

REVISED
HENDERSON COUNTY
PLANNING BOARD MINUTES
June 21, 2005

The Henderson County Planning Board met on June 21, 2005 for its regular 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; Mike Cooper, Vice-Chairman; Tommy Laughter, Jonathan Parce, Renee Kumor, Paul Patterson, Stacy Rhodes, Gary Griffin, and Mark Williams. Others present included Karen C. Smith, Planning Director; Lori Sand, Project Manager; Autumn Radcliff, Planner; Matt Card, Planner; Anthony Prinz, Planner; Kathleen Scanlan, Secretary; and C. Russell Burrell, County Attorney.

Approval of Minutes. Chairman Tedd Pearce presided over the meeting and called the meeting to order. Mr. Pearce asked for the approval of the May 17, 2005 regular meeting minutes. Renee Kumor made a motion to approve the minutes and Gary Griffin seconded the motion. All members voted in favor.

Adjustment of Agenda. Chairman Pearce stated that Item 5, *Update on Land Development Code Project* by Loris Sand, Project Manager and Item 11, *Cemeteries and Land Use Regulations* by Karen Smith will be tabled until they arrive at the meeting. Chairman Pearce stated that both Lori Sand and Karen Smith are at a Board of Commissioners meeting which was being held at the same time of the Planning Board meeting. All members were in favor of the adjustment.

Chairman Pearce said that reviews of subdivisions would be conducted informally unless the applicant or anyone qualified to participate in the proceeding requests that such review be conducted as a formal quasi-judicial proceeding.

Chairman Pearce noted that the amendment to Section 15, Item 6, would be tabled until further notice.

OLD BUSINESS:

Development Parcel Review – Carriage Park Planned Unit Development (PUD), Section 19, Phase II (The Preserve) –8 Proposed Single-Family Residential Lots – Dale Hamlin, Agent for Carriage Park Associates, LLC. Chairman Pearce stated that this item would be conducted as a quasi-judicial proceeding and the proceeding is to consider Section 19, Phase II, development parcel review. Jonathan Parce and Paul Patterson asked to be recused from any discussion or decision from this item because of personal and business conflicts in Carriage Park. Chairman Pearce made the motion to accept their recusal and Stacy Rhodes seconded the motion. All members voted in favor.

Chairman Pearce then asked all parties to the proceeding Bob Grasso, Engineer for Carriage Park, Planning Department Staff, Mr. Card, Planner, Richard Krupp, President of Carriage Park Homeowner's Association, Paul Patterson, surveyor, and James Bandelin, Carriage Park Architectural Committee to be sworn in.

Mr. Card stated that Carriage Park is a Planned Unit Development (PUD) on Haywood Road on 392.3 acres of land approved by the Henderson County Board of Commissioners under Special Use Permit # SP-93-13 (and as amended). Carriage Park was approved under Special Use Permit SP-93-13 granted on October 11, 1993. He stated that this review is for Section 19,

Phase II, labeled *The Preserve*, located off of Carriage Park Way in Carriage Park. Section 19, Phase I, also a portion of The Preserve, was approved with conditions at the September 21, 2004 Planning Board meeting. The Applicant, Dale Hamlin agent for Carriage Park Associates, LLC, submitted the Section 19, Phase II, Development Plan on May 23, 2005. Phase II of Section 19 is proposed to have a total of 7 single-family dwelling units on 7.03 acres of land. Residential streets with a 45-foot rights-of-way, labeled as Road A and B will serve the lots. The plans show the 30-foot setback for single-family residential dwelling units from the centerline of residential streets as required by the Schedule of Site Standards in Special Use Permit SP-93-13 (as amended). The roads are proposed to be private. The Applicant has proposed public water (City of Hendersonville) and public sewer. The project area is located in the R-30 zoning district and the Water Supply Watershed IV district.

Mr. Card said that as part of the notice requirements of Special Use Permit SP 93-13 (as amended) the Planning Department notified any owners of property located outside of Carriage Park but within 100 feet of the proposed Section. Mr. Hamlin submitted notice to the Planning Department on June 6, 2005, that there were no such owners. The Planning Department sent out notices on June 6, 2005 to Carriage Park Associates LLC, the Carriage Park Home Owners Association and all other recipients on the Carriage Park mailing list.

Mr. Grasso, engineer for Carriage Park, said that this Section deals with 7 lots and complies with all of the requirements in the Special Use Permit and also with the *Henderson County Subdivision Ordinance*. He stated that Paul Patterson, Carriage Park's engineer, is designing water and sewer. He said that the erosion control permit is pending at this time and that they are looking forward to moving ahead to having more residents in Carriage Park.

Mr. Card said that he would like to enter Staff's packet as evidence. He said that Staff has reviewed the Development Plan for Section 19, Phase II, for conformance with the Henderson County Subdivision Ordinance (HCSO), the Henderson County Zoning Ordinance (HCZO), the Henderson County Water Supply Watershed Ordinance (WSWSPO) and Special Use Permit #SP-93-13 (as amended) offers the following comments:

1. **Private Roads.** Because private roads are proposed, 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 from a professional land surveyor, engineer, landscape architect, architect or professional planner that no plan is required prior to beginning construction.
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 City of Hendersonville Water and Sewer Department and NCDENR have approved the water and sewer plans serving Section 19, Phase II, prior to beginning construction (HCZO Section 200-33 F(4)(b)[6]).
5. **Private Road Standards.** Special Use Permit #SP-93-13 (Exhibit A [12]) requires that roads be constructed to NCDOT standards for vertical alignment and grade and that the

Applicant provide evidence of the responsibility for road maintenance and repair, prior to the recordation of any plat representing lots or units having direct access to said roads.

6. **Development on Slopes.** Special Use Permit #SP-93-13 Exhibit A[10] states, where development is proposed on slopes in excess of 40%, the Applicant shall state, for every development parcel, the extent of existing soil stabilizing vegetation and trees, to what degree, if any, removal of such is proposed and what the effect of such removal will be on erosion of the development site, both short and long term. The Applicant has indicated in the Descriptive Narrative that certain areas contain slopes greater than 40%. It also says that disturbance within these areas, initiated by the Developer, will be limited to the street construction limits and that disturbed slope areas will be stabilized with permanent vegetation as provided in the erosion control plan. Staff did not see any indication of the 40% slope on the Development Plan. Staff would like revised plans that show these areas as described in the Descriptive Narrative.
7. **Evidence of Infrastructure Development.** The Applicant has indicated in the Descriptive Narrative that sewer and water lines are extended to the Section 19, Phase II, boundary. The Applicant shall, prior to any request for review or approval of plans for any development parcel, provide evidence that development infrastructure including roads, drainage, water and sewer, have been extended to the boundary of said parcel; or otherwise provide an improvements guarantee in a form acceptable to the Henderson County Board of Commissioners. Prior to beginning construction, the applicant should, on a revised development plan, clarify where water and sewer lines are located in relation to the development parcel and should show drainage areas and culverts (#SP-93-13 Exhibit A[A][2][d]).
8. **Road Names.** The Applicant has proposed two roads labeled Road A and Road B. The Applicant has not provided road names. Prior to the recordation of the final plat, road names will need to be submitted and approved by the Henderson County Property Addressing Office (HCSO Section 170-25). Such names should be shown on the final plat.

Mr. Card added another comment, being # 9, regarding open space. He said that that the applicant is required to put on record the amount of open space prior to or concurrent with the recordation of the final plat for Section 19, Phase II.

Staff has found that with the exception of the items listed in the Technical and Procedural Comments, above, the proposed Development Plan for the Section 19, Phase II, development parcel appears to meet the standards of the Henderson County Zoning Ordinance, Water Supply Watershed Protection Ordinance, and Subdivision Ordinance, where applicable, and the Special Use Permit #SP-93-13 (as amended). Staff recommends approval of Section 19, Phase II, subject to the above comments being addressed and any other issues that may arise during the hearing.

Mr. Bandelin, who is a member of the Architectural Review Committee for Carriage Park stated that the Committee reviewed this Section as part of our Committee process and would recommend approval.

Mr. Krupp, President of Carriage Park Homeowner's Association stated that he also recommends approval of Section 19, Phase II.

Chairman Pearce made a motion that the Planning Board find and conclude that development parcel Section 19, Phase II, of the 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 Technical and Procedural Comments section of Staff's memo and in addition, that the applicant is required to put on record the amount of open space prior to or concurrent with the recordation of the final plat for Section 19, Phase II and that the Planning Board direct Staff to prepare an Order with the Planning Board's findings of fact, conclusions and decision and make it available at a future meeting for approval. Mark Williams seconded the motion and all members voted in favor.

Chairman Pearce noted that Section 17, Item 7a, would be tabled until further notice and tabled the amendment to Section 15.

Paul Patterson and Jonathan Parce joined the meeting at this point.

Rezoning Application #R-2005-03 - Request Approximately 26.8 acres of Land Located off College Drive from O & I (Office and Institutional) Zoning District to R-10 (High-Density Residential) Zoning District – Jon Laughter, Agent for Blue Ridge Community College. Ms. Radcliff said on April 19, 2005, Mr. Laughter, agent for Blue Ridge

Community College submitted an application to rezone approximately 26.8 acres of land located off College Drive, from an O & I (Office and Institutional) zoning district to an R-10 (High-Density Residential) zoning district. The subject area appears to be a portion of two parcels both of which are owned by Blue Ridge Community College. She stated that in talking with the Land Records Department the information which has not been updated on their system, shows one of the parcels includes not only the fireman's training center (Herman Weisberg Training Center) but also the entire Blue Ridge Community campus. She said that it is her understanding that a good portion of the parcel is going to be subdivided, if it is rezoned and this was unclear in the agenda packet. Ms. Radcliff said that there are just two parcels, one parcel covers all of the Blue Ridge Community College and crosses over College Drive and takes in the part where the fireman's training center is located to the west, and the other parcel is below that. The subject area is a small portion of the first parcel, as mentioned above, and the majority of it is the other parcel.

Ms. Radcliff said that the subject area is situated between the Herman Weisberg Training Center located to the west, and the Elizabeth House and Pardee Care Center facilities located to the east. The subject area is currently zoned O & I (Office and Institutional), which were applied on October 1, 1990 as part of the East Flat Rock Phase I Land Use Plan. She mentioned that the subject area is surrounded on the north and east by an O & I zoning district, to the south by a C-4 (Highway Commercial) zoning district, and to the west by an R-20 (Low-Density Residential) zoning district.

Ms. Radcliff stated that the O & I (Office and Institutional) zoning district is intended to provide a compatible mixture of office, low-density residential, light commercial and institutional uses. The R-10 (High-Density) Residential District, which is the proposed district for the subject area is intended to be a high-density neighborhood consisting of single-family and two-family residences and small multifamily residences. It is expected that public water facilities and public sewage facilities will be available to each lot, providing a healthful environment. She stated that currently the subject area is undeveloped and most of the uses within the subject area consist of residential, commercial and institutional uses. Non-residential uses include the Elizabeth House and Pardee Care Center to the east, including an office building for Four Seasons Hospice and Palliative Care, which are also being built to the east. She said in addition, a wood products manufacturer and an RV park are located to the east and southeast. To the north of the subject area is Blue Ridge Community College. She said it is important to note that looking westward, the subject area is located adjacent to the training center and noted that there is a comment regarding this from Rocky Hyder, Henderson County Emergency Management

Coordinator. The subject area has access to City of Hendersonville public water and sewer lines.

Ms. Radcliff stated that Staff's position at this time, under the guidelines of current plans, policies and studies is it supports the East Flat Rock Area, Phase I Land Use Plan's recommendation for the subject area to be zoned for office and institutional uses and this is based upon the following:

Both the text and map of the 2020 CCP identify the subject area as being located in the Urban Services Area (USA) and suitable for industrial development, with a portion of the subject area being identified for conservation. Although the CCP states, "wide ranges of residential densities will exist," it also states that, "public schools would be developed within the USA whenever possible."

Ms. Radcliff stated that the pending Industrial Study will help the County further refine the industrial land use recommendations in the CCP and will, eventually, lead to industrial sites being zoned industrial. It is possible that the industrial land use classification in the Blue Ridge Community College area could be changed to some other category as a result of the Industrial Study.

She stated that the subject area is located adjacent to Blue Ridge Community College, and current zoning allows for a wide range of uses that are usually found near colleges. The proposed R-10 zoning district would, primarily, only allow for residential uses.

Based on comments from Henderson County Emergency Services, the subject area's close proximity to the existing Herman S. Wiseberg Training Center makes the subject area less desirable for R-10, High-Density Residential development. In addition, a small portion of the subject area appears to be located within the 100-year floodplain.

Ms. Radcliff said that Staff has identified no plans or policies, changes in existing conditions, undue hardship to the applicant, or overriding community interest that would justify granting the proposed rezoning. She said 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.

Ms. Radcliff reminded the Board it has 45 days from its first consideration of a rezoning application to make a recommendation to the Board of Commissioners. Thus, the deadline for a Planning Board recommendation to the Board of Commissioners regarding this application is Thursday, August 4, 2005. If no recommendation is made by August 4, 2005, then the application proceeds to the Board of Commissioners with an automatic favorable recommendation. She added that upon request of the Planning Board, the applicant may choose to grant a 45-day extension, at which time the deadline for a Planning Board recommendation would become Monday, September 19, 2005.

Mr. Patterson inquired whether the acreage is defined by metes and bounds? Ms. Radcliff referred this question to Mr. Laughter. She said she does have a site plan showing the acreage, which will eventually be subdivided.

Mr. Laughter said that it is 26.8 acres that the school had the opportunity to sell. He said that they have a buyer. It has not been surveyed. He said that neither the prospective buyers or the school wanted to pay for a survey until it is zoned, as they do not know whether they could use the property or not, but the school has the opportunity to sell and the buyer has walked the property and knows all of the conditions out there and would like to use the property as residential. He reiterated that the water and sewer is there on that location. He said that there

is a flood hazard issue next to the creek. He said that the buyer is aware that the training center is there. He added that he heard that the school is going to put a museum out there regarding firefighting. He said that the residential units will be geared mainly for retirees. Chairman Pearce asked whether the residential units will be single-family structures or multi-family unit structures. Mr. Laughter stated that there will be a mix of both types. Chairman Pearce added that Mr. Laughter does not have to answer these questions. Chairman Pearce stated that since it is incumbent upon the requester to justify why we should change, what do you feel has changed on the conditions that would make this R-10 more appropriate for this land than O & I? Mr. Laughter said they he can see advantages to having housing for retirees and for the school. Ms. Kumor said knowing that neighbors can get upset about a lot of things, how do you address the issue of the fire training facility being there and the information we received from Rocky Hyder suggesting the frequent use of that facility and also the hours and noise factor. Is that going to be something that everybody will need to acknowledge and not harass the firefighters or the Community College about having it withdrawn? Mr. Laughter said that although there might be some problems with developing residentially in that area, the developer has experience in this type of development and is fully aware of the surroundings. Chairman Pearce said that there is some reason for concern. He said that making a plat or deed requirement on the property regarding notice about the Herman S. Wiseberg Training Center can not be made because that would be considered contract zoning, but it could be a condition, if a Conditional Use Permit were requested at a subsequent date for approval of whatever they propose for the 26.8 acres. Chairman Pearce asked, does O & I allow residential, would Staff mind explaining the residential comparisons between R-10 and O & I? Ms. Radcliff stated that both R-10 and O & I allow for single-family dwellings including manufactured homes and two family dwellings including apartments provided that they be no larger than a four-family dwelling on a single lot. Chairman Pearce asked, "Would a large parcel be considered a single lot, or can they break that up into several smaller lots?" Ms. Radcliff said that even if it remains O & I, they could still subdivide the parcel into smaller lots. She said that you could make a subdivision there, but the big difference would be that the O & I requires a minimum lot area of 30,000 square feet, where the R-10 district requires 10,000 square feet, so obviously you would get more homes in the R-10 District. Chairman Pearce asked, "If you are building four-plexes, would the 30,000 square feet still apply or would that be 30,000 square feet per unit?" Ms. Radcliff said that it would be a little different. Ms. Radcliff said that with O & I the maximum lot area per dwelling per family unit would be 30,000 square feet. She said that if you wanted to build an apartment, you would need more square footage. She said that with R-10 there is the original 10,000 square feet, which is for the first family unit, then every unit after that would require 5,000 square feet. She added that the setbacks in R-10 are much smaller than the O & I District. She said that the big difference between the two is that R-10 allows for PUDs with a Special Use Permit.

Mr. Parce asked for an explanation of the wording found in Staff's recommendation regarding *demonstrating an overriding justification for approving a given rezoning application*. Ms. Radcliff said that if there had been a recent small area plan near this subject parcel or if there was community interest regarding this parcel as far as a group of neighbors or the whole community that came in and made a rezoning request not for just the applicant's area, but for the whole area that this would be an example of a justification. She basically any significant change in this area. Mr. Rhodes asked if there has been any negative feedback regarding this request? Ms. Radcliff said no, but adjacent property owners are not notified until there is a public hearing, as this is not a common practice until it reaches the Board of Commissioners level. Ms. Kumor said that she feels it is a strange piece of property and if the deal should not go through, what would the County's recourse be? Chairman Pearce said that the applicant would have to come back in a year, because they can't come back before then. Ms. Radcliff stated that the parcel would be split-zoned. Mr. Patterson said that in looking at the site, there is some questionable soil on the parcel, but it would be easier to handle with residential units instead of a large building. Mr. Cooper said that he doesn't feel that a large commercial building would go on this property in the future. Chairman Pearce said that generally the Staff's recommendation meets

the general intent of the Zoning Ordinance and how rezoning applications should be looked at. He said that really there is no change, but feels that there is a serious problem with the emergency training facility nearby so therefore there are a few reasons why it should not be residential, even though residential is allowed in O & I district. Chairman Pearce said that in its favor, it does have water and sewer, which would solve some of the problems for building residential units, but he feels a general tendency is to turn this down, because basically nothing has changed to make the O & I zoning incorrect. Mr. Cooper doesn't feel that any type of commercial would be conducive because of the type of soil and the cost involved, but that residential is a little more suitable because of a less-heavy structure.

Chairman Pearce made a motion to recommend denial for Rezoning Application # R-05-03 to the Board of Commissioners. Board members discussed the possibility of forwarding it to a subcommittee. After some further discussion among Board members, they decided that the main reason to deny this application is the statement given in the Staff report that states: "that there has not been any plans or policies, changes in existing conditions, undue hardship to the applicant, or overriding community interest that would justify granting the proposed zoning. It is generally incumbent upon the applicant to demonstrate an overriding justification for approving a given rezoning application." Tommy Laughter seconded the motion. Jon Laughter asked if the Board could delay the decision on this until the Board could talk to some of the directors at the Community College on what their thinking is. Chairman Pearce said that this was the College's opportunity to present evidence with regard to the information regarding what is going to be done and what the concerns were. He stated that if the Board wants to delay this request, he said he would withdraw the motion and Mr. Tommy Laughter withdrew his second on the motion. Ms. Radcliff said that the Board can table this request until the next Planning Board meeting and not make a recommendation nor send it to a subcommittee to allow Mr. Laughter to bring forward more information. Chairman Pearce said that specifically, to demonstrate an overriding justification for approving this rezoning application. Chairman Pearce said that the Board will table this request until the next regularly scheduled Planning Board meeting (July 19) for the reason previously discussed. Jonathan Parce made a motion to table the request and Stacy Rhodes seconded the motion. Jonathan Parce, Stacy Rhodes, Tedd Pearce, Mike Cooper, Mark Williams, Gary Griffin, Renee Kumor and Tommy Laughter were in favor of the motion. Paul Patterson opposed the motion. The motion carried.

Ms. Radcliff stated that the rezoning application for R-2005-04 was submitted on May 23, 2005 for Shane & Sara Swecosky, applicants asking that the County rezone approximately 3.17-acre portion of a 7.67-acre parcel of land located off Brevard Road from R-30 (Low-Density Residential) zoning district to a C-1 (Residential Commercial) zoning district. Ms. Radcliff said that according to Matt Card, Subdivision Administration, the 3.17-acre portion, which is the subject area, has been subdivided and the plat was picked up to be recorded at the Register of Deeds Office.

Ms. Radcliff stated that the subject area is located in a WS-IV Water Supply Watershed. As mentioned, the subject area is located off Brevard Road (US 64 West), just west of the intersection of Brevard Road and Campground Road and is located over one-half mile southeast of the intersection of Brevard Road and South Rugby Road. It is currently zoned R-30 since 1981 and is within the R-30 zoning district and is approximately 140 feet northwest of an existing C-1 zoning district that was applied in 1996 as part of rezoning application. The subject area is located approximately ½ mile east of a C-2 zoning district and approximately three-tenths of a mile southwest of an R-T and a T-15 zoning district. In addition, the subject area is also located approximately two-tenths of a mile north, south, and east of an R-40 zoning district. Ms. Radcliff stated that an R-30 district is intended to be a quiet low-density neighborhood consisting of single-family residences. The C-1 residential commercial zoning district is intended to provide a range of office, retail and service establishments of small to moderate size with small, well-landscaped parking areas to be available to residents of nearby

residential areas while maintaining the character and integrity of the neighborhood. The objective is to provide neighborhood conveniences and small commercial establishments without nuisance factors, such as constant heavy trucking and excessive noise, dust or odors. This classification will be considered where proximity to residential areas, existing land uses, traffic patterns and other factors make it desirable to maintain a commercial character which is less intense than that permitted in the C-2 (Neighborhood Commercial District). The character of this district shall be compatible with surrounding districts with regard to aesthetics, density, bulk and space.

Regarding the WS-IV Water Supply Watershed, she stated that the purpose statement reads: "In order to accommodate moderate to high land use intensity, unless exempted below development activities in WS-IV areas shall be conducted in accordance with the terms of this subsection. Single-family residential uses shall develop at a maximum of one dwelling unit per 20,000 square feet of lot size, or three dwelling units per acre upon qualification of a natural drainage and filtering system bonus. All nonresidential development shall be allowed at a maximum of 24% build-upon area or a maximum of 36% built-upon area upon qualification for a natural drainage and filtering system bonus." Ms. Radcliff stated that since there were no perennial streams on the subject parcel according to the USGS Topo maps, no thirty-foot vegetative buffer requirements are needed. Ms. Radcliff stated that the current land use, according to two weeks ago, there appeared to be a home located on the subject property, which was noted in the Staff report. She said it is her understanding that the home has been removed and the property is vacant. Ms. Radcliff showed photos of the subject parcel and distributed them to Board members. Ms. Radcliff stated that looking at the surrounding area, most uses within the vicinity of the subject area are residential, agricultural, or commercial. Residential uses include Robin Crest Subdivision to the west, Hunters Glen Subdivision to the southwest, and a number a single-family residential homes that surround the subject area. In addition, a number of farms and churches are within the vicinity of the subject area including Brevard Road Baptist Church to the southeast, Horse Shoe Baptist Church immediately to the west, and the Shaw Creek Methodist Church and campground to the northwest. Commercial uses include the Horse Shoe Gap Antique Village and General Store, and the Pooch Parlor Dog Grooming, all to the south of the subject area. At the intersection of South Rugby Road and Brevard Road, and at the intersection of Banner Farm Road and Brevard Road, are several non-residential uses, just west of the subject area, which include, the Hungry Bear Restaurant, Horse Shoe Landscaping, Carolina Precision Tile, the Horse Shoe Post Office, the Plaza of Horse Shoe, a gas station and the Horse Shoe Crossing Shopping Center. Ms. Radcliff stated that the subject area does not have direct access to public water but the City of Hendersonville has a water line along Two Tree Drive, 272 feet northwest of the subject area. Public sewer service is not available to the subject area at this time.

Ms. Radcliff stated that based on Staff's comments and recommendations, Staff does not support a C-1 Residential Commercial zoning district for the subject area. She said that this was based on the fact that both the text and map of the CCP identify the subject area as being located in the Urban Services Area (USA) and state that the USA will contain considerable commercial development at a mixture of scales: local, community, and regional, there is an existing commercial node that is identified as a Community Service Center, which is not adjacent to but within one-half of a mile east of the subject area, and already contains both C-1 and C-2 commercial zoning. She said that the CCP calls for Community Service Centers to be located in unified development concentrations at intersections of selected thoroughfares and in central locations that are convenient to nearby residential development so as to minimize problems associated with strip commercial development. Although the subject area is located in very close proximity to an existing C-1 zoning district, which was applied as part of rezoning application R-1-96, neither Planning Staff nor the Planning Board recommended a commercial zoning district at that location. She said that the subject area does not directly abut the existing C-1 zoning district and according to the Henderson County Zoning Administrator, would be

considered as two separate C-1 districts. Therefore, due to the maximum C-1 zoning district acreage restriction of 5 acres, abutting property to the existing C-1 zoning district and adjacent property to the subject area would have to remain residential or be rezoned to a commercial zoning district other than C-1. She said the subject area is identified as being in a priority 3 Community Planning Area, the Etowah/Horse Shoe/Mills River South Planning Area, within the community-based planning framework that is scheduled to be in FY 05-06. In addition, the County is currently working on its new Land Development Code that could replace the existing zoning districts and allow more flexibility for commercial development and mixed uses, as well as more protection to surrounding development, by providing more site design standards.

Ms. Radcliff stated that if the Planning Board decides to send this application to a subcommittee, the deadline to send the recommendation to the Board of Commissioners are the same for this rezoning application as it was for the previous one that she reviewed.

Mr. Patterson asked whether that is the same plat that was recorded?

Ms. Angela Beeker, introduced Shane & Sara Swekosky, the applicants requesting this rezoning. Ms. Beeker addressed Mr. Patterson's question and stated that is not the plat that ended up being recorded as there were some corrections that needed to be made, but Tract A is the same. She stated that they wanted that in place before they proceeded with the rezoning. Chairman Pearce asked whether the house has been taken out of the property? Ms. Beeker explained that this building is not actually on the subject property and showed some photos of the property and surrounding location.

Ms. Beeker stated that on behalf of her clients, she feels that the C-1 (Residential Commercial) zoning district would be highly appropriate and would be in accordance with the Comprehensive Plan. She said that C-1 was designed to be in a neighborhood and there were some safe guards that were put into place in the text to make it compatible with residential. She said there has been discussion about the maximum lot size being 5 acres for the C-1 district, so it is intended to be small. She said that at least 35% of the area has to be landscaped and open, a 15 foot buffer is required along the boundary that abuts residential property and the site plan needs to be approved by the Zoning Administrator before the zoning permit is issued to make sure that it is compatible with the residential. She said that the property is within the Urban Services Area for Henderson County and is very close to the Community Service Area, approximately one-half mile, as shown on the 2020 County Comprehensive Plan Future Land Use Map. She said that her understanding was that those areas were intended to have very generalized boundaries and she anticipates that when Staff does their detailed studies, those areas will not be exactly as indicated but will expand in both directions. Ms. Beeker stated that she envisions this as a transition out from the intensive commercial development that is in that node currently at the intersection of South Rugby Road and US 64-West. The strip mall there is quite large and was constructed in 2002 and another one, not as large, was also constructed in 2002, so therefore she feels that things have changed in the area since this property was zoned in 1981. She said that in addition, traffic has increased and there is a C-1 district that is located across the road that wasn't there in 1981. Ms. Beeker showed Board members photos of the C-1 district (which includes about 6 different small commercial developments), which is across the street from the subject parcel. She said adjacent to the property towards Hendersonville, there is another commercial use on the east side and a home occupation on the west side. She added that the subject parcel is located on a major highway. She said that the existing C-2 district that is shown on the existing zoning map, that borders R-40 and R-30 property.

Ms. Beeker said that she feels rezoning this property to C-1 would be favorable because of the availability of water and sewer, for the small reasonable uses allowed in this district, certainly wells and septic suffice.

Mr. Swekosky, applicant, stated that the reason why the property was split, so it was a smaller parcel. He said what they intend to do is have a business that will be attractive and people oriented, but doesn't feel will cause congestion but we also plan to live nearby. Chairman Pearce said that when the Board considers rezoning requests, we do not just consider what is the potential before us, but all of the uses that can be allowed in that district. Mr. Williams asked to explain the history of C-1 zoning district that is across the road? Ms. Smith stated that it use to be a produce stand for a long time, and the next owner did some considerable work to convert it to commercial and in fact was in violation of zoning and applied for a C-1 district because of the potential for small businesses to be developed. She stated that Staff did not recommend it, but she wasn't sure if the Planning Board at that time recommended C-1. Ms. Kumor said that the Commissioners accepted it because there was an already established business on the property and was a way to be in compliance. Ms. Kumor said why wouldn't the Planning Board use the same justification for rezoning on this one that we used for the previous rezoning request? Chairman Pearce said that the Board is using the same measure on this one as the previous one. Ms. Beeker said that the standards dealing with demonstrating an undue hardship, she feels is a variance standard and not a legislative rezoning standard as well as an overriding community interest is not justified in her opinion. Ms. Smith stated that Staff has been using those standards for some time as the Planning Board has been developing its recommendations, but it is not an absolute requirement that the applicant demonstrates that, but in past cases, people have demonstrated that. Ms. Smith added that it is one of the materials in North Carolina that they look for or suggest that we look for. Chairman Pearce feels that there is much more change in this area than the other rezoning request near Blue Ridge Community College. He also said that the closeness to other commercial properties could justify moving it to the lowest classification of commercial, but doesn't necessarily agree with having to make decisions before other land use studies are done but knows that the Board needs to make some type of decision. Ms. Kumor said their response on their request has no more weight than the previous rezoning request, but the Board found we needed more information from the Community College to justify the rezoning application, so therefore she doesn't feel that the Board is treating both applications in the same way. Chairman Pearce feels that Ms. Beeker did specifically state that she felt and eluded to some of the reasons for commercial such as the increase in commercial on both sides of the property, the small shopping center in Horse Shoe that had been developed and the expansion and work that had been done on the commercial property. He said these were addressed, whether they were sufficient enough, that is a different question. Ms. Kumor said that when the Board discussed the College's inability to use that property for any type of commercial structure because of the quality of the property. Chairman Pearce said that they actually can use that property for a wide variety of commercial uses, but they couldn't use the property for a 100,000 square foot building, but the O & I District does have a variety of uses that were allowed in the C-1 District. Ms. Radcliff noted that the applicants submitted a letter (which is Attachment 1 of the Planning Board's packet) to demonstrate an overriding justification for approving the rezoning application and information that would inform the County's consideration of the proposed rezoning. Mr. Williams said that the applicants stated that they have spoken to the surrounding property owners, would that be all of the property owners and if so, were they all in favor of the rezoning? The applicants submitted a document with the signatures and location map of the property owners who signed that they were in favor of the rezoning. Chairman Pearce noted that the Board has no way of verifying this information. Ms. Kumor stated that the surrounding property owners could have their opportunity to speak on this issue at the Board of Commissioners meeting.

Mr. Patterson stated that there are several factors regarding this request. He said there are streams, which affect your septic, because there isn't sewer. He said there is no water, so that limits the size of the structure and there are a lot of limited factors of what could go, enough though it is a big lot, as there are a lot of things that can control what can or can not happen because of all of these factors I mentioned and he feels it is not what all that we are looking at for the C-1 district.

Mr. Parce said that he has a problem with the standard regarding “overriding justification for approving a given rezoning application” and where it comes from. He said he has trouble deciding whether or not an applicant has an overriding justification. Mr. Burrell explained that when we deal with rezonings, it gets into the issues of what is spot zoning. While this is not a spot zoning issue, the court analysis of this goes down the same road. He said we are looking at a comprehensive scheme and it is different than the scheme you are in at present, in order to change that scheme you need to show what you want would be consistent with that scheme that is already there or that overriding concern for why it should be different from the scheme that is already there. The question is, “What is overriding to you?”

Mr. Laughter stated that he feels that the landscape and characteristics, it being a small area, he feels it fits the profile of the area businesses that are already there. He added that with 35% percent of it being landscaped, there would not be anything major in commercial development. He said what they propose would not demand a high noticeable traffic area and doesn't feel that the surrounding property owners have much concerns or they would have been here at tonight's meeting. Mr. Laughter made a motion to send a favorable recommendation to the Board of Commissioners regarding rezoning request R-2005-04. Mark Williams seconded the motion. Mr. Cooper said that he envisions that US 64 West will become more developed as time goes on. All members voted in favor of the motion.

Staff Reports. Ms. Smith informed Board members of the upcoming workshop on Low Impact Development, which will be hosted by the Planning Board and the North Carolina Division of Water Quality. Ms. Smith said that it would be held at the Board of Commissioners Meeting Room on July 6, 2005 at 6:30 p.m. She also mentioned that hearings on the rezoning of the parcels near the airport as well as the Special Use Permit amendment for Carriage Park on the townhouse definition are going to be held on July 5, 2005 at 7:00 p.m. with the Board of Commissioners. Ms. Smith stated that at tonight's Board of Commissioners meeting, the Commissioners went through some of the key points and have looked at a flood ordinance that County Attorney Russell Burrell had drafted for Chairman Moyer that was handed out at the Commissioners' last meeting. The Board of Commissioners talked about that draft and various other ordinances that had been proposed or already exist and gave Staff direction to prepare another chart that compares what Commissioners call the “compromise draft,” the Staff draft, the State model and then some suggestions the Board made tonight for some other things to consider. She said they plan on talking about this again on Thursday night and are expected to give some direction on what they want. Staff will then finalize the material to bring back to them.

Introduction to the Preliminary Recommendation of the Industrial Site Suitability Study – Anthony Prinz, Planner. Mr. Prinz stated that on May 18, 2005, the Board of Commissioners referred the preliminary recommendations for the Industrial Site Suitability Analysis to the Planning Board. He said basically this is to continue the process of implementing the goals of the CCP, which was adopted as Strategy 1.1, under Goal 1 of the Henderson County 2005 Strategic Plan. He stated that the purpose of Goal 1 of Strategy 1.1 is to implement the recommendations of the Henderson County Comprehensive Plan and with that the recommendations of the Lockwood Greene Study but also to specifically to identify appropriate land to preserve for future industrial development. Mr. Prinz said that since February, 2005, County Staff has been working in cooperation with the Partnership for Economic Development to establish criteria that identified critical needs of industrial operations and circumstances where industrial development may conflict with surrounding land use and/or the natural environment and also to run a GIS (Geographic Information Systems) model, which identified the areas most suitable for industrial development in Henderson County. He said that the Board of Commissioners is asking the Planning Board to review and refine these recommendations. He said that the target date for completion of this action is set by the Strategic Plan to be December 2005, and the results of this study are intended to be amendments to the Comprehensive Plan and the Official Zoning Map of Henderson County.

Based on the complexity of this study, Staff has recommended that this matter go to Subcommittee for further consideration.

Ms. Smith added that this study is operating parallel to other things that Staff is working on, and the Board of Commissioners did not want to wait until we had a new Zoning Ordinance to move forward on it. The Board felt that some of the industrial sites were in jeopardy, and our current zoning districts do not necessarily protect land for just industry because they allow so many other uses, but right now it is all that we have. She said that if the Board of Commissioners wants to move forward and do some industrial zoning, IT would have to use the current districts. Ms. Smith said that land that is designated as Open Use would not limit the uses that could go on that property in the meantime. She said that there are some sites that may not have the appropriate zoning designation, or the Board may want to look at some future projects sites that they have in mind. After some further discussion, Chairman Pearce made a motion that this subject should be sent to the Land Use Subcommittee for review and comments. Tommy Laughter seconded the motion and all members voted in favor. Chairman Pearce advised Staff to get together with the subcommittee members for the best meeting date and time. Ms. Kumor said that when the Commissioners started the Broadpointe development, the County had to buy portions of the development that were in the floodplain. She said that when you start looking at industrial sites, just remember when you want to include a portion in the floodplain, you might be encumbering the taxpayers in this community to have to buy it. She added that there have been other industries that would not buy in the floodplain because they couldn't use it, and the County ended up purchasing that portion. She said to think that there is an industrial investment to be made in the floodplain is spurious and naive and we're just asking the citizens to be set up to have to purchase land at a higher price that might be higher than anybody would have ever thought they'd ever get.

Cemeteries and Land Use Regulations (Referred by the Board of Commissioners) – Karen Smith, Planning Director. Ms. Smith said that the Board of Commissioners has referred this project to the Planning Board and that it came from the Strategic Plan, although the Planning related aspects were not included in the goals that the Board had set on preservation of cemeteries. She said that recently there has been much discussion dealing with cemeteries and preservation of cemeteries, however, at a meeting recently the Board had asked the Planning Department to look at what kinds of regulations other people are using through land use ordinances to preserve and protect cemeteries. She said that the preliminary survey that Staff made is summarized in the packet each member received and shows what was found in each community. Ms. Smith stated that the Commissioners are interested in having the Planning Board looked at developing some standards. The base minimum that they have asked for is to at least require the people identify cemeteries on their sketch plans, that they use for pre-application conferences with Staff, and have also to show them on preliminary development plans and, possibly, final plats. Chairman Pearce asked, "Are there any regulations if you find a cemetery, but didn't know that it was on your property, especially regarding subsequent notifications?" Mr. Burrell said that nothing exists now, but this would be something to consider. Chairman Pearce made a motion to assign the Short Term Zoning Subcommittee made up of Renee Kumor, Mark Williams, Gary Griffin, and Jonathan Parce, to further study this issue and develop some standards and come back to the Planning Board with their findings. Gary Griffin seconded the motion and all members voted in favor. Chairman Pearce asked Staff to notify the members of the subcommittee of the date and time to meet.

Adjournment. There being no further business, Chairman Pearce made a motion for the meeting to be adjourned. All members voted in favor. The meeting adjourned at 9:17 p.m.

Tedd M. Pearce, Chairman

Kathleen Scanlan, Secretary