

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
JULY 1, 1996

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 7:00 p.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Renee Kumor, Vice-Chair Vollie G. Good, Commissioner J. Michael Edney, Commissioner Bob Eklund, Commissioner Don Ward, County Manager David E. Nicholson, Assistant County Manager/Staff Attorney Angela M. Skerrett, County Attorney Don H. Elkins, and Clerk to the Board Elizabeth W. Corn.

Also present were: Finance Director Carey McLelland and Planning Director Matt Matteson.

CALL TO ORDER/WELCOME

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

PLEDGE OF ALLEGIANCE

Commissioner Good led the Pledge to the American Flag.

INVOCATION

J. S. McGee, retired Missionary to Nigeria, gave the invocation.

DISCUSSION/ADJUSTMENT OF AGENDA

Commissioner Edney requested that one item be pulled from the Consent Agenda, for discussion. The item was a Road Petition for SR#1219 to be abandoned from the State Maintenance System.

CONSENT AGENDA

Commissioner Edney made the motion to accept the Consent Agenda as altered. All voted in favor and the motion carried.

Consent Agenda included the following:

Renewal of Trademark, County Seal - On October 1, 1981, the County registered its County Seal with the North Carolina Department of

July 1, 1996

2

the Secretary of State as a service mark. A service mark is "a mark used in the sale or advertising of services to identify the services of one person, and distinguish them from the services of others". Once registered, the service mark may not be used or duplicated by others without the consent of the County. The mark was renewed in 1991; however, under the regulations, a registrant must demonstrate that the mark is still in current use five years after registration or renewal. The County must therefore submit, and the Chairman must execute, the documentation. Failure to do so would result in cancellation of the registration.

Staff recommended the Board approve the submission and execution of the Affidavit of Use by the Chairman.

INFORMAL PUBLIC COMMENTS

1. Margaret Cole - Ms. Cole addressed the Board regarding Retiree Insurance. Ms. Cole retired from Henderson County at age 55 with 31 years service to Henderson County. She is a former DSS employee. She commended the Board on the retiree insurance that the county just recently implemented. She spoke in favor of the Board approving retroactively this insurance coverage for employees with 25-30 years service. (This item is on the agenda for this meeting)

2. Jim Cameron - Mr. Cameron spoke on behalf of the Etowah Lions Club, the Etowah Community, and the people of Henderson County, thanking the Commissioners for the allocation of funds for the Etowah Park. He explained that the residents in Etowah and the Etowah Lions Club are very committed to this project and appreciate very much the \$110,000 the County has allocated for this fiscal year.

3. George Berry - Mr. Berry spoke regarding the Road Petition for SR #1219. He spoke on behalf of the Willow Lake Homeowners Association.

A petition was submitted for abandonment from the State Maintained System of Secondary Roads for a portion of SR #1219, beginning at the intersection with the private road known as Crest Blvd. and continuing southwesterly to it's termination.

Mr. Berry showed the location of the road on maps and discussed some of the history. He stated that this is the only state maintained road in their subdivision. All the other roads within

July 1, 1996

3

the subdivision are private. They would like to take over the maintenance of this road and to install three-way stop signs. Their biggest concern is safety, speeding on the road. He stated that they do not intend to shut the road off as others use it as their major ingress and egress.

Commissioner Edney raised a question of Mr. Berry "When the subdivision was developed, did the owner of the property record a right-of-way so that everyone in the subdivision would have a legal right to use the road. If not, if you take that off Public Roads, then nobody has a right to use it and that could cause you problems refinancing or selling, that's what I'm getting at".

Mr. Berry planned to seek advice from their Attorney before the next Commissioners' meeting. This will be on the agenda for the next meeting.

PUBLIC HEARING - On a proposed amendment to the Henderson County Zoning Map (Application #R-10-96)

Karen Collins informed the Board that Phillip Todd Moss had requested that the County rezone property located on the south side of US 64 West from an R-20 (low density residential) district to an O&I (office and institutional) district. The study area under consideration for rezoning, as recommended by the Henderson County Planning Board, contains approximately 9.5 acres and is bounded by US 64 West, Shaws Creek Lane, the Southern Railroad line and Bonaire Drive. Ten different parcels, or portions thereof, are located within the study area.

Proper notification of the Public Hearing was advertised in the Times News on 6/14/96 and 6/21/96.

Karen showed the area in question on a map. Staff did not recommend changing the zoning of this area to O & I but supports maintaining the current R-20 zoning.

Commissioner Eklund made the motion for the Board to go into Public Hearing. All voted in favor and the motion carried.

Public Input

1. Joe Martina - Mr. Martina objected to the proposed rezoning, mostly because of the heavy traffic on Hwy.#64 West.

2. Jim & Judy Durfee - Mr. Durfee objected to the proposed rezoning. They bought land in a residential district, built a

July 1, 1996

4

home, and hoped to retire there, in a residential district. He does not want commercial traffic on Shaw's Creek Lane, which is in his front yard. Mr. Durfee stated that rezoning does not conform to the Henderson County Land Use Plan or the Thoroughfare Plan.

3. Eva Ritchey - Ms. Ritchey objected to the proposed rezoning. She asked that the Board not undermine the Land Use Plan which suggested this area be residential. She asked that the Commissioners support staff's recommendation of the property remaining R-20.

4. Jack Tate - Attorney Tate spoke as the petitioner's representative. Mr. Tate plans to build "The Log Cabin Farmer's Market". Mr. Tate passed around a land survey of the area with a drawing of what Mr. Moss plans to construct on his property. It is roughly a 30' x 40' structure which he intends to construct of the same material as his home. Mr. Moss is aware of the set backs and of the vegetative buffer he'll have to maintain, all of which will limit the size of the building he can construct. His property does border on Hillside Lane which provides ready access for any so-called commercial vehicles.

Mr. Moss has visited three of the residents himself and they have indicated by hand written statement that they are in support of the proposed zoning. Mr. Tate also passed those up for the Board's review.

In answer to a question - Mr. Tate stated that Mr. Moss hopes to have an entrance off of Hwy. # 64 with an exit onto Hillside Lane but is willing to abide by the conditional use permit.

5. Jim Durfee - Mr. Durfee again spoke against the proposed zoning because of what could happen years from now. He doesn't want to have to move.

6. Bertha Jarvis - Mrs. Jarvis spoke in opposition of the proposed rezoning. She didn't understand the zoning issue as it was presented to her initially when she signed favoring the request.

7. Eloise Horton - Ms. Horton had a question about the map and it was addressed for her.

8. Rick Moss - Mr. Moss drives a large truck sometimes. He stated that there are limitations of what roads he can drive on.

July 1, 1996

5

Mr. Tate stated that they would agree to a limitation of a conditional use permit that would not allow any trucks to go out a back right-of-way as well as a limitation that would do the same for Hillside Lane to try to address Mrs. Jarvis' concern and others. They do want to address the neighbors' concerns and to be reasonable.

Commissioner Ward asked for copies of the Planning Board minutes prior to making a decision, as well as any subcommittee minutes.

Commissioner Ward made the motion for the Board to go out of Public Hearing. All voted in favor and the motion carried.

NO ACTION WAS TAKEN. This will be on the agenda at the next Board meeting, July 17, 1996.

PUBLIC HEARING - Request by the Branigar Organization to amend a Special Use Permit (SP-19-94) to construct a proposed park

This Public Hearing was conducted under the Rules of procedure for a Quasi-Judicial Procedure.

Commissioner Ward made the motion for the Board to go into Public Hearing. All voted in favor and the motion carried.

The Clerk swore-in the following as participants in the proceeding:

Stuart Rohrbaugh, Planner
Matt Matteson, Planning Director
John Jeter
Robert Vail

Stuart showed the area in question on the Master Plan for Champion Hills. All the roads and water & sewer construction have been constructed and completed according to the permit requirements. Many of the villas and cottage style homes have also been constructed and sold.

Stuart stated that this request is by the Branigar Organization to amend their Special Use Permit and to construct a small park near the middle of their properties. The park would displace two proposed single family detached units. The only permanent structure in this proposal is a gazebo. If the request is approved, the park would become part of the PUD in accordance with the provisions and standards of SP-19-94 and Section 700 of the Planned Unit Development section of the Zoning Ordinance.

July 1, 1996

6

Stuart Rohrbaugh informed the Board that notice of this Public Hearing was published in the Times News on June 14, 1996 and June 21, 1996. On June 19, 1996, the Planning Department mailed notices of the hearing to the owners of the property and the adjoining property owners.

On May 28, 1996, the Henderson County Planning Board voted unanimously to send the Board of Commissioners a favorable recommendation on this request.

John Jeter stated that the Branigar Organization currently has no plan to relocate the two units but is not willing to give them up at this point. They realize that to relocate the two units would be a substantive change to the permit and would require it to go back before the Planning Board. They are only asking now to be permitted to build a park which would allow them to get a building permit for the gazebo structure.

Public Input - There was none.

Commissioner Good made the motion for the Board to go out of Public Hearing. All voted in favor and the motion carried.

FINDINGS OF FACT:

1. Board would approve the new proposed site plan to put a park In the PUD, and
2. Delete two units formerly on the site plan.
3. No opposition was presented.
4. Request complies with the Henderson County Zoning Ordinance.

CONCLUSIONS:

Approving the request wouldn't bring harm to anyone and is in everyone's best interest.

Commissioner Edney made the motion to approve the request and authorize the Chairman to sign, based on the County Attorney and the Staff Attorney's review and approval. All voted in favor and the motion carried.

The Chairman called a brief recess.

REVISE FEE SCHEDULE FOR PARKS & RECREATION, Waiving Fees for Henderson County Public Schools Use

David Nicholson reminded the Board that in the past, the Henderson County Public Schools have charged Henderson County Parks &

July 1, 1996

7

Recreation Department \$15.00 each time we use a school gymnasium for a recreation or sports program. Last year we started charging the school system \$15.00 each time the schools used our facilities, i.e. tennis courts, ballfields, picnic shelters, etc. The Henderson County Board of Education passed a proposal on June 10, 1996, saying they will no longer charge our department for use of the gymnasium for children's recreation and sports programs. Therefore, our department recommended revising the fees and charges policy approved by the Board of Commissioners on February 21, 1996, and waive the fees to the Henderson County Public Schools for use of our parks and recreation facilities.

This was approved by the Henderson County Parks and Recreation Advisory Board on June 18, 1996.

The County Manager recommended that the Board of Commissioners revise the Fee Schedule for the Parks & Recreation Department to eliminate any fees charged to the Henderson County Public Schools.

Following discussion, Commissioner Edney made the motion to approve this request, as long as the Board of Public Education charges Henderson County no fees. All voted in favor and the motion carried.

RETIREE HEALTH INSURANCE COVERAGES

David Nicholson made a presentation to the Board of Commissioners for implementation of Retiree Health Insurance, "retroactive coverage".

Henderson County does not have a health insurance program which would allow employees who have retired to continue their health insurance benefits. Because we do not offer this benefit, many employees are postponing retiring with full retirement benefits until they reach the age for eligibility for Medicare. Staff proposed a limited program that will assist these employees to retire under the North Carolina Local Government Employees Retirement System and continue with medical benefits.

The program would cover retirees who have either a full thirty (30) years of service retirement or are between the ages of 55 and 64 with at least ten (10) years of actual service with Henderson County and whose combined age and years of actual service totals at least seventy (70) years.

July 1, 1996

8

The proposal is conservative in nature but will meet the need for long-term County employees. The proposal was developed through the efforts of the Management Team, Department Heads, and the Manager's Advisory Council. Board action is required for implementation.

During the 6-19 meeting, the Board requested information concerning Medicare co-payment costs. A chart entitled "Retiree Insurance Projected Costs - Medicare Part B" was reviewed. Subsequent to that meeting the issue was raised as to whether or not to extend Retiree Health Benefits retroactively. A chart entitled "Retiree Insurance Projected Costs - Retro Coverage" was reviewed.

Following discussion, Commissioner Edney made the motion to approve the request regarding "retroactive coverage". All voted in favor and the motion carried.

THREAT RESPONSE PROCEDURE

The Risk Management Department has developed a Threat Response Procedure in an effort to avoid incidences of workplace violence. Employees would respond to a threat of any kind using the guidelines developed and included in the procedure. The Board of Commissioners' approval would be necessary for implementation.

Bill Byrnes, Safety Coordinator, was present to answer questions.

The County Manager encouraged the Board to carefully review and approve the Threat Response Procedure. As an employer, Henderson County must plan proactively to prevent conditions leading up to incidences of workplace violence.

It was the consensus of the Board to have our Insurance Carrier review this policy prior to the Board taking action.

UPDATE ON PENDING ISSUES/Request for Direction to the Chair

Voting Delegate Designation for 1996 Annual Conference - Each Board of County Commissioners is requested to designate a commissioner or other official as the county's voting delegate at the 89th Annual Conference of the North Carolina Association of County Commissioners to be held in Winston-Salem, on August 22-25, 1996.

It was the consensus of the Board, since the Chairman plans to attend the Annual Conference, to designate the Chairman as the voting delegate.

July 1, 1996

9

NOMINATIONS - Chairman Kumor reminded the Board of the following vacancies and opened the floor to nominations:

Senior Companion Program Advisory Council of Land Of Sky - 1 vac.
There were no nominations so this item was rolled to the next meeting.

Motor Vehicle Valuation Review Board - 3 vac.
Chairman Kumor nominated Robert J. Roubaud. Commissioner Ward made the motion to suspend the rules and appoint Mr. Roubaud. All voted in favor and the motion carried.

Henderson County Industrial Facilities & Pollution Control Authority - 1 vac.
There were no nominations so this item was rolled to the next meeting.

Asheville Buncombe Water Authority (ABWA) - 1 vac.
There were no nominations at this time so this item was rolled to the next meeting.

Henderson County Board of Health - 2 vac.
Chairman Kumor nominated Commissioner Good to serve an additional term. Commissioner Edney made the motion to suspend the rules and appoint Mr. Good. All voted in favor and the motion carried.

Mountain Area Workforce Development Board - 4 vac.
Commissioner Edney nominated John Murdock and Dr. Sink for reappointment. Commissioner Eklund made the motion to suspend the rules and appoint both gentlemen. All voted in favor and the motion carried.

The Chairman will write a letter to the Chamber of Commerce regarding their two vacancies.

IMPORTANT DATES

The School Board would like to meet with the Board of Commissioners. Following discussion, the Board set a Special Called Meeting for August 13 at 7 p.m.

CODIFICATION WORK SESSION

Due to the lateness of the hour, the Codification Work Session was postponed to a later meeting.

July 1, 1996

10

CLOSED SESSION

Commissioner Good made the motion, as allowed under NCGS 143-318.11 for the Board to go into Closed Session for the following reasons:

1. (a)(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. To consult with an attorney employed or retained by the public body in order to consider and give instructions to the attorney with respect to a claim.
2. (a)(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.
3. (a)(6) To consider the qualification, competence performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee.

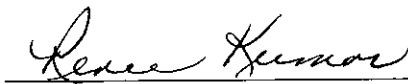
All voted in favor and the motion carried.

Commissioner Eklund made the motion for the Board to go out of Closed Session. All voted in favor and the motion carried.

There being no further business to come before the Board, the meeting was adjourned at 9:45 p.m.

ATTEST:


Elizabeth W. Corn, Clerk


Renee Kumor, Chairman

HENDERSON COUNTY**Memorandum****TO:** Libby Corn, Clerk**FROM:** Stuart Rohrbaugh, Planner *SR***DATE:** November 7, 1996**SUBJECT:** **Champion Hills SP-19-94-A1**

At their July 1, 1996 meeting, the Henderson County Board of Commissioners held a Quasi-Judicial Public Hearing for a request by the Branigar Organization, Inc., to amend their Special Use Permit (SP-19-94) for Champion Hills, Section 3, a Planned Unit Development. The amendment was approved to allow the construction of a small park.

The developer returned the attached originals today. Please secure the Chairman's signature on both originals. Keep one original to attach to the July 1, 1996 Board of Commissioners minutes and forward the remaining original to me.

Thank you in advance for your cooperation.

002055

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COUNTY OF HENDERSON
STATE OF NORTH CAROLINA

SPECIAL USE PERMIT APPLICATION
SP-19-94-A1

IN THE MATTER OF THE APPLICATION OF

THE BRANIGAR ORGANIZATION, INC.
Applicant,

to the

HENDERSON COUNTY BOARD OF COMMISSIONERS,
Permit Authority

ORDER APPROVING AMENDMENT TO SPECIAL USE PERMIT, SP-19-94

The HENDERSON COUNTY BOARD OF COMMISSIONERS having held a quasi-judicial public hearing on Monday, July 1, 1996 to consider the request of THE BRANIGAR ORGANIZATION, INC. to amend Special Use Permit SP-19-94, governing the development of a Planned Unit Development on a 30.2 acre parcel, to replace two units within the Planned Unit Development with a Park, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS.

FINDINGS OF FACT

1. The Branigar Organization, Inc., hereinafter "Developer", was granted a Special Use Permit, SP-19-94, on December 21, 1994 to develop a Planned Unit Development to be known as "Meadow Ridge" on 30.2 acres of land in single ownership located in Champion Hills Subdivision, Henderson County.
2. The Developer requested to amend the Special Use Permit to enable the Developer to replace two proposed units shown on the site plan entitled "Champion Hills Section 3, Henderson County North Carolina" dated 9/94, with a Park as shown on the revised site plan, entitled "Preliminary Plan Champion Hills, Section 3", dated 9-94, said plan being incorporated by reference as is fully set forth herein.
3. Developer has complied with the terms of SP-19-94 and the Henderson County Zoning Ordinance.
4. No opposition was presented at the July 1, 1996 quasi-judicial public hearing which was held by the Board of Commissioners to consider Developer's request to amend SP-19-94.
5. The Developer's request to amend SP-19-94 was reviewed by the

002057

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Henderson County Planning Board on May 28, 1996 and received a unanimous favorable recommendation.

Based upon the foregoing FINDINGS OF FACT, the Henderson County Board of Commissioners makes the following

CONCLUSIONS:

1. The requested amendment to SP-19-94 to replace two proposed units with a Park will not adversely affect the health and safety of the persons residing or working in the neighborhood of the proposed Planned Unit Development.
2. The requested amendment to SP-19-94 to replace two proposed units with a Park will not be detrimental to the public welfare in the neighborhood, including adjoining properties.
3. The requested amendment to SP-19-94 to replace two proposed units with a Park will not be injurious to property or public improvements in the neighborhood, including adjoining properties.
4. Developer has complied with all terms and conditions of the Henderson County Zoning Ordinance and SP-19-94.
5. Adding back the two units replaced by the Park and adding any other units to the Planned Unit Development entitled "Meadow Ridge" and governed by the terms of SP-19-94 and this order would be a substantial change to Special Use Permit, SP-19-94, which would necessitate the submission of an application for a separate amendment to SP-19-94 in compliance with the terms of the Henderson County Zoning Ordinance for approval by the Henderson County Board of Commissioners.

Based on the foregoing FINDINGS OF FACTS and CONCLUSIONS drawn, and it appearing to the HENDERSON COUNTY BOARD OF COMMISSIONERS that the request to amend SP-19-94 to replace two proposed units with a Park should be granted,

IT IS THEREFORE ORDERED by the HENDERSON COUNTY BOARD OF COMMISSIONERS by a unanimous vote that the request to amend SP-19-94 to replace two proposed units with a Park, submitted by Developer, is granted. In the event Developer is desirous of adding back the two units replaced by the Park, or any additional units within the Planned Unit Development entitled "Meadow Ridge", governed by SP-19-94 and this order, Developer will be required to submit an application for a separate amendment to SP-19-94 in compliance with the terms of the Henderson County Zoning Ordinance for approval by the Henderson County Board of Commissioners.

002059

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ORDERED the 1st day of July, 1996.

THE HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: Renee Kumor
Renee Kumor, Chairman

ATTEST:

Elizabeth W. Corn
Elizabeth Corn, Clerk to the Board

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002061

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ACCEPTANCE BY DEVELOPER

I, R. D. Stephens, Jr., Developer, do hereby acknowledge receipt of this Special Use Permit on behalf of the Branigar Organization, Inc., Owner of the property which is the subject of this Special Use Permit. I further acknowledge on behalf of the Branigar Organization, Inc., that no work may be done pursuant to this permit except in accordance with all of its conditions and requirements and that this restriction shall be binding on the Branigar Organization, Inc., and its successors in interest.

This the 7th day of August, 1996.

[Signature]
 _____, Developer
 Project Director, Champion Hills,
 The Branigar Organization, Inc.

ACCEPTANCE BY THE BRANIGAR ORGANIZATION, INC.

I, WILLIAM LATTIMORE, JR., President, The Branigar Organization, Inc., do hereby acknowledge receipt of this Special Use Permit by The Branigar Organization, Inc., Owner of the property which is the subject of this Special Use Permit. The Branigar Organization, Inc., acknowledges and agrees that no work may be done pursuant to this permit except in accordance with all of its conditions and requirements and that this restriction shall be binding on the Branigar Organization, Inc., and its successors in interest.

This the 8th day of AUGUST, 1996.

Attest:

[Signature]

 Corporate Secretary

[Signature]
 _____, President
 The Branigar Organization, Inc.

002063

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STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

I, Avalina B. Merrill, Notary Public for said County and State, certify that Elizabeth W. Corn personally came before me this day and acknowledged that she is Clerk to the Board of Commissioners of Henderson County, a body politic and corporate, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Chairman of the Board of Commissioner, sealed with its corporate seal, and attested by herself as its Clerk.

Witness my hand and official seal, this the 13th day of November, 1996.

(Official Seal)

My commission expires:

Avalina B. Merrill
Notary Public

***** My Commission Expires on January 6, 1999 *****

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

I, Shelley M. Cribbs, Notary Public for said County and State, certify that R.D. Stephens Jr. personally appeared before me and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 7th day of August, 1996.

(Official Seal)

My commission expires:

January 16, 2001

Shelley M. Cribbs
Notary Public

002065

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002065

STATE OF GEORGIA
COUNTY OF CHATHAM

I, MARIA ROBIDER, Notary Public for said County and State, certify that ROBERT D. FARR personally came before me this day and acknowledged that he/~~she~~ is Secretary to the Branigar Organization, Inc., a ILLINOIS (State) Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by him/~~her~~self as its Secretary.

Witness my hand and official seal, this the 8TH day of AUGUST, 1996.

(Official Seal)

My commission expires:

MARIA A. ROBIDER
Notary Public, Chatham County, Ga.
My Commission Expires Aug. 10, 1997


Notary Public

002067

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