

## MINUTES

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS  
JULY 24, 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: Planner 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. This is a vested rights proceeding with respect to VR-2007-01, the Glens and Highlands at Flat Rock. Chairman Moyer stated that the Board of Commissioners had one order of business that they would need to take care of before starting.

Commissioner McGrady explained that he had a Clean Water Management Trust Fund meeting scheduled on the day of the Board of Commissioners rescheduled regular County Commissioners meeting in August and after speaking with everyone they were amenable to moving that meeting to the following night, Tuesday, August 14. This is contingent on making sure the Board room is available. The N.C.D.O.T has a meeting scheduled for August 14 that will need to be relocated.

*Commissioner McGrady made the motion that the Board reschedule the August 13 meeting to August 14 subject to the availability of the room. All voted in favor and the motion carried.*

Chairman Moyer stated that the hearing would now continue with the presentations of staff's evidence and called Matt Cable to the podium.

### 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

Matt Cable – “Good evening Mr. Chairman, Commissioners. Staff would like to begin by reminding the Board that Exhibits A through G were formally entered into record at the continuance of the hearing on May 22<sup>nd</sup>. As a reminder to the Board, Exhibit A refers to the Board Action Form and attachments. Exhibit B is a copy of the power-point presentation of which you’ve seen part of already. Exhibit C is the vested rights application materials. Exhibits D, E and F are staff memo’s which contain recommendations regarding the development and Exhibit G are comments from the emergency medical services. Staff would also like to enter Exhibit H, which has been placed at each of your seats, which included modifications to staff recommendations and conditions contained in Exhibits E and F should the Board wish to develop the...wish to grant the development vested rights. If the Board would refer to

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

Exhibit D, when reviewing the application and the plan for development vested rights, the Board may wish to consider the following:

The purposes of reviewing vested rights application and site specific development plan during this public hearing process as is outlined in the vested rights ordinance is to protect the public health, safety and welfare.

The Henderson County 2020 Comprehensive Plan is intended to serve as a guide for preserving and being in the best interest of the general welfare of the humanity including the public health and safety of the county citizens. In consistency with the CCP among other issues may indicate that an application and plan would not be in the best interest of the county in terms of said public health, safety and welfare.”

Commissioner Williams – “Excuse me a minute, where were you reading from in that. I see exhibit D but I was not following exactly where you were.”

Matt Cable – “That’s generally a staff statement regarding the actual vested rights ordinance. Um, there are issues that are highlighted in Exhibit D regarding the vested rights ordinance and what you’re needing to look at when evaluating the applications. The CCP applies the conservation area to the southern portion of the subject property. The RAA is also applied to the southern half of the property and the RTA to the northern portion of the subject property.”

Chairman Moyer – “You’re on page two of Exhibit D now basically.”

Matt Cable – “Yes. Sorry about that. The conservation area is applied to the property largely due to the presence of steep slope. Slopes within the project site appear to be in excess of 25 percent, with many areas in excess of 45 percent. Developing on steep slope does pose environmental concerns particularly related to storm water runoff, sedimentation and erosion control concerns, reduced soil stability and an increased risk for landslides. Reduced soil stability and increased landslide risks are a significant concern for public health and safety as you’re well aware. The county does not currently have any ordinances regarding steep slopes however.”

Commissioner Williams – “Looking at this map where the slopes...can you give some indication in terms of the proposed structures and their proximity to those steep slopes?”

From audience – “Speak up sir”

Commissioner Williams – “Is this better? I just asked that we have some verification on the slopes. We’re looking at the maps as you saw up here and I’m asking simply to see the structures that are being proposed – where they are in proximity to those slopes.

Matt Cable – “Um, this is generally on some of the single family lots of the Highlands portion of the development. Additionally portions of the Glen, and this would be from staff’s analysis, including townhomes, the health center and some of the apartment buildings also appear to be located in these steep slope areas. The RAA is applied to the southern portion of the project site. The project was not consistent with the recommendations of the CCP in it’s application of the RAA in that section of the site to the proposed density, the surrounding community character in that area, the proposal of a package plant for the site and it’s effect on emergency medical services. The northern portion of the subject property is identified as being within the RTA. Again the RTA is intended to be largely rural with the general density of five or fewer acres per dwelling unit. The RTA is generally limited by a lack of access to

public water and sewer. Um, as is shown on the map that's now up on the slide, the subject property is located over two miles from existing public water and four miles from public sewer on average and that is straight line distance, it's not road distance. Uh, the project is currently located within the open use zoning district, however for the Board's information the draft LDC places the subject project within the proposed R3 zoning district. R3 is the lowest density district currently proposed by the Land Development Code. The proposed zoning would not permit the development as it is proposed by the applicant. Staff is recommending denial of the project based on inconsistencies with the CCP and Land Development Code; inadequate access to water and sewer services, impacts that this development might have on emergency services, the incompatibility of densities and uses with the surrounding area, the impacts this development may have on the environment, and also the impacts this development may have on adjacent property owners. Staff has also prepared, in Exhibit E, summarized also in Exhibit F, Exhibit F just basically provides a summary of each condition that would result from Exhibits E. This was modified somewhat by Exhibit H. The recommended conditions, should the Board wish to grant development vested rights, staff would be happy to present those to the Board, this is just a condition now where it at a point later in the meeting following Board discussion with the applicant regarding our suggested denial."

Chairman Moyer – "The Board's pleasure, we will put that off until later. Matt, go ahead."

Matt Cable – "Um that concludes staff's presentation. We tried to be brief as many of these points have been raised earlier."

Chairman Moyer – "Okay, any questions from Commissioners? Mr. Alexander do you have any questions?"

Attorney William Alexander – "I do Mr. Moyer."

Chairman Moyer – "Alright"

Attorney William Alexander – "Matt you indicated that part of your recommendation for denial was based upon the impact of the project on the environment. Do you have any objective evidence or do you consider in your recommendation any objective evidence that the development would in fact cause an adverse impact on the environment?"

Matt Cable – "The issues which we have noted regarding environmental impact include; sedimentation, steep slope development, landslides, the impact of the package plant on – potentially on water quality, also as many others indicated, the impacts on water levels in the area, as far as, wells are concerned."

Attorney William Alexander – "You also indicated that your - there was inconsistent...or you were recommending denial based upon the impact of emergency services. What objective data, if any, have you developed that would show that it would have a negative impact on emergency services?"

Matt Cable – "Um, as was noted in Exhibit G, the response time appears to be 14 minutes for this area already, that the preferred response time for EMS is about 9 minutes. Adding a development of this density in this scale would obviously have some sort of impact on emergency services."

Attorney William Alexander – "Has anyone in any of the emergency services agencies of the county indicated to you it would have a negative impact?"

Matt Cable – “They have not specifically indicated that no.”

Attorney William Alexander – “And as to the sedimentation issues, is your opinion on that based upon an assumed violation of the sedimentation control regulations of the Department of Environment and Natural Resources?”

Matt Cable – “No it would not be based on any sort of violation that they would have already received or necessarily in the future receive. This type of development on this type of slope will have sedimentation issues especially during the construction phase. It may be something that they can mitigate but we’re not aware of how they would do that at this point.”

Attorney William Alexander – “And so if the development was to implement mitigation measures to control sedimentation would that satisfy your concern on that issue?”

Matt Cable – “It would likely satisfy that in terms of the construction phase. It would be the post development phase where this may also remain a concern.”

Attorney William Alexander – “And isn’t it true Matt that – that package plants are currently approved for this type of use in...by the North Carolina Division of Water Quality?”

Matt Cable – “Yes, package plants are permitted and they have been permitted in the county. They all do run the same risk however for environmental impact in the event of a flood or other type of event of that nature; a failure of the plant itself.”

Attorney William Alexander – “Are you aware of the redundant systems built into this proposed plant to protect against such failures?”

Matt Cable – “No I am not specifically aware of any of the specific systems?”

Attorney William Alexander – “And you indicated a concern about the impact on water levels. Did you refer to that as potential impact or actual knowledge of impact on water level?”

Matt Cable – “At this time it would be potential impact. As the Board is aware we’ve all heard testimony on both sides regarding that issue.”

Attorney William Alexander – “And staying with the water issue a moment; um, is your office been made aware, since the date of our last hearing, that the developer has now proposed and will propose tonight to the Board that it will install city water from the City of Hendersonville to this project?”

Matt Cable – “Yes we have heard that. Staff would continue to be concerned with extending public water on – based on the fact that potential impacts of continued growth in that area as well as the issue of the fact that the Board of Commissioners would actually have to approve that expansion and extension of that water line.”

Attorney William Alexander – “But if in fact city water was approved, that would eliminate the potential for damage to any existing wells in that...and any reduction of the aquifer in that area would it not?”

Matt Cable – “Yes”

Attorney William Alexander – “And I believe that you indicated that the steep slopes were of concern to you because what type of data base indicated that the area of steep slopes within this subdivision or this development?”

Matt Cable - “We developed our steep slope map based on the recently flown lidar data which is what they’ll use to determine the flood boundaries and those indicated slopes in excess of 45%. Planning...within the planning profession generally any slope in excess of 25% is considered steep.”

Attorney William Alexander – “So your recommendation to the Board is that...that building on slopes in excess of what percentage be restricted or denied?”

Matt Cable – “That would be in this case we have specifically identified slopes in excess of 45% due to the amount of slopes actually on this property, I believe as the Board is aware discussions with the Land Development Code revolve around the 35% slope, so those are the ranges that we generally have been considering.”

Attorney William Alexander – “And isn’t it true when you’ve made reference to the conservation area and the CCRP that the southern portion of the property which you’ve identified as being included in the conservation area is also...is that portion of property which is encompassed by the Highland Subdivision which is already approved as a major subdivision?”

Matt Cable – “Yes that area where the conservation is applied is largely where the Highlands portion of the development is located.”

Attorney William Alexander – “And isn’t it true Mr. Card that when the application for approval of the Highlands as a major subdivision came before the Planning Board that staff recommended approval of the Highlands at that time?”

Matt Cable – “Yes staff did recommend approval of the Highlands portion of the development.”

Attorney William Alexander – “That’ll be all my questions. Excuse me my co-council has questions.”

Attorney Angela Beeker – “You’re going to get double whammed, sorry. I’d like to talk to you about the new Land Development Code a little bit. You had said that apartment dwellings, which we’re calling independent living units, would not be allowed in the R3 district, is that right?”

Matt Cable – “Correct”

Attorney Angela Beeker – “Okay, but they would be allowed if they were a part of an assisted living facility, is that correct?”

Matt Cable – “If the units were an assisted living facility which would be classification from the state yes they would be allowed.”

Attorney Angela Beeker – “Okay, or if they were um maybe a hospice residential care facility or something like that, multi family units would be allowed, is that correct?”

Matt Cable - “Yes and that would be allowed with a special use permit in those cases.”

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Attorney Angela Beeker – “Okay, isn’t it true that CCRC’s, Continuing Care Retirement Communities are also allowed in the R3 district?”

Matt Cable – “Yes, CCRC’s are allowed in the R3 district.”

Attorney Angela Beeker – “Okay, thank you.”

Chairman Moyer – “Attorney Massagee do you have any questions?”

Attorney Boyd Massagee – “I do not sir.”

Chairman Moyer – “Mr. Cherry, is Mr. Cherry here this evening? Do you have any questions sir? Mr. Knowlton?”

Bill Knowlton – “No questions sir.”

Chairman Moyer – “Okay, Mr. Erb and Ms. McDowell? Okay thank you very much Matt. We will now move into – we’re going to have some rebuttal testimony and we’ll start with the applicant. I’ll ask him to try to limit his time to 10 to 15 minutes in rebuttal, which he’s agreed to do so we will...”

Attorney William Alexander – “Per witness”

Chairman Moyer – “No, not per witness, come on.”

Attorney William Alexander – “Mr. Moyer we have eight witnesses or several witnesses for tonight and there’s no physical way that they can present their testimony in that length of time and I would respectively remind the Board that when we came back from the last hearing that after Mr. Massagee’s client had closed his evidence in the previous hearing that he was allowed to admit testimony from not only an expert um or alleged two expert witnesses, my recollection, that took substantially more time than that. We don’t believe we have prepared to rebut the testimony in part of those witnesses and there’s no possible way we can do it in ten minutes. I mean we have...we have streamlined and tried to prepare ourselves to move it along as rapidly as possible but we just”

Chairman Moyer – “Go ahead and we’ll be the judge...you know we don’t provide for rebuttal but I’ll give you as much lead way as we can.”

Attorney William Alexander – “Alright, if you please, we call William Lapsley. Also to streamline this we’re going to a little bit of it by question/answer form as opposed to a narrative testimony.”

Chairman Moyer – “Alright”

Attorney William Alexander – “Um, and if...you’ll recall Mr. Lapsley was previously sworn, has testified in this proceeding, has previously submitted an affidavit to this proceeding and his testimony will be limited today. Mr. Lapsley, you are currently the owner and manager of William G. Lapsley and Associates, P.A. is that correct?”

William Lapsley – “That’s correct”

Attorney William Alexander – “And you...you have been retained as the supervising engineer for that

project known as the Glen, the applicant in this proceeding?"

William Lapsley – "That is correct"

Attorney William Alexander – "In the scope and course of your employment, did you supervise the design of and the requirements of the private water system originally proposed for this system?"

William Lapsley – "Yes sir that's correct"

Attorney William Alexander – "And as I think has been indicated that system is to depend on two or more wells on the property to produce a maximum capacity of 90,000 gallons of potable water per day?"

William Lapsley – "That's correct"

Attorney William Alexander – "And also installation of a water tank at the site specified on our graphic plan for the storing of water and sufficient capacity to meet the state regulations for human consumption, as well as, fire protection?"

William Lapsley – "That is correct"

Attorney William Alexander – "And Mr. Lapsley the various details relative to the private water system originally proposed have been included, have they not, in a supplemental affidavit which you've reviewed and signed?"

William Lapsley – "Yes sir that's correct"

Attorney William Alexander – "And also the...since the time of the last meeting have you had occasion to explore with the...in response to the concerns of the public relative to effect...potential effect on wells in that area, the availability of public water to this site?"

William Lapsley – "Yes sir I have met with the City of Hendersonville staff to discuss extending their water system to the site."

Attorney William Alexander – "And before I go into the details of that Mr. Lapsley there was testimony received, from Mr. Massagee's client I believe, about the...doing draw down test on adjoining wells if we pursue the private water systems and under standard engineering principals, as applied by your office and as would be applied in this project, would you conduct draw...simultaneous draw down tests on wells within some reasonable proximity of this site?"

William Lapsley – "I think only if we suspect or the State of North Carolina suspects that there may be a impact of the new well that the...that my client would propose to drill on any neighboring well."

Attorney William Alexander – "If my clients indicated to the Commission that they were willing to perform simultaneous draw down tests on all wells requested by individual property owners within a thousand foot radius of this site could that be accomplished?"

William Lapsley – "Yes sir it can"

Attorney William Alexander – "Going back to the city water sir, did you as part of your process with the

city review the availability of water from the city, review the current facilities available to serve this site and actually do estimates of the various construction cost and materials and labor necessary to reach this site with city water?"

William Lapsley – "Yes sir I did"

Attorney William Alexander – "And in the course of that conversation or that investigation and analysis did you determine that city water could be run to this site in an amount sufficient to serve this site for the sum of \$1,339,300.00?"

William Lapsley – "I think there needs to be a clarification. The cost to, as you stated, that the estimated cost to serve...to extend city water to provide sufficient capacity just for this site, the estimate was \$1,339,300.00. I also made an estimate to enlarge that system, if you will, to meet the master plan needs as expressed to me by the City of Hendersonville. That being a larger storage tank and a larger size water line to serve other areas along Crab Creek Road and the cost estimate for that extension was \$2,023,200.00."

Attorney William Alexander – "And is it your knowledge, based upon review of the city's current master plan that it is their plan to ultimately, whether we're there or not, to extend a twelve inch water line to this area?"

William Lapsley – "Yes sir that's correct"

Attorney William Alexander – "And did you enter into a series of conversations with Lee Smith from the City of Hendersonville Water and Sewer Department relative to a cost sharing on this project?"

William Lapsley – "Yes sir I did."

Attorney William Alexander – "And have you reached a preliminary understanding and agreement with Lee Smith that my clients would expend the sum of \$1,339,300.00 on the total installation cost of \$2,023,200.00?"

William Lapsley – "We have...I have expressed that to Mr. Smith in a letter dated June 19, 2007."

Attorney William Alexander – "And I ask you sir if you would identify...is the letter in which I'm showing you dated June 19, 2007, is that your letter to Mr. Smith?"

William Lapsley – "Yes sir it is"

Attorney William Alexander – "And attached to that is...is that your estimate of cost of construction?"

William Lapsley – "yes sir"

Attorney William Alexander – "Jason if you would hand out those please. Matt if somebody or somebody would distribute these. And also give the affidavit away – supplemental affidavit. Mr. Lapsley – show you and ask you to identify this supplemental affidavit reflects your testimony on these issues, is that your signature there on them?"

William Lapsley – "Yes sir it is"



Attorney William Alexander – “Alright, Mr. Moyer I have other testimony relevant to the siltation issue that Matt commented on a minute ago.”

Chairman Moyer – “Bill before you do that have you given copies to the other parties?”

Attorney William Alexander – “We will right now sir.”

Chairman Moyer – “So Mr. Massagee and the others have them.”

Attorney William Alexander – “I hope we have enough we brought about ten or twelve, give them what you have there and I’ll give them mine. Alright we would...one more question Mr. Lapsley. Mr. Lapsley are you uh...Matt had indicated the possible impact of siltation um coming from this site either during or after construction. Based on your knowledge of this type of project and this particular project as a supervising engineer, do you have an opinion as to whether or not mitigation measures can be installed to control the siltation?”

William Lapsley – “I think it’s certainly possible to design a system that’s consistent with the standards required by the State of North Carolina to control sediment from the site, that’s certainly possible.”

Attorney William Alexander – “And in fact are they required by the Department of Environment and Natural Resources or some division thereof to have a sedimentation and control plan?”

William Lapsley – “Yes sir the North Carolina Division of Land Quality at the moment oversees that.”

Attorney William Alexander – “That’s all the questions I have of Mr. Lapsley.”

Chairman Moyer – “Bill...just a minute. Mr. Lapsley the estimate you gave on running water – the cost estimates, does that include all the water for fire protection?”

William Lapsley – “Yes sir, there’s two numbers, as I’ve stated, one was for a ten inch water line which is the minimum size that I believe is necessary to provide adequate domestic supply and fire protection...”

Chairman Moyer – “and fire that’s what I needed to know.”

William Lapsley – “to the site and then the second estimate is to enlarge the line to twelve inch which was the recommendation from the city and their master plan and the same issue with regard to the size of the water tank.”

Chairman Moyer – “With regards to getting the city to run the water line did you look at the comprehensive plan to see what – which of our districts this is in?”

William Lapsley – “No sir I focused on discussion with the city as to whether it would possible to extend water to the site and what size line would be necessary to do that.”

Chairman Moyer – “So you don’t have any opinion with respect to whether it would require the consent of the Board of Commissioners for them to do that?”

William Lapsley – “No it’s my understanding that the Board of Commissioners would have to approve

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that.”

Chairman Moyer – “Alright. Any other questions from the Board?”

Attorney William Alexander – “I needed to know if there was any other cross?”

Attorney Boyd Massagee – (Spoke but not intelligible because he did not come to the mic).

Attorney William Alexander – “We want to follow the previous procedure Mr. Moyer where we wait to the end.”

Chairman Moyer – “Yes, okay”

Attorney William Alexander – “Alright, we’d like to make the Board aware that we will be tendering at the time of closing uh...the uh...some specific conditions which my clients have – are willing to except without question in this project; one of which would be that if the system of city water can be installed for the sum of \$1,339,000.00 contributed by us that we will so do which hopefully will belay some of these folks concern. Um, we’d like to call Juanita James.”

Russ Burrell – “Could you spell her name please?”

Attorney William Alexander – “Yes it’s J-U-A-N-I-T-A Juanita James J-A-M-E-S. Ms. James is – you’re employed by James and James Environmental Management, Hendersonville, North Carolina, is that correct?”

Juanita James – “Yes it is.”

Attorney William Alexander – “And Ms. James in the scope...in what capacity are you retained there?”

Juanita James – “I’m co-owner.”

Attorney William Alexander – “And is that company licensed by the State of North Carolina as a certified laboratory in waste water evaluation drinking water evaluation?”

Juanita James – “Yes we are.”

Attorney William Alexander – “And specifically North Carolina waste water permit or license 482 and drinking water 37763?”

Juanita James – “That is correct.”

Attorney William Alexander – “And Ms. James in – did we request, my clients request of you that that you perform a feecal call form test on the water in Mud Creek at three different locations here last week?”

Juanita James – “Yes that is true.”

Attorney William Alexander – “And did you in fact perform a feecal call form test right at the Blue Star Camp package plant discharge into Mud Creek?”

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Juanita James – “Yes about twenty feet below”

Attorney William Alexander – “And did you also perform a test in Mud Creek at Pearl Road?”

Juanita James – “Yes I did.”

Attorney William Alexander – “And did you also perform a test of Mud Creek at Walnut Cove Road?”

Juanita James – “That is correct.”

Attorney William Alexander – “Now what was the – you measured these tests with presence of fecal call form based on colonies per hundred milliliter, is that correct?”

Juanita James – “That is correct.”

Attorney William Alexander – “And is it true ma’am that the state recognizes essentially zero through two hundred result as being water that is suitable for drinking... no...excuse me not for drinking...but for fishing, swimming that type of thing?”

Juanita James – “Yes sir that’s true.”

Attorney William Alexander – “And that on up to four hundred is considered a maximum daily presence?”

Juanita James – “That is correct.”

Attorney William Alexander – “And what result did you get immediately below the Blue Star Camp discharge?”

Juanita James – “We got ninety six colonies per one hundred mills of sample.”

Attorney William Alexander – “And is that within the states standards for regulation of a package treatment plant?”

Juanita James – “Yes it’s within the state allowable limits.”

Attorney William Alexander – “And what result did you get at Pearl Road?”

Juanita James – “Eighty four colonies per one hundred mills.”

Attorney William Alexander – “And what result did you get at Walnut Cove Road?”

Juanita James – “Three hundred and eighty colonies per one hundred mills.”

Attorney William Alexander – “Now was – when you did this test was the Blue Star package plant running full blast essentially?”

Juanita James – “Yes it was at a strong discharge.”

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Attorney William Alexander – “Now if there was an environmental problem, if this plant was not operating as intended to and as regulated from your experience what type of result would you have gotten below the discharge plant?”

Juanita James – “If a facility was not operating properly we would be in the thousands in the count. Three to Four Thousand with the dilution process of the twenty feet applied.”

Attorney William Alexander – “So did this test indicate to you that that uh that that plant was functioning properly?”

Juanita James – “Yes sir”

Attorney William Alexander – “Alright do you know of any other package plants between there and Walnut Cove Road?”

Juanita James – “No sir”

Attorney William Alexander – “Alright now ma’am in your experience...your firm is retained from time to time to monitor various package plants is that correct?”

Juanita James – “Um, yes we’re a contract operations for water and waste water.”

Attorney William Alexander – “And in the course of doing that how often are these plants required to monitor the waste water?”

Juanita James – “Daily”

Attorney William Alexander – “Alright, and...”

Juanita James – “Daily Monday through Friday.”

Attorney William Alexander – “Alright so five out of seven days a week you’ll are out testing water to ensure the plants are operating correctly?”

Juanita James – “That is correct.”

Attorney William Alexander – “So if my clients installed a plant that was permitted by the State of North Carolina at this site, they would be required to have daily monitoring of the water?”

Juanita James – “That is correct.”

Attorney William Alexander – “So if a – if an accident occurred, which we certainly don’t think it will hope it won’t, but if an accident occurred is that something which in your opinion with legal lawful monitoring would be detected virtually immediately?”

Juanita James – “Oh yes sir.”

Attorney William Alexander – “Alright and ma’am have you summarized the results of your finding in a letter addressed to William G. Lapsley and Associates?”

Juanita James – “Yes I have.”

Attorney William Alexander – “And is that the same letter that’s in front of you?”

Juanita James – “Yes it is.”

Attorney William Alexander – “Alright Jason would you hand that out please. Did the Board have any questions of her, I’m sorry?”

Commissioner Williams – “I had one question and perhaps you may have mentioned this but in terms of the higher count on down stream, what was – just any indication as to why you suspect there was a higher count on down the stream?”

Juanita James – “Any free flowing body of water, whether it be a stream, a pond, a lake, has the potential for nature to deposit fecal matter into the water and that is a very highly populated area for animals and so raccoons, deer, anything that’s a warm blooded animal could easily have caused that to be a higher number um with the runoff with rains, anything like that can cause the fecal count to change in the water supply and as was expressed this is not above the four hundred daily max even at that, so it was still was not exorbitant numbers.”

Commissioner Williams – “Thank you.”

Attorney William Alexander – “Thank you. We call Mr. Forrest Westall. Mr. Westall, are you a licensed professional engineer?”

Forrest Westall – “Yes”

Attorney William Alexander – “And are you employed by McGill and Associates Engineering?”

Forrest Westall – “Yes”

Attorney William Alexander – “And in the uh is that the same firm which has these applied for the permits for a package – sewerage treatment plant for my clients The Glen?”

Forrest Westall – “Yes on behalf of your clients.”

Attorney William Alexander – “Alright now Mr. Westall...”

Chairman Moyer – “Bill have these last two witnesses been sworn?”

Attorney William Alexander – “Um”

Chairman Moyer – “I don’t remember this gentlemen being...”

Attorney William Alexander – “Ms. James could you step back up please.”

Chairman Moyer – “Terry, do you know how to do, Terry”

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Attorney William Alexander – “With them all at once here, let me see”

Chairman Moyer – “Yes if you can do them all at once it would save us...”

Attorney William Alexander – “Would Mr. Wibble stand...Wible stand please where you are, um Mr. Hepler has previously been sworn I believe, Mr. Hepler’s been sworn previously. You may have to do him separately. That’s all we’ll have that haven’t been sworn.”

Chairman Moyer – “Just have them raise their hand Terry”

Deputy Clerk Terry Wilson – “Do you swear or affirm that the testimony you shall give to the Board of Commissioners shall be the truth the whole truth and nothing but the truth so help you God?”

In unison – “I do”

Attorney William Alexander – “Mr. Moyer, are you satisfied about Ms. James or do you want her to verify that the testimony that she has rendered is true?”

Chairman Moyer – “She can make that statement, that’s fine.”

Attorney William Alexander – “Ms. James. Ms. James you have just taken an oath that your testimony rendered to this Board is truthful. Is the testimony that you have already received truthful – given?”

Juanita James – “Yes”

Attorney William Alexander – “Thank you”

Chairman Moyer – “That’s fine, thank you.”

Attorney William Alexander – “Uh, Mr. Westall would you just briefly give the Board a little bit of your background in the area of sewerage treatment facilities including your professional qualifications?”

Forrest Westall – “Uh yes, I worked for the North Carolina Division of Water Quality from 1976 until 19...until 2004. I was employed as the regional water quality supervisor in the Asheville Regional office that covered the nineteen western counties out of the Ashville area where all waste water treatment management, spills, water quality management in general and I joined McGill Associates in 2005 and have been with them since that time. I have a BS in uh Civil Engineering from NC State and a Masters Degree in Civil Engineering from NC State.”

Chairman Moyer – “I think you may need to speak up just a little bit as you go forward so the people in the back can hear you.”

Attorney William Alexander – “Uh, Mr. Westall would you explain to the Board just basically the type of system that is proposed for this particular facility, particularly concentrating on the design standards of that system, redundant design standards to ensure against accidental discharge or problems?”

Forrest Westall – “Yes the uh waste water treatment system proposed for the Glen would be a biological waste water treatment system uh commonly used for uh treatment of human uh commercial and domestic waste water. Uh those systems uh utilize uh reaction tanks and they produce uh...uh um removal of

biochemical oxygen man to suspended solids ammonium and other common pollutants. The State of North Carolina requires a uh...uh waste water treatment system with dual units. That means that each of the treatment units within the treatment train have to be duplicated so in case one particular part of the train fails that they can bypass that and still continue to treat. A waste water treatment system also has to have a source of standby power in case of a power outage they must have a generator on site to provide power to continue treatment during power outage conditions. The siting of the waste water treatment plant has to be outside or it has to be protected from the hundred year flood storm – well an typically what that means is preventing flood waters from being able to enter into or damage the waste water treatment plant and the collection system during those events. That's essentially the design components of that uh as you're I'm sure already aware from previous testimony there's two permitting processes in the State of North Carolina. The first is under the uh Federal Clean Water Act and that's the NPDES or National Pollutant Discharge Elimination System permit that allows someone to discharge treated waste water into the waters of the United States. Uh that permit has to be issued by the North Carolina Department of Environment and Natural Resources Division of Water Quality as delegated from the Federal Environmental Protection Agency. Once that permit is issued uh any applicant has to submit detailed plans and specifications of the waste water treatment system to the Division of Water Quality and those plans are reviewed and approved and an authorization to construct permit is issued at that time for the building of that which would incorporate all the treatment requirements uh that I just generally outlined. There's all kind of requirements about the amount of oxygen in the pumps and different things in there but essentially the system is set up to have redundancy in it to operate under conditions that uh where systems may fail."

Attorney William Alexander – "Mr. Westall, I believe you mentioned this but is standby power in case of power outages required?"

Forrest Westall – "Yes"

Attorney William Alexander – "And to your knowledge is the system that would be proposed for this facility one that would require certified operators for the facility as part of the on going permitting process?"

Forrest Westall – "Yes"

Attorney William Alexander – "And is reporting...are there reporting and monitoring requirements under the permitting process as, as the system continues to operate over the years for this project?"

Forrest Westall – "Yes, there's monitoring requirements uh daily during the five days of the week and there's uh notification requirements for anytime...anytime there's a problem at the waste water plant uh their...their requirement is that they notify the Division of Water Quality immediately or the State Warning Point uh...uh which is a uh 24 hour manned station that's run through the uh Department of Crime Control and Public Safety."

Attorney William Alexander – "And do the state regulating agencies also do a...have inspection and compliance procedures?"

Forrest Westall – "Yes"

Attorney William Alexander – "Um, sir some concerns have been voiced relative to this um particular um site for use of a package treatment plant on the issue of odor from the plant. Uh can you uh explain to the

Board please, what and if any odors are associated with operation of one of these plants?"

Forrest Westall – “A properly operated biological waste water treatment system uh does not have offensive odors uh one of the requirements in the standards uh for design minimum design criteria that there is no more quality hazards to require that the facility be constructed in a way that it not cause nuisance and obviously odor would be a problem associated with that. The setback requirements are also associated with that. Uh if they...if the treatment system is not properly operated or maintained you could have other problems.”

Attorney William Alexander – “And Mr. Westall also is the...there have been issues of concern expressed about noise from one of these systems. Would you explain uh on that issue for the Commissioners?"

Forrest Westall – “Noise is uh obviously an issue with waste water treatment plants. They require several large motors and pumps and different mechanical uh devices that do make noise. Uh standard engineering design does provide uh mechanisms for mitigating that noise. Again, the setback requirements are critical but also the housing of those...of that equipment uh...the uh...the uh foundation that are placed under those equipment and generally uh just the operational components can be managed by buffering and other things so that the noise should not be an issue uh within the setback requirements for the waste water treatment plant.”

Attorney William Alexander – “In fact are portions of this system installed either underground or right at ground level?"

Forrest Westall – “Yes many of the systems are the pumps and other return pumps and uh facilities associated with getting the waste water into the plant are often below ground. The uh systems that are required for uh...uh...uh for...for providing aeration those blowers are placed at ground level and often in order to prevent noise they will provide additional foundation and sit them below the level of the ground and provide covers over them.”

Attorney William Alexander – “Sir there was testimony received by the Commissioners um to the effect that there had been hundreds of violations recorded for this type of plant in Western North Carolina in a year’s time. Could you explain to them what types of violations are typically seen and whether are not many of those violations constitute a threat to the environment?"

Forrest Westall – “Well uh the waste water treatment NPDES permits for these type systems are in excess of forty pages long. They have a series of requirements in there including monitoring requirements for all the things that are limited for plus reporting requirements on items that are not limited. Uh there is a requirement that those reports be submitted every...every month on time. There’s a requirement that every perimeter be monitored for in those permits. Uh it is true that uh there are violations of these permits uh from existing facilities. In the majority of...of those cases, those violations are due to missing a monitoring requirement, not reporting on time, or some other what I would call a technical violation. There are violations of limits which would be biochemical oxygen, manned BOD, total suspended solids, flow, ammonium nitrogen and those violations are reported to the state and the state reviews those on a...on a essentially a continuous basis to take enforcement action associated with those so uh the majority of the monitoring violations, the majority of the violations that are reported are monitoring violations; failure to monitor a particular perimeter. That in no way indicates that the discharge during that period of time had an adverse impact on water quality.”

Attorney William Alexander – “Mr. Westall staff has indicated to the Commissioners that the basis of one



of their objections to this particular project is that it does use a package treatment facility, which I assume would mean in opposition to or instead of individual sanitary septic sewage systems. If, based on your experience as a design engineer and your experience with the state of North Carolina, on this site which is approximately a hundred and fifty acres...a hundred and twenty eight acres, if multiple...a hundred plus septic systems were installed to serve various residences would the impact of that on the environment equal or exceed the impact of a package treatment facility?"

Forrest Westall – "It could obviously if you have a hundred and twenty home sites on a particular piece of property and they're on a septic system the same amount of waste water is being generated and disposed of and managed the same way it would with a package treatment plant. A failure of a septic tank system or subsurface onsite waste water disposal system could have environmental and public health impacts associated with the property next to it and anyone that lives downstream. The failure of a waste water treatment plant, particularly in relationship to enteric bacteria or bacteria that causes human disease, could also have an impact but essentially the same amount of waste water is being managed with onsite systems or with a package treatment system; and the word package is a term that's used often but the same biological treatment processes that the City of Hendersonville uses is the same biological treatment processes that these units use, they're called package units because they're small and they can be brought in usually by large flatbed trucks and that's why they're referred to as package plants."

Attorney William Alexander – "So is this proposed plant in essence a miniature City of Hendersonville plant?"

Forrest Westall – "It's a miniature biological treatment system similar to all the municipalities that discharge across the State of North Carolina and throughout the country."

Attorney William Alexander – "Tendering view for your questions."

Chairman Moyer – "Does the Board have any questions?"

Commissioner McGrady – "Yes just one, um you mentioned um the use of...the need to use certified operators for the plant. Um how might the applicant provide for certified operators for this plant in your...based on your knowledge of how this plants are typically run?"

Forrest Westall – "Uh Mr. McGrady that typically...and...and there's about two choices; one you hire your own operator, they work for the company similar to what Hendersonville does, they have their own operators. A lot of the smaller systems hire a firm to do that; a certified operating firm. One of the conditions of the permit is that operator, that's the same operator that's designated, has to visit that facility every single day and uh typically for units of this size, which would be the proposal's 90,000 gallons a day, uh I've seen operations hire their own operator and put them on the payroll and I've also seen them hire uh...uh companies that would provide an operator that would be designated. But it is an individual, it's not a company. Whoever that person is their name goes on the certification card that gets mailed to Raleigh and they have to sign the reports that are submitted under a penalty of law."

Commissioner McGrady – "Thank you for that explanation."

Attorney William Alexander – "Thank you sir, I do need you wait just one minute...I would call Dan – is it Wible or Wibble...Wible? I'd like to indicate to the Commissioners that Mr. Wible is a professional engineer employed by Kay Hill Associates um and who has been retained by my client to do uh some studies on the issue of storm water uh retention and storm water control on this site. Uh Kay Hill and

Associates is a nationally recognized firm in this area, is certified by a group called LEED which I think Mr. McGrady is probably familiar with. I'll ask Dan to expound on Kay Hill and Associates amongst other credits has uh previously written the best management practices manual for storm water control for the state of Pennsylvania I believe, um has uh is currently writing one for the state of Michigan and is also...has been employed um fairly extensively here in North Carolina by the University of North Carolina in Chapel Hill to do some enervative projects in storm water retention. The purpose of this testimony is address the concerns of...stated in the defense testimony particularly relating to uh the issues of depletion of the aquifer; how water can be returned to the aquifer, and also uh to offer some testimony relative to siltation issues. I'm going to indicate to the Board that my client will be submitting to you later in this proceeding a uh set of, what we'll refer to, agreed upon conditions which would require my clients in developing this site to implement storm water retention control methods on the site which will keep...which will prevent storm water from leaving the site in excess of those amounts estimated to currently leave the site in it's natural state. With that I would tender Mr. Wible to..."

Russ Burrell – “Would you spell his name please as well?”

Dan Wible – “As Bill said my name is Dan Wible.”

Russ Burrell – “Spell his name please.”

Dan Wible – “I'm a professional engineer.”

Chairman Moyer – “Would you spell your name please?”

Dan Wible – “I'm sorry it's W-I-B-L-E.”

Terry Wilson – “Thank you”

Dan Wible – “I am a professional engineer and I'm also accredited by the US Green Building Councils LEED program and LEED stands for Leadership in Energy and Environmental Design. It's a set of standards that was developed um probably about eight or nine years ago by the US Green Building Council uh to uh give uh credit to green building um and there's a whole bunch of standards mostly relating to energy efficiency for building, but there's also a number of site credits as well, especially for storm water management. Uh Kay Hill and Associates have been there now seven years. I've focused my efforts on sustainable site design and storm water management. Uh I have a BS in Civil Engineering from Villanova University and I also have a Masters in Water Resources Engineering uh from Villanova University as well. Uh Kay Hill Associates was hired um to perform...to consider the preliminary feasibility of implementing a low impact and truly sustainable storm water management plan for the project. Um specifically we looked to go beyond the traditional approach to handling storm water management uh by considering a cutting edge yet proven approach that would treat storm water runoff at its source as apposed to piping it down into a giant detention basin at the bottom of the site which is the traditional approach and we would do this uh by a series of distributed infiltration based and vegetative based um best management practices or BMP's. Kay Hill Associates places a very high value on treating storm water as a precious resource not just something that needs to be disposed. Um we do this really uh by considering the natural hydrologic cycle of the site and our goal is to try to sustain that natural hydrologic cycle and we do that really by trying to integrate storm water management into the uh natural landscape of the site and also integrating it into the disturbed or build areas of the site as much as we can. We've developed a series of very specific goals for this project that we think are feasible based on our preliminary assessment; and these goals would include uh sustaining to the greatest extent practical the

predevelopment ground water recharge and the way we would do that is by infiltrating the net increase in a two year storm volume. So the volume of runoff that will be generated – the increased volume of runoff that will be generated by this site in a two year storm uh will be held in a variety of systems and infiltrated back into the ground recharging the aquifer. We also don't want to forget about the extreme storm events, the one hundred year storm events, and uh for those storms we would try to control or we would control the peak rates of runoff from the site. We also want to sustain the water quality of Mud Creek. Uh we also want to respect the natural drainage patterns of the site and any discharge points that we do have, and there will be discharge points from an engineered site, uh those will be done in a sensitive fashion uh using such things as level spreaders and other techniques that won't uh create erosion problems down stream. Uh, there's a whole suite of best management practices that we have at our disposal and many of these we've developed in various manuals uh that Bill mentioned. We wrote the best management practices manual for the State of Pennsylvania. We're currently writing one for the State of Michigan. And just to go through some of these BMP's that we think would be feasible at this particular site; uh such things as infiltration trenches, infiltration beds, uh bio-retention areas also known as rain gardens, um level spreaders, infiltration berms along the contours in the woods, those are just very subtle berms behind which you can hold water and infiltrate it, vegetated swells with or without check dams, with or without infiltration trenches beneath them uh minimizing the disturbance. Um I mentioned the traditional approach of building large detention basins usually at the bottom of the site uh typically we see those big basins require a lot of land and a lot of clear cutting of trees and a lot of earth work. Uh we try to avoid all of that by spreading the water out again into a series of distributed BMP's not just one BMP or detention basin. We would look at uh capturing and reusing the uh storm water that we have on the site, again we're considering storm water as a precious resource, something that we can use uh most notably we can use it possibly for irrigation. The less water we have running off the better so we can hold it and use it to water the plants and the landscaping; all the better. My company has a lot of experience with porous pavement materials. Um we actually designed two rather extensive parking lots at UNC Chapel Hill utilizing, of course, paving materials uh specifically porous concrete, porous asphalt. Those are – that's another technology we think is feasible at the site possibly for the walkways if they exist or especially for the parking base in the center of the area. Uh such things as soil amendments restoration, landscape restoration, reforestation um and a couple of other things just uh looking at sediment traps on inlets just a very simple measure um but yet can be very effective. Um, I think I got them all."

Attorney William Alexander – "If I could ask you Dan, if this Board was to impose on my clients a condition of this project that it develop and submit for review to whatever entity the Planning Board or otherwise, and engineered program for storm water retention that is designed to return or keep on the site storm water in sufficient capacities to prevent discharge from the site of storm waters in excess of it's current natural state, do you believe that's possible?"

Dan Wible – "Yes I do"

Attorney William Alexander – "And in fact, even though we frankly don't want to commit to this, is it possible on some sites to retain virtually all the storm water?"

Dan Wible – "It's possible to retain on site most storms that occur in any given year."

Attorney William Alexander – "Alright, but the normal storm water leaving the site would be what would be feeding the creek down below the site wouldn't it? Alright sir the same, you have some experience in sedimentation control?"

Dan Wible – "Correct"

Attorney William Alexander – “Would the same features which you have described relative to storm water retention, could they be used to accomplish sedimentation control on the site both during construction and after construction as an ongoing facility?”

Dan Wible – “Uh, some of them could be utilized for uh temporary erosion control.”

Attorney William Alexander – “And there has been concern expressed by Planning Staff to the Board about potential for building on steep slopes within this project, if...assuming...if a person was going to build a house or other structure on a slope in excess of 35%, in your opinion, can mitigation measures be engineered designed to slow the acceleration of water down on those steep slopes to a point where there's not undue damage done to the environment?”

Dan Wible – “Yes I believe it can.”

Attorney William Alexander – “And so if this Board was to impose a condition on my client that in any building on slopes in excess of 35% that they first submit a certified engineers plan for mitigation of storm water acceleration and runoff; that's something that your firm or any other qualified firm could do?”

Dan Wible – “Yes it is.”

Attorney William Alexander – “Did I miss anything? You want to say something else? I have one other question sir. If this project is on city water not in any fashion depleting the aquifer with private wells and if this project is returning to the soil storm water in sufficient capacities that it does not exceed...the runoff doesn't exceed what comes off of it in its natural state that in fact the...the aquifer would not be affected at all by the presence of this site would it?”

Dan Wible – “That's correct.”

Attorney William Alexander – “And if in fact we go beyond that we might in fact improve the aquifer, if we retain all the storm water?”

Chairman Moyer – “Wo-wo, let's...Bill you have an exhibit with any of this?”

Attorney William Alexander – “Um, no just his testimony Mr. Moyer. We do have a um a...in our proposed conditions a condition that relates to this issue.”

Chairman Moyer – “Alright”

Attorney William Alexander – “Does the Board have any questions for Dan?”

Chairman Moyer – “Next witness”

Attorney William Alexander – “We call Thomas Hepler please. Alright um we have one witness that got delayed in traffic on the interstate that we're hoping that he will arrive here in a minute. Um, I'm going to call Richard Grant please. Mr. Grant you are currently the uh President of Beverly Grant Incorporated which is the contractor concerned to develop this site, correct?”

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Richard Grant – “Yes I am.”

Attorney William Alexander – “And also an owner of the LLC which owns this site?”

Richard Grant – “Yes I am.”

Attorney William Alexander – “And sir are you...have you retained Edwards and Associates as architects to design the structures on this project?”

Richard Grant – “Yes I have.”

Attorney William Alexander – “In the course of that did you ask them to provide for you and have you reviewed within your own construction knowledge the uh the fire classifications for this building and the uh types of materials that are required and other systems that are required to meet those fire requirements?”

Richard Grant – “Yes”

Attorney William Alexander – “And sir I show you an affidavit uh entitled Affidavit and Support of Vested Rights application as to fire related construction issues, have you examined and signed that affidavit?”

Richard Grant – “Yes I have.”

Attorney William Alexander – “The facts contained in that affidavit true sir?”

Richard Grant – “Yes they are.”

Attorney William Alexander – “Attached to that affidavit is a specific list of fire um...uh construction methods and other issues, could you briefly summarize those for the Commissioners?”

Richard Grant – “Basically this building per the North Carolina building code will be either a type 1B or a type 2A depending on the type of structural frame that we use and basically those codes outline all the uh protections that floors would have a two hour fire rating. All stairwells will have a two hour fire rating. Interior materials will be metal studs and fire rated sheetrock. There will be no combustible materials used in the construction of the structure itself; and is planned going along with that any combustible materials used in things such as draperies or carpets are also required to have set flame spread ratings and also uh the amount of smoke that they can generate. In addition to that the HVAC systems have smoke detectors in the duct work that shut down the HVAC systems if there’s any smoke anywhere in the buildings. Also, the buildings are...have to be equipped with a fire protection system and the systems are constructed to automatically notify the fire department if there’s any smoke or temperature sensed.”

Attorney William Alexander – “Does the entire building have a sprinkler system in it?”

Richard Grant – “Yes it does.”

Attorney William Alexander – “And based on the graphic plan, which we submitted, is this uh the main building as shown on that plan connected to the smaller buildings or all those main buildings connected with what we refer to I think as skywalks?”

Richard Grant – “Yes they are.”

Attorney William Alexander – “And in...in what methods of exit would the resident’s of these buildings have uh in the event of a fire?”

Richard Grant – “There are multiply stairwells which are again two hour rated so they could be in that stairwell for two hours after the fire started uh before flames would spread into that area. They also have the ability to go to the other buildings that are...they are connected to.”

Attorney William Alexander – “So in the event of a fire the resident’s would have the ability in those stairwells and through the skywalks to seek safe harbor if there was a four or five minute delay in the fire department getting there.”

Richard Grant – “That’s correct”

Attorney William Alexander – “And um Mr. Grant have...has you or Jerry Grant your partner had discussions with the local fire department about its ability to uh serve this building?”

Richard Grant – “Yes we have.”

Attorney William Alexander – “And...and what is the height of the highest building...main building?”

Richard Grant – “I think it’s...I think its forty-two feet to the top floor.”

Attorney William Alexander – “But in any event sir is it less than eighty-five feet?”

Richard Grant – “Yes it is.”

Attorney William Alexander – “Alright, questions of the Board? No, I move to admit his affidavit. Alright, Mr. Tim Garren, is Mr. Garren present? Can you come up here?”

Chairman Moyer – “For the record, Mr. Garren spoke with me several days ago and asked if it would be appropriate for him to appear and I said I thought it was important that the factual information that he had might be good for the record and that he should appear if called so if the Board questions that...that’s what I did.”

Attorney William Alexander – “I’d also like to indicate for the record that...that we have uh been in communication with Mr. Garren and requested that he be present to do so.”

Commissioner Williams – “Just also...also as a matter of record I mean I guess that you are going to point out that he is the fire chief at Valley Hill.”

Attorney William Alexander – “He needs to be sworn please.”

Chairman Moyer – “Do it right from there Terry.”

Terry Wilson – “Okay, thank you. Do you swear or affirm that you 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?”

Tim Garren – “I do”

Attorney William Alexander – “Mr. Garren your name is Tim Garren correct?”

Tim Garren – “Yes sir”

Attorney William Alexander – “And you’re Battalion Chief at Valley Hill Fire Department?”

Tim Garren – “That’s correct.”

Attorney William Alexander – “In scope and course of those duties sir you do serve that site on Crab Creek Road upon which this project is proposed to be constructed?”

Tim Garren - “Yes we do.”

Attorney William Alexander – “Now sir have you had occasion to uh review with, I believe, Jerry Grant from uh Beverly Grant the specifics relative to construction of this building?”

Tim Garren – “Yes we have.”

Attorney William Alexander – “And sir there...Mr. Richard Grant just testified and submitted an affidavit relative to this building having to be constructed in compliance with the North Carolina state building code and particularly with two particular fire code references, are you generally familiar with those types of construction requirements on these buildings?”

Tim Garren – “Yes we are.”

Attorney William Alexander – “And Mr. Garren there’s been a lot of testimony and opinions rendered here that that Valley Hill might not be able to respond quickly enough to this project with a ladder truck sufficient to serve people in the upstairs portions of the main building, also been the concern stated that Valley Hill might not have a ladder truck with sufficient height to reach the main floor of this building, could you address those issues for us?”

Tim Garren – “Um, we do have a ladder truck, the total height of the truck counting the ladder and the truck would be a total of eighty five feet, there’s a seventy five foot ladder, the truck itself is 10 foot. Um response time, response time would be probably less than two minutes because we have a station out on Crab Creek a half a mile from the project. However, the ladder truck we keep stationed at headquarters which all I can do is I use the formula that the state has that they use to figure travel time for us. It’s based at thirty five miles an hour. So based and using that formula the response time, my opinion, the response time from headquarters to this construction site depending on traffic, weather and the driver would be anywhere from eight to eleven minutes. We have three stations that’s manned 24 hours a day 7 days a week.”

Attorney William Alexander – “Sir in your experience is a building that is constructed as this one would be from essentially non-combustible materials in the structure and fire retardant materials in the surface uh condition of the building uh, be susceptible to a rapidly proceeding fire?”

Tim Garren – “I, we do not see it being a rapidly...fire. It wouldn’t burn rapid.”

Attorney William Alexander – “So would it be...do you have an opinion sir in the event of a fire as to whether or not Valley Hill could respond in an adequate time to uh prevent uh undo loss of life?”

Tim Garren – “It...It’s our opinion that in the event of a fire we could have personnel on the scene to prevent loss of life, I mean we have a station a half a mile from it and have two other stations on the way.”

Attorney William Alexander – “Would it be true sir that there are other areas within the Valley Hill fire district that are substantially more remote from the services of your department than this site?”

Tim Garren – “Yes we have further outlying district. Our district runs to the county line on Crab Creek.”

Attorney William Alexander – “And sir I believe that Valley Hill has expressed the desire, if this project is approved, to have a uh...what I call a dry hydrant I don’t know what it’s really called, located in the pond or storm water retention facilities on the property?”

Tim Garren – “During the meetings with the developers before the water issue come up, which I’ll take the water line that’s hydrants, but what we can do we take a pond and we put what we call a dry hydrant in to us the dry hydrant is the same thing as a hydrant. Because we can send an engine company to the dry hydrant, the attack engine goes to the fire scene, they lay a line between each other, the one truck sucks water out of the pond straight to the engine and it’s the same thing as having a hydrant and they did discuss and I asked during the develop, if any ponds on site, could we put in dry hydrants and they agreed to it, paying the cost.”

Attorney William Alexander – “And Mr. Garren do you have an opinion as to whether or not the installation of a uh 10 inch or 12 inch um city water line from the City of Hendersonville that its current terminus which I believe is up there near uh Beaumont Estates somewhere out to this project would benefit fire protection for resident’s along Crab Creek Road?”

Tim Garren – “It is my opinion that it would...if they extend the water line out Crab Creek that is nothing but a benefit to us, as far as the hydrants go; because pressurized hydrants right now we have hydrants that run Kanuga and stop at Little River Road. That’s where they stop at so an extension of the water line would be an addition of hydrants for us. ”

Attorney William Alexander – “And in the event of a major fire would the availability of water from the city water system make your ability to recharge trucks fighting fire away from that city water system quicker?”

Tim Garren – “It helps...it’s a closer run to fill tankers but we have a lot of...out in the Crab Creek area we have a lot of static water spots, which is the dry hydrant spots, usually no more than 2 miles, every 2 miles, we’ll have a static water spot somewhere out there.”

Attorney William Alexander – “Sir your department, I believe, also runs uh in conjunction with all the other departments in the county with what’s referred to as First Responders System, is that right?”

Tim Garren – “The medical first responder?”

Attorney William Alexander – “Yes”



Tim Garren – “Yes that’s correct.”

Attorney William Alexander – “And so when...when somebody calls in with a medical emergency the Sheriff’s Department or someone notifies you’ll, you know , of the location and you’ll send a team out?”

Tim Garren – “Alright if someone calls 911 the appropriate fire department is sent out with EMS or First Responder EMT protection. We don’t transport to Pardee Hospital however.”

Attorney William Alexander – “How long do you uh would you estimate it would take your medical first responder team to reach the site of the Glen?”

Tim Garren – “If he’s in the station and not at a call probably less than 2 minutes, if he’s not already out on a call, which the stations only a half a mile from this project site.”

Attorney William Alexander – “And if there wasn’t someone at this project site and someone had to come from the main station in Valley Hill would it be essentially the same response time as the fire truck, 9 to 11 minutes?”

Tim Garren – “Probably anywhere from 8 to 11 minutes but my opinion it would be a little quicker because we run small trucks on medical calls, suburban’s.”

Attorney William Alexander – “And the small trucks can be run a little bit faster than the big ones?”

Tim Garren – “Yes I mean you just...common sense will tell you that.”

Attorney William Alexander – “Alright, excuse me just one second. My co-council will ask next.”

Attorney Angela Beeker – “Could you explain to the Board what a mutual aid agreement is and if you’ll have one in place?”

Tim Garren – “Okay there’s two types, there’s automatic aid and there’s mutual aid. Most all fire department in the county are teamed up with another fire department and if anything structural related calls, if Valley Hill was dispatched to any time of structural related call in our district, Blue Ridge is our team mate so to speak. They are dispatched at the same time with us for automatic aid. Then there’s a county wide agreement mutual aid agreement between all the departments in the county including the City of Hendersonville that once we have officers on the scene and size up the situation we can call other departments as needed. You know I could call Etowah, Dana, Little River Fire Department I could call on them because we do go help them and they’ll come help us on occasion; Green River so that’s the difference in automatic aid versus mutual aid.”

Attorney Angela Beeker – “I wanted to ask you a little bit about Crab Creek Road. You travel Crab Creek Road to provide fire fighting services often don’t you or...?”

Tim Garren – “Yes we do.”

Attorney Angela Beeker – “Okay does that present a concern to you...the condition of the road, the curves, the traffic, is that a major concern to you in providing fire services to this project?”

Tim Garren – “Not on Crab Creek Road itself, we have other roads off Crab Creek but...are more concerning to us.”

Attorney Angela Beeker – “Why isn’t Crab Creek Road of a major concern?”

Tim Garren – “It’s paved and wide and you know it’s up to each drive. They got to look at the road and take their time and drive according...according to the road.”

Attorney Angela Beeker – “If you run a fire truck with the lights and sirens on what does the traffic tend to...does the traffic...how does...how does traffic respond?”

Tim Garren – “When we’re running emergency traffic, which is light and sirens, all we’re doing is asking for the right of way. Most people slow and pull to the right if possible and we proceed to go around them.”

Attorney William Alexander – “Does the Board have any further...any questions for him? Mr. Young”

Commissioner Young – “Mr. Garren uh if the city runs a water line out there how often would they place a fire hydrant in that line?”

Tim Garren – “It’s...It’s usually within every thousand feet. It’s usually not over thousand feet. That’s the standard that we usually get because we carry a thousand feet of five inch supply line on each engine so we can lay up to a thousand foot of hose. So it’s usually not over a thousand feet. Now I don’t know if they have other standards they go by but normally it’s...it’s not over a thousand feet.”

Chairman Moyer – “Anything else? Bill move on”

Attorney William Alexander – “Sir Valley Hill Fire Department runs three shifts of four persons twenty four hours a day is that correct?”

Tim Garren – “Yes”

Attorney William Alexander – “You keep two at station number one, one at...one person at number two, and one person at station number three?”

Tim Garren – “That’s correct”

Attorney William Alexander – “so there’d be one person twenty four hours a day at the site that’s only two miles from this site, is that correct?”

Tim Garren – “That’s a half a mile...a half a mile from the site.”

Attorney William Alexander – “I’m sorry. Um do all paid staff on duty respond to a confirmed structure fire?”

Tim Garren – “All paid staff on duty respond to any structural alarm until the officer in charge gets on the scene and confirms if it’s a fire or false alarm.”

Attorney William Alexander – “And off duty staff can respond if they hear the call?”

Tim Garren – “At Valley Hill our policy is off duty personnel, as well as, the volunteers will also be responding.”

Attorney William Alexander – “Sir does Valley Hill Fire Department have five engines, five tankers, one ladder truck and one heavy rescue truck?”

Tim Garren – “That’s correct”

Attorney William Alexander – “And the capacity of your tankers total nine thousand two hundred gallons of water?”

Tim Garren – “That’s correct”

Attorney William Alexander – “Sir isn’t it true that they establish fire ratings for different fire districts and that affects homeowners insurance among other things?”

Tim Garren – “The Department of Insurance.”

Attorney William Alexander – “And Valley Hill has a pretty high rating doesn’t it?”

Tim Garren – “It’s...we just received last year a class four rating for our entire district.”

Attorney William Alexander – “And that class four is that the highest one or...”

Tim Garren – “No class one is the best you can be but that’s in the cities that have a hydrant every block.”

Attorney William Alexander – “Okay”

Tim Garren – “So...an also a class one through a six carries the same for residential home owners.”

Attorney William Alexander – “Given the type of this construction of this building to your knowledge in doing the fire rating for your district, by the Insurance Commission, is this type of building even taking into account?”

Tim Garren – “No sir this building, if the inspectors were to come back in and start inspecting us again and looking at our buildings and putting together the fire flow for our district this building would not even come into consideration because it’s a sprinkler building so they don’t look at them.”

Attorney William Alexander – “Would it summarize your testimony sir that that as Battalion Chief of Valley Hill Fire Department that you just don’t have any substantial concerns about the ability of your department to serve this facility?”

Tim Garren – “That’s correct”

Attorney William Alexander – “And Mr. Garren if in fact, this depends on what the Commissioners approve on the fire tax I guess but, if in fact this project added sufficient funds to the tax base to generate say a hundred thousand dollars a year and fire tax revenues in the Valley Hill district would that be a benefit to your department?”

Tim Garren – “It would allow us to keep growing with the community.”

Attorney William Alexander – “Do you believe such a contribution would exceed the drain of services if any upon your department from this facility?”

Tim Garren – “This facility itself is not going to drain us because we already have a station, equipment and personnel there. What we have to watch is the continual growth of the Crab Creek area because we have several other developments going in and we try and grow with the community and stay ahead of it.”

Attorney William Alexander – “Mr. Garren thank you for your comments, any other questions from the Board?”

Attorney Boyd Massgee – “Bill relative to the city situation with the water line, has the City Board of Commissioners approved this expansion?”

William Lapsley – “Not to my knowledge”

Attorney Boyd Massagee – “Has the City Board of Commission approved dollars for it?”

William Lapsley – “To the best of my knowledge Mr. Smith, the director, has not presented this project to the City Council.”

Attorney Boyd Massagee – “Haven’t even got to them, and uh I assume those dollars are not even in the budget?”

William Lapsley – “Mr. Smith indicated to us that he had sufficient funds to undertake the additional costs to enlarge the system.”

Attorney Boyd Massagee – “Just out of his regular...he has that much extras in his tax dollars?”

William Lapsley – “From...I don’t know that there tax dollars, there water revenues but he indicated to us that he had the funds available to upsize.”

Attorney Boyd Massagee – “If the city approves it?”

William Lapsley – “If the City Council and the County Commissioners approve it.”

Attorney Boyd Massagee – “and the County Commissioners, the next one sir that I would ask would be Ms. James. How are you?”

Juanita James – “Good”

Attorney Boyd Massagee – “Do I understand you that this...these daily tests would be made either by someone retained for that purpose or they’d be someone who was...is a uh certified employee for the company?”

Juanita James – “Yes sir that would be true. It would either be a contract operations firm like myself.”

Attorney Boyd Massagee – “Right”

Juanita James – “Or it would be someone hired by the company but they would be required to maintain the license required for the facility and this case I would assume it would be a grade two waste water operator.”

Attorney Boyd Massagee – “Have you contracted with any of the Grant Companies for any of their projects now?”

Juanita James – “No sir we were only hired to do the fecal color forms then the strain at this point.”

Attorney Boyd Massagee – “I see, Now then normally these projects would have a person certified as such...it was just be an additional duty for them rather than their sole duty being to inspect...inspect this system, would that not be correct?”

Juanita James – “If they were hired by that company yes sir that would be true.”

Attorney Boyd Massagee – “One are their other duties?”

Juanita James – “One of their other duties.”

Attorney Boyd Massagee – “And the problems arrive when they don't get inspected and when they...they're sick, they're on vacation, they're not there or they forget?”

Juanita James – “The state requires them to have a back up operator that if they are sick or on vacation they are required to notify and that back up operator is required to make that visit during that day.”

Attorney Boyd Massagee – “And this frequent does not get done from time to time does it ma'am...that's why we have failures?”

Juanita James – “In our company it does sir.”

Attorney Boyd Massagee – “But I'm not talking about you, I'm talking about on...you know all the various uh...uh complaints that the governmental agencies have when non...for not making these inspections do you not?”

Juanita James – “But the state is very, very quick to take care of those problems and their very quick to make sure that the laws are being followed adequately.”

Attorney Boyd Massagee – “Alright are you telling me that these, these failures do not occur?”

Juanita James – “I'm not saying they never occur but I can tell you they are certainly taken care of when they do.”

Attorney Boyd Massagee – “And uh how does the state know whether or not...have not occurred or not?”

Juanita James – “The state comes out and does periodic checks at the waste water treatment facilities. Um, they do spot and check inspections when we're not there. They are allowed to have legal access no matter what time of day it is or weekends whenever they so choose to come. Um, also they do regulated

inspections where they call us and say we want to see all your books, all your records and we have to present everything to them. Um, also they get monthly reports that we are required to submit to them requiring all of the data that the permit asked for; flow, temperature, PH, etc. etc., and so they monitor those and its goes into something called a Sims System, I believe it's a Sims System, which tells them whether or not there's a frequency that's been violated. Whether it be uh time on site was left off or a day was missed or a foreign residual was left out. It tells them and it flags them and you get a letter of...notifying you that you had a violation."

Attorney Boyd Massagee – "Can the forms be filled in just later on and, and not be determined by the inspectors as to when it was filled out?"

Juanita James – "Not by an honest operator sir"

Attorney Boyd Massagee – "Are you implying that one who is not honest operator would, could do that?"

Juanita James – "I would hope not sir."

Chairman Moyer – "Mr. Massagee, let's move on."

Attorney Boyd Massagee – "That's all. Uh, Mr. Westall, Mr. Westall these systems do fail, do they not sir?"

Forrest Westall – "At times yes"

Attorney Boyd Massagee – "And...and you have seen uh systems that you were involved with originally that weren't cared for properly that subsequently failed have you not?"

Forrest Westall – "Yes"

Attorney Boyd Massagee – "And would that not be the case for most every...every engineer who's had your experience?"

Forrest Westall – "Are you talking about from a regulatory standpoint?"

Attorney Boyd Massagee – "Yes sir"

Forrest Westall – "Yes, probably so"

Attorney Boyd Massagee – "That's all thank you. Mr. Wible if I may please. Mr. Wible good evening sir, you're talking about as I understand you a storm water management plans?"

Dan Wible – "Yes"

Attorney Boyd Massagee – "Are, are the plans that you're talking about novel ones that's not been in existence uh for some period of time? Are they...are they those plans been available for some time?"

Dan Wible – "No the plans have yet to be developed."

Attorney Boyd Massagee – "Oh they haven't been developed?"

Dan Wible – “Correct”

Attorney Boyd Massagee – “But I thought you said they were plans available that could be developed that would be uh not fool safe but close to fool safe?”

Dan Wible – “I believe, based on my preliminary assessment of the site and soils and having visited the site personally, I believe that the suite of BMP’s, Best Management Practices, that I mentioned earlier would be feasible and that the specific goals for storm water management would be feasible at this site but there has yet to be developed for this project a storm water management plan.”

Attorney Boyd Massagee – “Alright, uh the individual involved who is the...the applicant involved is going to be one who’s going to be determined as to whether or not such a plan and whether governmental regulations are carried out properly are they...are they not?”

Dan Wible – “Yes”

Attorney Boyd Massagee – “Have you done work before with the Grant companies on any of their projects?”

Dan Wible – “With the Grant Companies, no I haven’t.”

Attorney Boyd Massagee – “Uh, would you be aware of by any chance of the um Brevard project that the Grant’s have done?”

Dan Wible – “No I can’t say I am.”

Attorney Boyd Massagee – “Brevard Road Industrial Park?”

Dan Wible – “No”

Attorney Boyd Massagee – “Were you aware that the County of Buncombe has sited them uh for a project, as far as water erosion control being improper, to the extent of a hundred and sixty seven times on one project and fined them some twenty plus thousand dollars for defects in...in...in their operation of that plan?”

Dan Wible – “No I wasn’t aware of that.”

Attorney Boyd Massagee – “Alright sir, if...if...if uh that kind of behavior occurs with this project we will have a lot of water coming down the creek in the road will we not sir?”

Dan Wible – “You will, yes”

Attorney Boyd Massagee – “Thank you”

Chairman Moyer – “One question from me before you leave. You explained these various gullies and...and really small places to retain water that voids having a...a major collection point?”

Dan Wible – “Yes”

Chairman Moyer – “How in the world does a dry hydrant system work if you don’t have a major pond to draw water from?”

Dan Wible – “Uh, yes maybe I should clarify that. I believe the pond is still a future that will uh exist on the site. I’m not...we’re not proposing to eliminate the retention pond that’s going to be there. We approach storm water management, I say we, Kay Hill Associates, we approach storm water management with the idea again of promoting infiltration, ground water recharge, improved water quality, and again we do that through a distributed system of infiltration best management practices. So we always start off with the assumption or the hope that we will be able to eliminate large detention basins; detention meaning hold and release over a period of time. That’s our goal whenever we start a project. Um, now it doesn’t always turn into reality, we sometimes need a small detention basin depending on lots of factors but that’s our goal.”

Chairman Moyer – “To the extent that you’re successful there’s no water for a dry hydrant to draw from.”

Dan Wible – “No that’s not true. No the retention basin will exist um regardless of anything that we come up with uh for storm water management, is my understanding at least.”

Chairman Moyer – “Any other questions? Mr. Massagee?”

Attorney Boyd Massagee – “I have no questions of him sir.”

Chairman Moyer – “Of anybody else, I mean other witnesses.”

Attorney Boyd Massagee – “I have no questions of the other witnesses.”

Chairman Moyer – “Alright, Mr. Cherry do you have any questions?”

John Cherry – “Yes I do.”

Chairman Moyer – “Alright, you can just go down the same order any one’s you want.”

John Cherry – “Okay uh, the first meeting we had I asked uh is this to do with traffic but uh it really wasn’t that satisfied with my answer. I asked about the traffic that was out there and someone from the Glen stated that traffic would be no problem, and keep in mind they were supposed to be under oath. Traffic be no problem because all their employees would be on a twenty four hour shift. Uh, I’m wondering if that’s so and if it is I’d hate...I’d hate to be there in the nursing home when the nurse on a twenty four hour shift. So I think that was a little misleading on their part.”

Chairman Moyer – “Mr. Cherry you’ll have an opportunity in just a short bit to make your closing statements and say what you want.”

John Cherry – “Okay”

Chairman Moyer – “Right now you can only ask questions of the witnesses that were put on.”

John Cherry – “Right, okay, Mrs. James, or the...the lady that spoke on the...”



Chairman Moyer – “She’s coming down right behind you.”

John Cherry – “Uh, what is the discharge rate for the Blue Star Camp, in other words how much water – sewer water are they putting in Mud Creek?”

Juanita James – “I don’t know, I am not the operator of Camp Blue Star and so I have not seen their permit.”

John Cherry – “Would you think that you...you said that you went out and checked and the water level was fine but would theirs...should be a lot less...be a lot less than what the Glen’s going to put in there, would that not be correct?”

Juanita James – “No sir, no that’s not true, as long as their facility is operating properly you could literally have a non-detect, no colonies per hundred mills leaving your waste water treatment facilities.”

John Cherry – “I’m not talking about that, I’m talking about the volume, they would put less water into Mud Creek than the Glen is. I mean there can’t be that many people using the bathroom and whatever there in comparison to the Glen which is going to be like a small hospital.”

Juanita James – “I truly have not seen either one of the permits. I cannot attest to that.”

John Cherry – “Okay”

Juanita James – “I’m sorry”

John Cherry – “Uh, you stated that...are you telling me that you, if this is approved, that your company would be out there everyday checking the water at the Glen, you’re going to go out there everyday and take a water sample?”

Juanita James – “If they hire us as their contract operations firm then yes sir I will have an operator on that site, that is at least a grade two operator, every day doing testing Monday through Friday and if there is problems we always go out on the weekends and recheck but definitely on Monday through Friday.”

John Cherry – “Do...do most failures in these systems do they happen during the weekend or on...during the week?”

Juanita James – “Well if they’re going to have one it usually happens at four o’clock on a Friday afternoon when you’re making your last stop and you’re wishing to go home. That’s when your belts are broke, but typically...but when you come in on Monday morning, it’s just as pretty as it was when you left on Friday afternoon. Very seldom do you have breakdowns.”

John Cherry – “Uh, sludge removal...”

Juanita James – “yes sir”

John Cherry – “Do you all monitor that and who will take this sludge out of there and where will it be disposed at?”

Juanita James – “If they hire us as their contract operations we are contracted with Mike’s Septic Tank

Service out of Leicester, North Carolina and what they do they have permitted both in Hendersonville and in Brevard and at MSD, I'm sorry not at Hendersonville, they're not excepting right now. But at Brevard and MSD to be able to do a sludge haul to their...they are permitted to dump at those two sites and sludge is only removed on a necessary basis. I anticipate that this facility will have a digester; again I don't know I've not seen the permit. But what that does is it allows you to accommodate many, many solids over a large period of time to where it settles out so you have less impact, um it literally eats itself if you will so that it's not pumped as often."

John Cherry – "Would it be removed on a smell basis or just as a getting to full?"

Juanita James – "As Mr. Westall had pointed out, as long as the facility is operating properly, which you aerate, those digesters ought zone. You settle them out, you waste, and then you aerate and as long as you're aerating that facility then the opportunity to have an odor is nil to none. As Mr. Westall mentioned when you have a problem, yes you do have a small odor. It's regains very, very quickly. Those facilities are designed to be able to recover at a rapid pace."

John Cherry – "Yes well at the present out there we have no odors at all."

Juanita James – "That's exactly right and that's because Camp Blue Star's doing a fantastic job operating their...operating their plant and that would be the same accommodation at any other waste water facility whether it be the Glens or anyone else for that matter as long as their operating properly and the operators attentive then very little problem should every occur."

John Cherry – "Okay thank you"

Juanita James – "Thank you"

John Cherry – "Uh, Mr. Wible, I might have said your name wrong. Could you...could you possibly, I'm just kind of a country boy, but could you tell me exactly you spoke of berms just how big a berm would have to be to retain water on a slope of say 25 to 45% slope? How tall would that berm be to keep that water from coming over it and sending it to where you want it to go?"

Dan Wible – "That's a good question. Um, we would never rely on a single berm on such a slope to retain uh a large quantity of storm water to be infiltrated. Um, I mentioned uh we're talking really about many, many, many small measures, not, not big measures so uh when we would design a berm it would be we would try to make it very subtle we would try to sneak it through the trees we don't want to disturb any trees as much as we can. Um, maybe twelve inches tall maybe less."

John Cherry – "So a person's yard out there is going to be one rolling hill after the other to keep the water from coming down?"

Dan Wible – "No, no, no not necessarily, um what we've done uh on other such projects we've looked into um creating or implementing subsurface infiltration trenches or beds usually filled with stone uh on the property itself within the lot and within the limit of disturbance. What we're talking about here is within the woods itself so downhill of any homes of any sites again very subtle short berms twelve inches probably less."

John Cherry – "You...you stated earlier or at the close of your thing that you believed that your system would work. Do you believe that it will work or do you know that it will work in this...in this particular

site where you've got the steep slopes and uh you know you're going to have a lot of...you're going to have a lot of water coming off that hill? When it rains it...it comes down hard. We haven't...haven't had any really, I think the last time we had any bad rain was the hurricane up there at Canton. I went up there and worked uh with a church clearing out some stuff and the...you know that river got like a quarter of a mile wide up there, Pigeon River."

Dan Wible – "No, I believe it will work. My initial assessment tells me that such a tragedy is feasible at this site. Uh, all the engineering has to be done, all the calculations, all the homework but um I believe if you looked up my company, Kay Hill Associates, you'll find that we have an excellent reputation uh in storm water management throughout the nation and we would not be involved in this project if we didn't think we could make it work."

John Cherry – "Okay thank you, uh Mr. Grant."

Jerry Grant – "Yes sir"

John Cherry – "Uh, you stated uh I guess your going to have elevators in the building and you got stairwells and uh this if for uh I guess assisted living although uh some assisted living people are in wheelchairs. Uh, in case of a fire your people you stated would be carried or moved...moved from that building uh by ele...uh by a stairwell, are your - uh stairwells wheelchair accessible?"

Jerry Grant – "Yes they are wide enough for a person to be carried downstairs per building code."

John Cherry – "And in the event of a fire I guess you're going to have uh enough people up there probably to carry all these people down the building?"

Jerry Grant – "If they were in a wheelchair they'd have to be carried down."

John Cherry – "Okay, that was my question. Mr. Garren are...the Glen is proposing to build a five story building, are there any other in the Valley Hill fire district are there any other five story buildings that you all...you all give protection for, five story buildings in the county not the city?"

Tim Garren – "I don't know right off hand if we have any five story we have several four story buildings."

John Cherry – "Okay, uh the ladder truck, have...have...I can't...I don't imagine...I don't see a big five story building out there you know out Crab Creek Road. Have you all ever run that big ladder truck out Crab Creek Road?"

Tim Garren – "Yes we have"

John Cherry – "You have"

Tim Garren – "several times because we've responded mutual aid when Transylvania has called us to Brevard we've run it that way."

John Cherry – "Okay, and is uh...do you have the Glens uh...uh stuff that, that the roads going into the Glen, I know some of these...some of the...when they build these developments the roads are kind of big going in there and one's get small, are the roads going to be adequate where that you will be able to

get...get this truck up there if...if come need uh I brought up at the last meeting or you know said fire uh a lot of these people in assisted living are or nursing homes or whatever are on oxygen and normally you won't have a big fire but if oxygen gets...gets loose and somebody's smoking then you could have a big flash fire so uh are the roads going to be adequate, I guess you're going to make them...make them be adequate."

Tim Garren – "They've showed us the roads and we discussed a few changes and they've said that you know if the project goes through that those changes can be made to accommodate our vehicles."

John Cherry – "Okay thank you"

Chairman Moyer – "Thank you Mr. Cherry. Mr. Knowlton do you have any questions?"

Bill Knowlton – "Yes sir"

Chairman Moyer – "Okay"

Bill Knowlton – " Uh Mr. Lapsley please."

William Lapsley – "Yes sir"

Bill Knowlton – "Alright I know that you talked about moving the ten inch pipe and if the city would - could do it in conjunction they would use a thirty inch pipe."

William Lapsley – "No the city indicated to us their master plan for that area called for a twelve inch."

Bill Knowlton – "called...I'm sorry a twelve inch."

William Lapsley – "line and the size to serve this project alone was a ten inch pipe."

Bill Knowlton – "Okay, now with all these monies that have been uh talked about, does that also include buying rights over different land to move that...the uh – the uh water lines?"

William Lapsley – "To uh...you're talking about rights of way along the road?"

Bill Knowlton – "Yes"

William Lapsley – "There is a contingency amount in...in that budget for requiring any rights of ways along Crab Creek Road that would be necessary."

Bill Knowlton – "For pump stations and...and the like"

William Lapsley – "Well the design presumes, in my opinion, that a pumping station would be built near the intersection of Little River Road and Crab Creek Road where...at the point of connection and that uh that then there would be a pipe line from that location along the shoulder of the road to the Glens through the Glens project to a storage tank on the Glens property. It assumes that the...the Glens would provide the land for the water storage tank, which they have indicated they will do, and there are sufficient funds, I believe, in that budget to acquire a pumping station site, yes."

Bill Knowlton – “As well as...as you mentioned uh the right of ways that they would have to purchase uh for...”

William Lapsley – “Well I’m not sure they’d have to purchase any but there is...there is an amount in the budget to do that if it’s necessary.”

Bill Knowlton – “Oh, alright thank you. Um, Ms. James please, I’m not quite sure if you would answer the question or Mr. Westall or between the two of you we’d...you’d address this. But what uh...what are the corrective action that’s taken if indeed you detect a failure?”

Juanita James – “Okay, there’s multiple things that can occur. If you walk on site and you’ve got belts broken um we always have a backup belt either on site or in the service truck that can go right on to the motor blower combination. If it happens to one that we’ve just used at another site off the service truck we have accounts with like BMW Auto Parts that they stock all of the belts that we need. So if it’s something simple like that it’s a quick fix, we can run and get the part we need and put it back on. If it’s something along the lines that a motor has burn up let’s say, then you are required to have dual motors and blowers so that particular one would go out of service, the other one would come online, it would run the treatment plant while you have one either overnighted or wait where it’s usually a two day delivery time. If it’s um a pump that goes out then there’s um...where you have contract with HD Waterworks; one in Charlotte, one in Asheville, depends on the size of the pump that you need that you go and you get it and it goes in usually again on the same day. But again it’s a dual train system so if you have two pumps in the equalization basin for example that sends the water to the rest of the facility then if one is out the other can carry the load until which time the second one can be installed so it depends on what you run in to um if it’s floats that...um that levels out the water in the equalization basin we always have extra floats in our...in our arsenal of goods, if you will, that we can get it replaced that same day. Um same with electrical, if we have an electrician’s problem if it’s something minor we take care of it ourselves, if not we are contracted with an electrician who comes in that same...you know basically eight hour period when we call. He might come at six o’clock that evening but he’s still there that day.”

Bill Knowlton – “Well uh one uh, have you engaged in any failures?”

Juanita James – “Oh yes you will always have mechanical problems.”

Bill Knowlton – “Okay...Alright”

Juanita James – “Over time”

Bill Knowlton – “Now when that mechanical failure occurs what happens to the source...to the uh...uh...stream that...that...that the waste is being inputted?”

Juanita James – “Really very little impact because we do have the backup system. If...if it were only one motor and blower sitting there then yes it would be down for the time that you’re waiting. But since we do have the dual, and on everything, dual pumps, dual motors and blowers, dual –um if it’s a EQ it has a cross through if the level gets to high, if the pump goes out. You know any number of things there’s always a backup system so really very, very little impact would occur because you always have a backup plan.”

Bill Knowlton – “So even if you did...if you did a test after a failure that there would be very little impact in the stream?”

Juanita James – “Very little”

Bill Knowlton – “Alright”

Juanita James – “If...if you’re typically running at let’s say three parts BOD then after a failure you might be at ten but your limit would be thirty so again that’s very, very little impact it would not be a compliance issue most of the time.”

Bill Knowlton – “Okay”

Juanita James – “Most all of the time”

Bill Knowlton – “Thank you”

Juanita James – “Thank you”

Bill Knowlton – “Mr. Westall, I believe that Mrs. James answered one of my questions which was on the effect on any type of crops that was using that stream for irrigation that there would be no affect on that as far as uh fecal color form or any other type of uh infestation that...that could be transmitted into the stream.”

Forrest Westall – “Associated with a failure?”

Bill Knowlton – “With a failure”

Forrest Westall – “There shouldn’t be any impact on the uses of the water as an irrigation source.”

Bill Knowlton – “Okay, you mentioned that in the...in the case of a flood that the structure had to be built such that the flood would not affect it?”

Forrest Westall – “That’s correct”

Bill Knowlton – “Okay, what do you do in the case of a flood and you have to pump water out into the area, do you continue to pump and increase the...the flood capacity or do you hold the...the uh...can you hold the tank and stop your flooding...your uh pumping...uh procedure?”

Forrest Westall – “You’re talking about the discharge?”

Bill Knowlton – “Yes”

Forrest Westall – “There would be a provision in there to be able to discharge during the hundred year storm level. It would be the plant itself would be protected from the hundred year flood level and they’d be able to discharge their waste water. In addition all the collection system, the lines that serve the plant and the pump stations, they have to be protected from the hundred year flood level as well.”

Bill Knowlton – “Alright, well...uh...along with this plan and...and the projection that you talk about you also talked about noise abatement and...and uh the different techniques that could be used. My question is...is I mean right now is that conjecture or is this actually planned in this uh...this

uh...uh...sewerage treatment center...uh already, I mean are they lowering it are they...what are they going to with it?"

Forrest Westall – "Well at this point the...the design of the waste water...the detailed design has not been done."

Bill Knowlton – "Alright"

Forrest Westall – "and...and that would be something that would be incorporated. I think because of the issues that are raised by the public that that would certainly have to be a very important provision of the design that you would include very substantial noise suppression in the design of the treatment plant."

Bill Knowlton – "Well I...yes sir we live across from Blue Star and they have tried their best to be good neighbors and they've done their best to try to abate the noise however, it is really a pain and you thank God when the camp closes for it to continue on. Now that would be a main concern for us not only that...that in it's hypothetical that this can be done but indeed that this be part of the...the uh whole procedure in developing it."

Forrest Westall – "Well and...and when you say hypothetical, I've seen many plants built and approved many plants that did have noise suppression designed into it at a very high level and it really depends on the design component once the plan is put together and that would take into consideration the concerns of nearby neighbors."

Bill Knowlton – "Okay, I that...just one more question for you. You talked about various violations and said yes there are multiple violations those most of them were minor in nature or technical in nature. Has there been a major violation in which uh the...the point of discharge was adversely affected?"

Forrest Westall – "In, in what...any...any facility?"

Bill Knowlton – "Yes"

Forrest Westall – "Obviously there have been yes."

Bill Knowlton – "Yes"

Forrest Westall – "But when you consider a major violation again it depends uh...you know...I would consider a major violation a complete failure with raw waste water going down...most of...most of the...most of the failures that we've seen, in fact ninety five percent of them, even when it's a limit violation it's only a small deviation from the number they are required to do. They can be assessed a penalty for that but, as far as, failures – complete failures, we see more of those in collections systems not in waste water plants where the pump station goes down and raw waste water goes into a stream."

Bill Knowlton – "Alright so...but the water sewerage treatment right now you say is pointed more in the right direction, as far as, preventative?"

Forrest Westall – "Yes"

Bill Knowlton – "Thank you sir"

Forrest Westall – “Thank you”

Bill Knowlton – “Mr. Wible, sir I believe you’ve already answered part of these, but I’d like to just reiterate a bit if I may.”

Dan Wible – “Certainly”

Bill Knowlton – “Um, right now you have not been engaged...you were talking hypothetical of berms and the like you have not been engaged to develop this?”

Dan Wible – “We have only been engaged uh thus far to preliminarily access the feasibility of such a tragedy.”

Bill Knowlton – “Okay, and uh how costly is this?”

Dan Wible – “It’s a good question, um we’ve seen uh...well let me back up a little bit...uh I talked I think at great length about the type of approach that we would espouse. Um, we typically don’t do a traditional design, traditional detention, because we think it doesn’t work. We think it’s a failed system. Um, what we’ve seen from our studies comparing uh traditional approach to a...what’s called a sustainable approach um we believe that the cost are comparable.”

Bill Knowlton – “You...you...there’s no way of coming up with a figure until you actually work on the actual project?”

Dan Wible – “Well it involve you doing essentially two different designs; traditional and a sustainable approach and then coming up with detailed costs.”

Bill Knowlton – “Who monitors the project?”

Dan Wible – “During construction, post construction...would...both?”

Bill Knowlton – “Yes”

Dan Wible – “Uh, well that’s a good question, I think um during construction uh I believe uh the local regulatory agency would...would be out here um I not sure what the local uh requirements are for that but um, as far as, long term monitoring um to be honest typically there’s not a long term monitoring for these projects. Once it’s approved uh once the design is approved and it’s been implemented correctly um it’s considered good for life as long as it’s maintained.”

Bill Knowlton - “It’s maintained and of course it’ll...when it’s finished you’re the one that says it’s finished.”

Dan Wible – “Yes and...and I should say that Kay Hill Associates takes a very...hands on approach uh to our projects. We like to be out there at several key phases during the installation to make sure that their building it to our specifications.”

Bill Knowlton – “Um, well you talked about returning water to the aquifer.”

Dan Wible – “Yes”



Bill Knowlton – “Which we do not know what the layer is on it or what the size of it is or anything else. How long is it going to take you to return that water to the aquifer?”

Dan Wible – “I...I can't answer that question.”

Bill Knowlton – “Conceivably it could be thirty days, it could be three months, it could be three years?”

Dan Wible – “Uh, conceivably it could be some length of time that I can't tell you right now that is but...”

Bill Knowlton – “Until you know the size of the aquifer...”

Dan Wible – “It won't be any different from the pre-development conditions is what our goal would be.”

Bill Knowlton – “Yes but I mean until you know the size of the aquifer, the depth of it and...and the like...and how far you have to go to reach it.”

Dan Wible – “Uh, that's not exactly what our analysis will entail. We would look at how much runoff is coming off the site under existing conditions, what doesn't runoff is being recharged or at least is being infiltrated. Some of what is infiltrated is sent back into the atmosphere be all the veggies that we have all the trees which are great water pumps. Uh, and what doesn't get evaporate transpired back into the atmosphere gets recharged in the aquifer.”

Bill Knowlton – “Over a period of time”

Dan Wible – “so we can calculate what that volume is and we can design our system to mimic that volume”

Bill Knowlton – “Well the question I ask you here then, you know, I know the aquifer is a problem but you also have all these roadways, you also have all these driveways, uh what-cha-ma-call-it, you know, picnic sites or whatever, you have the uh the parking areas, you've got thirty acres of a town center which is all concrete. Uh, how do you return the water from that to the aquifer?”

Dan Wible – “Well um, if you have uh areas such as the parking lot and the courtyard area um you can grate that out of permeable materials. You can design infiltration systems to go below those areas. Uh, so any water that is going to fall directly on those hard surfaces can be directly infiltrated at the source.”

Bill Knowlton – “But once again this is theoretical and this is what could be done, it doesn't necessarily mean it's going to be done.”

Dan Wible – “It's uh...I think it's feasible for the site.”

Bill Knowlton – “Yes alright, uh I believe that's all the questions I have for you sir. Thank you. Um, Mr. Grant, I know that you talked about the buildings and the fire uh control uh and the like and of course it has been mentioned earlier about uh oxygen and other highly explosive type materials uh that are there. I know that you want...right now they've talked not from apartment buildings they've talked about this being assisted living buildings so therefore if you go into that category we're not talking about people that...that are viable that can walk and...on their own because if they are on their own and they can walk

and the like then they're really not assisted living their in an apartment building. But rather if they are assisted living and the like, how do you go about moving a hundred...I believe it was a hundred and sixty people in the apartments or assisted living items plus eighty personnel in the nursing center in the case of a fire how do you evacuate all these and about how much time do you think it would take?"

Jerry Grant – "I've...I have no idea. It wouldn't be any different than a hospital. Uh, these...all the walls inside this facility if a fire starts it would be contained within a one hour rated structure so you've got at least an hour, plus you've got a automatic sprinkler system that's going to be putting the fire out in that period of time, plus you don't have anything combustible other than the persons furniture or bed or sofa or that kind of materials. That's why it's built out of non-combustible materials."

Bill Knowlton – "Well I...I realize that I'm just looking at the...the actual fact of trying to evacuate a hundred and sixty people plus another eighty, that's two hundred and forty people and even though you may have an hour to do it in, it's not necessarily an easy project."

Jerry Grant – "No it wouldn't be easy but what we're doing is following the North Carolina building code which has been developed over many, many years and it's actually the southern building code that North Carolina adapted. So this isn't the first multi-story building with assisted living people in it. There are fifty-five CCRC's in the State of North Carolina. Almost all of which have multiple story buildings such as this and they have the same issues."

Bill Knowlton – "Well my question was have you resolved the issues?"

Jerry Grant – "No sir"

Bill Knowlton – "Okay"

Jerry Grant – "We would have a procedure to get people out of the building but at this point and this preliminary design we have not gotten into that level of details."

Bill Knowlton – "Okay, thank you sir, and one more Mr. Garren. Uh, I've looked at your response times and...and...and the like and we could...we could cribble, but I've driven Crab Creek Road and it's a hum-dinger and my questions is, where do you go when you're driving down Crab Creek Road and there's a fire engine behind you, because you can't pull off on the right or on the left because you not only have some pretty steep ditches which turns your vehicle over so it...it...it...it...it...it is indeed a hazard for you moving at that high speed to get around those vehicles, would you not say that?"

Tim Garren – "Anytime we go out anywhere we go running in merging traffic is a hazard to us, that's why we train our people and they train constantly to deal with it."

Bill Knowlton – "Alright in this particular case we're looking at two multi-story buildings of five stories; one of four story, you have one ladder, do you need additional equipment?"

Tim Garren – "It's...it...do I need additional equipment for what? It just depends on what I'm doing?"

Bill Knowlton – "Yes for handling a fire in two buildings, three buildings, four story, two five story"

Tim Garren – "Are you talking about if all three buildings are on fire at one time?"

Bill Knowlton – “If they’re on fire or evacuation?”

Tim Garren – “I’d be calling for the Mutual Aid Departments. I’ve got eleven other departments in Henderson County I can call.”

Bill Knowlton – “Alright and they all...each one have has a hook and ladder?”

Tim Garren – “No, the City of Hendersonville has a ninety-five foot platform I could call.”

Bill Knowlton – “Okay”

Tim Garren – “The Fletcher Fire Department has a hundred foot platform I could call. Mountain Home has a ladder truck I could call for.”

Bill Knowlton – “and...and...How long could you get it...how quickly could they get into it?”

Tim Garren – “That’s...I can’t answer that question...I mean”

Bill Knowlton – “Well I mean this is just a consideration. I also noticed that you have the streets...not the streets but the roadways going in...into the um uh facilities, they all merge into one main lane. Alright uh if you’re coming in you hope no ones coming out because you can’t get passed them.”

Tim Garren – “Before the road...before anything’s approved and building wise I normally get draft copies from the Planning Board, that shows us roads and the width and stuff like that and the Henderson County Fire Marshal’s office also gets them and they make sure our road widths...you know that’s one thing we check as to make sure we can get our trucks in and out.”

Bill Knowlton – “No, I’m really...I’m just concerned about that. That was. The uh, you say you have a safety net a half mile away and that they could respond within uh two minutes or less?”

Tim Garren – “Station two.”

Bill Knowlton – “Yes, I’ve been there. They have two uh...uh pumpers, two tankers right?”

Tim Garren – “No there’s a pumper there, there’s a tank...there’s a engine, and two tankers and a medical truck.”

Bill Knowlton – “Alright, with...the engine can actually it attaches to a pumper and it can then be used against fire?”

Tim Garren – “The pumper would be your attack pumper.”

Bill Knowlton – “Okay”

Tim Garren – “The other two trucks, the tankers, all they...they bring water to you. Okay, then I have three other tankers at the headquarters station.”

Bill Knowlton – “So basically with one man at that location which vehicle does he drive to get there within two minutes and what does he do? If he gets there without a tanker he can’t...he can’t uh...”

Tim Garren – “If one mans at the station he - he drives, depending on what the call is...”

Bill Knowlton – “Yes”

Tim Garren – “We respond to what the call is.”

Bill Knowlton – “Well fire”

Tim Garren – “If it’s a medical call we take the small truck. If it’s a fire call he takes the engine. His first thing is life safety. That’s our...our first obligation is life safety.”

Bill Knowlton – “Okay”

Tim Garren – “He gives the size up to the responding unit’s coming. The officer in charge starts calling for additional help if needed. Every call is different.”

Bill Knowlton – “I understand sir and I’m not trying to pin you down but what I’m saying, with one person there, even though the response time...and you’re talking response time but what are you responding with?”

Tim Garren – “An engine”

Bill Knowlton – “An engine, one person and that one person once he drives in with the engine what does he do with it?”

Tim Garren – “He calls and gives a size up and he starts life safety measures.”

Bill Knowlton – “Yes but, like I said, the building’s burning so now he’s...he’s got to have some of the...in other words what I’m saying is...”

Tim Garren – “Well, but you’re saying...you’re thinking of just the career staff, you’re forgetting that we are a combination department and we also have volunteers that are responding as well; which we have a couple of volunteers out in the Crab Creek area.”

Bill Knowlton – “Great, how quick can a volunteer on his job get to your location?”

Tim Garren – “It...it depends on the type of...the time of day of the fire. They may be at home and not be at their job.”

Bill Knowlton – “Yes, well once again what I’m trying to...just for...”

Tim Garren – “No I’m giving you answers as factual as I can.”

Bill Knowlton – “Yes but if, you know, it’s one thing to say we’ve got a response time but the question is what do you have a response time with, thats all? You know uh...uh...uh you know the guy that shows up with the rifle but the ammunition is...is being carried by five other guys...he can’t shoot the bear until they get there, and so that’s what I’m looking at, as far as, the fire is concerned. The big thing that I was uh...really concerned about was do you need the cost of now the density if this site goes in? The density

of homes, the density of the assisted living, uh all these items they now are a greater threat and therefore would need, you know, a greater uh...uh be able to respond with a greater resource to relocate some of your vehicles. Do you leave the vehicles that you've got there and...and build an addition on that station and put a ladder truck there for example; man it with more than two or three people? What I'm saying is due you need to increase your resources?"

Tim Garren – "We're in the process now of increasing our resources. We watch the community and try and grow with it as growth happens. The growth has been happening in the Crab Creek area because we have several developments going in at this time and our current budget that we just got approved by the County Commissioners we just budgeted in to hire three more people which we're going to put another person to each shift which we're going to double up out at station two. In other words, there will be two men at station two on duty, just like at headquarters."

Bill Knowlton – "I guess what I'm looking at is, from your standpoint, how much on uh, you know, degrade you what I'm really...you do a great job, what I'm looking at is if this is going in do you need additional resources, and if so, now is the time to say I need them and if this goes in I need to have this, this or this at the station."

Tim Garren – "If you're asking if I need additional resources for this project, the answer is no, not for this project. Okay, as I've got the resources for this project, but as the community of Crab Creek grows we will have to grow with it. But for this one particular project, no we do not need additional resources."

Bill Knowlton – "Even with two five story buildings and a four story building, that's all I have sir."

Chairman Moyer – "Alright thank you Mr. Knowlton."

Bill Knowlton – "Thank you"

Chairman Moyer – "Mr. Erb I believe was not here, Ms. McDowell do you have any questions? She's not here either. Um, Mr. Alexander has your other witness arrived?"

Attorney William Alexander – "He has Mr. Moyer um, I would frankly like to ask for about a ten minute recess before I start him, he's not going to be that long but we can right from him into closing."

Chairman Moyer – "I'd rather get him done then have a break and do the closing. Is he not ready to go?"

Attorney William Alexander – "Yes sir he's ready to go, Mr. Hepler would you come up please? Let me organize here just one minute. We call Thomas R. Hepler uh, you are Mr. Hepler uh you are Mr. Hepler is that correct? Mr. Hepler you were sworn in at a previous proceeding weren't you?"

Thomas Hepler – "That is correct"

Attorney William Alexander – "And Mr. Hepler I know you previously rendered testimony in this proceeding but the Board has since received other testimony from people relative to the highway and highway safety issues out there. The first thing I would ask you sir is whether or not, in the scope and course of your study, this project you have prepared; what has been delineated as an accident study uh relative to this project uh and the road out there and dated June 25, 2007?"

Thomas Hepler – "That is correct"

Attorney William Alexander – “Alright and I believe those are being disseminated now and is this that same report?”

Thomas Hepler – “That is correct”

Attorney William Alexander – “And sir, are the findings set forth in that report and the data attached to that report uh your findings and data?”

Thomas Hepler – “That is...that is my findings and my data.”

Attorney William Alexander – “Alright, we’ll come back to how you did that in just a minute. Sir did you also prepare a separate report entitled Traffic and Safety Analysis uh dated May 18, 2007 revised July 19, 2007?”

Thomas Hepler – “That is correct”

Attorney William Alexander – “Sir at the time you prepared that report and...and then later at the time you revised it on July 19, 2007 had you made...had made available to you the uh report of a Mr. Hummer who testified in this proceeding as well as some raw data relative to his reports?”

Thomas Hepler – “Uh at the time of the revision that...this had been made available to me”

Attorney William Alexander – “Okay, and I believe that’s also being disseminated at this point and is the report that I’m showing you is that one in the same?”

Thomas Hepler – “That is the correct report, yes.”

Attorney William Alexander – “Alright, and sir would you uh tell the Board first what your professional uh qualifications are. What your educational background history, area of employment, professional or state issued certification?”

Chairman Moyer – “We’ve covered this before when he testified didn’t we?”

Attorney William Alexander – “Um, I’m not sure sir that we, Mr. Moyer, that we uh established his credentials particularly in the area of transportation engineering so if he could just briefly address that for your own...”

Chairman Moyer – “Okay”

Thomas Hepler – “Just briefly uh my educational background was from NC State University. I’ve got a Master Degree in Transportation, uh...also a...uh...further study with...toward a PHD in Transportation as well. Um...I am a...um...licensed professional engineer, as well as, a licensed professional uh surveyor. Uh, I have been conducting traffic engineering studies for almost thirty years, uh...also taught at the NC State University for approximately four years in the transportation arena.”

Attorney William Alexander – “Now Mr. Hepler would...would you agree that the base data that you used for your study was essentially from the same base data source that uh Mr. Hummer used in his consideration?”

Thomas Hepler – “The data that was...that I used in my study is from the same source. The data is for a different segment of roadways so the data’s going to be slightly different um and my study also came up with a few different findings based upon the ADT on the roadway out there. Uh, so it...whenever you’re dealing with accident data, uh which we’re talking about here, accident data and the statistics involved with that are heavily dependent upon the average daily traffic that you have on the roadway. Basically the uh accident uh we measure accident data uh on...we evaluate accident data based upon the number of accidents per hundred million vehicle miles traveled. So it’s very dependant upon the average that we traffic upon the roadway. That is where our reports differ uh mainly is in...is in the ADT that was actually used to determine that.”

Attorney William Alexander – “Would you tell the Board what the difference was in the ADT?”

Thomas Hepler – “The difference in the ADT, the ADT that uh Dr. Hummer used um was based upon a...a ADT that was taken in 2005 just south of the project. Uh, there’s actually another ADT that was uh...that was available too from the DOT, from the same source, north of the project which increased. That ADT that Dr. Hummer used was forty-three hundred vehicles a day in 2005 and the ADT north of the project is sixty-four hundred as you get closer back into town. What I did, in my analysis, was take an average because the project base...the project corridor that was analyzed by Dr. Hummer uh was between those two points, so I took an average between those two. Furthermore we took...I took and projected that traffic along the three year time span of which the um...of which the traffic accident data was obtained. Now based upon that I come up with an ADT...the actual ADT average was fifty-four hundred and thirty-five vehicles over the time span of which the accidents occurred. That was used in determining the uh vehicles or the accidents per hundred million vehicles per uh hundred million vehicle miles traveled. Now applying this to the five mile section and the number of accidents that Dr. Hummer used in his report, which was seventy-eight accidents I believe over that period of time, you come up with an accident rate of uh two hundred and fifty eight accidents per million miles...million vehicle miles of travel or with that three year time span. The statewide average as obtained from the NCDOT that was provided to me in this same report or in the same um data that they gave me...the statewide average is three hundred and seventy vehicles...three hundred and seventy accidents per million vehicle miles traveled. Bottom line is the accident rate on that roadway, on Crab Creek Road, based upon that is less than the statewide average for a two lane rural highway. Now Dr. Hummer also proceeded to project based upon what he referred to as a model, I think he referred to it as a Hummer Model. Well there...uh...he attempted to project or he projected the number of accidents that would be incurred or expected to be incurred just as a result of this development. Uh, his ADT...his ADT that he generated from this development was nine hundred and forty ADT...additional ADT on the roadway. Which when compared to the, you know, to fifty-four hundred and thirty five, it’s roughly...it’s slightly under 20% increase according to the development. Now in his projection he projected a...an expected number of accidents that would be associated...could be expected to be associated with this development. Um, I think that was somewhere in the magnitude of seven to eight accidents per year. That’s basically just you’re projecting upward based upon the trend, based upon the...the calculated value that you have for accidents per hundred...per million vehicle miles traveled. When you take this new ADT into consideration uh if you take that nine hundred and forty and apply it to the two hundred and fifty-eight accidents per hundred million vehicle miles traveled you come up with four point five accidents per year expected. So that’s basically the difference between our two reports. Um, one fatal um observe or one of the observes I made of the study that was...of the assumption that was made by Dr. Hummer was he applied all the nine hundred forty ADT to the section of roadway back toward town on Crab Creek Road. This is...would not be true in reality because you’ll have some traffic coming from the south uh to the site, as well you know, you may have a good percentage of it going back toward town or coming from

town but not all the traffic would be coming in that direction. So the point I'm presenting here though with the nine hundred and forty applied to that section, in which Dr. Hummer did, is basically a worse case scenario. Um, in terms of the fatality, there's been one fatality that has been um recorded over this three year period. Now Dr. Hummer in his report projected that there would be, based upon that one fatality, you could expect maybe one fatality over...in the next seventeen years to ever occur again. Uh, I present to you that one fatality over a three year time period is low but statistically you can't use a statistic of one incident to project forward, backward or wherever. It's just not enough data to do that. You could have...you could have no fatalities over the next twenty years. This is not statistically accurate enough or you don't have enough data to...just...to one fatality. The total fatality...the total number of accidents that is statistically acceptable to...there's enough data there that you can project that far but you can't project just one...one accident or one fatality forward. It's just not - statistics will not allow it. The result is not acceptable under statistics, I used to do that. Um, the...the final thing I would like to say, as a part of the accident data or as far as the accident study, which I've concluded with, is one thing that was...has been overlooked in the study that Dr. Hummer did. Uh he assigned all the traffic for course out there to the roadway. Um, in his development of the ADT, uh he failed to uh recognize the fact that there's going to be alternate transportation provided by this development; alternate transportation in the form of vans, which would be shuttling people to and from their destinations. The van is a much more safe...safer than a private automobile. The other thing that was not recognized in the study was the time of day in which the residents, those that would be driving, would be utilizing the roadways and it's going to be in the off-peak hours and I think I made a statement in my previous uh...uh...visit here that a um...that a community of this nature...a development of this nature is, you know, basically it's a...one of the best things a traffic engineer can study because it develops such a small amount of traffic compared with other residential communities and that traffic is being placed on the roadway during the off peak hour. If you look at the statistical data from the traffic accident studies the majority of the traffic is...accidents are occurring during the peak hour so your putting traffic onto the roadway, additional traffic on the roadway during the off peak hour so I'll be happy to take any questions that you may have but that's a summary of what I...my findings."

Chairman Moyer – "Bill you have anything else?"

Attorney William Alexander – "Mr. Hepler is it true in Mr. Hummer's report he assumed that all traffic coming out of this project onto Crab Creek Road was going to turn right toward Hendersonville as opposed to turning left back out toward Brevard area?"

Thomas Hepler – "Um, that is correct, I think I'll reiterate what I spoke...mentioned earlier. Um, in reality, as much as, thirty maybe even forty percent maybe be going back toward the uh opposite direction and not back toward Hendersonville."

Attorney William Alexander – "And in doing your study did you in fact include the segment of road that continued into Hendersonville and ended at State Street in Hendersonville as opposed to Price Road where Mr. Hummer stopped?"

Thomas Hepler – "Uh that is correct, the study that you have before you actually extended on into the downtown area. Uh it did not go to the actual intersection but uh it did extend at least one mile further than the uh the study that uh...uh that Dr. Hummer prepared."

Attorney William Alexander – "And it's your testimony that one death event in three years on a road with this ADT is insufficient statistically to be reliable on a seventeen year projection?"



Thomas Hepler – “It is insufficient data to project with just one data point and you envision how you project a line, you have to have at least two data points to project a line so one...one point of data is insufficient to do any projection with.”

Attorney William Alexander – “Isn’t it true sir that those same things, whether or not a death occurred unfortunately, or an accident occurred unfortunately, is it affected by a multitude of issues such as weather, road conditions, you know, speed limits, changes, you know, hazards in the road that can’t be adequately incorporated into a modeling program?”

Thomas Hepler – “Um that is correct. Um the...you have a multitude of modeling programs out there uh with different variables you can incorporate into those. The best model that you can...the best way in which in order for it to predict what kind of accident you’re going to have is too look at the historical trend on the existing...on the roadway, which takes into affect all those variables and all those perimeters. Uh, so that’s essentially what I did on my projection. My projection, when I did that, matched up almost identical to Dr. Hummer’s using his data. Now when I incorporated the different data with the ADT of course I got different results. But my projections were the same as his using the data that he used. So I’m not...I’m not differing from the method he used in projecting his accidents but uh I think the data that was used uh needs to be reviewed more carefully and using a different ADT out there.”

Attorney William Alexander – “And sir do you know whether or not the North Carolina Department of Transportation, in doing it’s own safety reviews of highways, utilizes a modeling program that predicts future fatalities?”

Thomas Hepler – “I do not know that they use a modeling program. DOT does use projections to project uh both traffic, as well as, accidents. I’m not aware that they are using a modeling program but uh I cannot say one way or the other whether they do or not.”

Attorney William Alexander – “And sir you made a comment in your traffic and safety analysis report, and specifically over in paragraph three, that there are differences in the age um categories of drivers in terms of what you referred to as a use factor chart, and how did that...how did those differences affect Mr. Hummer’s report in your own study?”

Thomas Hepler – “There was a statement made in Dr. Hummer’s report that the older driver is a more likely driver to have an accident. Uh when looking at the table that he provided, which was basically a use table, in his report, if you look at that the older driver, I would consider the older driver from say retirement age on forward, the retirement age driver beginning with retirement age driver, according to his table or his chart, actually has a safer...much safer driving record than a teenager and an equal driving record to someone between the age of twenty and say thirty...uh I think it was twenty and uh...no it’s twenty four and thirty-five years of age. So I don’t think you can say that the older driver, based upon that chart, is a more hazardous or is likely to have an accident. Now when you take a driver that’s say eight-five plus that sort of goes off the chart. There’s not too many drivers out there at eighty-five, they still, an eighty-five plus driver, has a lower accident rate according to that chart than a teenager. So I think it was...what I’m seeing in my report is that the older driver is not necessarily a more hazardous person...or more likely to have an accident. Um depends on your definition of an older driver, I’ve been called an older driver from time to time.”

Attorney William Alexander – “Sir based up your review of this matter, your study of Dr. Hummer’s report and your review again of the raw data in comparison of that to Dr. Hummer’s data, are you still of the opinion stated previously to the Board that this project will not create such traffic on Crab Creek Road

as will significantly increase um the threat to the public on that road?"

Thomas Hepler – "It is my opinion that this project um it will create additional traffic, I cannot deny that but the type of traffic that it will be creating compared with other developments that could go in onto this place would be a much better traffic scenario from both an accident, as well as, a volume standpoint. Um based upon the capacity of the roadway, the roadway has plenty capacity to carry any additional traffic that would be developed by this or be brought...or created by this development. Um and also the one thing I...I want to remind you of again is the...the uh availability of alternate transportation that this developments going to be providing to it's residents and...which will reduce the vehicular traffic on the roadway and also introduce a more safer means of transportation. The bus and van is much more-safer than riding in an automobile."

Attorney William Alexander – "Thank you, does the Board have any questions?"

Chairman Moyer – "Any questions, Mr. Massagee."

Attorney Boyd Massagee – "Much, much shorter question be...am I correct in saying that this project, if it's approved, will cause additional wrecks to occur on this road? Would that not be a fair statement?"

Thomas Hepler – "I cannot say that this project would cause additional wrecks on the roadway."

Attorney Boyd Massagee – "Do you..."

Thomas Hepler – "You can...anyone can predict and anyone can project additional...additional uh...uh...uh accidents will occur on the roadway. Uh any additional traffic out there, on the roadway, on any roadway, not just this roadway, any roadway, if you place this project on any particular roadway inside of Henderson County or inside the state, um I mean it's going to add traffic to the roadway. Uh if you build a house, you're adding traffic to the roadway. Uh so whenever you increase the...whenever you increase the volume of traffic on a roadway you're increasing the likelihood of additional accidents, yes."

Attorney Boyd Massagee – "Would the answer to my question then be yes?"

Thomas Hepler – "The answer to your question – would you restate your question just again?"

Attorney Boyd Massagee – "Sure, would you not agree that it is correct that this project, if approved, will result in the likelihood of more accidents on this road, traffic accidents?"

Thomas Hepler – "It would...I would have to agree that it would result in a likelihood of more accidents."

Attorney Boyd Massagee – "Thank you"

Chairman Moyer – "Mr. Cherry"

John Cherry – "If you...if you use different data on this study, shouldn't you get different results? You said yours was different from the other man. If you're using different data, so your results are going to be different, is that correct?"

Thomas Hepler – "The data that I am using is the identical data that was provided by the DOT."

John Cherry – “I’m...I’m talking comparing to our witness, you said your result was different from his, but you said...you stated that you used different data.”

Thomas Hepler – “I did not state I’d used different data, I used...I stated I used a different base for ADT. The traffic accident data that I used was the identical data that was used by Dr. Hummer. The data was for a long...longer section, but I then I went back and used his same section in my analysis for the uh...uh...the resist...the...the...the information I presented here tonight.”

John Cherry – “So..you didn’t use the same stuff that he used then?”

Thomas Hepler – “I used the same available stuff that was presented by DOT. I used the same stuff that was available to him by DOT. The biggest difference was the ADT, the average daily traffic that was assumed for the base.”

John Cherry – “So I guess either he can’t add and subtract right or either you can’t add and subtract right.”

Thomas Hepler – “I’m not questioning...I’m not questioning his ability to...as I stated earlier. When I took his same...the same information that he used, I got the same projections that he got so I’m not questioning his ability. I’m not saying that...that he’s...that he...that it...that what he did was incorrect, uh but I had...I...I...I picked up some additional information on the average daily traffic.”

John Cherry – “Did you uh ride this road? You said you did a study. Did you actually go out there and physically ride up and down the road?”

Thomas Hepler – “I did”

John Cherry – “How many times?”

Thomas Hepler – “Twice”

John Cherry – “Twice, did you sit and watch the traffic any?”

Thomas Hepler – “I observed the traffic for a short period of time during the peak hour.”

John Cherry – “Like from side the road?”

Thomas Hepler – “Uh, well I don’t want to set in the middle of the road.”

John Cherry – “Well did you...where did you pull...where did you pull off and watch it at is what I’m asking?”

Thomas Hepler – “At Crab Creek...I mean at uh Pearl Lane.”

John Cherry – “Pearl Lane, okay. Uh they have said something about putting water in uh, if you stopped the traffic, you observed the traffic out there, uh if...it’s along ways from town...if we put a waterline in...if you stopped the traffic for three minutes uh how far do you think the traffic would back up, cause you’re going to have to stop the traffic going one way or the other cause you can’t...there’s not any room

off to the side to put a waterline in?"

Thomas Hepler – "It would depend upon...it would depend upon the time of day that you're stopping the traffic. Uh normally the waterline construction's going to go on and DOT has a set standard for creating basically a one lane, two way operation using flagmen, which is normally employed for a waterline construction like that or for construction on the shoulder of the roadway. That way you alternate the traffic and um passage from the two directions, normally the traffic's not stopped more than one minute. Three minutes is a long time if you've ever set at a three minute..."

John Cherry – "Well I've...I've set out there for as many as five."

Thomas Hepler – "The other thing is that the DOT will normally specify a time of day in which they can actually set the flagmen out there or operate under a flagman one lane operation and it will be during the off-peak timeframe so it will not be allowed to be operated during the peak hour which would be between seven and nine in the morning and between four and six in the evening."

John Cherry – "We're...uh I think most of us are more concerned...you're talking the traffic after the thing is built...uh most of us more concerned about the traffic during the construction. Have you done a study to try to figure how much more traffic is going to be on the road during this construction and what type of big heavy vehicles uh...dump trucks, concrete trucks, earth moving equipment uh on trucks, all that stuff, we're worried about uh more worried about during the construction than some seventy year old person riding in a van? They're talking about five...their wanting five years to build this thing so are we going to have to put up with five years of bad traffic, have you done any study on the uh construction traffic during this period of time?"

Thomas Hepler – "No sir I have not but I can project that...or I can estimate that there will be an increase in traffic...will be in construction traffic. Uh the...the uh construction traffic will uh be entering this site through uh again through a construction driveway which will also be set up by DOT...will be approved by DOT...so it will have to be a safe access for them to enter that site. The construction traffic in all likelihood is going to be occurring again during the off-peak hour and not during the peak hour traffic."

John Cherry – "Uh I don't know how they're going to get out there and get the work done if they don't come during early in the morning, most...most construction people work from about sun up till sun down. Uh how many...how many deaths as a result of the Glen being built on the road would you consider to be acceptable?"

Thomas Hepler – "Zero"

John Cherry – "Thank you"

Chairman Moyer – "Mr. Knowlton"

Bill Knowlton – "Sir just a...just one question for you, um I understand that there are other communities that are quiet sizeable that are also being developed in this area which would have access to uh Crab Creek and all likelihood would not only use it both to go to Brevard and into town, did you compute that into uh your estimate?"

Thomas Hepler – "We utilized the approved communities in the uh generation and projection of the traffic. We used the traffic growth rate that which is standard by DOT's measures on an annual basis and

that is actually um is compounded annually. So if you have a three or four percent annual growth rate that three percent is added not just each year it's added one year and then this three percent on top of that again so it's like interest essentially so the effectiveness of say a three percent growth rate over a time period of say eight years end of being a roughly a fifty percent increase in traffic. So this takes into account some of the...most of the additional growth but any approved development we took into consideration that was out there and had not gone into place yet. Now the developments already there is on...in the place...it already has the traffic on the road."

Bill Knowlton – "Sure I understand that but I'm talking about future uh growth on Evans or up in Jeter Mountain some place over there."

Thomas Hepler – "We can only...we can only take into account that development that has been approved that's a sure thing."

Bill Knowlton – "When considering Crab Creek um"

Thomas Hepler – "You said one question."

Bill Knowlton – "Yes I know I'm getting in the second one just for the heck of it. Uh Crab Creek is a short cut from Brevard to Hendersonville, uh which...which changes the whole posture of it. Normally you say well you have Highway...Highway 64 but Crab Creek has a ...has an unusual density because of it's ability to...to forego through lights and kind of zip on in and uh while I might agree with you uh with the elderly folks being safer than a teenager, uh it's because they're more mature and they drive uh slower and when this teenager comes up and over the hill uh he may be responsible for the accident but it was that elderly driver that was driving slow that kind of contributed part of it. But my main question is um when you look at the road because Crab Creek Road is a short cut did you take that into consideration because the traffic there would be a little bit higher because of that?"

Thomas Hepler – "Actually Crab Creek Road, the traffic on Crab Creek Road compared to the other roadways in that vicinity that actually becomes...are considered as a more of a arterial roadways, and so I would consider Crab Creek Road as an arterial. All the other...it has the list amount of traffic of the other arterials in that area. So although it may be considered a shortcut uh there are other roadways that have a higher volume of traffic on it by...based upon DOT's traffic count there."

Bill Knowlton – "Well yes based on that but I would venture."

Thomas Hepler – "Are you questioning...okay"

Bill Knowlton – "Oh I would question that one hundred percent because I live on..."

Thomas Hepler – "So if you question the data that we use then our study in invalid."

Bill Knowlton – "No...I...I understand that...I'm not faulting you."

Thomas Hepler – "Okay"

Bill Knowlton – "Thank you very much."

Chairman Moyer – "Thank you Mr. Knowlton. Thank you Mr. Hepler."

Commissioner Williams – “I have...had a question.”

Chairman Moyer – “Oh I’m sorry wait a minute.”

Commissioner Williams – “Mr. Hepler, I was just concerned...up here”

Thomas Hepler – “I’m sorry”

Chairman Moyer – “It’s echoing off of this thing.”

Commissioner Williams- “Question that came up...I’ve had a number of people to mention about the speed limit through that area...Did your study take that into account at all about the speed limit and what in your opinion do you think that they may contribute to the safety factor?”

Thomas Hepler – “Well I think uh our study did take that into consideration. If you read the study our...the recommendation of our study was to drop the speed limit to petition to DOT to drop the speed limit on the roadway. Um I believe the speed limit out there right now is posted at fifty, if I’m not mistaken, but it drops to forty-five and then...but we’re...our recommendation is too petition DOT to drop that speed limit down. Most of the accidents that occurred on this corridor were....well they were not necessarily exceeding the posted speed limit of fifty in the...on the uh...uh to the south, but they were um they were approaching that speed. They were driving fifty or better in some cases. Um it would be our recommendation or what is my recommendation in report that the roadway be....or a petition be presented to DOT to post the roadway at a maximum of forty-five miles per hour in this area. Of course it drops to thirty-five as it gets back into town but in this area it needs to be, in our opinion, forty-five.”

Commissioner Williams – “Thank you”

Chairman Moyer – “Any other questions from the Board? Okay that includes the presentation of all evidence, rebuttal evidence.”

Attorney William Alexander – “Mr. Moyer”

Attorney Boyd Massagee – “Mr. Chairman – Mr. Chairman you had indicated that I could introduce just a documented item which I’d do before you close it up.”

Attorney William Alexander – “Mr. Moyer as Mr. Massagee has already questioned one of my witnesses about alleged facts contained in that documentary item what I would ask the Commission is to let me call on Jerry Grant for just about four or five questions about the facts contained in that affidavit.”

Commissioner McGrady – “Mr. Chairman we’ve got to take a recess here.

Chairman Moyer – “Yes”

Commissioner McGrady – “Um this is...unless we’re going to put all the lawyers and all the witnesses and all the parties in the same metal chair as I am sitting in, we’ve got to take a...”

Commissioner Williams – “That’s right”

Chairman Moyer – “What is the purpose of the uh...”

Attorney William Alexander – “Mr. Massagee asked one of my clients...one of my witnesses about whether they knew whether this applicant had been sited by Buncombe County and DENR or somebody about a violation and he has an affidavit which he intends to present and rebuttal that shows such a violation. We...it wasn't Beverly Grant and I need to put testimony before you to show that it was not Beverly Grant and not Beverly Grant responsible for the project. Even though Jerry Grant individually was sited and fined in that project we need to let him explain that to you if Mr. Massagees going to put in his affidavit. It won't take but a few questions to explain it.”

Chairman Moyer – “Alright, well since Commissioner McGrady can't sit still any longer we will take a ten minute break and we'll have that short questioning and then we'll go into closing remarks. I think because of the nature of the case we need to let the parties pull this all together and we'll back and do that.”

**TEN MINUTE BREAK**

Chairman Moyer – “Okay we're going to continue the hearing. Mr. Massagee we're going to start with you and your rebuttal.”

Attorney Boyd Massagee – “We have an affidavit by the Erosion Control Officer”

Chairman Moyer – “Please go to the mic so that everybody can hear you, I'm sorry.”

Attorney Boyd Massagee – “We have a...an affidavit by the Erosion Control Officer of Buncombe County relative to one of the Grant uh projects and some of the deficiencies they've had. I would hand this to whomever I can hand it to.”

Chairman Moyer – “Do you have copies for?”

Attorney Boyd Massagee – “I had copies which I've given to Mr. Alexander.”

Chairman Moyer – “And who has signed that?”

Attorney Boyd Massagee – “The Erosion Control Officer of Buncombe County who is Michael Brookshire.”

Chairman Moyer – “And he's not here right now right?”

Attorney Boyd Massagee – “That's correct he was a witness that we had.”

Chairman Moyer – “Alright then I'll let Mr. Alexander put uh Mr. Grant back on to respond to this.”

Attorney William Alexander – “Jerry Grant please, Mr. Grant are you familiar with a project referred to in Mr. Brookshire's affidavit that occurred in Buncombe County at Brevard Road Industrial Park?”

Jerry Grant – “I am”

Attorney William Alexander – “And sir was that in fact a project of Beverly Grant Incorporated?”

Jerry Grant – “It was not”

Attorney William Alexander – “Did Beverly Grant Incorporated ever have a responsibility for any involvement in that project?”

Jerry Grant – “No sir”

Attorney William Alexander – “Were you personally involved in that project?”

Jerry Grant – “I was involved as an investor.”

Attorney William Alexander – “And did you have uh supervisory capacity over that?”

Jerry Grant – “I did not”

Attorney William Alexander – “And was there in fact and assessment originally made against you by the Buncombe County uh Planning Director?”

Jerry Grant – “There was”

Attorney William Alexander – “And was that subsequently set aside?”

Jerry Grant – “It was”

Attorney William Alexander – “I have no further questions.”

Chairman Moyer – “Mr. Cherry do you have any questions on that subject?”

John Cherry – “No”

Chairman Moyer – “Mr. Knowlton”

Bill Knowlton – “No sir”

Chairman Moyer – “Okay, Mr. Massagee I saw you rise do you have anything?”

Attorney Boyd Massagee – “I have a question. Mr. Grant, you were an investor in this project, Brevard Road Industrial Park?”

Jerry Grant – “I was”

Attorney Boyd Massagee – “Are you and...and investor in the present project here that we have?”

Jerry Grant – “I am”

Attorney Boyd Massagee – “And you were the original applicant in this were you not?”

Jerry Grant – “I made the application to Buncombe County that is correct.”



Attorney Boyd Massagee – “Now then uh you said the \$29,225.00 assessment was...was...was...was waived, you didn't pay anything?”

Jerry Grant – “No sir”

Attorney Boyd Massagee – “You paid nothing?”

Jerry Grant – “I could not”

Attorney Boyd Massagee – “Nothing was paid toward this?”

Jerry Grant – “Not by me”

Attorney Boyd Massagee – “Who paid what about this sir?”

Jerry Grant – “Mr. Massagee it's been some time but I believe the entire amount was set aside.”

Attorney Boyd Massagee – “You did not pay \$10,000.00 was not paid on this?”

Jerry Grant – “Well if you know that then, then perhaps uh there was an amount paid, but it would have been paid by the entity who owned the property.”

Attorney Boyd Massagee – “Do you get enough of fines so that you don't fines when they come by?”

Jerry Grant – “Uh Mr. Massagee that's the only fine I recollect that I've ever had.”

Attorney Boyd Massagee – “And did you have uh according to this thing here the project that you were invested in and that you were...made the application for 167 days out of a year you had uh, uh penalties?”

Jerry Grant – “Uh that's what that says thats correct.”

Attorney Boyd Massagee – It says you...you were first notified on November third...thirteenth nineteen ninety eight of violations and you hadn't cured them and over a year later when they fined you?”

Jerry Grant – “Um I'm not privy to that...”

Attorney Boyd Massagee – “What took so long to fix it?”

Jerry Grant – “Uh Mr. Massagee you've asked the question, I'll answer it. That project was originally a spec building for Progress Energy. They came to the Chamber of Commerce of Asheville and asked them to do a spec building. Asheville Chamber of Commerce came to me and to Mr. Slosman and asked us if we would participate and we agreed to participate because Mr. Slosman knew of another gentleman Mr. Donald Dickson who wanted a building so that we could two buildings on the site. Mr. Dickson subsequently had some business turnarounds and could not build his building. Uh Progress Energy decided because they had a change in management that they were no longer interested in the spec building program. Um the Chamber of Commerce had worked with us to get the state to put the roads in and the county to put the water and the sewer in. Uh the county was the only one that ever came through with the water and sewer. We graded the property and the property had to sit there while we waited for

the state to pave the roads. Well that happened at a time when DOT was having some problems if you may remember that timeframe. The DOT was not able through it's agent that it was going to use to pave the roads. So the roads were unpaved because Mr. Slosman and I neither one wanted to invest anymore money in the site and that's why the thing went on so long."

Attorney Boyd Massagee – "So if this project is such that you decide you don't want to put anymore money in the project, it's just going to sit there and...and the erosion control measures are not going to be taken. Would that be a reasonable conclusion?"

Jerry Grant – "No it would not"

Attorney Boyd Massagee – "I have nothing else, thank you"

Chairman Moyer – "Thank you. We'll move now into the closing remarks. As I indicated these are at the option of the Board to give the parties the chance to pull everything together and make their final comments. We are going to have closing remarks but I asked that the parties limit their closing remarks to ten minutes and uh we'll start with the petitioner Mr. Alexander."

Attorney William Alexander – "Mr. Moyer we would ask that the Board would allow us to go last we'd waive opening reserve closing please?"

Chairman Moyer – "No I'm going to ask you to go first."

Attorney William Alexander – "Alright in that event Mr. Moyer we will...first I'd like to hand out uh before we close our evidence some copies of exhibits previously received only for your record."

Chairman Moyer – "Okay"

Attorney William Alexander – "On a procedural matter before we start closing I would like to call the courts...I mean to the Commissions attention that we filed a supplement to our application uh with your office on May 21 of 2007. We did that by filing it with your office specifically and with the office of the...of the Planning Office and I have not heard reference in the Planning um Director or Mr. Cable's testimony of their exhibits as to that being included in the record. I just want to be sure that that's within our application and what everybody understands we're you know applying for. They can confirm that for me."

Chairman Moyer – "Matt was that included in what was..."

Matt Cable – I believe that they entered that at the May 22 hearing themselves. I received a copy at that time during the hearing. That was my..."

Attorney William Alexander – "As long as it's in the record, I just want to be sure."

Chairman Moyer – "Alright we'll deem it admitted at that time."

Attorney William Alexander – "And then I have a couple of other little things which I'll refer to in my closing. I would surrender the podium to my co-council Angela Beeker for her uh closing comments and I will follow her with mine."

Attorney Angela Beeker – “Before I begin um I just want to, for the record, make sure that uh the Comprehensive Plan Land Development Code are recognized as part of the record. I believe everybody has been referring to them and I’m going to refer to them in my closing.”

Chairman Moyer – “So noted”

Attorney Angela Beeker – “And also um this is a vision plan for um Advantage West for economic development and I wanted to submit that into evidence as well. It goes to the economic development element of the Comprehensive Plan Use Plan.”

Chairman Moyer – “Alright”

Attorney Angela Beeker – “I want to address just a couple of things and I will be brief so that Mr. Alexander has most of the time. Um it has been brought up about um tax ability of these types of facilities and I wanted to hand out some statutes to you on that issue. Just very briefly the North Carolina General Statutes provide that um all property in the county is subject to taxes unless the statutes provide a specific exclusion and this is summarized on the cover but I have attached the relevant statutes for you. There’s no automatic exemption. You have to apply for it. So no matter what...I have other clients who I had to go back and uh fight for an exemption because believe me it’s not automatic and I’ve provided that statute for you. Regarding a Continuing Care Retirement Community, there are only two ways that I’ve been able to find in the statutes; and I talked to Mr. Duncan to confirm this today, that they could become tax exempt and that is if they were charitable or if they financed all or part of the project through Medical Care Commission Bonds. As to the first, it is possible to convert to a non-profit. Um I believe the um attorney that spoke before did indicate that that was a possibility. But we are willing to self limit ourselves and our articles of organization so that that could not happen. In addition before that could happen it also has to go through the IRS through a very argues process before such a conversion could occur. The second point is if they merged with a non-profit the statutes do provide that it is possible but only after a superior court hearing in which the attorney general is invited to participate because the state is very protective of its non-profits. Um so that I offer that for your additional information because there’s not been anything offered on that. I want to talk briefly about the Comprehensive Land Use Plan. I still call it the Comprehensive Land Use Plan, it’s the 2020 County Comprehensive Plan and there have been statements made that say that this project is not in accordance with the Comprehensive Plan and I believe that you have to look at the Comprehensive Plan from corner to corner. The Comprehensive Plan consists of more than just that Land Use Plan map. When you look at the Land Use Plan map it divides the county into the Urban Services Area, the Rural Transition Area and the Rural Agriculture Area. This tract of land is split. Matt said it tonight, um it is part in the RTA and part in the RAA but I’ve always understood that those are very generalized boundaries that they are not surveyed lines out there and the entirety of this project could just as well be in the RTA as it is in the RAA. The RTA does contemplate that um public water and sewer may be available in the future to this site and in fact this site is within the Mud Creek service area um pursuant to that agreement with the City of Hendersonville, so it is not out of the question that um in the next twenty years public water and sewer could be to that site and I would argue that the Comprehensive Plan even contemplates that. With regards to the Comprehensive Plan, it has an economic development element; you’ve heard testimony already about how this is going to contribute to the economy by providing a substantial tax base and a substantial amount of jobs to be created. With regard to the natural resources element, the majority of the property is less than 25% slope; those that are in excess are proposed for the low dense development, the Highlands that has been said tonight has already been approved um under the subdivision ordinance. With regard to the housing element, and I’m going to slow down a little bit through here, um the Comprehensive Plan recognizes that an important percentage of the county’s immigration can be attributed to older adults who make up a

relatively large percentage of Henderson County's population. In short this plan says we need these types of facilities. That's why I mean you have to read the plan from cover to cover you can't just focus on the map. At the end of the housing element, and I am on page 8 of what I handed you, um the housing element of the CCP recommends that the county ordinances be revised to allow the private sector to develop a broad range of housing choices by ensuring that future regulations do not unnecessarily impede the development of nursing homes and other types of care facilities. It goes on to repeat that statement in the growth management element also as one of the action steps. That statement is in there several times. Um we believe that the project would be allowed under the R3; you heard Matt testify that Continuing Care Retirement Facilities are allowed. My closing argument that I have presented to you states and provides a basis for the conclusion that multi-family living units are part and parcel of a Continuing Care Retirement Facility just like they are part of an Assisted Living Facility. You cannot have one without the other. The applicant must do an actuarial study to satisfy the licensing board that this project will work and from an economic standpoint it will not work without those independent living units. As well I handed out a retirement uh Department of Insurance Retirement guide, I don't have it...I've got it in my box, I could dig it out but you remember it has the nice colored picture of a...of a man fishing in a pond and what it provides is a summary of all the Continuing Care Retirement Communities in the state. Every single one of those facilities has multi-unit...I'm sorry multi-family units associated with it; independent living units; every single one of them, so if you'll allow a CCRC you are allowing those in an R3 district. Um let's see...I will...I will stop um there except to say, I do have one more thing and that is the definition of a Continuing Care Retirement Community. If I could hand this out, the first page that I have for you is the definition of a Continuing Care Retirement Community that is in the Land Development Code. It is the identical definition to the states definition of the Continuing Care Retirement Community in the North Carolina General Statute. It says a Continuing Care Retirement Community involves the furnishing to an individual other than their relative of lodging together with nursing services, medical services or other health related services; lodging, nursing services, medical services or other health related services. The last page of what I handed you is the North Carolina Administrative Codes definition of lodging. Lodging means independent living without the need or use of health related services. Again, lodging means independent living without the need or use of health related services. So therefore if you don't have a definition for lodging in the county zoning ordinance you would look to the states definition and use of that term since the code mimics the state statutory definition. So it is our position that if you look at the four corners of the Comprehensive Land Use Plan and you look at the Land Development Code and the proposed R3 that both would support this project. Thank You."

Chairman Moyer – "Thank you Mrs. Beeker."

Attorney William Alexander – "Members of the Commission thank you for this opportunity to present the case of the applicant for approval of a site specific development plan in accord with North Carolina General Statute 153A 344.1. I appreciate your attention to the evidence throughout this proceeding. It has been long and hard for all of us. You have received confident evidence in support of this project and a mixture of opinions from various individuals both for and against the project. It's my purpose now to summarize and conclude my client's position to the degree that my co-council Mrs. Beeker has not already addressed the issue. I've been a little shocked throughout this proceeding to hear so many really vociferously stated opinions about this project. From the vehement nature of the opinions you would think we were trying to get approval for a race track or a land fill or a quarry. What we have here instead is a community of people all through this proceeding and I know this sounds in this late hour a little silly but all through this proceeding you've heard talk about trees, trees, trees, views, everything. I want to remind the Commission that human beings, the citizens in Henderson County, are in some ways like those trees in this since. When a tree is young you can move it you can transplant it, tear it up from its soil, without killing it. As the tree gets older it becomes more difficult to do that without killing it and

human beings are the same as those trees; if you just rip them up and root them out and make them move to some other part of the county you destroy their sense of community. We propose a CCRC so that citizens of Henderson County can choose a progressive state of living in the same place. The...in passing this statute our legislatures clearing stated that you should approve this project subject only to such conditions as are necessary to protect the public health, safety and welfare. I will hand up my closing arguments in written form for you which we've set out that I want to address the evidence briefly though. You heard Matt talk about drain on emergency services. At the same time you heard the volunteer...uh the chief of the volunteer fire department, the battalion chief say it's not going to drain us, it's not going to drain, you know, first responder services. No one has presented evidence from the uh EMS or the hospital that it's going to strain their services. Pardee Hospital located sixteen to seventeen minutes away of posted speed limits, a distance of seven point four miles. There's people out in Bat Cave would love to be that close to the hospital. The...we have asked you and we ask you now by this document which I would submit to you um we have what we call proposed conditions for the vested rights application of the applicant. In these conditions uh we think these would be reasonable and ask you to simply impose them. On the steep lot issue, number one, we have developed a restricted covenant which we will apply to this property which requires building on any lot in excess of a 35% slope to first be approved by our architectural committee with a certified engineers plan showing mitigation features designed and to be installed to mitigate the effects of accelerated storm water runoff or other steep slope issues. Beyond that quite frankly we don't want to be painted with a different paintbrush than the rest of the county. We know that in considering your comprehensive code you are going to at least address the issues of steep slopes. We think equity demands and require that you should treat us with the same fashion that you treat everybody else in the county on that issue. So if you impose upon us a condition that is consistent with what you subsequently impose on the rest of the county on the steep slope issue, we suspect we'll have to live with that. On the uh the utilities to the project, we propose instead of a private water system to install city water to this project. We propose to spend \$1,339,000.00 doing that. We ask that you approve this project subject to the condition that we install city water on these conditions; that we can do it for \$1,339,000.00, that we obtain the necessary encroachments agreements from North Carolina Department of Transportation, and that no unknown physical or engineering factors development which would prevent installation of this system. We have so much invested in this project we ask to retain as an option if those conditions cannot be met that we be allowed to install our private water system that has been projected to you. I would submit to you that there has been no competent evidence presented that the installation of the private water system will in any way endanger the public welfare. The sewerage system, private packed sewerage system, competent testimony before you is, properly maintained managed and regulated by the state will have no adverse impact on the environment. The main entrance we would subject that a condition to project that the main entrance be located on Pearl Lane as in our revised plan that we have submitted. We would like to submit a more specific revised site plan showing that main entrance. We suggest as a condition that we be required to comply with all state and local storm water and sedimentation control requirements. In addition, and this is not on your list, we would willingly accept a condition from you that says we will in this project have a certified engineering plan for retention of storm water, having a design goal of retaining sufficient water on the project that the discharge of storm water from the project is no more than in the lands natural state and have an engineer follow up with that after installation of the systems to certify to you that that engineered system has been implemented. We suggest that we be required to provide to the county if we receive...to notify you basically if we have any waste water problems that you'd be notified separately from the state and that we make available for use of the Valley Hill Fire Department our storm water retention ponds and I'm also going to add to that, even though it's not on our list, that our roads be constructed and developed in a fashion consistent with the requirements of the Valley Hill Fire Department. Having said all that, there is not before you any substantive evidence of a danger to the public health, safety and welfare in this community. The interesting thing in this process has been that virtually every witness, not just our

witnesses, but the opposition witnesses have stood before you and said Henderson County needs a project like this. Even Mr. McPhail, our most vocal opponent, stood before you and said, it's a well designed project I just want it somewhere else. Henderson County resident's retiring elder people have just as much right to live their lives in a pastoral element as do any other citizens. I'm...I'm skipping over real quickly Mr. Moyer."

Chairman Moyer – "Alright"

Attorney William Alexander – "We would submit to you that this matter needs to be brought to a vote. We ask you to vote in favor of approving our site specific development plan as submitted. We ask you to impose such of the conditions as you find to be reasonable. The conditions proposed by staff; there was a parking condition of one space per five hundred square feet of commercial space. We think that the square footage space should be more specifically defined. In any event; there's one or two minor modifications to planning staff which could be worked through with them, I think aside from your principle decision. Um Beverly Grant and the folks at Beverly Grant are responsible businessmen, great contractors and will comply with the things that you impose. We're not out there to fill the county with sewer. We want to build a facility that we can sell and benefit them, benefit the residents of the county and do it in a way that exemplifies the way people should behave rather than the types of behavior that Mr. Massagee has characterized us as having. Thank you very much."

Chairman Moyer – "Mr. Massagee that was about twenty minutes, I'm going to give you the same privilege as the other parties if you'd like."

Attorney Boyd Massagee – "Mr. Chairman I will not take it. I'm sure that will probably brighten your day."

Chairman Moyer – "Shorten the night anyway."

Attorney Boyd Massagee – "Shorten your night. Look at the number of projects that you know of that the Beverly Grant Company has been involved with. It would be interesting to know how many of them they now own and operate. They're a construction company. I think it is unrealistic for anybody to think that when this project is finished and gone that they're not going to sell it to somebody who comes along and wants to buy it. That's what they do for...that's what their business is. Now there is no contract that can be made and...and you guys are...like me learned this the first year in law school. You cannot contract away the right to convey real estate in the future. So a contract of that affect that they offered the first night is totally worthless. The person that they sell to are the entity that they sell to, whether it's Parkridge or whoever it happens to be, if they qualify under the statute as tax exempt they will be entitled by federal law to the tax exemption. They'll be entitled under the North Carolina law to the tax exemption. You can't contract that right away. That's just what the statute says you can do. So I think if...if this thing goes through, I mean is realistic to anticipate that they'll be no property taxes taken out of this property for any extended period of time. Now your, your local people live out there now, I really think should be given more consideration, possibly than...than...than what those of us in town, what those in Asheville want to do. They got a...they're going to be right beside this, they're going to be living with this. Those ladies with the babies, the ladies who are doing the babysitting and near here, they're the one's who are going to have to live with this. You're talking a five year program. Let me ask you...you...you...some of you guys have been on this thing for five years. Think back at your needs and your desires as Commissioners five years ago, how many things have changed as far as your needs are concerned in the last five years? I would dare say that there has been a significant change in your priorities in the last five years. Now if you approve this you're marrying this thing for five years. They

take – the five year period is what they anticipate it would take to finish it. If you approve this you are going to be marrying these folks to the construction vehicles in and out for a five year period. The sewer systems fail. Everybody up here after they tell you how fool proof it is and well yes they do fail. Uh frankly I had a better impression of the Grant Company until I looked at this...at this report and I...even worse after listening to Mr. Grant. He stopped complying with what the statute calls for on erosion because it wasn't economically feasible to do so. That's frightening and that's...that's who the top dog is I suspect in the company that's going to be doing this if you allow it. So I would ask you for the sake of those that live nearby, I would ask you for the sake of those who are going to have needs in the next five years inconsistent with this to deny this project. Thank you."

Chairman Moyer – "Mr. Cherry"

John Cherry – "If you'll uh sometime before you make a decision, go and uh look on there, they've got a website and uh bring up the Glen at Flat Rock and look at their uh picture there...the picture on their website I'm sure is an artists drawing but it is quite a bit different from what they have showed you here. Uh they...the picture they presented us here is a little small development. Well if you'll look at that picture on that website it is huge. It looks like maybe four or five, five story buildings. I'm sure my opinion of this, if we give them five years to do it, we're just...this...what they've presented is just a tip of the iceberg. They're...they're not planning on quitting where they...where they're at. They're planning on adding and expanding. Uh the first...first night I...I was kind of puzzled uh all the dealings I've had with the county, if I go down and take a permit out in John Jones or John Cherry or whatever uh and I go back and I want to put Henry Cherry on it, then I've got to file a new deal and...and I don't...I don't get to change it. Uh the very first night uh they wanted to amend...amend then and I think you'll let them do it the...but they wanted Parkridge uh MOB on the application also. Uh I don't know whether...what that's got to do with the tax exempt or whatever. Also the very first night um I...I've learnt a lot about the uh about the rules of this thing uh. The first night I asked two questions or walked up here and asked a question and went back and sit down, uh didn't really know what was going on. Later I found out that I could've stayed up here. Uh the one question I asked, I asked about the...about the traffic, this is preliminary way back when the first night and uh they, I was told that uh by...by one of their witnesses, uh traffic be no problem because their...their people were going to be on twenty-four hour shifts. I find that hard to believe that everybody in that nursing home and all their people are going to work a twenty-four hour shift, I don't...the only people that I know that do that are firemen and they sleep at night when their not...when their not working. Uh they proposed to build a sewer treatment plant uh, I built my house out there, I like my house but had I known that that Glen was over there and that sewer treatment plant and all were there and I'm that close to it I don't think I would have bought out there. Uh you can go into any town anywhere and find sewer treatment plant but usually you don't find any houses around it. It's stuck off in some back...back place uh no one chooses. Say well let's see...I think that land will be cheaper over there beside the sewer treatment plant so that's where I'm going to go build my house and my kids can go over there and play and smell whatever they smell. Uh Mr. uh lawyer I forgot what his name, Alexandria or whatever, uh he mentioned about the people that uh people at Bat Cave uh would be glad to be this close to the hospital, uh they probably would but uh I don't think no body was stupid enough to go out there and put a eighty bed nursing home in Bat Cave with no facilities and no water or anything. And last uh...I feel like, you know, if...if...if this thing was for the poor or not poor but just the ordinary citizen or whatever uh I think people might be a little more receptive to it. But this...this is...this is maybe I don't know you fellows and know...know your financial status but uh for most of us in this room uh we couldn't...we couldn't go stay in this place. Uh it's going to be extremely expensive. It's for the...for the wealthy of the wealthy and it is for people that say well I've got the money I like that out there so I'm going to go buy it. Uh I hope you don't let them go buy our peaceful valley uh and we don't...right now as I said before, we don't have any smells out there. They've

compared this to the uh to the to the Blue Ridge...every time they've made a comparison, they've not compared apples to apples, not, not to Blue Ridge but Blue Star, uh this...the water treatment plant there, I can't imagine...I don't even know why they've got one...I can't imagine uh those kids uh I guess they go to the bathroom uh they may wash their clothes once a week uh there's not kind of volume of water coming out of that place going into Crab Creek that is going to be coming out of this uh hospital. Uh nurses and people uh...uh working in a hospital are required to wash their hands every time they go in a room so uh anyway the...um just uh think about it and think about...think about us poor people out there that will have to put up with this. Not to think about the five years of traffic and not being able to get to town. Uh I've also heard that they wanted to put uh...run a gas line out there. So if they run a gas line and run a water line, Crab Creek Road is going to be a nightmare of traffic of stoppages for the flagmen for probably the next four years and uh so anyway think about it and help us out and vote no on this. Uh they can find somewhere to build this thing. Thank you."

Chairman Moyer – "Mr. Knowlton you're up next, I'd ask you to wait just a minute. Commissioner Messer had to take care of something so just wait till Mr. Messer comes back to start your comments please. You can make your closing remarks now."

Bill Knowlton – "Well I guess I uh I wasn't really aware that I'd have to make closing remarks but I'll make one, I'll try to put it together."

Chairman Moyer – "You do not have to, I'm giving you the option if you'd like."

Bill Knowlton – "Oh okay. Well out of spite I'm just going to do it. Alright sir well first of all, you know, it was mentioned that that these elderly folks uh need a pastoral atmosphere in which to spend the rest of their remaining time and uh I agree whole heartedly. I agree that we need uh a CCR here, not in this location, but that's necessary there's no doubt about it. But I happen to be an elderly person too and I'd like to live in a pastoral atmosphere and when they turn around and put in two five story buildings, a four story building, a health care center for 42,000 square foot and all this parking area and all these homes and the like, where do my pastoral atmosphere go to? And of course the folks that are living there what kind of pastoral atmosphere do they have? That's bologna. Truth is we are uh I guess a little obstinate but we're sitting here and we're...we're...we're tax payers. We're residents, we live here they don't. They want to come in. I don't care about them coming, I don't care about the CCR it should be in a place that they have uh they have infrastructure to support it. Once that water line runs out and even gas line, Crab Creek is going to be a good place for development because now they have city water and if this is just the beginning of a...of a high density development there's going to be another and another and another. That's not fair to us. It really isn't. I know what they want to do but everything that you've heard up here has been smoke and mirrors. Oh this is what we can do. Do they have a contract on it? Is this the way their going to put in the sewer plant? We don't know. Is this the way their going to uh take care of erosion? We don't know. There's no contract on it but if I get the contract this is the way I could do it. I don't think that's a way of doing business. It's like damning apple pit and motherhood if you say that nursing homes and assisted living is not...not a good thing to do. So I'm not going to do that. But I will tell you that if you have to move two hundred and forty people out of uh a area that's in danger by fire or whatever I don't care if you have a sprinkler system or like and they are partially infirmed, I've moved them, and I will tell you, you can't. To try to do it in an hour, yes I did it in an hour and I went in with a battalion of people, three companies to move them. And, as far as, the fire department I applaud what they do but I will tell you when he shows up with one truck and one person that's not a reaction time. When they show up with three trucks and three people that's not a reaction time and I would not want to be in a burning building saying, looking down at the three folks saying well we're calling it and we're coordinating it. What I want to know is when is it operational and when can they fight the fire and



that's probably in the neighborhood of about forty-five minutes? Not three minutes, not four minutes because it's a volunteer organization and we know this. And I think that battalion chief shot himself in the foot when he said he doesn't need any additional equipment because he sure as the devil does. We're counting on you to help us. We've got no place else to go. If they come in and my water...and...and my well goes dry, all our wells go dry, we're shot and I think this is a foretaste of the development of the Crab Creek valley. So I really ask you please consider it. Look at the health and welfare of those that are already here and then drive Crab Creek Road a few times yourself. Tell me how dangerous it is, especially on the weekends. I get a few motorcycle guys I like you to meet, especially as they come down off the hill. So just look at that and...and...and cut us a break because we have no place but to you and we're asking you please move it where it can be more beneficial. Thank you."

Chairman Moyer – "I'd call on Mr. Erb but I think he is not here, has not arrived and the same thing with Ms. McDowell. It would not be appropriate to have a motion to go out of public hearing."

Commissioner Messer – "So moved Mr. Chairman."

Chairman Moyer – "All in favor say I."

In unison – "I"

Chairman Moyer – "Opposed"

None

Chairman Moyer stated that the Board was now out of public hearing. Now that the Commissioners had heard the evidence and closing remarks concluded it was an appropriate time for the Commissioners to discuss the issues presented over the several hearing held. The Board would make determinations regarding finding of fact and conclusions of law by a majority vote. The Board may delegate to staff the drafting of proposed findings and conclusions subject to a vote by the Board. The Board's final decision shall be in writing and provided to all parties who have indicated to the clerk that they wish to receive a copy of the decision. The Board must decide according to both North Carolina General Statutes and to Chapter of the Henderson County Code whether to approve the site specific development plan. The Board may approve a site specific development plan or a phase development plan on such terms and conditions as may be reasonably necessary to protect the public health, safety and welfare. The public hearing having been closed at this time the order must be entered by this Board within thirty (30) days of today, which is the close of the hearing.

Commissioner Messer expressed that this had been an ongoing hearing. He was ready to review some of the closing statements and come back at a meeting in August and make the decision.

Commissioner Young was in agreement with Commissioner Messer.

Chairman Moyer pointed out that they had received a lot of documents and a lot of additional information at this meeting. The thirty (30) days would be August 23, 2007.

It was the consensus of the Board to take due diligence to the documents received and testimony received and discuss it and place it on the agenda for the next Board Meeting.

Commissioner McGrady suggested that two sets of orders be prepared, one denying the application and

one agreeing to it with a clear range of stipulations or limitations.

Chairman Moyer recommended that staff or the County Attorney, if it was approved subject to all conditions that staff and the petitioner have said they would comply to the Board would provide clarification for discussion purposes only to the Board.

County Attorney Russ Burrell established that it would be an index of all possible conditions that had been proposed or stipulated to the Board in one way or the other if approved.

**ADJOURN**

*Commissioner Williams made the motion for the Board to adjourn at 9:45 p.m. All voted in favor and the motion carried.*

*Attest:*

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Terry Wilson, Deputy Clerk to the Board

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William L. Moyer, Chairman