

# HENDERSON COUNTY PLANNING BOARD MINUTES July 20, 2004

The Henderson County Planning Board met on July 20, 2004, for its regular meeting at 7:00 p.m. in the Meeting Room of the Henderson County Land Development Building, 101 East Allen Street, Hendersonville, NC. Board members present were Tedd Pearce, Chairman; Mike Cooper, Vice-Chairman; Leon Allison, Paul Patterson, Tommy Laughter, Jonathan Parce, Renee Kumor and Vivian Armstrong. Others present included Derrick Cook, Planner; Karen C. Smith, Planning Director; and Kathleen Scanlan, Secretary.

Chairman Pearce welcomed two new Planning Board members, Jonathan Parce and Renee Kumor.

Approval of Minutes. Chairman Pearce presided over the meeting and called the meeting to order. He asked for the approval of the regular meeting minutes of June 15, 2004. Mr. Patterson noted a typographical error. Tedd Pearce made a motion to approve the minutes subject to correction of the error mentioned and Paul Patterson seconded the motion. All members voted in favor.

Adjustment of Agenda. Chairman Pearce asked that Item 7, *U.S. 25 North Area Study Update*, be moved after Item 11 in the interest of time.

Staff Reports. Ms. Smith said that the Board of Commissioners adopted the Comprehensive Plan on July 6, 2004. The Board added back some prior language and added their own language. The Planning Staff is presently working on the final edits. She stated that Staff plans to have the document printed and ready by the first part of August for distribution.

## **OLD BUSINESS:**

Development Plan Extension Request – Cumming Cove Golf & Country Club, Mountain Crest, Phases 4 & 5, and Valley View (File # 02-M08) – William R. Buie, Agent for Cummings Cove Properties, LLC – Hill Realty Group, Inc., Owner. Mike Cooper said he needed to recuse himself from any discussion or decision regarding this matter. All members voted in favor of his recusal. Chairman Pearce asked Mr. Cook if all of the criteria have been met for an extension? Mr. Cook said that the Planning Board had some reservations on the last extension the Board reviewed (Mountain Vista) and he feels that this is similar to that one. Mr. Allison said that regarding the prior extension, the project had not been started at all. Mr. Cook said that he doesn't have any reservations on going forward with an extension on this one and added that if an individual takes the time to acknowledge that they need an extension and they are willing to go forward then he feels that shows good faith in trying to finish their development. Chairman Pearce asked Mr. Buie, who was representing the applicant, to come forward and discuss this matter briefly.

Mr. Buie said that he represents the applicant, Cummings Cove Golf and Country Club, and added that he has completed the engineering and has received the majority of the permits except for one. He asked the Board members to allow this extension so that the project can proceed.

After some brief discussion, Mr. Allison made a motion to grant a one-year extension for Cummings Cove Golf and Country Club, Mountain Crest, Phases 4 and 5, and Valley View Development Plans. Vivian Armstrong seconded the motion and all members voted in favor.

### **NEW BUSINESS:**

Sugar Loaf Gardens, Section III (File # 04-M09) – Combined Master Plan and Development Plan Review for Property Located off Sugar Loaf Lane and Kim Lane – (6 Lots) – Jon Laughter, Agent for Dreams Dominion, Inc., Owner. Mr. Cook stated that this is a major subdivision application for Sugar Loaf Gardens, Section III, and mentioned that in his review he found that he had no comments regarding the Master Plan as all requirements had been satisfied. He stated that regarding the Development Plan, his comments were as follows:

1. Soil Erosion and Sedimentation Control – The applicant should submit notice from NCDENR that a soil erosion and sedimentation control plan has been received or provide documentation that no plan is required prior to beginning construction (HCSO 170-19).
2. Private Roads – Because private roads are shown, the final plat 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 Appendix 7).
3. Farmland Preservation – The applicant provided the Affidavit of Understanding of Farmland Preservation District. On the final plat, a statement should be noted saying the subdivision lies within ½ mile of the Blue Ridge Farmland Preservation District (HCSO 170-35 and Appendix 7).
4. Water Supply – The applicant supplied a letter of water capacity from the City of Hendersonville Water and Sewer Department. The applicant must meet the City of Hendersonville's minimum requirements for fire hydrant installation. Final approval of the water supply system must be provided and such system must be installed (or an improvement guarantee for such system must be posted) prior to Final Plat approval.

Mr. Cook stated that the applicant shows on the combined Master and Development Plan that the proposed development is 0.3 miles from the closest sewer connection. Mr. Cook said that the *Henderson County Subdivision Ordinance* requires that a subdivision connect to public sewer when it is within a distance of equal to 50 feet times the number of lots, however the maximum distance required for connection shall be 2500 feet. Mr. Cook stated that the distance to sewer shown was a typographical error and it should have read 1.32 miles from the closest sewer connection line. Mr. Cook added that the applicant has provided documentation with regard to this change.

Chairman Pearce moved that the Planning Board find and conclude that the combined Master and Development Plan submitted for Sugar Loaf Garden, Section III, complies with the provisions of the Subdivision Ordinance except for those matters addressed in the technical and procedural comments section of the Staff's memo that have not been satisfied by the applicant; and further moves that the combined Master and Development Plan be approved subject to the following conditions: that the applicant satisfies Staff comment 1 prior to beginning construction and comments 2 through 4 on the Final Plat or by Final Plat approval. He said there was nothing to add regarding the sewer system

as the owner has met the requirement and does not have to connect to the sewer mains. Leon Allison seconded the motion and all members voted in favor.

Valley View Farms (File # 04-M10) – Combined Master Plan and Development Plan Review for Property Located off Walnut Cove Road – (33 lots total) – Jon Laughter, Agent for Frady Family Limited Partnership, Owners (Edward and Norine Gillilan and Patrick and Gay Ann O’Neal have contract to purchase property). Mr. Cook said staff reviewed the combined Master Plan and Development Plan for conformance with the *Henderson County Subdivision Ordinance* and found that regarding the Master Plan, all requirements had been satisfied. Mr. Cook stated that regarding the Development Plan, he had the following comments:

1. Soil and Erosion and Sedimentation Control - The applicant should submit notice from NCDENR that a soil erosion and sedimentation control plan has been received or provide documentation that no plan is required prior to beginning construction (HCSO 170-19).
2. Private Roads – The Final Plat should include a note regarding private roads: *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 Appendix 7).*
3. Perennial Stream Setback – The applicant has acknowledged on the combined Master Plan and Development Plan a 30-foot building and other structures setback from perennial streams required by Section 170-37A of the Subdivision Ordinance and such setback must be noted on the Final Plat (HCSO Appendix 7).
4. Farmland Preservation – The applicant provided an Affidavit of Understanding of Farmland Preservation District. On the Final Plat a statement should be noted saying the subdivision lies within ½ mile of the Flat Rock Farmland Preservation District (HCSO 170-35 and Appendix 7).
5. Road Grade – The applicant has provided one cross-section illustrating two right-of-way widths, one being 60 feet for Old Gait Drive and the other, a 50-foot right-of-way for Saddle Club Lane. Mr. Cook stated that if the applicant is building roads to collector road standards, they are not to exceed a 12% grade. The applicant has provided approximate finished grades of the roads on the combined Master and Development Plan. A section of Saddle Club Lane exceeds the 12% maximum road grade standard as required by the *Henderson County Subdivision Ordinance* with a 12.8% approximate finished grade. He said that the applicant may designate Saddle Club Lane as a private gravel local residential road, which allows a maximum road grade of 15% or change the road so it does not exceed the 12% grade standard for private gravel collector roads. Mr. Cook also noted that from Walnut Cove Road to the Saddle Club Lane intersection, the proposed road must be built to private residential collector road standards. To alleviate any confusion of which type of road the applicant intends to build, the applicant should provide, on a revised Master and Development Plan, cross-sections for the residential collector road and local residential road specifying which sections of the proposed roads will be built to the indicated road type. On the Final Plat, a professional engineer or professional land surveyor must certify that no portion of the roads has a grade that exceeds 12% for residential collector roads and 15% for local residential roads.

In response to a question from Ms. Kumor, Mr. Cook said that in the Ordinance there are certain standards for various types of roads. He said for the collector road, if it is gravel

or stone-based, the highest percentage of grade is 12% and in this case, that particular section exceeds 12%. However, under local residential road requirements, the applicant can have a higher grade. He said that if the applicant indicated that it would be a local residential road, the 12.8% grade would not exceed the maximum 15% grade allowed under the private road standards for gravel roads. Ms. Smith said that the designation of "collector" versus "local" is based on the number of dwelling units that the road serves or has a potential to serve, so they might not be able to change the designation but they could propose paving the road, which allows an increase in the grade. Ms. Kumor asked about road maintenance. Mr. Cook said that it is a private road and the maintenance is up to the developer or the residents through their restrictive covenants. He said that the developer may decide to maintain ownership and maintain the roads for the duration of the development. Mr. Patterson stated that the design requirements in the *Subdivision Ordinance* are the minimum and that just because he is widening the right-of-way width from 45 feet to 50 feet, doesn't mean he needs to meet the collector road standards, because the road by definition is local because of the number of lots. Mr. Cook said the applicant should clearly indicate what road type is to be constructed on the plan. He said that one can presume that it is a local residential road.

Mr. Jon Laughter, agent for the applicant, stated that regarding the right-of-way, it has been made wider, not necessarily a collector. The plan is to set the ditches back to control more of the right-of-way. He said that the road is not steep and lays well. Chairman Pearce asked, "It is going to be a local residential road and not a collector road?" Mr. Laughter said that is correct. Mr. Patterson said lots 13 and 14 front on Bear Rock Road and asked if there was any intent to use that road as access? Mr. Laughter said that everything will be accessed off of the new subdivision road. Mr. Patterson said that there are two adjacent tracts that are under the same ownership as the subject property and asked if there were any requirements or issues regarding future development? Mr. Laughter said that the tracts are now owned by the Fradys and he does not know what their disposition will be, but the proposed owner of this property does not intend to buy any additional property or extend the subdivision. The area on the north side of the creek is for the entrance into the subdivision.

Mr. Laughter responded to several other questions and comments from the Planning Board, noting that the box shown on the right-of-way near the entrance is a culvert, that a homeowners association will own the road and that he would change the width of the right-of-way entering the cul-de-sac on the cross-section to 18 feet. Mike Cooper moved that the Planning Board find and conclude that the combined Master and Development Plan submitted for Valley View Farms subdivision complies with the provisions of the Subdivision Ordinance except for those matters addressed in the technical and procedural comments section of the Staff's memo that have not been satisfied by the applicant and further moves that the combined Master and Development Plan be approved subject to the following conditions: the applicant satisfies comments 1 and 5 prior to beginning any construction and comments 2 through 4 prior to Final Plat or Final Plat approval. Tommy Laughter seconded the motion and all members voted in favor.

Hutch Mountain Estates (File # 04-M12) – Combined Master Plan and Development Plan Review for Property Located off Hutch Mountain Road – (30 Lots Total) – Terry A. Baker, Agent for Chad Z. Cabe, Owner. Mr. Cook stated that Hutch Mountain Estates contains 36.63 acres in four tracts located off Hutch Mountain Road. He stated that Staff reviewed the combined Master Plan and Development Plan for conformance with the *Henderson County Subdivision Ordinance* and found that regarding the Master Plan, all

requirements had been satisfied. Mr. Cook stated that regarding the Development Plan, he had the following comments:

1. Soil Erosion and Sedimentation Control – The applicant should submit notice from NCDENR that a soil erosion and sedimentation control plan has been received or provide documentation that no plan is required prior to beginning construction (HCSO 170-19).
2. Road Grade – The applicant has proposed paved private residential collector roads and paved private local residential roads to serve the property. The road grades are not to exceed 16% and 18% respectively. The applicant has provided approximate finished grades of the roads on the combined Master and Development Plan. A professional engineer or professional land surveyor must certify on the Final Plat that no portion of the roads has a grade that exceeds 16% for residential collector roads and 18% for local residential roads (HCSO 170-21 Table 1 and 170-21E).
3. Private Roads – Private roads have been indicated so therefore the Final Plat 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 Appendix 7).*
4. Perennial Stream Setback – The applicant has acknowledged on the combined Master Plan and Development Plan the 30-foot building and other structures setback from perennial streams required by Section 170-37A of the *Subdivision Ordinance*. Such setback must be noted on the Final Plat (HCSO Appendix 7).
5. Existing Rights-of-way – The applicant has clearly indicated several rights-of-way and dirt road beds that adjoin and/or cross the project. Mr. Cook stated that the applicant might want to address the status of the rights-of-way as they relate to access and usage availability and should be depicted on the Final Plat.

Terry Baker, agent for the owner of Hutch Mountain Estates, discussed the matter of the rights-of-way. He said that at one time it was a family tract that was divided up into four pieces. He said the tract in the proposed subdivision consists of three of the four pieces. He said that it is a continuation of an existing easement and that the other easements have been abandoned and are no longer in force on the subject property. This tract is 7/10 of a mile from Hutch Mountain Road and serves several tracts of land. Chairman Pearce asked, "There is no place that someone will need to cross your property?" Mr. Baker said no. Ms. Kumor asked, "When the applicant prepares the changes on the Final Plat, will it need to come back to us?" Chairman Pearce said that it does not have to come back to the Planning Board. Ms. Smith said that if the Board wants to see the Final Plat, this could be made a condition by the Planning Board. Chairman Pearce said that the Board has tried to endeavor to keep people from coming back and the Planning Department's Staff is presently doing more than they have ever done before with regard to verifying everything before the Final Plat is signed. Mr. Parce asked about the bottom right-of-way (serving the Pressley tract). Mr. Baker showed on a map that this right-of-way will stay in place. It will be the only one partly on the proposed subdivision property and it will only serve one piece of property. Mr. Patterson said in reference to the Bagwell tract, which is west of Lot 18, there is a dirt road bed and asked if that is the way they are accessing their property? Mr. Baker said that it is just a dirt road that was an old logging road but that they have no right-of-way on this road. Mr. Patterson also noted that it is hard to read the road rights-of-way. Mr. Baker said that all of the rights-of-way are designated on the map but it is hard to see on a reduced 11 X 17 map. Mr. Patterson asked where the collector road ended. Mr. Baker stated that the collector road (Kristy Cabe Drive) ended at the intersection with the other two roads. Mr.

Patterson asked whether you have requested any flexibility in the requirements for the roads with regard to cross slopes? Mr. Patterson indicated that there were two curves on Kristy Cabe Drive that had radii exceeding the 110-foot requirement for collector roads. Mr. Baker said that he would adjust the radii of the two curves Mr. Patterson mentioned. Mr. Patterson asked, regarding the comment on the plat which states *right-of-way width for Hutch Mountain Road was unavailable from NCDOT*, if anything has been recorded in the courthouse?" Mr. Baker said that they never have found anything and he believes that NCDOT never acquired one. Mr. Patterson asked if any right-of-way would be dedicated along Hutch Mountain Road. Mr. Baker said the applicant will do so, adding that the applicant only has about 180-190 feet of frontage on Hutch Mountain Road and that is where the entrance must be located.

Chairman Pearce moved that the Planning Board find and conclude that the combined Master and Development Plan submitted for Hutch Mountain Estates subdivision complies with the provisions of the Subdivision Ordinance except for those matters addressed in the technical and procedural comments section of the Staff's memo that have not been satisfied by the applicant and further moves that the combined Master and Development Plan be approved subject to the following conditions: The applicant satisfies comment 1 prior to beginning any construction and comments 2 through 5 on the Final Plat or by Final Plat approval and, in addition, that a Comment 6 be added requiring that the applicant comply with private collector and local residential road standards, specifically noting the 110-foot centerline radius requirement for collector roads. Vivian Armstrong seconded the motion and all members voted in favor.

Special Use Permit Application # SP-02-01 (Revised) for Proposed Expansion to Existing Mining and Extraction Operation for Hoopers Creek Quarry (off Hoopers Creek Road in an Open Use Zoning District) – William G. Lapsley, Agent for Junius D. Grimes, Applicant. Leon Allison said that he needed to recuse himself because he is an adjoining property owner. All members voted in favor of his recusal. Ms. Smith reviewed the background information on this matter, referencing her memo to the Planning Board dated July 15, 2004. She stated that in November 2002, Mr. Junius Grimes submitted a special use permit application (#SP-02-01) for an expansion to an existing mining and extraction operation for Hoopers Creek Quarry and a related variance from a fencing requirement. She said that Hoopers Creek Quarry is located off of Hoopers Creek Road approximately 635 feet west of the intersection of Hoopers Creek Road and Jackson Road. The property is located in the Open Use District, however the entrance and part of the access road for the subject property fall within the extraterritorial jurisdiction of the Town of Fletcher. The site plan indicates that the subject property contained approximately 32.53 acres. Ms. Smith stated that Hoopers Creek Quarry has had a mining permit issued by the State of North Carolina Department of Environment and Natural Resources, Division of Land Resources, Land Quality Section in 1994 as well as a Federal mining permit. She stated that there has been some discrepancy discovered more recently between what was permitted by the State in 1994 versus what is permitted and affected now and she added that it has been changed by approximately an acre. She said that the 1994 permit should have read 6 permitted acres and 5 affected acres which is the acreage they can disturb. Ms. Smith said that in 2002 the applicant applied for a modification to the State mining permit in order to relocate a sediment basin and enlarge a waste fill site. The modification also involved adding an area along the entrance road to the area to be disturbed and in doing so it required notices to all adjoining property owners in the County and that is how the County heard about the expansion. Staff made contact with Mr. Lapsley, who is the

applicant's agent to inform him the modifications would prompt a Special Use Permit action. She said that since the property is in the Open Use District and because the quarry is a pre-existing use, it gets more favorable treatment under the Zoning Ordinance than someone who would be starting a new quarry. Mining and extracting operations are regulated uses in the Open Use District, requiring Special Use Permits, but with preexisting use status, the quarry is able to expand or alter its operations as long as it can meet specific site standards to the maximum extent possible, only for the area where they are expanding the operation. She added that they also require that the quarry meet the general standards which apply to all special use permit applications, with or without conditions imposed by the Board of Commissioners. She said that there are two areas in the Open Use District text which specifically address how development occurring around a preexisting use will not affect the ability of such use to alter or expand its facilities or operations and they apply in this case.

Ms. Smith stated that in 2002, the Planning Board discussed this special use application and made a favorable recommendation to the Board of Commissioners subject to the applicant satisfying two comments that were in the Staff memo. Such comments stated that the applicant should either obtain a variance from the fencing requirement or meet the fencing requirement for the expansion area only and also stated that the applicant should obtain approval of the amendments to the State mining permit application before beginning construction of the sediment basin. The Planning Board also acknowledged that there would be an adjustment to the site plan as to the location of the sediment basin per comments made by Mr. Lapsley during the Planning Board meeting. The Planning Board, at the time, did not specifically address the variance request as the Zoning Ordinance does not require a recommendation from the Planning Board on variance applications.

She stated that the Board of Commissioners held a quasi-judicial public hearing on special use permit application # SP-02-01 on January 15, 2003. At the hearing, the Board voted to approve the special use permit, but did not act on the fencing variance request, asking Staff to bring back some alternatives on ways that the Board might be able to work with the applicant on the fencing requirement. The County Attorney brought back a draft order granting the special use permit for the Board of Commissioner's decision and at that point, the Board learned that the State was changing the amount of land it was including in its permit. This was due to a change in the design of the waste fill area/sediment basin that caused the expansion area to change from 0.72 acres to 1.07 acres. The Board then decided to postpone approval of the order and other action until it could re-open the hearing to obtain evidence regarding the actual size of the expansion area. The Board of Commissioners re-opened the hearing and limited testimony to the increase in the expansion area. The Commissioners learned that the State had not yet approved the modifications to the applicant's mining permit, so the Board decided to hold open the hearing until the applicant had heard from the State.

Ms. Smith said that the applicant has now heard from the State that it received approval of the modifications to its permit and the Board of Commissioners has referred this item to the Planning Board. Reasons for this include:

1. A change in the acreage of the expansion area (or "affected" area).
2. The time that has passed since the application was first considered.
3. A change in the "permitted" acreage under the State mining permit to include the entire piece of property.

Ms. Smith indicated that the revised site plan that was considered by the State shows a design of the waste fill site and sediment basin that is somewhat different than what was considered during the Board of Commissioners' hearing on the special use permit. While the size of the waste fill area and sediment basin remains at 1.07 acres, the new design shows that a portion of the sediment basin will encroach on the 180-foot buffer that the applicant had initially proposed. She said that the State also approved a modification to the applicant's mining permit that allows the subject property in its entirety plus the access road to be included in the "permitted" acreage. This change, according to State staff, enables the applicant to apply to the State for future modifications of the mining permit without having to go through all of the public notice procedures. The State would still have to approve the modifications. She stated there is also 0.4 of an acre along the access road, where they are going to be realigning the road that will be disturbed.

Ms. Smith stated that the Board of Commissioners has asked the Planning Board to reconsider the application due to the revisions, to see if there were any changes it wanted to make to the prior recommendation. She stated that the Commissioners have scheduled a continuation of the quasi-judicial public hearing on the special use permit and variance requests for Wednesday, August 18, 2004, at 11:00 a.m., so therefore they need a response from the Planning Board before that date.

She said that there are some Staff comments based on its review of the modified State mining permit as well as the revised site plan, as follows:

1. Reduction in the buffer areas that are proposed. The previous site plan showed a 180-foot buffer between the expansion area and the eastern boundary of the subject property however the most recent site plan shows a portion of the sediment basin within approximately 140 feet of the eastern boundary. She said that the applicant or his agent should provide information to the Planning Board as to whether a 140-foot buffer is all that can be provided along that portion of the expansion area. She said that the buffer standard for mining and extraction operations in the Open Use District is 500 feet as per the *Henderson County Zoning Ordinance* and that this is not a planted buffer but a separation. She said that back when the Planning Board initially reviewed this application, it was presented that this was the maximum extent to which the applicant could meet the buffer requirement. She said one of the items for discussion with the applicant is the location of the sediment basin and if it really needs to be in the location indicated and whether there is any way to adjust that buffer area or not.
2. The State mining permit expires on July 6, 2005, and the Planning Board needs to find out what the applicant's plans are for the future, such as whether he plans to reapply to the State for another mining permit.
3. The applicant must comply with the *Henderson County Zoning Ordinance* for any future alterations or expansions of the mining and extraction operation, regardless of whether a modification to his State mining permit is required.

Ms. Smith stated that the Commissioners have adopted the Comprehensive Plan. Section 200-56 (of the Zoning Ordinance) states the general standards for special uses and talks about conformance with the Comprehensive Plan. She said she has asked the County Attorney as to whether or not Staff needs to use the plan that was in place when the applicant originally applied or the new Comprehensive Plan. She showed where the property is located on the Future Land Use map from the new Comprehensive Plan.



The property falls within the Urban Services Area outlined in the Comprehensive Plan's growth Management Strategy. The Future Land Use map of the Comprehensive Plan designates the area as "conservation." Conservation areas are those that should be targeted for protection through regulations and incentives, which, at this time, are not yet available. The Comprehensive Plan calls for an industrial and commercial study, within the next 18 months to two years, to see if the areas that are designated on the zoning map for commercial and industrial are appropriate and whether the County will need to add or remove some zoning based on the market. Such study may or may not designate this area commercial or industrial. She said another factor that might affect the project in the future could be revisions to or elimination of the Open Use District. She said the Comprehensive Plan calls for the County to look at Open Use to replace it with another district for areas that are in the urban services area boundary. Possible revisions to the Open Use District could limit the types of industrial and commercial uses allowed and limit the density of residential development.

Chairman Pearce said that this is a preexisting condition and there are only certain items that the Board is allowed to look. He asked whether residential density can affect the Board's decision? Ms. Smith said she believes that residential density standard has been met, even though anything that changes as far as residential density concerned does not affect this permit, but the standard is one unit per two acres within a one mile radius. She said that the information the applicant provided to the Board of Commissioners showed the residential density to be one unit per four acres and it is measured from the center of the parcel on which the quarry is located to the outer boundary of any parcels that fall within a one mile radius. Chairman Pearce said that even if the residential density standard was not met, he believes it is irrelevant at this time with regard to a preexisting use in the Open Use District. Ms. Smith said that the Open Use District gives it that favorable treatment. She stated that the applicant also had to present information about separation from schools and health care facilities and those standards were also met. Chairman Pearce said if a school had been moved closer to property with a preexisting use, it would not be a criterion that they would need to satisfy or re-satisfy? Ms. Smith said that was correct. Ms. Smith said that Mr. Lapsley is present on behalf of the applicant and will describe the modifications of the State permit. Tommy Laughter asked, "What options does the Planning Board have in this matter? If we turn the request down, will the applicant have to cease operation?" Ms. Smith said that the Planning Board does not have the approval authority. Chairman Pearce added that the Planning Board only makes a recommendation to the Board of Commissioners and the Planning Board can make it either a favorable or unfavorable recommendation or a split decision. Ms. Smith said that the Board of Commissioners will hold a quasi-judicial hearing in which evidence and facts are presented and findings of fact are made. She added that in a typical Special Use situation, if an applicant can meet the standards, the Board usually has to grant the applicant the Special Use Permit. Ms. Armstrong had a question regarding buffering and the definition which states, "...whichever is closer to the principal or building..." She said she assumes that the principal use of the quarry is for excavation and asked if the little node that is sticking out that is less than 180 feet was a sedimentation basin? Ms. Smith said that it is for sedimentation and waste fill site and looks like it is a graded area. Ms. Armstrong said, "By definition of sedimentation basin, there will be water there?" Ms. Smith said that there will be. Ms. Armstrong asked, "The sedimentation basin isn't where there is actual excavation, which would be the principal use?" Ms. Smith said it is not where they are doing excavation. She added that the principal use, as defined in the *Zoning Ordinance*, is the primary purpose for which land or buildings are arranged, designed, intended or

used including the storage or use of inventory, materials or equipment associated therewith. Chairman Pearce asked whether, the lower end of the property, the boundary line had changed? Ms. Smith said that it is her understanding that it has not.

Mr. William Lapsley, stated he represents Junius Grimes, and is the owner of Lapsley and Associates, which the initial permitting for the quarry in 1994. He said that this whole process started when Mr. Grimes approached him in the summer of 2002 regarding two issues: (1) moving the sedimentation control basin for the quarry, which the State requires him to have to catch any run-off from the quarry and remove the sediment and (2) Improving the access road. Mr. Lapsley was at the quarry and found in 2002 there were some erosion problems. He said that the side slopes were too steep and had very minimum erosion control measures and he recommended to the applicant that if he wanted a permit for a new erosion control facility, he would need to look at the access road improvements to reshape the slopes, seed them and put in some erosion control measures. He said that the process started with submission of an application to the State for an erosion control permit. The State told them the changes would require a modification to the applicant's mining permit. He said he then applied for a modification to the State mining permit in October 2002. After the County received notice of the application to modify the State mining permit, Ms. Smith advised them that at the time the quarry was permitted by the State in 1994, there was no zoning on the site. Ms. Smith told them that Open Use zoning had since been enacted and a Special Use Permit application would need to be submitted because of the proposed expansion related to the modification to the mining permit. Mr. Lapsley said that he submitted the application for the Special Use Permit to the County and at the same time, he was tracking the permit modifications with the State. Mr. Lapsley said that the State had further questions on the design of the sedimentation basin and at the same time, the Board of Commissioners were to make a decision on the Special Use Permit. The State's process requires that Mr. Grimes notify all adjoining property owners of what he proposes to do. Mr. Lapsley said that as part of this Special Use Permit process, the County requires him to notify all the adjacent property owners. He said that both of these procedures have been done. Mr. Lapsley said that the State thought that Mr. Grimes was going to increase the area of his quarry, but that was never his plan and was never in the application. The quarry area, where the stone is extracted is not to be expanded. Under the State's definition of the permitted area, sediment basin must be within the permitted area and that is why the permitted area has expanded. Chairman Pearce asked, "Why was the sedimentation basin being moved in the first place?" Mr. Lapsley said that the sedimentation was really too small under today's standards. He said that State regulations changed from 1994 to the present. He said that when the State looked at the sediment basin that was originally designed, it was the same size as that permitted in 1994. The State said it needed to conform to the new standards which are much more stringent. Mr. Lapsley explained the operation of the quarry, which extracts decorative stone and generates rock waste. Mr. Lapsley said that the area where waste material is placed has grown out and is at the edge of the sediment basin, which Mr. Lapsley showed on a map. He said there are two reasons to move the sediment basin, one was to meet the current standards and the second was to expand the waste area where Mr. Grimes puts the rock dust and the smaller rocks that are not put in baskets and hauled off. He said it has taken about twelve months for the sediment basin to be reviewed by State engineers and because of their input, there was a silt curtain added to the basin to increase its efficiency. Mr. Lapsley said that the basin shown on the new site plan is the one that the State mandated be put in and it increased the area from 0.72 to 1.07 acres. He also said that there is a nearby creek as well as

slope limitations that are dictating the dimensions of the basin and where the basin can go. There are length and width requirements that the sedimentation control regulations and the State mining people say are needed, therefore the dimensions of the sediment basin can not be changed. Chairman Pearce asked, "What would be the effects on water quality if this application were approved?" Mr. Lapsley said because of the basin's size and capacity, the silt curtain and all of the things that the Raleigh staff dictated be done, it will be more efficient and better than what is there today. In response to a question regarding what would happen if the Board of Commissioners turned down the Special Use Permit, Mr. Lapsley said that one of the conditions of the State's permit is that the quarry comply with applicable local government zoning regulations. If the Commissioners turn down the Special Use Permit, the quarry would not just "go away." It would continue to do exactly what it has been doing with the same sediment basin, because the State has not said Mr. Grimes can't continue the quarry operation, but rather that he is allowed to move the sediment basin and do the other things stated in the permit provided that the Special Use Permit is issued by the County. Chairman Pearce asked, "Does the original permit expire, July 2005, or does the new permit expire July 2005?" Mr. Lapsley stated that the original permit expires July 2005 and needs to be renewed every ten years and at that point the State looks at the operation and if it's not being operated according to the permit, or if there are some violations, then the State can make a decision to not renew the permit, but that is an issue between the State and the applicant. Chairman Pearce asked, "Assuming there is no problem with renewal, there is nothing in the *Zoning Ordinance* under the Special Use Permit section that would require the Planning Board to review this at a future time?" Ms. Smith said that the Special Use Permit general standards require that you comply with all State and Federal rules, so they would need to keep their State and Federal permit. Chairman Pearce asked what is required and reviewed to provide this documentation? Ms. Smith said that the County has not dealt with this before, but if information on the State permit renewal is something that the Planning Board wants, it may be prudent to suggest that as a condition.

Mr. Lapsley stated that regarding the buffer issue that was mentioned in Staff's memo, the dimensions on the side are what they are because of the configuration of the sediment basin and there is no way that it can be built to meet the State requirements and not reduce the buffer from either side. He said that the topography limits it on one side as does the stream on the other side, so therefore there is no way that they can change the configuration of the basin under the conditions there and increase the buffer.

Mr. Lapsley said that the second issue was the renewal of the permit, and he indicated that it is a routine process that the State deals with.

Mr. Lapsley said that regarding the issue of the fence, variance that the applicant asked for back at the time of the original application, Open Use District of the *Zoning Ordinance* would require a six to eight-foot chain link fence all around the property. He said that what the applicant has done for a number of years is that he has put in new fencing facilities and has a barbed wire fence around the upper end of the property. Chairman Pearce asked, "What area would need to be fenced to meet the current standards under the existing use?" Ms. Smith stated that the Ordinance specifies that the applicant is required to meet the specific site standards listed in Section 200-38.2, regarding the fencing, to the extent possible for the expanding or altered portion of the facility or operation only, which in this case would be 1.07 acres. She said that in the discussion that the Board of Commissioners had about the variance, the Board wondered if as an

alternate to that it could require them to fence the highest risk portion of the quarry. The County Attorney was going to look into that.

Mr. Lapsley said that at the last public hearing in March 2003, the Board of Commissioners had taken public comment and had reviewed the application and made a decision to hold the hearing open and not make a decision until the State made a final decision on the permit. He said that the County wanted to make sure that the State issued a permit before making a decision. He said that there has been considerable correspondence to resolve this. Mr. Lapsley said that when he saw the State permit, it was in error because it indicated that the quarry was expanding its operation. Mr. Grimes has never requested to do so and he asked Mr. Lapsley to clarify that point so that everyone would know. He said that the State then came back and modified the permit. Mr. Grimes received the permit in May 2004 and it was at that time that we came back to the County and tried to find out what the Commissioners wanted to do. He said that he is under the impression that the Commissioners want to continue the hearing and make a final decision on this matter in August. Tommy Laughter asked Mr. Lapsley, "What is the process you need to go through to expand a sedimentation area?" Mr. Lapsley said that the State would require them to keep the existing one in service. He said they would use material from the quarry site or and bring it in and create an embankment or a dike that is ten feet high and then it needs to be compacted so that water won't seep through it. For a period of time there would be two, an existing one and the new one being built. He said once the new one was in service and the State was satisfied with everything, then the old one would come out. Chairman Pearce asked, "What would you do with the waste material if the Special Use Permit was not granted?" Mr. Lapsley said that it would need to be hauled off-site, which might entail about one or two trucks a week. Ms. Armstrong wanted to know what the position of the owner is on the fencing? Mr. Lapsley said that the Commissioners would like to have the applicant put in a chain-link fence all around the quarry, which would be a lot of money and since nothing has ever happened, Mr. Grimes feels that it would be unjustified expense. Chairman Pearce asked Mr. Lapsley to show the Board where the applicant would be required to put a fence if they did not have a variance. Mr. Lapsley said that because it is a preexisting condition, he would be required to fence the additional area that he is adding and basically he would have to fence the sediment basin. He said that rather than put the money into fencing a sediment basin, the Commissioners asked Mr. Grimes if he would consider putting the money toward adding a fence all the way around the quarry. Mr. Lapsley mentioned that there are two gates on the road into the quarry, one near Hoopers Creek Road and the other one near the entrance to the quarry. Chairman Pearce asked whether the first gate also accesses another property? Mr. Lapsley said that the Andersons have property near there. Mr. Lapsley said that the gate that is near Hoopers Creek Road was put up to eliminate trash dumping that had been occurring in the area.

The Chairman asked for public input.

Gloria Anderson. She stated that she owns property that borders the quarry and also share the right-of-way to the second gate. She asked Mr. Lapsley, about the two 0.5-acre pieces that he said were permitted originally by the State but were added in again on the new State mining permit. Mr. Lapsley explained that the two areas she was referring to were permitted in 1994. She asked and Mr. Lapsley confirmed that the quarry had started expanding into those areas already. She said that she has 15 acres of property in the ETJ of Fletcher and added that if she had sewer there, she could put

four dwellings per acre. She feels that some day it will be developed. She said that there is no fencing along the border of her property. She feels that there will be a serious problem regarding traffic through the right-of-way. She is worried about the look of the area and increased traffic due to the expansion. Changing of the road near the second gate will take down a lot of trees. She pointed out that also present were other adjacent property owners as well as residents from the Livingston Farms development, which is being expanded. She said the new basin will help with erosion that affects a nearby pond. She said she understands the quarry is a business but the area is also having residential growth. There are only 3 parcels in the Open Use District in that area. The rest is ETJ, Town of Fletcher and RC (Rural Conservation) zoning. She said that with the new land use plan, she couldn't imagine any other commercial uses in the area.

After some discussion regarding Ms. Anderson's concerns, Chairman Pearce said that the only things that the Planning Board can address regarding the road is how to control erosion on the road and what could be done to mitigate impacts on adjacent properties. Ms. Anderson asked Mr. Lapsley, regarding the parking and loading area indicated, if it was a new area? Mr. Lapsley said that is what is presently there and it will not be expanded.

Stephanie Kiratzis. She stated that they are adjacent property owners and are members of the Hoopers Creek community. She also indicated that she is speaking on behalf of their adjacent neighbor, Doug and Kathy Lassiter. She had two issues of concern. One is regarding the expansion and improvement of the sediment pond and the other is the expansion of the road. She said that there is a lot of documentation in the records at the State regarding sediment leaving the quarry site because of a fault in the pond and there is some documentation regarding the road. She said that the vast majority is in regard to the inadequacy of the sediment pond. She stated that she is in support of the recommendation to relocate and improve the sediment pond for the purpose of controlling sediment. Regarding the purpose of relocating it in order to have more area to put waste, she believes it is a premature reason because the State permit is within one year of expiring. She feels expansion and improvement of the sediment pond may be better for the entire community and overrides any timeline because if they were to close the quarry tomorrow, she hopes that they would improve and expand the sediment pond before they stopped because of the amount of sediment that is coming off of that site. An unnamed tributary goes from the quarry to Hoopers Creek, and eventually goes into the French Broad River. This tributary also goes through some farms and is an aesthetic delight, although compromised by sediment, for those residents who live in and around the Hoopers Creek area. Regarding the other issue, enlarging of the road, she feels this is premature that it is more for an ease of use for larger vehicles and is not solely for the purpose of controlling sediment. She recommends that the applicant wait on the road until they have renewed their permit for the next ten years, because they have only one year left on their present permit. She also feels that a fence would be appropriate with the current and future growth of the community. She noted that it is easy to access the road to the quarry as the gate is not attached to the fencing.

Charles Dillion. Mr. Dillion purchased approximately 78 acres near the quarry site in November of 2002 and his main concern is regarding the fencing. Since they have purchased the property they have not received any notices or information regarding the quarry. He said that they plan to build a house near their property line adjacent to the quarry. He said they would like to develop a subdivision. He said he would feel much more comfortable if there was fencing.

Ms. Smith stated that regarding sending of notices, there will be notices sent for the continuation of the hearing to current adjacent owners.

Jerry MacIntosh. Mr. MacIntosh said that he lives on the Buncombe side of the adjacent property and owns approximately 300 acres. He said that due to the changing nature of the area, and the growing population, he is in favor of a fence around the property. He also feels that the cost of taking sediment out should be considered in this matter. He said that he is concerned with the escaping sediment and the effects it has on the property as well as the community, even if it is not right to tell the applicant he can not do something that he has already been given permission to do. He said it is also not right for the applicant to do something on his property that affects other people that has not been contemplated originally.

Chairman Pearce said that neither the Planning Department nor the Planning Board handle soil and erosion control at the present time and that it is handled by the State. Mike Cooper asked, regarding the improvements to the road that are being proposed, if that constitutes expansion if they do not do the sediment pond? Mr. Lapsley said that the State has advised that any grading along the roadway would expand the permitted area which was part of the modification. Mr. Lapsley said that it could be left as is, especially if they decided to pave it, without having to change the State permit. Mr. Cooper said that all that the Planning Board can require regarding fencing is just around the new sediment pond. Ms. Smith said that not much has been discussed in the past regarding the expansion related to the road. Chairman Pearce asked what affect expanding the road will that have upon any trees or foliage? Mr. Lapsley said he feels that is the concern that most people have. He added that what he is proposing is not to relocate the road and not to expand it in the sense of widening the road, as it will continue to be twelve feet wide and one lane. To better control erosion, he recommended that the slope be flattened and reseeded and that they put in some better erosion control measures along the road as it has a steep (16-18%) grade. He said to lay the slope back, some trees would have to come down and that might open up a view of the quarry in the winter and until trees grew back. He added that the State is not dictating that the road work be done. Chairman Pearce asked whether they know the approximate cost to fence the expansion area. Mr. Lapsley said it was around \$ 15,000 and if it is required that he needs to do this, then that will be done. Mr. Patterson said it looks like they are widening the road from shoulder to shoulder and putting fill on the low side and cutting on the high side to try to stabilize the road bed. Mr. Lapsley said that is right.

Bob Bachand. Mr. Bachand lives in Livingston Farms. He asked whether there was any protection regarding the sediment piles they have there now? Mr. Lapsley said that there is. He said that the way the topography works from the existing waste pile, is that all of the run-off goes into an existing sediment pond that the State had permitted. Mr. Bachand asked whether the sedimentation pond is an earthen dam? Mr. Lapsley said that a certain portion of it is. Mr. Bachand commented that there is a danger, due to a natural disaster, that it could come down into the creek rather rapidly. Mr. Lapsley said that the dam has been designed to the State's criteria and nothing has happened within the last ten years, but it could fail. Mr. Bachand said this needs to be considered and he added that he is also concerned about the fencing and he thinks the Planning Board can inform the Board of Commissioners of its thoughts on the fencing issue.

Ms. Armstrong asked Mr. Parce, "What is the liability if a child would happen upon the quarry and get injured, whose responsibility would it be, the owner?" Mr. Parce said since he deals in real estate, that question would need to be referred to counsel. Chairman Pearce said generally it is the property owner who has the responsibility. Mr. Parce said he feels from his past studies of law, that mining operations may impose some strict liability not for fault but because they are inherently dangerous activities.

Chairman Pearce said that the Board either needs to make a favorable or unfavorable recommendation on the Special Use Permit application and that they also have a variance request for the fencing. He added that the only fencing that the Board has the ability to require and not recommend a variance from would be on the 1.07 acres of the proposed waste fill site expansion. Ms. Smith said that the Planning Board is not required to make a recommendation on the variance, only on the Special Use Permit, but if it wants the Board of Commissioners know the Planning Board's feelings it may convey them, but the Commissioners need to make its decision based on whether the request meets the standards for granting a variance. Mr. Patterson asked, "What is the time frame to clean out this sedimentation basin?" Mr. Lapsley said that it is in the interest of the owner to make it as long as he can, so the more sediment he can keep up in the quarry, the better. It can fill up every year to 18 months. Mr. Patterson asked, "How do you access this?" Mr. Lapsley said "We would construct a ramp for a track hoe to get down into it from within the quarry."

Chairman Pearce said that he feels with erosion control being the primary improvement and reason for this Special Use Permit, he has the same opinion regarding this matter as previously. He made a motion for a favorable recommendation for Special Use Permit # SU-02-01 and also recommended a condition that the applicant provide documentation for renewal of the State mining permit at the permit intervals to the Henderson County Planning Board. He mentioned that he does not believe that the Planning Board has the density and other factors that it would typically look at if this was a new application and feels therefore that they aren't pertinent issues on this matter. He also said that the overall benefits to the water quality of the area far exceed the changes to the buffering. He said that there is not a significant change in the buffer and it is still in excess of buffers in at least three or four other general spots. Considering that, Chairman Pearce said the buffer issue should take a secondary role to the benefits to be derived from the erosion control. Mike Cooper seconded the motion. Ms. Kumor said that because of the explanation of what the Planning Board has been asked to do by the Commissioners and what the Planning Board may or may not be able to recommend, she was wondering if the Commissioners will get any more than just a simple report as to what the recommendation is. Chairman Pearce said that the Commissioners will get a copy of the minutes of the Planning Board meeting. Ms. Smith said that even if they are in draft form, the Commissioners will receive a copy of the minutes. Ms. Kumor said, "Will the Commissioners be made aware the fact that a number of citizens had some concerns regarding the information the Commissioners will be considering?" Chairman Pearce and Ms. Smith both said that they will. Mr. Patterson asked whether there was any mention of fencing in this motion? Chairman Pearce said no. Tedd Pearce, Mike Cooper, Tommy Laughter, Renee Kumor, Jonathan Parce and Vivian Armstrong voted in favor of the motion. Paul Patterson was opposed of the motion. The motion carried six to one.

Ms. Kumor made a motion that the Planning Board, as a part of its report, specifically call attention to the Board of Commissioners that there was a definite concern with

regard to fencing expressed by various citizens that appeared before the Planning Board and that the Planning Board would hope that the Commissioners give some consideration to the issues that the community raised regarding safety. Ms. Armstrong asked whether the public hearing before the Board of Commissioners would be opened to the public for comments? Ms. Smith said she does not know at this time who will be able to make comments. She said that the hearing is a continuation of a prior hearing and it maybe that only the parties that participated previously can participate in the hearing. She said that those parties may be able to call witnesses, which may be some of these people (those attending the Planning Board meeting). Chairman Pearce said that the Planning Board has no way of requiring the applicant to fence the entire property, but he feels that the Board might want to consider suggesting to the Board of Commissioners that the amount of money that would be applied to fencing for the expansion area be used to properly fence the most dangerous portions of the property. Ms. Kumor said that she is not suggesting that the Planning Board say any more to the Board of Commissioners about what they should or should not do with regard to this request for the fencing variance, all she feels that is important to call the Commissioners' attention to the fact that this Board heard some concerns about the fencing issue. The decision is clearly theirs. She feels that it is a responsibility of the Planning Board to forewarn the Commissioners that there are some concerns in the packet of information forwarded to them that they can be prepared for and possibly consider. Ms. Kumor reworded her motion to read as follows: The Planning Board sends to the Board of Commissioners our notification that they should be aware of the concerns that the Planning Board heard this evening regarding the fencing and safety issues of the neighboring property owners. Tedd Pearce seconded the motion. Mr. Patterson wanted to be clear on the fencing issue that it is in reference to fencing the entire quarry area. Chairman Pearce said that what the Board is stating in this motion is that we heard concerns and that the Board is acknowledging that concern and thinks that the Board of Commissioners should look at the fencing issue strongly. All members voted in favor of the motion.

US 25 North Area Study Update – Land Use/Zoning Study Subcommittee of the Planning Board. Ms. Smith informed the Board members on the recommendations proposed by the Land Use/Zoning Subcommittee for the US Highway 25 North Study and the plan which is in the Planning Board's packet. She mentioned that last week at the Subcommittee's meeting, there was discussion about the Planning Board meeting for a special called meeting to go through the details of the Subcommittee's recommendations with the entire Planning Board. Staff could explain what the existing zoning is at present, what the consultant proposed and what the Subcommittee recommends Staff would be able to show on a screen how the zoning proposal relates to other factors. Chairman Pearce asked, "What is the status of the final report from CMR Services?" Ms. Smith stated she does not know. Chairman Pearce said that the Subcommittee met with Staff and toured the area. Subsequently, the Subcommittee has held five meetings on this matter, heard some public input and studied the area. He said he feels that the Subcommittee has come up with some good suggestions and the Subcommittee's general recommendation regarding the study that was done by CMR Services is that the County accept the report as just that The Board is not in the position to change any of the text of the report and the Board would not ask for any additional services regarding this study from CMR Services. He said that the Subcommittee felt that there was no reason to recommend new zoning districts at this time and it would not be making any recommendations suggested by CMR Services regarding other items such as those regarding flood waters and storm drainage as they are covered under the



Comprehensive Plan and when the proper studies are done, these issues can be addressed. He said that the Board's only interest is in making recommendations on the land uses as there have been some fairly significant departures by the Subcommittee from recommendations by CMR Services. The Subcommittee expanded some areas slightly and tried to get the zoning aligned with property lines, because there were some parcels that had been previously zoned and part of the land might have been under one zoning and part would be in another zoning district. He said the Subcommittee asked Staff to clean-up lines and, in studying the corridor, asked that one large area (with parcels owned by the Layman Foundation and others) be dropped from the study at this time until a proper district can be set up and the zoning ordinance rewrite is completed. Chairman Pearce feels that a special called meeting would be a good idea so that the Board can work with Staff and go through the map. He believes the Planning Board can have the work done in the 120-day frame that was granted by the Commissioners. Mr. Cooper asked, "Does the whole Planning Board want to take time, before we have the public hearings, to completely dissect everything we have done or do we want to ask general questions and have the public hearings to get feed-back and then sit down and do this one final time as a total group on changes that we hear on the public input?" Chairman Pearce said the Board also needed to make decisions on how it wants to do the public input. Mr. Allison feels that the Board should have the public input sessions receive suggestions from the public and then come back as a whole Board to discuss the input. Chairman Pearce said that in having a special called meeting the Subcommittee could familiarize every Board member with the maps on a better scale than what is in the packets at present. The Board had discussions on what types of maps to present at the public input sessions and it was decided that the maps showing the existing zoning districts as well as the Subcommittee's recommended zoning districts should be used so that there would be less confusion on the part of the public. Ms. Kumor said that in order to have public meetings, she feels that the presentation as crafted by the Staff needs to be very clear that it is just recommendations and that the Planning Board is asking for input before they go forward to vote on a recommendation. Mr. Laughter said that there were a number of pieces of property in the study area that the Subcommittee members agonized over because they really didn't have an answer for what the zoning should be or didn't have the proper zoning district. Mr. Allison discussed some specific properties that he had concerns on regarding what the Subcommittee recommended, in particular the parcel that Harold's Furniture was on and the businesses there with the proposed RC District. Chairman Pearce said that if there were no preexisting uses the Subcommittee tried to envision what could go in the area as well as factored in some common sense as to try not to hurt what was existing. Chairman Pearce said that the Subcommittee had to look at the floodplain issues. He said in particular, the RC District was recommended in the study area because this district allowed a lot of uses, most of the things that were existing in that area would continue to be allowed uses and it would have the least impact on the community as a whole in that area. He added that the RC District does allow expansion but not at the rate a higher commercial district or a higher residential district would provide. Mr. Cooper asked Ms. Smith what are the uses in the RC District? Ms. Smith stated that the RC District allows uses from single-family and two-family residential uses as well as home occupations, rural accessory businesses, bed and breakfast inns by right to conditional uses such as offices, conference centers, commercial campgrounds, retail services, business, professional, medical and financial offices, nursery and day-care facilities, camps, kennels and animal shelters, agricultural product processing and storage facilities, conference centers, and sawmills no more than two acres in size. Mr. Cooper asked about how a furniture store would be treated? Ms. Smith said that RC

district allows for retail services and it would need to be looked at as to the definition of retail services versus retail businesses. Ms. Kumor asked whether the Subcommittee was influenced by the CMR report, because it used factors such as whether the Commissioners choose to get a floodplain ordinance or not as a basis for their zoning recommendations. Chairman Pearce said that he feels that the report by CMR Services was a “colossal” waste of money and added that he is not fond of the report. He added that he does not feel that enough time was spent in the field making recommendations and that is the main reason he feels that we should not be taking the CMR Services proposed map to the public input sessions because he feels it will cause confusion. Ms. Kumor said that she feels the Board needs to hear more from the public. Chairman Pearce said that he has been looking at the idea of two public input meetings. Ms. Kumor said that the roadway widening may have changed some of the uses and input sessions would allow the Board to hear what some people are planning to do before the Planning Board goes further. Chairman Pearce said the tour that the Subcommittee made of the area was extremely informative. Ms. Armstrong feels that before the Board listens to the public and in anticipation of being asked questions, she would like to have a broad understanding of what informed the Subcommittee’s decisions before the Planning Board holds the public meetings. Ms. Smith stated that this will be in the minutes of the Subcommittee, but Staff can pull out information which might make it clearer as to how the Subcommittee came up with its decisions. Chairman Pearce said that when the Subcommittee met, it tried to look to make sure that areas were reserved that allowed manufactured homes. The Subcommittee tried to look at all types of housing, commercial uses, floodplain issues, industrial uses, and ended up expanding some of the industrial areas beyond the CMR Services recommendations were and took some industrial zoning away in other places. He said that the Subcommittee tried to make a good balance of all the different types of zoning while respecting the uses that are already in place. At the same time it looked at it from the standpoint of what would be the best for the County to have at a certain area if there was basically nothing in place at present. He said that they considered all these factors and feels that the Subcommittee came up with what he considers the best plan. The Subcommittee did hear from a few members of the public, who attended its meetings. Ms. Armstrong asked, “How do we plan to inform the public regarding the input sessions?” Ms. Smith said that Staff is intending to do a mailing to individual property owners, which would be approximately 1400. Ms. Armstrong asked, “What is it that we will be telling people in the mailing notice?” Chairman Pearce said that the notices would read that there would be a public input session by the Henderson County Planning Board regarding a draft recommendation to rezone the Highway 25 North corridor. Ms. Armstrong asked whether everyone will understand that the purpose of the meeting will be that their property is going to be rezoned? Mr. Cooper said that this isn’t what is going to happen. The Planning Board is only drafting a recommendation to the Board of Commissioners to rezone the property. Ms. Kumor asked whether it might be necessary to say in the notice, that this recommendation may or may not result in your property being rezoned? Ms. Armstrong said that she only wants to make sure that everyone will know that their property will be materially affected. Mr. Allison and Mr. Patterson indicated that a piece of land across from Southern States on US 25 North that has changed businesses various times and is in the floodplain is recommended for a residential zoning. Mr. Allison said it would be a non-conforming use, and asked, if that business moves out, where does it stand? Mr. Patterson said that he is concerned about that parcel of land because it is in a floodplain. He said he is concerned with residential properties being in the floodplain and that the R-15 District only works with water and sewer. Chairman Pearce said that the Subcommittee went with the predominant use in the area. Mr.

Allison asked a question about changing a non-conforming use. Ms. Smith said that if a different business moved in within six months such as a retail business going where there was a retail business, that would be fine. Chairman Pearce said that any legal questions can get answered. He said the Subcommittee might have overlooked or missed something, but that is why the whole Planning Board needs to look it over and have the public input sessions to get feedback. After some further discussion, Chairman Pearce scheduled a Special Called Meeting of the Planning Board from 4:00 – 6:00 p.m. on August 3, 2004 for an informational discussion on the Subcommittee's recommendations. He also scheduled public input sessions for August 16, and August 23, 2004 starting at 7:00 p.m. Ms. Armstrong was concerned about the text of the notification that will go out to the property owners. Chairman Pearce said that perhaps a postcard could be used and that the press perhaps could advertise the two meetings along with any other advertisement. Chairman Pearce also asked that Staff e-mail a draft of the postcard to everyone for input anyone might have regarding the language or anything else.

Adjournment. There being no further business, Tedd Pearce made a motion to adjourn and Tommy Laughter seconded the motion. All members voted in favor. The meeting adjourned at 10:15 p.m.

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Tedd M. Pearce, Chairman

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Kathleen Scanlan, Secretary