

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

Meeting Date: July 16, 2008

Subject: Set Public Hearing on Vested Rights Amendment Application (VR-2007-03-A1) for the development known as “Biltmore Farms Hammond Tract”

Attachments:

1. Vested Rights Amendment Application (VR-2007-03-A1)
2. Order Granting Development Vested Rights on May 24, 2007
3. Letter from Applicant Describing Amendment Request
4. Comparison of Existing and Proposed Order Language
5. Comparison of Existing and Proposed Plan
6. Revised Master Plan June 13, 2008 – Biltmore Farms Hammond Tract

SUMMARY OF REQUEST:

On June 13, 2008 Mr. Thomas A. Williamson, Vice President of Biltmore Farms, LLC., applicant, with permission from current property owners Mr. John T. Hammond and Mr. James W. Hammond, and with Mr. Will Buie of William G. Lapsley and Associates, agent to the applicant, submitted a Vested Rights Amendment Application (VR-2007-03-A1) and accompanying site specific development plan in order to seek amendment to an established development vested rights for the development known as “Biltmore Farms Hammond Tract” (see Attachments 1-6).

Former Chapter 189 of the Henderson County Code (Vested Rights Ordinance), under which development vested rights were originally granted, provided the landowner the ability to establish a development vested right through the approval of a site specific development plan. The established vested right allows the property owner (or his/her successors in ownership) to proceed with specific approved development plans, in accordance with the currently approved order, regardless of zoning changes that might affect such development.

Before taking action on the application, the Board of Commissioners must hold a public hearing. The hearing must be held within 45 days of the application for amendment to the development vested right. The Board of Commissioners must schedule the public hearing for vested rights amendment application #VR-2007-03-A1 for an appropriate date between August 4, 2008 and August 29, 2008, to fulfill this requirement. Due to the nature of the hearing, staff comments on the amendment application and development will be presented at the public hearing.

BOARD ACTION REQUESTED:

Planning Staff requests the Board of Commissioners accept vested rights amendment application #VR-2007-03-A1 and schedule special called meeting for the public hearing for any of the following dates: August 4, 5, 7, 14, 18, 19, 25 or 26 at 7:00 P.M.

Suggested Motion: I move that the Board accept vested rights amendment application #VR-2007-03-A1 and schedule special called meeting for the public hearing on _____, August ____, 2008 at 7:00 P.M.

Application No.

6/13/08
VR-2007-03-A1

HENDERSON COUNTY
VESTED RIGHTS APPLICATION FORM
PURSUANT TO N.C.G.S. 153A-344.1

GENERAL INFORMATION

Date of Application: June 13, 2008
Previously Submitted (Circle One): Yes No

PARCEL INFORMATION

Property Address: 205 McKinney Road City, State, Zip: Etowah, NC
PIN: 9529767505, 9529838232 Tract Size (Acres): 518 acres
9539037259, 9529916743
Zoning District: R1

CONTACT INFORMATION

Property Owner:
Name: John and James W. Hammond Phone: (407)-563-0311
Address: 1230 West Central Boulevard City, State, Zip: Orlando, Florida 32805

Applicant:
Name: Biltmore Farms, LLC Phone: (828) 209-2000
Address: One Town Square Boulevard City, State, Zip: Asheville, NC 28803

Agent: Att: Thomas A. Williamson Suite 330
Name: _____ Phone: _____
Address: _____ City, State, Zip: _____
Agent Form (Circle One): Yes No

Site-Specific Development Plan Preparer:

Name: Greg Cloos-Cloos Landscape Arch Phone: (828) 243-1070
Address: 132 Ravenwood Ln. City, State, Zip: Horse Shoe, NC 28742

Attached is a site-specific development plan (one large copy and one 11 x 17 inches in size): Yes No

CERTIFICATION

I, Thomas A. Williamson, hereby certify that I am seeking to acquire a vested right pursuant to N.C.G.S. 153A-344.1 and the Henderson County Vested Rights Ordinance. I understand and agree that my application will be considered by the Board of Commissioners following notice and a public hearing and that I am under a duty to provide complete and accurate information to the Board of Commissioners.

This 13th day of June, 2008.

Thomas A. Williamson Thomas A. Williamson June 13, 2008
Print Applicant (Owner or Agent) Signature Applicant (Owner or Agent) Date

County Use Only

Fee: \$ _____ Paid: _____ Method: _____ Received by: _____

IT IS HEREBY ORDAINED AND ORDERED BY THE BOARD OF COUNTY COMMISSIONERS OF HENDERSON COUNTY, NORTH CAROLINA as follows:

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

ORDER GRANTING VESTED RIGHTS

THIS MATTER, Henderson County planning file VR2007-03, came on to be heard before the Henderson County Board of Commissioners on 1 May 2007. The Board continued its deliberations on this matter at its meeting on 16 May 2007, and concluded deliberations and adopted this Order on 24 May 2007. After hearing and deliberations, the Board makes the following findings and conclusions, and enters the following Order.

Findings

1. The Henderson County Board of Commissioners ("the Board") accepted the application of Biltmore Farms, LLC (made through Thomas A. Williamson, Vice President), for vested development rights pursuant to Chapter 189 of the Henderson County Code, on 21 March 2007. A public hearing, pursuant to Chapter 189 of the Henderson County Code, and pursuant to the Rules adopted by the Board for hearings under Chapter 189, was scheduled for 1 May 2007.

2. Notice of the public hearing was published in *The Times-News* newspaper on 11 April 2007, 14 April 2007, 18 April 2007 and 21 April 2007. On 18 April 2007, personnel from the Henderson County Planning Department posted notice at the project site advertising the public hearing. Notices of the public hearing were sent to the applicant and to the owners of real property adjacent to the site of the development proposed by the Applicant.

3. All members of the Board were present for the hearing on 1 May 2007, except for Commissioner Williams. Commissioner Williams did not participate in the hearing, in any deliberations resulting in this Order, or by voting regarding this Order.

4. At the commencement of this hearing, the Board inquired as the persons or entities who believed they should be parties to this proceeding, in addition to the Applicant and the Henderson County Planning Department. The following persons, all adjacent property owners, requested to become parties to this hearing, which request was granted, without objection by the remaining parties, by the Board:

Edward R. Doyle, Jr.
331 Old Orr Road
Etowah, North Carolina 28729

Roger Rusnak
1903 Brannon Road

Horse Shoe, North Carolina 28742

William Ricks
221 McKinney Point Dr., Lot 9
Etowah, North Carolina 28729

J. David Caudle
192 Brock Creek Road
Horse Shoe, North Carolina 28742

William Trimarco
193 Brock Creek Road
Horse Shoe, North Carolina 28742

5. All parties to the proceeding, and all other witnesses, gave oath for their testimony. The Board received Exhibits A-E from Henderson County Planning Staff, plus Exhibits from the Applicant and from Edward R. Doyle, Jr.

6. The Applicant proposes a residential development to be located on property identified by Henderson County parcel identification numbers 9529-76-7505, 9529-83-8232, 9539-03-7259, 9529-91-6743 and located on McKinney Road (SR 1203) ("the subject property").

7. The subject property fronts McKinney Road, at the intersection of McKinney Road and Brickyard Road (SR 1323). The subject property is approximately 469.96 acres in size, and does not include a 50 acre tract to be retained by the current property owners.

8. The application for vested development rights shows that the development is proposed to include a total of 653 residences including 234 single-family dwellings, 42 duplexes (containing 84 dwelling units), 49 triplexes (containing 147 dwelling units), and 47 quadraplexes (containing 188 dwelling units), for an average density of roughly 0.71 acres per unit (viewed alternatively, 1.39 units per acre).

9. The minimum lot size for the single-family dwellings would be 1/3 acre, with a maximum height of 40 feet, front setbacks of 20 feet from edge of right of way, and side and rear setbacks of 10 feet. The Applicant proposes single family homes of a square footage maximum of 6,500 square feet, but average will be far less.

10. Multifamily dwellings would include 42 duplex structures (84 dwellings), 49 triplex structures (147 dwellings) and 47 quadraplex structures (188 dwellings). The indoor area range for multifamily dwellings would range from 1,000 square feet to 3,270 square feet. Maximum height would be 40 feet, and setbacks would be 15 feet in front from the edge of the right of way.

11. The development is also proposed to include a community amenity area with a clubhouse (of a maximum 14,600 square feet), and not less than 240 acres of open space, with sidewalks in the vicinity of the multifamily dwellings.

12. The Applicant has requested that the vested right be valid for a period of 5 years, if granted, alleging that such a period is justified due to the size and scope of the project.

13. Applicant has an investment in the project to date of approximately \$500,000.00.

14. The Board finds that a 5-year grant of vested rights is justified (upon the conditions stated below), due to the size and scope of the project, and the investment in the project by the Applicant. The Board further finds that there would be significant negative effects on the residents and the environment in the area surrounding the subject property were the build-out of a project of this scope to be accomplished in a more compressed time period. These negative effects of a shorter grant of vested rights would include substantial construction traffic and construction ground-disturbing activity, both during a compressed time frame.

15. The subject property is currently zone "open use", which does not restrict the density of development for the property.

16. Under Henderson County Comprehensive Land Use Plan, the subject property is projected as Rural/Urban Transition Area (RTA), but would be projected as Urban Services Area (USA) if water and sewer was available to the subject property.

17. Under the most current draft of the proposed Henderson County Land Development Code zoning map, the subject property would be allowed to potentially have a maximum of 1,409 dwelling units in a standard subdivision.

18. The Board finds no evidence of any bad faith on the part of the Applicant in seeking these vested rights at this time.

19. A portion of the subject property—approximately 117 acres—is located in the flood plain as identified the Federal Emergency Management Agency 1980 maps ("FEMA Maps").

20. The Applicant proposes construction in the flood fringe area as shown on the FEMA maps on no more than 3 acres, for road construction, construction of sewer pump stations, and portions of 3 buildings. Under the Henderson County Flood Damage Prevention Ordinance, subject to no-fill certification, a maximum of twenty percent of acreage in the flood fringe area as shown on the FEMA maps, in this case approximately 8.5 acres, may be filled.

21. As the subject property is located in an environmentally sensitive area and flood plain/fringe, stormwater runoff resulting from construction and new water-impervious surfaces could be significantly detrimental to the environment, and thus to the public health, safety and welfare.

22. To protect the environmentally sensitive areas included in the subject property and the surrounding area (including particularly the flood plain/fringe areas), County staff proposes that no structures be allowed to be built in the flood plain/fringe as shown on the FEMA maps (and no fill is to be allowed in the floodplain except for the trails and roads indicated on the site specific plan) except for sewage pump stations (so long as the stations are underground), and that "Phase II" stormwater regulations as determined by the National Pollution Discharge Elimination Program and the North Carolina Department of Environment and Natural Resources.

23. The Applicant proposes in the development that open space is to constitute approximately 51% of subject property. Underground utilities will be extended in open space.

24. The Applicant proposes that trails and sidewalks will have over 8 miles of trail, sidewalks in higher density.

25. County planning staff proposes and the Applicant has agreed that combined linear footage for trails plus sidewalks must equal the linear footage for roads within the proposed subdivision.

26. A traffic study of both the effects of the proposed development and the possible needs for additional road connections is being prepared for the North Carolina Department of Transportation.

27. Applicant intends restrictions on the property such that one-half percent (½%) of the proceeds from the sale of each lot by the Applicant, and of each re-sale of each lot by subsequent owners, is paid into a fund held by the The Community Foundation of Western North Carolina, Inc., or its Henderson County, North Carolina affiliate, or similar tax exempt organization, to be used exclusively for the needs of the residents of the area in which the development is planned.

28. The project plans public water from the City of Hendersonville, and private sewer from the Etowah Sewer Company, Inc.

29. Two additional entrances to the development may later be designed depending on the outcome of the traffic study and the availability of rights of way.

30. The target market for this development is second and subsequent home buyers, and Applicant does not expect that a large portion of homeowners in the development would be of a likely child-rearing demographic. If correct, the direct effect of this development on the school age population of Henderson County would be minimal.

31. No lots will be sold except as land/home packages, and there are no plans for any rental units (although purchasers are not intended to be restricted from long-term leases of their properties).

32. The Applicant is generally agreeable to buffering along the boundaries of the subject property.

33. Henderson County staff recommends the conditional approval of the application. The conditions recommended are as follows:

- a. No structure is allowed to be built within the flood plain/fringe as defined on the FEMA maps, and no fill is to be allowed in the flood plain/fringe except for the trails and roads indicated on the site specific plan, and except for sewage pump stations (so long as the stations are underground). If and when new maps of the flood plain/fringe issued by FEMA, then this restriction shall be deemed to apply to the area shown as flood plain/fringe on such maps as to the extent of any structures for which building permits have not been issued.

- b. That all structures be served by public water and private sewer.
- c. That the rights for the clubhouse be vested for the following specific uses only, and not any other: restaurant, catering facilities, gathering space, meeting space, banquet facilities, workout and recreational facilities, real estate sales and marketing, swimming pool, and tennis.
- d. That the rights vested are for a total of not more than 234 single-family units on individual lots, not more than 42 duplexes as townhomes (containing 84 dwelling units), not more than 49 triplexes as townhomes (containing 147 dwelling units) and 47 quadraplexes as townhomes (containing 188 dwelling units).
- e. That the single-family units have individual lots of not less than 1/3 acre in area.
- f. That the Applicant supply no fewer than one (1) parking space for each 500 square feet of area of the "clubhouse".
- g. Lot dimensions and structures, not exceeding the square footage and height indicated in the site specific plan. Building height is to be measured as vertical distance from finished main floor to highest point in building. For each structure type:
 - i. Single-Family Residences may have a maximum size of 6,500 square feet, and a maximum height of 40 feet.
 - ii. Multifamily Residences may have a maximum size of 3,270 square feet per unit, and a maximum height of 40 feet.
 - iii. The Clubhouse may have a maximum size of 14,600 square feet, with a maximum height of 45 feet.
- h. Minimum yard setbacks are to be as indicated on the site specific plan, with all structures to have at least the minimum separation required by the North Carolina Building Code. The yard setbacks are as follows:
 - i. For Single-Family Residences, a 20 foot front yard setback from the edge of right-of-way, 10 foot rear yard setback and 10 foot side yard setback.
 - ii. For Multifamily Residences, a 15 foot front yard setback from the edge of right-of way.
- i. Notwithstanding other setbacks, the minimum structure setback from outer boundary of the subject property is to be at least 20 feet.
- j. The Clubhouse shall be located generally as shown on the site specific development plan.

- k. Only single family residences may be constructed within the subject property abutting McKinney Road.
- l. The traffic study current cited by the Applicant shall be completed in a form acceptable by the North Carolina Department of Transportation (“NCDOT”), and the Applicant shall obtain NCDOT approval for all road connection between the subject property and the NCDOT road system.
- m. Applicant shall only have vested rights for the uses specified in the Applicant’s application for vested rights. No vested rights shall be granted regarding any environmental ordinances including but not limited to any Stormwater Ordinance, Sedimentation and Erosion Ordinance, Watershed Protection Ordinance, Flood Damage Prevention Ordinance, Protected Mountain Ridge Ordinance or similar ordinances previously or hereafter adopted by Henderson County. In addition, this project will still be subject to any adequate public facilities ordinance, impact fees or the like should the County adopt any such ordinances during the term of this Ordinance and Order.
- n. There shall be a minimum of 240 acres of open space within the subject property as developed. “Open space” means “an area that is intended to provide light and air, and is designed for either environmental, scenic or recreational purposes and shall not include roads, any areas dedicated or reserved for roads, land within setbacks or separation areas, internal or external roads, rights-of-way, driveways, parking spaces, sale or model homes, and areas needed for aboveground utility facilities including water supply or sewage disposal systems.”
- o. There shall be a minimum of 8.65 miles of pedestrian trails.
- p. There shall be a minimum of 0.24 miles of sidewalks
- q. The applicant shall provide a buffer along the perimeter of the project where any duplex, triplex or quadraplex is to be located within 40 feet of the exterior line of the subject property or where any internal roads are immediately adjacent to exterior lines of the subject property.
 - i. The buffer should be 20 feet in width and contain 1 large deciduous tree (35 feet plus at maturity), 2 small deciduous trees (less than 35 feet at maturity), 2 large evergreen trees (20 feet plus at maturity), and 6 small evergreen trees (less than 20 feet at maturity) per each 100 linear feet of buffering.
 - ii. The trees shall not be planted within five (5) feet of any property line to ensure access for maintenance and to avoid encroaching onto the adjacent property.
 - iii. The trees shall be spaced to provide screening and shall be a minimum of 8 feet (deciduous) and 6 feet (evergreen) in height at the time of planting.

- iv. Preserved trees (of the size required above) may be credited toward the buffer requirement, and must be indicated at the time of development plan submittal.
 - v. The buffer must be installed prior to receiving final plat approval.
 - r. The Applicant shall comply with Phase II Stormwater regulations as determined by the National Pollution Discharge Elimination Program and the North Carolina Department of Environment and Natural Resources.
 - s. The Applicant shall submit an instrument or instruments setting forth a plan for permanent care and maintenance of open space and buffers which would be legally enforceable; that the Applicant create a homeowners' association and submit bylaws and rules and regulations governing the association. The Office of the County Attorney must review the Declaration of Covenants and Restrictions for Biltmore Farms Hammond Tract, the Bylaws of the Property Owner's Association as to form, and approve the same as preserving in perpetuity the open space and buffers, and reasonably providing for their permanent care and maintenance.
34. The Board deems the conditions on the grant of the application sought by staff as detailed in paragraph 33, above, to be necessary to protect the public health, safety and welfare. This is true as a result of the following:
- a. The environmentally sensitive nature of the subject property and the surrounding area, particularly the flood plain/fringe areas thereof.
 - b. The development requested represents a large influx of dwelling units into an area where the surrounding roads are not currently designed or built to easily accommodate the traffic resulting from the same.
 - c. The setbacks, structure separations, structure dimensions, structure locations, open space, trails and sidewalks and structure type restrictions are needed to ensure the safe occupation of the dwelling units proposed by their future owners while simultaneously protecting the safety, health and community character of existing residents in the area surrounding and near the subject property.
35. The Board also deems the following additional conditions to be necessary to protect the public health, safety and welfare:
- a. The applicant must provide evidence that the water supply and sewer system plans shown on the site specific development plan have been approved by the appropriate agency, in order to insure their sound design and construction in an environmentally sensitive area.
 - b. All public water and private sewerage systems shall be installed and shall meet the requirements of the Henderson County Health Department or other government authorities having jurisdiction thereof. The development vested rights are contingent on final approval from such agencies.

- c. As the development is served by a public water system, such shall meet the respective the County's or, should it become a part of any municipality, such municipality's minimum requirements for fire hydrant installation.
- d. The community investment percentage from each sale or resale of each parcel in the development, as detailed in paragraph 27, above, shall be included as a provision in the restrictive covenants encumbering the entirety of the subdivision.
- e. All statements, whether in the site specific plan or made by the Applicant during the hearing of this matter, of the intent of the Applicant shall be required to be fulfilled.
- f. All trails within the development shall be accessible to the public during the period of development, as the Applicant has agreed in another forum, and thereafter, subject only to the requirements of the North Carolina Planned Communities Act.
- g. Any change in use or the addition of a roadway connection point to the subject property beyond those currently indicated in the site specific plan shall require an amendment to this Order, after public hearing before the Board of Commissioners.

From the foregoing, the Board concludes as follows:

- 1. That the Board has the authority to vest development rights in the Applicant pursuant to N.C. Gen. Stat. §153A-344.1, and pursuant to Chapter 189 of the Henderson County Code.
- 2. That the Board should grant the Applicant vested rights pursuant to the revised site specific plan submitted by the Applicant, subject to the conditions stated below.
- 3. That the conditions stated below are appropriate and necessary to protect the public health, safety and welfare.

WHEREFORE, IT IS ORDERED as follows:

- 1. The Applicant is granted vested development rights for a period of 5 years in the subject property as shown on the site specific development plan as submitted by the Applicant, as it has been amended in writing and by the Applicant's statements at this hearing, subject to the conditions stated below.
- 2. The grant of the vested development rights to the Applicant is expressly conditioned on the full, complete and timely compliance by the Applicant with the following conditions:
 - a. No structure is allowed to be built within the flood plain/fringe as defined on the FEMA maps, and no fill is to be allowed in the flood plain/fringe except for the trails and roads indicated on the site specific plan, and except for sewage pump stations (so long as the stations are underground). If and when new maps of the

flood plain/fringe issued by FEMA, then this restriction shall be deemed to apply to the area shown as flood plain/fringe on such maps as to the extent of any structures for which building permits have not been issued.

- b. That all structures be served by public water and private sewer.
- c. That the rights for the clubhouse be vested for the following specific uses only, and not any other: restaurant, catering facilities, gathering space, meeting space, banquet facilities, workout and recreational facilities, real estate sales and marketing, swimming pool, and tennis.
- d. That the rights vested are for a total of not more than 234 single-family units on individual lots, not more than 42 duplexes as townhomes (containing 84 dwelling units), not more than 49 triplexes as townhomes (containing 147 dwelling units) and 47 quadraplexes as townhomes (containing 188 dwelling units).
- e. That the single-family units have individual lots of not less than 1/3 acre in area.
- f. That the Applicant supply no fewer than one (1) parking space for each 500 square feet of area in the "clubhouse".
- g. Lot dimensions and structures, not exceeding the square footage and height indicated in the site specific plan. Building height is to be measured as vertical distance from finished main floor to highest point in building. For each structure type:
 - i. Single-Family Residences may have a maximum size of 6,500 square feet, and a maximum height of 40 feet.
 - ii. Multifamily Residences may have a maximum size of 3,270 square feet per unit, and a maximum height of 40 feet.
 - iii. The Clubhouse may have a maximum size of 14,600 square feet, with a maximum height of 45 feet.
- h. Minimum yard setbacks are to be as indicated on the site specific plan, with all structures to have at least the minimum separation required by the North Carolina Building Code. The yard setbacks are as follows:
 - iv. For Single-Family Residences, a 20 foot front yard setback from the edge of right-of-way, 10 foot rear yard setback and 10 foot side yard setback.
 - v. For Multifamily Residences, a 15 foot front yard setback from the edge of right-of way.
- i. Notwithstanding other setbacks, the minimum structure setback from outer boundary of the subject property is to be at least 20 feet.

- j. The Clubhouse shall be located generally as shown on the site specific development plan.
- k. Only single family residences may be constructed within the subject property abutting McKinney Road.
- l. The traffic study current cited by the Applicant shall be completed in a form acceptable by the North Carolina Department of Transportation (“NCDOT”), and the Applicant shall obtain NCDOT approval for all road connection between the subject property and the NCDOT road system.
- m. Applicant shall only have vested rights for the uses specified in the Applicant’s application for vested rights. No vested rights shall be granted regarding any environmental ordinances including but not limited to any Stormwater Ordinance, Sedimentation and Erosion Ordinance, Watershed Protection Ordinance, Flood Damage Prevention Ordinance, Protected Mountain Ridge Ordinance or similar ordinances previously or hereafter adopted by Henderson County. In addition, this project will still be subject to any adequate public facilities ordinance, impact fees or the like should the County adopt any such ordinances during the term of this Ordinance and Order.
- n. There shall be a minimum of 240 acres of open space within the subject property as developed. “Open space” means “an area that is intended to provide light and air, and is designed for either environmental, scenic or recreational purposes and shall not include roads, any areas dedicated or reserved for roads, land within setbacks or separation areas, internal or external roads, rights-of-way, driveways, parking spaces, sale or model homes, and areas needed for aboveground utility facilities including water supply or sewage disposal systems.”
- o. There shall be a minimum of 8.65 miles of pedestrian trails.
- p. There shall be a minimum of 0.24 miles of sidewalks.
- q. The applicant shall provide a buffer along the perimeter of the project where any duplex, triplex or quadraplex is to be located within 40 feet of the exterior line of the subject property or where any internal roads are immediately adjacent to exterior lines of the subject property.
 - vi. The buffer should be 20 feet in width and contain 1 large deciduous tree (35 feet plus at maturity), 2 small deciduous trees (less than 35 feet at maturity), 2 large evergreen trees (20 feet plus at maturity), and 6 small evergreen trees (less than 20 feet at maturity) per each 100 linear feet of buffering.
 - vii. The trees shall not be planted within five (5) feet of any property line to ensure access for maintenance and to avoid encroaching onto the adjacent property.

- viii. The trees shall be spaced to provide screening and shall be a minimum of 8 feet (deciduous) and 6 feet (evergreen) in height at the time of planting.
 - ix. Preserved trees (of the size required above) may be credited toward the buffer requirement, and must be indicated at the time of development plan submittal.
 - x. The buffer must be installed or bonded as allowed by Henderson County Ordinances prior to receiving final plat approval.
- r. The Applicant shall submit an instrument or instruments setting forth a plan for permanent care and maintenance of open space and buffers which would be legally enforceable; that the Applicant create a homeowners' association and submit bylaws and rules and regulations governing the association. The Office of the County Attorney must review the Declaration of Covenants and Restrictions for Biltmore Farms Hammond Tract, the Bylaws of the Property Owner's Association as to form, and approve the same as preserving in perpetuity the open space and buffers, and reasonably providing for their permanent care and maintenance.
- s. The applicant must provide evidence that the water supply and sewer system plans shown on the site specific development plan have been approved by the appropriate agency.
- t. All public water and private sewerage systems shall be installed and shall meet the requirements of the Henderson County Health Department or other government authorities having jurisdiction thereof.
- u. As the development is served by a public water system, such shall meet the respective the County's or, should it become a part of any municipality, such municipality's minimum requirements for fire hydrant installation.
- v. The community investment percentage from each sale or resale of each parcel in the development, as detailed in paragraph 27, above, shall be included as a provision in the restrictive covenants encumbering the entirety of the subdivision.
- w. All statements, whether in the site specific plan or made by the Applicant during the hearing of this matter, of the intent of the Applicant shall be required to be fulfilled.
- x. All trails within the development shall be made reasonably accessible to the public during the period of development beginning at such time as the trails are accessible to the residents of the development. Upon the formation of a homeowners association in the subdivisions, and thereafter as well, the applicant shall implement a permanent program allowing members of the public to use the trails in the subdivision, subject to the rules and regulations adopted by the homeowners' association for the subdivision. Members of the public desiring to use the subdivision trails shall apply to the homeowners' association and shall pay a reasonable annual use fee to defray a portion of the trail maintenance costs. The

participation of any member of the public in trails program may be terminated for failure to pay the annual use fee or failure to abide by the rules and regulations.

- y. The Applicant shall comply with Phase II Stormwater regulations as determined by the National Pollution Discharge Elimination Program and the North Carolina Department of Environment and Natural Resources.
- z. Any change in use of the subject property or the change or addition of a roadway connection point to the subject property beyond those currently indicated in the site specific plan, and any significant change in the site specific plan or other plans for the project submitted to the County (as they may have been amended through the completion of this hearing) shall require an amendment to this Order, after public hearing before the Board of Commissioners.

As ordered by the Board upon motion duly made and seconded and unanimously adopted, this the 16th day of May, 2007.

HENDERSON COUNTY BOARD OF COMMISSIONERS



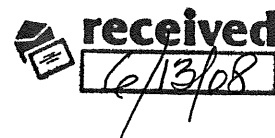
By:

[Handwritten Signature]
 WILLIAM MOYER, Chairman

[Handwritten Signature]
 ELIZABETH CORN, Secretary to the Board



BILTMORE FARMSSM
Established 1897



June 13, 2008

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

RE: Request for Vested Rights Order Amendment
Hammond Property, Etowah
Planning file VR2007-03

Dear Mr. Starr:

In preparation for its proposed development of 470 acres in Etowah along McKinney Road (planning file VR2007-03), Biltmore Farms, LLC commissioned Robert Charles Lesser Company, a national residential expert, to study the housing demand in the Hendersonville/Etowah market. Our goal in commissioning this study was to ensure that our proposed development would be appropriate for the local community. The study recommended residential product mix that requires minor amendments to the vested rights order that was granted on May 16, 2007 by the Henderson County Board of Commissioners.

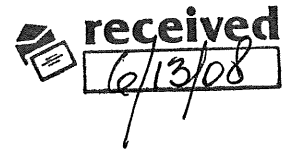
We hereby request specific text amendments to the order, which are outlined on Exhibit A and on the proposed revised site plan included herewith. We also request your consideration of this at your earliest convenience, as our scheduled closing on the land is in September 2008.

The requested changes are summarized as follows:

Density & Lot Sales

- Overall density has decreased from 653 to a maximum of 635 units. The proposed amended language caps single family detached units at 330 and townhome units to 305 (a significant reduction in attached product from the existing approval of 419 units). Quadraplexes would be capped at 28 buildings

verses the existing approved plan of 47 buildings. In addition, the amendment seeks the flexibility to offer both lot/home packages as well as lot-only sales for custom homes. The vested rights order contemplated that Biltmore Farms or its subsidiary would build all the homes, but the amendment would permit approximately 7-10% of the total number of homes to be built by other builders (but subject to recorded community design review guidelines and development standards). In addition to giving buyers more choices, this also allows other builders to participate in the growth of this community.



Open Space

- In order to accommodate the increased number of single family detached units, open space as defined by the order has been slightly reduced from 240 to 237 acres, still above 50 percent total open space (50.4 percent). Indeed, Exhibit B shows a reduction in overall maximum impervious area from 15.4 percent to 14.0 percent. In addition, open space per unit increases to .373 acres/unit compared to only .368 acres/unit in the original plan. In reality, there is more total open space in the revised plan, but some of the public open space becomes private space (in the yards of single family homes). This phenomenon is not accurately reflected in the way open space is calculated.

Lot Sizes

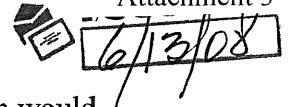
- To achieve the better community feeling of traditional neighborhood development (TND)--which involves some clustering to increase open space--and keep the price of the units consistent with Henderson County's market, we are requesting a text change from the existing order to eliminate the requirement that lot sizes be no smaller than 1/3 acre. A small number of lots in the plan will be smaller than that, but the community's average parcel size will still be .74 acres, which is consistent with WS IV requirements. Average density for the 635 units on 470 acres is 1.35 units per acre, far lower than what is allowed by right under R1 zoning.

Pedestrian System

- We request a minor text change to the amendment that aggregates separately calculated sidewalk and trail length calculations into a single pedestrian system. Total minimum length has increased from 8.89 miles in the current order to 9.73 miles in the proposed plan.

Road connections

- In order to reduce blue line stream impact, we proposed that the road connection between phases 5 and 7 be eliminated. In addition, in order to avoid an unsightly land scar, we propose eliminating the steep slope portion of the road loop in the northern portion of phase 7. The changes have been reflected on the site specific plans along with the addition of the main Brickyard Road entrance roundabout as recommended by our traffic study and NCDOT.



Based on our conversations with your office, we anticipate that the Commission would accept our amendment application during their July 7, 2008 session followed by a hearing for consideration on August 12, 2008. We very much appreciate the Planning Department staff's guidance through the process and are eager to be a part of the Etowah community.

The vested rights amendment fee of \$400 is included with our application package.

Respectfully,

BILTMORE FARMS, LLC

Thomas A. Williamson
Vice President
Community Development

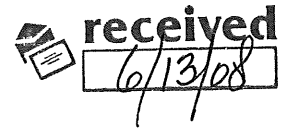
cc: Will Buie

Proposed Vested Rights Order Amendments Biltmore Farms Hammond Tract (Etowah, NC)

received
6/13/08

Submitted: 05 June 2008

Current Vested Rights Order	Proposed Amended Language
2. d. "That the rights vested are for a total of not more than 234 single-family units on individual lots, not more than 42 duplexes as townhomes (containing 84 dwelling units), not more than 49 triplexes as townhomes (containing 147 dwelling units) and 47 quadraplexes as townhomes (containing 188 dwelling units)."	2. d. "That the rights vested are for a total of not more than 330 single-family units on individual lots and not more than 305 townhome units of which not more than 112 units may be in quadraplexes (28 buildings). Single family unit individual lots may be sold as land/home packages or as lots."
2. e. "That the single-family units have individual lots of not less than 1/3 acre in area."	2. e. "The maximum density of the project will be 635 units on 470 acres for a average density of 1.35 units per acre and an average parcel size of 0.74 acres per unit. The project will comply with all WS IV requirements."
2. n. "There shall be a minimum of 240 acres of open space within the subject property as developed. "Open space" means "an area that is intended to provide light and air, and is designed for environmental, scenic or recreational purposes and shall not include roads, any areas dedicated or reserved for roads, land within setbacks or separation areas, internal or external roads, rights-of-way, driveways, parking spaces, sale or model homes, and areas needed for aboveground utility facilities including water supply or sewage disposal systems."	2. n. "There shall be a minimum of 237 acres of open space within the subject property as developed. "Open space" means "an area that is intended to provide light and air, and is designed for environmental, scenic or recreational purposes and shall not include roads, any areas dedicated or reserved for roads, land within setbacks or separation areas, internal or external roads, rights-of-way, driveways, parking spaces, sale or model homes, and areas needed for aboveground utility facilities including water supply or sewage disposal systems."
2. o. "There shall be a minimum of 8.65 miles of pedestrian trails."	
2. p. "There shall be a minimum of 0.24 miles of sidewalks."	2.o/p. "There shall be a minimum pedestrian system length (including sidewalks and unpaved trails) of 9.73 miles."



**Biltmore Vale
Plan Comparison
June 13, 2008**

	Vested Rights Plan	Modified Plan
Total Units	653 total units	635 total units
Single Family lots	234	330 maximum
Duplex	42 buildings (84 units)	11 buildings (22 units)
Triplex	49 buildings (147 units)	57 buildings (171 units)
Quads	47 buildings (188 units)	28 buildings (112 units)
Stream Crossings	9 crossings	8 crossings maximum
Impervious area	15.4%	14.0% maximum
Total Open Space	240 acres (51.06%)	237 acres (50.43%) minimum
Open Space per unit	0.368 acres/unit	0.373 acres/unit

Biltmore Farms Hammond Tract

Community Master Plan June 13, 2008

This site specific development plan establishes a development vested right pursuant to N.C.G.S. 153A-344.1. Unless terminated at an earlier date the development vested right shall be valid until _____
Chairman, Board of Commissioners

Current Owner: Annette P. Hammond Trust and Grattan Hammond Jr. Trust
1230 W. Central Blvd. Orlando, FL 32805 (407) 849-6060
Current Zoning: R-1 Residential (Entire Project Site)
Water System: Public (City of Hendersonville Water System)
Sewer System: Community (Etowah Sewer Company)
Fire District: Etowah - Horse Shoe
Density of Project: 1.35 Units/Acre
All Roadways to be Private
Henderson County Property ID Numbers: 9529767505, 9529838232, 9539037259 and 9529916743

469.96 Ac. = Overall Property Size (Excluding Retained 50 Ac.)
237 Ac. = Total Open Space Area
50.4% = Open Space as Percentage
51,373 LF = Total Pedestrian System Length or 9.73 Mi.
43,291 LF = Total Roadway Length or 8.2 Mi.

Applicant:
Biltmore Farms LLC
One Town Square Blvd., Asheville, NC 28803 (828) 209-2000
Landscape Architecture - Land Planning:
Cloos Landscape Architecture
132 Ravenwood Lane, Horse Shoe, NC 28742 (828) 243-1070
Consulting Engineers & Land Planners:
William G. Lapsley & Associates
Two Town Square Blvd., Asheville, NC 28791 (828) 697-7334
Land Surveyor:
Webb A. Morgan & Associates
96 Central Ave Asheville, NC 28801 (828) 252-1550

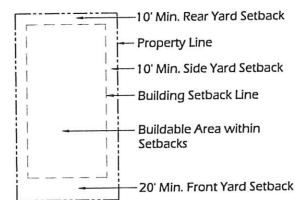
50 Acre Parcel to be Retained by Current Owner with 10 Residential Lots Maximum

High Point Elevation 2435'

Boundary of W54 Water Supply Watershed

TYPICAL LOT DIAGRAM

Single Family Lots



BUILDING DIMENSIONS

Building Type	Min. Width	Max. Width	Min. Depth	Max. Depth	Min. Height	Max. Height	Max. Area
Duplex Buildings	60'	100'	40'	120'	40'	40'	8,540 sf
Triplex Buildings	90'	140'	40'	120'	40'	40'	9,910 sf
Quadplex Buildings	120'	180'	40'	120'	40'	40'	13,080 sf
S.F. Detached	30'	100'	40'	120'	40'	40'	6,500 sf
Clubhouse	40'	100'	40'	120'	40'	40'	14,600 sf

LEGEND

- Proposed Roadway
- Proposed Pedestrian System
- Stream with 30' Buffer and Flow Direction
- Approx. 100-Year Floodplain Limit
- Index Contour (10' Interval)
- Delineated Wetland Area

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

UNIT SUMMARY

	Ph. 1	Ph. 2	Ph. 3	Ph. 4	Ph. 5	Ph. 6	Ph. 7	Ph. 8	Total
Single Family Lots	65	40	35	0	39	55	58	38	330
Townhomes	44	50	6	110	25	0	30	40	305
Total	109	90	41	110	64	55	88	78	635

