

**HENDERSON COUNTY
PLANNING BOARD MINUTES
July 17, 2008**

The Henderson County Planning Board met on July 17, 2008 for its regular called meeting, at 5:30 p.m. in the King Street Meeting Room at 100 N. King Street, Hendersonville, NC. Board members present were Tedd Pearce, Chair, John Antrim, Tommy Laughter, Gary Griffin, Mike Cooper and Renee Kumor. Others present included Anthony Starr, Planning Director; Autumn Radcliff, Senior Planner, Matt Cable, Planner, Matt Card, Planner, Sarah Zambon, Associate County Attorney; Mark Williams, Commissioner and liaison to the Planning Board, and Kathleen Scanlan, Secretary. Jonathan Parce, Suprina Stepp, and Stacy Rhodes were absent.

Chairman Pearce called the meeting to order and asked for the approval of the June 19, 2008 meeting minutes. He noted a correction that needed to be made and then made a motion to approve the minutes subject to the change. Tommy Laughter seconded the motion. All members voted in favor.

Adjustments of the Agenda. The Staff Report was moved after Item 10.

OLD BUSINESS:

Land Development Code: Text Amendment 2, Manufactured Home Provisions/Regulations – Presentation by Autumn Radcliff. Ms. Radcliff stated that this was presented at last month's Planning Board meeting at which time the Board decided to table the text amendment request until its July meeting. Ms. Radcliff stated that Staff has recommended a change to the permitted use table and the zoning district regulations to allow multi-section manufactured homes in the R1, R2, R40, WR and LC zoning districts to address requests made during the March 27, 2008 public hearing. In addition, Staff recommended changes to the supplemental requirements for manufactured homes (SR 1.5) to require masonry underpinning on multi-sectioned units.

The Henderson County Technical Review Committee (TRC) reviewed the proposed text amendment on June 3, 2008, and voted 5-2 to recommend that the Board of Commissioners approve LDC Text Amendment 2 to allow multi-sectioned manufactured homes in the R1, R2, R-40, WR, and LC zoning districts with changes to SR1.5, 4-b-2 as discussed. Those opposed to the motion stated that the older multi-sectioned manufactured homes were not built to the same quality and appearance standards as today's newer manufactured homes. Staff supports the TRC's recommended change to SR 1.5, 4-b-2. The Planning Board first considered LDC Text Amendment 2 at its meeting on June 19, 2008

Chairman Pearce stated that he still has concerns regarding the garage issue because manufactured homes do not look like stick built houses without a garage attached to the structure or located on the land. It tends to look like a manufactured home. He feels that Staff should consider some type of language to consider garages as a standard. Mr. Starr stated that there are examples of homes versus modular units with garages and there are also some without garages in both cases and in each case you can not tell the difference between the two structures. How would requiring a garage on a manufactured home be any different than requiring a garage on a modular home. Renee Kumor reiterated that she believes that the manufactured housing industry were the ones requesting that manufactured homes be in the R1, R2, R40 and so forth districts and not the citizens who were having some problem with wanting to go into these districts. Mr. Starr stated that on frame modular homes look exactly the same as manufactured homes. He didn't feel what we were accomplishing anything by prohibiting manufactured homes in those districts from an aesthetic standpoint. Mr. Starr stated that this was how Staff arrived at the recommendation since we were not protecting anything. Chairman Pearce stated that the citizens have not asked us for this text amendment, it was initially the manufactured housing industry, is that correct? Mr. Starr said that it was requested by the Manufactured Housing Association at the

Commissioner's hearings in the Spring on text amendments and it was one of the three issues that were directed to Staff to develop a solution for and bring them back to the Board with a recommendation. After some general discussion among Board members, Renee Kumor made a motion that the Planning Board recommended that the Board of Commissioners deny LDC Text Amendment 2 with the associated changes to SR 1.5, 4-b-2. John Antrim seconded the motion and all members present were in favor.

Revised Master Plan and Phase I Development Plan - Laurel Rock Reserve Major Subdivision (#2008-M11) – 137 Single-Family Residential Lots on 309.85 Acres – Located near the Intersection of Hutch Mountain Road and Clark Gap Drive – 137 Single-Family Residential Lots - McAbee & Associates, Agent for Andy Anderson (Lark Properties Inc.) – Presentation by Matt Cable. (Mark Williams arrived to the meeting at this time). Mr. Cable stated that Mr. Eric McAbee, PLS with McAbee and Associates Professional Land Surveyors, agent, on behalf of Andy Anderson of Lark Properties Inc. (formerly Couch Mountain Properties, LLC), owner, submitted a Revised Master Plan and Phase I Development Plan for the project known as Laurel Rock Reserve. The original Master Plan was conditionally approved by the Planning Board on December 20, 2007. The project is located on approximately 309.85 acres of land located near the intersection of Hutch Mountain Road and Clark Gap Drive. The project site is composed of three (3) parcels. He stated that the applicant is proposing reducing the total number of single family lots from 149 to 137. Phase I is proposed to contain 50 single family lots. The project is located in both the Residential Two (R2) and Residential Three (R3) zoning districts and is not located in a water supply watershed district nor is it located within the floodplain. He said the project does contain protected mountain ridges and slopes in excess of 60 percent and private individual wells and private individual septic are proposed to serve the project site.

Master Plan:

Mr. Cable stated that according to Chapter 200A, Henderson County Land Development Code (LDC) §200A-309, the purpose of a Master Plan is to provide general information about the proposed development to allow for an assessment of its impact on the orderly growth and development of the County, environmental quality, land values, natural features identified on the site analysis sketch and the County's roads and governmental services. When reviewing the Master Plan it is important to consider that, due to sever topographic conditions, inadequate road access, distance from services, unique natural areas, soils that do not easily support soil drainage systems and or the proximity to existing and incompatible land uses/zoning, all land may not be suitable to be subdivided for the purpose of dense development .

He said that Staff has reviewed the submitted Revised Master Plan and Phase I Development Plan for Laurel Rock Reserve, taking into consideration the recommendations of the *Henderson County 2020 Comprehensive Plan* and reviewing the plan for conformance with Henderson County Land Development Code. Staff offers the following comments:

1. **Henderson County 2020 Comprehensive Plan (CCP).** The Future Land Use Map of the CCP shows the project site as being located within each of the following areas: Conservation Area and Rural/Agricultural Area (RAA).
 - **Conservation Area.** The conservation area designation is applied to a majority of the project site, largely due to slope and a protected mountain ridge. Slopes within the project site appear to be in excess of 25 percent, with portions having slopes in excess of 60 percent. According to the plan, a majority of the steep slope areas within the project site appear to be located in designated common area/open space and are not currently proposed to contain single-family development. The CCP states that conservation lands “are intended to remain largely in their natural state, with only limited development,” and further that “such areas should be targeted for protection through regulations and incentives.” Under the currently approved Master Plan, 26 lots contain slopes in excess of 60 percent with a condition that where possible, the Applicant shall reconfigure lots and alter the design of the development so that slopes in excess of 60

percent remain in common area/open space. Proposed lots which now contain slopes in excess of 60 percent include the following 20 lots: 17, 23, 32, 70, 71, 91, 99-101, 119, 123-126, 129-134.

Planning Staff and the TRC recommend, as conditions of approval, that: (1) where possible, the Applicant reconfigure lots and alter the design of the development so that slopes in excess of 60 percent remain in common area/open space; and (2) where development plans are approved with lots that contain these slopes that the reason for such lot approval be noted.

The Technical Review Committee (TRC) further recommends, as a condition of approval, that where a development plan shows lots which contain slopes in excess of 60 percent that the final plat(s) must contain a note stating: *Lots on this final plat contain slopes in excess of 60 percent. Where a lot contains a slope of 60 percent or greater, such area of the lot shall not be subject to land disturbance or development.*

- **Rural Agricultural Area.** The Rural Agricultural Area (RAA) designation of the Growth Management Strategy is applied to the project site. The RAA is intended to remain predominantly rural with a density of five (5) or more acres per dwelling unit (average lot sizes of five (5) or more acres per unit). According to the plan, the project would have an average density of approximately 0.44 units per acre (average lot size of 2.26 acres). The density has been reduced from the currently approved Master Plan; however, the proposed densities are higher and the lot sizes remain smaller than those recommended by the CCP. The CCP states that regulations should encourage “densities that are consistent with steep slopes, poor septic capacities, and sensitive topography.” The Applicant is proposing individual septic for the lots in the development.
2. **Protected Mountain Ridges.** The project site appears to contain areas effected by the Mountain Ridge Protection Ordinance which states that the provisions of NCGS 113A-209 apply to all mountain ridges in Henderson County whose elevation is 500 feet or more above the adjacent valley floor (Map C: Protected Mountain Ridges). NCGS 113A-209 states that no county may authorize the construction of, and no person may construct, a tall building or structure on any protected mountain ridge. The definition of a tall building found in NCGS 113A-206 is any building with a vertical height of more than 40 feet measured from the top of the foundation and the uppermost point of the building. Additionally, where such foundation measured from the natural finished grade of the crest or the natural finished grade of the high side slope of a ridge exceeds three (3) feet, then such measurement in excess of three (3) feet shall be included in the 40-foot limitation provided that no such building protrudes at its uppermost point above the crest of the ridge by more than 35 feet. The area of ridge under protection is defined as the elongated crest or series of crests at the apex or uppermost point of intersection between two (2) opposite slopes or sides of a mountain, and includes all land 100 feet below the elevation of any portion of such line or surface along the crest. Planning Staff and the TRC recommend, as a condition of approval, that the Applicant shall adhere to the Mountain Ridge Protection regulations of the County which state that the provisions of NCGS 113A-209 apply to all mountain ridges whose elevation is 500 feet or more above the adjacent valley floor.
 3. **Chapter 200A, Henderson County Land Development Code (LDC).** According to Chapter 200A, Henderson County Land Development Code (LDC) and its Official Zoning Map adopted September 19, 2007 (as amended), the proposed project site is located within both the Residential Two (R2) and Residential Three (R3) Zoning Districts. The R2 and R3 district allows for single-family residential development.

Tract 1, which includes 10.28 acres, is located in the R2 Zoning District. R2 allows for a standard residential density of 1 unit per acre (average lot size of 1 acre) where the slope is less than 60 percent. A total of 7.7 acres of Tract 1 are in this category, meaning a total of 7.7

units would be permitted. Where slopes are 60 percent or greater the density shall be on-half (½) the eligible density (0.5 units per acre (average lot size of 2 acres)). A total of 2.58 acres of Tract 1 are in this category, meaning a total of 1.29 units would be permitted. The total numbers of units permitted by Tract 1 are 8.99, as shown on the table .

Tracts 2 and 3, which include 299.57 acres, are located in the R3 Zoning District. R3 allows for a standard residential density of 0.66 units per acre (average lot size of 1.5 acres) where the slope is less than 60 percent. Tracts 2 and 3 contain slopes in excess of 60 percent, but they do not account for ten (10) percent or more of the tract, therefore the density reduction does not apply. A total of 299.57 acres of Tract 2 and 3 are in this category, meaning a total of 197.71 units would be permitted .

Chapter 200A would allow for a maximum of 206 units on the project site. The Revised Master Plan proposal of 137 units (reduced from the currently approved 149 units) would fall within the density permitted by Chapter 200A .

4. **Adequate Public Facilities.** LDC Article IV contains the Public Facilities Regulations (LDC Article IV) noted in LDC §200A-81 S.

- **Traffic Impact Study (TIS).** A TIS is required for the proposed development as it is a residential subdivision proposed to contain more than 100 lots/units (137 lots/units are proposed) (LDC §200A-104). The TIS must be prepared by a licensed engineer and must be submitted as part, or as a condition, of Master Plan approval (LDC §200A-104 B(1)). The Planning Board required, as a condition of the current Master Plan approval, that the Applicant conduct a TIS (prepared by a licensed engineer in accordance with LDC §200A-104 and utilizing the assumptions identified by County Staff, TRC and NCDOT) and that the Applicant provide the TIS findings/information and recommended requirements as a part of the Phase I Development Plan submittal.

Mr. James Voso, PE with Mattern and Craig, Inc. Consulting Engineers and Surveyors submitted the TIS. Staff reviewed the findings of the TRC and Planning Board and coordinated with NCDOT to define assumptions and study requirements of the TIS. The proposed report meets the requirements and satisfies the technical standards required by LDC §200A-104 requirements for a Traffic Impact Study.

The TIS made the recommendation that a right turn lane along northbound Howard Gap Road at Hutch Mountain Road is warranted based on expected volumes under current NCDOT standards. The TIS does not recommend that this improvement is necessary based on anticipated level of service volumes and safety history. Planning Staff and the TRC support construction of an additional right turn lane in order to mitigate potential impacts, especially since the volumes currently meet NCDOT standards for improvement of the roadway. Planning Staff and the TRC recommend the work be coordinated with the NCDOT as part of any other scheduled improvements to Howard Gap Road.

The permit issued by NCDOT includes a provision requiring the installation of the right turning lane at Howard Gap Road, coordinated with NCDOT. Planning Staff and the TRC recommend, as a condition of Master Plan approval, the following: the turn lane be installed/constructed prior to the recordation of the 100th lot of the development OR proof of right-of-way acquisition (adequate to accommodate the proposed turn lane) by the Applicant or NCDOT and the execution of an improvement guarantee by the Applicant prior to the recordation of the 100th lot of the development. Should NCDOT and the Applicant not be able to attain the necessary right-of-way, documentation from NCDOT indicating that this is the case, including a new or revised driveway permit (which remove the turn lane installation requirement), must be submitted to Planning Staff prior to recordation of any further lots. Planning Staff shall reserve the right to refer any final plat for any lot beyond 99 to the Planning Board for approval if right-of-way cannot be acquired.

The TIS also recommends and Planning Staff and the TRC support the following: (1) that the intersection of Clark Gap Drive and Hutch Mountain Road should be improved with clearing and grading as necessary to ensure adequate sight distance as required by the NCDOT; (2) the addition of stop sign control should be placed on the Clark Gap Drive northbound approach; (3) that Clark Gap Drive should be located and constructed so as to provide adequate sight distance and width for roads within major subdivisions as required by LDC §200A-81; and (4) that the developer provide secondary gated emergency vehicle access.

- **Emergency Services Impact Report (ESIR).** An ESIR is required for the proposed development as it is a residential subdivision proposed to contain more than 100 lots/units (137 lots are proposed (LDC §200A-105). The Applicant has provided an Emergency Services Impact Report. The findings of the ESIR and recommendations of County Staff or the Planning Board, may require that the proposed development be built at a maximum density of one (1) unit per (3) acres. The project site contains 309.85 acres which would allow for 103 lots/units on the project site. This would require the elimination of 34 proposed lots/units. The current Master Plan approval did not recommend that the reduction be applied to the proposed development given the following condition which should be carried forward. The Revised Master Plan is approved conditionally, given that the Applicant provide an alternate entry point, including a right-of-way and all weather access road, which would serve as an evacuation route or point of access for emergency services vehicles. The Revised Master Plan provides a 16 foot gravel road for emergency access in Phase 3 of the development.
1. **Soil Erosion and Sedimentation Control Plan.** The Applicant shall submit written notice from the appropriate local agencies verifying that an Erosion and Sedimentation Control Plan has been received or a written notice from a professional land surveyor, engineer, landscape architect, architect, or professional planner certifying that no plan is required (LDC §200A-81 A).
 2. **Fire Protection Requirements.** According to LDC §200A-81 B(3), for any *subdivision* without a fire suppression rated water system, that either has or has access to an adequate permanent surface water supply (100,000 gallon storage in a 50 year drought), the *Applicant* shall be required to install a dry fire hydrant system, the type and location of which is to be determined by the County Fire Marshal. An all-weather access *road* for fire-fighting equipment shall be provided by the *Applicant* to this permanent surface water supply. The Planning Board required, as a condition of the current Master Plan approval, that the Applicant shall provide a pond with a surface storage area of at least 100,000 gallon storage in a 50 year drought with two (2) certified static water points (accessible by an all-weather access road) and a dry fire hydrant system, the type and location of which is to be determined by the County Fire Marshal. This condition should be extended to the Revised Master Plan approval. The Phase I Development Plan includes a 125,000 gallon pond set aside for fire suppression which is to be accessible by a proposed all-weather access road within a proposed 50 foot right-of-way.
 3. **Private Roads.** Phase I is proposed to include private roads. Private subdivision collector roads include: Clark Gap Drive upgrade and Laurel Rock Parkway. Private subdivision local roads include: Couch Mountain Drive and Broad Bluff Way. Private subdivision limited local roads include: Braden Lane, Youngblood Way, and Shady Rise Lane. The proposed private roads (including the off-site improvements to Clark Gap Drive) appear to and must, as a condition of approval, meet the standards of LDC §200A-81 C(2). The final plat(s) must contain a note stating: *The private roads indicated on this final plat may not meet the requirements of the North Carolina Department of Transportation for acceptance into the state road system.* Planning Staff and the TRC propose the following conditions to ensure the private roads meet the standards of the Land Development Code:

- a. **Lots Served.** Limited local roads are permitted to serve a maximum of 4 lots (LDC §200A-81, Table 3.1). Braden Lane currently abuts 5 lots (Lots 2, 3, 4, 7 and 8). The Applicant should indicate, and such should be a condition of approval, which of the five lots will not be permitted access from Braden Lane.
 - b. **Road Drainage and Culverts.** Road or drainage structures shall be constructed in accordance with state roads standards. Road drainage side ditches shall be constructed with sufficient depth and width to carry the expected volume of storm water runoff (LDC §200A-81 C(3)).
 - c. **Road Construction.** A professional engineer or professional land surveyor certify on the final plat that no portion of the constructed roads have grades that exceed maximum allowable grade as defined for each class of road or submit a final as-built graded center line profile showing grade and alignment for all roads (LDC §200A-81 C(4)).
 - d. **Minimum Curve Radius.** Should the Applicant requests a reduction in centerline radii, that a professional engineer or professional land surveyor certify on the final plat, the existing cross slope of roadway sections where reductions in centerline radii are requested (LDC §200A-81 C(5)).
 - e. **Road Intersections.** The Applicant has proposed the realignment of Clark Gap Drive near its intersection with Hutch Mountain Road (SR 1556) due to the existing intersection angle and resultant poor sight distance. The current Master Plan approval is conditional on the following: (1) the realignment of Clark Gap Drive meet the requirements of LDC §200A-81 C(6) (intersections with angles of 75 to 90 degrees preferred); (2) intersection angels must be shown on the first Development Plan; and (3) the Applicant provide the appropriate permit for realignment from NCDOT with the first development plan These conditions should be extended to the Revised Master Plan approval.

The Applicant has provided a copy of the appropriate permit from NCDOT regarding the realignment of Clark Gap Drive and the intersection appears to meet the requirements of LDC §200A-81 C(6). The proposed intersections within Phase I also appear to meet the requirements of LDC §200A-81 C(6).
 - f. **Gates.** Phase I indicates that an entry gate will be located on the project site. The Applicant should become familiar with the Entry Gate provisions of Chapter 200A (LDC §200A-81 C(7)). All entry gates shall be constructed and maintained as required by and in accordance with Chapter 200A and Chapter 89 of the Henderson County Code, *Entry Gates*.
 - g. **Dead Ends, Cul-de-sacs and Turnarounds.** The Applicant has proposed branch turnarounds at the end of Braden Lane, Shady Rise Lane, and Broad Bluff Way; and a cul-de-sac at the end of Couch Mountain Drive. The cross sections shown on Development Plan Sheet RT2 appear to meet the requirements of LDC §200A-81 C(8). No turn around is required at the end of Youngblood Way as the road is less than 300 feet in length. The reviewing agency may require additional turnarounds at intermediate locations along dead end roads with a centerline length of greater than 2,500 feet (LDC §200A-81 C(8)). Couch Mountain Drive is approximately 2,800 feet in length and does not provide an alternative turnaround. The Planning Board may require, as a condition of approval, that the Applicant provide an alternative turnaround at an appropriate location along the proposed road.
4. **Shoulder Stabilization.** All areas disturbed by the construction of a private road, including cut and fill slopes, shoulders and ditch banks, shall be seeded to stabilize the soil and prevent erosion. Seeding should be done as soon as feasible after road construction (LDC §200A-81 E).

5. **Road Name Approval.** Proposed road names for a private and/or public road shall be pre-approved by Henderson County in accordance with Chapter 142 of the Henderson County Code, Property Addressing (LDC §200A-81 F).
6. **Subdivision Names.** The final plat shall contain certification that the public records of the County have been searched and the proposed subdivision name meets the standards set forth in this Chapter (LDC §200A-81 G).
7. **Road Frontage and Existing Off-Site Access.** Any tract of land to be subdivided must have frontage on an existing public (state-maintained) road or a private right-of-way to the public road (LDC §200A-81 K). The project site does not have frontage on a public road or an existing private right-of-way to a public (state-maintained) road. The plan proposes a right-of-way extending approximately 2,500 feet from the project site, through two (2) other properties (PIN 9662-81-0633 owned by Thelma J. McMinn and PIN 9662-72-5751 owned by the Applicant).

In certain areas additional right-of-way will be applied to and expand the existing right-of-way for Clark Gap Drive. Clark Gap Drive, which connects Hutch Mountain Road (SR 1556) to the proposed right-of-way through the McMinn Property, is a private road with a 30 foot right-of-way. The Applicant is proposing to add an additional 20 feet of right-of-way to Clark Gap Drive in order to conform with the standards of LDC §200A-81 J. The provision of this additional right-of-way is a condition of the current Master Plan approval and should be extended to the Revised Master Plan approval.

The current Master Plan approval requires the Applicant to provide, prior to or at the time of the first Development Plan submittal, a deeded and recorded right-of-way which meets the width requirements of Chapter 200A (Article III, Table 3.1), from Hutch Mountain Road (SR 1556) to the subject property. This condition should be extended to the Revised Master Plan approval. The Applicant has provided a deed for a 60 foot right-of-way through the McMinn property.

The current Master Plan approval is conditional on the Applicant upgrading Clark Gap Drive, on the portion where the additional right-of-way is provided, to meet the minimum standards of Chapter 200A (Article III, Table 2.1) as a condition of first Development Approval. Planning Staff recommends that such be a condition of the Phase I Development Plan approval.

The current Master Plan approval provides the condition that the Applicant provide the appropriate cross section for Clark Gap Drive with the Phase I Development Plan submittal. This condition should be extended to the Revised Master Plan approval. The Applicant has provided the appropriate cross section.

8. **Stormwater Drainage.** LDC §200A-81 L requires that, where the drainage of the subdivision does not follow the natural drainage of the property, the Applicant shall design such new drainage systems, including swales, ditches, pipes, culverts, detention ponds, lakes or similar devices to minimize any adverse effects. Further, an easement shall be reserved on site by the Applicant, or otherwise provided, conforming to the lines of any drainage way into which natural runoff has been diverted. The Applicant has provided drainage easements as required.
9. **Notice of Farmland Preservation District.** The proposed development lies within one-half (½) mile of a Farmland Preservation District. A note must be included on the final plat which states that such property lies within one-half (½) mile of land in a Farmland Preservation District.
10. **Street Tree Requirements.** Street trees shall be required for all major subdivisions (LDC §200A-81 R). Trees shall be required at a rate of one (1) large deciduous tree per 50 feet of property abutting an internal road (LDC §200A-145). Trees shall be placed within the right-of-way or within 20 feet of the edge of the right-of-way and may be placed in groups with a minimum spacing of no less than 15 feet and a maximum spacing of no more than 65 feet (LDC §200A-146). The Applicant has proposed the required 204 trees.
11. **Miscellaneous Advisory Provisions.** The Applicant should become familiar with the Miscellaneous Advisory Provisions of Chapter 200A (LDC §200A-81 S).

12. Final Plat Requirements. The Final Plat(s) must meet the requirements provided by the Planning Department whenever a subdivision of land occurs (LDC §200A-311 B(2)).

Mr. Cable stated that Staff has found that the Revised Master Plan and Phase I Development Plan appear to meet the technical standards of the subdivision regulations of Chapter 200A, Henderson County Land Development Code (LDC) except for the comments listed in the Staff Report . Staff recommends approval of the Revised Master Plan and Phase I Development Plan subject to the developer addressing any issues raised by the Planning Board and addressing the comments listed in the Staff Report, including those comments and conditions recommended by the Technical Review Committee.

Mr. Antrim had concerns regarding site distance regarding Clark Gap Drive and that this could be an issue.

Chairman Pearce opened public input.

Robert and Sarah Jones. They live on Hutch Mountain Road and live on the edge of Clark Gap Drive. Their concerns are dealing with access to Clark Gap Drive from the driveway on their property in the back of their property and when they develop the new road how it will affect their property.

William McMinn. Mr. McMinn pointed out his mother's property and part of the agreed right-of-way. He stated that this company built a road across his mother's property without any permission.

Mr. Eric McAbee, agent for the owner, stated that there is a twenty-foot right-of-way reserve recorded for the McMinn property that William McMinn indicated across his mother's property, it has never been used or open by his client. He added that a temporary road has been cut up in there, but have not stopped access to the McMinn property. He stated that regarding the placement of the new Clark Gap Drive alignment, NCDOT requested that we put the site distance there because it opens up and gives us 350 feet in either direction and there was one part of the permit where we shaved the bank back on our property to open up the site distance a little more and make it perpendicular to the road. The reason there is a curve is because of the Jones' access. The height of the road there will be up two feet more and does not affect access to that property. He stated that Clark Gap Drive will not be affected from that point back. Mr. McAbee added that there is a thirty-foot right-of-way and his client and the Jones' meet in that right-of-way, so there is fifteen-feet on either side. To get the fifty-foot right-of-way, they have tacked onto their property only. The reason for the curvature is to get the distance so that the elevation where the Jones' come into there and where we take on to Hutch Mountain Road, we stayed within the 16 percent slope and hit back to the existing grade of Clark Gap Drive so there wouldn't be any impact on Clark Gap Drive. Regarding the issue of the shared cost on the existing Clark Gap Drive, Mr. Andy Anderson, applicant, stated that the existing Clark Gap Drive was going to stay just as it was and that he did not plan on changing anything. He said instead of it being a shared road, it would be his private road. Chairman Pearce asked how much do you plan on raising the road as it moves up the mountain at the point in the back of the Jones' property? Mr. McAbee said that we held the existing grade up to the existing Clark Gap Drive with a slope of 13 or 14 percent as it stands today. He said the reason we are raising it, is when you get on top of the hill past the Jones' property, because of the steep grade on the side to access our property, we started filling that road, but as we are picking it up we are pulling it into the bank and therefore coming into it at a higher point to access the property. Mr. Starr stated that a solution to this issue is that the Board put a condition that any of the current property owners be granted access to this new right-of-way on Clark Gap Drive for that new section of Clark Gap Drive to get back to Hutch Mountain Road or that section of Clark Gap Drive would be dedicated as a public right-of-way. He said, In addition, the Planning Staff approve the exact details about how Mr. Jones' property driveway will tie in and he feels this would address the concerns.

Chairman Pearce made a motion that the Planning Board find and conclude that the Revised Master Plan and Phase I Development Plan appear to comply with the subdivision provisions of Chapter 200A, Henderson County Land Development Code (LDC) and further move that the Revised Master Plan and Phase I Development Plan be approved subject to the following conditions: the applicant satisfies any conditions that may result from the comments listed in the Staff Report, conditions recommended by the Technical Review Committee, and additionally that owners be granted right-of-way on Clark Gap Drive for that section of Clark Gap Drive to get back to Hutch Mountain Road or the section of Clark Gap Drive would be dedicated as a public right-of-way and the Planning Staff shall review and approve the detailed plans for the driveway to the Jones' property. Additionally, as a condition, the applicant shall blend the grades of existing and proposed portions of Clark Gap Drive and existing driveways to Clark Gap Drive. Gary Griffin seconded the motion. Tedd Pearce, Gary Griffin, Mike Cooper and John Antrim voted in favor. Tommy Laughter and Renee Kumor opposed the motion. The motion carried four to two. Ms. Kumor stated that she opposed this issue because of the amount of conditions listed by Staff and because of the right-of-way issue. Mr. Laughter felt it might not meet the recommendations of the Comprehensive Plan.

Rezoning Application # R-2008-10 – Request to Rezone Approximately .83 Acres of Land – Fronting Directly on US Highway 64 West (Brevard Road) – from R-40 (Estate Residential) Zoning District to a CC (Community Commercial) Zoning District – Kevin Brown – Presentation by Jason Waddell. Mr. Waddell stated Rezoning Application #R-2008-10 requests that the County rezone approximately .83 acres of land, located off of US Hwy 64 (Brevard Road), from an R-40 (Estate Residential) zoning district to a CC (Community Commercial) zoning district. The property is currently owned by Kevin Brown. The Technical Review Committee reviewed and sent forward a favorable recommendation on the rezoning at its July 1st meeting. Mr. Waddell explained the comparison between the R-40 zoning district and the Community Commercial.

Planning staff posted the property giving notice of the Planning Board meeting on July 7, 2008. The Planning Board has 45 days from its first consideration of a rezoning application to make a recommendation to the Board of Commissioners.

Mr. Waddell stated that Staff's position at this time, under the guidelines of current plans, policies and studies, is it support the rezoning of the property to be zoned from R-40 zoning district to CC (Community Commercial) zoning district because the CCP future Land Use map places the subject area in the Urban Services Area and that it suggested that the subject area would be suitable for commercial development among other uses and applying Community Commercial may be in keeping with surrounding residential uses if adequate protections for these uses are in place. The future Land Use map also identifies the subject area as being in close proximity to a Community Service Center and therefore may be appropriate for a variety of uses. The subject area directly abuts an existing Community Commercial zoning district to the northwest and south and if this was to be rezoned, this property would be part of a contiguous Community Commercial zoning district. He stated that however the Local Commercial zoning district may be the most suitable zoning district as it allows for single-family residential uses, where the Community Commercial does not allow these uses.

Mike Cooper made a motion that the Planning Board recommends approval of rezoning application #R-2008-10 to rezone the Subject Area from an R-40 (Estate Residential) zoning district to a CC (Community Commercial) zoning district based on the recommendations of the Henderson County 2020 Comprehensive Plan. Tommy Laughter seconded the motion and all members voted in favor.

Rezoning Application #R-2008-05-C – Request to Rezone 9.98 Acres of a 12.03 Acre Tract - Located in the Foxwood Subdivision and Adjacent to the County Landfill – from Residential One (R1) zoning district to Local Commercial Conditional District (LC-CD) - Initiated by the Board of Commissioners at the Request of the Emergency Services Department – Presentation by Autumn Radcliff. Ms. Radcliff stated that rezoning #R-2008-05-C was initiated by the Henderson County Board of Commissioners at the request of the Emergency Services Department and requests that the County rezone approximately 9.98 acres of a 12.03 acre tract of land owned by Henderson County, from an R1 (Residential One) zoning district to a LC-CD (Local Commercial Conditional District). The Subject Area is located in the Foxwood subdivision off Foxwood Drive, and adjacent to the Henderson County Landfill.

She explained that conditional zoning districts are different from traditional zoning districts because they require a site plan for the proposed use(s) of the property and certain conditions or restrictions are placed on the property based on the proposed or allowable use(s). Conditional zoning district decisions are a legislative process subject to the same procedures as traditional zoning districts. She said according to the Land Development Code, conditional zoning districts are created for the purpose of providing an optional rezoning choice where the owner of property proposes to rezone property and, in order to, among other reasons, carry out the purposes of the Comprehensive Plan, proposes to impose special imitations and conditions on the use of the property proposed for rezoning

She said the County proposes to use the large barn and property for emergency services storage and County government storage. It is expected that this use would generate an average of 1 trip per week and would have little to no impact on the neighborhood. Staff held a neighborhood meeting on April 15, 2008 with approximately 30 residents of the Foxwood subdivision to answer questions and concerns and address issues that the neighbors might have. With the conditional zoning district process, the County can impose limitations upon itself to address neighborhood concerns. With that in mind, only the storage by the county and emergency services would be allowed. Other commercial uses and governmental operations would not be allowed.

Ms. Radcliff stated that the CCP Future Land Use Map identifies the Subject Area as being located in the Urban Services Area, the County's economic development activities should be pursued within USA as the USA will contain considerable commercial development at a mixture of scales, and further, all regional commercial development should be concentrated here. Commercial development will exist within predefined zoning districts whose standards and configuration are in keeping with the surrounding community. The CCP Future Land Use Map does not place the Subject Area in a "Community Service Center" area. But commercial zoning districts are adjacent to the Subject Area. Staff suggests the following conditions be imposed on the Subject Area:

- (1) The existing structures on the Subject Area shall be used for the storage of emergency service supplies and equipment including the storage of County government records and property. Only storage by the County and emergency services shall be allowed. Other commercial uses and governmental operations shall not be allowed.
- (2) Stored items shall be stored indoors. Outdoor storage shall not be allowed.
- (3) Lighting mitigations is required. There shall be a minimum amount of lighting for the facility, and this lighting should not adversely affect the surrounding neighbors.
- (4) Primary access to the Subject Area shall be via the Henderson County Landfill.
- (5) The portion of the Subject Area adjacent to Foxwood Drive shall remain zoned for residential uses.
- (6) The existing wooded areas as identified on the site plan shall remain intact.
- (7) The existing power line right-of-way shall remain open and unobstructed.
- (8) The proposed use(s) shall comply with the landscape design standards and off street parking provisions as outlined in the Land Development Code (LDC Article V and VI).

(9) The Subject Area may be accessed at any time for just cause to retrieve emergency service items stored on the premises.

Ms. Radcliff stated that Staff did meet with some of the Foxwood residents that were concerned with the access issue, and since that meeting, Staff decided that the access would only be via the Henderson County Landfill. She stated that the Henderson County Technical Review Committee reviewed rezoning application #R-2008-05-C on July 1, 2008 and voted 7-0 to send the Board of Commissioners a favorable recommendation to approve the rezoning request with the conditions as suggested by Staff. She added that Staff posted notice signs on the Subject Area property on July 7, 2008, providing notice of the consideration of the request by the Planning Board at its July 17, 2008 meeting. Recommendation from the Planning Board is needed before the Board of Commissioners can make a decision on the rezoning application.

She said Planning Board action to recommend that the Board of Commissioners approve, approve with modifications, table, or deny rezoning #R-2008-05-C would be appropriate. Staff's position at this time, under the guidelines of current plans, policies and studies, is it supports the rezoning of the Subject Area to a LC-CD (Local Commercial Conditional District) with the conditions as outlined in the staff report and based on the recommendations of the Henderson County 2020 Comprehensive Plan.

Mr. Hyder, Fire Marshal for Henderson County, stated that after talking with the neighbors in the Foxwood Subdivision, the County wants to be the best neighbors and feels that we have been fairly restrictive with what we are asking for. He said that if the trees were destroyed or removed to the point where it would be a problem to the neighborhood, we would replace those trees or would put some type of buffer there so there is a tree buffer along that line. There was further discussion regarding the wooded area and access between the properties. Mr. Cooper asked whether that wooded area could be used as a residential lot, the County wanted to sell it. Mr. Hyder said that potentially it could be, but the County does not have any interest in conveying that property for that purpose. Ms. Radcliff noted that the small wooded area that was left as R1 zoning district that was an issue that was expressed by the Foxwood neighborhood to remain as residential.

Chairman Pearce opened public input.

Todd Trace – Mr. Trace lives in Foxwood and wanted to give the Board a background before they make a decision regarding this request. He said he proposed in a letter to the County Commissioners over a month ago, in lieu of giving him that piece of property that the Subdivision wanted to remain wooded, he would provide the County with a road to State standards into the landfill. He said that was the property where he was raised and the County acquired it because of methane gas problems. He said he also offered money to purchase this piece of property to maintain it as a residential lot, free of all encumbrances in the past of the methane gas just because the Foxwood residents are very adamant about the County not using Foxwood Drive. He said that the Foxwood Homeowners Association has no concerns with the conditions of this request as long as they do not come through Foxwood Subdivision. He added that it would be nice if the County would reforest or plant trees and to enforce that the County would not use Foxwood Drive.

John Antrim made a motion that the Board recommend approval of rezoning application #R-2008-05-C to rezone the Subject Area from an R1 (Residential One) zoning district to a LC-CD (Local Commercial Conditional District) based on the recommendations of the Henderson County 2020 Comprehensive Plan, and based on the conditions as stated by staff with changes as noted on 7.4, that the word *primary* be taken out, and add a notation that 7.6 still needs to comply with the provisions of 7.8. Tommy Laughter seconded the motion and all members voted in favor.

Development Plan Approval Extension – Cobblestone Village Major Subdivision (# 2006-M16) – Brian Ely, Developer – Original approval June 20, 2006 – Presentation by Matt Cable. Mr. Cable stated that the Planning Board approved the Master Plan and Development Plan for the proposed Cobblestone Village on June 20, 2006 subject to the completion of conditions that were imposed during the meeting. On January 2, 2007 and June 4, 2007, the Board of Commissioners approved applications for improvement guarantees proposed to cover road construction and shoulder stabilization work. On July 8, 2008, Mr. Ely, developer of the project submitted a letter requesting a one year extension of the Development Plan for Cobblestone Village because of a delay in securing a valid water source for the property. He stated that they had completed over half of the city water line construction and anticipates completing the project including paving in the next 75 – 90 days. Mike Cooper made a motion that the Planning Board approve a one-year Development Plan extension for Cobblestone Village through June 20, 2009.

Development Plan Approval Extension – Summit Springs Major Subdivision (File # 2006-M19) – Hunter Marks, Agent for Jeff Cosgrove – Original approval June 20, 2006 – Presentation by Matt Cable. Mr. Cable stated that the Planning Board approved the Master Plan and Development Plan for the proposed Summit Spring major subdivision on June 20, 2008 subject to the completion of conditions that were imposed during the meeting. Mr. Hunter Marks, agent on behalf of Summit Springs LLC, submitted a letter requesting a one year extension of the Development Plan for Summit Springs because 50% of the roads have only been constructed for Phase 1. Mike Cooper made a motion that the Planning Board approve a one-year Development Plan extension for Summit Springs through June 20, 2009. Renee Kumor seconded the motion and all members voted in favor.

Staff Reports. Mr. Starr stated that recently Polk County plans to tap Lake Adger as a water supply, which would extend state watershed protection rules upstream along the Green and Hungry rivers into Henderson County. He said in most cases, the County's existing zoning rules for single-family homes are already more restrictive than what the State is proposing. Polk County agreed to purchase Lake Adger and build a water treatment plant to draw water from the lake. He said once they tap into the lake, the N.C. Department of Environment and Natural Resources will reclassify the watershed area. He said Henderson County wants the designation to be a WS-IV, the least restrictive designation, but North Carolina proposed that the watershed be labeled initially a WS-III along the Green River Basin, including the Hungry River. He said the WS-III would affect non-residential land development further than residential. It will limit the impervious area. Unlike the residential development code, current regulations on non-residential development are less restrictive than what the State proposed under WS-III rules. He said the WS-III classification proposed by the State would allow 70 percent of each parcel to be developed and would limit non-residential development to 10 percent of the total watershed. He said the proposed Lake Adger watershed would not be effective until 2010, but if it does, it would require the County to do is to adopt a new water supply watershed protection map for Henderson County which would reflect these boundaries. He said the text is already in place for WS-III. He said the main question would be how this would play into any stormwater regulations that the State already has in place and that we might take on in the future and how all of this will mesh together. Mr. Starr said this was brought to this board only as an informational item.

Mr. Starr also informed the Board that the Board of Commissioners approved US 25 North rezoning request from Community Commercial to Regional Commercial and they also expanded Charles Grime's property zoning from 250 feet to 500 feet, also being Regional Commercial. Commissioners plan on taking up the Comprehensive Plan in a workshop and plan on scheduling that and determine what changes are needed for the Comprehensive Plan to reflect where we stand at present. The Commissioners plans on continuing exploring the development of adequate public facilities regulations. A workshop will be scheduled to study the details.

Adjournment. There being no further business, the meeting adjourned at 7:13 p.m. All members voted in favor.

Tedd Pearce, Chairman

Kathleen Scanlan, Secretary