

**HENDERSON COUNTY
PLANNING BOARD MINUTES
October 18, 2005**

The Henderson County Planning Board met on October 18, 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 Paul Patterson, Vice-Chairman, Tommy Laughter, Renee Kumor, Mike Cooper, Jonathan Parce, and Stacy Rhodes. Others present included Judy Francis, Planning Director; Lori Sand, Project Manager; Matt Card, Planner; Kathleen Scanlan, Secretary; and C. Russell Burrell, County Attorney. Planning Board members Gary Griffin, Mark Williams and Chairman Tedd Pearce were absent.

Due to the absence of our Chairman, Tedd Pearce, Paul Patterson, Vice-Chairman called the meeting to order. He asked that Mike Cooper be appointed as a temporary Chairman of the meeting due to some medical problems he is presently dealing with. All members were in agreement.

Mr. Cooper asked for a motion for the approval of the September 20, 2005 regular Planning Board minutes. Renee Kumor made a motion to approve the September 20, 2005 minutes and Paul Patterson seconded the motion. All members voted in favor.

Staff Reports. Lori Sand said that there would be two small area plan studies conducted. The US 64/Etowah-Horse Shoe Community Plan will be held at the Etowah Elementary School on November 10, 2005 at 6:30 p.m. and the NC 191/Haywood Community Plan will be held at Rugby Junior High School on November 17, 2005 at 6:30 p.m. She distributed flyers for each meeting. She also distributed a draft table of contents for Board members, so they will be knowledgeable of the elements the Committee will be covering in these small area plans.

Update on Land Development Code Project – Lori Sand, Project Manager. Lori Sand stated that the next meeting would be held on Monday October 24, 2005 at 6:00 p.m. in this Board Room to continue discussing the Code Book. The sections that will be covered will be Articles 5 and 13 and Articles 3 and 4 reviewed.

Draft Order Granting Approval of Common Law Vested Right for Stonecrest Major Subdivision. – Glade Holdings Inc., Agent for Brickton Association and Kenneth Wilson, Owners. Ms. Kumor stated that the draft order that Mr. Burrell wrote reflects the findings that the Board made with regard to finding that there was a legal vested right from Glade Holdings to continue on that property. Jonathan Parce made a motion to approve the order granting approval of common law vested right for Stonecrest major subdivision. Renee Kumor seconded the motion and all members present voted in favor.

Review of Master Plan for Eagle Pointe Subdivision (File #2005-M27) - Located off Airport Road on 11.5 Acres, Adjacent to Blue Ridge Community College – 52 Single-Family Residential Lots in Three Phases - Eagle Rock Properties, Inc., Owner and Developer. Mr. Card stated that Eagle Rock Properties, Inc., owner and developer of the property, submitted a Master Plan application for a subdivision titled Eagle Pointe. The proposed subdivision is located off of Airport Road on 11.5 acres of land adjacent to Blue Ridge Community College. The project site consists of a few existing structures while the remaining portion of the property is predominantly an open field. No perennial streams are on the property.

Mr. Card said that the Applicant is proposing 52 lots for the entire subdivision. According to the Master Plan, Eagle Pointe will be developed in three phases. It appears that the subdivision will have access through three entrances on Airport Road. The Plan also shows a park located near the middle of the property. The project proposes to have public water and public sewer (City of Hendersonville for both) and is in the Urban Services Area (USA). It is located in the Open Use zoning district which does not regulate the residential use of land. The Blue Ridge Farmland Preservation District is located within a half mile of the proposed subdivision.

Mr. Patterson asked about the triangular wedge on Lot 33, what are their intentions? Mr. Card said that there is a portion of the adjoining property owner, which is located on Lot 33, he said he believes they intend to purchase that property since it is shown as Lot 33, but said that the applicant should address that issue.

Mr. Card stated that 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 and other items. Mr. Card stated that Staff has found that the proposed Master Plan appears to meet the technical standards of the Henderson County Subdivision Ordinance and have no comments. He said Staff recommends approval of the Master Plan subject to the developer addressing any other issues that might arise by the Planning Board.

Jim Black, one of the owners of Eagle Rock Properties addressed Mr. Patterson's question dealing with Lot 33 and said that they have contacted the property owner, who is Joseph Garren to inquire about what can be done to purchase that property. If no agreement can be met, they would plan to design around Lot 33. Tommy Laughter asked whether the corner lot (Lot 33) fronts Airport Road? Mr. Black said yes and that it is part of a 5-acre tract that runs up New Hope Road and there is a NCDOT right-of-way running through it, so it makes it an isolated parcel. Mr. Patterson asked whether that is a recorded right-of-way or is that just something that NCDOT claims? Mr. Black said that they have been told that it is a recorded right-of-way.

Renee Kumor made a motion that the Planning Board find and conclude that the Master Plan appears to comply with the provisions of the Subdivision Ordinance; and further move that the Master Plan be approved without any conditions. Tommy Laughter seconded the motion and all members voted in favor.

Review of Combined Master Plan and Development Plan for Little Mountain Hollow Subdivision (File # 2005-M28) – Located off Drexel Road on 16.8 Acres – 17 Single-Family Residential Lots - Terry Baker, Associated Land Surveyors, Agent for Mary Lee Miles, Owner. Mr. Card said Associated Land Surveyors, agent, for Mary Lee Miles, owner, submitted a Combined Master Plan and Development Plan and major subdivision application for a subdivision titled Little Mountain Hollow. He said the project site for Little Mountain Hollow is on 16.8 acres of land located off of Drexel Road in Etowah. The project site for the subdivision is on a portion of two parcels currently shown in the Henderson County tax records as being owned by Mary Lee Miles and James Dillon. Ms. Miles, the applicant, proposes 17 lots that will be used for single-family residential purposes. Drexel Road is a public road and will be used to access the subdivision. Mr. Card said that according to the Combined Master Plan and Development Plan the project site appears to have 51.87 feet of frontage on Drexel Road's right-of-way. The Enchanted Forest subdivision is adjacent to the proposed project site and it appears from the Combined Master Plan and Development Plan that the dashed line which shows Mr. Fisch's property (lot #3 of Enchanted Forest), extends to the centerline of Drexel Road's right of way and ends at the EIP in middle of the proposed entrance. On

the other side of the proposed entrance is Mr. Jones property. As labeled on the Plan, Mr. Jones's driveway accesses Drexel Road next to the proposed entrance and may encroach on the project site for Little Mountain Hollow. Mr. Card said the Plan also shows a pond which is situated near the entrance. It is the applicant's intention to fill the pond so that the road can be built there. Mr. Card pointed out Mr. Jones' property and the paved drive encroachment that is labeled on the plans which comes over into the right-of-way of the proposed entrance. Mr. Card stated that there also appears to be another encroachment which is Mr. Fisch's driveway, which is on Lot 2 of the proposed subdivision. Mr. Card said that it looks as though they have 51.87 feet of frontage which is sufficient according to the *Henderson County Subdivision Ordinance*. Mr. Card said that he feels that there are some disputes over that, but those are between the property owners and adjacent property owners and not a concern for approval. He said that should there be any changes made, they would need to make them on revised plans, but it is more of a legal matter than a subdivision approval matter at this point.

The stream feeding the pond is not a perennial stream (official blue line stream) but the stream leaving the pond, flowing northeast, is shown as a perennial stream (official blue line stream) on the Henderson County GIS Website and USGS 1:24,000 (7.5 minute) topographic map which Staff uses to determine the location of perennial streams. The 100-year flood way is located on the two parcels but is not within the project site for the subdivision. Ms. Berry, Zoning Administrator made a comment that there needs to be a change of the notation on the plan dealing with the flood hazard statement.

Mountain Hollow is in the Open Use zoning district which does not regulate the residential use of land. The property is not in a water supply watershed district and the French Broad Farmland Preservation District is within a half mile of the proposed project site.

Mr. Card said that it is not known at this time if public water (City of Hendersonville) or individual wells will serve the subdivision because the applicant is in the process of trying to negotiate a deal with the City of Hendersonville; however the property is within 50 feet of an existing water line according to the Combined Master Plan and Development Plan and individual septic systems and private roads are proposed.

Mr. Card said Staff has reviewed the submitted Combined Master Plan and Development Plan for conformance with the Henderson County Subdivision Ordinance (HCSO) and said that regarding the Master Plan; there are no comments, as it appears that all requirements have been met. The comments regarding the Development Plan are as follows:

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)

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)

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 170-37, A).

Other Final Plat Requirements. The Final Plat(s) must meet the requirements of Appendix 7 of the Subdivision Ordinance.

Water Supply. According to Section 170-20B (1) of the Henderson County Subdivision Ordinance, a subdivision shall be required to connect to a public water supply system when the subdivision is located within a distance from the existing water system equal to the product of 100 feet multiplied by the number of lots proposed for the subdivision. According to the Combined Master Plan and Development Plan the proposed project site is located 50 feet from the nearest public (City of Hendersonville) water supply. Therefore the Applicant must connect to the public water supply in order to satisfy this requirement of the Subdivision Ordinance. The Applicant must also provide evidence that the water supply plans have been approved by the appropriate agency. The development plan may be approved contingent on final approval from such agency; 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 hydrant installation (HSCO 170-20).

Frontage. Section 170-28A of the Subdivision Ordinance states that for a proposed subdivision which has less than 30 feet of frontage on an existing public road, the maximum number of lots allowed would be 1 lot per acre. According to the Combined Master Plan and Development Plan it appears that the Applicant has 51.87 feet of frontage even though part of that frontage falls in Mr. Fisch's property. The frontage is based on how much of the property abuts the right-of-way for Drexel Road and would be up to NCDOT whether to issue a driveway permit. Based on conversations with Mr. Fisch and Mr. Jones, adjacent property owners to the project site, doubt has been expressed about the 30 feet of frontage requirement. If it were found that the proposed subdivision does not have 30 feet of frontage, it would then have to comply with Section 170-28A and B, which allows a minimum of one-acre lots. In this case, a revised Plan would have to be submitted for review and approval.

Permits. The applicant must obtain a driveway permit through NCDOT for the proposed entrance on Drexel Road (S.R. #1209). Staff also suggests that the applicant consult with the US Army Corps of Engineers regarding the fill of the pond and the impact on the stream. Permits may be required by the US Army Corps of Engineers since the pond and stream are indicated as perennial streams (official blue line streams).

Floodplain Comments. Natalie Berry, Floodplain Administrator for Henderson County, submitted comments regarding the flood hazard notation on the Combined Master Plan and Development Plan. The proper changes should be made on the Plan and a revised Plan submitted to the Planning Department for review.

Mr. Card said Staff has found that the proposed Combined Master Plan and Development Plan for Little Mountain Hollow 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.

Mr. Cooper said that regarding the blue-line stream and filling the pond, this Board does not have any control over that. Mr. Card said that they would be required to get a permit through the Army Corp of Engineers, separate to subdivision approval. Mr. Cooper said that regarding water supply, the only way they wouldn't have to connect to it is if they could prove that it is not economically feasible or a hardship. Mr. Card said that they could get a variance from that by proving a hardship. Ms. Kumor said, "Is it possible for the City at some point to say that they can not hook up, or do they not have that right?" Mr. Card said that they could deny that. Mr. Patterson said that the residual piece is not

labeled as a lot, future development or anything. Mr. Card said that it is not labeled for development. Mr. Patterson asked, "Does the floodplain actually touch any on of these seventeen lots?" Mr. Card said not that he could tell. Mr. Baker said that it touches the residuals of both of them and both are going to be private, individual homeowner's land. There will be no future development. Ms. Kumor has questions whether the property owner can access this property with the thirty or fifty feet. Mr. Card said that Mr. Jones has expressed some doubt about that same issue, but what Staff can go on is what is shown on the plan, which is approximately 51 feet. Mr. Card added that if any of these disputes outside of this show that they actually have 28 feet, then they would need to change their plans, which is all that Staff can be concerned about at present. Mr. Parce asked that if the Planning Board approved this subdivision, would it be contingent on them getting a driveway permit showing the 51 feet? Mr. Card said that we could make it contingent on obtaining a driveway permit.

Mr. Baker of Associated Land Surveyors said that he did the surveying on this project. He stated that the water line is insufficient. He further stated that the City has approached Mr. Miles regarding a portion of his property that the City would like to place a water tower, but it is all based on whether they have the budget to do that. He said that the property owners have talked with the Corp of Engineers regarding the pond and they will know better before Final Plat submission about the water issue. Mr. Parce asked, "Is there a recorded right-of-way to Drexel Road?" Mr. Baker said yes. There is a recorded plat of Drexel Subdivision as a 60-foot right-of-way. Mr. Parce said, "Is it a recorded State maintained road right-of-way?" Mr. Baker said that the State has come through and paved the roads so they also have a recorded right-of-way. He said that he has a recorded plat that shows a 60-foot right-of-way so unless that has been rescinded, which we cannot find any evidence of, then that is still in place. Mr. Parce said that wouldn't be the benefit of this property, it would be the benefit of the subdivision. Mr. Baker said it would be the benefit of anything that touches that right-of-way. Mr. Parce said that the issue of 51.87 feet should be able to be resolved. Mr. Baker added that Mr. Miles can speak to this and have consulted an attorney and he sees no problem with it. Mr. Parce asked Mr. Baker to show where the State maintenance of the road ends. Mr. Baker said it ends at the cul-de-sac and is shown on the plan. Mr. Patterson said regarding this right-of-way, he feels that there should be a letter from Mr. Miles' lawyer stating the issue of the road and that way it would alleviate the Planning Board from having to worry about this issue. Mr. Baker said that if an attorney needs to draft a letter stating the rights that Mr. Miles has for Final Plat approval, then that can be done. Mr. Patterson asked Mr. Burrell whether he agreed with a letter from the attorney? Mr. Burrell stated that the Planning Board could make that letter as part of your recommendation. He added that the County couldn't be in a position to certify either way, all you would be saying is that it has been certified to us, based on that the Planning Board approves it. Mr. Patterson agreed and added that it puts the liability off of them and us if we get the letter. Mr. Patterson said that as a condition for the Development Plan, if you were connecting onto City water, you would need an availability letter. Mr. Baker said that they would not let us tie onto the system the way it presently is. Ms. Kumor asked, "Do the owners have the option, even though the water is close, because of the volume, do they have the right not to accept it?" Mr. Burrell said they have to accept it. According to the Ordinance, they have to provide it unless they get a variance, which they would need to go to the Board of Commissioners. Mr. Parce said the plat shows encroachments that is, their drives are located on this subject property, do you know whether those other property owners dispute the fact that there are encroachments and instead claim that the ownership are underneath where those properties lie? Mr. Baker said I don't think he disputes it. Mr. Baker stated that between Mr. Jones and Mrs. Thomas, they were going to actually cut a portion off to get this encroachment of her and back on to him, but he doesn't know why it didn't happen. Mr.

Baker said he feels that most of their issues are dealing with concerns and their rights as an adjacent property owner.

Mr. Cooper opened public input.

Robert H. Jones. Mr. Jones stated that he lives at 116 Drexel Road, which is adjacent to Little Mountain Hollow development. He said that he is the secretary/treasurer for the Enchanted Forest Property Owners Association. He handed out to the Board members the Enchanted Forest Subdivision map, dated November 28, 1975 along with some supportive document dealing with the proposed subdivision, Little Mountain Hollow. Mr. Jones stated that he filed in Superior Court a suit for adverse possession as to where my property lies in relation to this proposed subdivision. In his discussion about the property, he said that all three roads in the Enchanted subdivision end in cul-de-sacs and this would appear that the developers and the purchasers of the property in that subdivision didn't expect any further developments after that. All three of those roads were private, and was noted on all of the deeds as such. Mr. Jones added that there are covenants that run with the property. He mentioned that he notices that there are no covenants proposed for Little Mountain Hollow development and is concerned with that issue. Over time two of those roads, Maple Leaf Road and Drexel Ivy Circle Road were improved according to State standards and turned over to NCDOT. The residents of the subdivision paid for those improvements. Mr. Jones showed the highlighted section of a map he had distributed to Board members and mentioned that they were proposed for swap of property between Mr. Fisch, who owns lot 3 in Enchanted Forest and a piece of property off Drexel Road. He stated that he has lived on Drexel Road for twenty-four years and the pin that is in question of this survey, where Drexel Road doesn't seem to go on, but said that it does go on. He said the pin has not moved in the twenty-four years and that pin is the corner of Mr. Fisch's property and therefore the twenty-three feet is Mr. Fisch's property. Mr. Jones said the twenty-eight feet is the encroachment of my driveway which has been there since around 1968. He said he wasn't aware of that encroachment until 1992, when a survey was done of my property because of an addition we had done. He said that at that time he approached Mrs. Thomas who said not to worry about it and that it will be taken care of in time. Mr. Jones said that this is now the time. Mr. Jones said that there are two other roads that the proposed development could use – Misty Mountain Drive and Nicholson Lane. He stated that he is also concerned about the documents, which refer to a combined master plan and development plan, and wonders if there is another combined master and development plan or is this "the" plan for all of the property that is involved in that area and feels that this question should be answered. He also is concerned with water supply to this subdivision because he mentioned that according to the water department, there are no more taps available on that line and that all of the taps that have been acquired for that area have been acquired by Seladon Hills development (Glade Holdings) and therefore it appears that the water issue is a serious matter. He stated that due to the water problem and the suit and the fact that the encroachment property mentioned is owned by Mr. Fisch, that this proposed development be put on hold by the Planning Board until these matters are resolved and that none of the infrastructure be permitted to proceed at this time.

After some Board member discussions, Mr. Burrell mentioned that the Board is in a situation where there are a number of interesting issues – a sixty-foot recorded right-of-way, a forty-five foot State right-of-way running from where to where within that sixty-foot right-of-way and whether it runs up to the property edge of the old subdivision boundary or not. He added that the State's right-of-ways are not the best document, but that is not for this Board to determine, but is for someone else to certify for you and other people to fight that in court and therefore this Board can not take a roll in this action. Ms. Kumor asked Mr. Burrell to explain the County's process in this matter. Mr. Burrell stated that

the Board is looking at this in a preliminary stage and not the ultimate plans. He said there will be other steps that will bring it to the final plat stage before any lots are sold and that this could take several months with various permits required and various designs that will need to be approved along the process including among some of the permits, a driveway permit from NCDOT and if the State is not satisfied that there is sufficient right-of-way to give a right-of-way permit here, then that would be a condition upon approval. Mr. Burrell stated that if the Board chooses to approve this subdivision, and uses the recommendations of the Planning Staff, the Planning Board can put some additional conditions on them and among them would be a road permit from NCDOT.

Edward Fisch. Mr. Fisch stated that he owns the property at 126 Drexel Road, which joins the property that Mr. Miles has purchased for the proposed subdivision and Mr. Jones' property is behind it. He said that this proposed road that is coming in on this subdivision is on his property. He added that a plan was submitted to this Board where it looks like Mr. Miles owns all of that property, but in fact I own it and that this should be discussed with Mr. Miles.

After some further discussion regarding the encroachment issue, Paul Patterson commented on the Planning Department's interruption of the off-site access section of the Subdivision Ordinance. Mr. Burrell said he feels that the Board should make any approval of this subdivision conditional on their being sufficient access and that Mr. Miles provide the Planning Department a letter from an attorney saying that there is in fact a thirty-foot access on the ground that they have the right to use. He added that he assumes that NCDOT will make the final call on this, subject to the courts overruling everyone on this issue.

Jonathan Parce 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 the Technical and Procedural Comments section of the Staff memo that need to be addressed; comments 1 – 8 and further move that the Combined Master Plan and Development Plan be approved subject to the following conditions: in addition to comment 6, that the Planning Department obtain a letter from the Attorney stating the nature and extent of the right-of-way on Drexel Road and also dealing with comment # 5, that the property owner either obtain approval from the City of Hendersonville Water Department with a water availability letter or obtain a variance. Tommy Laughter seconded the motion. Mr. Jones asked whether the owners would be allowed to proceed with the infrastructure of the subdivision? Mr. Burrell said that they would need to have the permit from the NCDOT before any construction begins. This can be held up for a number of reasons including litigation. All members voted in favor of the motion.

Subcommittee Assignments and Meetings Dates. Ms. Francis reminded the Board members of the workshop dealing with the Land Development Code on October 24, 2005 at 6:00 p.m.

Paul Patterson mentioned that one of the subdivision matters that the Board should look at is the interpretation of the one-acre standard in the off-site access section of the Ordinance.

Adjournment. There being no further business, Tommy Laughter made a motion to adjourn the meeting and Paul Patterson seconded the motion. The meeting adjourned at 8:35 p.m.

Mike Cooper, Acting Chairman

Kathleen Scanlan, Secretary