights, persons who can demonstrate that they have a substantial interest in the outcome of the proceeding or which may be adversely affected specifically adversely affected by the decision rendered may become parties to this action. However, you should remember that you do not need to become a party to this hearing in order to have your say at this hearing. All persons who are allowed to speak and participate in

DATE APPROVED \_\_\_\_\_

this hearing including all witnesses that will be called must be placed under oath, and we'll cover that procedure in a few moments. The order of procedure will be as follows: The Board will ask any persons, other than the petitioner and the Henderson County Planning Staff, who desire to become parties to this action to come forward and explain how they would be specifically affected by the outcome of this proceeding. Examples of specifically affected people would include the owner of adjoining parcel of property or other individuals who have some other special or unique interest that justifies their participation as a party over and beyond that of the average citizen. As I stated before, you will not have to be a party to this proceeding in order to testify and to make statements before this group. Then all witnesses and parties will be sworn as a group; we'll call you down front to the clerk you'll be sworn in to tell the truth then your testimony. The Board will then have the Planning Staff briefly summarize the petition and what is sought by petition. The Planning Staff will be allocated five (5) minutes for this. The Board will then have the petitioner or the petitioner's attorney or attorneys present their evidence in favor of their position. The petitioner will be allowed an aggregate of twenty (20) minutes for their presentation. Henderson County Planning Staff shall then present any position which it wishes to take regarding the petition. The Planning Staff will be allowed ten (10) minutes for this. Other parties shall then present evidence in favor of their position. The other parties will be allowed ten (10) minutes each. So the people that identify themselves as parties that have a specific interest will be allowed ten (10) minutes to make their statements. All other witnesses, those that are not parties, who wish to make a statement will present their evidence will be limited to three (3) minutes unless that time is extended under special circumstances which I'll determine. Only the petitioner, the parties and members of this Board may question witnesses. Those just making statements or participating...other than as parties will not have the right of cross-examination. Cross-examination will be allowed by the petitioner and the other parties as I indicated. The time allocated for cross-examination is at the Board's discretion and will be depending upon the type of questioning and what kind of information is being developed. After the evidence is presented the Board will discuss the issues raised and will make a decision. The Board's decision must be in writing within thirty (30) days of the conclusion of this hearing. We will now proceed to identify the parties. The Board acknowledges the petitioner, the petitioner's representatives, and the Planning Staff as parties to this proceeding. Now I'm going to ask if there are other persons who wish to be made parties who can demonstrate they have a substantial interest or will be specifically affected by the outcome of this proceeding and who wish to be a party. I know the technical distinction between party and a person making a statement may be a little fuzzy, but technically if you have a specific interest and you can identify to the satisfaction of the Board you'll basically have five (5) minutes to make your statement and you can participate in cross-examination while other people will be more limited to the floor. Um, as a matter of fact, other parties will have ten (10) minutes rather than five (5) as I indicated. So are there...is there anyone in attendance who wishes to be identified as a party to the proceeding... if you'll come forward...where's...I'm sorry..."

Attorney Boyd Massagee – Should I go ahead?

Chairman Moyer – “You are automatically a party so...I mean...”

Attorney Boyd Massagee – “I didn't realize that I was sir. My client is Mr. McPhail who is a Trustee of the Trust of the property owned...”

Chairman Moyer – “We can't hear you, something must be wrong with the sound.”

Attorney Boyd Massagee – “I really didn't say it...”

Chairman Moyer – “Hold on. Mike I don't think this mic is uh...lets try again. Try getting a little closer

and see if we can..."

Attorney Boyd Massagee – "My client is Mr. Fritz McPhail. The McPhail Trust is... owns the property adjacent to it and to the south. He elects to be a party sir."

Voices from audience – "cannot hear...speak up"

Chairman Moyer – "Wait a minute...let's see if we can get this mic situation straightened out. Anthony I saw you there a minute ago."

Anthony Starr – "Testing one two, testing one two. Mike can you adjust the podium mic louder, test one two on the podium mic? Test one two, test one two, testing the podium mic, one two three four five."

Chairman Moyer – "Can you all hear now?"

Voices from audience – "yea"

Chairman Moyer – "Okay let's give that a try...Mr. Massagee would you...I'm going to ask you to start again. I don't think anybody heard...we probably didn't pick you up on tape."

Attorney Boyd Massagee – "I represent the McPhail Trust which owns property...sir...adjacent to it and to the south who would like to be a party."

Chairman Moyer – "Are there any objections from any of the Board? Do we approve him as a party representative Mr. Massagee...okay - next"

John Cherry – "Uh, John Cherry...I live close enough to hear it, see it, and smell it. So I feel like this will affect me quite a bit."

Chairman Moyer – "What's your last name?"

John Cherry – "Cherry, C-H-E-R-R-Y."

County Attorney Russ Burrell – "Can we get an address?"

Commissioner McGrady – "Can we get an address?"

John Cherry – "7 Curtis Drive"

Attorney William Alexander – "Mr. Moyer, on behalf of the petitioner, we're going to be making a...just entering an objection for your record to identification of anyone that's a party to this proceeding other than the County and the petitioner...just make the Board aware of that."

Chairman Moyer – "What is the basis for your objection?"

Attorney William Alexander – "This procedure is akin to a procedure for special use permit...it rises from the statutory rights of the applicant... rising from state statute...and then is later codified by ordinance that neither the state statute nor the ordinance makes any other member of the public a party to the proceeding. The statute does call for public hearing but does not specify that any other person is a

party...and just for purposes...we understand you've already ruled on procedure that's going to allow some of these folks to speak...but for purposes of a record we want to object."

Chairman Moyer – "The Boards agreeing we will proceed with the rules we've adopted."

Commissioners in unison – "Agreed"

Chairman Moyer – "The objections noted for the record. Mr. Cherry...everybody agrees...party."

Commissioners in unison – "Yes"

Chairman Moyer – "Next"

Bill Knowlton – "Sir my name is Bill Knowlton and I'll be speaking on behalf of Mountain View Estate Property owners, which is directly uh, adjacent to the property...we're right across the street on Crab Creek."

Chairman Moyer – "I'm sorry last name again please."

Bill Knowlton – "Knowlton, K-N-O-W-L-T-O-N."

Chairman Moyer – "You'll be speaking on behalf of all the people in the..."

Bill Knowlton – "Yes sir, I have a petition for you also."

Chairman Moyer – "All right. Board's pleasure"

Commissioners in unison – "Fine"

Chairman Moyer – "Okay you are a party."

Bill Knowlton – "Thank You sir"

Susan Cox – "My name is Susan Cox and I live with my father at 304 Anne Drive which is 9/10 of a mile from this development. We own property that touches Crab Creek Road."

Chairman Moyer – "What's the Board's pleasure?"

Commissioner McGrady – "That's a tougher one."

Chairman Moyer – "Would you explain to us a little more detail at where your property is located if you can please."

Susan Cox – "It is directly across the street from the utility substation on Crab Creek Road...very close to the fire department."

Chairman Moyer – "And you say you'll be 9/10 of a mile from what of the subdivision?"

Susan Cox – "From...um, it's about 8/10 of a mile from Pearl Lane."

Chairman Moyer – “Well, I guess where I would come out...uh, Ms, Cox has a right to speak and give evidence but I think we start to expand the limits of party too far if we go that far.”

Commissioner McGrady – “Mr. Chairman that’s what I was going to say. I certainly want to hear from Ms. Cox but given the rules in cross-examination and all of that the... it wouldn’t add anything to have another party playing that same role, and I’d try to limit parties to adjoining land owners.”

Chairman Moyer – “You do not have party status but you will be able to make your statement at the appropriate time.”

Susan Cox – “Thank You”

Chairman Moyer – “Next”

Richard Freudenberger – “My name is Richard Freudenberger...I live at 255 Warren Lane which is just off Evans Road which is directly across the entrance...very close to Pearl Lane. My concern is I have been on a spring uh system for twenty-two (22) years...um, and I am very concerned that the impact of such a large, highly dense development and a private water supply is going to impact my water supply.”

Chairman Moyer – “I assume your property is not adjoining...”

Richard Freudenberger – “It is not adjoining but the ground water doesn’t work as... the same way the roads do.”

Chairman Moyer – “I would put this in the same position as Ms. Cox and you can make your statement and be a witness but my recommendation is not a party. Board’s pleasure - Chuck are you in agreement?”

Commissioner McGrady – “That’s fine”

Chairman Moyer – “Alright – next”

Kenneth Erb – “Good evening, my name is Kenneth Erb...I have eighteen (18) acres of over fourteen hundred feet adjoining this property. Goes all the way from Crab Creek Road...ups the back of their property.”

Chairman Moyer – “Your address”

Kenneth Erb – “709 Crab Creek Road”

Chairman Moyer – “And you do adjoin”

Kenneth Erb – “about 1400 feet”

Chairman Moyer – “alright – the Board alright with the party...you are...is it Erb - is a?”

Kenneth Erb – “Right correct”

Chairman Moyer – “Thank you, anyone else?”

Misty McDowell – “My name is Misty McDowell...I live on Pearl Lane. My address is 131 Pearl Lane. I will be directly across from the secondary entrance to the Glen.”

Chairman Moyer – “Alright...you are not adjoining though?”

Misty McDowell – “I adjoin Pearl Lane and Crab Creek.”

Chairman Moyer – “Okay – but I think under what we’re doing we’ll make you a witness...you can make your statement but you will not be a party.”

Voices from audience – “she does...she is...”

Commissioner McGrady – “Mr. Chairman um, as I understood this one is it’s immediately across the street from an entrance as opposed to it’s only being divided by road...it’s not like it’s some distance from um the property line...this is right across the road...wouldn’t that be adjoining?”

Chairman Moyer – “Alright”

Commissioner McGrady – “My understanding she will be a witness...she will be a party?”

Chairman Moyer – “May I have the name again Terry”

Deputy Clerk Terry Wilson – “I’m sorry”

Attorney Russ Burrell – “Misty McDowell”

Chairman Moyer – “Next...once we stop identifying parties, no one can be added as a party later to the proceeding...again you will all have a chance to make your statements but not to be identified as a party. So, is there anyone else that would like to be identified as a party at this time? Okay”

Breeze Kinnett – “My name is Breeze Kennett...I don’t live anywhere near close enough for you to consider me a party. I live right next to Holmes State Forest down at the other end of the road. And uh, I think it’s pretty shameful how close to this someone has to be in order to speak and be counted a party because this is going to affect the ecological situation, traffic situation, the water table for everyone along the entire Crab Creek and I don’t have anything else to say...thank you.”

Chairman Moyer – “Well, just so we’re clear once again...everyone will have a chance to speak...the difference between the being a party, the law, and being able to speak is whether you have established interest in the defined. So you will be given your chance to make your statement at the appropriate time. I now ask that uh, all the people who’ve been identified as parties...um want to speak, petitioners got to come down and be sworn in so...Terry you’re going to be busy for a while.”

Attorney Russ Burrell – “Anyone who’s going to testify needs to come down here.”

Chairman Moyer – “Anyone that wants to testify or make a statement has to be sworn in under oath... so it’s going to take a while but we will...”

Attorney Russ Burrell – “They can just stand up where they are and raise their right-hand.”

Chairman Moyer – “Are you going to do it that way?”

Attorney Russ Burrell – “I think rather than do a hundred different times”

Attorney William Alexander – “Mr. Chairman why don't you just do a bulk swearing of them all.”

Attorney Russ Burrell – “That's what we are going to do.”

Commissioner McGrady – “That's what we are going to do.”

Chairman Moyer – “Alright, now that we're clear, anybody that's going to be a party, wants to be a witness and make a statement, we're going... please stand...we're going to ask you to raise your hand...you'll be sworn in by the Clerk...Terry go ahead.”

Deputy Clerk Terry Wilson – “Please raise your right-hand if you want to speak...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”

Deputy Clerk Terry Wilson – “Thank you”

Chairman Moyer – “How are you going to get all the addresses?”

Attorney Russ Burrell – “We'll get them when they come up to testify.”

Chairman Moyer – “I've been reminded by the people here that under...because of the fire rules we cannot block the doors. So, people standing in the back can stand against the walls or etc. but please do not block the doors. So, if there is an issue people can get out.”

Commissioner Williams – “Mr. Chairman I noticed a few seats down here to the right...and probably some over there as well if others would like to have a seat rather than stand.”

Planning Director Anthony Starr – “There are a number in the center also...section here close to the front”

Chairman Moyer – “Alright...we'll now have the staff overview of the evidence.”

Attorney William Alexander – “Mr. Moyer, um before you get into that we just a couple of real preliminary things for your record. Um, and to preserve the record – The petitioner would like to uh file with you, and we've already given Russell a copy of this and we would file with the clerk, a objection to the procedure as adopted by the Board for purposes of this proceeding. Uh, we object to it on several basis which are outlined in a written motion and I would like to hand that up to whoever...and I'll bring that up to her in a second. The second thing is um we would like to enter an objection to the rendering in this proceeding of opinion testimony that is not supported by a uh confident material relevant um...factual testimony. The...um, we would like the Board...we understand that you've already pretty much made your decision, you're going to receive the opinions of these folks...but we would like to have you note a continuing objection on part of the petitioner to that for purposes of our record for this and any

future proceedings that might be required. I have that also in writing. And then one other thing just relevant to your procedure...um, when what you've handed out tonight and what you've announced you've stated that the petitioners gonna be limited to an aggregate of twenty (20) minutes in presentation. I'm gonna call your attention to your own adopted uh procedure which, assuming the copy we have of it is accurate, now there's not limitations stated therein to the ability of the petitioner to present their case in chief. Uh, we, there is a limitation of three minutes on non-party witnesses, uh stated in your procedure. We certainly have tried to pare to down and will try to pare it down and go forward but we don't believe that it's possible in twenty (20) minutes to present our case in chief. We have eight (8) witnesses, multiple documentary exhibits, and we believe that for the due process to be served in this type of proceeding that petitioners got to be afforded more time than that."

Chairman Moyer – "I'll give you the three (3) minutes for each of your witnesses in addition to the time that you have."

Attorney William Alexander – "Um, Twenty (20) minutes in addition to....and three (3) minutes for each witness in addition to that...we'll try our very best Mr. Moyer."

Chairman Moyer – "I also want to mention, before staff gets started, and Mr. Alexander you may want to make note of this, um the Commissioners have been receiving mail, letters from various people on this. It is very hard to know what's in a envelope until you open it...sometimes you see these...there has been things in the newspaper...sometimes you open the newspaper...technically the decision we make tonight... is being based on the evidence we received here. The way I'm proposing to the Board that we handle this is that all the information that we have received has been made available publicly...we'll make it part of the record for all the parties so that anything we have, and I think I've gotten the same as everybody else...seen in the newspaper...will be part of the official record. Any of the Board"

Attorney Boyd Massagee – "Chairman, may I inquire that I assume from your ruling, as far as, the time for the petitioners the applicants will be the same for the other parties. Is that correct?"

Chairman Moyer – "No, they will have ten (10) minutes...but I will give you...if you have witnesses three (3) minutes for each of the witnesses."

Attorney Boyd Massagee – "In addition to our ten (10) minutes"

Chairman Moyer – "Yes"

Attorney Boyd Massagee – "Thank you sir"

Planner Matt Cable – "Good evening, staff would like to begin by entering the following exhibits which you have already received. Exhibit A, which refers to the Board Action form and its attachments, Exhibit B, which is a copy of the power-point presentation we will be giving tonight, Exhibit C, which includes the vested rights application materials, Exhibits D, E and F, these are staff memo's which contain the recommendations regarding this development, and Exhibit G, which includes comments from the Emergency Medical Services. Due to the number of exhibits and attachments staff has included the bulk of the reference materials in the power-point presentation for you tonight. Mr. Jerry Grant, CEO of Beverly-Grant along with Mr. Jimmy Edwards of Edwards and Associates, architect for the applicant, submitted an application for development vested rights under Chapter 189 of the Henderson County Code. Notices of the public hearing on vested rights VR-2007-01 were published in the Times-News on March 7, 10, 14 and 17. Signs were posted at the subject property and notices of the public hearing via



first class mail were prepared and sent to the applicant and adjacent property owners on March 7, 2007. On May 1, 2007, reminders notices of the continuance of the hearing were sent via first class mail again to the applicant and adjacent property owners. The Continuing Care Retirement Community of the Glens and Highlands at Flat Rock is proposed to be located on approximately 132 acres of land located on Crab Creek Road. The CCRC appears to have approximately 400 feet of frontage on Crab Creek Road. The CCRC is proposed to be located in the open-use zoning district. The OU district does not propose a maximum density or minimum lot size. The applicant is proposing 318 dwelling units and an additional 80 beds in the health center and a number of additional institutional, commercial and recreational uses. The CCRC, for purposes of a brief overview from staff's prospective, can be divided into three areas which are shown now on the screen. The Highlands portion of the development which is along the southern actual portion of the development...the map they provided is actually oriented the other way. Um, the Highlands portion is along the south...the Glen parts A and part B...they're divided based on the types of uses that are included in that portion of the Glen. The Highlands includes 45 single family dwellings that are to be on individual lots. The Glen part A includes 75 single family dwellings and 16 townhome units. The dwellings in this section are to be associated with property that is to be retained by the Glen...that is they want be subdivided into lots from our understanding. Also included in this section is the summit house, which is a common area for resident use and a package plant. The Glen part B contains many of the most dense residential uses and institutional and commercial uses. The main CCR building, that includes apartment A, will contain a number of uses including dining spaces, auditorium, library, mail center, kitchen and administrative offices, etc. Um, part B also includes apartment B which will contain 46 units of independent living. Part B includes apartment C which contains an additional 64 units of independent living in a separate building. There's also a health center to contain again 80 beds of full support service and that's the primary uses within the development. As the Board is aware, granting of vested rights allows the right to run with the property not with the applicant and is granted for a maximum of up to five (5) years. That is the time-frame the applicant has requested. The Board's approval is based on the need to protect the public health, safety and welfare. The Board may, if it chooses to grant the vested right, require terms and conditions to ensure public health, safety and welfare. Should the Board disapprove the site specific development plan and choose not to grant the development vested right, nothing would prevent the applicant from seeking a common law vested right for the development. Staff will now reserve its comments and recommendations until the after the applicant has had its opportunity to address you.

Chairman Moyer – “Okay we'll move to the presentation of evidence by the petitioner...Bill”

Attorney William Alexander – “First I'd like to clarify on the record that the applicant is actually a limited liability company called Parkridge MOB. Mr. Grant and Mr. Edwards were the agents for that entity and the application. The - I'd also like to uh, or I will in a brief opening here address some of the issues staff presented even in their outline of the issues. Mr. Chairman and Commissioners, as you know by now I represent the applicant in this proceeding Parkridge MOB, LLC which seeks approval from you of a site specific development plan for a project known as The Glen. It also includes a major subdivision previously approved by the Henderson County Planning Board, known as the Highland. The Glen is a Continuing Care Retirement Community as defined by North Carolina law planned for a tract of 149.15 acres in the southern portion of Henderson County off of Kanuga Road or Crab Creek Road. I would like to outline for you the case which we will present for approval, the law in which applies to this proceeding and make a few brief opening remarks. First it should be acknowledged by all that this is not a legislative proceeding in any respect. This is a proceeding where by you are charged with state by, by state law with receiving our application, considering the facts to determine whether or not our proposed plan is consistent with current zoning regulations, determining whether any aspect of our plan must be conditioned in approval to protect the health, safety and well being of the public and to act as the body

which finalizes by approval our right to receive a vested right under existing law to develop this project. You are placed in this position by State Statute to substitute for the role of the superior court in performing these functions. If Henderson County had not elected by ordinance to have its Commissioners fill these needs we would have had the right to seek approval from the superior court. Our record for this proceeding and for such other proceedings is maybe necessary will consist of the following: The application itself together with the supplement to that application which we have filed prior to today. As your staff has identified various issues and their recommendations and reports we have tried to address those issues in supplements to the application and we ask that those be part be part of our record in what we're seeking. The testimony to be received by you tonight both from lay witnesses and expert witness presented by the applicant in support of the application. Documentary evidences may be produced for you tonight and supported by testimony. Written statements of fact, as well as, written summaries of law which are submitted for the purpose of streamlining this proceeding and making clear to you that the applicant has a legal right to release sought that being approval of the site specific development plan. I suspect that you will elect to receive tonight other testimony from individuals who are in support of our project, as well as, individuals in opposition to our project. Though we respect the need of the individual members of the public to voice their opinions, for the record we object to any testimony that is not relevant, confident and material to the limited scope of the issues presented. We contend to you and encourage you to remember in your deliberations that the following are the only issues presented by this proceeding. First issue - Would the applicant have the right to apply this particular property to the proposed use if that use was to start today? Staff has pretty much said to you that that is the case. Second issue - Does the application of the applicant comply with the requirements of North Carolina General Statute 153A-344.1? We contend that it does in all respects. Third issue - What specific aspects of the proposed plan, if any, create a real and existing danger of the public health, safety and welfare? Fourth issue - Based upon confident material and substantial evidence, what if any conditions need to be applied to the plan to protect the public health, safety and welfare? The final and fifth issue - Upon approval should the period of vested right be for a period of two years or five years taking into account the scope and nature of the proposed plan? We respectfully state to you, based on our knowledge of the facts, that the answer to the first and second issues will be an unqualified yes. We further state to you that the answer to the third and fourth issues is an unqualified no or none. Upon those findings, in our opinion, the Board not only should approve the proposed plan but it must approve the plan. To decide otherwise would constitute the county, seeking to impose its legislative judgment, upon a decision already made by our state legislature. Before presenting our case I would like to remind you of some other uses this property could be put to today without approval of a site plan by you and ask that you keep these in mind in considering your application in evidence. We believe that this prospective affects issue of public welfare. Some of these other potential uses are as follows: Any owner of the property could desecrate the same by cutting every last living tree off of the site. We do not propose to do that. Any owner could pull the building permits for and start construction of a thousand residential housing units. We do not propose to do that. Any owner could start construction upon and pull permits for virtually any type of industry, whether that industry employed twenty people or two thousand people. Though we do propose to employ people, we don't employ through an industry. Any owner could start any type of farm whatsoever uh, including some of the issues we've seen recently on Crab Creek Road with farms causing environmental problems. Any owner could submit and have approved a major subdivision of individual lots and convey those lots to individuals with no limitations on number of occupants. None of these potential uses require your approval. However, my clients have sought and do seek your approval of a site plan for a use that is quieter, less visible, less taxing on public resources and which lets its citizens face their later years with dignity and self respect. We choose to proceed with this development in an ordering fashion by utilizing our state established vested rights therein. We are trying to and will always act in a responsible fashion toward completing this project, meeting our resident's needs, while at the same time being a steward of the land and sensitive to the needs of its citizens. With

your permission, and to protect our record, I will introduce briefly each of our witnesses in chief. Each of those witnesses has been prepared to present their principle testimony in narrative form. I would then ask the right to direct examine those witnesses if I think they've left out anything essential to our case in chief. The witness will then be available for your questions, as well as, cross examination."

Chairman Moyer – "Mr. Alexander, before you proceed would you clarify for me your statement about the applicant. Are you amending your applicant to change the party? Is that..."

Attorney William Alexander – "I think it's always been acknowledged and the communication we've had, I think with the Planning Office, that the applicant was Parkridge MOB, LLC. The applicant was submitted by Mr. Grant and Mr. Edwards on behalf of the owner of the land. The actual owner of the land, this is what the vested rights proceeding affects, is Parkridge MOB, LLC."

Chairman Moyer – "Staff, are we in agreement on that?"

Planning Director Anthony Starr – "Mr. Chairman, the actual application submitted to the planning staff was in the name of Jerry Grant at 64 Peachtree Road and it was certified by Mr. Grant as the applicant and however, that should be noted that the address on the application is the same address as Parkridge MOB...it's just in the name of Jerry Grant as opposed to Parkridge, MOB."

Attorney William Alexander – "Basically everything we've submitted to the Planning Department Mr. Moyer has been on behalf of and in the name of Parkridge MOB, LLC and to the degree that...no...we...they didn't have council at that time...but to the degree that there is any variance we would move to amend the application to reflect the property owner name. The proceeding relates to this specific tract of property...so"

Chairman Moyer – "Staff, any issues?"

Anthony Starr – "No sir, staff has no objection."

Chairman Moyer – "Alright...Okay Mr. Alexander we'll treat it that way."

Attorney William Alexander – "Thank you Mr. Moyer. Um, we would also, even though your procedure doesn't call for it, we would reserve the right to present evidence or testimony to rebut alleged facts or evidence presented by any other party. Um, we would also like to reserve our closing arguments for the end of all the presentations. Having stated all of this, I'd call as our first witness, the Jerry Grant, CEO of Beverly Grant, Incorporated, developer, managing member of the applicant, Parkridge MOB, LLC and as a construction expert. Mr. Grant"

Jerry Grant – "My name is Jerry Grant and I the CEO of Beverly Grant, Incorporated and a member manager of Parkridge MOB, LLC. I wish to thank the Commissioners for the opportunity of appearing here this evening to tell you about our project...the Glen and the Highlands. What is the Glen? The Glen is a continuing care retirement community located in the Crab Creek valley. It's a very special residential community offering life care to its residents while allowing them to retain the ownership of the funds used to purchase their dwelling units. The Highlands is a conventional residential community whose residents will benefit from close proximity to the Glen by having the ability to use some of the Glen services and facilities, as well as, a priority position on the waiting list. How did it start? I was contacted by David Ammons, who had been contacted by a group of some 180 Henderson County residents, who desired a CCRC located nearby their existing homes. David contacted me because of our reputation for

quality developments and our local status. David will tell you more about this in his presentation. We purchased the property, which had been acquired by Mr. Jim Frady from Fritz and Linda McPhail in 1997. We contracted for the property in 2005 and closed on the acquisition in October of 2006. We'd started drilling, testing, planning, meeting with adjacent land owners, architects and engineers in the Henderson County Planning Department in 2005 in anticipation of closing and have accelerated our planning process since October including opening an office here in Hendersonville. Is it a commercial project? No...as I've said it's residential. We're building residences with ancillary services. These services are designed to meet the needs of the residents without the need for travel off site. Is it needed? Yes...this project is clearly needed given that the major CCRC's in the area have waiting lists that are up to ten years long. Deerfield has a list of around seven hundred, even with a planned expansion next year. Givens has just completed a major expansion and now claims four hundred and twenty on their waiting list and Carolina Village has more than either one of these. Will it generate taxes? Yes...it's not a 501C3 qualified tax exempt organization and it will not and cannot be, therefore its lands, buildings, equipment, water and water systems etc. are subject to tax by Henderson County. In fact we are proud that this project will generate some eight hundred thousand dollars in additional taxes and over a hundred thousand dollars in fire supplement tax to the Valley Hill area. Despite this high tax base, operation of this community will cause very little expense to the County in services cost, as the community is basically self-contained. Is the Glen an allowed use? Yes...under your current zoning, open use, we could build the Glens several times over on our property. We relied on that zoning classification in starting to develop this project. In fact, we consciously sought out a tract that had open use classification. Even under the proposed R2 and R3 zoning, that you're considering now, we could still build the facility. Although it would require us to increase the footprint which would cover more of the land and eliminate some of the green space. Who are the owners...my brother Rick Grant, Henry Watts, the Vice-President of Beverly Grant and myself and yes we are a for-profit developer. We just completed the senior health center in Laurel Park, Executive Park. In Asheville, Devinshire Homes for living in South Buncombe...Nettlewood Professional Park in South Buncombe...Parkridge MOB in Mountain Home...as well as, Crowfields a few years ago. We're good neighbors...ask the neighbors of our projects. We're responsible corporate citizens. We contribute to the community causes and non-profits...both time and money. We're not out of state developers as has been maliciously reported by some. We're tax payers in Henderson County. We're members of the Chamber of Commerce. We were one of the founding members of your original Committee of One Hundred. My brother will address our family ties to Henderson County...but we've been here since before there was a county. Mr. McPhail brags in our newspaper that his family has been here for fifty years...while ours has been here for over five times that long and I didn't personally get here in 1997 or 2001 as I've heard some people state in some of your previous meetings. We lived here when I was born in 1942 and only later moved over county line so my father could be closer to his work, although I now live in Buncombe members of our family have lived here continuously. In fact, a large number of the people here tonight are probably related to me. Why Henderson County...first, I'm a native and I plan to live in the Glen. Second, we were asked by a Henderson County group and realized the market was here. Third, it's a desirable place for retirees to live because of the beauty in community. Fourth, because of the way Henderson County is postured and advertised itself over the years as a Mecca for retirees we believed we would be welcome. But foremost was the fact that the property was zoned open use and we wouldn't have to have it rezoned. I think you can understand that we didn't want to have to go through meetings such as the one we're going through tonight. Why Crab Creek? A vast majority of the hundred and eighty persons who asked us to consider building a CCRC were located in and near Crab Creek. Our prospects wanted close proximity to their existing homes and we identified six sites in the Crab Creek area with the McPhail-Frady site being by far the most desirable to me. It was away from congestion. It allowed us to nestle our larger buildings down in a glen so as not to disturb the views. It presented views looking up the mountains without having to be located on steep terrain which would be detrimental to our aging

resident's ability to enjoy outdoor activity. It was within a few hundred yards of a well equipped and award winning fire department and we could design the site to minimize any disturbance to our neighbors since they were all situated on larger tracts themselves. Even our closest neighbors, the McPhails and the Barkers, will not be able to see anything except a small number of single family homes when the leaves are on the trees. Most importantly we required a site with open zoning, And last....what are we asking for? I, together with Rick and Henry, determined to utilize the existing entity of Parkridge MOD, LLC to acquire the McPhail-Frady property. Principally to allow the property to be purchased pursuant to a section 1031 exchange transaction for tax reasons. David Ammons, on behalf of Parkridge MOB, contracted for the property in 2005 and ultimately assigned the contract to Parkridge MOB. On the second day of October, 2006, Parkridge MOB purchased the property from the Frady family limited partnership for the sum of two million, one hundred thousand dollars. In doing so, we also invested twelve thousand five hundred and twenty seven dollars in direct expense cost related to the purchase. Purchase of this land by us was only for use as a continuing care retirement community and for no other purpose. The Highlands, a major subdivision upon the property is considered an integral part of the continuity of care purpose for the continuing care retirement community. In purchasing the property we relied upon the current zoning designation of open use as the same as set out in the ordinances of Henderson County. At the time we submitted the Highlands for approval under the Henderson County subdivision ordinance we made full disclosure to the Planning Office of the intent to develop the CCRC. Parkridge MOB individually or through its contractual associate Glen Grant, LLC has already expended substantial monetary sums in the planning and development of the CCRC project to be placed upon this property. The activities incurring those expenses which have been instituted on completed to date, include but are not limited to: Obtaining surveys and topographical studies of the property...preparing architectural plans for the various structures to be placed on the property...preparing a comprehensive landscaping engineering design for the total project...obtaining engineering analysis of the utilities needed for the project along with feasibility studies for the same...planning for and actually installing a well on the property for water service...planning for waste water treatment...engineering and waste water treatment facility and submitting to the North Carolina Department of Water Quality an application for approval of a waste water treatment facility...planning, surveying and engineering relative to preparation and submission of a major subdivision application to the Henderson County Planning Board in which the subdivision received master plan approval on the 15<sup>th</sup> day of February this year...planning, preparation and submission of an application to the North Carolina Department of Insurance for the approval of the CCRC development project including approval to solicit and obtain deposits from potential residents in the project which approval was obtained...preparation and dissemination of marketing materials to the public - which marketing is being conducted on behalf of us by Retirement Living Associates at the expense of us and our contractual associate, Glen Grant, LLC...employment of individuals for development in marketing staff by Parkridge MOB and Glen Grant through its associate Retirement Living Associates...maintenance and monitoring of contractual deposits received from potential residents numbering around two hundred and forty at this point...participating um...which is being done by um Retirement Living Associates and James A. Lucas on behalf of us...conducting financial feasibility studies...maintaining on going accounting records...monitor the financial health of the project...contracting for the purchase of additional lands to serve as an alternative entrance to the project which has been completed...rental and maintenance of an off site development and marketing office. The conducts of these development activities have all involved the expenditure of monetary funds by us either directly or through Glen Grant, LLC. Through the 1<sup>st</sup> day of March, 2007, we have spent an additional two hundred and sixty seven thousand two hundred and four dollars in monies directly related these activities. This expenditure is in addition to the forty eight thousand six hundred and eighty four dollars and thirty three cents spent to service the development loan on the property. The expenses were disbursed through Retirement Living Associates, Beverly Grant General Contractors or directly by Parkridge MOB and Glen Grant. All of these funds have been expended for the planning and development of the project

and in reliance upon the current zoning classification of the property. In addition to the expenses already disbursed, we've incurred a liability to Retirement Living Associates for its services in develop...."

Chairman Moyer – "How much more do you have Mr. Grant?"

Jerry Grant – "I'm sorry"

Chairman Moyer – "How much more do you have...I'm trying to let you wrap up"

Jerry Grant – "I have a page...in addition to the expenses actually disbursed we've incurred liability to Retirement Living Associates for its services in development and marketing of the project in the approximate sum of four hundred and fifty thousand dollars which will be due and payable when we reach phase II of the marketing plan. That phase will hopefully be reached within a hundred and twenty days."

Chairman Moyer – "I'll monitor the time fairly to everybody...proceed Mr. Grant"

Jerry Grant – "Thank you. In addition we have contractually committed to expend in excess of three hundred thousand dollars to obtain additional property to utilize and developing an alternative access in utility easement. The deposits received by RLA on our behalf from potential residents are held in escrow by RLA pursuant to an escrow agreement required by the North Carolina Department of Insurance Chapter 58 of the North Carolina General Statutes regulates the solicitation of contracts for continuing care retirement communities...the operation of the same and the use of deposits received from these solicitations...we are required to comply with all these...all aspects of these laws. Based upon all studies conducted upon marketing results to date and viewing the construction details from the perspective of Beverly Grant as general contractor, I believe that this project can be substantially completed within five years of the date of the moralization of our vested rights. I request on behalf of Parkridge MOB that you the Henderson County Board of Commissioners declare that the vested rights of Parkridge MOB continue for a period of...."

"Whistling from the audience"

Chairman Moyer – "Please lets give everybody...please go ahead Mr. Grant...lets not get involved."

Jerry Grant – "Based upon my knowledge of the project I state to you that this project complies in all respects with both state and local law and that the uses and densities that which the property will be placed are allowed by right under the current open use zoning classification of the property...that we've complied in all respects with the requirements of Henderson County Code of Ordinances Chapter 189.2 and that we are entitled to a declaration of vested rights in this site specific development plan pursuant to North Carolina General Statute 153A.344.1 and thank you again for your kind attention."

Chairman Moyer – "I have a question for you or you can be assisted by Mr. Alexander if you wish. You indicated that this will be a tax reducing property for the county?"

Jerry Grant – "Yes sir"

Chairman Moyer – "Are you willing to agree that you would not or the company...seek tax exempt status or use financing techniques which would cause this to be tax exempt property?"

Jerry Grant – “Yes sir...we don’t think it can ever be tax exempt.”

Chairman Moyer – “Well then, it’s an easy answer...but uh”

Attorney William Alexander – “Mr. Moyer, the applicant’s also willing to seek or to waive any right to ask the county for economic incentive based on the employment which we’ve calculated at a four hundred thousand dollar cost savings to the county under your current economic incentive guidelines.”

Chairman Moyer – “I’m also concerned about the financing techniques that can used to obtain tax exempt status...particularly for this type of property.”

Jerry Grant – “No this will be conventional”

Chairman Moyer – “I’m gonna...help Bill...I’m gonna hold off on any cross examination by the parties until you’ve finished your witnesses...then we’ll go back over all of them together...so if you can ask them to try to make up the time that I gave Mr. Grant I’d appreciate it.”

Attorney William Alexander – “Alright...we’re going to ask um Mr. Moyer but... not... not knowing before we walked in here tonight that there was going to be that severe a time limitation may be difficult and our...several of our witnesses will take less than your time and several will take more.”

Chairman Moyer – “Alright”

Attorney William Alexander – “I would ask the audience to show courtesy to all speakers just as we intend to show courtesy to the speakers in opposition to us. Um, if...we call Mr. David Ammons...Mr. Ammons is the president and CEO of Retirement Living Associates who serves as the managing entity of this project.”

David Ammons – “Good evening...as he indicated my name is David Ammons and uh...I am...I appreciate the opportunity to be here tonight and to tell you about a project that I’ve been working on for a long time. I’m the president of Retirement Living Associates and work directly for and with Jerry and Rick Grant in developing the Glen and Highlands. I live in Raleigh and work all across North Carolina in the retirement industry. We have projects in Eastern North Carolina...we have projects in piedmont section of North Carolina and here in Western North Carolina...as I own and manage a...um...assisted living facility in Mars Hills called Mars Hill Retirement Community. My family is from Mars Hills and we all enjoy coming back up here as much as we can which is why we’re back up here working now. Um, I have worked in the retirement industry since 1985 in various capacities and involvements including my current role as CEO of Springmore Lifecare Retirement Community...a continuing care retirement community in Raleigh that I have been involved with since it began as well...numerous roles statewide in different industry associations. But the Glen I work in addition to my development role in overseeing marketing and I plan to oversee the management of the Glen once it is developed. I have two main topics to discuss tonight. The first covers how I came to be here today and why. The second covers more insight into what is a CCRC and specifically what makes the Glen a unique CCRC. In 1999 I was working on the development of an assisted living facility in Mars Hill in Madison County as was reported earlier...uh, with my father Jud Ammons and during my work there I was contacted by a group that you’ll hear from some tonight...um, of senior citizens hear in Count...in Henderson County. The group was led by Bob Demartini and Ken Jones, both of whom are hear tonight, and I think you’ll hear from them. From 1999 through 2004 we had numerous meetings on the topic and worked hard to try to figure out what we should do and what was the right thing to do. We were looking for the right team...the right

site...and we were fine tuning what type of CCRC we wanted to build. I'm pretty familiar with the other CCRC's in the area including Carolina Village as I have been what I consider to be a friend of Doley Bell for many years...who is the Executive Director at Carolina Village. In 19...I mean in 2004 I began meeting with Jerry and Rick Grant of Beverly Grant. Mr. Jimmy Edwards...one of the Glens architects and I while working with the Grants have identified and evaluated over thirty five possible sites. We weighed the pros and cons of each one without exception for each of us when we found our current site on Crab Creek Road...we knew had...we had found the right site. Our site combines important benefits such as proximity to Flat Rock, proximity to Hendersonville which provides the access we favor to medical care, cultural opportunities and shopping destination and as is in open use we were comfortable we could precede. We placed the site under contract in September of 2005...closed on the majority of the land in 2006. As is required in the development of a CCRC we have been working with the North Carolina Department of Insurance. I will tell you a little more about that in just a minute. After receiving our first step of approvals from the Department of Insurance in November of 2005, we prepared our marketing materials and sales office which then opened in July, 2006. We have received a very strong response with over 250 applications to date. The North Carolina Department of Insurance is heavily, heavily involved in this industry. I want to explain a little bit the process that a CCRC must follow in North Carolina to protect um, the citizens of North Carolina. This process is mandated in North Carolina General Statute 5864. It is this licensing and its impact on the development of a CCRC that makes a CCRC unlikely development of a Non-CCRC real estate development. I also want to share with you and submit into our record the North Carolina Department of Insurance reference guide. It lists all licensed CCRC's in North Carolina...believe...you have that or will have that in just a second. Um, also I have an exhibit to be entered into the record um, that is a process as outlined by the Department of Insurance that is very long and I want to try to summarize briefly. There are four major steps. The first step is notification stage. The second is startup certificate. The third is preliminary certificate...and the fourth is a permanent license. Describing these points will illustrate why it is essential that we be granted the full five years to complete the project. The Glen has made application and received approval for step one. This step is whereby the community submits a package to the Department of Insurance notifying the department of who is behind the development, what type of CCRC is being developed, where the CCRC is being developed, and examples of the marketing materials that will be used in communicating with the public. This first step allows the Glen to market itself and execute non-binding resident agreements for folks to join the priority reservation list by making a fully refundable one thousand dollar deposit. This is the step we are operating under today and have for the last year and a half. Many of these applicants are in our white hat and shirts tonight. Um, the second step is made following several key milestones. One of these is after a significant number of deposits have been collected a second milestone is the successful involvement of a third party professional to provide a market assessment and a financial compilation. Submitting for this second step requires over twenty exhibits and is the most voluminous of the steps. It is very important to note that in this step the CCRC project begins to have a third party CCRC industry professionals involved. One of these will be a firm such as Dickson Hughes or Larson Allen who provide financial compilations. These compilations will factor in the confidence of developers but will require that assumptions made with respect to priority list marketing presales and other development steps follow industry norms in the time required. For example, the likely assumption is that it will require eighteen months to reach the required fifty percent presales figure during step two that is required in the startup certificate stage. Adding up these timelines is very common for the development of...to require three to five years to be developed and constructed. We believe our message, product and market will expedite some of these steps but we will be required to project more common industry norm timelines. The third step is preliminary certificate phase. This is the step that allows construction to begin but it cannot be started until fifty percent of the total number of independent living units has been reserved with at least a ten percent deposit. Construction of a project like the Glen is likely to be eighteen to twenty four months. The fourth step and final step is permanent licensing is sought after the construction is completed and



we're preparing to open. My second topic tonight is...what is a CCRC and what makes the Glen a unique CCRC? The retirement industry is complex, I will not try to explain all of that tonight, but I wanted to point out a few points. The retiree today has numerous choices to choose from in looking in retirement living options. Looking at the industry from the point of view of services and level of care delivered the industry can be broken into four main categories. First, on the most independent living side of the spectrum is active adult...A person is generally purchasing their accommodations in an active adult community and are buying a place to live with convenience type services. An example would be Sun City in Arizona. There...There a lot more in North Carolina also but that's one well known. A second of inde...retirement choice is independent living. A person here may be purchasing or renting an accommodation and the unit may be free standing but is generally in a multi-story setting. A senior apartment building is a good example and many exist across our country and state. Third is assisted living. A person here is purchasing service...services for a daily rate. These services include assistance with the basic acts of daily living, such as bathing, dressing and meal preparation, but the resident is not fully dependent on the care provided by the staff. Fourth and final level is skilled nursing care. A person here is purchasing services and care for a daily rate. Services include full twenty four hour – seven days a week nursing care. A person here is typically dependent on the staffs care for supporting life and their acts of daily living. CCRC as you've heard me say over and over now is an acronym for continuing care retirement community. The CCRC combines two or usually three of these levels that I described into a single community. The premise is that a person or persons moved to the community when they are fully independent and as their needs change the community has available, on site, the increasing levels of care to provide..."

Chairman Moyer – “Mr. Ammons...let me interrupt you for a...Mr. Alexander I think we're getting off our field of what we need as far as testimony in this matter.”

Attorney William Alexander – “Mr. Moyer the point that Mr. Ammons testimony goes to is that a CCRC being highly regulated by the North Carolina um um Insurance Commissioner um has to have more extensive time for development that other entities. We're...”

Chairman Moyer – “I'll let him finish that point but the education on all the different styles of living however, I don't think is relevant.”

Attorney William Alexander – “May I speak to him just one moment Mr, Moyer?”

David Ammons – “Okay thank you...I apologize, I worked hard to prepare...um...didn't...didn't know”

Chairman Moyer – “I know”

David Ammons – “it was a problem...um, I want to skip through...I have three pages that I'm gonna hit one paragraph on each page and try to wrap up for you. Um, first I want to talk one second about EMS and 911. Um, having an on-site skilled nursing facility at the Glen allows us to respond to trouble alarms. Residents will have pull cords, they'll have pendants, they'll have that type of thing, and we can send a nurse and respond to trouble. Obviously if a person is in major trouble and they dial 911 that's handled directly as EMS and we would not intercept that...but that's significant. Also I wanted to point out that I have recently spoken to Lieutenant Peppers at the Henderson County Sheriff's Department about their ability to respond and serve the Glen. His is confident that it does not put an additional burden on the Sheriff's Department as they are already working in that area as...including Camp Bluestar. Skipping along I want to address the point you brought up. Um, in North Carolina, to be property tax exempt as a CCRC, um, you have to be 501C3...you have to go through the Medical Care Commission for bonds and

you have to pass a charitability test. We are not envisioning any of those and so as Mr. Grant responded that's handled. My last page I will skip except the summary. Um, I live two miles from a CCRC, we have six hundred residents...I've worked at it for twenty two years and it is a wonderful thing. The residents, the interaction, the multi-generational, the ability for kids growing up in the area to work there...um, just all the interaction of seniors...I won't bore you with that now but...it's um, it's it is a wonderful thing and it's something that I have admired and is why I choose this as my profession. Thank you."

Chairman Moyer – "Thank you."

Attorney William Alexander – "Mr. Moyer we would call uh Mr, Jimmy Edwards who is the uh planning architect of the uh project."

Jimmy Edwards – "Mr. Chairman-Commissioners, good evening. I'm Jimmy Edwards. I'm a registered North Carolina Architect and a member of the larger design and planning team working on the Glen and the Highlands. Bill Lapsley of William G. Lapsley and Associates and I will have the major responsibility for the overall planning of the Glen and the Highlands. As an architect I am the senior firm member and principal at Edwards Associates Architects in Raleigh. Our firm specializes in master planning, medical facilities...senior care communities. Our firm has participated in or is in currently involved in the design and planning nine senior care communities. Our work in life care field has been published and has received numerous awards. As a planner I first worked for the Atlanta, Fulton County Planning Department. I've also worked with Willard C. Byrd Landscape Architect and City Planner. There I was a member of the design team that designed Peachtree City Georgia...that's a complete new town about 50 miles south of Atlanta with a population now of about thirty five thousand people. As an environmentalist I have worked with Wake Environment and Sierra Club Greenways Committees in the city of Raleigh and Park Planning and an active advocate founding member and have served eight years as president and vice-president of the Triangle Greenways Commission appointed by the city of Raleigh. I wish to thank you for this opportunity to speak tonight about the Glen but I must warn you about two things. As an architect we talk or think unless we have some graphic images and I'll probably use my hands so I'll just say sorry and move on. David Ammons just told you that a CCRC is a continuing care retirement community. Continuing care simply is at various levels of supported environment..."

Chairman Moyer – "Thank you Mr. Alexander"

Jimmy Edwards – "Simply its various levels of supported environment from complete independence to full health services. The key word however is community. It has many definitions...it's a social group of any size who's members reside in a specific location and often have a common social or cultural heritage. It's a community where independence and at the same time inter-dependence. Something to most of us it's where you live...it's your home, your house, your yard, your back, your village or your town. It's where you feel you have membership or influence or where you count. It's where you share an emotional connection. Other than social and emotional ties we also relate to the physical precedence of our community...places of worship, buildings, courtyards, places to talk, parks, open space, places to play, trees and the general character. We propose to build the Glen a special residential community. This is the community of the Glen...let me walk you around a little bit. Beginning at the community center, Building A, Building A is the center building...it's basically five levels with a footprint of around thirty nine thousand square feet. The lowest level is in the ground and faces downhill towards the lake. On the lowest level is the clinic, the auditorium, a small media theater, the wellness center, the pool, the laundry and covered parking. The main level – level one faces the courtyard and the hillside garden and is served by a vehicle covered drop-off. On level one is the main lobby, the living room, the cart area, the study,

the postal area, the bank, the administration, the sales, the resident store and the terrace room. Level two is primarily the assisted living. Level three is all residential units and Level four is the dining area, kitchen, library and chapel. This is not a large area but it sticks up slightly above the rest of the buildings. Buildings B and C are residential living units with some common area. Buildings A, B and C are connected by a sky-bridge which was done to provide a no step method of connecting from building to building without severe grading. Around the center is the village of seventy five homes and sixteen townhouses and the Healthcare Center. Above the Glen's the summit house and a small 2000 square foot special gathering space with a deck and a fireplace. The lake and the associated ponds add beauty and also act as watershed protection. From the...what I'll go right straight into the where. The Glen is located one thousand feet south of Crab Creek Road just past Pearl Lane. The building...the center building is one thousand eight hundred feet from Crab Creek Road. The tract of land is one hundred forty nine acres...the land slopes upward from Crab Creek and Mud Creek...first at ten percent then twelve then fourteen and then finally behind the Highlands its steeper and that is the area which will be left undeveloped. The entrance into the project is off the existing Coral Lane...there's some special landscaping and signage...this is about four uh fifty feet off of Crab Creek Road itself on Pearl Lane just past the bridge. The elevation of Crab Creek Road in front of the site is two thousand two hundred feet. The elevation of the McPhail's house is two thousand two hundred and forty feet. The center main building is at two thousand three hundred and sixteen feet. The Summit House is at two thousand four hundred and ninety feet. The top of the ridge of the mountain beyond the project is three thousand two hundred feet. Therefore, the main building is eight hundred and eighty four feet below the ridge...almost a thousand feet. We have a minimum of a thirty foot buffer around the entire project additionally by design the main...they circle the main center buildings with homes so that all edges of the project are single family residents homes. Thus the impact of the adjoining neighbors would be by abutting only to a single family residence. We've prepared a couple of profiles to try to show you the conditions that exist there. We have a combination of profile and photographs. The...quickly you'll notice Crab Creek Road itself... and I'll just point to the top of the hill...the top of the mountain you can see the full mountain itself at three thousand two hundred feet. I...now would go to an enlargement where you'll be able to see the site lines clearly. In the far right hand corner is Crab Creek Road...then you'll see the McPhail house...then you'll see our property line which is one thousand feet from the street...then we go to our main grouping of building which is one thousand eight hundred feet from there and you'll notice the redline is clearing all of the buildings. You will see however, up near the top edge of the property some of the single family homes of the Highlands and perhaps of the Glen itself but the main center buildings appear to be totally blocked by existing tree cover and land itself. Going to the next profile we've cut it from a slightly difference area. We did this one near the entrance of Pearl Road to show you that also you can see from the site lines the buildings are nestled in the actual glen itself and the site lines go well over the buildings from that standpoint. To further verify what we are trying to show you we've taken photographs from approximately the same point. The photograph...this is taken near Pearl Lane...you can see Pearl Lane slightly in the distance...you can see the point where our driveway comes off. Uh, well I...thank you...and our buildings would be up into the area... you can see slippery rock from here up above...we're well below that so our buildings are way low...bring the dot down...down... down... down right in that area right there is where our building would be. Going to another photograph directly in front of the site looking back you can see slippery rock again and our building mass are just about the dead middle of the tops of the trees at that particular point. We're 'hind the trees at this point. Due to the slopes and the location of the existing trees some of the trees that block the site lines are on the McPhail property but even if the McPhails cut them we will have remaining trees that will be thick enough to obscure the visibility of our main building. A five story building sounds tall until you realize it is one thousand eight hundred feet away and that a one story building that is three hundred feet from the road...a simple one story building will appear twice as tall as our building. Probably more important than what we are doing and where it is...is how we propose to go about it. We must and will be good stewards of

this land. I started work on this project in 2004 by walking the land and observing and photographing its character...rolling hills, sharp draws, noting soil types, trees, noisy streams and wildlife. I have spent more than five and a half days walking on this land at various seasons observing, studying and listening to the land...trying to learn as much as I could about the land and the natural systems at work here. This was done prior to any design work. Next we prepared a site analysis document graphically overlaying information; aerial photographs, topo, trees, streams, drainage draws, slopes, soils, vista sun pattern, wind patterns, wind direction and lastly the architectural conceptional program which was then reworked numerous times and reconfigured to reflect and support the natural patterns and systems at work. Generally speaking the key to the sustainability for this land is how we address and handle water in relation to a land. Rainwater, storm water, ground water and waste water are the critical areas that we recognize and will proactively address. Sustainable development generally is understood to mean...the development occurs which is sensitive to environment concerns. A good site design incorporates existing land forms, natural drainage draws and a reduction of footprints. Our community building is very compact to reduce the overall circulation to have minimum footprints and...if we built only two story buildings instead of what we are proposing we would disturb and cover up to two and a half times more land. One fourth of our surface parking is under the building and thus does not have a storm water or heat sink profile footprint. Taller compact buildings allow us to leave seventy eight percent of the glen growing trees and grass. Considering the Glen and the Highlands together that number of growing green would be eighty three percent. There's not enough time obviously to do anything else tonight on the green design for the buildings. Again, let me simply say we have committed to being good stewards of this land, of energy and of water. This land is living and we're committed to responsible development. Thank you."

Commissioner Young - "(Unintelligible - something in regards to redundant)"

Attorney William Alexander - "Mr. Young we...I don't think...this mics working. Um, Mr. Young we will...we will attempt to uh not be duplicative, but we have already attempted to have different witness speak within their areas of expertise and we will try to do that. We'd call on Mr. Thomas Hepler. Mr. Hepler is a road engineer that we've retained to conduct an analysis of the property. He has a written report which I'd like to disseminate to you for him to refer to during his testimony."

Thomas Hepler - "Good evening and I will try to be brief...much briefer than the others. I would like to complement the stenographer...she caught that last presentation...that's excellent. Okay, anyway my name is Thomas Helper and I am a traffic engineer, as well as, a site engineer. Um, I work with the...part owner with CH Engineering in Raleigh. I have been retained by the applicant here to do a traffic study of this particular development and in doing this...we did...we did an analysis...did a comparative analysis of this development and first I'd like to speak to you from the standpoint of all the traffic studies I've done. This type of development is a dream type of development from the traffic standpoint. It is the best type of development that you could actually place upon a piece of property that would generate the least amount of traffic other than say a graveyard...say...but uh, but a graveyards going to have a higher peak of traffic at certain times of the day. Anyway, I've done a comparative analysis and I would if everyone has a copy of the traffic study that we did prepare...uh if you'll turn to page two of that study it basically gives you a summary of the trip generations that could be expected for this development as compared to the trips that would be...could be expected from a residential development that could be developed on this site. We did a comparative study there with a say...the existing type of zoning that would be allowed. We could get up to reasonably up to four hundred units of residential development on this site. Uh, the trips that would be generated by residential development would be double that on the average day we traffic. The average day we traffic would be double that of what this site would generate. The actual peak hour traffic which we do...which we use for analysis purposes would almost be one...would be less

than one half of that...would...that would be generated from a residential type development. So that is one of the reasons that this development is a dream come true for traffic engineers. Um, the other thing that I would like to mention is the...much of the traffic that you'll see here generate...that's listed in this table...much of the traffic would be internally generated or internally shared uh within the uh development since it is a self-sufficient type of development it has its own services within the development so you're gonna have an exchange between the residential units and those services within the development. In other words the development...the traffic would never enter the street during this peak hour time period. Most of the traffic would never enter the street. The other thing I would like to mention about it is the employees for this retirement community uh...are service employees...they will be on a twenty four hour shift and the...the shifts of twenty four hours long...three shifts within that. That can be shift...that can be arranged so that they will be entering and leaving the site during the off peak traffic times. Uh, the other things I would like to mention is the existing traffic on Crab Creek Road...Crab Creek Road is forty three hundred vehicles per day based upon DOT's traffic counts. Uh the traffic being generated here is...is less than one...is only going to be adding twenty two hundred vehicles uh during the thing. So the developers also chose an access to the site which is not on Crab Creek Road. It is a secondary access onto a secondary road which the DOT likes to see. It's a much safer access and they...uh be...allow them to provide turning movements to the site from them. So I see I'm out of time so I will sit down."

Attorney William Alexander – "I'll now call on Bill Lapsley...Mr. Lapsley is a civil engineer in Hendersonville and Asheville who's retained as an oversight engineer on this project. Let me just mention Mr. Lapsley's testimony is also been reduced to affidavit and he's just going to hit the highlights of it and we'll submit his affidavit."

William Lapsley – "Mr. Chairman and members of the Board my...for the record my name is William Lapsley. I'm a consulting engineer...a resident of Henderson County...uh licensed in the state of North Carolina. Uh, in summary I've been involved with this project for approximately twelve months. I've been assigned the duty to oversee the activities of several other consultants...familiar with the site...the topography, storm water, water supply, waste water...details are in my affidavit if you have any questions I'll be more than happy to answer them. Mr. Chairman, council has asked me to reiterate to you that I'm familiar with the application prepared by McGill Associates...consulting engineers in Asheville for the proposed waste water treatment facility. I have reviewed that and uh I find it to be in keeping with what the state of North Carolina requires for such applications...support it and uh have no reason to criticize it. I expect it to go through. If you have any questions about it...I'll be more than happy to answer."

Chairman Moyer – "Bill on the...here who's going to speak to the water and sewer?"

Attorney William Alexander – "Uh, Mr. Lapsley...so if need any questions, his comments are in the uh..."

Chairman Moyer – "Could you just give us a summary of how that's going to be handled on the same...different (unintelligible.)"

William Lapsley – "Mr. Chairman, members of the Board...uh, for the record uh, the documents that you have seen indicate from a water supply standpoint uh this site uh is quite a distance from existing public water supplies uh so it will require it's own onsite water supply system that would be a combination of ground water sources. Uh, we estimate three or more wells uh, drilled on the property. Uh, the water would be withdrawn uh and pumped to a...to an above ground pump storage tank located on the site. Uh, that stored water supply would meet domestic needs, as well as, fire protection. Uh, the system would be

designed in accordance with state of North Carolina public drinking water supply regulations. Uh, both the withdrawal of ground water and its potential impact, if any, must be approved by the state uh, and the uh, distribution system uh from the standpoint of pipe sizes, pumping sizes, tank sizes and that sort of thing all must be approved by the state of North Carolina. With regard to the waste water system..."

Chairman Moyer – “Before you get to that part do you have estimates and obviously I can’t get through this with volume of water you will need”

William Lapsley – “It’s been estimated by state standards...uh the state requires that the applicant identify the proposed uses...meaning single family home sites, continuing care retirement facility, all of the various uses uh on the property. The state assigns gallons per day for each of those uses uh, and those are then summarized to give the total gallons per day...uh, in this case the estimated gallons per day is 90,000. Uh, this...from a drinking water standpoint uh the state uh requires that that amount of water be withdrawn uh over a period of no longer than twelve hours. In other words it can be withdrawn less than twelve hours but not longer than twelve. They don’t want uh wells...pumps to be running twenty four hours a day so the water must be withdrawn in twelve hours. That translates to a minimum safe yield of the wells of approximately a hundred and twenty five gallons per minute. So that that’s why or how we estimate that with deep wells in this area we would expect probably three wells and maybe as many as four uh to be required. There are...is a requirement from state regulations that those wells be located such that there are no activities within a hundred feet of the well...hundred foot radius. So, basically you dedicate an acre of land per well uh that must be...the site must be approved by the state.”

Chairman Moyer – “Do that have tanks...storage tanks?”

William Lapsley – “Uh, storage tanks uh the state requires that that uh the applicant or the system uh must store a half a day uh of supply. In this case half of 90...45,000 gallons and then the state requires...uh that...for fire protection that you store a minimum of 50,000 gallons a day solely for...or 50,000 gallons for fire protection and most systems provide 100,000...so a um...we see a tank in the neighborhood of 150 to 200,000 gallons to make sure we have enough storage for fire protection, as well as, domestic supply.”

Chairman Moyer – “So pressure isn’t an issue, they just empty the gallons from your tank to put into the fire tanker”

William Lapsley – “The Lord has provided on this site a good elevation change and the tank site would be up on the mountain at such an elevation...provide more than adequate pressure...uh for the service.”

Chairman Moyer – “Alright, I’m sorry...you were going on with the story”

William Lapsley – “Uh, I was just to add from a waste water standpoint...uh the site has...we have had uh...uh...uh, another consultant come out and inspect the soils on the site to see if septic systems could be permitted...uh, one or more large systems for the development. Uh, the soil conditions are such that that’s not an acceptable uh waste water method uh on this site uh for this density. Uh, and that uh...uh...is the basis for the application to the state for a centralized waste water treatment plant...that plant to be located at the lower elevations uh down near the creek uh, again the site itself must be approved by the state of North Carolina, Division of Water Quality. Uh, the...the treatment uh components of that plant uh are...are set by the state of North Carolina. That permit process has been underway since last November...now, we anticipate a draft permit to be issued shortly which will have the particulars of what the degree of treatment has to be and the applicant will have to meet that in order

to gain the permit.”

Chairman Moyer – “The going order is going to be retained on the property or what (unintelligible)”

William Lapsley – “Well, the... the...storm water facilities are proposed to collect storm water and certainly slow it down as far as retention, as the Chairman knows at the moment, county does not have a specific storm water retention ordinance. We’re aware of impending regulations that are coming but uh the applicant will certainly apply by any regulations that require uh retention on the site.”

Commissioner Young – “Will the storm water be...accommodation with the expected start up July 1<sup>st</sup>?”

William Lapsley – “Yes, to the best of our knowledge we won’t have any problem meeting those requirements.”

Commissioner Young – “Let me ask you another question.”

Commissioner McGrady – “They can’t hear you.”

Commissioner Young – “Let me ask you another question. Um, on the well...do you...are these any houses close to these wells that you are going to drill...that might affect their water supply?”

William Lapsley – “Well, I really...”

Commissioner Young – “really deep wells”

William Lapsley – “There are some wells...individual wells near by the site. Uh, I think it uh...when...when the wells are drilled it’s incumbent by state regulation for the applicant for approval of that well to show that the withdrawal activity...uh...and we...and that is proven by what they call a well drawdown test. Uh, it’s a twenty four hour test pumping at full rate whatever the well will yield uh and the state regulations require that we do a twenty four hour drawdown test and monitor any wells in the vicinity that we think may be impacted to prove that we’re not having a detrimental affect on anyone. That’s a state requirement.”

Chairman Moyer – “Any other questions for Mr. Lapsley? Thank you Bill”

William Lapsley – “Thank you”

Chairman Moyer – “Mr. Alexander”

Attorney William Alexander – “Uh, Mr. Moyer, one of our witnesses...we planned to call our case-in-chief...we...um...and had not probably signed up because of that. We’re gonna ask that he jump back and to just... whatever other witnesses you receive from non-parties...Mr. Andy Petrie...um, so if...we ask he’d be allowed to add name to the sign in sheet if necessary. Um, and we’d also...before calling our last witness, Mr. Moyer we’d like to um point out...relative to your question...about the...the water system that as Mr. Lapsley indicated, the water system is to serve as fire protection also on the premises but the...not only the hydrants on that water system but the hydrants that we are proposing to place in all the standing water bodies...um dry hydrants as I’ve been know to call them...will be available for the Valley Hill Fire Department to draw water from to fight a emergency fire anywhere in the community not just on this project. And, in that um...so having said that I would call Mr. Richard Grant to testify.”

Chairman Moyer – “Well let me ask Mr. Lapsley, then again...if you still...Bill is...so the water in the ponds would be in additions to the water you’re required to have in storage in the tanks?”

Rick Grant – “Mr. Chairman...members of the Board...my name is Rick Grant, I’m the president of Beverly Grant Incorporated and a member of Parkridge MOB, LLC. I’d like to thank the Commissioners for the opportunity to speak today. I’m cutting my uh notes down so it may jump a little. Uh, my company is Beverly Grant, is a general contracting firm started by my father fifty two years ago. We specialize in retail office buildings, medical and residential projects in Buncombe and Henderson Counties. I’ll be using the screen behind you uh, to try to assist in my presentation and hopefully it will speed things up. I...First I’d like to begin by discussing Beverly Grants commitment to responsible development. It’s our intent to preserve the natural beauty of the site. In fact, the major reason for selecting the site, other than open use zoning, was its rural pristine character. Our financial success actually depends on preserving the character since we’re marketing a tranquil wooded environment. Beverly Grant has a history of developing high quality, environmentally friendly projects such as Laurel Park Medical Center, Crowfield Condominiums, Nettlewood Office Parks, Executive Park and others. The current budget for the Glen includes over six hundred thousand dollars for landscaping. As Jimmy explained every attempt has been made to minimize the impact on the natural features. In fact Jimmy was selected as the architect because his...of his passion for the site and the project. The project is designed to minimize the views of the main structures as Jimmy has already shown you. Approximately ten acres are to be...are planned to be placed in a conservancy. This is a large construction project, but unlike a residential subdivision with each house being built by a different contractor at different times there will be one coordinated erosion control plan. The construction will occur during one condensed timeframe versus a continuous non-coordinated effort over as many as twenty years. The estimated cost of construction for the Glen is between a hundred and twenty million and a hundred and twenty five million dollars. The design includes a complete fire protection system for the multi-story buildings; including a hundred thousand or greater water tank as Bill mentioned, non-combustible construction, fire rated floors, a sprinkler system and fire alarm system. In meetings with the Valley Hill Fire Department we agreed to provide a hydrant system in all the ponds for use by the fire department to fight a fire anywhere in the community. The project will include a state approved waste treatment plant and a water system as Bill mentioned. In addition to the permanent jobs that David mentioned or was going to mention, the Glen will create jobs for hundreds of construction personnel and related industries. This project will provide a significant economic impact to the county. The following is based on information obtained from the County Manager’s proposed budget dated 5-7-07 and a Citizen-Times article dated 5-10-07. The Glen will increase the County tax base by one percent. The estimated property taxes for the Glen portion only of the project are eight hundred thousand dollars a year. This equals one and a half percent of the entire Henderson County property tax revenues for physical year 2007. There will be no impact on the county school system or Blue Ridge Community College which accounts for thirty one percent of your next years budget as proposed. The impact on law enforcement will be minimal. In fiscal year 2007 the county budgeted a hundred and forty three dollars per county resident for law enforcement. If you take the four hundred and eighty one residents that would be in the Glen...that would add sixty eight thousand nine hundred and sixty six dollars at the same per resident rate. We all know the Glen...the Glen’s residents will require less law enforcement services than the average county resident. In addition the Glen will employ its own security force and in a conversation with the Sheriff’s Department they stated that providing services to the Glen will not create a burden. Henderson County budgeted thirty two dollars and change per county resident in fiscal year 2007 for emergency medical services. If you apply that to our residents...that’s fifteen thousand five hundred and fifty dollars a year. Okay our residents are a little bit older, so let’s double that...that comes to thirty one thousand one hundred dollars a year. The EMS personnel that we talked to estimate a response time to the Glen of nine minutes. Also, keep in



mind that seventy percent of the people in our reservation list already live in Henderson County which means you're already providing those people services so there won't be additional services for them. In addition to the property taxes, the estimated fire district tax for the Glen is a hundred thousand dollars a year. There would be no significant additional cost to the county as a result of the Glen. The local fire department has confirmed that they have adequate equipment to provide protection for the Glen. The county should have an estimated net income of around eight hundred thousand dollars a year. To put this in perspective we've contacted the municipal finance department of BB&T to obtain likely loan terms for the county. Based on this information, the county could do any of the following with that eight hundred thousand."

Chairman Moyer – "Mr. Alexander I think we're getting way up field again from uh, what we need. I let you go past the time but again I think we're getting far up field. Can you sum up Mr. Grant?"

Rick Grant – "I had several different options of what eight hundred thousand can mean to the county. If you'll just get through those we'll skip that. Basically you could pay for a third of your schools budget next year in terms of capital expenditures. Under schedule we estimate one year for design, pricing and permitting; two years for construction time, because of the information David gave you we feel we need five years in order to complete the project. I gonna skip through the next information and go to the summary. As you've heard we've made a major investment based on the fact the site is currently zoned open use. Most of this expense...or much of it is unrecoverable. It is in our best interest as the developers to maximize the beauty of the site. We have a proven track record. The project will have a positive impact on the economy. The project will have a positive impact on the county, and finally we believe that seniors have a right to spend their senior years in a rural setting. Thank you for your consideration."

Chairman Moyer – "Thank you."

Attorney William Alexander – "Mr. Moyer we would submit, since Mr. Grant was cutting parts of his testimony we have some substance of this testimony reflected in an affidavit by him...we submit that for your record."

Chairman Moyer – "Alright...Mr. Alexander I would ask...so that the hand...to make the questioning easier for us...whether you said you had additional witness. If you have them sworn now and give his uh, testimony so we can have all yours on the record before we start the questioning."

Unintelligible

Chairman Moyer – "Oh, alright I thought you said...sorry I thought you said he wasn't sworn."

Unintelligible

Chairman Moyer – "You may call him...just give your name and address when you start to speak."

Bob Demartini – "Uh, my name is Bob Demartini and uh, I live at uh...in Flat Rock at 215 Pineholt Lane. Uh, gentlemen as a certified old geezer myself...I would like to provide you some insight on how we two hundred and forty or so signed up fellow geezers view the...this Glen project. Some six or seven years ago my wife and I signed onto the waiting list for a cottage in the newly expanded Deerfield CCRC in Asheville. Subsequently the more we thought about it the less intrigued we became at the prospect of moving to and living in the urban kind of atmosphere where Deerfield is located in Asheville.

Furthermore, having lived in Henderson County...in Flat Rock for seventeen years a move to Asheville would have been severing ties with all the people and all the things we've come to value right here. In Asheville it would mean starting all over...which is not easy for geezers. We put a high priority on remaining in the informal rural ambience that characterizes Henderson County...and knowing about the long six, seven, eight hundred applicant waiting list at Carolina Village we began wondering about the possibility of building a modern CCRC right here. Talking to friends about it we discovered that there are many people who shared the same sentiments. What to do about it. With several good friends we formed a team to explore the possibility. We decided that the outset...that we need the involvement of people more knowledgeable about CCRCs than were we. A total of perhaps a dozen CCRC development firms were interviewed and from among them we chose to work with David Ammons whose company had founded and operated the highly successful Springmoor CCRC in Raleigh. Living in Flat Rock our first thought was to seek a site there. Before we could finalize on any land purchase rumors began flying and there was opposition. Surprise, because the largest site we could consider within the village was but forty acres. It probably was fortunate that we went on to search outside of Flat Rocks boundary. Because ultimately we found that the much larger more desirable site we are discussing today was available. You can do so much more with more elbow room. The rural atmosphere in the Crab Creek county area is exactly right for a CCRC. We future residents have a strong interest in being sure that that atmosphere is preserved...but there is opposition. We have to believe that most of the folks who have been thinking that they should oppose haven't yet thought about the day that they too will become geezers like us and will be told that they are unwelcome here. Its unconcieve...inconceivable to us that the good people of Henderson County would say now that you're old...sayonara...go away...we're not willing to yield even a small piece of our many square miles in Henderson County where you can spend your final days. And one thing more, based on their outstanding records we have every confidence that the team of David Ammons and the Grants from Beverly Grant will deliver the kind of quality product that the Crab Creek community and we will be appropriate...will be proud to be associated with. Gentlemen we geezers respectfully ask that you make it possible for us to spend our remaining years right here in Henderson County...the place we call home. Remember one day you too will graduate to become geezers. Thank you."

Attorney William Alexander – "Mr. Moyer...Mr. Demartini will be our last witness on our case in chief. I do have however the affidavit...an affidavit which I would propose to submit to you from Mr. George Jenson which reflects Mr. Jenson is a um, certified professional engineer and that he has made the drive times...comparative drive times from Pardee Hospital to Carolina Village versus Pardee Hospital to the Glen site and what resulted in those times...uh sixteen minutes to the Glen from Pardee Hospital obeying all speed limits. We move...we ask to submit that."

Chairman Moyer – "He is not here I assume"

Attorney William Alexander – "No he...he could not be here um."

Chairman Moyer – "We're admitting other evidence that has just been presented to us so we'll admit that evidence also."

Attorney William Alexander – "Alright...thank you...and we would also obtained and I think Planning may have already given you this but we've obtained from the Henderson County EMS uh, Director Terry Layne, uh a letter about the average response time uh to this district. She's provided in letter form uh her statement that the average response time to calls in this district was 14.7 minutes...and we would ask to submit her letter to your record. Then finally um we have obtained a letter from Mr. Tim Garren, who is the Battalion Chief of Valley Hill Fire and Rescue. Mr. Garren had another commitment...could not be

here tonight...but indicates in his letter that he is familiar with the resources of Valley Hill Fire and Rescue...in his opinion all necessary fire protection and other emergency services uh that are necessary at this project can be provided uh by Valley Hill Fire and Rescue within the scope of their current program. The...that the response time because of the Crab Creek station should be considered minimal...that his review indicates no undue danger to the public health, safety or welfare created by this project in the area of fire protection or first responder emergency medical services...and he reflects his conversation with uh my client asking that hydrants be installed in the various still water bodies on the property and our clients willingness to do that...and states that this will heighten their ability to fight fire within the project and would also be a benefit to other area owners...and I'd like to submit his letter to your record. Mr. Moyer we filed yesterday a supplement to our application with the County Commissions office, as well as, with the Planning office um, it just clarifies some issues basically but I was asked by uh the uh I believe it was a lady in uh the clerk there where you come in you alls office to have extra copies of that available for dissemination of you all tonight in case they didn't get to your files. So I made copies of that supplement...would ask to submit those to you."

Chairman Moyer – "Terry have they already been distributed?"

Unintelligible response

Attorney William Alexander – "Mr. Moyer other than for our closing arguments and rebuttal evidence that would be our case in chief."

Chairman Moyer – "Thank you Mr. Alexander. We are now...as this is a legal type proceeding as I explained at the beginning by...by law...we will now move into cross examination of the petitioners evidence...cross examination means you can ask questions...I know Mr. Massagee you understand this but for the other parties...you can ask questions at this time...something that was stated in their evidence is not clear...you want it supplemented...this is not the time for you to make your statements or to put your evidence on...you will be called separately later. This time in the legal proceeding is only for you to ask questions. You can come to the mic and I'll start with Mr. Massagee so you can see how this works. When you say I have a question for let's say Mr. Alexander or Mr. Ammons and I like to ask this question and you ask that question then we'll give them time to respond. Then you can ask additional questions or whatever if you're satisfied...and we will go through that process until all the questions from the parties...I think we've identified five...every party has a chance to ask the questions of the petitioner the applicant with regard to their evidence. So it's only going to be questions...if you start to make a statement I will cut you off at that time because this is not the time to do that...so we'll start off with a Mr. Massagee...Attorney Massagee...let him ask any questions that he has...you'll see how this works from him."

Attorney Boyd Massagee – "We have no questions."

"Laughter from room"

Chairman Moyer – "Well if everybody does that that we'll be fine...but the...alright...we'll move down to Mr. Cherry. Mr. Cherry do you have any questions with regard to any of the petitioners evidence? I need you to come down to the mic and...I assume this question will be for Mr. Lapsley"

John Cherry – "Well I guess...I guess it will be for Mr. Garren. Uh, I was wondering on the fire protection thing...you gonna have a five story building there...and...older people in there possibly with oxygen...somebody lights a match or whatever and sets the building on fire...I know they have sprinkler

systems and all that...but if this building catches on fire you gonna have to have a latter truck to get to the building to put the fire out. Uh, the only latter truck I know of is over there in Valley Hill over there on...where...the other...other road it's on. So uh, how...how are they gonna get that latter truck out there in a timely manner without endangering people that's on Crab Creek Road trying to...uh...especially the curves that's on Crab Creek Road. I mean it's...it's going to be tough. I mean...I was just curious...I mean it sounded like you know the local fire stations...and grant it they could probably be up there in two or three minutes...but you've got two five story buildings that that its if you got...evacuate people off the upper floors...you gonna have to have a pretty good size latter truck. So that was that was my question."

Chairman Moyer – "Alright let's see if Mr. Garren is not here..."

Attorney William Alexander – "Jerry"

Chairman Moyer – "to the best of my knowledge"

Attorney William Alexander – "Jerry – Jerry Grant can answer that question."

Chairman Moyer – "Alright Mr. Grant"

Jerry Grant – "Mr. Moyer um, I was um the one who uh interviewed Mr. Garren and he tells me that he can be there at our site with a latter truck within just a matter of mere minutes...and he sees absolutely no problem with serving uh our site with his latter truck from uh Valley Hill number one."

Chairman Moyer – "Did he state to you that he has a latter truck that is capable of reaching the top of a five story building?"

Jerry Grant – "We discussed that building and you have to understand that the top floor is the dining room...so he's only reaching actually three floors for residents."

Chairman Moyer – "Well...I would assume the potential for a fire in the restaurant..."

Jerry Grant – "and he's...he also said that uh fire goes up which is why he appreciated the dining room and kitchen being on the top level...and he also said that with the fire suppression system with the sprinkler system that he saw absolutely no problem with our designs."

Chairman Moyer – "Alright, Bill do you have anybody else that wants to add anything on that subject?"

Attorney William Alexander – "Um, yes...Mr. Jimmy Edwards can comment on the fire retardant design of the building uh as it affects that question."

Jimmy Edwards – "Thank you. Very quickly the building is basically five floors high but the first part of the building – the front is only four. Secondly the building is totally non-combustible. Third it is sprinkled. Fourth it has area of rescue assistance established by code to where anybody on the higher floors could go for total safety and then be evacuated at a much later point. Thank you."

Chairman Moyer – "Mr. Cherry do you have any additional questions? Okay...Uh Mr. Knowlton...yes please come to the mic."

Bill Knowlton – “My uh...my question would uh...uh address the number of people that they said they would have at this...uh...uh at the Glen and at the Highlands. Uh, it was shown on a slide approximately four hundred and eighty one. I'd like to know how they can...they arrived at that...uh figure?”

Chairman Moyer – “Mr. Grant you want to take that or who...Mr. Ammons”

David Ammons – “We have two hundred and fifty six living units. How many of those will be occupied by single person...I don't know. How many of those will be occupied by a couple... I don't know. Using typical industry norms we arrived at four hundred and eighty one. Uh, that...that's one point three or four per unit and that's comp...but it's an estimate.”

Bill Knowlton – “The uh second question...which you know...I can refute that later in my statement sir.”

Chairman Moyer – “When you make your argument you can do what ever you want.”

Bill Knowlton – “Yes sir...yes sir...”

Chairman Moyer – “Their having trouble hearing you Mr. Knowlton”

Bill Knowlton – “Okay, uh the other question I would have would be concerning the water. Uh, what I would like to know is what will be the capacity of your water treatment plant...addressing approximately how many people?”

Chairman Moyer – “Thank you...Mr. Lapsley”

William Lapsley – “Mr. Chairman...uh...uh the state of North Carolina sets its standard based on number of...of bedrooms and based...number of chairs or seats in the...in the dining facility. There's a standard table that the design engineer must use to follow how many gallons per day are allocated for each of those uses. Then they're all summarized to come up with what...as I stated the ninety thousand gallons per day. The state of North Carolina then uh backs off of that and says alright for ninety thousand gallons a day water supply you must...if you're using a ground water source...you must be able to withdraw that volume of water from uh...from two...in this case two or more wells...and two because of the number of people...persons that are served. From two or more wells...so that you have to have at least two wells to generate the gallons uh per minute that are required to withdraw that water within the twelve hour period. As far as the treatment is concerned of that supply...that again is set by the state of North Carolina for a ground water source...there...uh the...the user of the system uh has...not only has to do the...the safe yield test of the well...but they have to do a water quality test as well and that includes uh organic materials, inorganic, nuclear uh elements and a whole list of... of a items that must be tested. Once those test results are provided...if they all fall below the uh maximum allowable limits set by the state then the well is approved for use for portable water system. If one or more of the...unit...or the elements uh are tested exceed that allowable limit then the applicant under state standards has the ability to provide a treatment process to reduce that level down. Uh, but my experience has been uh that's been very rare. If...if there is an element that's exceeded uh most developers uh would...would cancel the well and not use it. Uh so we do not anticipate based on other ground water tests that have been done in this area that there will be any elements in the water quality that would disqualify the well.”

Bill Knowlton – “Sure uh excuse me...I didn't properly ask the right question. What I'm interested in is...you base your amount of water that you will draw on the amount of people that you will serve...and the needs to serve those people. Is that correct?”

William Lapsley – “Well it’s not...correction, it’s not based in our case with the water supply...its not based on the number of people. The standard table that the state issues is based on the number of bedrooms, the number of dining room seats, uh the square footage of a retail facility...those are all the perimeters that are met to determine how many gallons per minute and how many gallons per day that the system must provide. It’s not based on number of people. Uh the...the only...and I’m talking about the Glen now...as far as the homes are concerned that the state standard is four hundred gallons per day per home. Uh, and that’s uh been developed by...based on number of occupants in the building...but it’s four hundred irregardless if there’s one person in that house or sixteen...it’s four hundred gallons per day for a single family residence.”

Chairman Moyer – “When you’re using state guidelines...determine how much water you’ve got to provide by your wells.”

William Lapsley – “yes”

Bill Knowlton – “And you’re using same state guidelines in order to uh...uh to establish your water treatment system in order to treat that amount of water...your waste water.”

William Lapsley – “That’s correct”

Bill Knowlton – “waste water”

William Lapsley – “I’m...we’ve been talking about drinking water.

Bill Knowlton – “No, I’m talking about waste water.”

William Lapsley – “Waste water...from a waste water standpoint the same basic perimeters...there’s two different divisions in the state. Uh, Division of Environmental Health deals with water. Division of Water Quality deals with waste water. With regard to waste water the same uh procedure...the state has a table and it’s based on number of bedrooms...uh same issues with...with a continuing care facility. With a single family homes it’s a hundred and twenty gallons per day per bedroom in the house...and what we do is we tend this case uh...we take uh the site plan...look at the homes...uh the number of bedrooms...calculate the number of gallons per day uh that’s anticipated to be discharged per the state standard. Uh, all that waste water then is collected at the central treatment facility. The state of North Carolina, based on their examination of the receiving stream, in this case Mud Creek...uh the state goes out, tests the water quality in Mud Creek, uh determines the quality of that water and what the impact will be of the proposed discharge into the stream. Based on their analysis, not ours based on the states analysis the state determines what the treatment level has to be for that treatment facility. Whether it’s a primary treatment...secondary treatment...tertiary treatment...those are the three standards that...the degree of treatment...in other words how clean you have to get the water. The state of North Carolina determines what those perimeters will be. Once they issue uh those perimeters in their uh discharge permit...it’s called an MPDES discharge permit...then it’s the applicants...uh require...is required to meet those uh permit uh water quality permit restrictions. The applicant then, if they decide to proceed, has to provide engineering plans for the proposed waste water treatment facility that will prove to the state that that technology will provide an effluent that meets the standards that the state has set.”

Bill Knowlton – “Thank you sir. That answers my questions.”

Chairman Moyer – “Thank you. You’ll have an opportunity to present also later. Mr. Erb, do you have any questions at this time?”

Kenneth Erb – “Unintelligible”

Chairman Moyer – “I’ll repeat your question if it’s easier for you to do that. They won’t be able to hear you on the...okay.”

Kenneth Erb – “Well I wonder if I can get you to stand up again for just a minute. If I heard you correctly, did you say you monitored all the wells in the area? You do these tests like individual home owners.”

William Lapsley – “No sir. No we”

Chairman Moyer – “Question was, I’m sure some of you didn’t hear it...Did you say you had to monitor all of the wells in the area when you drill yours to see if there is any affect on the wells...and that’s what Mr. Lapsley gonna answer.”

William Lapsley – “Okay, I think the...the key word here is monitor. Uh, the state requires when...if...if they applicants drills a proposed drinking water well on this site uh the applicant first point has to own a hundred foot radius...basically a two hundred by two hundred square...around the well and when the well is drilled uh there are two things that we have to do. We have to under state requirements...we must do a draw down test on the well which is strictly to look at the volume of water that that well can produce and we run the test for twenty four hours continuously. A pump is put in the bottom...it’s run for twenty four hours to monitor...to determine what the safe yield of the well is and the safe yield of the well is the lowest amount...in other words when the well starts pumping its...it normally starts pumping at a high rate and as the hours go by and you start drawing down the table uh the gallons per minute goes less and less. The state requires that we can draw no more than the lowest gallons per minute during that twenty four hour period. The state requires us uh to...to check any wells in the area, and...and that’s uh an open definition. But if the state suspects that this well that we’ve got...we’re proposing has a high yield. Let’s say that it’s a hundred gallon per minute well, we’ve hit a gusher uh...the state will require that we do another test to make sure that we’re not drawing down water that’s impacting wells that are near by. That would be during the initial test of the well. From the other part of the monitoring, if you will, is water quality. There’s an initial test done to make sure the well the water quality in the well meets state standards and then if...if it does and it is used the state requires that that well be monitored on a monthly basis for a certain perimeters and then on an annual basis for others to made sure the water quality does not change over time to exceed the limits.”

Chairman Moyer – “I guess the draw down test...the issue is there’s no definition for nearby so you can’t tell these people how...”

William Lapsley – “It’s a state...it’s a state call...if the state feels that there may be an impact on an adjacent well; for instance I mentioned a hundred foot radius. If there’s another well a hundred and five feet from our proposed well there’s no question we’ll have to monitor it. If there’s a well a thousand feet away I don’t suspect the state would require us to monitor that.”

Chairman Moyer – “But a resident near by could go to the state and ask if their situation could be looked at and the state may, or may not grant it.”

William Lapsley – “Absolutely, yes that’s correct.”

Chairman Moyer – “Mr. Erb do you have additional questions?”

Kenneth Erb – “One more question. If I understand you’re going to discharge ninety one thousand gallons a day.”

William Lapsley – “Ninety thousand gallons per day is the proposed discharge.”

Kenneth Erb – “That’s the entire flow through Mud Creek going through my property...the entire Mud Creek.”

Chairman Moyer – “Mr. Erb is saying that...saying that the...the Mr. Lapsley indicated that if you’ll discharge ninety thousand...ninety thousand gallons a day into the creek...and his estimate is that’s the total amount in Mud Creek passing his property at this time.”

Kenneth Erb – “That’s not an estimate...that’s the picture.”

William Lapsley – “My...my response to...with all due respect to Mr. Erb, because I’ve known him for a long time, uh the state of North Carolina in the permitting process for waste water treatment plant...uh...in their analysis of the impact of the proposed discharge to the stream, the basis for that impact is what they call the 7Q10 flow. That’s an estimated number of...of the flow in any given stream uh that they calculate the lowest seven days of record in any given ten year period and according to the state uh the 7Q10 for Mud Creek at the proposed location, where this discharge would occur, the state number is five hundred and ninety six thousand gallons per day. That’s what they have provided to the applicant uh and what has been used uh in the application.”

Kenneth Erb – “Thank you”

Chairman Moyer – “Thank you Mr. Erb. Ms. McDowell do you have any questions at this time? Alright”

Misty McDowell – “Yes I would like to ask about the traffic capacity...um he had mentioned that it would be at certain times of the day when it wasn’t so busy. Um, what about the deliveries and the different things that they’ll be needing for...for the Glen. You know the food the different things about the delivery workers?”

Chairman Moyer – “Who’s going to...Mr. Hepler”

Tom Hepler – “Yes, my name is Tom Hepler again. Um, the deliveries will be...are normally scheduled during off peak uh time...during the day...this off peak for the peak traffic on the adjacent roadways. There will be delivery trucks of course to a facility of this nature. Uh, there’s no doubt about that but they will be coming during off peak time and we see no problem with that.”

Misty McDowell – “Can I ask what off peak time is?”

Tom Hepler – “Peak time is defined by...it is the peak hour of traffic on the adjacent roadway. Normally in this particular case it’s usually a time between seven and nine a.m. and between four and six p.m.”



Misty McDowell – “Okay”

Chairman Moyer – “Any other questions?”

Unknown voice – “no”

Chairman Moyer – “Thank you very much. Staff do you have any questions uh with respect to the applicant at this time?”

Anthony Starr – “No sir.”

Chairman Moyer – “Okay. Board want to move into...wanna take a five minute break before we go farther.”

Commissioner Williams – “Let’s do...let’s just stretch.”

Chairman Moyer – “Alright we’re gonna...we’re gonna take just a five minute break to stretch, get a drink and then we’ll come back. We’ll have the evidence by our staff...will be presenting their evidence now.”

**BREAK**

A five minute break was taken.

Chairman Moyer – “Alright we’re gonna start the...continue the hearing again. Mr. Erb has asked the...to uh...has a couple more questions he’d like to ask. I’ll let him do that now. Mr. Erb”

Kenneth Erb – “I’d like to ask about the proposed setbacks...the buildings from the property lines. Those and that...the closest distance to adjoining property lines...can they build the buildings.”

Chairman Moyer – “Mr. Alexander do you wanna...”

Attorney William Alexander – “I’d ask Jimmy Edward to address that.”

Jimmy Edwards – “First of all the entire project is separated from the boundary line of the project itself by thirty feet. This is a thirty foot area that we do not see any disturbance in. It is not owned by any landowner. It is listed as...as a perpetual buffer for...around the entire project. As far as how close could anything be built, we are agreeing to...that the major center building including the health center will be no closer than four hundred feet to the property line. We’re also agreeing that no structure, even a single family residence will be no closer to the perimeter boundary line than fifty feet. In many cases it’ll...the average will probably be closer to a...about a hundred feet most residents cause most of the houses are set with the back yard...and then you go through the buffer so it’s seventy five to a hundred feet is probably more typical...there could be a case where you might be as close as fifty but no place else, and then it would be a single family residence.”

Chairman Moyer – “Mr. Erb was concern...was a particularly concerned about where his home is.”

Kenneth Erb – “Am I to understand you’re going to build the houses fifty feet from our property line?”

Jimmy Edwards – “The houses that you are referring to...the rear yards face your land so there’s a thirty

foot buffer and then there's a rear yard behind the house...a typical rear yard is between fifty and seventy feet. So I would suspect that you might have a single family house approximately seventy to seventy five feet away from your property line."

Chairman Moyer – "Okay"

Kenneth Erb – "Can you follow the property line all the way down my fourteen hundred feet with that...every fifty feet...distance between, between the homes as well."

Jimmy Edwards – "If I may respond, the point he is pointing at is a cul-de-sac that approaches his line and there are two houses involved. Uh, the rest of the line that goes down it looks like the average distance is maybe two hundred feet and then it proceeds to go down to again to where it's seventy feet. We're talking about one, two, three houses...four, five, six, seven, eight, nine houses that abut his entire line of fourteen hundred feet."

Chairman Moyer – "Other questions Mr. Erb?"

Kenneth Erb – "No"

Chairman Moyer – "Thank you sir. We are going to uh...going to recommend to the Board that we...we revise our procedure. I've talked to a council and staff. I know many of you have been patiently waiting to make comments. Rather than go into a staff recommendation to cross examine, what we're gonna do is go to having the other parties present their evidence so they can certainly get that on the record tonight, and as soon as we do that and have cross examination of the other parties, then we're going to go into the witnesses directly...those of you that signed up and then we'll come back to the staff. I'm afraid we're gonna run out of time and I don't wanna cut...we...and the Board doesn't wanna fail to hear from many of you that have come out because we run out of time. So, uh I'm gonna go down to the parties now and start with Mr. Massagee and this is his chance to put on any testimony or any evidence that he would like. Mr. Massagee."

Attorney Boyd Massagee – "Chairman they took approximately eighty to eighty and a half minutes. Now they were allotted twice as much time as were we. I don't anticipate using forty but I would certainly hope that in fairness you would not hold me to any three or five minutes per person."

Chairman Moyer – "I will uh...as long as it stays relevant like I did with them Mr. Massagee we'll give you the same flexibility."

Attorney Boyd Massagee – "I can certainly stay within that time frame. Now then, a question on the staff's recommendation...uh how is it to be transmitted to them if we come to ten o'clock to...to your Board...if we come to ten o'clock tonight and the fireman locks us up."

Chairman Moyer – "We will uh, if we get to nine forty five and we're still in the hearing we will have to continue it to a date as close to this day as we possibly can to continue the hearing. Nothing will be done in secret, but I don't want all the people to have to come back to give their testimony if we can avoid it."

Attorney Boyd Massagee – "That's fine. That makes since. Thank you, sir. First witness I would ask would be...uh David...how"

Chairman Moyer – "We're gonna lose you...If you don't...if you don't stay at the mic I'm gonna lose

you.”

Attorney Boyd Massagee – “David McMurray is a retired First Sergeant State of Highway Patrol. He would be out first witness.”

Chairman Moyer – “Alright...have you been sworn sir?”

David McMurray – “Yes sir I have.”

Chairman Moyer – “Alright”

David McMurray – “Mr. Massagee introduced me. My name is David McMurray and I am a resident and a native of Henderson County. Uh, I retired after thirty years from North Carolina Highway Patrol as a District First Sergeant. Uh, spent more than half of that time as a trooper in Henderson County...my primary patrol area was southern Henderson County including Crab Creek. I spent the last third of my career as a traffic safety information specialist in Troop G headquarters which governs all of Western North Carolina. Uh, that job...traffic safety information specialist means that I identified, evaluated and planned with reference to traffic safety problems in Western North Carolina in seventeen western counties. Uh, other words I crunched numbers, evaluated road conditions, uh road use, driving habits, patterns, geography, topography and that sort of thing. Based on that uh work history, Mr. Massagee contacted me and asked me to do a...a...uh traffic safety impact study uh on the Crab Creek project. He did not ask me to form an opinion and...and I don't plan on stating an opinion whether I'm pro or con. The project...this is strictly a neutral uh statement as to my opinion based on the...the expertise I have with Highway Patrol as to the traffic safety issues of this project. Um, I started looking at this...at this uh roadway...having troopered in Henderson County for...a seventeen years. I was intimately familiar with Crab Creek and I knew that uh it although it wasn't a heavily traveled road it was...it was a traffic safety problem and we had some serious crashes out there. So I started to try to find comparable roads uh in the Henderson County area to compare it to. The closest comparison of...of the roads in Henderson County, as far as, the numbers of crashes combined with the numbers of personal injury crashes, property damage crashes and fatalities or fatal crashes uh US #176. That immediately jumped out at me to confirm what I already thought that Crab Creek was pretty dangerous because we're all familiar with 176 and it's half of it from the Hendersonville city limits out to US #25 connector is a business area, four lane heavy traffic...you know some places on in closer to town hard to get out and then the other half was really pertinent because it's similar in topography uh to the Crab Creek Road area. Uh, so I looked at those numbers and found that those numbers were very comparable to Crab Creek and US #176. Um, I thought that was remarkable in that common sense tells you that...that it the numbers of crashes are comparable when you compare it with a US highway with that heavy traffic volume, that once you get into the uh traffic count information for those two roadways it's really gonna skew uh the relative seriousness of...of the crash data for those two roadways. I did obtain the traffic count data for those two roadways uh and to summarize this and not kill you with statistics, uh the length of Crab Creek Road is 7.1 miles versus #176 - 8.9 miles. The yearly traffic count on uh on Crab Creek is uh nine...excuse me...nine hundred and eighty five thousand five hundred versus just slightly over two million on US #176. Uh, meaning that the...the uh vehicle miles traveled is, is vehicles per mile traveled is, is uh six million...well nearly seven million miles on Crab Creek and nearly eighteen million miles on US #176. When you introduce those vehicle miles traveled and compare them with the very similar numbers of crashes and severity of crashes the danger factor for Crab Creek versus US #176 and that includes both the rural portion and the business portion. It's uh a hundred and eighty two percent is dangerous to be involved in a uh personal injury crash on Crab Creek Road is at this point uh and it's uh and it's uh three hundred and fifteen percent as likely that you're going to be involved in a property damage crash on Crab Creek versus US

#176. Um, partly that's probably because of the topography, partly it's because of weather. Those obviously are Henderson County natives and residents know that our bad weather comes in from the southeast, from the Atlanta area and the southeast. That's the first part of our bad weather hits and often times those people are caught off guard. Uh, in the...I have a lot of numbers here that I could bore everybody to death with and be glad to answer specific questions about it but rather than go into any more detail numbers I'd just like to summarize that strictly from a traffic safety impact, uh opinion I think a professional opinion based on my qualifications and my career, uh is that any – any increase, not necessarily this project, but any project of this size in the Crab Creek area, without major changes to the roadway, is going to result in an appreciable negative traffic safety situation for the Crab Creek community and Crab Creek Road. Uh, having said that I will...I'll wind up what I've got to say. I appreciate the attention from the Chairman and the Board and I appreciate the opportunity to come in and help."

Chairman Moyer – "Do you have a copy of your study...the numbers that you can leave with the..."

David McMurray – "I've not run copies and it's not in a format that you all could decipher, but if...if you Mr. Chairman would like that I could get it to you within a few days. I'll just have to crunch it...put it into something that you could read and not just me read."

Chairman Moyer – "Okay, if you could work that out Mr. Massagee, that will be fine."

David McMurray – "I'll be glad to do that."

Chairman Moyer – "I would like something to back up your testimony if you can get it."

David McMurray – "I'll do that sir. Thank you."

Chairman Moyer – "Massagee...I'm going to have to ask you to come to the mic please."

Attorney Boyd Massagee – "(Unitelligible)...want to bring into evidence the..."

Chairman Moyer – "We can't hear you."

Attorney Boyd Massagee – "What would amount to exhibit number one...I've identified this as McPhail...I know what I'm doing thank you. I've identified this as McPhail one"

Chairman Moyer – "Alright"

Attorney Boyd Massagee – "and I've got a copy for which ever one over here would like to take it...and I've got copies also..."

Chairman Moyer – "Go ahead and start - so give your name and address."

Fritz McPhail – "Okay, yea...I thought he was gonna finish up. My name's Fritz McPhail. (Clears throat) excuse me and I'm from...I'm a native to Henderson County, was born and raised here - was born here in 1962. First let me say that the um the concept that these gentlemen have for a development uh the team they've got put together uh the design they've got with the development, none of those things are really anything that we're against uh as...as in opposition. We're only concerned and we're only against about the location of the development. We're not going to argue about the need for it. Uh, but we're very

concerned about where it's going and to a very rural area. Uh, one thing I don't have a projector but I'd like if you would look at that map, and Susan, I don't know if there's a way for you to kind of point where the perimeter of our where our property is. Uh, but you can pretty much see from that map that we're - we're gonna take the brunt of - of - of the impact of this development. All of our land is at a lower elevation than this project. Uh, I'm not an expert on erosion laws. I understand that they have to plan for a ten year storm. But if you get a one and a half hour rainfall uh that's just pouring down it's probably going to far exceed a ten year storm. You can see where they are putting several lakes on the property, uh - uh - uh that are - that are essentially the - gonna be in the middle of the main stream that's feeding our pond. So I suspect that for a period of time our ponds not going to have much water in it. Uh, and then when this you know when they have this site torn up and we get one of these big rains or maybe a hurricane situation like we had in '04 that there's gonna be massive you know erosion careening on to well certainly into our lake. The developer has told us on several occasions that our water will be colored uh essentially brown - if they can - I don't know how long it's gonna take to build this thing - they indicated five years so I - I guess this means we have to look at a brown lake for two, three, four, five years. That's not really what you wanna have to face as a property owner when you've been looking at that lake for fifty years. Um, the uh, we have three streams that feed that lake and all of them come from that property. Uh, we also have water uh...we have a water line that Susan can point to. I can't remember what color it is but we have - that's in - oh yellow. Uh, and we - and that water line is a back up water source. We don't currently use it but it's in the event that the...that the well supply is not current or sufficient enough to provide us water we can use that that yellow uh water line that is protected by an easement in perpetuity. Uh, above that yellow line is a red line which is a road which is an access road that we use to periodically go up there and just check the water supply. That's also protected in perpetuity with a - with a in the deed. Um, one other thing that we're concerned about is if you look where their lake is, I don't see any detention of any significance south of...they have a whole bunch of houses a basically beneath the beginning of their lake and where is all that water going to go when one of the storms hits? I mean it's pretty much - it's pretty much gonna hit us uh as sad as that is and - and - and there's really nothing that we can do about it and I don't even know that there is anything...we can look at...I mean I read countless and I've gone out and seen other developments and you know they're getting their's - there's a huge erosion sedimentation problem in the county and you know they'll fine them \$200 here \$200 there but it doesn't - we can't put the erosion back where it came from. That's impossible to do. Um, I also kind of - there's, a little bit of a safety issue it seems to me. They've got all of their people coming out of a...a...they've got two entrances to this thing, one on Pearl Lane, one on Crab Creek. As soon as they leave these two places it joins up into a T which then feeds the development. What if that road gets blocked off, uh damaged in some way, how are these people going to get out? There's - there could be five six seven hundred people. I...you know that...I'm not an engineer nor am I a land planner but that's just something that - that strikes me as - as a safety hazard and I also can't imagine they referenced Valley Hill #1 and I went to Valley Hill Elementary School but I think he talking about the one that's closer - the main Valley Hill Fire Station. Uh, and if that is the case, I mean I, if I were in a sports car and driving from my house to Valley Hill I couldn't make it in fifteen minutes. How their gonna get a - a fire truck out there that has a capacity to get to a five story building in a few minutes - I just...I just don't see how that's possible. Um, in terms of a - you know - show him a couple of the entrances that - that right there, that's a blind curve entrance. That's the first entrance into their project which is right before you get to a hill. I mean these people on Kanuga as the Highway Patrolman would tell you fly down this road. We've had one person paralyzed in front of our driveway since we've lived there and we've had at least five or ten crashes in fifty years right at our driveway but that's a blind curve entrance. If you look at the other picture of their entrance on the other side of that map - that's another blind curve - so both of their entrances are on either side of a blind curve. Um, I don't see how that's safe - uh, for the people getting in and out of this place. Uh, in terms of - and I guess just the last thing on the map, you can see there, they said that we can't see their buildings. Well as long as it's

summer time we may not be able to see their buildings of course its not always summer time and we're gonna certainly be able to see the high rise buildings when its not summer time and leaves fall from the trees – but their main road goes right behind our lake and I guess I'm...I'm concerned because we're gonna have traffic...we can sit on our back porch, look out over our lake, and we're gonna be watching cars go by all day long and all night long. What if an ambulance goes by at 2:30 in the morning? All our dogs are going to wake up, we're going to wake up, I mean it's not much of a quality of life to sit there and have essentially a highway you know right behind our lake. Um, but kind of moving on to some...some of our big picture issues – the...you know I've read the county's uh the Henderson County 2020 Comprehensive Plan. I've looked at some of the pending Land Development Codes...realized these aren't in place but this project would not fit within...within obviously the pending...the pending uh...the pending Land Development Code. Uh, from what I understand the Hendersonville County Planning Board has recommended denial of the project pursuant to something I got at the last meeting. Uh, when we added up the square footage of this development we're talking about a total square footage which would exceed that of about three Super Walmarts being put right beneath Mt Pinnacle. We took a picture - uh I hiked up – well I went up to Mt Pinnacle from the very top where I've been going since a kid – took a picture down into the valley and you can see that when you're sitting at Mt Pinnacle looking over Crab Creek that virtually half of that picture is going to be consistent of these...of this development. Uh, the developers indicated that you can't see it from Crab Creek Road – well how relevant is it that you're going to be looking at the development when you're driving fifty miles an hour going – going in front of our house. That's not so relevant. What is relevant is if you're sitting on your back porch on Jeeter Mountain – or you're sitting on your back porch in the development that just got built across the street and you're looking at the development that is relevant and alright it's going to be visible from a variety of vantage points uh in the area. You can just see uh Crab Creek Baptist Church's lower left-hand picture of that column – I stood in the parking lot of Crab Creek Baptist Church – right beneath that rock and to the left are where you're gonna uh ...uh where the development is going to be – so you'll be looking at high rise buildings again from an elevated level. He drew his line from a point in the street in front of our house to the buildings and that's...and that's not...that's not how the neighborhood is going to look at it. Uh, the – you know when you look at the uses that their planning on putting here again we're not in opposition to the type of development it's just the location, Seven miles from town, we're going to have libraries, shops, salons, restaurants, bank branches, spas, mail centers, auditorium, a theater, a health clinic, offices, and a wellness center all with sufficient demand to require a waste water treatment plant. The developers contend that this is not a commercial development. Uh, perhaps somebody has a better word for it but I haven't of one at this point. It certainly seems like a commercial development to me. Um, the...uh - you know I think the fact that the density and the uses of the area were...I've actually already mentioned that – that the Planning Board had denied it on that – on that front. Uh, I don't want to talk a lot about water. I can tell you that there was a fifteen home subdivision put directly across the street from us about a year ago. They clear cut all the trees. Uh, I'm not suggesting these people will do that – I don't think they would but...um several of the farmers in the area have already commented to us that their pastures are turning brown and I don't have – I don't have any engineering studies that I can show you uh for that. I can tell you that they didn't make it up and I wonder if you can build fifteen houses and pastures turn brown – what's going to happen when you put in a commercial development that's many time that. Uh, you have to wonder. Um, about whether they're going to have enough water in the water table to deal with that. Camp Kanuga, from what I understand, had four hundred homes – probably a similar demand component to what these folks were going to have and they tried to drill wells and they finally just...they finally gave up and had to pump in city water. Uh, we're further from town than they are and I...and I...I don't see...I don't think that there's going to be enough water to serve all these people uh and if we find out five years from now or one year from now that there's not enough water...we can't go give it back. Um, I also noted that the Hendersonville County Planning Board has...has...has recommended to us to deny the project for what they say and I quote “inadequate access to

water and sewer” end quote. Um, the...you know the neighborhood impact is probably one of the more relevant things. It’s the reason my family came to this community fifty years ago. It’s the reason probably many people came here a long time ago is for a certain quality of life. If we wanted to live in the city we would have moved into the city. If we want to live in the country you move into the country. Uh, when you see high rises framing the base of Pinnacle Mountain uh not from a point in a road in front of my road but from your everyday existence and uh you’re listening...I understand it’s going to take five years they said to build this development, we have to listen to jackhammers, bulldozers, carpenters and cranes for five years to build a huge development echoing throughout the county. About two months ago they were working on a road up there, this was not their fault, but somebody was up there getting some dirt uh without permission uh and they were using a jackhammer and I was sitting over there trying to take a nap in the afternoon and my walls were shaking. And I presume that many people’s walls were shaking. We haven’t even seen the beginnings of the scope of this development. Uh, some of us care about the quality of the night sky. I know that...I don’t know how ambient light this thing is going to create but a lot of us want to be able to look out our...go out in our front yard and look up to the big dipper, the little dipper, uh and uh I just I wonder what the impact of that will be. That will certainly never be the same again if it’s built. Uh, traffic...to say that traffic is a problem on Kanuga is an understatement. Uh, during the construction phase, I imagine there is going to be dump trucks and eighteen wheelers coming down uh the road um, for a five year period of time. Um, I can remember when Dupont was open and I can remember seeing all these trucks speeding down Kanuga and the safety hazard that created. After construction we’re not talking about residents, we’re talking about their family at Christmas, their family at New Years. We’re talking about uh employees that will be working there twenty four seven. I don’t know how many shifts they’re going to have but there’s going to be people coming and going all the time and at all hours, probably. Uh, you don’t want to be, you know, I mean it, you know, ambulances careening down our valley at 2:00 in the morning and it’s not just – it’s not like we’re removed from it. The people that live on Pearl Lane uh, they’ve got fifteen houses over there on Pearl Lane, they walk up and down the streets, they...they, you know, it’s a very private area and they’re going to have all these trucks and cars careening down this...this private road...so the traffic is going to be a huge issue. Uh, basically I a just a closing statement that I have is that this is an urban development slated for a rural community. It no more belongs here than a farm would belong on Main Street. The welfare and safety of our community will be directly affected by this invasive and expansive project. The reason we moved to this community will be in question if this development happens. We chose to live in the country because it is the country. Adding a virtual city at the center of our community is unwarranted and inappropriate. Henderson County’s own plan for growth and Planning Department agree. In the spirit of protecting our fine community for us and for future generations, we ask the County Commissioners to join us in rejecting this development. Thank you.”

(A portion of the recording was unintelligible.)

Susan Cox – (1<sup>st</sup> portion unintelligible – Clerks notes included that Ms. Cox lives at 304 Anne Dr and was a Geography major. She worked as a city planner from June of 2000 until May of 2005. She had reviewed inconsistencies in the 2020 Comprehensive Plan. Recording begins) “feel and pace of life, rural landscape and scenic vistas, valid sustainable growth, which states avoiding mistakes which could damage to our established communities, accessibility, efficiency and equity in the provision of services, facilities and resources. This principal talks about the efficient development of these services and directs our growth in economic development to areas that can be served efficiently and by these services while discouraging development in areas that cannot be served. On page 6 of the 2020 Plan the introduction states how this plan should be used. More specifically that realtors, developers and perspective home buyers can take a look at the future land use map for guidance regarding the geographic placement of future investments. This future land use map, as the County Planning Staff has shown, is uh divided into

three separate uh parts; the first of it being a rural agriculture area, a conservation area, and a rural urban transition area. The conservation areas are intended to left in a natural state, as stated by your plan. The second two classes both contain the word rural in them and by the definitions of the comprehensive plan rural areas are generally characterized by cultural, timberland, open space and very low density residential developments. (i.e., less than one dwelling unit per acre) A rural community is generally not served by community water or sewer services. I won't go into the different...the other two areas just to state the fact that they are meant to be rural in nature. I also have noticed inconsistencies with the new Land Development Code. The new Land Development Code shows this area as R3 which would be low density residential and contain one unit per one and a half acres. The development site plan indicates 2.4 units per acre. I would also the question of the Planner; is there enough existing water to meet the needs of this development? Has a detailed water study been done to show that they can meet the needs of their development? (i.e., not only the water needs for their dwellings but also the water for the fire hydrants, sprinklers for the buildings, and dining aspects of this development, laundry facilities, etc) What affect would this amount of water use have on existing local wells in the area and what happens if these local established wells go dry? There appear to be many issues associated with this development and that these issues could seriously impact the existing local residents, Henderson County residents and future residents as a whole. By requiring the possible connection in the future of water and sewer lines, potentially...the potential for um possibly four laning Crab Creek and Kanuga Road by upgrading fire apparatus and trucks that may or may not be able...the current ones may or may not be able to serve this development and any other upgrades to existing emergency services.”

Stuart Ryman – “Good evening. My names Stuart Ryman...I'm with a firm in Asheville by the name of Altamont Environmental.”

Chairman Moyer – “Could you spell that last name please?”

Stuart Ryman – “I'll get the mic adjusted. Stuart Ryman R-Y-M-A-N, the Company is Altamont Environmental. I'm the principal owner and a registered professional geologist in the state of North Carolina. I've been doing this uh...environmental related hydrogeology profession for about twenty three years. We looked at water quality, water quantity and waste water treatment and discharge. Mr. Massagee retained our firm to look at three primary aspects related to this proposed development. Waste water, water supply and storm water and so I'll be brief because I know some other folks really wanted to get their points across here, but I want to reiterate some points - and uh further talk about the potential ramifications of some of the facts you've already heard. The um proposed development is correct in saying that they've applied for an 89,000 gallon a day discharge permit for a waste water treatment system. We confirmed that with the DENR and that permit is actually in review right now. The um - putting that in prospective though, as they pointed out, the 7Q10 low flow for the stream is approximately 412 gallons per minute. Well this discharge would be about 62 gallons per minute – or about 15% of the flow of Mud Creek during low flow conditions. It's just something that needs to be recognized and thought about. The uh, Mud Creek is a recognized impaired water body by the DENR and if there were an upset of the waste water treatment plant during low flow conditions or even normal flow conditions it could have impacts to the stream water quality. Permitting aspects are regulated by DENR and DENR should set - uh - permit requirements that uh will protect water quality however, waste water treatment plants have been known to have upsets and problems in the past. With respect to surface, if you could hold the boards up please, um, as a Mr. McPhail noted, all of the storm water both during construction and after construction will be routed toward his property. Um, given the topography of the site, uh we don't see in the review of the preliminary plans that we were provided, we don't see that there's an opportunity to route surface water any direction but down through their property and into their pond. One of the concerns they have certainly has to do with potential sediment transport during construction.



Again, the developer will be required to get an approved erosion control plan and the DENR will be – a tasked with making sure that that plan is adequate and consistent with state law. However, even during construction storm events can occur that overwhelm a well designed erosion control plan. This is a...this is a picture from a week ago Saturday, May 12th. It's a project we've just begun working on in Gaston County. It was a large coordinated construction project of about 35 acres and this is a flow onto a neighboring property. The development was set back approximately 50 feet from the property boundary and the flow during an inch and a half rain storm in an afternoon overwhelmed the erosion control measures and impacted the uh pond on a adjacent property. I just point this out to show that it can happen and like Mr. McPhail said once it happens the sediment damages are very difficult to deal with. Longer term the uh long term storm water control measures will continue to direct flow onto this property and will need to be designed in a way that is very protective of surface water quality not uh but a few uh a hundred feet or less down stream of the property line. Uh, then just touching on the water supply; again it's been noted repetitively this evening that the development will utilize approximately 90,000 gallons of water a day and that will be for the domestic water supply. Uh, it's also been pointed out that there will be additional water needed for the fire suppression system or back up system. Also probably for irrigation and other non-domestic uses. All that said, what that comes out to is - 125 gallons a minute approximately over a 12 hour period every day that must be produced. One of the things we are asked to look at is just what is the um - local ground water use and what is the availability of ground water in the area? Today that we just did a survey of the local residents; both by interviews, looking at well tags and driving by and looking for well houses and well vaults knowing that there is no public water supply in the area. There's about a hundred and fifty residences with a half mile that use ground water as their primary supply source. Um we found that the um wells in the area range from about 120 feet below ground to over 1100 feet below ground (one thousand one hundred feet). They draw from a fractured bedrock aquifer...it's called the um Hendersonville gneiss and the water supply comes from the fractures within the rock. Um, typically the wells in the area produce between 5 and 20 gallons per minute. The well tag on the test well on the property shows that it produced approximately 20 gallons per minute and that's based on one test well that we noted on the property. Assuming that that is indicative of the production rate on the property they will probably need six or seven wells to produce the required 125 gallons minute flow and over the period of time they will again need to produce about 90,000 gallons of water or more a day. So our concern is simply that once a water supply is depleted, particularly in a fractured bedrock aquifer, the water supply can uh intercept fractures that travel for some distance away from the property and if that water supply is depleted um it can't be easily replenished and our opinion is that it would be prudent to make sure that the water supply is in fact adequate. A twenty four hour pumping test may or may not allow the well to reach a steady state draw down condition and if the well is not at steady state after twenty four hours draw down an additional withdrawal will continue and it's possible that the affects of that well could extend further than what's noted after just twenty four hours. Thank you.”

Chairman Moyer – “That's it Mr. Massagee.”

Attorney Boyd Massagee = “the comment made about rebuttal witnesses is such as had; we would offer some later on but not at this time.”

Chairman Moyer – “Alright, now we will go as we will do at each of the parties, not the witnesses, but the parties go down through them and give the ask...give them the opportunity to ask any questions they have from Mr. Massagee's witnesses and I'll start with Mr. Cherry do you have any questions...just of the witnesses that Mr. Massagee put on?”

John Cherry – “No”

Chairman Moyer – “Mr. Knowlton?”

Bill Knowlton – “No”

Chairman Moyer – “Mr. Erb?”

Kenneth Erb – “I’m trying to digest all that’s been tossed at me tonight so I’m just going to take a step back and be a country boy for a minute. I believe the property and rights of Crab Creek Community should be protected against thoughtless invasion of tourist...”

Chairman Moyer – “Mr. Erb now this is not your opportunity to make a statement this is just questions of Mr. Massagee’s witnesses; you’ll be called up in a few minutes to make your statement.”

Kenneth Erb – “Okay, I apologize I misunderstood.”

Chairman Moyer – “I’m sorry I didn’t make that clear to you. This is just questions for Mr. Massagee’s witnesses. Ms. McDowell do you have any questions of these witnesses that Mr. Massagee...?”

Misty McDowell – “No”

Chairman Moyer – “Alright, now we’ll go back to the applicant, Mr. Alexander?”

Attorney William Alexander – “I do have some questions. My first questions will be addressed to Mr. Ryman, if he’d like to step up.”

Chairman Moyer – “Mr. Ryman did you say?”

Attorney William Alexander – “Yea”

Chairman Moyer – “Okay”

Attorney William Alexander – “Mr. Ryman, my first question of you is as an...you described yourself as a registered geologist...do you do any work in the area of development of residential housing facilities?”

Stuart Ryman – “Yes I have”

Attorney William Alexander – “And do you participate in and do applications for uh package sewage treatment facilities?”

Stuart Ryman – “Uh, professional engineers in my firm do. I have not personally.”

Attorney William Alexander – “So are you personally familiar with the uh the procedures and data necessary to have the State of North Carolina approve a package sewer facility?”

Stuart Ryman – “Yes”

Attorney William Alexander – “Have you conducted any studies yourself of the flow of Mud Creek to determine whether or not or what the actual uh average uh flows are and low draw time?”

Stuart Ryman – “We contacted DENR and determined that the 7Q10 was approximately 412 gallons per minute. We went out last week and measured the flow and determined that the flow last week was about 2800 gallons per minute. We haven’t done any studies beyond that.”

Attorney William Alexander – “Okay, so last week, after how ever many days we haven’t had rain here, the flow was over 2800 gallons per minute and the flow that uh...is...the State of North Carolina it’s gonna base it’s determination on as to available capacity is 412 gallons per minute...Is that correct?”

Stuart Ryman – “That’s correct...the flow last week would receive about 3% additional discharge if the package plant was permitted as requested.”

Attorney William Alexander – “Alright, and does your firm... uh make application through the State of North Carolina to uh serve residential subdivision projects with package treatment plants?”

Stuart Ryman – “We typically work for industrial and more complicated waste streams than residential discharge.”

Attorney William Alexander – “Now you brought some pictures in here as exhibits, we’re holding them up showing them, you know big ole pictures of erosion, uh in...is that...I understand your testimony that erosion did not occur on this site, Is that correct?”

Stuart Ryman – “No this site has not yet been developed. That erosion occurred in Gaston County on a site of very similar topography - about 35 acres in area and the site was under an approved erosion control plan which was not followed during construction entirely. Some of the more obvious measures such as erosion control fences were installed but some of the other measures such as erosion control ponds apparently were not constructed correctly and the rainstorm and afternoon thunderstorm overwhelmed the silt fences and put a considerable amount of sediment offsite.”

Attorney William Alexander – “And so in that event to which you refer the developer did not follow the erosion control plan, you know thus saying nothing about whether a similar event would occur on this site would if this developer did follow the erosion control plan, Is that correct?”

Stuart Ryman – “The State is required to uh approve an erosion control plan designed for a 10 year storm event. If the developer were to follow the 10 year storm event design and implement it correctly to every element it would be capable of holding a 10 year storm. A storm higher than a 10 year event were to happen while the construction was ongoing or before the temporary erosion control measures were installed, the uh erosion control measures could still be overwhelmed.”

Attorney William Alexander – “So are you saying that this Board should make its decision based upon the threat of a 10...of a storm greater than a 10 year storm?”

Chairman Moyer – “Mr. Alexander you know I’m going ask you to restrict yourself to questions please. You can make your arguments later.”

Attorney William Alexander – “Sir on the issue of the uh – aquifer, the fractured bedrock aquifer which I believe you referred to by name, what was that name again sir?”

Stuart Ryman – “The rock type is a gneiss.”

Attorney William Alexander – “Alright, and do you have any information uh in your possession, within your knowledge that would indicate that the aquifer in this location, an aquifer travels does it not, isn’t that kind of nature of it, it travels through the bedrock?”

Stuart Ryman – “The aquifer itself doesn’t travel, ground water travels.”

Attorney William Alexander – “Really, ground water running through the aquifer. So is...do you have any information available to you that the ground water within this aquifer is not sufficient to serve the capacity of water draw down which this project projects?”

Stuart Ryman – “The only information I have available is the information from the nearby residents that show that the ground water wells in the area produce between 5 and 20 gallons per minute. The highest flow well found in the area was the test well on the property which produced 20 gallons per minute and other wells including the Kanuga Park or Kanuga Camp area have been shown that multiple locations were drilled, they were not able to identify water after multiple attempts, and were required to hook to city water or public water.”

Attorney William Alexander – “Did you ask Mr. Charles Barker about his well?”

Stuart Ryman – “I did not personally, no”

Attorney William Alexander – “Were you aware that he has a well producing over a hundred gallons a minute

Stuart Ryman – “I’m not aware of that?”

Attorney William Alexander – “And sir isn’t it true, from your own knowledge as an engineer, that...or is it true that if the State and a public...private water system to serve this facility requires a certain level of production, that if...if this applicant can’t produce that level of production within the state standards, they wouldn’t be able to put in the system?”

Stuart Ryman – “As your applicant’s engineer pointed out, the State requires a 24 hour drawdown test to demonstrate that the well can produce the capacity or combination of wells can produce the capacity required for 24 hours. My point, based on professional experience and judgment is that a 24 hour test, though it is the State standard, may be a minimal test requirement and often times public water supply wells are run for 72 hours or longer to make sure that steady State conditions are reached and if in fact the well cannot provide adequate water over 365 days a year ongoing the residents in the area, including this development, may lack sufficient water and then that water will need to be replaced somehow. I’m simply stating that this 24 hour test, though it is a State standard, professionally is a minimal test requirement.”

Attorney William Alexander – “Sir, sir it’s not your opinion that a private water system couldn’t be used on this property, you just don’t believe the State’s 24 hour system is sufficient to test it, is that what you’re saying?”

From audience – “You’re badgering the witness”

Attorney William Alexander – “So are you sir.”

Chairman Moyer – “Alright, that’s enough”

Stuart Ryman – “I’m going to say...I’m just going to repeat my statement which is the State requires a 24 hour draw down test. It is my experience, my direct observation that wells don’t always reach steady State conditions after 24 hours of pumping. If the well is not at steady state then the aquifer has not reached steady state conditions and it’s continuing to be dewatered...and after 24 hours you may or may not be able to predict whether or not the aquifer has long term sustainability.”

Attorney William Alexander – “Going to the waste water issue, It was my understanding, and just correct me if I’m wrong, that your testimony was that the system as designed could handle the waste water flow under the current, you know, low water times of 412 gallons per minute but that only in the event of a what you call an upset or breakdown in the system do you perceive a danger in prepared water situation?”

Stuart Ryman – “I don’t think you heard what I said correctly or maybe I didn’t state it clearly enough. The State will determine whether or not the receiving water is adequate to receive the flow. The low flow is 412 gallons per minute. The State runs a model based on this potential discharge, as well as, other permitted discharges to this receiving water to determine whether this is a permissible discharge. What I did say is that treatment plants have been known to have upsets and if an upset occurred during a low flow event it could have a detrimental affect on the stream.”

Attorney William Alexander – “As could any sewer system such as the City of Hendersonville Sewage System?”

Stuart Ryman – “They all follow the same NPDES regulations, absolutely.”

Attorney William Alexander – “Sir isn’t it true that if a single family residence subdivision containing a hundred and forty nine residents was placed upon this property that with the average water use demands of a single family residence on the individual well that that would require over 59,000 gallons a day and draw down from a hundred and forty nine different wells?”

Stuart Ryman – “I’m not going to do that math in my head, I’ll take your word for that, but there are numerous ways to develop a site and they all are dependent upon how many homes and how many residents. I don’t know how to answer that question up here right now.”

Attorney William Alexander – “That’s all the questions I have of this witness Mr. Moyer. My next questions would be uh to Mr. McMurray, Trooper McMurray. David”

Chairman Moyer – Mr. McMurray...is that?”

Attorney William Alexander – “yea, David obviously I think most of us have known you as a highway patrolman here for a number of years, but what I’m going to ask you is...what uh this traffic safety impact study that you said you’d done on this property, tell us exactly what that consisted of; what figures you took into account, what um data resources you accessed, how you go about doing a traffic information or traffic impact safety study?”

David McMurray – “Well your terminology’s not exactly right. What I talked about during my career was I spent the last third of my career as a Traffic Safety Information Specialist for Western North Carolina and that job involved looking at problem areas throughout the seventeen western counties including Henderson County. Identifying high risk roads, high risk intersections, high risk areas, all

difference types of high risks, you know whether it be a roadway or an area where a community or sometimes a county or a district and once you identify that problem, it was my responsibility to crunch the numbers, look at the geography, look at the topography, uh go to the site and look at the driving habits and traffic patterns and come up with a solution to alleviate that problem. Um, having done that for a third of my career, Mr. Massagee was familiar that I did that and he asked me to look at the Crab Creek area and form an opinion as to the impact of this type development on the Crab Creek area. I had personal knowledge of Crab Creek, having troopered here for sixteen or seventeen years and so I was familiar that it was a dangerous roadway. My impression was that that the roadway and the quality of the road was the major impact...impacter on the safety of this roadway and uh when I looked at all the available data, and you asked what data I gathered, I looked for daily traffic counts, crash index information including the number of crashes the number of personal injury crashes, the number of property number crashes and the number of fatal crashes. Combined with the length of the roadway that I was looking at which would...which gave me ultimately the...the number of...of uh vehicle travel miles per roadway. Uh, and then when you take the number of vehicle travel miles per roadway and compare that with the crash data of those two roadways, obviously with the much higher traffic count on the other...on the only other road in southern Henderson County that had almost exactly the same crash data was US 176 when you compare those two roadways with almost identical crash data and you find that the traffic count and roadway length gives you such a higher index number that's what skews it way out of proportion as to your likelihood of being involved in either a property damage or an injury crash on Crab Creek Road. I know that's sort of a lengthy detailed explanation and if I need to clarify part of that I'd be glad to follow-up."

Attorney William Alexander – "Mr. McMurray, where did you get the information for the crash index information and the source that you resourced does it give you any information as to causes of crashes such as for instance; speeding, intoxication, violation of traffic laws, road conditions?"

David McMurray – "The majority of the information that I got for the...for the entire study from North Carolina Department of Traffic uh...excuse me North Carolina Department of Transportation. Uh, the...I'm trying to think of what their terminology is...you can find it on the internet but...but you look for...for uh vehicle count, uh and I could follow up later and tell you exactly where it's at on the internet. But you can get the internet...you can get the vehicle count off the internet. I actually corresponded directly with DOT to get the traffic count of those two roadways and I got the crash data from the North Carolina Highway Patrol because I wanted to exclude the uh vehicle crashes inside the city limits on...on uh US 176. I wanted to exclude the portion on 176 from...from uh South Main Street there all the way out to the city limits which is uh near Brooklyn Avenue. I didn't want that crash data in there so I got the crash data from the Highway Patrol. To answer your question can you...can you find the cause of the crashes? Yes you can. Did I? No, because Mr. Massagee commissioned me to determine whether or not it was a dangerous roadway not why it was dangerous. I simply offered my opinion having troopered here for seventeen years that I thought the major impact making it dangerous was the topography and geography and the quality of the roadway as opposed to uh some other factor."

Attorney William Alexander – "Mr. McMurray you testified that your opinion the addition of this facility to Crab Creek area will add to the danger of the road. At the time you formulated that opinion did you have any kind of data as to the number of trips per day, miles traveled on the average, any kind of, you know historical research data as to what kind of traffic this facility generates?"

David McMurray – "That's not exactly what I testified to, what I testified to was that...that this or any other development of this magnitude would have an appreciable negative impact to the traffic safety of the Crab Creek area and Crab Creek Road. Uh, I don't have the expertise to tell you how many uh maids,

uh, lawn maintenance people, nurses, doctors, uh restaurant workers, all these other people, I don't have...I don't have that information. I'm just saying that...that any major project on Crab Creek Road is going to further extend a road that is already overly extended."

Attorney William Alexander – "Mr. McMurray does this higher crash index on... on Crab Creek Road indicate that the current drivers of Crab Creek Road as opposed to prospective future drivers are not abiding by the law as faithfully as they should?"

David McMurray – "I want to start out by saying I think these questions are getting a little bit silly. No...in no road...in no road in North Carolina prior to what all of us would like to have do all the drivers abide by the law. Uh, are people more reckless and more...or less law abiding on Crab Creek Road? No, I don't think so. I'll...I'll reemphasize what I've said three or four times. I think the major factor on Crab Creek Road is the road is already stretched beyond its ideal potential and any increased use of the roadway will result in a negative...appreciable negative impact on traffic safety."

Attorney William Alexander – "Sir if that...if that was your opinion, did the establishment of Dupont State Forest and the visitors to that negatively impact the safety of Crab Creek Road?"

David McMurray – "Let me say for the seventh time, any increased use of Crab Creek Road will produce a negative impact. Obviously the intensity or the volume of that use is going to be directly in proportion to how much it...it uh affects it. I don't think anybody's noticed an increase on Crab Creek Road traffic from Dupont State Forest because it was such a decrease from the operation of the Dupont Plant."

Attorney William Alexander – "Do you know how much the traffic decreased when the Dupont Plant closed Mr. McMurray?"

Chairman Moyer – "Hey Bill, Bill let's move on."

David McMurray – "Thank you Mr. Chairman."

Attorney William Alexander – "Alright the next...I like to next ask Mr. McPhail some questions. Mr. McPhail you've stated your opposition to this project and opposition to development of this project on the particular track of land in question, stating that you don't um...um oppose the project elsewhere. In fact, isn't it true sir that you owned this tract of land, that you sold it to Mr. James Frady, who sold it to my client?"

Fritz McPhail – "Yes, we originally owned the tract of land and when we sold it to Mr. Frady we actually had a deed restriction on there and other restrictions on the land and we have not pursued those at this time."

Attorney William Alexander – "Well isn't it true sir, and I'll show you a copy of those deed restrictions, that the restriction that you imposed on this land at the time you sold it was to allow no development other than one single family residence and outbuildings per one acre but that that was limited to a ten year duration which has now terminated?"

Fritz McPhail – "Uh, well that...that restriction and...and...and this was uh...it was not worded, as well as, it should have been and we're finding that out now, but it...it also says...it says that uh after the purchase price has been paid in full uh or the expiration of ten years uh from the closing whichever is later, development shall be no more than one single family dwelling per acre. So we could go back and

forth for a long time...it...it...it...and...it is...there's a sentence at the bottom that says "everything except for deed restriction number four goes away." However, that is contradicted by the fact that it specifically specifies here...and I think this is going to up to a jury to determine what the intent was. Clearly the intent with my family selling this land and having this lake was to limit the development to one single family dwelling per acre. Now we made a mistake when we wrote it...uh and...and so I...I...I leave that up to a...to a jury to determine that one but uh more importantly we've reserved here in four, "seller reserves an easement for their waterline as it's...at it's present location including the right to enter the premises to conduct repair to the line including the use of the service road."

Chairman Moyer – "Mr. McPhail, that was not the...limit your answers to the question."

Fritz McPhail – "Okay, let me...let me"

Attorney William Alexander – "Sir, just look here with me and tell me if I'm reading wrong. The forgoing restriction shall expire 10 years after closing the sale which closing took place March 3, 1997?"

Fritz McPhail – "You're, you're reading that sentence correctly. What it says is 10 years after the closing of the sale they should expire, but...but in paragraph one it says that "after the date of closing of sale" the very same sale as it's referring to here...there's only one sale. It says here "after the closing of the sale the development shall be no more than one single family dwelling per acre."

Attorney William Alexander – "Sir it's my understanding of your objection as stated to the Board of Commission as an adjoining land owner that you don't like sitting on your porch, walking, cars driving up the road past the lake, or that's what you fear they'll do but you were willing to see people driving back and forth to 135 single family dwellings."

Fritz McPhail – "Well, it...because of our water restrictions that we have here, hopefully the...we're going to be able to limit the ability...you know you're talking about a...a huge development that is going to require a type of traffic that a residential development of one single family dwelling per acre would not require. I don't think we're going to be seeing service trucks driving up at 2:30 in the morning to go to somebody's house. Uh, this is kind of stretching the boundaries of being realistic."

Attorney William Alexander – "Sir I'll show you a document and ask you if you recognize what it is?"

Fritz McPhail – "It...this was an email from me to David."

Attorney William Alexander – "Would you read that email into the records?"

Fritz McPhail – "Sure, David I spoke to Mom, as I suspected she will take a few days to think about it before I can talk to her again. Her dog of eighteen years...uh just passed away and she is grieving now. Then she called back an hour...an hour later with an idea to turn our pond into a lake with your help. Certainly within the next month we could come up with a win – win scenario I think. Uh, by the way did I tell you I am very religious and I spend most of my time working on my church camps? That was actually a uh...uh that was not regarding my...well that was regarding something that only David and I are privy to but it wasn't regarding myself in particular. By the way if you need an equity partner let me know. Give me a couple of days to catch up."

Attorney William Alexander – "So in that email sir you indicated Mr. David Ammons, representative of our company that by the way if you need an equity partner let me know, is that correct?"



Fritz McPhail – “Yes, this was uh in the very beginning stages of all this. We had no idea...we were basically told that the development going to happen, there’s nothing that we can do about it, you’re going to have to live with it, and so for my Mom and I perspective that was...that was all that we knew. We had no idea we had any other chance so we were talking to them about ways they could alter their site plan because they wanted us to remove these restrictions and we said we would consider removing the restrictions if we could make site planning changes uh that would be to our benefit. Well when we started looking at it, we had Luther Smith out there, and Luther basically told us that that; A – you’re gonna have huge erosion and sedimentation issues and B – You’re gonna be able to see this stuff. He goes there’s no amount of land planning that we can do to take that road and move it on the backside of that hill or there’s no amount of land planning we can do to prevent you from seeing all this stuff. This was a very early email that you’ve selected out of hundreds of emails that we...we...we sent back and forth and I...if I had a chance I’d go back and get other emails that would be entirely different.”

Attorney William Alexander – “Mr. McPhail isn’t it also true that my clients met with you and actually changed the course of a road bed in one place to...uh help accommodate your privacy issues on your own residence.”

Fritz McPhail – “Yea, we...we...we were working to try to a...to figure out a way that we could...we could basically position the road in another place and...but after talking to our land planner and just looking at the... how it was going to come out...the...there was just no way to minimize the impact. Uh, and after...and during that period of time we actually found out there was a hearing on the matter which was uh not something that we were aware of. Uh, and obviously...uh the first thing I did was I called Jerry Grant...and I respect Jerry and David, like I said from the very beginning I think they’re good developers and I have no problems with the project. Uh, and we told him from the very beginning we didn’t agree with where it was going to be put. It’s not an issue of them or us. I think all of us are respectable upstanding citizens. I’m simply...I found out I had an opportunity to speak against the project itself and that’s what we did.”

Attorney William Alexander – “Mr. McPhail do you live on your property that’s out there?”

Fritz McPhail – “Yes, I’m...I’m currently living on this property, correct.”

Attorney William Alexander – “When did you start living on the property?”

Fritz McPhail – “When my Mom was diagnosed with terminal cancer about 3 months ago.”

Attorney William Alexander – “And prior to that time how long had it been since you lived on this property?”

Fritz McPhail – “Uh, well we...we...we come back...I have a company in Atlanta and I travel back and forth, so it’s...I spent the first uh, let’s see twenty...twenty years of my life on the property, then I went away for the next fifteen years and now I’m back uh for the time being.”

Attorney William Alexander – “One final question Mr. McPhail. You made multiple references in your testimony – the Henderson County Planning Board having recommended against this project. Are you aware that the Planning Board has not made a recommendation against this project?”

Fritz McPhail – “Uh, well I’m not an expert on it, at the last meeting that I came to I was handed a

pamphlet uh and in the pamphlet uh it said in there...there was an excel spread...or there was a powerpoint presentation that said – reasons uh the staff is recommending for denial and there were six reasons given and I just presumed that that was the Henderson County Planning Department. Maybe I misunderstood that.”

Attorney William Alexander – “I’m talking about the difference between the Planning Board sir and the Planning Staff, do you understand that?”

Fritz McPhail – “No I do not”

Attorney William Alexander – “And sir you also aware that the Highlands has already been approved as a major subdivision uh by the Henderson County Planning Board?”

Fritz McPhail – “Uh, I knew that you all were...that this hearing was dealing primarily with the Glen and I was not aware of exactly what had happened to...or regarding the Highland.”

Chairman Moyer – “Please, Bill do you have any more questions?”

Attorney William Alexander – “Uh, no”

Chairman Moyer – “Alright – we are at a point as I indicated before where we have to start clearing the building. Unfortunately we did not get as far as any of us would have hoped. Um, we are only finishing the testimony of basically one of the parties and we still have all the parties plus the witnesses and then back to staff. We need to uh, continue this hearing to a date as soon as we possibly can to pick up this hearing while it’s all still fresh in our minds and I am suggesting to the Board that we continue this till Wednesday, May 30<sup>th</sup> at 6:00 here.”

Unintelligible

Chairman Moyer – “Alright”

Gentlemen from audience – did not give name – “I hope in the future that you as the Board will not let Mr. Ammons have a field day on the citizens of Henderson County like he has tonight. I’m mad about it. I’m sure everybody else is mad about it. I know he’s doing his job, but to me this is not really right. We’re not attorneys, we’re just ordinary people. He’s picking us off like we’re fish in a barrel shooting us.”

Chairman Moyer – “Anthony, how can we check whether this building would be available on the 30<sup>th</sup>?”

Commissioner McGrady – “We can’t”

Deputy Clerk Terry Wilson – “I can call tomorrow.”

Chairman Moyer – “No way we can find out now?”

Deputy Clerk Terry Wilson – “No, there’s no one here.”

Multiple talking amongst Board and staff

Chairman Moyer – “Yea, we try to avoid...we have so many meetings scheduled.”

Unintelligible talking from audience

Chairman Moyer – “I knew we were going to run into...we’ll get to all these...these uh...but we’ve got to find a date before we get kicked out of here to continue this to...cause we’ve got to get...continue moving this along. Um, how about the 31<sup>st</sup> is that?”

Commissioner McGrady – “The 31<sup>st</sup> is fine”

Commissioner Williams – “That’s Thursday”

Chairman Moyer – “That’s Thursday”

Commissioner Williams – “I mean we have committed ourselves to...”

Chairman Moyer – “Oh we have haven’t we...what time is that?”

Commissioner Williams – “six thirty until eight thirty”

Chairman Moyer – “six thirty until eight thirty – well that kills that you’re right”

Commissioner McGrady – “How about Monday”

Chairman Moyer – “I tried Monday, I think it’s not good for you isn’t it?”

Attorney Russ Burrell – “Monday, the 28<sup>th</sup>”

Voice from audience – “Memorial Day”

Chairman Moyer – “twenty eighth...that’s Memorial Day right”

Discussion amongst Board – Unintelligible

Chairman Moyer – “Well let’s try June and see what we can get at...yeh, I think to get this place would be uh...the fourth is our regular meeting...fifth we have a meeting...sixth is Wednesday...”

Commissioner Williams – “May I make a suggestion”

Chairman Moyer – “seventh we have a meeting...”

Commissioner Williams – “In terms of folks wanting to attend church services and I certainly respect that, I’m not sure what time most services might end...but you know I don’t know how long we may take but perhaps we could you know move it to seven or seven thirty and begin at that time. A lot of people go to church.”

Chairman Moyer – “I’m afraid with all we have to cover Mark...if we don’t get...start earlier than that we’re not going to get it.”

Commissioner McGrady – “Yes, I think we have to start it much earlier um because we’re not anywhere near through, we haven’t begun to take any statements from anybody else.”

Chairman Moyer – “What’s that”

Commissioner Young – “First week in June”

Chairman Moyer – “Well I went through the first week – we have uh Monday the fourth is our regular meeting, Tuesday”

Commissioner McGrady – “Bill, we’re not going to get this...my suggestion would be that we check available dates first because even if we agree on something tonight and then just put it on the website.”

Chairman Moyer – “Well the problem is we have to...if we don’t continue it...the only other option would be to continue it till...”

Commissioner McGrady – “to a date uncertain until we check on the availability”

Chairman Moyer – “No”

Attorney William Alexander – “Mr. Moyer may I make a suggestion procedurally? If you would continue it to one of your regular meeting dates like your next one only for the purpose of setting adjournment date then you won’t have to republish it”

Commissioner McGrady – “And that’s what I was...that’s a good idea and we’ve got a meeting scheduled on Thursday night...we continue it to Thursday night simply for purposes of rescheduling – continuing it um to a night that will give us a sufficient block of time and there are no conflicts.”

**ADJOURN**

Chairman Moyer – “*Well let’s continue it to our regular meeting on June 4<sup>th</sup> rather than Thursday night. Alright do we have a motion to continue this public hearing only for purposes of setting...finding a location, which is going to try to be here if at all possible, and continuing this hearing so they’ll be nothing substantive, we’ll take no testimony other than us finding a date, so I’ll continue this hearing until 7:00 on Monday, June 4<sup>th</sup> at our...at our meeting place which is part of our regular meeting. Does that work Russ? All in favor of that motion say I.*”

Commissioners in unison – “I” (All voted in favor and the motion carried)

Chairman Moyer – “Thank you all very much and I’m sorry we didn’t make further progress.”

Attest:

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May 22, 2007

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Terry Wilson, Deputy Clerk to the Board

William L. Moyer, Chairman

DRAFT