

DRAFT MINUTES

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS  
AUGUST 26, 2008

The Henderson County Board of Commissioners met for a special called meeting at 7:00 p.m. in the Commissioners' Meeting Room in the Historic Courthouse on Main Street.

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 Card, Planning Director Anthony Starr, and Associate County Attorney Sarah Zambon.

Absent was: Elizabeth Corn

**CALL TO ORDER/WELCOME**

Chairman Moyer called the meeting to order and welcomed all in attendance. This is a special called meeting, a Public Hearing for Vested Rights Amendment with respect to application VR-2007-03-A1, known as the Biltmore Farms Hammond Tract. He stated that because of the way the hearing was noticed it would have to be done as a quasi-judicial proceeding which makes it a more formal proceeding than the Board and possibly the citizens like. We must follow through unless all of the people who are identified as parties agree to waive the requirement of having a quasi-judicial hearing. If this is the case we can have a much more informal public hearing.

*Commissioner Young made the motion that the Board go into public hearing in respect to Vested Right Amendment application VR-2007-03-A1. All voted in favor and the motion carried.*

**QUASI-JUDICIAL PROCEEDING – VESTED RIGHTS AMENDMENT APPLICATION VR-2007-03-A1 also known as Biltmore Farms Hammond Tract**

Chairman Moyer stated that this is a quasi-judicial proceeding being held in respect to petition and a Public Hearing on Amendment of Vested Rights granted to Biltmore Farms, LLC, where Biltmore Farms, LLC is the petitioner. A quasi-judicial proceeding, much like a court proceeding, is one in which one's individual's rights are being determined under specific rules of procedure. As such, not every person has a right to give evidence in a quasi-judicial proceeding. Under the Rules of Procedure for quasi-judicial proceedings, only persons who can demonstrate that they will be affected by the outcome of the decision are allowed to participate in the proceeding.

All persons who are allowed to speak and participate in this hearing, including all witnesses that will be called, must be placed under oath.

The proceedings will be as follows:

- The Board will ask any persons (other than the petitioner and the Henderson County Planning Staff) who desire to become parties to this action to explain how they would be affected by this proceeding. For example, they may be the owner of an adjoining parcel of property, or have

DATE APPROVED:

some other special and unique interest that justifies their participation as a party. You should understand that you do not have to be a party in order to testify in this proceeding.

- Then all witnesses and parties will be sworn as a group to tell the truth in their testimony.
- The Board will then have the Planning Staff summarize the petition, and what is sought by the petitioner.
- The Board will then have the petitioner or the petitioner's attorney present their evidence in support of the request.
- Each party (and Commissioners) has the right to ask questions of the witness.
- After the petitioner is finished presenting evidence, the other parties are then allowed to present their evidence. The Board may impose (has imposed) a time limit of 3 minutes for each witness to present evidence, except for parties which will be given a time of approximately 5 minutes.
- Again, each witness who testifies may be asked questions by the other parties.
- The members of this Board may also ask questions.
- After the evidence is presented the Board will discuss the issues raised and will make a decision. The Board's decision must be in writing within 45 days of the hearing.
- We will now identify the parties. The Board acknowledges the petitioner, Biltmore Farms, LLC, and the Planning Staff as parties to this proceeding. Are there any other persons present who can demonstrate that they will be affected by the outcome of this proceeding and who wish to be a party to this proceeding?

Mr. Edward R. Doyle Jr. who resides at 31 Old Orr Road, Etowah, identified himself and stated that he is an adjacent land owner. County Attorney Russ Burrell stated that Mr. Doyle was a party to the previous hearing.

*The Board of Commissioners had no objections and voted unanimously to accept Mr. Doyle as a party to the proceedings.*

There were no other citizens present who wished to be a party to the proceedings.

Chairman Moyer asked that council for the petitioner to approach the podium.

Attorney Susan Taylor Rash came to the podium to represent the petitioner Biltmore Farms.

Chairman Moyer asked Ms. Rash if she would agree to waive moving forward as a quasi-judicial proceeding. This would give the Board a lot more flexibility and the hearing can move a lot faster if they do not have to go through the formalities.

Chairman Moyer also asked Edward R. Doyle, Jr. if he would agree to waive moving forward as a quasi-judicial proceeding.

After conferring with the petitioner, Ms. Rash agreed to waive moving forward as a quasi-judicial proceeding.

Mr. Doyle also agreed to waive moving forward as a quasi-judicial proceeding.

Commissioner McGrady explained that this would eliminate the cross examination procedure.

### **Project Summary from Planning Staff**

The Deputy Clerk swore in Matt Card and Anthony Starr.

Matt Card stated that 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 know as “Biltmore Farms Hammond Tract”. The development is to be located on property identified by Henderson County parcel identification numbers 9529-76-7505, 9529-83-8232, 9539-03-7259, 9259-91-6743 and located on McKinney Road (“the subject property”). The subject property fronts McKinney Road, at the intersection of McKinney Road and Brickyard Road. The subject property is approximately 519.96 acres in size, including a 50 acre tract to be retained by the current property owners the Hammonds, leaving approximately 470 acres within this proposed development.

The Board of Commissioner issued an Order Granting Vested Rights for Biltmore Farms Hammond Tract on May 24, 2007, allowing for the undertaking and completion of the development and use of property under the terms and conditions of an approved site-specific development plan and the Order. This order was issued in accordance with former Chapter 189 of the Henderson County Code (the Vested Rights Ordinance) to which the application is vested. The development vested rights are attached to and run with the real property for an approved extended five (5) year vesting period as outlined in the order.

The proposed amended site-specific development plan does propose a number of changes that are all inter-related as follows:

	<b>Vested Rights Plan</b>	<b>Modified Plan</b>
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

They are also requesting the following:

- The minimum lot size required before be removed and allow an average density provision of 0.74 acres per unit
- In addition to selling land/home packages, allow selling of individual lots without homes
- A 3 acre reduction of open space (from 240 acres to 237 acres)
- An increase of 1.08 miles in additional trail and sidewalk

For comparison purposes, the existing approved plans and the amended plan were provided to the Board. Mr. Card highlighted the following information:

- The areas contained within the red circles are the existing approved plan showing the principle areas where multi-family units are proposed to be changed by the amended plan. The new proposed plans now show the units to be single-family lots.
- The most changes were seen in what is proposed to be phases 2, 5 & 6 in terms of a multi-family

unit change to single-family lot. This is an overall reduction in density of 18 total units.

- The areas contained within the orange circles show where proposed roads were eliminated and has resulted in reduced connectivity in these areas of the development. However it appears to staff that most of the modifications were due to the reconfiguration of lots.
- The area contained with the blue circle is the principle entrance proposed. The applicant is showing a reconfiguration of that entrance to be a round-about. This was actually at the recommendation of the North Carolina Department of Transportation.
- Primarily phases 5, 6 & 7 show loss of the roadway networks which is connected to the lot reconfigurations.

Chairman Moyer opened the floor to questions from the Commissioners. There were none. The petitioners were called to the podium for their presentations.

The Deputy Clerk swore in Tom Williamson and William Buie.

Chairman Moyer indicated that after all of the people had a chance to speak the petitioners would have a chance to respond and make final comments.

Mr. Tom Williamson, Vice-President of Community Development in Biltmore Farms stated that they had been before the Board approximately 15 months prior and had achieved vested rights approval. The market among other things had changed and it made since to them to look at the plan. They commissioned a study with Robert Charles Lesser who completes market studies for master plan communities around the country. Based upon their research and what they were seeing from their projects in Buncombe and Henderson County they dramatically reduced the number of multi-family units for this plan. The original plan was to have every unit in this development built by Biltmore Farms homes but they now wish to amend that to allow for custom builders and local builders in other projects they have in order to make a better fit in the Henderson County community. Predictability and flexibility are both needed. Basically the plan before the Board has 96 buildings and the petitioners would like the flexibility to keep those buildings in the same location as shown on the plan but be able to go from a quad unit down to a tri unit, or from a duplex to a triplex within that same building location. He feels that this will maintain site specific integrity. Obviously there are conflicts and differences of opinion. Relative to the open space requirements, they feel that they have produced a better plan.

Mr. William Buie, engineer of Lapsley and Associates stated that they had been working with Biltmore Farms for a number of years and on this project. He referred to the impervious area of approximately 14% which is a reduction from the original vested rights plans of 15.4% that the Board had approved. They have also reduced from 9 to 8 stream crossings. The primary change has been from attached products to single-family lots. Most of the open space change is now in the form of single-family lots. In phases 2 & 5 much of the open space included in the 240 acres was around the proposed attached units, and now much of the land is in the form of single-family lots therefore providing more green space. While they do see a reduction in common open space from 240 acres to 237 acres, the overall green space has increased. The current 237 acres of open space is over 50% of the property. They are asking for a number of caps in the number of units (305 attached units) and the highest intensity would be to the quad units with the flexibility to work with staff to be able to adjust between the duplex and triplex units or to be build fewer of the quad units if that is what the market requires.

#### Public Comment

The Deputy Clerk swore in Doug Salkewicz, Edward Doyle, Angela Fernandini and Richard

Freudenberger.

1. Doug Salkewicz – Mr. Salkewicz stated that the traffic impact study had just arrived today. He questioned how the Board came to their decision to allow this hearing without a traffic impact study. (Chairman Moyer stated that staff would address this question at a later point in the meeting). He was concerned with Brickyard Road and the traffic impact on the property owners.
2. Edward R., Doyle, Jr. – Mr. Doyle stated in the matter of the application for an amendment to this Commission's previously granted vested rights to Biltmore Farms development company, it was his request that the Board both deny the application for amendment and furthermore rescind the previously granted vested rights as that action is an option legally available to them. He did not feel that Biltmore Farms met the standards for vested rights and was not entitled to an amendment of its vested rights for a more intensive and destructive development. He presented three reasons why he felt the Board should deny the application for amendment and to overturn the previous granting of vested rights. It is immoral, unethical, and illegal. Biltmore Farms came to this Commission with a development plan they claimed was so far advanced that it would be unfair to apply the new land development code. Now, they seek to change the deal midstream, having "discovered" with market changes that their development will not be profitable enough. The standards for vested rights required them to show that they were far along in the planning for this project, it is immoral to allow them to make that claim one day and come back the next with an assertion that they had not thought their development through far enough to ensure they made a profit. It is also fundamentally unfair and misleading to the people of Henderson County to allow Biltmore Farms to count front yards as open space, when they assert that the more intensive development they seek approval for will leave more open space. Chief Seattle is popularly credited with the saying "We have not inherited this earth from our ancestors we are borrowing it from our children." Unfortunately this hearing tonight is about money, not morality. Secondly, it is unethical for the Commission to support and condone the rampant development of Henderson County against the clear and vocal concerns of citizens and taxpayers, turning a deaf ear to their arguments and impacts on those citizens, while providing for virtually every request of developers and business interests, especially when those requests are counter to both common sense and the newly enacted Land Development Ordinance. It is unethical to allow millions in profits to flow out of Henderson County while costing Henderson County taxpayers millions of dollars to facilitate that loss. Unfortunately, this hearing tonight is about money, not ethics. Third, it is illegal for this Commission to grant an amendment to these vested rights, just as it was illegal for this Commission to grant the vested rights in the first place. This Commission does not have the legal right to grant vested rights or an amendment to vested rights to these applicants when the very definition of vested rights is to protect citizens and landowners in the process of building or developing their property when regulations change in the middle of that process. Vested rights are available only for a property owner. While Biltmore Farms is the applicant, and clearly the developer, nothing on the face of their application indicates that they have authority to act as an agent for the Hammonds, who are the owners of record, or that Biltmore Farms has a valid property interest in the property. This Commissioner does not have the legal right to grant vested rights or an amendment to vested rights when the demonstration of expenses and investment in the ongoing process is required. There is a clear exemption of expenses incurred in the normal application process, all of which have been expenses incurred to date. Biltmore Farms claimed previously during last year's testimony that they had spent approximately \$500,000 as a basis for the granting of vested rights, yet they provided no documentation as to where that money was spent, and subsequently admitted they had not yet even spent all of that money, specifically on

the DOT traffic study which arrived this morning. In fact, all of the money they have spent, whatever that amount eventually turns out to be, should this Commission even ask them to provide an accounting, will have been spent on the normal application and preliminary expenses, which are clearly inadmissible as expenses in the matter of granting vested rights. And of course, none of those expenses can justify the midstream change to a more intensive development than they originally planned. In addition to it being illegal for this Commission to grant vested rights for projects not yet underway, it is illegal to grant vested rights to all phases of a development plan, vested rights apply only to sequential phases of ongoing projects, which this is not. This Commission does not have the legal right to grant vested rights to a project of this size and scope when, clearly knowing from ongoing testimony and evidence, there are extreme concerns regarding water supplies for existing residents and citizens. While you may not believe it because it is raining this evening, the fact is, we are in a period of extreme drought and furthermore, it is entirely possible that these changes in our weather are not going to be the exception, but the norm. It is clear and undeniable that if this project is built, one direct impact will be that Etowah neighborhood wells will go dry, because they rely on that acreage to recharge them. This Commission does not have the legal right to grant vested rights to a project of this size and scope when, clearly knowing from ongoing testimony and evidence, there are significant and current problems with sewage for the existing residents of Etowah. The Etowah Sewer facility has regular, consistent and extensive issues with overflows, odors and capacity. The existing sewage system is operating at or above its physical capacity, adding a project of this size and scope is irrational, simply because it cannot be handled as the facility exists today; which begs two questions directly related to the sewage problem in Etowah. One, who will pay to bring this current, privately owned facility into compliance today, and by what reasoning does anyone believe that a permit will be even granted from DENR to expand the current facility to include this project proposal? The French Broad is now designated as a source of drinking water, and the additional flow of sewage effluent into the river is not an irrelevant issue, except perhaps to this Commission. This Commission does not have the legal right to grant vested rights to a project of this size and scope knowing full well, from ongoing testimony and evidence, that it will significantly and severely impact the traffic patterns of current residents in the Etowah community. Simply undertaking a DOT traffic study to quantify the extent of the disruption, damage and loss of current citizen's property due to eminent domain and the cost to taxpayers, does not give this commission leave to accept that damage, loss and cost to taxpayers for the sole benefit of Biltmore Farms. This Commissioner does not have the legal right to grant vested rights to a project of this size and scope without having a comprehensive Environmental Impact Study conducted regarding the property, the wildlife, the habitat and the natural environment of the river and surrounding areas. Yet, this Commissioner has accepted without question the so called archeological study submitted by the applicants, despite all its shortcomings, omissions and clear lack of substantive effort. This Commissioner does not have the right to grant vested rights or an amendment to vested rights under any circumstances when there is clearly a question of the applicant acting in good faith. The actions to date in this matter by the applicants are obviously questionable, and this Commission's previous declaration that they are acting in good faith is, in the least, a questionable violation of your responsibility to make a reasonable determination of good faith. Finally, we must address the basic issue of our citizen's property rights. Not solely the rights of Biltmore Farms as a development company, but also the rights of the citizens of Etowah and Henderson County. This Commission has made it clear to the citizens of Etowah and Henderson County that their existing property rights are secondary to those of developers. This unquestionably violates our citizen's property rights and their rights to safety, health and welfare. However, there is also the issue of the Hammond family's property rights. They have the right to responsibly utilize

their property and to reasonably profit from that property, make no mistake. All of Mr. Doyle's testimony and evidence submitted in this matter to date relates to the immoral, unethical and illegal proposals submitted, and actions taken by Biltmore Farms and this Commission. What options do the legitimate property owners have besides the destruction of natural habitat and wildlife, impacts on wells, water supplies, sewage, traffic problems, increasing tax rates of citizens and the lowering of the quality of life of current citizens who will be sacrificing their safety, health and welfare as currently approved by this Commission? Mr. Doyle offered a proposal to satisfy the concerns of the citizens, protect the Hammond family's property rights and benefit the children and future generations of Henderson County.

Chairman Moyer stated that Mr. Doyle was going beyond his comments with respect to the amendment and felt it was irrelevant to hear his proposals. He asked Mr. Doyle to bring his comments to a conclusion.

Mr. Doyle stated that in closing, he requested that this Commission deny the amendment to the vested rights application and reverse the original granting of vested rights. Know full well that the citizens of Henderson County today, and the children of tomorrow, will pay attention to your decision. Where does the responsibility of the Commission lie; with the citizens of Henderson County and the law, or with outside developers looking for a fat profit margin?

3. Angela Fernandini – Ms. Fernandini stated that about a month ago this developer had a community meeting at the Etowah Country Club where the representatives for this subdivision said that their vested rights amendment would in fact reduce green space. She is glad that this subdivision has decided to reduce its number of quadrangles. However, she did not feel that a reduction in green space should be allowed. If nothing else green space should be increased. Consider this week's weather with the amount of rain that we've had and received and that we desperately need, green space will help the rainwater soak into the ground at an acceptable rate instead of turning into a new problem which is storm water runoff. Part of the reason vested rights agreements are sought is for the protection against changes and yet this subdivision, that was adamant about seeking vested rights, is now wanting to make changes. She has spent most of her life living on Brickyard Road and it is an insult to her to hear that a large scaled subdivision, multi-million dollar subdivision, says that they have Etowah, or any other Community in Henderson County or Western North Carolina in their best interest and how such a community will benefit from such a subdivision. There is nothing beneficial from such a large scale subdivision to our rural heritage in this area. In fact, the only thing that this subdivision will do to our community is tax people such as her family and other people that have lived in Etowah most of their lives out of the county. The housing market was in trouble when vested rights were sought from this subdivision back in 2007. She feels that road changes to Brickyard Road and McKinney Road would not be needed if not for this subdivision.
4. Richard Frudenberger – Mr. Frudenberger stated that he came to the meeting not as a party but as a citizen of Henderson County. He stated that a development of this size has a quite a large impact and the loss of open space, even the loss of a minor 3 acres, is still a significant loss. He encouraged the Board to maintain the 3 acres if not more of impervious space in order to maintain a good rain water retention system and protection against erosion in the future. He also reminded the Board that a higher density building plan is always more desirable to allow for more open space. Perhaps some kind of agreement with the developer with regards to exchanging some rain water retention and some mitigation of runoff in exchange of some of the proposals asked for here might be in order. These modern road systems are broad state scale road systems which to the average driver is 30% more road but also 30% more runoff which isn't being handled well and the retention effort is very important here especially when there a

long period of drought followed by heavy rains.

**Planning Department Recommendations**

Matt Card stated that the Board has the ability to require additional terms and conditions to ensure the public health, safety and welfare. After staff reviewed the application materials they have suggested some conditions related to the change that they are proposing. To be clear...Staff is recommending that the original order conditions will stand except as noted in this meeting. He addressed the question raised earlier in regards to the Traffic Impact Study. There was a condition included in the original order however, there were no provisions from the county requiring a Traffic Impact Study. DOT did require it. There are also provisions related to water and sewer; the plans for water and sewer as well as the installation requirement (Mr. Doyle's comments) are also provided.

As in the original granting of development vested rights for Biltmore Farms Hammond Tract, the approval of the amendment request will be based on the need to protect public health, safety and welfare.

The Board may require additional terms and conditions as necessary to ensure the public health, safety and welfare.

Also, as a reminder, the approval is tied to a site-specific development plan as defined by former Chapter 189, Vested Rights ordinance.

Staff supports the development vested rights amendment request based on such approval being subject to staff recommended conditions, in addition to any other conditions that may be discussed during the hearing and any conditions that the Board of Commissioners may impose.

With regard to type and intensity of use, the applicant has requested the elimination of minimum lot size with overall density limitations, a reduction in overall units and density, flexibility to sell lots without homes, and flexibility in the mix of multifamily units.

Staff recommends that the applicant be vested to a maximum number of units (330 single-family and 305 multifamily); be vested to an average density of no more than 1.35 units per acre with an average lot size no fewer than 0.74 acres per unit; and be able to sell single-family lots as or not as land/home packages.

Chairman Moyer stated that to this point, all of the requests were in accordance with the amendment application.

Commissioner McGrady stated that Staff had added that there would be some discretion left with the Planning Department with respect to future composition of multi family units.

Mr. Card stated that this statement was correct. Further, with regard to the applicants request regarding the residential units...as noted by documents provided to the Board, by the County Attorney's office, the Board has several options with regard to the request for multifamily residential unit flexibility:

The applicant, as noted, has requested full flexibility in terms of moving units between duplex, triplex and quadraplex building types with a cap on quadraplex units only; of the 305 units that they be able to have those in duplex, triplex or quadraplex in any combination with the caviat that they would have no more than 28 of the quadraplex units.



Staff is recommending only a minimal amount of flexibility be granted, whereby Staff would have the authority to grant, administratively, approval for modifications in the multifamily unit composition for up to 10% of the multifamily units (or 30 total units). Staff is not requiring a minimum and the table included in the agenda and PowerPoint only intend to be illustrative of the possible ranges in unit type this flexibility would afford. Beyond this flexibility, any further changes to the composition of the multifamily units must come back before the Board of Commissioners in a public hearing.

Chairman Moyer questioned if Staff would accept 28 maximum on quadraplexes but limit their ability to move between duplexes and triplexes to more than 30 in either direction.

Mr. Card responded that this statement was correct.

Chairman Moyer stated that the other possibility would be that Staff approves them for the maximum with flexibility to go down to the full extent they wished.

Mr. Card responded that this statement was correct.

Chairman Moyer stated that if they took all the quadraplexes or triplexes down to duplexes he personally would not have a problem.

Alternatively the Board could vest the applicant to the maximum number of units as currently proposed by the applicant without any flexibility. The applicant was previously vested to a maximum number of each unit type.

The Board may wish to further discuss the appropriateness of this flexibility in light of the applicant's request.

With regard to open space preservation, the applicant has requested a 3 acre reduction in open space and additional trails and sidewalks to link the open space areas.

Staff recommends the following regarding the preservation of open space:

- The applicant vested to a minimum amount of open space as originally proposed (240 acres)
- The applicant provide a minimum of 9.73 miles of pedestrian trails and sidewalks (with sidewalks provided on at least one side of the road in areas of multifamily units)

Due to the existing order in effect that is recommended be carried forward, Staff does not suggest any additional conditions, beyond these, at this time.

Commissioner McGrady stated that in respect to the open space issue, while they were seeking a reduction they then go on to say "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." He questioned if Staff agreed with this assessment or did they have any basis on which to judge it.

Mr. Card responded that he felt that what the applicant was speaking to was the fact that by reducing the density you are having fewer building and in essence you are going to see more green space. However, it being open space that is accessible to the entire public, if it is privatized in individual lots that would be

staffs position to not reducing that. He feels that the petitioners arguments is that they actually have more open space, but within lots. Staff believes that the open space should be accessible as defined by the order to all citizens of the development.

### **Response by the Petitioner**

Tom Williamson stated that the traffic circle is primarily been pulled back on to their property. They have spoken with the Edwards and other in the community around there and they are very enthusiastic about the concept of this traffic circle in relation to pulling away the traffic at a bad intersection. He responded to Mr. Doyle's comments with the following:

- The approval from NCDENR was received on April 1, 2008 for the expansion that will accommodate the growth which the applicant and developer of the project will be paying for out of tap fees.
- Clearly this is not a more intensive development with fewer units and less impervious.
- They are reducing green space as defined by the UDO (code), but in terms overall of the open space on a per unit basis they are actually better off.

In response to other statements:

- In regard to BMP's they are not exempt from the changes to the state water quality issues. They will have to comply with them. They have always done (voluntarily) BMP devices at Biltmore Forest.

Commissioner McGrady asked the petitioner if they had seen the draft of possible conditions that was proposed by staff.

Mr. Williamson responded that they had received a copy the prior Friday. They were uncomfortable with the minimum on quads. They would possibly want to do fewer quads than twenty-one; if they can't sell them they do not want to build them. The thirty unit number does not touch upon units it touches upon structures and buildings. They have 96 sites of multi family and they would be more interested in being able to change them from four to three to two with the caps on basically what the obnoxious use is. They are not comfortable with these conditions.

Commissioner McGrady asked the petitioner with respect to the lot size and maximum density, staff has proposed different language; was he comfortable with this.

Mr. Williamson did not think that he had seen this. He stated that their plan was to have a cap on quads with the hope that they would have flexibility to convert a quad unit down to a triplex or duplex as long as they stay within the footprints of the 96 sites.

Further discussion followed with regards to the possible conditions presented by staff and the petitioner had no further problems with the recommendations.

Commissioner McGrady questioned if the land was still owned by the Hammonds and the petitioner responded yes. He stated that when the Board handled the first vested rights preceding it was carried forward in the name of the developer and not the owner of the property and asked the County Attorney to clarify this information.

Russ Burrell, looking at the order, stated that it basically talked about the developer seeking development rights in a particular piece of property. Given that the nature of vested rights preceding is the right to develop, it is certainly the appropriate way as long as they have the legal authority to move forward. The Hammonds would be allowed to be parties to the preceding if they wished.

Chairman Moyer asked the petitioner if the following conditions of them having no more than 28 quadraplexes and no more than 67 triplexes with flexibility anywhere under that with the same total cap of 305 units would that give them what they need.

The petitioner felt that this would work. The maximums were not a problem. It was the minimum's that gets them in a "tail spin" from a product mixed point of view.

Commissioner McGrady stated that in the presentation from staff it stated that staff had the authority to act to protect the public health and welfare, and he questioned how they would respond to Mr. Doyle's comment about the County not doing anything to protect the public health and welfare in amending or changing the vested rights that have already been granted.

Planning Director Anthony Starr stated that in staffs prospective this is the general phrase or terminology used in any ordinance making or decisions made. This is the context from which you will render your decision in balancing the request of the developer and the needs and impacts on adjoining property owners in the immediate area. This is nothing more than just the "lens" in for which you look through. This is also the "lens" in which they evaluate and make staff recommendations.

Russ Burrell stated that the vested rights starts with the idea that they can have no more than what they had under the original ordinance back when they made the first application. You could in return for vesting those rights impose conditions that you found to be proper under the health and welfare standards. We are now amending that and this allows the Board to reopen that right by their application to make those conditions that you find to be appropriate under general health and welfare standards.

Chairman Moyer inquired if Mr. Edward Doyle would like to make any responses to anything said.

Mr. Doyle stated briefly stated that he found it interesting that his testimony was cutoff but the Commission was very concerned...and he quoted "are you comfortable with that" and "would that give you what you need"...obviously this is not biased in favor of the citizens it is biased as a way to determine how we are going to get this project through.

*Commissioner Messer made the motion that the Board go out of public hearing. All voted in favor and the motion carried.*

Discussion followed among the Commissioners with respect to how they wanted to proceed. Chairman Moyer stated that the request have been made with requests for indication as soon as possible. The maximum is 45 days to issue an order. Normally the Board proposes some findings of fact and conclusions of law which gives everybody good indication and bring it back at the next meeting after the actual wording has been put down to finalize it.

*Chairman Moyer made the motion to approve the application for amendment to develop vested rights and revise site specific development plan for Biltmore Farms Hammond Tract subject to the conditions that the Board has set forth which are staffs conditions except for the following: a maximum of 305 multifamily units, maximum of 28 buildings and 112 units in the quadraplex, a maximum of 67 buildings*

*and 201 units in the triplex and complete flexibility to the developer below that with no minimums. He further motioned that the minimum for open space be 237 acres.*

Commissioner McGrady stated that the Board is providing staff with direction. They will come back with the form of an appropriate amendment circulated to the parties and at that time it will be placed either on our consent agenda or regular agenda.

Chairman Moyer stated that staff would come back with findings of fact needed along with the conditions requested by the Board.

Russ Burrell stated that the findings of fact along with the condition requested by the Board would be available for anyone who wished to see it approximately 1 week prior to the September 17 meeting.

Chairman Moyer reminded the Board of the motion on the floor. *All voted in favor and the motion carried.*

**ADJOURN**

*Commissioner McGrady made the motion for the Board to adjourn at 8:25 p.m. All voted in favor and the motion carried.*

*Attest:*

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Teresa L. Wilson, Deputy Clerk to the Board

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William L. Moyer, Chairman