

**HENDERSON COUNTY
PLANNING BOARD MINUTES
July 19, 2007**

The Henderson County Planning Board met on July 19, 2007 for their regular called meeting at 5:30 p.m. in the Commissioners' Meeting Room at 100 N. King Street, Hendersonville, NC. Board members present were Tedd Pearce, Chair; Mike Cooper, Vice-Chair; Jonathan Parce, Renee Kumor, Stacy Rhodes, Gary Griffin, John Antrim and Tommy Laughter. Others present included Anthony Starr, Planning Director; Matt Cable, Planner; Planner; Parker Sloan, Planner; Sarah Zambon, Associate County Attorney; Mark Williams, Commissioner and Liaison to the Planning Board and Kathleen Scanlan, Secretary. Board member Mitchell Gaither was absent.

Chairman Pearce called the meeting to order and asked for the approval of the June 21, 2007 regular Planning Board Meeting Minutes. Renee Kumor made a motion to approve the June 21, 2007 minutes and Gary Griffin seconded the motion. All members voted in favor.

Adjustments of the Agenda. There were no adjustments needed.

Staff Reports. Mr. Starr stated that Grand Highlands of Bearwallow came before the Board of Commissioners with a density reduction from 320 homes to 249, so that they could get a waterline extension approval. He also mentioned that the Board of Commissioners has set another workshop regarding the Land Development Code for August 2, 2007 and the public hearing is set for August 30, 2007 at Blue Ridge Community College in the Thomas Auditorium. Mr. Starr introduced Parker Sloan, who will be working on subdivisions in the Planning Department.

OLD BUSINESS:

Request for Phase 1 Development Plan Extension – Cloud Nine (2005-M03) – Harold and Betty Coston, Owners and Developers. Presentation by Parker Sloan.

Request for Development Plan Extension – Riverstone P.U.D. (2005-M24) – Don Hunley, William G. Lapsley & Associates, P.A., Agent for Windsor-Aughtry Company of Greenville, S.C., Owner. Presentation by Parker Sloan.

Chairman Pearce asked Staff whether they had any problems with either of the above request for extensions and Staff said they did not. Chairman Pearce made a motion to grant Cloud Nine, Phase 1 and Riverstone P.U.D. with a one-year extension. Renee Kumor seconded the motion. All members voted in favor.

NEW BUSINESS:

Combined Master and Development Plan - Mitchem Commercial Park (2007-M26) - 6 Commercial Lots Located off Chimney Rock Road – A. J. and Dorothy Mitchem, Owners. Presentation by Parker Sloan. Mr. Sloan stated that A.J. & Dorothy Mitchem, owners, submitted a Combined Master Plan and Development Plan for a commercial subdivision off of Chimney Rock Road (US Hwy 64). The applicant is proposing six lots on approximately 35.03 acres of land which will be used for commercial and residential purposes.

He stated that the current uses of the proposed project site include a residential home, a machine shop, and a packing house. During the pre-application conference it was indicated that the purposes of the subdivision is for construction of a mini-storage facility and offices. The developer also intends to keep the machine shop and continue to live on the property. Public water (City of Hendersonville) is proposed and the project site is currently located in the Open Use (OU) zoning district. Draft 10 of the Land Development Code shows this property in the Local Commercial

zoning district which allows for limited residential and commercial development. The property is also adjacent to the Clear Creek Farmland Preservation District.

1. **County Comprehensive Plan (CCP).** The Future Land Use Map of the CCP shows the project site as being located within the Rural/Urban Transition Area (RTA).
 - **Rural/Urban Transition Area.** The Rural/Urban Transition designation of the Growth Management Strategy is applied to the project site. The CCP states that, “the primary factor preventing urban development in the RTA is the absence of sewer and water service”. The plan indicates that public water will be available to the development. The CCP also states that “Commercial development and Community Facilities will be encouraged within defined Community Service Centers. Commercial development will be at Local and Community scales, while Regional Commercial development will be generally discouraged within the RTA.”
2. **Land Development Code (LDC).** According to Proposed Draft 10 of the Land Development Code Zoning Map the proposed project site for this development is located entirely in the Local Commercial zoning district. Local Commercial is to foster orderly growth where the principal use of land is commercial and residential. According to the Table of Permitted and special Uses in the LDC the local Commercial zoning district may not allow the proposed uses.

The County does not currently operate under the Land Development Code (“LDC”), and current applicable land use regulations are based on Open Use zoning which allow these uses by right. Since these uses would not be allowed in the Local Commercial zoning district, provisions for allowing expansion and alteration to existing nonconforming uses have been incorporated into the LDC. According to Section 200A-213 of the LDC (Nonconforming Commercial and Industrial Uses/Structures within the former Open Use (OU) Zoning District) commercial and industrial uses/structures legally established in this chapter and its associated zoning map shall be allowed to be maintained, improved, altered, expanded, remodeled, repaired and/or reconstructed in adherence with the dimensional requirements and setbacks of the current applicable district.

Staff has reviewed the submitted Combined Master Plan and Development Plan for Mitchem Commercial Park for conformance with the Henderson County Subdivision Ordinance (HCSO) and offers the comments that follow.

1. **Future Development.** According to HCSO §170-31 development plans and master plans should be drawn to show the short-term and long-term plans for the property. The Planning Board may wish to discuss with the applicant plans for the use of the property.
2. **Soil Erosion and Sedimentation Control.** The developer shall submit notice from NCDENR that a soil erosion and sedimentation control plan has been received, or provide documentation that no plan is required prior to beginning construction (HCSO §170-19).
3. **Buffers.** Property within the proposed commercial park contains residential homes. Property to the west and south of the project site appear to contain residential uses. The property to the north and east of the project site contain agricultural uses (Clear Creek Farmland District). According to HCSO §170-33 the Planning Board may require a buffer strip of no less than 10 feet wide between dissimilar uses of land such as a residential area. He said the Planning Board may require the applicant to arrange for, or be responsible for the grading and planting of said buffer strip. Retention of existing vegetation is encouraged and the Planning Board has the authority to determine if existing vegetation fulfills the intent of the buffer requirement or if additional vegetation should be planted. Staff suggests that the applicant provide a ten foot vegetated buffer along the western and northwestern boundaries of the project where there are existing residential uses.
4. **Water.** The applicant has proposed public water (City of Hendersonville). According to the HCSO, the applicant must provide evidence that the water supply plans have been

approved by the appropriate agency. All public water and sewerage systems shall be installed and shall meet the requirements of the Henderson County Health Department or other government authorities having jurisdiction thereof. The development plan may be approved contingent on final approval from such agencies; however, the final plat shall not be approved until all such final approvals have been obtained. Any subdivision served by a public water system shall meet the respective county or municipality's minimum requirements for fire hydrants installation (HSCO §170-20).

5. **Farmland Preservation District.** The Final Plat(s) should include a notation that the property is within ½ mile of land in a Farmland Preservation District (HCSO §170-35 and Appendix 7).
6. **Final Plat Requirements.** The final plat(s) must meet the requirements of Appendix 7 of the HCSO.

Review Agency Comments

1. **Comments from Emergency Services.** Rocky Hyder stated that the NC Fire Prevention Code requires a fire hydrant located within 400 feet of any portion of a commercial building and that the access roads must provide 13 feet 6 inches vertical clearance and extend to within 150 feet of any portion of a commercial building.
2. **Comments from NCDOT.** Josh Lanning with NCDOT stated that the developer must apply for and obtain a street and driveway access permit from the district engineer's office prior to connecting any roads or drives to a NCDOT maintained road. He further stated that if at anytime in the future the developer plans to have the roads within the subdivision added to the State maintained system all roads within the development must be listed as public when filed at the Register of Deeds Office.
3. **Comments from Zoning Administration.** Natalie Berry, Zoning Administrator stated that although the present zoning is open use and does regulate commercial development, all uses are acceptable except the ones she referenced in the Zoning Ordinance and went on to note that hazardous waste disposal facilities and radioactive waste disposal facilities are prohibited.

Chairman Pearce made a motion that the Planning Board find and conclude that the Combined Master Plan and Development Plan complies with the provisions of the Subdivision Ordinance except for those matters addressed in Staff Comments section of the Staff Report that need to be addressed; and further move that the Combined Master Plan and Development Plan be approved subject to the following condition: that the Planning Board after discussion on the buffering issue, determined that buffering between the commercial and residential site, which is owned by the property owner would not be required. Mike Cooper seconded the motion. All members voted in favor.

Combined Master and Development Plan – Mont Shannin (2007-M23) – 13 Single-Family

Residential Lots Located off Fruitland Road – Jon Laughter, Laughter, Austin and Associates, P.A., Agent for Tony A. Bloemsma, Owner. Presentation by Matt Cable. Mr. Cable stated that Mr. Jon Laughter with Laughter, Austin & Associates, P.A., agent, on behalf of Tony A. Bloemsma, owner, submitted a Combined Master and Development Plan and major subdivision application for a project known as Mont Shannin. The project site is located on approximately 9.69 acres (portions of parcel 9680-16-9964 and all of parcel 9680-17-7283) located off Fruitland Road. The applicant is proposing a total of 13 lots that will be used for single-family residential purposes.

Mr. Cable stated that the site is currently zoned Open Use (OU) which does not regulate the residential use of land. The site is not located in a water supply watershed district or the floodplain.

Public roads are proposed to serve the project site. Private shared wells and private individual septic are proposed to serve the project site.

He mentioned that the plan is a Master and Development Plan. The purpose of Master Plan review is to present the overall development concept for a project and provide general information about the project. When reviewing the Master Plan Staff took into consideration the recommendations of the Henderson County Comprehensive Plan, Proposed LDC and existing County Ordinances.

Master Plan Comments include the following:

Mr. Cable said Comment 1 relates to the recommendations of the CCP. The Future Land Use Map of the CCP shows the project site as being within the RTA which recommends a general density of five (5) or fewer acres per residential dwelling unit. The project would have an average density of 1.33 units per acre. The proposed densities/lot sizes are in keeping with those recommended by the CCP.

He said consistency with the LDC is discussed in Comment 2. The project site is located in the proposed R2MH zoning district. The LDC allows for a density of one (1) unit per acre for single-family residential development. According to the plan, the project would have an average density of 1.33 units per acre. This would not be in keeping with the densities generally proposed for the property by the LDC, being that the proposed development is denser than the LDC would allow.

Development Plan Comments include the following:

Mr. Cable said standard Comments apply and are noted in Comments 1 through 7 and 9 (Sedimentation and Erosion Control Plan, Public Roads, Road Name, Site Stabilization, Driveway Permit, Farmland Preservation District, Soils Map, and Final Plat Requirements).

He said Comment 8 discusses Existing Structures. The southern boundary of the subdivision dissects two (2) existing structures, where one such structure is accessed through the Berna Knoll Mobile Home Park. These structures must be moved prior to the recordation of a final plat. Movement of any structure within the manufactured home park must be in compliance with Chapter 114 of the Henderson County Code (Manufactured Home Park Ordinance) or other applicable regulation at the time the structure is moved.

Review Agency Comments:

1. **Comments from the Fire Marshal.** Rocky Hyder of the Henderson County Fire Marshal's Office submitted comments regarding the project. Mr. Hyder's comments are related to existing established dry hydrants, access roads, and the entry gate ordinance.

There was discussion on the fire hydrant/fire suppression issue and that the Planning Board that the applicant could be required to install a dry fire hydrant system, but they felt that the type and location of which should be determined by the Fire Marshal. The main tract from which this subdivision is made contains an existing pond, so the applicant must work with the Fire Marshal to determine the adequacy of the adjacent parcel's permanent surface water supply. Should it be determined that the permanent surface water supply is adequate, the required dry fire hydrant system must be installed and a road to the water source providing permanent all-weather access to the water source that is adequate for fire-fighting equipment shall be required, if applicable. The applicant should submit the County Fire Marshal's determination of adequacy and any dry fire hydrant system approvals to the Planning Department prior to Final Plat approval.

2. **Comments from Property Addressing.** Curtis Griffin of the Henderson County Property Addressing Office submitted comments regarding the project. Mr. Griffin's comments reflect the need for a road name submittal to the Property Addressing Office.
3. **Comments from North Carolina Department of Transportation.** Josh Lanning, Assistant District Engineer with NCDOT submitted comments regarding the project. Mr. Lanning's comments reflect the need for obtaining a NCDOT driveway permit for the connection to

Fruitland Road (SR 1574) and the need for NCDOT review of road design because the road is proposed to be public.

After discussion among Board members and Jon Laughter, agent, Chairman Pearce made a motion that the Planning Board find and conclude that the Combined Master and Development Plan appears to comply with the provisions of the Subdivision Ordinance; and further move that the Combined Master and 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 and that the Planning Board requested that the applicant could be required to install a dry fire hydrant system, but they felt that the type and location of which should be determined by the Fire Marshal. The main tract from which this subdivision is made contains an existing pond, so the applicant must work with the Fire Marshal to determine the adequacy of the adjacent parcel's permanent surface water supply. Should it be determined that the permanent surface water supply is adequate, the required dry fire hydrant system must be installed and a road to the water source providing permanent all-weather access to the water source that is adequate for fire-fighting equipment shall be required, if applicable. The applicant should submit the County Fire Marshal's determination of adequacy and any dry fire hydrant system approvals to the Planning Department prior to Final Plat approval. Renee Kumor seconded the motion. Chairman Pearce, Mike Cooper, John Antrim, Renee Kumor, Tommy Laughter, Stacy Rhodes and Jonathan Parce voted in favor of the motion. Gary Griffin opposed the motion. The motion carried 7 – 1.

Revised Development Plan - Cummings Cove, Valley View Section (2007-M27) – 29 Single-Family Residential Lots Located off Cummings Cove Parkway - Will Buie, William Lapsley and Associates, Agent for Cummings Cove Company, LLC, Owner. Presentation by Parker Sloan. Mr. Sloan stated that Mr. Will Buie with William Lapsley and Associates, agent, submitted a revised Development Plan for an approved section of Cummings Cove titled Valley View. The Valley View section was originally approved and plated before Henderson County adopted the first subdivision ordinance in the 1980's. The Valley View section has been revised and approved multiple times in the past, but it was never developed. The most recent version of the Master Plan, approved by the Planning Board on December 21, 2006, showed the Valley View section (titled Mountain Fairways on the revised Master Plan) with 34 units. In 2002 staff administratively approved the last Development Plan for Valley View which showed a total of 29 lots with a similar design to what is being proposed. The 2002 Development Plan approval has since expired.

The applicant is now requesting re-approval of the expired Development Plan for Valley View. The Plan shows a total of 29 lots on 8.81 acres of land and has been revised to show a slightly different layout than the previously approved Development Plan. Valley View is in the Open Use (OU) zoning district which does not regulate the residential use of land. The applicant has proposed private roads, public water (City of Hendersonville) and private sewer.

Staff has reviewed the Development Plan for Valley View for conformance with the Henderson County Subdivision Ordinance (HCSO) and offers the comments that follow.

1. **Final Plat Requirements.** The final plat(s) must meet the requirements of Appendix 7 of the Subdivision Ordinance.
2. **Private Roads.** Because private roads are proposed, 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.* (HCSO 170-21B and Appendix 7)
3. **Soil Erosion and Sedimentation Control.** The Developer should submit notice from NCDENR that a soil erosion and sedimentation control plan has been received or provide documentation that no plan is required prior to final plat approval.

4. **Stream Setbacks.** A minimum thirty-foot setback for buildings or other structures is required along all perennial streams. The thirty-foot setback must be noted on the final plat (HCSO 170-37A).
5. **Road Grade.** A professional engineer or professional land surveyor must certify on the final plat that no portion of private roads have grades that exceed the maximum allowable grade, which is 18 percent grade for paved local residential roads and 16 percent grade for paved collector roads.
6. **Water Supply.** The applicant has proposed public water (City of Hendersonville) and private sewer. According to the HCSO, the applicant must provide evidence that the water supply and sewer system plans have been approved by the appropriate agency. All public or private (community) water supply and sewerage systems shall be installed and shall meet the requirements of the Henderson County Health Department or other government authorities having jurisdiction thereof. The development plan may be approved contingent on final approval from such agencies; however, the final plat shall not be approved until all such final approvals have been obtained. Any subdivision served by a public water system shall meet the respective county or municipality's minimum requirements for fire hydrants installation (HSCO 170-20).

Master Plan Comments

7. **Master Plan.** Mr. Sloan stated that the applicants had submitted a revised Master Plan to staff for approval.

Review Agency Comments

8. **Comments from the Fire Marshal.** Rocky Hyder, Fire Marshal submitted comments regarding fire hydrant that should be located within 1000 feet of any residential structure and should have a minimum flow rate at 20 psi residual. Mr. Sloan said that the Planning Board can only require the applicant to meet the minimum standards of the Henderson County Subdivision Ordinance; the Planning Board may not have the authority to require any additional standards.
9. **Comments from Property Addressing.** All road names must be approved by the Property Addressing Office.

Mr. Antrim noted that he is a property owner in this development, but does not live in that area.

Board members inquired as to the number of lots in this development and Mr. Will Buie, agent for the developer, was not sure of the number of homes that have been built at present, but the Master Plan proposes a total of 574 residential units.

Tommy Laughter made a motion that the Planning Board find and conclude that the Development Plan complies with the provisions of the Subdivision Ordinance, except for those matters addressed in Staff Comments section of the Staff Report which need to be addressed, except for Comment 7, which has been satisfied as indicated by Staff. Gary Griffin seconded the motion and all members voted in favor.

Combined Master and Phase II Development Plan – Morning Glory Place (2007-M22) – 8 Single-Family Residential Lots Located at the Intersection of Lynn Estate Road and Chelsea Hill Lane – David Hill of Hill and Associates, Surveyors, P.A. for Mr. Christopher Lindsey, Agent on behalf of Mr. Joseph D. Laughter, Owner. Presentation by Parker Sloan. Mr. Sloan stated that Mr. David Hill of Hill and Associates Surveyors, P.A. for Mr. Christopher Lindsey, agent, on behalf of Mr. Joseph D. Laughter, owner, submitted the Combined Master and Phase II Development Plan and major subdivision application for a project known as Morning Glory Place. Morning Glory Place was previously approved to contain five (5) lots on approximately 3.56 acres. Phase II is a proposed expansion to the originally approved major subdivision. Phase II is located on a 6.0 acre portion of a parcel located at the intersection of Lynn Estate Road and Chelsea Hill Lane. The applicant is proposing an additional 8 lots in Phase II that will be used for single family residential purposes. The site is currently zoned Open Use (OU) which does not regulate the residential use of land. The site is not located in a water supply watershed district or the floodplain. Private roads are proposed to serve the project site. Private individual wells and private individual septic are proposed to serve the project site.

Master Plan Comments:

According to Section 170-16B of the Henderson County Subdivision Ordinance (HCSO), the purpose of a Master Plan is to present the overall development concept for a project and to provide general information about the project to allow for assessment of its impact on growth and development of the County, environmental quality, land values, natural features, etc. When reviewing the Master Plan it is important to consider that all land may not be suited to be subdivided for the purposes of dense development (HCSO §170-3) Staff has reviewed the submitted Master Plan for Morning Glory Place, taking into consideration the recommendations of Henderson County's Land Use Plan (the Henderson County 2020 Comprehensive Plan) and Draft Land Development Code:

1. **County Comprehensive Plan (CCP).** The Future Land Use Map of the CCP shows the project site as being located in the Rural/Urban Transition Area (RTA). The Rural/Urban Transition designation of the Growth Management Strategy is applied to the project site. The RTA is intended to remain predominantly rural with a general density of five (5) or fewer acres per residential dwelling unit (average lot sizes of 5 or fewer acres per unit). According to the Master Plan, the project would have an average density of 1.36 units per acre (average lot size of 0.74 acres). The proposed densities/lot sizes are in keeping with those recommended by the CCP. The CCP states that, "the primary factor preventing urban development in the RTA is the absence of sewer and water service" (2020 CCP, Pg. 130). The plan indicates that public water and sewer service will not be available to the development.
2. **Land Development Code (LDC).** According to Proposed Draft 9 of the Land Development Code Zoning Map the proposed project site for this development is located entirely in the Residential Zoning District 2 – Manufactured Housing (R2MH). The current draft of the Land Development Code (LDC) allows for a density of one (1) unit per acre (average lot size of one (1) acre) for single-family residential development.

Mr. Sloan pointed out, according to the plan, the project would have an average density of 1.36 units per acre (average lot size of 0.74 acres), this would not be in keeping with the densities generally proposed for the property by the Land Development Code, being that the proposed development is denser than the LDC would allow. Since differences exist between proposed densities with the LDC and the CCP, if the LDC is adopted as proposed, the CCP may need to be amended to be consistent with the LDC.

Development Plan Comments:

1. **Sedimentation and Erosion Control Plan.** The Applicant shall submit notice from NCDENR that a soil erosion and sedimentation control plan has been received or provide documentation that no plan is required prior to beginning construction (HCSO 170-19).
2. **Private Roads.** Because private roads are proposed, the final plat(s) must contain a note stating the following: *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.* (HCSO 170-21B and Appendix 7).
3. **Private Road Standards.** The Applicant has provided a cross section for the proposed roads (Morning Lane and a limited local road). The cross section for Morning Lane indicates that this is to be a "local road." The proposed local road and limited local roads (proposed to be stone) appear to meet all requirements of the HCSO. All of the subdivision roads must be designed and constructed to the minimum standards of §170-21 of the HCSO (§170-21 and Table 1).
4. **Road Grade.** The Applicant has proposed private stone roads for the subdivision. The maximum road grade for private local and limited local residential subdivision roads constructed of stone is 15 percent. A professional engineer or professional land surveyor must certify on the Final Plat that no portion of the road has a grade that exceeds 15 percent or submit a final as-built graded center line profile showing grade and alignment of the road (HCSO §§170-13A[5], 170-21 Table 1 and 170-21E).
5. **Drainage.** All 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 (HCSO § 170-21D).
6. **Site Stabilization.** All areas disturbed by the construction of a private road, including cut and fill slopes, shoulders and ditch banks, must be seeded in permanent vegetation to stabilize the soil and prevent erosion. Such seeding should be done as soon as feasible following road construction (HCSO §§170-13A[7] and 170-22).
7. **Stream Setbacks.** A minimum thirty-foot setback for buildings or other structures is required along all perennial streams. The thirty-foot setback must be noted on the final plat (HCSO 170-37A).
8. **Fire Suppression.** According to the Henderson County Subdivision Ordinance (170-20C), for any major subdivision without a fire suppression rated water system, that either has or is adjacent to an adequate permanent surface water supply, the applicant may be required to install a dry fire hydrant system, the type and location of which is to be determined by the County Fire Marshal. A road to the water source providing permanent all-weather access to the water source that is adequate for fire-fighting equipment shall be required, if applicable.
9. **Soils Map.** The proposed phase has an average lot area of less than one acre. No public or community sewer is available. The applicant should review a soils map of the property and be knowledgeable of the suitability of ground absorption systems for his development (HCSO §170-37E).
10. **Farmland Preservation District.** The Final Plat(s) should include a notation that the property is within ½ mile of land in a Farmland Preservation District (HCSO 170-35 and Appendix 11).
11. **Final Plat Requirements.** The Final Plat(s) must meet the requirements of Appendix 7 of the Subdivision Ordinance.

Chairman Pearce asked if the road standards would change because of the change from 5 lots to 13 lots on the original road. Staff stated that the first 5 lots off of Lynn Estate Road services another subdivision and is actually property on that is on either side and has been developed in different phases. The road would meet the standards made for local residential roads as it exists now and that is why Staff is not suggesting he would need to upgrade. Chairman Pearce said that on an increase in a subdivision, he suggested that Staff should address that as part of the

application just so that the Board would know that it had been looked at. Mr. Cooper asked whether Morning Lane is a new proposed road, because half of the right-of-way is on the adjacent property. Are they putting that road in preparation for future development? Mr. Cable interceded and said that he had spoken to the applicant about this issue and the owner wanted to be able to utilize that road for future development as he owns that property, which is being subdivided by the applicant and he is aware that the road can only service a certain amount of lots. He additionally said that he could use the road for the lots that he is proposing there, Lots 10, 9, 8 and 7 and also Lot 11 as well as the future development. Mr. Cable added that if the owner were to develop that further and subdivide that further, he would be limited or would have to improve that road.

Chairman Pearce asked at what time when you have the same ownership would Staff start looking at a Master Plan instead of continuing piece-mealing future development. Stacy Rhodes addressed that issue and stated that he worked on the first plat and was presented as a major subdivision because at the time we cut off three acres from Joseph Laughter's property, it wasn't disclosed that it could be further subdivided. It was a one-lot minor subdivision. We then needed to re-present the plan to the Planning Board as a major subdivision and this is an additional way of Phase 2. Mr. Laughter owned this property previous to Mr. Chris Lindsey, so they share that road right-of-way for access to Mr. Laughter's remaining portion, otherwise he is cut-off from Lynn Estate Road. Chairman Pearce said that Staff might want to consider in the Land Development Code when there is any contiguous property owned by the same individual whether they should be included in any master plan approvals.

Chris Lindsey, agent for the owner, Joseph Laughter stated that he is not planning on developing the property that is indicated as future development. He added that he is planning on buying the six acres from Joseph Laughter, but wanted to wait until he received the approval of the eight lots. He added that eventually Mr. Laughter might sell the rest as one whole piece, but he said neither him nor Mr. Laughter plan on developing it. He said that he just needed an access from his property.

Review Agency Comments:

1. **Comments from the Fire Marshal.** Rocky Hyder of the Henderson County Fire Marshal's Office submitted comments regarding the project. Mr. Hyder's comments are related to the perennial stream as a source for static water supply points. According to the HCSO (§170-20C), for any major subdivision without a fire suppression rated water system, that either has or is adjacent to an adequate permanent surface water supply, the applicant may be required to install a dry fire hydrant system, the type and location of which is to be determined by the County Fire Marshal. The applicant must work with the County Fire Marshal to determine the adequacy of the onsite permanent surface water supply. Should it be determined that the permanent surface water supply is adequate, the required dry fire hydrant system (determined by the County Fire Marshal) must be installed. A road to the water source providing permanent all-weather access to the water source that is adequate for fire-fighting equipment shall be required, if applicable. The applicant should submit the County Fire Marshal's determination of adequacy and any dry fire hydrant system approvals to the Planning Department prior to Final Plat approval

Mike Cooper made a motion that the Planning Board find and conclude that the Combined Master and Phase II Development Plan appears to comply with the provisions of the Subdivision Ordinance; and further move that the Combined Master and Phase II 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. Gary Griffin seconded the motion and all members voted in favor.

Combined Master and Development Plan – The Farms at Waters Edge (2007-M05) – 15 Single-Family Residential Lots Located off Eade Road – Mark Corn, Associated Land Surveyors and Planners PC., Agent for Terry Baker with Eade Road Investments, LLC, Owner. Presentation by Matt Cable.

Mr. Cable stated that Associated Land Surveyors, agent, on behalf of Terry Baker with Eade Road Investment, LLC, owner, submitted the Combined Master and Development Plan for The Farms at Waters Edge. Approval of the Farms at Waters Edge would replace the Master and Development Plan approval for the Overlook at Waters Edge which occurred at the May 17, 2007 Planning Board Meeting.

Mr. Cable said the project is located on 76.29 acres of land off Eade Road. The applicant is proposing a total of 15 lots for single-family residential purposes to be developed in a single phase. The site is currently zoned Open Use (OU) which does not regulate the residential use of land. The site is not located in a water supply watershed district. The southern portion of the property borders the French Broad River and a majority of this area of the parcel is located within the 100-year floodplain or floodway. A common area is proposed in the southern portion of the floodplain to include an equestrian riding rink and riding trails.

He said private roads are proposed to serve the project site. Public water (City of Hendersonville) and private individual septic are proposed to serve the project site.

The plan is a Master and Development Plan. The purpose of Master Plan review is to present the overall development concept for a project and provide general information about the project. When reviewing the Master Plan Staff took into consideration the recommendations of the Henderson County Comprehensive Plan, Proposed LDC and existing County Ordinances.

Master Plan Comments:

Mr. Cable stated that Comment 1 relates to the recommendations of the CCP. The CCP indicates that the project site contains conservation area due to floodplain/floodway. The Master Plan shows most of this land is to be in common area. This area is in the RTA which recommends 5 or fewer acres per residential dwelling. The applicant is proposing an average lot size of 5.08 acres so that the proposed densities/lot size is in keeping with CCP recommendations.

Mr. Cable said in Comment 2, the LDC Zoning Map shows R2MH applied to the property, which allows for a density of one (1) unit per acre. The proposed density does not exceed the recommendations of the LDC.

The Flood Damage Prevention ordinance is noted in Comment 3. Staff recommends the reconfiguration of lots within the proposed development for the purposes of increasing the amount of non-floodplain and non-floodway land contained by Lots 6 through 9.

Development Plan Comments:

Mr. Cable said standard comments apply and are noted in Comments 1, 2 (Sedimentation and Erosion Control Plan & Water and Sewer), and 4 through 7 (Site Stabilization, Private Roads, Farmland Preservation District, and Final Plat Requirements).

Comment 3 deals with Future Access. When the Applicant submitted the application for The Overlook at Waters Edge, a 113 unit development, and staff recommended that the applicant provide a stub road to serve as a potential future point of access for emergency response vehicles in the event of an emergency. The Planning Board made it a condition of approval of The Overlook at Waters Edge, that “the applicant provides a “stub road” as a potential future point of access for emergency vehicles at the location of the flag lot labeled “future development.” Such road and right-of-way shall conform to the minimum requirements of the HCSO §170-21.” Mr. Cable said the Board may again wish to discuss a potential future access point for emergency response vehicles with the applicant, but can only require the applicant to meet the minimum standards of the Subdivision Ordinance and may not have the authority to require any additional standards.

Review Agency Comments

1. **Comments from the Fire Marshal.** Rocky Hyder of the Henderson County Fire Marshal's Office submitted comments regarding the project and his comments reflect hydrant requirements and the requirements of the entry gate ordinance.
2. **Comments from the Zoning and Floodplain Administrator.** Natalie Berry, Zoning and Floodplain Administrator of the Code Enforcement Services Office submitted comments regarding the project and reflected on the presence of floodplain and floodway on the property and the requirements of the Flood Damage Prevention Ordinance as they relate to the project.
3. **Comments from Hendersonville Water and Sewer Department.** Lee Smith, Director of the Hendersonville Water and Sewer Department, submitted comments regarding the project. Mr. Smith's comments indicate that city water is available and will require a water line extension with potential additional water system upgrades.
4. **Comments from Environmental Health.** W. Scott Foster of the Henderson County Environmental Health Office submitted comments regarding the project. Mr. Foster's comments reflect the need for septic system evaluations and soil evaluations.
5. **Comments from North Carolina Department of Transportation.** Josh Lanning, Assistant District Engineer with NCDOT submitted comments regarding the project. Mr. Lanning's comments reflect the need for obtaining a NCDOT driveway permit for the connection to Eade Road.

Mr. Cable said Staff is recommending approval of the Combined Master and Development Plan subject to the developer addressing any issues raised by the Planning Board and addressing the comments listed in the Staff Report.

Terry Baker said that he could construct a stub road but doesn't feel that there is a need. After some discussion among Board members, they felt that they would not require the stub road as a future point of access for emergency vehicles.

Renee Kumor made a motion that the Planning Board find and conclude that the Combined Master and Development Plan appears to comply with the provisions of the Subdivision Ordinance; and further move that the Combined Master and 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 and that the Board is not requiring the stub road for a future point of access. Tommy Laughter seconded the motion and all members voted in favor.

Revised Development Plan - Crystal Creek (2006-M40) – Amendment to change Crystal Dawn Drive from a Public Road to a Private Road – Mark Corn, Associated Land Surveyors, Agent for Etowah Developers, LLC. Presentation by Matt Cable. Mr. Cable said Mr. Corn is requesting that the Planning Board amend the original Development Plan approval to allow Crystal Dawn Drive, which serves lots 34 – 36 to be changed from a public road to a private road. Mr. Cable said according to Mr. Corn, NCDOT will not accept this road because it only serves three lots. Mr. Corn is also requesting that the Planning Board approve an alternate turnaround at the end of Crystal Dawn Drive. The original Development Plan was approved by the Planning Board on September 21, 2006 and the original approval had a condition that all roads were to be public and should be designated and built accordingly.

Staff Comments:

1. **Alternate Cul-De-Sac Design.** The applicant has proposed an alternate turnaround for Crystal Dawn Drive. According to the Subdivision Ordinance, alternative culs-de-sac may be approved by the Planning Board based on sound engineering design and public safety concerns. Cameron Baker with Associated Land Surveyors stated that they have submitted a revised Development Plan to allow Crystal Dawn Drive, which serves lots 34, 35 and 36 be changed from a public road to a private road, as NCDOT will not accept this road as it only serves three lots and will be built to private local residential road standards. He also mentioned that the applicant has proposed an alternate turnaround for Crystal Dawn Drive because of the grade and will be built to the specifications noted on the plan.

Chairman Pearce opened public input on this subject.

Angela Fernandini. Ms. Fernandini was concerned regarding the decision of changing the road in this development from public to private. Chairman Pearce said that the developer is totally within their rights to have their roads changed to private, as the County has no requirement that the roads have to be public. He said the minimum standard for a subdivision is private roads and for a developer to request public roads, they are upgrading the standards of the Subdivision Ordinance. He said in this particular case it is more of a correction to change the wording so that it is more a legal clarification than a developmental change. Mr. Starr clarified that the decision whether this road be a public or private road was made by NCDOT.

Jonathan Parce made a motion that the Planning Board find and conclude that the revised Development Plan appears to comply with the provisions of the Subdivision Ordinance; and further move that the revised Development Plan be approved subject to the following conditions: that the road, Crystal Dawn Drive which serves lots 34, 35 and 36 be changed from public road to private road and that the final plat contain the proper statement accordingly and that an alternate turnaround for Crystal Dawn Drive be approved and built to the specifications noted on the plan. Renee Kumor seconded the motion and all members voted in favor.

Master Plan Review – Couch Mountain (2007-M24) – 447 Lots (297 Single-Family Residential Lots; 75 Duplexes (150 Dwelling Units) Located off Clark Gap Road – Eric McAbee, McAbee and Associates, Professional Land Surveyors, Agent for Couch Mountain Properties, LLC, Owners. Presentation by Matt Cable. Mr. Cable stated that Eric McAbee, on behalf of McAbee and Associates Professional Land Surveyors, agent for property owner, Couch Mountain Properties, LLC, submitted a Master Plan and major subdivision application for a project known as Couch Mountain Estates. The project site is located on 296 acres of land, accessed off of Clark Gap Drive. A total of 447 lots are proposed including 297 single-family dwelling lots and 75 duplexes containing 150 dwelling units. The applicant is proposing to develop the project in 10 phases. It also appears that the applicant is also proposing that the northwestern portion of the property remain in common area/open space.

Mr. Cable said the site is currently zoned Open Use (OU) which does not regulate the residential use of land. The project site is not located in a water supply watershed district or the floodplain. Private roads are proposed to serve the subdivision. Public water through the City of Hendersonville and public sewerage through Cane Creek Sewer District is proposed to serve the development.

Mr. Cable stated that According to the Henderson County Subdivision Ordinance all land may not be suited to be subdivided for the purpose of dense development due to severe topographic conditions, inadequate road access, distance from services, and unique natural areas. He said the purpose of a Master Plan is to present the overall development concept for a project and to provide general information about the project to allow for assessment of its impact on growth and development of the County, environmental quality, land values, natural features, etc. Staff has

reviewed the submitted Master Plan for Couch Mountain Estates, taking into consideration the recommendations of Henderson County's Land Use Plan (the Henderson County 2020 Comprehensive Plan) and reviewing the plan for conformance with Henderson County's Ordinances and offers the following comments:

1. **County 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 a majority of the project site, largely due to slope and protected mountain ridge. Slopes within the project site appear to be in excess of 25 percent, with large portions having slopes in excess of 45 percent. According to the plan, those steep slope areas in the northwest portion of the project site appear to be in 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" (2020 CCP, Pg. 134). The Planning Board may wish to discuss with the applicant the possibility of reconfiguring lots or the design of the development in order to provide that steep slopes remain in common area/open space. Staff recommends that all slopes in excess of 45 percent remain in common area/open space. Further, as noted in Section 170-3 of the HCSO, the project site may not be suited to be subdivided for the purpose of dense development due to these severe topographic conditions and unique natural areas.

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. According to the plan, the project would have an average density of 1.50 units per acre. The proposed densities are significantly higher and the lot sizes are significantly reduced from 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." Should public water and sewer be provided, as indicated by the Master Plan, this may result in a reclassification of the project site to "Rural/Urban Transition Area" or "Urban Services Area" which would permit the proposed densities.

2. **Protected Mountain Ridges.** Mr. Cable said a protected mountain ridge was located on the subject property and therefore the Protected Mountain Ridge Ordinance would apply on site.

3. **Water and Sewer.** The applicant has indicated that public water and sewer are proposed for the development. It appears the nearest existing waterline is approximately 5,100 feet straight-line distance from the project site and the nearest existing sewer line is approximately 6,200 feet straight-line distance from the project site. Extensions proposed by the Water and Sewer Master Plan do not appear to place the project site any closer to public water or sewer. The Planning Board may wish to discuss with the applicant the feasibility and practicality of extending water and sewer lines to the project site. Should the Planning Board wish to approve the Master Plan, Staff recommends approval be contingent upon the applicant requesting water and sewer line extensions within 6 months, and the Board of Commissioners' approval of the required water and sewer line extensions.

4. **Land Development Code (LDC).** According to Proposed Draft 9 of the Land Development Code Zoning Map, the proposed project site for this development is located entirely in the proposed Residential Zoning District 3. The current draft of the Land Development Code allows for a density of 0.66 units per acre. According to the plan, the project would have an average density of 1.5 units per acre. This would not be in keeping with the densities generally proposed for the property by the Land Development Code, being that the proposed development is denser than the LDC would allow. To be in keeping with the LDC the applicant could propose, as a maximum, 197 units. This would require eliminating approximately 250 of the currently proposed units. The Board of Commissioners is currently considering amendments to the Draft LDC language which would reduce the permitted density on slopes in excess of 35 percent to 1 unit per 3 acres.

Approximately 0.47 percent of the project site, 138 acres, contains slopes in excess of 35 percent. To be in keeping the LDC, including this provision for development in areas of steep slope, the applicant could propose, as a maximum of 150 units (104 units on 158 acres containing slopes less than 35 percent; plus 46 units on 138 acres containing slopes in excess of 35 percent). This would require eliminating approximately 297 of the proposed units. Should public water and sewer be provided, as indicated by the Master Plan, this may result in a reclassification of the project site to "Residential Zoning District 2 - Manufactured Homes (R2-MH)" or possibly "Residential Zoning District 1 (R1)" which may permit higher densities. Since differences exist between proposed densities with the LDC and the CCP, if the LDC is adopted as proposed, the CCP may need to be amended to be consistent with the LDC.

5. Road Frontage and Existing Off-Site Access. Any tract of land to be subdivided must have frontage on an existing public road or a private right-of-way to the public road (HCSO §170-28). The tract of land does not have frontage on a public road or a private right-of-way to a public road. The plan shows a right-of-way extending approximately 1,600 feet from the project site, through another property (owned by Thelma J. McMinn) to Clark Gap Drive. Henderson County records do not show the existence of any such right-of-way; and proof of such must be provided prior to obtaining any development plan approval. 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 (proof of such must also be provided prior to obtaining any development plan approval). The existing road: has a road grade which, in certain areas, appears to exceed 18 percent; is one (1) lane; lacks shoulders; and lacks turnarounds. The Planning Board may also wish to discuss with the applicant the existing grades and conditions of Clark Gap Drive.

The Board members reviewed a large map of the plan regarding road frontage and off-site access. There was considerable discussion among Board members.

Mr. Cable stated that according to the Henderson County Subdivision Ordinance, "In the event that five or more lots may be created and the grade of the road at any point in the off-site access right-of-way exceeds eighteen-percent grade, then the Planning Board will review the application on a case-by-case basis." Further, in accordance with Section 170-3 of the HCSO, the project site may not be suited to be subdivided for the purpose of dense development due to inadequate road access. He said should the Board wish to approve the Master Plan, Staff recommends approval be contingent on the applicant providing the Planning Department with a certification from an Attorney which demonstrates that the applicant has the legal right to access the property and subdivision as shown on the Master Plan through Clark Gap Drive and the proposed right-of-way through the McMinn property.

Review Agency Comments

1. Comments from the Fire Marshal. Rocky Hyder of the Henderson County Fire Marshal's Office submitted comments regarding the project. Mr. Hyder's comments are related to fire hydrants, access roads, the entry gate ordinance, and the possible addition of a fire station for Fletcher Fire & Rescue.

2. Comments from the Engineering and Facility Services. Marcus Jones, Director of Engineering and Facility Services submitted comments regarding the project. Mr. Jones' comments reflect concerns with sewer extensions by the Cane Creek Sewer District to the project site.

3. Comments from Property Addressing. Curtis Griffin of the Henderson County Property Addressing Office stated that street names are required.

Mr. Andy Anderson, owner of the property along with his wife, addressed the water and sewer issues and the road issues. He stated that regarding the water and sewer, he said that he had

been talking with the water department but nothing had been done formally. He stated that he has not approached anything dealing with the sewer district. He said coming off of Hutch Mountain Road, he owns the first three acres, so most of the land on Clark Gap Drive he owns. He said that he had gone to see Mrs. McMinn and she wanted to know where they were going to enter her property. He showed where he owns the property in relation to where Ms. McMinn owns her property and further discussed the road frontage and right-of-way issue.

Chairman Pearce, along with the other Board members, was concerned about the inadequate road frontage and lack of proof of ownership of right-of-way through the properties which provide access to the subdivision. Chairman Pearce also stated that he felt the proposed densities were too high and it would be impossible to develop this project without public water and sewer, which the Board felt is not likely to be available to the project. Chairman Pearce made a motion that the Planning Board find and conclude that the Master Plan does not appear to comply with the provisions of the Subdivision Ordinance; and further moved that the Master Plan be denied because of the issues mentioned. Renee Kumor seconded the motion and all members voted in favor.

Development Plan Review – Royal Ridges of Carriage Park (Sections 7 and 8) – 46 Townhouse Units Located off Carriage Park Way – McGill Associates, Agent for Carriage Park Associates, LLC, Owner. Presentation by Matt Cable. Mr. Cable stated that Carriage Park, Planned Unit Development, is located on 392.3 acres of land off of Highway 191 and is approved for a total of 695 residential units. Carriage Park was approved under Special Use Permit # SP-93-13 granted on October 11, 1993 by the Henderson County Board of Commissioners. Special Use Permit # SP-93-13 has been amended six (6) times for various reasons.

Mr. Hamlin with Carriage Park Associates, LLC, the Applicant submitted the original application and Development Plan for Section 7 on March 20, 2006. Section 7 was originally located on 9.30 acres of land to be located off of Carriage Commons Drive through Section 6. The Applicant proposed 34 attached townhouse units in Section 7. The Planning Board found that, as proposed, Section 7 was in contravention to certain access requirements of SP-93-13, as amended. Section 7 was never approved. Mr. Hamlin submitted a new Development Plan for Section 7 on June 13, 2007. The new Plan shows a total of 46 attached townhouse units on 15.1 acres of land. The entrance for Section 7 is proposed directly off of Carriage Park Way to the east of Section 6 and adjacent to the area labeled as the “quarry.” The applicant has added approximately 5.8 acres of land to the originally proposed boundary of Section 7. This land comes from property owned by Carriage Park Associates, LLC and appears to be a portion of development parcel Section 8. According to County tax records, this area is labeled as future development. Section 8 was never approved for development. Mr. Hamlin has submitted a letter stating that since he has added acreage to Section 7 from Section 8 he will no longer develop Section 8 and it will remain as open space. It appears the remaining area left in Section 8 is approximately 11.8 acres. The entrance road for Section 7, High Plateau Court, to the intersection of Fortress Mountain Court will be built to minor collector road standards. Fortress Mountain Court and the remaining portion of High Plateau Court will be built to neighborhood drive standards as defined in the Conditions Governing Special Use Permit #SP-93-13. The Applicant has proposed public water and public sewer provided by the City of Hendersonville to serve Section 7, which appears to be extended to the development parcel boundaries. The project area is located in the R-20 Zoning District and the Water Supply Watershed IV district. It appears that the applicant has met all the applicable setback requirements found in the Schedule of Site Standards for SP-93-13 as amended.

Mr. Cable said Plat slide 2516, recorded in September of 1997, shows the area located around the proposed entrance to Section 7 as open space for Carriage Park. According to SP-93-13-A3, open space is considered a category of common area and is for the use of Carriage Park residents and their guests. This area is not limited common area which would be for the exclusive use of Section 6 residents. This open space was most likely put on record with Section 6 to offset the density of Section 6. According to the original development plans for Section 6, this open space falls outside of the boundaries of Section 6. According to County tax records this area is owned by Carriage

Park Associates, LLC and has not been transferred to the Homeowners Association. It appears that no other areas of Section 7 are located in recorded open space. Planning staff requested that the applicant revise the Plan for Section 7 to more clearly depict the location of the platted open space and the boundary of Section 7. This revision reduces the overall acreage for Section 7 from 15.1 acres to 14.28 acres. This revision was requested when staff learned about the platted open space.

As part of the notice requirements of Special Use Permit #SP-93-13, the Planning Department was to notify any owners of property located outside of Carriage Park that are within 100 feet of the proposed Section. Mr. Hamlin submitted notice to the Planning Department on June 13, 2007 that there were no such owners. The Planning Department sent notice on July 5, 2007 to Carriage Park Associates, LLC to be posted at the gatehouse and forwarded by the Secretary of the Association to the Carriage Park Homeowners Association as required by SP-93-13 as amended.

STAFF COMMENTS

Staff has reviewed the Development Plan for Section 7 for conformance with the Henderson County Subdivision Ordinance (HCSO), the Henderson County Zoning Ordinance (HCZO), the Henderson County Water Supply Watershed Ordinance and Special Use Permit #SP-93-13. Staff offers the following comments:

1. **Private Roads.** Because private roads are proposed, 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.* (HCSO 170-21B and Appendix 7)
2. **Final Plat Requirements.** The Final Plat(s) must meet the requirements of Appendix 7 of the Subdivision Ordinance.
3. **Soil Erosion and Sedimentation Control.** The Developer submitted to the Planning Department notice from NCDENR that a soil erosion and sedimentation control plan was approved on June 2, 2006. The approval letter states that the acreage approved is a total of 3.3. It appears that the applicant does not have all the required approvals for soil erosion and sedimentation control and must submit proof that the entire project, as proposed, is approved by NCDENR or provide documentation by a professional and licensed land surveyor, engineer, landscape architect, architect or professional planner that no plan is required prior to beginning construction.

There was discussion regarding the County's role in Soil Erosion and Sedimentation Control and Chairman Pearce felt that it should be clarified from now on as to whose role it is for approval, especially after October 1st when Henderson County takes the responsibility of approval of Soil Erosion and Sedimentation Control over NCDENR unless in some cases such as NCDOT or County owned properties.

4. **Water and Sewer Plan Approval.** A letter from the Hendersonville Water and Sewer Department regarding capacity to provide water and sewer service for the entire PUD project was provided on June 11, 1993. The Applicant should provide evidence that the water and sewer plans serving Section 7 have been approved by the City of Hendersonville Water and Sewer Department and NCDENR prior to beginning construction (HCZO Section 200-33 F(4)(b)[6]).
5. **Stormwater Management.** The applicant shall initiate and maintain a stormwater management program to minimize the impact of stormwater runoff within the project site and on adjacent properties. If this comment becomes a condition, failure to meet this condition will result in the Section 7 approval becoming null and void.

6. **Section 8.** The applicant must leave the remainder of Section 8 as open space as stated in Mr. Hamlin's letter dated June 21, 2007. No further development can occur in Section 8. Mr. Hamlin should put Section 8 on record as open space prior to or concurrent with the recordation of the final plat(s) for lots in Section 7.

7. **Access to Section 7.** It appears that the applicant has proposed a portion of the entrance road through platted open space for Carriage Park. Carriage Park Associates, LLC is the owner of this property. The Special Use Permit does not directly address this issue, but Amendment 3 of SP-93-13 adopted by the Board of Commissioners in October of 1997 helps to understand the authority of the Planning Board and the processes for amending approved common areas. According to SP-93-13-A3, Condition 3 b (j) describes common areas as:

Common Areas – any area shown on the Research Master Plan, or amendments thereto, and owned by, or to be owned by the Carriage Park Homeowners' Association, for the primary use of the Carriage Park residents and their guests; including, but not limited to, the clubhouse, open space, recreational areas and facilities, roads, lakes, and streams. Categories of common areas include "open space," "recreational/social areas and facilities," "civic areas and facilities," and "infrastructure." "Infrastructure" includes roads and customary accessory buildings. Such categorization of the common areas shall not affect the overall open space requirements as provided for in this PUD.

According to past documentation for Carriage Park (final plats, development plans, etc.) roads are considered open space and are supposed to be designated as OS-1 on final plats. Other open space is designated as OS-2 on final plats. Paragraph 24 of SP-93-13-A3, Review and Approval of Common Areas, generally outlines the procedures for review of proposed development in approved common areas. Paragraph 24 (c) says:

Development of common areas outside the development parcel not contemplated by the Research Master Plan or amendments thereto – review and approval pursuant to Paragraph 25. Paragraph 25 discusses amendments to approved development parcels and approved common area. Paragraph 25 (c), Amendments to Approved Commons Areas, outlines different scenarios for amending approved common areas. Paragraph 25 (c) (7) says:

New or changed use where the new or changed use is within the common area category and site plan modification is necessary – by the Planning Board.

Mr. Cable said that from the procedures established by Amendment 3 of SP-93-13, the Planning Board can approve or deny changes in use of approved common areas. According to the procedures for a PUD the applicant must provide the appropriate amount of open space to offset the density of different development parcels. Staff does not necessarily agree with allowing the applicant to construct a road through platted open space but it appears that for Carriage Park and SP-93-13 roads are classified as open space. Staff strongly encourages the applicant to consider moving the proposed entrance to a more suitable location which does not require going through approved open space. If the Planning Board approves Section 7, the Planning Board may negotiate with the applicant that all land within the proposed right-of-way (OS-1), which goes through the platted open space, be designated as open space (OS-2) somewhere else within Carriage Park. Comment 8, addresses open space requirements for Section 7.

8. **Open Space.** A PUD allows the Applicant the flexibility to create lots which do not meet the minimum dimensional requirements (lot size, setbacks, etc.) of the zoning districts where PUD is allowed, to cluster dwelling units, to include multi-family dwellings, etc. The Applicant has to compensate for the lot size reduction with common area/open space areas. Based on the proposed Section 7 Development Plan the applicant has proposed a total of 15.1 acres of land for Section 7. It appears that the area located along Carriage Park Way where the proposed entrance is located is already platted open space. This area cannot be developed with any use that is not allowed as described in the definition of common area found in Amendment 3, Condition 3 b (j) of SP-93-13. The approximate size

of this platted open space is 0.82 acres of land. Therefore using a total acreage of 14.28 acres for Section 7, the applicant must provide 6.9 acres of open space to offset the density requirements of the R-20 zoning district. The required open space will need to be put on record prior to or concurrent with the recordation of the final plat(s) for lots in Section 7. The applicant must also provide the Planning Department, for approval, documentation describing where the required open space will be designated in Carriage Park. If Section 7 is approved, it appears that the total number of approved and built units for Carriage Park will be at 672. The maximum number of units allowed by SP-93-13 as amended is 695.

9. **Road Standards.** Special Use Permit #SP-93-13 requires that the Applicant build all roads and culs-de-sac to NCDOT standards for vertical alignment and grade, which means that no section of paved road can exceed 18 percent grade #SP-93-13, Condition 12.

Mr. Dale Hamlin, manager of Carriage Park, he said as mentioned he previously brought before the Planning Board Section 7 and failed because of the routing that went through Carriage Commons. He said that he appealed your verdict and went before the Board of Adjustment and they in turn agreed with the Planning Board that Carriage Park, Section 7 could not access through Section 6, Carriage Commons. He said we were told by the Board members who were in favor of continuing with the Planning Board's decision, "go find another way for access, but don't go through Carriage Commons." Mr. Hamlin said it was discussed with his engineers and they found two other ways. One was the very long entrance that would have gone through Section 8 and torn up much of the hillside and would have been 300-foot fills and would have created a mess. He said one of the preambles to the PUD, which Carriage Park operates under, the section states "*the purpose of this section is to afford substantial advantages for flexibility, improve marketing and efficiency.*" Mr. Hamlin said that the engineers looked at the way of going directly off of Carriage Park Way to the east of Section 6 and found that it was the most efficient approach to getting into this land. He said because in 1994 we had anticipated either going through the commons or Section 8 and we didn't plan for the OS-2/OS-1 issue, and we are certainly understanding of how that works. He said 100% of Carriage Park properties and neighborhoods have OS-1 going through OS-2 to access neighborhoods. He said you can't get there if you don't put a road through there. Also, in Carriage Park there have been numerous driveways that have been approved through open space for purposes of individual homeowners having a better access to their own personal residence. With regard to comments on stormwater management, Mr. Hamlin stated that his engineers are here to answer any questions that the Board members might have. Mr. Hamlin said that the way we plan on accessing will cause the least possible disturbance of land and the most effective way of accessing that site.

Chairman Pearce wanted clarification by stating, "All of the remaining land between Sections 6 – 9 and 12 and that whole section, is that going to become OS-2 land? Mr. Hamlin clarified that this would be OS-2 land. Chairman Pearce then asked whether Carriage Park would be willing to designate and record that as OS-2. Mr. Hamlin said that Staff has asked us that concurrent with approval or platting we must record open space and open space must be one of two, either OS-1 or OS-2, so the open space that is the balance of Section 8, which is approximately 11 acres that would be OS-2. Chairman Pearce said that this section of this plat, when you record this plat you will be recording all of the lands outside of Section 7 that are not previously recorded as OS-2. Mr. Hamlin said other than the OS-1 designation that we need to access the development parcel, everything else will be OS-2, there are only two uses for open space. The only thing else that are engineers are concerned with is the State has a whole new set of erosion control guidelines and one of these guidelines is an erosion pit that sucks water off of the top and this method is demanded by the State and therefore we will be doing this procedure. He added that they will be putting in state of the art erosion control measures in this parcel. There was some discussion while looking at the access on maps of the Master Plan.

Chairman Pearce opened public input.

Robert Welty. Mr. Welty, resident of Section 6, Carriage Commons, was concerned with building an access for another section off of Carriage Park Way to the east of Section 6 when previously was designated as open space over 10 years ago. He asked that the Planning Board deny Carriage Park's request.

Jim Wohlgenuth. Mr. Wohlgenuth, resident of Spring Side Court in Carriage Park showed some photos of the proposed area of access and warned that Board members take special care regarding the density and the closeness of the development of Carriage Springs section and the concerns regarding the sedimentation built-up regarding the pond, especially when they begin building the access road.

Chairman Pearce stated even though the Board members may or may not agree with the public's comments, the Board is still governed by the Special Use Permit # SP93-13 of Carriage Park and each section is a viable and permissible section of Carriage Park which can be broken into any number of lots the owner chooses to separate into, but limited to the total in the entire subdivision and by land area.

Les Cheatle. Mr. Cheatle, who lives in the Carriage Springs section of Carriage Park, requests the Planning Board to deny approval of the request until such time as the limit of the disturbed area delineated on map C-3, setting up perimeter for the proposed Sections 7 and 8 be clearly marked with paint and durable tape. He also is requesting the Board to require the developer to maintain the marked perimeter throughout the development for Sections 7 and 8 and that the developer require all businesses operating in Section 7 and 8 to acknowledge in writing that they will not damage any trees or properties outside the delineated area and if they do, they will immediately cause the damage to be repaired.

Bonny Marsh. Ms. Marsh, who is a resident of Carriage Park, Section 6, opposes going through the open space that was designated in 1997 through Section 6. She reviewed each section and the homes in each section now plus the proposed 46 units and stated that this will not be safe on a 25-foot road.

Bob Papes. Mr. Papes lives in the Carriage Springs Section and asked that the Board require the developer to submit soil sample testing as part of the proposed Section 7, because he wants to know that the land will be able to support the foundation.

Roger Lund. Mr. Lund, who lives in Carriage Springs said his home lies just below Section 7. He is concerned with the erosion control requirements, which the developer will be subject to during development and home-building phases. He also described a list of questions that he would like the Board to provide as well as the developer to see that the development is done in a responsible manner.

Jack Osterberg. Mr. Osterberg is the President of the Homeowner's Association. He apologized for the lengthiness of Carriage Park meetings and said if the developer would have meetings with the residents before he applies, the time could be shortened considerably and have a lot less controversy. The Homeowner's Association opposes the road coming through Section 6, because if the developer can come in at anytime and change what is already set taking it from OS-2 to OS-1, leaving us with lots of open space to find in the subdivision. He said if there is not a precedence set, it will happen again. The Association is also concerned with erosion and would like it reviewed in the entire section and said he would like to see any damage that would be done in the development of this section be the responsibility of the owner. Mr. Osterberg is concerned with the safety issue.

Chairman Pearce said that Carriage Park has a set number of lots allowed, which are 695 lots, and there is a set area for lots and for open space. Mr. Cable stated that the special use permit requires a certain amount of open space based on the off-set for units for open space and the developer can not reduce the designated minimum amount of open space in the development. Chairman Pearce also stated that regarding the erosion and sedimentation permit, the developer is required to have a permit that covers 100% of the area that will be disturbed. Chairman Pearce asked legal council what the role of this Board is in dealing with any damages done to area properties because of the construction of this Section 7. Ms Zambon stated that if you are talking

about private action, it is not within the Special Use Permit #SP93-13 and soil testing is also not within the special use permit, it is more of a “buyer beware” and not the authority of the Planning Board. Chairman Pearce asked whether the Board could mandate erosion control measures outside of NCDENR or Henderson County. Mr. Starr stated, “No.” He said the State will have its rules applied and the developer will have to get an erosion control permit for the infrastructure on what he plans on disturbing. Mr. Starr added that any homes that start construction after October 1, 2007, will have to have a permit from the County as well, but if the developer is not doing the home building, it would be the responsibility of the builder.

Ms. Zambon stated that she had a discussion with Planner Matt Card on whether they could go through the open space and according to the Order, there is no definition of open space in the Order, there is only a definition of common space in the Order and common space includes putting a road through it and is allowed under the Order we are working under. Chairman Pearce asked, “Who owns the open space now?” Ms. Zambon stated that it is owned by the developer and does not belong to a section or the Homeowner’s Association, but it could be at any time handed over to the Association but she does not feel that it would ever be handed to a certain section of the development. Jonathan Parce said that in other words what you are saying in this case that if a section is designated as open space until such time as the developer gives it over to the Homeowner’s Association, the individual homeowners in the section do not have specific rights to that open space. Considerable discussion on open space continued. It was also noted that the applicant must leave the remainder of Section 8 as open space and that no further development can occur in Section 8 and that Section 8 should be put on record as open space prior to the recordation of the final plat and Mr. Dale Hamlin agreed to this. There was some continued discussion regarding the sedimentation control measures that the developers plan to use and Chairman Pearce suggested that perhaps some type of marking so that the borders of the development area and the borders of the road themselves could be clearly delineated. He said although the Board can not make that a recommendation, it would certainly be a nice gesture to do. Mr. Hamlin said that they would do that.

Board members were discussing the buffer issue between Carriage Springs and Mr. Bill LaLark, who is the design engineer with McGill and Associates stated that he felt it was at least 25 feet or more. Renee Kumor asked whether he feels that the road cut is as safe as it can be coming on to the main Carriage Park road because that was a concern dealing with visibility. Mr. LaLark stated there isn’t limited visibility because of the low gulley and the drop off is pretty steep and in addition, there is a long straightaway. He also added that in his professional opinion what is shown on the plan is the best access. Mr. Starr asked whether the intersection would meet standards for site visibility and stopping distance. Mr. LaLark said that it would.

Mike Cooper made a motion that the Planning Board find and conclude that the Development Plan submitted for Section 7 of Carriage Park Planned Unit Development complies with the provisions of the Henderson County Zoning Ordinance, Water Supply Watershed Protection Ordinance, Subdivision Ordinance, and the Special Use Permit regulating the Planned Unit Development (#SP-93-13, as amended) except for those matters addressed in the Staff Comments section of the Staff Report and further move that the Development Plan be approved subject to the following conditions: that the Developer is willing to designate the remainder of the portion of Section 8 that is not going to be developed as OS-2 on the final plat and that, from a legal standpoint, the developer has no right to put the road in open space, but that it would have to be relabeled as OS-1. Regarding soil and sedimentation requirements other than requiring that the necessary permits needed to be obtained, that it is only the requirement for Master Plan approval and that stormwater rules are not part of SP-93-13, and therefore the Planning Board does not have the right to require State and legal matters. According to legal opinion, Carriage Park has the right to move their open space. Gary Griffin seconded the motion and all members voted in favor.

Master Plan Review – Preserve at Pinnacle Mountain (2007-M25) – 42 Single-Family Residential Lots Located off Pinnacle Mountain Road – Paul Michael Witt, Agent for Richard Fritts, Owner. Presentation by Matt Cable. Mr. Cable stated that Mr. Michael Witt, agent for property owner, Mr. Richard R. Fritts, submitted a Combined Master and Development Plan and major subdivision application for a project known as Preserve at Pinnacle Mountain. The project site is located on 113 acres of land. The site is accessed off of Pinnacle Mountain Road and Mountain View Church Rd. A total of 41 single-family lots are proposed and the site is currently zoned Open Use (OU) which does not regulate the residential uses of land. He said the project site is not located in a water supply watershed district. Private roads are proposed to serve the subdivision and there are three entrances proposed off of Mountain View Church Rd., Pinnacle Mountain Road, and Hawks View Lane. Private individual wells and septic systems are proposed.

Staff has reviewed the submitted Combined Master Plan and Development Plan for conformance with the Henderson County Subdivision Ordinance (HCSO) and offers the comments that follow.

Master Plan

1. **County 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.

Conservation Area. The conservation area designation is applied to much of the project site, largely because of the presence of sensitive natural areas such as steep slopes. 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.”

Rural/Agricultural Area. The RAA is predominately rural and characterized by low-density residential development with substantial land areas devoted to agricultural and undeveloped lands. It is suggested that densities in this area should strive for 5 or more acres per residential dwelling. According to the plan, the project would have an average density of .36 units per acre. The proposed lot sizes are reduced from those recommended by the CCP. The project site contains large areas with steep slopes.

2. **Land Development Code (LDC).** According to proposed Draft 10 of the Land Development Code Zoning Map, the proposed project site for this development is located entirely in the Residential Zoning District 2 Manufactured Housing (R2MH). The current draft of the Land Development Code (LDC) allows for a density of 1 unit per 1 acre for single-family developments. According to the Master Plan, the project would have an average density of .36 unit per 1 acre. This would be in keeping with the densities proposed for the property by the Land Development Code. Since differences exist between proposed densities with the LDC and the CCP, if the LDC is adopted as proposed, the CCP may need to be amended to be consistent with the LDC.

Development Plan

1. **Off-site Access.** The applicant has proposed one private local residential road titled Corydalis Lane which serves lots 24 – 26. Corydalis Lane is accessed off of an existing private road, Hawks View Lane. Hawks View Lane leads to another existing private road titled Hawks Point Drive which is accessed off of a public road, Mountain View Church Road. It appears that Hawks Point Drive meets or exceeds the standards for private local residential roads. Hawks View Lane is a graveled road and appears to be about 12 to 14 feet in width with some shoulder area. It also appears that Hawks View Lane does not have steep grades. According to the Combined Master Plan and Development Plan, the applicant owns to the centerline of Hawks View Lane. The applicant is required to upgrade Hawks View Lane, on the portion of the road owned by the applicant, to meet the minimum standards for private local residential roads.

2. **Minimum Curve Radius.** All subdivision roads must meet the private road standards found in Section 170-21 of the HCSO. Roads must also meet the standards for minimum curve radius (Section 170-21(F)). It appears that on the Plan some of the curve radii are less than the 90-foot minimum for private local residential roads and the 110-foot minimum for private collector roads. Where the existing cross slope on private local residential roads is 15 percent or greater, a minimum centerline radius of 60 feet shall be permitted. Where the existing cross slope on a private collector road is 15% or greater, a minimum centerline radius of 80 feet is permitted. It appears on the Plan that the applicant is requesting these reductions. The applicant is also requesting to reduce the shoulder widths in certain areas in accordance with Section 170-21, Table 1 of the HCSO. The Final Plat(s) must have a notation that states where the existing cross slope exceeds 15 percent a minimum centerline radius of 60 feet and 80 feet, respectively, are permitted (170-21F of the HCSO). The applicant should also provide a note on the final plat regarding the shoulder reduction.

Standard Comments

1. **Final Plat Requirements.** The Final Plat(s) must meet the requirements of Appendix 7 of the Subdivision Ordinance.
2. **Soil Erosion and Sedimentation Control.** The Developer should submit notice from NCDENR that a soil erosion and sedimentation control plan has been received or provide documentation that no plan is required prior to beginning construction. (HCSO 170-19).
3. **Site Stabilization.** All areas disturbed by the construction of a private road, including cut and fill slopes, shoulders and ditch banks, must be seeded in permanent vegetation to stabilize the soil and prevent erosion. Such seeding should be done as soon as feasible following road construction (HCSO §§170-13A[7] and 170-22).

Other Comments

1. **Private Wells.** Staff is aware of previous subdivisions in this area that have had problems finding water for private wells. If the applicant ever chooses to connect to public water, it is possible that a waterline extension may not be approved due its location in the RAA district of the CCP.

Review Agency Comments

1. **Comments from the Fire Marshal.** Rocky Hyder of the Henderson County Fire Marshal's Office submitted comments regarding the project. Mr. Hyder's comments are related to sources for static water supply points. The Planning Board can only require the applicant to meet the minimum standards of the Henderson County Subdivision Ordinance section 170-20C; the Planning Board may not have the authority to require any additional standards.
2. **Comments from the Henderson County Engineer.** Marcus Jones of Engineering and Facility Services submitted comments regarding the project. Mr. Jones's comments reflect the possibility of back-hoe pits needed for soil evaluation.
3. **Comments from Property Addressing.** Curtis Griffin has submitted comments regarding the project. Mr. Griffin's comments reflect the need for continuity of road names. The road name Cory Dalis Lane cannot be used as the street name should be Hawks View Lane.
4. **Comments from NCDOT.** Josh Lanning submitted comments regarding the project. Mr. Lanning's comments reflect the need to obtain a Street and Driveway Access

Permit and the recordation with the Register of Deeds of any roads as public if the developer ever decides to add the roads to the State Maintained Road System.

Board members discussed the lot configuration and frontage. Board members will allow flag lots 2, 13 and 36 provided that they meet the minimum standards of the Henderson County Subdivision Ordinance. The narrowest width of any lot abutting the right-of-way will be 30 feet.

John Antrim made a motion that the Planning Board find and conclude that the Combined Master and Development Plan appears to comply with the provisions of the Subdivision Ordinance; and further move that the Combined Master and 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 and that the Board will allow flag lots 2, 13 and 36 provided that they meet the minimum standards of the Henderson County Subdivision Ordinance. The narrowest width of any lot abutting the right-of-way will be 30 feet. Board members also changed the wording in Comment 3, Off-Site Access from *“the applicant should be required”* to *“the applicant is required to upgrade Hawks View Lane...”* Renee Kumor seconded the motion and all members voted in favor.

Rezoning Application (#R-2007-04) – Request to Rezone Approximately .72 Acres of Land Located at the Intersection of Crest Road and Oak Grove Road – From R-15 (Medium-Density Residential) Zoning District to C-4 (Highway Commercial) – Floyd Barry Pruitt, Applicant and Property Owner. Presentation by Matt Cable. Mr. Cable stated that on June 10, 2007 Floyd Barry Pruitt submitted an application to rezone approximately 0.72 acres of land located off Crest Road, from an R-15 (Medium Density Residential) zoning district to a C-4 (Highway Commercial) zoning district. The Subject Area is located at the intersection of Crest and Oak Grove Roads; approximately 1000 feet west-southwest of the I-26—US Highway 25 South interchange. The Subject Area is currently zoned R-15 (Medium-Density Residential), which was applied on September 8, 1992, as part of the East Flat Rock Land Use Study, Phase II. The Subject Area is surrounded by C-4 (Highway Commercial) zoning to the north, R-20 (Low Density Residential) to the east and west, and R-15 (Medium Density Residential) to the south. The R-15 Medium Density Residential Zoning District allows for residential uses at various scales and limited nonresidential uses. The C-4 Highway Commercial Zoning District, which is proposed for the Subject Area, allows for commercial uses at various scales which are intended to serve persons traveling by automobile and local residents and are generally located on major highways. Residential uses are not permitted. The Subject Area is composed of one parcel containing a manufacturing/assembly operation. Adjacent and surrounding area uses include residential, commercial, and industrial uses. Currently adjacent properties appear to contain single-family residential uses; however, properties to the north are currently zoned C-4 (Highway Commercial). Further to the north, within the nearby Industrial District are Atlas Bolt and Screw and Appleland Business Park. Still further north, at Upward Road I-26 interchange are additional commercial uses.

Staff Comments and Recommendations

Staff’s position at this time, under the guidelines of current plans, policies and studies, is it supports the rezoning of the property to be zoned for commercial uses. This based on the following:

1. The CCP suggests that the Subject Area would be suitable for high-density residential, commercial, or industrial development, but does not indicate which use may be most appropriate for this area.
2. The LDC indicates that the Subject Area will be transitioning to R1 (Residential One). Properties north of the subject area, which are currently zoned C-4 are recommended to transition to an I (Industrial) Zoning District. The Subject Area, were it rezoned to C-4 would likely transition to an Industrial zoning district as well. Given the current manufacturing/assembly operation on site, the current use of the property is nonconforming under existing R-15 and LDC proposed R1 but would conform under applicant requested C-4 or the I district proposed by the LDC.

Staff's position at this time, under the guidelines of current plans and policies is it supports the rezoning of the property for commercial uses. The Subject Area currently contains a nonconforming use which would be made conforming by the rezoning of the property. The Subject Area will be part of a larger contiguous C-4 zoning district. Further, the recommendations of the CCP support commercial development within the USA.

It is generally incumbent upon the Applicant to demonstrate an overriding justification for approving a given rezoning application. Staff encourages the Applicant to present any information that would inform the County's consideration of the proposed rezoning.

Chairman Pearce said he is against the rezoning request because it goes against the Land Development Code and because in or around 1999, when the East Flat Rock Zoning Study occurred, there were a number of people who worked hard for several years to keep their area residential.

Chairman Pearce made a motion that the Board recommends denial of rezoning application #R-2007-04 to rezone the Subject Area from an R-15 (Medium-Density Residential) zoning district to a C-4 (Highway Commercial) zoning district based on the fact that it goes against the Land Development Code and because in or around 1999, when the East Flat Rock Zoning Study occurred, there were a number of people who worked hard for several years to keep their area residential. He said there is a non-conforming use and the people who lived next door to this already knew that it was going to be there and it is not being hurt by anyone because there is no benefit to anyone but the applicant himself – maybe - to get some other use out of it by changing it to commercial. He added from a practical standpoint, if they are going to change it to anything, it should be industrial, not commercial. Tommy Laughter seconded the motion. Jonathan Parce, Renee Kumor, Tedd Pearce and John Antrim voted in favor to deny the request. Gary Griffin and Mike Cooper opposed the motion. The motion was 5 – 2 for denial.

Rezoning Application (#R-2007-05) – Request to Rezone Approximately 322.46 Acres of Land Located off Butler Bridge Road – Bounded by I-26 on the East and the French Broad River on the West – From I-2 (General Industrial) Zoning District to a C-4 (Highway Commercial) Zoning District – Angela Beeker, Agent for Tap Root Dairy, LLC, Juanita Johnston and Mary Louise Corn, Co-Trustees of the Estate of S.E. Johnston, Jr. and Big J Small J Partnership, Owners. Presentation by Matt Cable. Mr. Cable stated that rezoning Application #R-2007-05 was submitted on June 19, 2007, requests that the County rezone approximately 322.46 acres of land, located off Butler Bridge Road and bounded by I-26 on the east and the French Broad River on the west, from an I-2 (General Industrial) zoning district to a C-4 (Highway Commercial) zoning district. The Subject Area is comprised of three tracts of land. The Applicants are: Tap Root Dairy, LLC ; Juanita Johnston and Mary Louise Corn, Co-Trustees of the Estate of S.E. Johnston, Jr.; and Big J Small J Partnership. The Applicant's Agent is Angela Beeker.

Mr. Cable stated that the Subject Area is approximately 4,800 feet south of the intersection of Boyleston Road (NC 280) and Interstate 26; approximately 4,600 feet north of the intersection of US Highway 25 North and Interstate 26; bounded on the west by the French Broad River; roughly bounded on the north by Cane Creek; bounded on the east by Interstate 26; and bounded on the south by Butler Bridge Road (SR 1345).

Mr. Cable said the Town of Mills River's jurisdiction is to the east and its MR-LI light industrial district is applied to those properties. The Town of Fletcher's jurisdiction is to the north and its C-2 commercial district is applied to that property. To the south are the OU (Open Use), R-10 (High-Density Residential), R-15 (Medium-Density Residential), and C-4 (Highway Commercial) zoning districts. To the east is the I-2 (General Industrial) zoning district.

Mr. Cable gave a comparison between the I-2 zoning district and the C-4 zoning district. The Subject Area is divided into three (3) tracts. Tract 1 contains six (6) residential structures and a

number of agricultural/industrial buildings (14+/-) associated with Tap Root Dairy. The primary use of Tract 1 is agriculture with residential uses also on site. Tract 2 contains three (3) residential structures and a number of agricultural buildings (7+/-). The primary use of Tract 2 appears to be agriculture with residential uses also on site. Tract 3 does not appear to contain any structures and its primary use appears to be agriculture. He said surrounding area lands contain undeveloped, agricultural, residential, office, institutional, recreational, commercial, transportation, and industrial uses. To the west there are undeveloped/agricultural lands and single-family residential uses are located across the French Broad River to the west. To the north, a commercial use and transportation use, Asheville Regional Airport are located across Cane Creek. An industrial use is located across Interstate 26 to the east. To the south, a number of single-family residential uses including those contained within River Stone Planned Unit Development. Also to the south, along Butler Bridge Road, are a number of commercial uses.

Mr. Cable stated that regarding water and sewer, public water is not currently on the Subject Area site, public water is through the Asheville Buncombe Regional Water Authority is, however, available to River Stone located adjacent to and directly south of the Subject Area. He said public water, through the City of Hendersonville, also appears to be available approximately 1,500 feet east of the Subject Area, at the intersection of US Highway 25 North and Butler Bridge Road. He said regarding public sewer, it is currently located on the Subject Area site. According to the Engineering and Facility Services Department: (1) a 30 inch gravity sewer line is located north of the Subject Area, within Broadmoor Golf Links property, and (2) a 10 inch force main is located on the Subject Area property, running parallel to Interstate 26.

He said Staff's position at this time, under the guidelines of current plans, policies and studies, is it supports the current zoning of the Subject Area (I-2 (General Industrial) zoning) which is consistent with the recommendations of the Henderson County 2020 Comprehensive Plan and Henderson County Industrial Study as they identified the majority of the subject area suitable for industrial development, a portion that was not suitable was in the floodplain. The Industrial Study is intended to be an extension of, and further refine the recommendations made by the CCP. The Industrial Study further indicates the importance of reserving appropriate areas solely for industrial development in order to preserve and expand that component of the County's economy. Staff has identified no plans or policies, changes in existing conditions, undue hardship to the Applicant, or overriding community interest that would justify supporting the proposed rezoning. Staff's position is that it supports the recommendations of the Henderson County 2020 Comprehensive Plan and Draft Henderson County Industrial Study.

Ms. Angie Beeker spoke on behalf of all three applicants and said the reason why it is coming before the Planning Board is because it has been designated and marketed as industrial, but has not had any success in marketing the property industrial. Secondly, the property just south of this property was rezoned residential which we believe now significantly impacts its ability to be marketed as industrial. She said thirdly, this property is under contract and Mr. Stephen Pharr, who is representing the developer who is interested in this property. She introduced Mr. Pharr.

Mr. Pharr stated that with the surrounding subdivision developments he feels the C-4 requested zoning would be more compatible. He feels that there are a lot of similarities between I-2 and C-4. He said it is within the urban services area, it has all of the adequate utilities that you would have for a C-4 along with the location of highways such as I-26, which is all similar to C-4. Chairman Pearce stated that there were two industrial sites in the same area that have been changed to residential because industrial is not as desirable in this area and because of the value of the land was more for residential. Chairman Pearce said that the Board should recommend approval because he does not feel industrial makes sense for that site. Board members agreed that this rezoning is not only good for the owners but for the County because of all the recent residential development.

Tommy Laughter made a motion that the Board recommend approval of rezoning application #R-2007-05 to rezone the Subject Area from an I-2 (General Industrial) zoning district to a C-4 (Highway Commercial) zoning district based upon the similarity of permitted uses under C-4 and I-2 zoning districts; the similarity of potential impacts on public services proposed by permitted uses under either the C-4 or I-2 zoning districts; the CCP's favorable recommendations regarding the location of commercial development within the Urban Services Area in which the Subject Area is located; and the proposition of a "Commercial/Industrial" land classification by the Industrial Study and the potential that this classification may be applied to the Subject Area in question during the review, approval, and/or implementation of this Industrial Study by the Board of Commissioners. The recommendation of approval is also made with the recognition that amendments to the Henderson County 2020 Comprehensive Plan and Industrial Study may be necessary to reflect the appropriateness of commercial development for the Subject Area properties. John Antrim seconded the motion and all members voted in favor.

Mr. Starr noted that the Board members have available copies of the new updated Land Development Code and the spiral book with the options. He said that the Board may want to take up these matters at the August Planning Board meeting, as you may want to weigh-in on each of these options. We will put this on your August agenda for discussion.

Adjournment. There being no further business, the meeting adjourned at 9:25 p.m. All members voted in favor.

Tedd Pearce, Chairman

Kathleen Scanlan, Secretary