

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 14 August 2007

SUBJECT: Board deliberation and decision, Glen and Highlands at Flat Rock

ATTACHMENT(S): Possible conditions should be the Board be inclined toward approval of vested rights

SUMMARY OF REQUEST:

This matter is on for your determination of whether to grant vested rights to the Glen and Highlands at Flat Rock project.

The ability of a landowner to obtain a vested right after county approval of a site specific development plan or a phased development plan will preserve the prerogatives and authority of local elected officials with respect to land use matters. There will be ample opportunities for public participation and the public interest will be served. These provisions will strike an appropriate balance between private expectations and the public interest, while scrupulously protecting the public health, safety, and welfare. N.C. Gen. Stat. §153A-344.1(a).

From §153A-344.1(c):

*A vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval, of a site specific development plan or a phased development plan, following notice and public hearing by the county with jurisdiction over the property. . . . **A county may approve a site specific development plan or a phased development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms and conditions will result in a forfeiture of vested rights. . . .***

Similarly, under §189-3B of the Henderson County Code:

The Board may approve or disapprove a site specific development plan based upon the need to protect the public health, safety and welfare. The Board may require such terms and conditions as it may deem necessary to protect the public health, safety and welfare.

BOARD ACTION REQUESTED:

To deliberate and decide whether to vest development rights in Park Ridge MOB, LLC, for The Glen and Highlands at Flat Rock.

If the Board is inclined to grant vested rights, the following motion is suggested:

I move that the Board grant vested rights under Chapter 189 of the Henderson County Code to Park Ridge MOB, LLC, in The Glen and Highlands at Flat Rock [subject to conditions numbered _____ on the list of possible conditions] [and subject to the following additional condition(s): _____]. I move that the Board direct staff to prepare a draft order with appropriate findings to this effect as soon as possible, if possible before the conclusion of this meeting.

If the Board is inclined to deny vested rights, the following motion is suggested:

I move that the Board deny vested rights under Chapter 189 of the Henderson County Code to Park Ridge MOB, LLC, in The Glen and Highlands at Flat Rock. I move that the Board direct staff to prepare a draft order with appropriate findings to this effect as soon as possible, if possible before the conclusion of this meeting.

Proposed conditions if the Board of Commissioners grants vested rights to the Glen and Highlands at Flat Rock. This draft is as of 9 August 2007.

No.	Proposed Condition	Party Suggesting Condition, and comments
1	<p>The applicant only be vested to the number of units described for each type of use as a maximum number of units (i.e. 17 units of elderly living care, 165 units of independent living, 80 beds for “full support service,” 16 townhome dwelling units (duplex, triplex or quadraplex), 75 single-family homes without lots, 45 single-family homes with lots) to prevent expansions which are not in conformity with the vested rights.</p>	<p>Suggested by: Staff NOTE: the number of units could be downwardly modified by the Board at its discretion if the Board finds it to be necessary to protect the public health, welfare or safety. NOTE FROM APPLICANT: Applicant does not want terminology to determine ownership. It is the intention of the Applicant that all lots within the Highlands will be separately owned; however, in the Glen, it is intended that all of the living units will be owned, but not the ground upon which they sit. This is true for the detached as well as attached units. Applicant would therefore like to steer clear of terms such as condominium units or townhomes, as these terms are very subjective, on a project by project basis. Also, applicant does not want to be pinned down to a specific number of attached units – therefore, applicant would prefer that a maximum number of living units be defined (75) , and that such units will consist of single-family detached units, duplexes, triplexes, and no more than 1 quadraplex. (Note: this comment is not intended for buildings A, B, &C).</p>
2	<p>The applicant shall provide and consistently abide by a detailed definition for each of the following uses: independent living, elderly care, resident storage, full support service, and connective bridge to ensure the uses are properly vested.</p>	<p>Suggested by: Staff</p>
3	<p>The applicant be vested to only those specific structures, and the uses specified for such structures, as identified by the applicant at the time of application or on the Master Plan dated May 22, 2007.</p>	<p>Suggested by: Staff. See comments to 1, above. NOTE FROM APPLICANT: The Applicant does not wish to determine at this time the types of accessory uses primarily serving the residents would be – the list was intended to be illustrative, not determinative. Therefore, rather than list separate accessory uses such as a bank, a theater, a hair salon, Applicant would prefer that the term “non-residential accessory uses intended to serve primarily the residents of the Highlands, the Glen</p>

		and their guests” be used when referring to the nonresidential, non-medical uses permitted to be located within the Glen.
4	The lots of the Highlands portion of the development must be no less than 1 acre in size.	Suggested by: Staff.
5	The applicant supply no less than one (1) parking space per each 500 square feet of gross floor area in commercial, office or civic use; and no fewer than two (2) parking spaces per each dwelling unit to ensure the uses are property vested and to prevent expansions which are not in conformity with the vested rights.	Suggested by: Staff.
6	The following lands be placed in common area/open space: lands which are both (1) within the Highlands portion of the development; and (2) have slopes in excess of 45 percent.	Suggested by: Staff. NOTE FROM APPLICANT: applicant requests this provision not be included.
7	The applicant is limited to buildings which do not exceed the square footage or building height as outlined by the site-specific development plan, and are sited as shown on such plan.	Suggested by: Staff
8	The applicant is vested only to buildings which have a building footprint not exceeding twice the calculated average square footage per level.	Suggested by: Staff NOTE FROM APPLICANT: applicant requests this provision not be included, without further explanation.
9	The applicant is vested to buildings which do not exceed the number of levels identified by the site-specific development plan. Building height shall be measured as the vertical distance from the finished main floor level to the highest point of the building or structure (chimneys, cupolas, steeples and mechanical equipment are not included in measuring a building or structure height).	Suggested by: Staff
10	Dimensions (area and height) of the “summit house”, any water tanks, any wastewater plant, and bridges/commons, and parking areas shall be provided by the applicant in a supplemental application, and the applicant be vested to such dimensions should the Board agree these dimensions are appropriate.	Suggested by: Staff NOTE FROM APPLICANT: applicant requests this provision “be revised to state that the dimensional requirements for the water tank and the wastewater plant be ‘as required by NCDENR and/or other governing bodies having jurisdiction.’”
11	The applicant provide a proposed minimum distance between structures within the Glen and Highlands portion of the development which are to be no less than permitted by North Carolina State Building Code.	Suggested by: Staff
12	No structure may be placed closer than 50 feet to the project perimeter.	Suggested by: Staff NOTE: this is in keeping with the overall intent of the site-specific development plan
13	The “Health Center”, Main CCRC Building/Apartment A, Apartment B, and Apartment C shall be located as generally indicated, no closer than 400 feet to any property line in keeping with the overall design and intent of the site-specific development plan.	Suggested by: Staff
14	No structure may be placed closer than 15 feet from the edge of any proposed internal right-of-way.	Suggested by: Staff
15	The developer shall only have vested rights for the uses specified in the developer’s application for vested rights. No vested rights shall be granted regarding any environmental ordinances, including but not limited to any Stormwater Ordinance, Sedimentation and Erosion Ordinance, Watershed Protection Ordinance, Flood Damage Prevention Ordinance, Protected Mountain Ridge Ordinance or similar ordinances previously or hereafter adopted by Henderson County. In addition, this project will still be subject to any adequate public facilities ordinance, impact fees or the like should the County adopt any such ordinances during the term of this Ordinance and Order.	Suggested by: Staff. NOTE FROM APPLICANT: Developer requests “that the language in E1 mimic the Applicant’s proposed language suggested in NOTE FROM APPLICANT to proposed condition 1, above: ‘non-residential accessory uses intended to serve primarily the

		residents of the Highlands, the Glen and their guests”.
16	The developer shall meet the requirements of the North Carolina Phase II Post-Construction Stormwater Controls as enacted and enforced by the North Carolina Department of Environment and Natural Resources effective July 1, 2007. The Developer and its successors in interest, shall secure the appropriate approvals from the State or its designee prior to final plat approval.	Suggested by: Staff
17	The applicant provide and abide by a definition of common area as “the area set aside, dedicated or reserved for the use and enjoyment of residents of a development or subdivision. Common area may include space for community buildings, ponds, gardens, walking paths, outdoor play areas, swimming pools, ball fields, basketball courts, racquet courts, gazebos, picnic shelters, etc. Where damage to subsurface sewage disposal systems or wells would not result as a use of property for common area, such areas over sewage disposal systems/wells may be used as common area. Those areas which shall not be considered common area include: land within setbacks/separation areas, internal/external roads/rights-of-way, driveways, parking spaces, sale/model homes, solid waste disposal areas and areas needed for above ground utility facilities including water supply or sewage disposal system.”	Suggested by: Staff. NOTE FROM APPLICANT: “Applicant requests that it be clarified that this definition is for purposes of the Vested Rights permit only.”
18	A minimum of 28 acres of common area shall be provided.	Suggested by: Staff NOTE: this is in keeping with the overall intent of the site-specific development plan
19	The applicant shall provide a buffer (“the buffer”) along the perimeter of the project where any dwelling unit is to be located within 100 feet of the exterior line of the subject property or where any internal roads are immediately adjacent to exterior lines of the subject property.	Suggested by: Staff NOTE: (As proposed this would apply to the Highlands units 28, 29, 31 and 34; and the Glen units 16-19, 24-27 and 30-34).
20	The buffer should be a minimum of 20 feet in width and contain 1 large deciduous tree (35 feet plus at maturity), 2 small deciduous trees (less than 35 feet at maturity), 2 large evergreen trees (20 feet plus at maturity), and 6 small evergreen trees (less than 20 feet at maturity) per each 100 linear feet of buffering.	Suggested by: Staff
21	The trees in the buffer shall not be planted within five (5) feet of any property line to ensure access for maintenance and to avoid encroaching onto the adjacent property.	Suggested by: Staff
22	The trees in the buffer shall be spaced to provide screening and shall be a minimum of 8 feet (deciduous) and 6 feet (evergreen) in height at the time of planting.	Suggested by: Staff
23	Preserved trees (of the size required above) within the area of the buffer may be credited toward the buffer requirement, and must be indicated at the time of development plan submittal.	Suggested by: Staff
24	The buffer must be installed prior to final plat approval.	Suggested by: Staff NOTE FROM APPLICANT: Applicant requests that rather than requiring the installation of buffering before the final plat approval that this condition be reworded as follows: Before Applicant receives the Certificate of Occupancy for any dwelling located within 100 feet of the exterior property line for the Glen, the buffer required due to such dwelling being within such 100 feet must be installed.
25	The Applicant shall submit an instrument or instruments setting forth a plan for permanent care and maintenance of common area and buffers which would be legally enforceable; that the Applicant create a homeowners’ association and submit bylaws and rules and regulations governing the association. The Office of the County Attorney must review the Declaration of Covenants and Restrictions for The Glen and Highlands at Flat Rock, the Bylaws of the Property Owner’s Association as to form,	Suggested by: Staff. NOTE FROM APPLICANT: Applicant requests that the following language be added at the end of the paragraph: Required instruments shall be submitted at the

	and approve the same as preserving in perpetuity the common area and buffers, and reasonably providing for their permanent care and maintenance.	time of final plat submission.
26	The applicant must provide evidence that the water supply and sewer system plans shown on the site-specific development plan have been approved by the appropriate agency. All private water and private sewerage systems shall be installed and shall meet the requirements of the Henderson County Health Department or other government authorities having jurisdiction thereof. The development vested rights are contingent on final approval from such agencies.	Suggested by: Staff. NOTE FROM APPLICANT: Applicant requests that applicant be able to post a letter of credit or bond in lieu of waiting for final approval from the governmental agencies before the vested right is final.
27	No building permit shall be issued until there is in place, and operating, a water line to the site providing water from the City of Hendersonville, meeting all the water needs of the site. No "fall back" alternative shall be allowed which would permit the use of wells instead of public water.	Suggested by: party McPhail
28	No building permit shall be issued until there is in place, and operating, a sewer line for disposition of all sewerage generated on the site and all storm water gathered on the site.	Suggested by: party McPhail
29	That the applicant provide written consent that the project shall be subject to all terms and conditions of any erosion and sedimentation control ordinance, upon the adoption of such by the county.	Suggested by: party McPhail
30	The following language shall be incorporated into the restrictive covenants for "the Highlands" prior to the beginning construction on said portion: Construction Site and Erosion Control: Prior to commencing any construction upon any lot, the Owner shall submit a site survey (including but not limited to: elevation notations, topographical maps, anticipated water runoff courses, and a tree inventory of all trees having a base trunk diameter in excess of eight inches) to the Architectural Committee for approval. The Architectural Committee shall not approve any improvements to be placed upon, or any soil disturbing activities upon, any sloped portions of any Lot whose slope exceeds thirty-five percent (35%) without first receiving and approving, which approval shall not be unreasonably withheld, an engineered plan for improvement that is designed to mitigate the affects of accelerated storm water run-off and to retain storm water in a reasonable fashion. Furthermore, any such plans and specifications submitted to the Architectural Committee shall be certified by a licensed professional engineer. Furthermore, at all times before, during and after construction the Owner shall take all reasonable steps necessary to control water runoff upon their Lot as may be necessary to prevent or mitigate erosion, and to prevent such runoff (which would be in excess of that occurring from an unimproved lot) from departing their Lot. The Committee shall have the right to impose reasonable rules and conditions to accomplish this goal. Where any owner fails to adhere to the provisions of this paragraph, the Association shall have the right, but not the obligation, to take such actions as may be necessary to control runoff or mitigate erosion for any such owner's lot; Any and all costs incurred by the association be a lien vs. the lot and collectable using any and all remedies provided for herein or by law for assessment. In no events shall any residences be built upon slopes in excess of 45%.	Suggested by: applicant.
31	The Applicant shall be required to provide public water to the Project if all three of the following three (3) contingencies are met: (a) The total cost to Applicant in installing the public water system not exceeding \$1,339,300.00 (b) Obtaining necessary encroachment agreements and other easements from or through the State of North Carolina, and (c) No unknown physical or engineering factors developing which would prevent installation of the system. In the event public water is not required due to the failure of one of the contingencies provided in Paragraph 2 above, the Applicant shall be permitted to install a community well system, including a collection of wells, a storage tank, pumping stations and water lines as necessary to serve the Project. At the time the draw down test is performed for the Applicant's application to the State for the community well system, also monitor the water levels in any private wells located within 1000 feet radius of the Applicant's Project wells whose owner's request and consent to such monitoring. It is specifically	Suggested by: applicant.

	noted that such owners, as part of the monitoring, will be required to refrain from water usage during the 24 hour period during which the draw down test is performed.	
32	To the extent permitted by State and Federal laws, Applicant shall amend its Articles of Organization to provide that Applicant does not have the power to convert to a nonprofit corporation. Additionally, by accepting this vested right, Applicant represents to the Board of Commissioners that (1) Applicant will not apply for Medical Care Commission bonds, nor any other type of financing for the Project that would result in any portion of the real property to qualify for tax exempt status under the North Carolina Machinery Act, as such may be amended; and (2) All of the living units within the Glen portion of the Project will be conveyed in fee simple ownership to their occupants, and thus should remain taxable, subject only exemptions within the Machinery Act that may apply to such individual occupants.	Suggested by: applicant.
33	The Applicant/developer shall in the development of this project design, and install according to such design, such control measures and systems as are reasonably predicted to retain upon the site sufficient storm water runoff to insure that the storm water runoff from the site, at the time of completion of those improvements shown on the graphic site plan, in all conditions up to and including a two-year storm, does not exceed that leaving the property in its current natural state. This shall be accomplished by the developer submitting to the planning office (or such other entity as that office directs) a written and graphic plan for control measures which has been certified by a licensed engineer, or by a design engineer from outside the state if acting in concert with a licensed engineer, as being of sufficiently capable and reliable design (based upon standard engineering principals and reasonable projections) to retain upon the property (after completion of the proposed improvements) the storm water runoff in quantities sufficient to prevent storm water departing the site in quantities in excess of those estimated to currently leave the site, using a two year storm as the maximum adverse event. This condition shall not require design or implementation of control measures to retain storm water runoff resulting from a rainfall event more severe than a two year storm. The developer shall further, during each year of development for a period of five years from the date of approval of the site specific development plan, file a written report annually with the planning office, certified by a licensed engineer, certifying to the said planning office the then current state of completion of these control measures.	Suggested by: applicant. NOTE: compare this condition to staff-suggested condition 30.
34	The applicant/developer shall, in the development of this project, design and install all roads in such a fashion as meets the reasonable requests of the fire department with jurisdiction (now Valley Hill Fire Department) for areas of sufficient turn around radius or turning distance as would be needed for ready access by emergency vehicles, if those requests are consistent with the requirements of the North Carolina Department of Transportation.	Suggested by: applicant.
35	Applicant shall be required to provide to the County if Applicant receives any determinations by the State of North Carolina Division of Water Quality that the wastewater treatment plant serving the facility is out of compliance with State laws, rules, or regulations.	Suggested by: applicant.
36	Applicant shall install dry hydrants within each of its ponds, and such make such dry hydrants available for use by the Valley Hill Fire Department to serve the entire Crab Creek Community.	Suggested by: applicant.
37	With regards to parking requirements for the Glen portion of the Project, the following shall be provided by Applicant: Single family home – 2 car parking (in garage) (75 units x 2 = 150 spaces) Townhomes – 2 car parking (in garage or in front of unit) (16 units x 2 = 32 spaces) --Visitor parking for homes and townhomes would be on-street parking or in-driveway parking. Center Parking – --Independent Living Units – 1 car parking on grade or in lower level parking under the	Suggested by: applicant.

	<p>buildings. (165 cars)</p> <p>--Assisted Living Units – no resident cars, visitor parking only.</p> <p>--Visitor and staff parking –</p> <p>----Center General – 12 cars</p> <p>----Resident visitors – 30 cars</p> <p>----Staff– 9 cars</p> <p>Maintenance, housekeeping, and services – 15 cars plus 2 truck loading bays.</p> <p>Health Care</p> <p>--Visitors – 15 cars</p> <p>--Staff– 20 cars</p> <p>Simply stated:</p> <p>Homes and townhomes: 2 cars per unit (91 x 2) = 182 cars</p> <p>Center and Independent Living Units: 1.3 cars per unit (165 x 1.3) = 215 cars</p> <p>Health Care: .45 cars per bed (80 x .45) = 36 cars</p> <p>Maintenance, housekeeping, and services: 15 cars plus 2 truck loading bays</p> <p>Total minimum parking required: 412 cars plus two truck bays until the Health Center is built.</p> <p>Total minimum parking required: 448 cars plus two truck bays when the Health Center is completed. (Note: the Health Center is to be built 4 to 5 (we are asking for a 5 year window) years after the CCRC opens.)</p>	
38	<p>The development is proposed to be accessed off of Crab Creek via Pearl Lane and a new “Entry Drive”. The applicant shall adhere, at the intersection of Pearl Lane and the “Entry Drive” with American Association of State Highway and Transportation Officials (AASHTO) site visibility standards.</p>	<p>Suggested by: Staff</p>
39	<p>The applicant is proposing the entrance off Pearl Lane as the “primary entrance” with the new “Entry Drive” proposed as a secondary entrance. Prior to the issuance of a Certificate of Occupancy for any structure within the Glen and Highlands at Flat Rock, Pearl Lane shall be upgraded to private collector road status, as defined in the Henderson County Subdivision Ordinance (Chapter 170 of the Henderson County Code), and the bridge or culvert provided on Pearl Lane shall be improved to accommodate 18 tons (to ensure provision of fire service).</p>	<p>Suggested by: Staff.</p> <p>NOTE: This is an alternative to the following condition.</p>
40	<p>The applicant is proposing the entrance off Pearl Lane as the “primary entrance” with the new “Entry Drive” proposed as a secondary entrance. Prior to the issuance of a Certificate of Occupancy for any structure within the Glen and Highlands at Flat Rock, the “Entry Drive” must be provided and built to the standards of the Henderson County Subdivision Ordinance (Chapter 170 of the Henderson County Code) or Pearl Lane must be upgraded to private collector road status and the bridge or culvert provided on Pearl Lane must be improved to accommodate 18 tons (to ensure provision of fire service). The bridge located on Pearl Lane shall be designed according to state road standards for public road bridges and the applicant shall submit a copy of the bridge design plans. Such plans should include certification from a registered professional engineer indicating that such plans meet state road standards for public road bridges. Prior to the issuance of a Certificate of Occupancy for any structure within the Glen and Highlands at Flat Rock, the applicant must submit a copy of an as-built drawing of the bridge with certification from a registered professional engineer that the bridge meets state road minimum standards for public road bridges.</p>	<p>Suggested by: Staff.</p> <p>NOTE: This is an alternative to the preceding condition.</p>
41	<p>The applicant originally proposed private water (community wells) but is now proposing public water. The applicant must provide evidence that the water supply and sewer system plans shown on the site specific development plan have been approved</p>	<p>Suggested by: Staff.</p>

	by the appropriate agency. All public water and private sewerage systems shall be installed and shall meet the requirements of the Henderson County Health Department or other government authorities having jurisdiction thereof. As the development is served by a public water system, such shall meet the County's or, should it become a part of any municipality, such municipality's minimum requirements for fire hydrant installation.	
42	Townhomes must average of 2000 square feet footprint per unit with 1 to 2 levels (35 feet in height). Homes Not Associated with Lots must average of 2400 square feet footprint per home, not including garage/car port (180,000 square feet total). Homes to be 1 to 2 levels (35 feet in height).	Suggested by: Staff. NOTE: Developer "requests that the average footprint per detached living unit be 2400 or less, not including garage or carport."
43	No area within 30 feet of the perimeter of the property be disturbed (except where necessary for providing access to the development).	Suggested by: party Erb.
44	A 100-year "superfund" must be created to deal with problems created for neighboring property owners' wells, if any, as a result of this development.	Suggested by: public.
45	The restaurant planned for the facility may not be located on the _____ floor(s) of the Main Building.	Suggested by: a member of the Board during the hearing as a possible plan improvement.
46	The applicant shall provide 10 acres to be placed in a permanent conservation easement.	Suggested by: applicant during the hearing.
47	The applicant shall noise screening for the sewage treatment plant planned for the facility consistent with public safety and the Henderson County Noise Ordinance as may be amended from time to time.	Suggested: indirectly by the applicant during the hearing.