

**HENDERSON COUNTY
PLANNING BOARD MINUTES
November 15, 2005**

The Henderson County Planning Board met on November 15, 2005 for their regular called meeting at 7:00 p.m. in the Board Room of the Land Development Building, 101 East Allen Street, Hendersonville, NC. Board members present were Tedd Pearce, Chairman; Paul Patterson, Vice-Chairman, Tommy Laughter, Mark Williams, Gary Griffin, Mike Cooper, and Stacy Rhodes. Others present included Judy Francis, Planning Director; Lori Sand, Project Manager; Matt Card, Planner; Kathleen Scanlan, Secretary; C. Russell Burrell, County Attorney, and Chuck McGrady, Commissioner and Liaison to the Planning Board. Board members Jonathan Parce and Renee Kumor were absent.

Chairman Pearce called the meeting to order and ask for the approval of the four sets of minutes – October 4, 2005, October 11, 2005, October 18, 2005 and October 24, 2005. Mike Cooper noted that the October 4, 2005 minutes showed that he was present and in fact was absent from the meeting. Mike Cooper made a motion to approve the four sets of minutes with the correction to the October 4th minutes. Tommy Laughter seconded the motion and all members voted in favor.

Adjustment of Agenda. No adjustments were made.

Staff Reports. Ms. Francis stated that there are corrected flyers dealing with the small area plans and asked the Board members for their help in distributing the flyers. She also asked that if any Planning Board members were available to attend either of the small area meetings it would be supportive for now and in the future.

OLD BUSINESS:

Update on Land Development Code Project – Lori Sand, Project Manager. Ms. Sand said that Staff has started with the list of information that Board members had asked for. She distributed a replacement to Article 8, maps and the tables that were used at the last meeting that Board members requested.

Request for Extension of Development Plan Approval for Hawke Crest Subdivision (File # 02-M03) – Joseph N. Solitario, Agent for Hawke Ridge Developers, Applicant. Stacy Rhodes and Paul Patterson recused themselves from any discussion or decision on this subject because of business conflicts. All Board members were in favor of their recusals. Mr. Card stated that on March 19, 2002, the Planning Board approved the Master Plan and Development Plan for the proposed Hawke Crest major subdivision subject to the completion of conditions that were imposed during the Planning Board meeting. A revised Master Plan and Development Plan for both Phase I and Phase II and Final Plat for Phase I was completed and reviewed by Staff on December 19, 2002. As of last November the developer of Hawke Crest had not completed Phase II of the project and a Final Plat was never recorded.

On November 16, 2004, the developer of Hawke Crest subdivision requested a one-year extension for the Development Plan approval which the Planning Board granted. The developer never completed the improvements within the one-year extension time period, due to financial and medical problems, which is submitted in a letter by the developer. The developer is now requesting another one-year extension so that the remaining portion of Hawke Crest can be completed. According to the Planning Board Extension

Policy it appears that the Planning Board may grant a second one-year extension if over fifty percent of the overall development improvements have been completed. It appears that over 50 percent of the overall development is completed because Phase I which was built and a Final Plat recorded which according to the developer consisted of over 50 percent of the overall project. The developer has discussed with the Planning Department changing the plans for Phase II, which may reduce the amount of lots and decrease the length of the road.

Mike Cooper made a motion to grant an additional one-year extension for Hawke Crest Subdivision. Tedd Pearce seconded the motion and all members voted in favor.

Request for Extension of Development Plan Approval for Mountain Meadows (File # 03-M17) –Jeffrey Donaldson, Agent for William H. May, Jr., Owner. Stacy Rhodes and Paul Patterson recused themselves from any discussion or decision on this subject because of business conflicts. All Board members were in favor of their recusal. Mr. Card stated that on November 18, 2003 the Planning Board approved the Master Plan and Phase I Development Plan for the proposed Mountain Meadows major subdivision subject to the completion of conditions that were imposed during the Planning Board meeting. On September 6, 2005 the Board of Commissioners approved an application for an improvement guarantee proposed to cover the road construction, shoulder stabilization and water improvements for the project. A final plat has not been recorded. On October 20, 2005 Jeffrey Donaldson, developer of the project, submitted a letter requesting a one year extension of the Development Plan for Mountain Meadows because he mentioned they were unable to start the grading work due to inclement weather and the late start on the grading.

Gary Griffin made a motion to grant a one-year extension for Mountain Meadows Subdivision. Tommy Laughter seconded the motion and all members voted in favor.

NEW BUSINESS:

DLV Investments, LLC Minor Subdivision Review – 5 Single-Family Residential Lots Located Off Old Brevard-Hendersonville Highway – Jon Laughter, Agent. Mr. Card stated that Jon Laughter, agent for DLV Investments, LLC, submitted a Development Plan for a minor subdivision located off of the old right-of-way for Old Brevard-Hendersonville Highway (Old US Hwy 64). The property is a 5.47-acre tract of land that has access through an existing 20-foot right of way off of Old Brevard-Hendersonville Highway. As you can see from the development plan there is only a small portion of this private 20-foot right-of-way that falls on the subject property which would have to be built to Henderson County private road standards, any portion of right-of-way outside of the property is considered off-site access and would not have to be improved but would have to comply with Section 170-27 (Right-of-Way Access) of the Subdivision Ordinance.

Mr. Card stated that the reason why this is being brought to the Planning Board is that the grade on the existing 20-foot right-of way, (between A and C on the diagram provided) which would be used for access to the subdivision, exceeds 18 percent from the portion of right-of-way that intersects Old Brevard-Hendersonville Highway to the portion of right-of-way that is proposed and is labeled as road section A to B on the attached plan. Section 170-28B of the Subdivision Ordinance states that 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. The subdivision could not be accessed by Old Brevard-Hendersonville Highway because of the steep terrain and a rocky cliff.

The grade of the road section within the property would have to comply with the Henderson County Subdivision Ordinance (HCSO). The maximum grade is 18% for paved local residential roads which is what is proposed. The applicant would have to comply with this standard of the HCSO or obtain a variance for road grade from the Board of Commissioners. Mr. Patterson asked whether Staff drove the road? Mr. Card said that they had drove the car up and down the slope.

1. **Private Roads.** Because private roads are shown, the Final Plat(s) should include a note stating: *The private roads indicated on this Final Plat may not meet requirements of the North Carolina Department of Transportation for acceptance into the state road system (HCSO §170-21B and Appendix 7).*
2. **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).
3. **Compliance with Appendix 7.** The Final Plat for the proposed minor subdivision should contain the information shown in Appendix 7, Final Plat Requirements (HCSO §170-13A[8]).
4. **Miscellaneous Advisory Provisions.** The Applicant should become familiar with the miscellaneous advisory provisions contained in Section 170-37 of the Henderson County Subdivision Ordinance (HCSO §170-13A[9]).
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 stormwater runoff (HCSO § 170-21D).
6. **Road Name.** Any road names shall be approved by Henderson County Property Addressing before a Final Plat is recorded.
7. **Road Standards.** All proposed roads must comply with the minimum road standards of Sections 170-21 and 170-27 in the Henderson County Subdivision Ordinance.
8. **Right-of-Way Access.** Section 170-27 of the HCSO states that a proposed subdivision which abuts an existing or recorded public or private right-of-way which does not meet the minimum width requirements of this chapter shall be required to provide additional rights-of-way to conform to the chapter standards to the maximum extent possible, as provided below. The applicant shall provide up to ½ of the required right-of-way measured from the center line of the existing right-of-way. Since the right-of-way width is 20 feet, the applicant will have to provide half of what is required.
9. **Off-Site Access.** Section 170-28 of the HCSO (Road frontage and existing off site access) states that for a proposed subdivision which has less than 30 feet of right-of-way to a public road, the subdivision shall not be divided into more lots than

provided in Table 2. Table 2 states that the maximum number of lots allowed is 1 lot per acre. The applicant is then restricted to 5 lots because the total acreage is 5.47 which is what is proposed by the applicant. For this reason the applicant would not be able to expand the subdivision.

10. **Turnaround.** The length of the road appears to exceed 800 feet and there is no apparent turnaround for emergency vehicles. After visiting the project site, Staff suggests some sort of turnaround at the end of the existing 20-foot right-of-way which would have to be built on the property of the proposed subdivision so that emergency vehicles have an adequate place to turnaround.

Sedimentation and Erosion Control Plan – While the minor subdivision procedure does not specifically require that the Applicant 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), Staff suggests that the Applicant contact NCDENR to discuss state erosion control requirements.

The steepest grades appear to be within the portion of road shown as section B to C on the plan. This section of road has grades that go up to 25 percent. The section of road between points A and B, the off-site access portion, has a grade that appears to be approximately 20 percent. Since the portion of road (section B to C) that is the steepest will have to be built to Henderson County private road standards with a grade that does not exceed 18 percent, Staff recommends approval based on the applicant meeting all of the above stated conditions and building road section B to C to Henderson County private road standards.

Mr. Laughter, agent for the project, stated that it is a straight section and there is no stop and start on it and is already paved. He stated that each of the lots will be fronted on the old highway which you would have to wind your driveway in to get in on the old driveway and feels that they meet the intent of the Ordinance there. The turnaround is good for turning around but it is graveled. He said per Staff's comments, they would put a graveled cul-de-sac. He added that this is a road that has been there for years. Mr. Laughter suggests not trying to get the grade down because it is a easy drive up there and other homeowners have been using it for years. Mr. Cooper asked, "This road that is bordering on Brevard Road, does this road that goes through the back have to meet the standard because you are tied to a road that does meet the standards, is that correct?" Mr. Laughter said that the old road is a State road and this road that is in there now will not be a State road. After some discussion on the road, Paul Patterson said that he feels it should be handled as a double-fronted lot because this meets that same criteria for setbacks. Chairman Pearce said that any road needs to be built to standards. He added that they are basically asking the Planning Board to approve something that varies quite significantly from the Subdivision Ordinance and that is very rare to happen to this degree as it is more than a 35% increase from the maximum grade at some points. Chairman Pearce said why should the Board approve this subdivision with the grade that exceeds the standards and require every other subdivision to meet the standards. Mr. Laughter stated that if we were building the road we wouldn't ask for this request, but this road already exists there. Mr. Patterson asked whether they were proposing anything on the sections within Lots 1 and 2 and are you going to pave that section? Mr. Laughter said that the pavement ends at the boundary but we will be widening that road and take it on out. Mr. Rhodes said that this 20 foot right-of-way that comes off of Old Brevard Road does it not loop around and serve some properties there? Mr. Laughter said yes that it does have quite a loop in it and that it serves a few properties there. Mr. Rhodes said from the standpoint of that 20-foot right-of-way is

usable by the rest of the people that bought those five lots? Mr. Laughter said yes and he feels it would be hard to stop anyone from not using it. After some further discussion, Board members agreed that there are other subdivisions that have just as steep grades. Mark Williams asked what is the precedence? Chairman Pearce said that is what we are trying to determine. Mr. Card stated that they would need to get a variance from the Board of Commissioners for the section between B and C, since it was proposed, it would have to be improved to our standards. Mr. Laughter said that they will improve it and try to keep it to a maximum of 18%. After continued discussion on the road grade, Chairman Pearce stated that subject to the decision of the developer who could apply for a variance to the Board of Commissioners, Chairman Pearce made a motion to approve this subdivision subject to Staff comments 1 – 10 and specifically noting that the road sections between B and C would have to be built in accordance with the Subdivision Ordinance standards. Mike Cooper seconded the motion and all members voted in favor.

Solomon's Cove Master Plan Review (File # 05-M30) – 35 Single-Family Residential Lots Located off Howard Gap Road – Jeff Suttles, Developer and Owner. Mr. Card stated that Jeff Suttles, developer of the project, submitted a Master Plan for a subdivision titled Solomon's Cove. The project site for Solomon's Cove is located on 23.8 acres of land off of Howard Gap Road (see attached map). Mr. Suttles proposes 35 single family residential lots. The average lot size is approximately half an acre. Mr. Suttles also proposes 1.8 acres of common area along Howard Gap Road.

The property is in the Open Use zoning district which does not regulate the residential use of land. Public roads built to NCDOT standards are proposed. Public water (City of Hendersonville) and individual septic systems are also proposed. The property is not located in a water supply watershed district. The Blue Ridge Farmland Preservation District is within half a mile of the proposed project site.

Mr. Card stated that 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. Staff has reviewed the submitted Master Plan for Solomon's Cove for conformance with the Henderson County Subdivision Ordinance and offers the following comments:

Master Plan

- 1. County Comprehensive Plan (CCP).** The Future Land Use map of the CCP shows the area where the subdivision is proposed as being within the Rural/Agricultural Area (RAA), which is expected to remain predominantly rural with low-density residential development during the life of the CCP (through 2020). The CCP states that RAAs are usually so far from public water and sewer as to make extensions of such utilities economically unfeasible. The RAAs designated in the County often contain steep slopes, sensitive natural areas, farmland and other natural and cultural features that the County wants to see preserved and protected. Densities should be considerably lower than that of the USA or the RTA. The suitability of land within these regions of the County should be a principal consideration in determining developmental densities and segregation of incompatible land uses. The density of the proposed project is higher than what the CCP suggests the density should be for the RAA with 5 of more acres per residential units. Public water is proposed. Staff has not seen any

indication that water extends that far down Howard Gap Road but if water is located adjacent to the property on Howard Gap Road, the property owner may be required to connect to that water system according to Section 170-20 B(1) of the Henderson County Subdivision Ordinance. Since the property is outside of the Urban Services Area extending water to the project is unlikely.

Mr. Card said that Staff has found that the proposed Master Plan appears to meet the technical standards of the Henderson County Subdivision Ordinance. Staff recommends approval of the Master Plan subject to the developer addressing any other issues raised by the Planning Board.

Chairman Pearce said that once the Master Plan is approved, what is the timetable for approval? Mr. Card said that there is no set timetable for a Master Plan. Chairman Pearce inquired as to whether this will be addressed in the Vested Rights section of the *Land Development Code (LDC)*? Ms. Francis said that the Vested Right language is general enough to include Master Plan and the Common Law Vested Right language has a timetable and that is established in the statutes and it is two years but can be extended to five years. Chairman Pearce just wanted to make sure that this was covered in the LDC.

Chairman Pearce said that he is looking at this property in comparison to the County Comprehensive Plan and if it is properly labeled for the Rural Agriculture Area and should we really revisit that issue since this particular property is in the Open Use. He added that he doesn't believe that it bears on approval of this Master Plan at this point in time unless Staff Attorney states something differently. Mr. Patterson said, "How much do we hang our hats on the CCP?" Mr. Burrell said that now you have an ordinance that you are following. Chairman Pearce said that once the Land Development Code is tied to the CCP, then by State statutes we have to follow the CCP and the conjunctive document, the LDC. Mr. Burrell said that the Land Development Code, once passed, will become part of the CCP, effectively. Mr. Patterson asked what the requirement was on a topo for a Master Plan? Mr. Card stated that he believes it is twenty feet as it is five for a Development Plan.

Chairman Pearce asked whether he could talk about the water issue. Mr. Suttles stated that they are within eight-tenths of a mile of public water now and Mr. Jon Laughter has drawn up plans to submit to the City of Hendersonville. The City is presently reviewing that and saying that it is ok to do that and are prepared to pay for that extension.

Mike Cooper made a motion that the Planning Board find and conclude that the Master Plan for Solomon's Cove Subdivision appears to comply with the provisions of the Subdivision Ordinance. Mark Williams seconded the motion. Mike Cooper, Mark Williams, Tedd Pearce, Tommy Laughter, Gary Griffin and Stacy Rhodes voted in favor. Paul Patterson opposed the motion. The motion was approved 6 to 1.

Brickton Industrial Park Master Plan and Development Plan Review (File # 05-M31) – Proposed Subdivision Located on Old Asheville Highway – Associated Land Surveyors, Agent for Brickton Associates, LLC, Owner. Mr. Card stated Associated Land Surveyors, agent for Brickton Associates, LLC, owner, submitted a Master Plan and Development Plan for a subdivision within the Brickton Industrial Park. The proposed project site for the subdivision is on 12.16 acres of land which extends on both sides of Old Asheville Highway.

Mr. Card said the proposed project site for the subdivision was originally shown as Tract 5 on a Master Plan for the Brickton Industrial Park and was approved by the Planning Board on February 27, 2001. The original Master Plan was approved with 11 lots, which consisted of 10 industrial lots and 1 reserved lot (now the Stonecrest subdivision project site). He said Brickton and Associates, LLC, has now decided to change Tract 5, of the originally approved Master Plan, by subdividing out 3 acres of it which will now make up Tract A shown on the new Master Plan and Development Plan. The proposed 3-acre tract of land will be used for industrial purposes. The remaining portions of this subdivision will be 1.81 acres to the north and 9.8 acres across Old Asheville Highway (Tract 6 on the original Master Plan). The entire parcel is zoned I-2. Public water (City of Hendersonville) and public sewer (Cane Creek Sewer District) are proposed.

Paul Patterson stated that he needed to recuse himself from any discussion or decision on this project as he is the engineer for the Stonecrest subdivision and feels that it would be a conflict. All members were in favor of his recusal.

Staff has reviewed the submitted Master Plan and Development Plan for Tract A of the Brickton Industrial Park 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. **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.
3. **Water and Sewer.** The applicant has proposed public water (City of Hendersonville) and public sewer (Cane Creek Sewer District). 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).

Staff has found that the proposed Master Plan and Development Plan for Tract A of the Brickton Industrial Park appear to meet the technical standards of the Henderson County Subdivision Ordinance. Staff recommends approval of the Master Plan and Development Plan subject to the above listed-comments being addressed and the developer addressing any other issues raised by the Planning Board.

Chairman Pearce said that it appears that this is a normal procedural subdivision. Mr. Card said that it is different from the original Master Plan and therefore the reason why it is brought back to you for approval. Chairman Pearce said, "How much difference does a subdivision change have to be before it is brought back to the Planning Board?" Mr. Card said that some of the reasons why subdivisions come back to the Planning Board is because of a change in lots – addition of lots. In addition, this subdivision is classified as a commercial-industrial subdivision, which needs to come before the Planning Board for any changes that are made. Chairman Pearce asked, "Staff can not make an

amendment to a Development Plan?" Mr. Card said you can, but if you are adding lots or making substantial changes it needs to come before the Planning Board.

Mark Williams made a motion that the Planning Board find and conclude that the Master Plan and Development Plan for Tract A of the Brickton Industrial Park complies with the provisions of the Subdivision Ordinance except for those matters addressed in the Technical and Procedural Comments section of the Staff memo that need to be addressed. Tommy Laughter seconded the motion and all members voted in favor.

Freeman Place Combined Master Plan and Development Plan Review (File # 05-M32) – 35 Total Single-Family Residential Lots (21 Lots in Phase 1) off Pilot Mountain Road – Stacy Rhodes, Agent for Wayne Nix and Sons Investments, LLC, Owner Stacy Rhodes, Paul Patterson and Mark Williams needed to be recused from any discussion or decision regarding this subdivision because of business/client relationships, all Board members voted in favor of their recusal. Mr. Card stated that Stacy Rhodes, surveyor for Wayne Nix and Sons Investments, LLC, owner, submitted a Combined Master Plan and Development Plan for a proposed subdivision to be named Freeman Place. Freeman Place is a proposed 35-lot subdivision on approximately 22 acres of land. The project site is located off Pilot Mountain Road in the Blue Ridge Township. Lot sizes range from a minimum of 13,639 square feet to a maximum of 43,853 square feet.

Mr. Card said access into the subdivision will come from Freeman Place Trail. A portion of Freeman Place Trail was built to serve a minor subdivision which was approved on August 26, 2005 and is shown on the attached Plan as the Justin Maybin lot and lot 23 of the major subdivision. The subdivision will be built in two phases. The first phase will have 21 lots and the second phase will have 14 lots. The applicant is requesting the approval of both Phases but will develop the subdivision one phase at a time. The Plan shows alternate turnarounds which will be used to serve the lots in the southern portion of the subdivision.

Private individual septic systems and wells are proposed. Freeman Place is located in an Open Use zoning district, which does not regulate the residential use of land. The property is located within half a mile of the Edneyville Farmland Preservation District. The property is located in the Rural/Urban Transition Area as outlined in the County's Comprehensive Plan.

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

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. **Other Final Plat Requirements.** In addition to the items noted above, the Final Plat(s) must meet the requirements of Appendix 7 of the Subdivision Ordinance.
3. **Farmland Preservation District.** The Affidavit of Understanding of Farmland Preservation District (Appendix 11) was not submitted with the application. Since the property is within ½ mile of the Edneyville Agriculture District, an Affidavit must be submitted pursuant to Section 170-35 of the HCSO. The Final Plat should include a notation that the property is within ½ mile of land in a Farmland Preservation District. (HCSO 170-35 and Appendix 7)

Mr. Card mentioned that Mr. Rhodes had submitted the signed affidavit regarding the Farmland Preservation District.

4. **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.
5. **Alternate Turnarounds.** The Combined Master Plan and Development Plan shows alternate turnarounds which according to the Section 170-21 Table 1, Note 2, may be approved by the Planning Board based on sound engineering design and public safety concerns.

Staff has found that the proposed Combined Master Plan and Development Plan for Freeman Place appear to meet the technical standards of the Henderson County Subdivision Ordinance. Staff recommends approval of the Combined Master Plan and Development Plan subject to the above listed-comments being addressed and the developer addressing any other issues raised by the Planning Board.

Chairman Pearce made a motion that the Planning Board find and conclude that the Combined Master Plan and Development Plan for Freeman Place complies with the provisions of the Subdivision Ordinance except for those matters addressed in the Technical and Procedural Comments section of the Staff memo that need to be addressed – comments 1,2,4, and 5. Mike Cooper seconded the motion and all members voted in favor.

Blue Moon on Pinnacle Peak Combined Master (File # 05-M33) – 47 Single-Family Residential Lots Located off Pinnacle Mountain Road – Alan Rieger, Agent for Sahalee, LLC, Owner. Stacy Rhodes, Mark Williams and Paul Patterson returned to the meeting for this item. Mr. Card stated that Alan Rieger, agent for Sahalee, LLC, owner, submitted a Combined Master Plan and Development Plan for a major subdivision titled Blue Moon on Pinnacle Peak. According to the Plan, the project site is located on 130 acres of land off of Pinnacle Mountain Road at the top of Pinnacle Mountain. The applicant proposes a total of 47 lots ranging from 25,538 square feet to 114,285 square feet. The remaining portion of land in the subdivision will be maintained as open space.

Since the proposed location of the subdivision is at the top of Pinnacle Mountain there are a few environmental issues that may affect the subdivision. The subject property is designated as a national heritage inventory site (Pinnacle Mountain site) in the North Carolina National Heritage Program's January 2002 inventory and the publication, *Natural Areas of Henderson County: A Preliminary Inventory of the Natural Areas of Henderson County, North Carolina*. The site is identified in the National Heritage Program because of its rock outcrops and cliffs. Chairman Pearce asked whether it was in the RAA District or the RTA District? Mr. Card stated it was in the RAA District as it is located far out.

In 1983 the Henderson County Board of Commissioners adopted the Mountain Ridge Protection Ordinance. According to Section 121-1 of the Mountain Ridge Protection Ordinance, the Board of Commissioners requests that the provisions of N.C.G.S 113A-209 apply to all mountain ridges in Henderson County whose elevation is 500 feet or more above the valley floor beginning January 1, 1984. The proposed project site is identified as a protected ridge under this Ordinance because the north side of Pinnacle Mountain is over 500 feet above the adjacent valley floor and therefore the height of any buildings or structures is regulated under N.C.G.S 113A-209 and N.C.G.S 113A-206.

The attached map, taken from the Henderson County GIS Online Website, shows the USGS 1:24,000 (7.5 minute) topographic map and elevation of the proposed project site.

A small portion of land between Maryann Popkin's parcel (the project site) and Pinnacle Mountain Road is shown in the Henderson County tax records as being owned by William Wright, not Susan Woodward as previously mentioned. It is the developer's intention to purchase this property and use it as part of the subdivision as shown in the Combined Master Plan and Development Plan.

Mr. Card said that the total lots proposed was 47, but Mr. Rieger came to me to mention that another lot is being proposed and that he will inform the Board of this. Mr. Card said that private roads are proposed and two entrances are also proposed on Pinnacle Mountain Road. The project is in the Open Use zoning district which does not regulate the residential use of land. Individual and/or community wells and septic systems are proposed. Dismal Creek, a perennial stream, starts on the proposed project site, but the property is not located in a water supply watershed district.

Mr. Card said Staff has reviewed the submitted Combined Master Plan and Development Plan for Blue Moon on Pinnacle Peak for conformance with the Henderson County Subdivision Ordinance (HCSO) and other relevant county land use ordinances and offers the comments that follow.

Master Plan

1. **North Carolina National Heritage Inventory.** As mentioned above, the project site for Blue Moon on Pinnacle Peak is designated as a national heritage inventory site in the North Carolina National Heritage Program's January 2002 inventory and the publication, *Natural Areas of Henderson County: A Preliminary Inventory of the Natural Areas of Henderson County, North Carolina*. The purpose of this program is to identify and protect natural areas with diverse ecological resources. This publication is just an inventory; therefore there are no land use regulations or protections available for the sites identified in this inventory. Staff feels that it is important to protect these sites because of their environmental significance and uniqueness. It appears that since the project is a conservation based subdivision and that the developer has completed their own inventory to identify sensitive environmental areas within the subject property that measures are being taken which will help protect the Pinnacle Mountain site. Mr. Card said the applicant may want to discuss with the Planning Board their intentions to protect these areas.

Development Plan

1. **Private Roads.** The final plat 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 should submit notice from NC DENR 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).

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 Standards.** The Applicant must meet all the applicable road standards for Section 170-21 in the Henderson County Subdivision Ordinance, especially 170-21F for minimum curve radius. Section 170-21F allows a minimum 60-foot centerline radius where existing cross slopes exceed 15 percent. It appears that some curves labeled on the Plans have curve radii as low as 70 feet. In areas where the cross slope does not exceed 15 percent the curve radii must comply with the minimum of 90 feet. The Final Plat(s) should include a notation that where the existing cross slopes are 15 percent or greater, a minimum centerline radius of 60 feet is permitted (170-21F of the HCSO).
6. **Fire Protection.** The applicant has met with the Henderson County Fire Marshal's office to discuss fire protection measures for the subdivision. No comments were submitted to the Planning Department from the Fire Marshal's office. It is in the Green River fire district. Staff would like the applicant to discuss with the Planning Board any fire protection measures for the proposed subdivision.
7. **Compliance with the Mountain Ridge Protection.** As mentioned above, Henderson County has adopted the Mountain Ridge Protection Ordinance which states that the provisions of N.C.G.S 113A-209 apply to all mountain ridges in Henderson County whose elevation is 500 feet or more above the adjacent valley floor. North Carolina G.S. 113A-209 states no county or city may authorize the construction of, and no person may construct, a tall building or structure on any protected mountain ridge. The definition of a tall building found in G.S. 113A-206 is any building with a vertical height of more than 40 feet measured from the top of the foundation and the uppermost point of the building. It also states that where such foundation measured from the natural finished grade of the crest or the natural finished grade of the high side slope of a ridge exceeds 3 feet, then such measurement in excess of 3 feet shall be included in the 40-foot limitation provided that no such building protrudes at its uppermost point above the crest of the ridge by more than 35 feet. The area or ridge under protection is defined as the elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain, and includes all land 100 feet below the elevation of any portion of such line or surface along the crest. By definition, this affects the northeast portion of the project site.
6. **Adjacent Property.** The developer must own the land that is being subdivided or provide an agent form for the property shown in the Combined Master Plan and Development Plan as the William Wright (Susan Woodward) property, which is the portion of the subdivision between the Maryann Popkin parcel and Pinnacle Mountain Road.

Paul Patterson asked Mr. Card to show on the Plan where the reductions of radius are located. Mr. Card demonstrated where they are on the smaller plans. Mr. Rieger said that walking the land, it is feasible that the radii may be greater. He said we drew from our aerial photography study. Now that we are in the land it is possible that this can be

straightened out a bit. Mr. Rieger said that they chose to connect rather than to leave a cul-de-sac especially after conversations with the Fire Marshal's office as they prefer a continuous move to a series of cul-de-sacs. He added that throughout the project, they never exceeded 13% grade. Mr. Rieger introduced John Durante, who is from an engineering firm located in Charleston, South Carolina and in Greenville, South Carolina that is well known for a lot of mountain work in Cashiers and Highlands area and has been appointed their lead engineer for this project.

Mr. Rieger stated that they are not asking for any variances as they are trying to stay within the Statutes of North Carolina but to exceed the rules when possible. He said that the whole neighborhood is a continuous neighborhood and this is being done for the ease of emergency vehicles. He said it is a sensitive and beautiful area and of the 138 acres with the acquisition of the additional land, there is only 52% of the property that will be used for homesites, so there is a very large preserve area, including the rock-out croppings which are significant in the face of the cliff, which is significant as well. Mr. Rieger stated that they are using the same idea as the Solomon Jones development – the people who are living there can see out, but neighboring people can not see in. He stated that all of the rock-out croppings are preserved and have stayed away from the perennial stream. He mentioned that the owners of Camp Blue Star have held this land for at least the second, third or even fourth generation campers and they are partners in the LLC and are extremely sensitive to the beauty of this property. He said that with regard to the National Heritage, they have been working with a company that is noted for being preservationists and also detailed some environmental issues that they have been working with on the property. He said that the area they are asking for an additional lot would serve twenty-four lots on the upper loop and twenty-four lots on the lower loop. The area is level and the lots will average 1.6 acres. Chairman Pearce asked, "You are not decreasing the open space, just increasing the density?" Mr. Rieger said, "No, just increasing the density and added that the entire property is buffered to protect the people who are already living outside of this development." Mr. Rieger said that it is not as environmentally sensitive as there are some cell towers nearby. Commissioner McGrady was concerned about the fire issue and asked what district is the development in? Mr. Rieger said that it is in the Valley Hill District. Mr. Durante said it is actually split between Green River District and Valley Hill District because if it is a structural fire both districts respond to the fire, but if it is a personnel-type matter, Valley Hill will respond. Commissioner McGrady said that Valley Hill can not get there. Mr. Rieger said that they are awaiting the approval of this development so they can start drilling wells, but have done some preliminary site works on the areas for the wells and also intend to provide a reservoir as a minimum. Chairman Pearce said that the Board will need some type of commitment from the owner on fire protection for the subdivision. Mr. Durante said that fire protection for the residential homeowners is required. He added that they did meet with the Fire Marshal, who indicated that they would need a minimum of 30,000 gallon tank to provide minimal requirement of fire protection for the subdivision. Mr. Durante said that they have done some preliminary hydraulic calculations, which probably estimate that need as even greater than that, so the minimum requirements will be met that the Fire Marshal asks us to do. Mr. Rieger added that they are not opposed of the 60,000-gallon tank, but concerned how we fill it and may end up with a series of community wells and a reservoir, but need to start drilling in order to know what the water flow will be. Commissioner McGrady is especially concerned about the fire issue in that area as there was a resident whose home burnt because they couldn't get to it in time and he urged Mr. Rieger to get together with the local fire departments. After further discussion on this matter, Chairman Pearce suggested to not only work with the Fire Marshal but also with the fire district chiefs and try to get something resolved.

Paul Patterson said that concerning the general detail on the plan shows a 16-foot pavement section, but the minimum standards are 18 feet on collector roads. Mr. Durante said that this is a local residential. There was further discussion regarding this issue. Paul Patterson mentioned that he brought this subject up regarding the collector road because he said he is trying to emphasize a point that 25 homes should not make a collector road and that the Planning Board has been trying to change that for a long time. Mr. Rieger stated that they connected those roads for the sake of fire protection and added that it would have been just as easy and it would have saved money not to try to connect them, but we felt that it would be much more practical if there ever would be a fire to connect them. He added that they could do 18-foot roads but because of the sensitive mountains and the degree of impact this would cause, it would be a very visible community from the valley area. Chairman Pearce stated that this is different from the DLV Investment project previously discussed. Unlike any from the past, this development proposes multiple entrances. Mr. Rieger stated that they had contemplated multiple entrances by putting a cul-de-sac in as that meets the letter of the Ordinance but he feels his design does as well because it addresses the more pertinent issues such as disasters and emergency vehicles. Chairman Pearce asked whether this requires Board of Commissioner approval? Mr. Card said that it is vague in the Ordinance that you could interpret it that maybe you could start out with a collector road and at some portion could go to a local residential road, but since it is a loop as stated, this is different. Chairman Pearce said that it would have to be approved by the Board of Commissioners to have a 16-foot roadway. Mr. Card said that is true and would require a variance. Chairman Pearce said that it would be up to the developer to decide whether they would want to comply because the road standards would need to comply. Mr. Rieger asked for more clarification. Mr. Card quoted from the Ordinance what is required. Mr. Rieger reiterated what he had previously addressed regarding the sensitivity of the project and the reason for the road designs. Chairman Pearce said that the Planning Board members are not given the authority to grant you a variance. Mr. Rieger suggested that he would take the conditional approval with the cul-de-sac and close it up permanently and then ask for a variance as far as the drawings are concerned. Chairman Pearce said that the Planning Board could give you conditional approval, but include in Condition 5, regarding road standards, to specifically note that 16-foot travelway does not meet road standards for collector roads. Mr. Patterson interjected and asked, "How long is that road from where it starts to where you will be putting your cul-de-sac? He said this brings in another matter of collector road characteristics when a dead-end road is longer than 2500 feet and this issue needs to be looked at as well." Mr. Rieger stated that he believes it is not more than 2500 feet. Commissioner McGrady asked when would these roads be constructed as he feels it is a painful discussion because we are suggesting to someone that is about to do a project to do the wrong thing because the present Ordinance is not written properly. Mr. McGrady said that in a few months the County will have a new Land Development Ordinance and suspects that this issue will be taken care of in the new Ordinance and that this will not occur. He said that if there were some way to work around this timetable, he would suggest doing so. Chairman Pearce said that he wants to grant approval giving them two choices, but if he wants to go forward now,, he does not see any other way to do it unless we are given another choice other than to approve it subject to the Subdivision Ordinance. Mr. McGrady stated that he is not suggesting anything else. Mr. Burrell said that if in five months from now there is a new Land Development Code that would allow precisely the plan you have on paper tonight, an amendment to the Master Plan could come in front of the Board where that changes the changes proposed. After some further discussion, Chairman Pearce made a motion that the Planning Board find and conclude that the

Combined Master Plan and Development Plan for Blue Moon on Pinnacle Peak comply with the provisions of the Subdivision Ordinance except for those matters addressed in the Technical and Procedural Comments section of the Staff memo that need to be addressed; and further more that the Combined Master Plan and Development Plan be approved and in addition to Condition 5, that the road will terminate with the cul-de-sac so that it meets local road standards. In addition that regarding Condition 8, the name change from Susan Woodard to William Wright and to add Condition 9, that the addition of one lot by recombining 3 lots into 4 lots, which are lot # 22, 23, and 24. Stacy Rhodes seconded the motion. All members voted in favor with the exception of Paul Patterson, who was opposed. The motion carried 6 to 1.

Chairman Pearce made an additional motion that the Planning Board recommends approval that these roads being built under the local road standards instead of the collector road standards primarily because of the multiple entrances and the looping system they presently have proposed and also because of the fire safety standpoint. He said having the roads loop instead of dead-ending into a cul-de-sac makes more sense for this development and would serve the general purposes of the Subdivision Ordinance much better than the letter of the law does, should the applicant seek a variance from the Board of Commissioners. Gary Griffin seconded the motion. All members voted in favor with the exception of Paul Patterson, who was opposed. The motion carried 6 to 1.

There was some further discussion regarding the DLV Investments subdivision previously presented by the Board at this meeting. They discussed the road grade and density issues of this subdivision.

Adjournment. There being no further business, the meeting adjourned at 8:56 p.m. All members voted in favor.

Tedd M. Pearce, Chairman

Kathleen Scanlan, Secretary