

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
MARCH 22, 2006**

The Henderson County Board of Commissioners met for a special called meeting at 7:00 p.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Bill Moyer, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner Chuck McGrady, Commissioner Shannon Baldwin, Assistant County Manager Justin Hembree, County Attorney Russ Burrell, and Clerk to the Board Elizabeth Corn.

Also present was: Subdivision Administrator Matt Card.

CALL TO ORDER/WELCOME

Chairman Moyer called the meeting to order and welcomed all in attendance.

DISCUSSION/ADJUSTMENT OF AGENDA

Commissioner Messer made the motion to approve the agenda. All voted in favor and the motion carried.

CONSENT AGENDA

Commissioner Young made the motion to approve the Consent Agenda. All voted in favor and the motion carried.

The Consent Agenda consisted of the following:

Approval of Order on Special Use Permit from May 19, 2006 concerning Blue Ridge Community College

A draft Order from the quasi-judicial hearing this Board held in the matter of the application for a special use permit and variance for Blue Ridge Community College was presented for approval.

QUASI-JUDICIAL PROCEEDING – Special Use Permit Application #SP-06-03 and V-06-03

Commissioner McGrady made the motion for the Board to go into public hearing. All voted in favor and the motion carried.

Chairman Moyer – “We are in uh, public hearing. This is a um, a quasi-judicial uh, hearing. It’s in the matter of the application for the modification of the special use permit for Carriage Park, where Carriage Park Associates was the original applicant. This modification is being sought by Henderson County staff. A quasi-judicial proceeding, which is what we’re required to have in this type of proceeding, is much like a court proceeding, in wh, in, is one in which one’s individual rights are determined under specific rules of evidence. Much more formal procedure than an informal uh, public hearing we normally have. As such not every person has a right to give evidence in a quasi-judicial proceeding. Under the Rules of Procedure for Quasi-Judicial Proceedings, only persons who can demonstrate that they will be affected by the outcome of the decision are allowed to participate in the proceeding.

All persons who are allowed to speak and participate in the hearing, including all witnesses that will be called, must be placed under oath. The proceeding will be as follows. The Board will ask any persons other than the petitioner and the Henderson County Planning Staff, who desire to become parties to this action to explain how they will be affected by this proceeding. For example there may be an owner of an adjoining parcel of property or have some other special and unique interest that justifies their participation as a party. You should understand that you do not have to be a party in order to testify in this proceeding if some other party calls you as a witness. This is a little confusing, but if we ask do you want to be a party, if you’re just going to give evidence as a witness for some pers, some other person or entity that’s a party, you don’t have to be uh, you don’t have to prove why you should be a party to this.

All witnesses and parties will be sworn as a group to tell the truth in their testimony. The Board will then have the Planning Staff summarize the petition and the modification, present their evidence. Each party, that’s on, each

DATE APPROVED: _____

party but not witness, has a right to ask questions of the witnesses. After the petitioner has presented evidence the other parties are then allowed to present their evidence. Again, each witness who testifies may be asked questions by the other parties. The members of this Board are free to ask questions at any time of any party they, they wish. After the evidence is presented the Board will discuss the issues raised and will make a decision. The Board's decision must be made in writing within 45 days of the hearing. It does not have to be made tonight. Uh, sometimes we do, sometimes we don't. We're now going to proceed to identify uh, the uh, parties. The Board acknowledges the petitioner, Carriage Park Associates, Dale Hamlin, um representing Carriage Park Associates and the, the Planning Staff. We have Matt Card who is representing the uh, Planning Staff as parties to this proceeding. Is there anyone else here who can demonstrate they will be affected by the outcome of the proceeding who wishes to be a party in this proceeding?"

Commissioner McGrady – "Mr. Chairman, before we proceed I need to disclose once again that uh, my mother is a property owner at Carriage Park. And once again, uh, uh, um, state that if any party uh, to this proceeding would want me to recuse myself from the proceeding I am willing to do so. I own no uh, property in Carriage Park, and have no direct interest uh, in this proceeding in any way that I'm aware of. Um, and in the past, um, no party, um, to any of the various Carriage Park, um, hearings that have occurred over the last uh, 10 years have requested my refusal. Um, but I've always taken as a precaution, um, to disclose um, this interest and I do so once again."

Chairman Moyer – "Does anyone on the Board wish to uh, ask uh, Commissioner McGrady to excuse himself?"

Commissioner Baldwin – "I, no I don't."

Chairman Moyer – "Alright. Show that the Board um, Carriage Park Associates uh, Dale, do you have any objection to Mr., Commissioner McGrady proceeding?"

Dale Hamlin – "No sir."

Chairman Moyer – "Alright. After we identify any other parties I will ask you also at that time. But we will now, so there's no objection at this time. We'll now move to identify the parties. Is there anyone else that ha, believes they have an interest in this that would like to be a party to this proceeding?"

Elizabeth Corn – "Mr. Chairman, we had one gentleman sign, Daniel Theron."

Chairman Moyer – "Would you, alright would you please, you'll have to come to the microphone, give your name, address, and how you believe, how you believe you will be affected by the outcome of this proceeding and then the Board will take action on your request."

Fran Ackley – "My, excuse me, my name is Fran Ackley. I live in Haywood Knolls at 632 Gold View Drive, and my property backs up to Carriage Park property. And I'm sorry, what else did you want to know?"

Chairman Moyer – "Your name again?"

Fran Ackley – "Fran Ackley. A-C-K-L-E-Y."

Chairman Moyer – "And your property backs up to the property."

Fran Ackley – "Yes sir."

Chairman Moyer – "That's in question tonight."

Fran Ackley – "Yes."

Chairman Moyer – "Okay. Any of the Board have any question with respect to uh, Ms. Ackley being a party?"

Commissioner Baldwin – “Is, is it the specific piece that is uh, part of this hearing? Your property, is it ab, does your property adjoin the piece that’s in question tonight?”

Fran Ackley – “I’m not certain what, what piece is in question tonight. That was not clear, that was not clear in the letter that we received.”

Commissioner Baldwin – “Okay.”

Russ Burrell – “All of Carriage Park.”

Chairman Moyer – “Alright.”

Commissioner McGrady – “My understanding is the entire um, all of Carriage Park is at issue tonight in terms of the. And so if she’s an adjoining property owner, one can argue she would have um, some interest in this proceeding.”

Commissioner Baldwin – “I agree.”

Chairman Moyer – “Any objection? Alright Ms. Ackley you’ll be, you’ll be made a party to the proceeding.”

Fran Ackley – “Thank you.”

Chairman Moyer – “That’s all you need to do right now.”

Fran Ackley – “Thank you sir.”

Chairman Moyer – “Alright. Theron.”

Daniel Theron – “Mr. Chairman I’m Daniel J. Theron. And uh, I have property um, abutting uh Carriage Park. And I can overlook quite a bit of it. Uh, and for that reason I regard myself as uh, an interested party, uh, in these proceedings tonight.”

Chairman Moyer – “What is the address of your property?”

Daniel Theron – “My address is 534 Starmount Lane in Hendersonville.”

Chairman Moyer – “Did you adjoin, or do you just overlook the property?”

Daniel Theron – “I adjoin it.”

Chairman Moyer – “You adjoin. Any objection to Mr. uh, Theron being a party?”

Commissioner Baldwin – “No.”

Chairman Moyer – “Alright, you’re also a party. Is there anyone else that would like to be a party?”

Commissioner McGrady – “There’s another hand.”

Chairman Moyer – “Yes mam. Please come up, state your name, address, and how you’ll be affected by the matter tonight.”

Virginia Burke – “You’re talking about Carriage Park right?”

Chairman Moyer – “Yes.”

Virginia Burke – “I’m Virginia Burke. I live at 114 Jenny Lind Drive in Carriage Park. I have lived there for seventeen years and I will be affected as a resident of Carriage Park.”

Chairman Moyer – “Okay. Any objection to Ms. Burke? Alright, thank you, you are also made a party.”

Virginia Burke – “Thank you.”

Chairman Moyer – “Alright. Now we have Ms. Ackley, Mr. Theron and Ms. Burke as uh, parties. And we have the petitioner and staff. We need all of those to come forward to be sworn with respect to testimony at this time. So come up to the Clerk and uh, get sworn in. And anybody that you’re gonna call as a witness, needs to be also sworn in. If there’s anybody that’s gonna give testimony in support of anybody that’s a party, you need to come up and be sworn in.”

Elizabeth Corn – “Left hand on the Bible please.”

Russ Burrell – “Left hand.”

Chairman Moyer – “Left hand Mr.”

Elizabeth Corn – “Left hand, cause you’re gonna need to raise your right hand. Do you swear or affirm that the testimony you shall give to the Board of County Commissioners shall be the truth, the whole truth and nothing but the truth so help you God?”

In unison – “I do.”

Chairman Moyer – “I’ll ask just to be sure, is there anybody that’s a party, that we’ve made a party to the proceeding, that’s gonna call a witness that was not sworn in? We’ve covered everybody? Cause you can’t call a witness later if they haven’t been sworn in to, with respect to their testimony. Okay, everybody’s been uh, covered. I’ll ask the, so we’ll begin with an overview of the case.

Commissioner McGrady – “Ask them if they object to me.”

Chairman Moyer – “Well. Okay. Is there a question or an issue? Sir?”

From the audience – “Well, we don’t know what it’s all about. According to your agenda it seems like it’s just the, the uh, movement of some responsibility from the Commissioners to the Planning Board? Is that?”

Chairman Moyer – “No, that’s not what’s at uh.”

Russ Burrell – “Close.”

Chairman Moyer – “subject. Why don’t we give, we’ll do this. We’ll have our attorney give you an overview of the case.”

From the audience – “I definitely wanna be sworn in.”

Chairman Moyer – “Do you wanna be a party?”

From the audience – “I did not understand that this was anything other than what that gentleman said. I wanna be sworn in.”

Commissioner McGrady – “Why don’t you give an overview before we get into this.”

Commissioner Young – “Yeah.”

Chairman Moyer – “Yeah. Mam.”

Bonny Marsh – “I’m Bonny Marsh. I live in carriage Park. I’m at 652 High Coy Road.”

Commissioner Messer – “What was the name again?”

Bonny Marsh – “Bonny, B-O-N-N-Y, Marsh, M-A-R-S-H.”

Russ Burrell – “She needs to be sworn.”

Chairman Moyer – “Alright.”

Bonny Marsh – “And it was my understanding from everything that happened that the County uh, Attorney had tried to get something changed so that the County Commissioners would not have the responsibility of doing, all the sudden I’ve gotten here tonight and that’s not what’s happening.”

Chairman Moyer – “Mam, have a seat, we’ll give you an overview of the...”

Bonny Marsh – “Thank you.”

Commissioner Messer – “She didn’t get sworn in.”

Chairman Moyer – “Mam.”

Russ Burrell – “Ms. Marsh.”

Bonny Marsh – “Oh excuse me. Excuse me.”

Elizabeth Corn – “Ms. Marsh. Left hand on the Bible, raise your right. Do you swear or affirm”

Bonny Marsh – “I do.”

Elizabeth Corn – “that the testimony you shall give to the Board of County Commissioners shall be the truth, the whole truth and nothing but the truth so help you God?”

Bonny Marsh – “I do.”

Chairman Moyer – “What we’re gonna do just so there’s, appears to be some confusion. We’ll have the County Attorney and Staff give you an overview of the purpose of this quasi-judicial proceeding. And then what I’m gonna allow anyone to do that would like to withdraw as a party and say that’s not what we thought was the issue here, or anyone who says geez I thought that something else was the issue I now would like to be a party, we’ll give you the chance to come back in. And then we’ll have requests with respect to Mr. McGrady’s, uh, Commissioner McGrady’s status. But let’s, Russ give the overview and uh, let’s get this issue clarified.”

Russ Burrell – “Thank you Mr. Chairman. What you have in front of you tonight is a proposed amendment to the Special Use Permit involving Carriage Park. Um, it was in the notice that was in the newspaper and also in the letter that I sent to all of the property owners in Carriage Park. Um, basically there are two amendments proposed to the special use permit. The first would mean that any appeals that are heard, normally the, under the current special use permit, they’re heard by this Board, the Board of Commissioners. Instead they would be heard by the Zoning Board of Adjustment. I think a gentleman earlier said by the Planning Board, and instead the appeals would be heard by the Zoning Board of Adjustment. The other change would be that hearings in front of the Planning Board, which are currently quasi-judicial hearings just like these, this hearing is tonight, would instead be an informal hearing which is the same kind of hearing that every other subdivision except for Carriage Park in Henderson County has in front of the Planning Board. Those are the only two changes that would be made.

There'd be no change to any, there'd be no development parcels come in front of you tonight, no change to anything about how any part has ever been developed. The only changes in front of you that, that are involved in this."

Chairman Moyer – "Go through them again slowly Russ."

Russ Burrell – "Alright. The only changes are two procedural changes. One changing any appeal rather than coming to this Board, the Board of Commissioners, instead they would go from the Planning Board to the Zoning Board of Adjustment. The other change is that the initial hearings in front of the Planning Board would be done on an informal basis rather than a quasi-judicial basis. There wouldn't be the same kind of sort of semi-court procedure that you have here now where someone has to be a party and ask questions of other witnesses. Instead people would be able to give statements like they are used to doing in Planning Board hearings because that's the way every other subdivision is dealt with in front of the Planning Board."

Commissioner Baldwin – "That's clear."

Chairman Moyer – "Now does anybody have a question as to that? You understand the purpose of the hearing now?"

Robert Ackley – "Yes I, I do. Just one question, uh."

Chairman Moyer – "Please come to the microphone sir and address the Board."

Robert Ackley – "My name is Robert Ackley, um, husband of Fran Ackley. And uh, I was just wondering now does still mean that the final results go from the Planning Commission, or, and."

Russ Burrell – "The Planning Board would hear a development parcel decision. There was one about a month ago they heard in this very room. An appeal from that would go to the Zoning Board of Adjustment rather than the Board of Commissioners."

Robert Ackley – "Okay."

Russ Burrell – "And then any appeal from the Zoning Board of Adjustment goes to court."

Robert Ackley – "Right, I see. So the Commissioners still have to vote, the final say?"

Russ Burrell – "No, no sir, no sir."

Robert Ackley – "No."

Russ Burrell – "Planning Board, to Zoning Board of Adjustment."

Robert Ackley – "Yes."

Russ Burrell – "To court."

Robert Ackley – "I see. Okay. Okay."

Russ Burrell – "The current, the current plan is Planning Board, to Board of Commissioners, to court."

Robert Ackley – "Yeah."

Russ Burrell – "And that's not something that happens for any other subdivision. We would go Planning Board, to Zoning Board of Adjustment, to court."

Robert Ackley – “Right. Okay, thank you.”

Chairman Moyer – “Does anybody else that’s indicated they’d like to be a party have any questions with respect to then the two issues that we’re gonna be talking about tonight? Do the parties involved still wish to be parties? All the parties still wish to be involved? Alright now we have, I have four uh, Ms. Ackley, Mr. Theron, Ms. Burke and Ms. Marsh, Marsh. Do any of those parties object to Commissioner McGrady uh, sitting with this Board and hearing this matter? I’ll ask each one of them. Ms., Ms. Ackley do you?”

Fran Ackley – “No.”

Chairman Moyer – “Mr. Theron?”

Daniel Theron – “No.”

Chairman Moyer – “Ms. Burke?”

Virginia Burke – “No.”

Chairman Moyer – “And uh, Ms. Marsh?”

Bonny Marsh – “No.”

Chairman Moyer – “Okay. Alright let the record show then there’s no objection to Commissioner McGrady.”

Commissioner McGrady – “Too bad.”

Chairman Moyer – “Nice try but that’s...”

Commissioner McGrady – “I tried.”

Chairman Moyer – “Alright um, further statement of the case Russ, do you wanna do anything further at this time?”

Russ Burrell – “I think the only thing I wanna emphasize is that while you have occasionally held appeals and while you’ve occasionally done things like modification of the special use permit, the greatest day to day change this is gonna mean is in front of the Planning Board. Right now the Planning Board um, who I have, who, while I great respect for them, um, they aren’t each of them uh, full of legal background. There’s one attorney on the Board but there’s, the rest of them are not. Uh, are in a position of having to hear quasi-judicial hearings every time a development parcel comes in front of them. That’s a pretty difficult thing for a judge to do in court. It’s a very difficult thing for a volunteer body like your Planning Board to do. Um, the reason I think Staff’s gonna be advocating these changes today will make the process easier for them, but also make pro, the process easier for the developer, for residents, for people who are opponents to, to the development. When they’re in front of the Planning Board they have to come basically prepared to try a law suit. If they are hearing an informal hearing they don’t have to come with nearly that kind of preparation, they can come and give their input to the Planning Board as they probably expect to do if they’ve seen any other Planning Board hearing on any other subdivision. That’s what’s in front of you today. I think Matt’s gonna present some on that, and he has some witnesses on that issue.”

Chairman Moyer – “Alright. This is Matt Card from the uh, Planning Staff. Matt.”

Matt Card – “Um, I really don’t have too much more to add to, to what Mr. Burrell said because he, he summed it up nicely. That’s the two issues that, that we’re looking at. Two amendments to the special use permit that governs Carriage Park and uh, I would just like to simply say that you know um, Planning Staff supports this, these amendments and uh, we have no objections and um, feel that it’s not gonna adversely affect any, you know, party

that's involved. Um, whether it be you know a resident of Carriage Park or the developer of Carriage Park. And um, you know, the Board of, again the Board of Adjustments is, you know, well equipped to handle quasi-judicial proceedings because they do it, you know, on a mon, on a monthly basis. Excuse me. And um, I really, you know, don't have much more to add than that."

Chairman Moyer – "Okay."

Matt Card – "I do have one witness to call if you would allow me to do that at this time or if you want me to wait."

Chairman Moyer – "Certainly."

Matt Card – "Um, Mr. Jack Osterberg, who is a resident of Carriage Park and he's also I believe the President of the homeowners association."

Chairman Moyer – "Mr. Osterberg. You were sworn, I saw that so you're free to speak."

Jack Osterberg – "Yeah. I'm Jack Osterberg, the President of the home owners association, and I just want to add that we have no objection to the, to the, either of the amendments that you're trying to make tonight."

Chairman Moyer – "Okay. Matt do you have anything else at this time?"

Matt Card – "I do not."

Chairman Moyer – "I'm gonna ask, uh, now go down, each of the parties have the right to ask Staff questions. Now this is not when you make statements or make arguments. If you have any question on Staff's position or what they're saying or what the intent is, this is the time to ask questions. But you'll have a chance in a minute to say whatever you want to say. This is only the chance to ask questions. Does any of the, any of the other parties have questions for, for Matt or the Attorney at this time. Yes."

Commissioner McGrady – "Or Mr. Osterberg."

Chairman Moyer – "Well I'm gonna get to him."

Fran Ackley – "I have, excuse me I have just one question and that is I want to be sure that I understand completely as it has been presented that what you're trying to put in effect tonight with Carriage Park is already in effect with other developments. That they're the only ones that have gone through this extra step. Is that right sir?"

Russ Burrell – "The normal procedure, Matt can, can take it through. That's what you do Matt so I'll let you go through the normal procedure for a subdivision and compare that to what Carriage Park's, a development parcel on Carriage Park is like."

Matt Card – "Okay under uh, the special use permit, uh, 93-13 which Carriage Park is kinda governed by, um, they, each development parcel that comes before the Planning Board it has to be a quasi-judicial proceeding. Um, normal subdivisions under the Henderson County Subdivision Ordinance does not have to be a quasi-judicial proceeding. It's basically an informal um, proceeding I guess where, you know, the developer would get up and present um, his subdivision or her subdivision, and then, you know, any other people at that point can give input, you know, on what, what he or she is doing. So um, you know, that's basically the standard for every subdivision in Henderson County is that it does not have to be a quasi-judicial and, you know, that it's handled informally by the Planning Board."

Chairman Moyer – "Matt, how about the right to appeal?"

Matt Card – "Right."

Fran Ackley – “Could I ask one more question?”

Chairman Moyer – “Well, who, how about, is, is everybody else gonna appeal to the Zoning Board of Adjustment?”

Matt Card – “The right to appeal from the Planning Board as it’s currently written in the Subdivision Ordinance would appeal actually to the Board of Commissioners. Um, what, what’s proposed tonight is that any appeals from the Planning Board’s decision would actually go to um, the, you know, Zoning Board of Adjustments instead.”

Fran Ackley – “Um hum. Could I just ask why it was set up this way for Carriage Park? I don’t know if it has impact on this but, you know, it seems unusual that if, if this is the case with Carriage Park why?”

Chairman Moyer – “Well we can take a stab at it. None of us were here then, probably I’m the old, the one around, but Russ you go first and then I’ll.”

Russ Burrell – “Carriage Park development is an interesting development to begin with. It involves the almost failure of a bank, it involves um, a great deal of change in the product, in the development being taken over by a brand new developer. And then morphing into a new developer that you have now. At some point there was a, there was a real loggerhead that was resolved by an agreement that was turned into this special use proceeding agreement, special use permit 93-13. After a great deal of going back and forth this was the best that they came up with. And it has by and large served most every development parcel except for the very first couple of Carriage Park, with some problems that have been noted by people who have been on the Planning Board and the Board of Commissioners ever since that they don’t note with other subdivisions in terms of process. Not in terms of outcome or in terms of dealing with folks, but dealing with how you get from one point to another. A hearing that might take an hour and a half to get to the same result takes four hours to get to the same result, over and over again. That’s what I think’s the best...”

Chairman Moyer – “I think that’s pretty close to, I was on the Planning Board through um, through most of this from the beginning and I think it was looked upon as a unusual, special, uh, situation that needed this at the beginning. I can honestly tell you for years I wish we had gotten rid of it before. Because it does tie your hands to a certain extent. When you have these hearings at the Planning Board, and I was Chairman, Commissioner McGrady was Chairman, uh, for a while, it’s nice to have the flexibility to let everyone speak who wants to say. When you have quasi-judicial you’re lock into, just like we had to do tonight. And in many cases people say well, we’re concerned about this and we say well you can’t be a party ‘cause you can’t show that you have a specific interest in this matter. You live too far away, or you’re not affected by this section or whatever. This gives much more flexibility to the person heading the uh, the Planning Board um, to run a good hearing and to get all the evidence out and give everybody a chance to speak. I think also moving the appeal takes it out of the political and gives it to a, to a body that’s not affected by politics and gives it an honest uh, straight forward decision. Not that we always don’t do that, but at least it removes any possibility that there’ll be politics in the uh, in the outcome. So uh, I wish we had done it a long time ago. I think it’s a good move, I think it would have gone a lot better if, when I was on the Planning Board I wish we’d have had it at the end but, better late than never.”

Fran Ackley – “Okay. Thank you for the clarification.”

Chairman Moyer – “Are there other questions from uh, for uh, Staff from any of the parties? Um, do you have any questions of Staff’s witness at this time? Okay. Now we’ll let any of the parties, and I’ll go right down in order, this is your chance to give evidence, make a statement, if you care to, with respect to this matter. And I’ll start with you uh, Ms. Ackley, uh, Ec, Ackley. Do you wish to make a further statement. You don’t have to, there’s no requirement that you do.”

Fran Ackley – “I’m just supposed to address what’s on the agenda tonight?”

Chairman Moyer – “That’s all, that’s all you can.”

Fran Ackley – “Then I have nothing else to say.”

Chairman Moyer – “Alright. Mr. Theron, you’ve been involved with me from the beginning on this I think so it’s uh.”

Daniel Theron – “Uh, yes Mr. Chairman, unfortunately so. Uh, I wish that were not the case. Uh, I lived in Carriage Park, I built a house there, a nice home. I had it very well landscaped, it’s a beautiful piece of property, it’s a credit to Carriage Park. Uh and I felt, my wife and I, that uh, the way things were going we would not want to be further, a part of Carriage Park. So we moved. Sold our property and bought another property. Uh, what concerns me sir, is why this special uh, change is made for Carriage Park alone. What concerns me also, is the continuous change of the PUD from this to that, to that to the other thing. From what I understand, there’s a dossier that thick about it. And I, submit sir uh, ladies and gentlemen, that I don’t think the Planning Board clearly knows what is going on and how it has all changed and how it affects the environment. I could see from where I live that a half of a whole hill was torn down and it was stripped out, the remains of that in two strips. From what I could gather about 30 feet high. Whats going to happen to that I don’t know. Is that the, is it the plan of Carriage Park to built on what they have, or the landfill they’ve done there?”

Chairman Moyer – “But you’re beyond, as you know, the scope of what we’re here for.”

Daniel Theron – “Yes, I know sir. Uh, but it, it’s something that’s just to come. But I want to, to, bring that question up.”

Chairman Moyer – “Alright.”

Daniel Theron – “Uh, and I also want to state that I think what is planned there as far as we can determine from the PUD which has been approved, it is totally, totally out of character with the environment around that area. Uh, it is also interfering uh, with the uh, um, the, the land flow of the water. Uh has polluted a lake, it has polluted a stream, uh, and uh, when you get to a um, uh, a non-traditional meeting, hearing, where people can just say this or that or the other thing and is not accountable, uh I would be totally opposed to that. I think if anybody says anything about uh, changing a PUD uh, particularly with a development which we’ve had and the changes over the years in that particular development, that person should be accountable. Secondly, I would like to, that this should be really, uh, the responsibility of people who are elected officials. The Planning Board is not, uh, not elected officials. We can not vote them out of office. And if you gentle, ladies and gentlemen, or gentlemen who sit here on the uh, on the Commission as Commissioners, if you do not do your duty, for the environment and for the best overlooks and appearance of uh, Henderson County, you can be voted out of office and you should be. Uh, I’m sorry to say that but that is I think the crux of the whole matter and I would be opposed to changing this to go through an informal discussion. Anybody can say what he wants to, and is not accountable, uh, I would, anybody says anything I would like to see that actually in writing and under oath. Thank you sir.”

Chairman Moyer – “Thank you. Ms. Burke?”

Commissioner McGrady – “We’re getting closing statements.”

Chairman Moyer – “Yeah, I know. That’s where we’re gonna close with.”

Virginia Burke – “Virginia Burke, 114 Jenny Lind Drive, Carriage Park. Resident since February, ’89. I uh, am opposed to changing from a quasi-judicial hearing at the Planning Board for a opening of new sections or changes that the developer wants to make to an informal hearing because we lose the protection of having each witness or speaker sworn in. At least by having that process of being sworn in and each speaker speaks under oath, we have a certain amount of confidence and assurance that what you’re hearing is the truth, or hopefully the truth. At an informal hearing we are denied that confidence and that assurance. And I think this quasi-judicial process has served us well from the beginning, from 1992 when Carriage Park Development Corporation took over Carriage Park Development from the original developer, Ken Erb, who operated under a different special use permit. Also, uh, in answer to one of the previous questions, why does this only apply to Carriage Park, why do we have quasi-

judicial hearings, I think it's because we have a special use permit. And uh, when speakers earlier said that other subdivisions do not have this process it's because they do not have a special use permit. And since we have a special use permit, it is special by name, and it requires additional supervision and clarity, and as Mr. Theron said, uh, accountability. So uh, I did not speak to our Association President, Jack Osterberg, who spoke before. I did not know that he was going to say that the Association was not uh, opposed to this. I am opposed to it, and I have a number of friends who are opposed to it because we lose the accountability, the confidence, the assurance, that what we are hearing from each speaker is the truth. Because each of us is under oath. And the second point I would like to make as far as appeals going to the Zoning Board of Adjustment rather than the uh, Board of Commissioners, again, I think the process has served us well for 14 years and I agree with Mr. Theron that uh, the Zoning Board of Adjustment is not elected. We have no recourse to uh, let them know that we disagree with their decision. Whereas with the Board of Commissioners you are elected. Going immediately from the Zoning Board of Adjustment to a court case is burdensome an uh, I would prefer to see uh, a continuance of the present system. Thank you."

Chairman Moyer – "Thank you. Uh, Russ I'm gonna ask you to comment on the uh, the witnesses in an informal proceeding."

Russ Burrell – "Okay I. I would note that, that, they would, there's, they still uh, can and freq, and generally are sworn to testify under oath in an informal hearing and also note that there will still be the right for a quasi-judicial hearing on each development parcel, it's just in front of the Zoning Board of Adjustment. You have the informal hearing in front of the Planning Board and then if any party appeals from the Planning Board to the Zoning Board of Adjustment it would be a quasi-judicial hearing with all witnesses under oath subject to cross examination, subject to all the rules of evidence, uh, in front of the Zoning Board of Adjustment."

Commissioner Baldwin – "Wanna ask a question Russ, maybe this will help clarify. Russ what, what you're saying is that we are not exempting this, this uh, special use permit from a quasi-judicial hearing, we're just changing the body that holds the hearing."

Russ Burrell – "That's correct."

Commissioner Baldwin – "Okay."

Russ Burrell – "That's correct."

Commissioner Baldwin – "Alright."

Virginia Burke – "Thank you."

Chairman Moyer – "Sorry we didn't make that clear at the beginning. Ms. Marsh?"

Bonny Marsh – "I too to a certain degree am opposed to changing. Uh, you are elected officials. We have a right to come before you if we do not agree on this proposal. I would never have come here had it not been for what happened about 15 days ago. You are elected, we have a right to come to you as elected officials and say we do not agree with what you are doing. Carriage Park is individual in and of itself. Our President of our Board is brand new. We change a, the Board every two to three years. The people that come in and serve on that Board have only come in recently, they have not lived there forever. Nor do they really know sometimes what is going on. So I have to agree with the people that our elected officials are where we need to be to say we don't agree. Where we need to be to say we don't agree."

Chairman Moyer – "Technically each of the parties now has the right to ask any of the other parties that just spoke questions if you would like. So, you know, Ms. Ackley could ask Mr. Theron questions, or Ms. Burke, or, if we wanna start that you do have the right so I'm gonna just."

Commissioner Young – "I guess Dale Hamlin could."

Chairman Moyer – “I’m just gonna ask whether you have any questions for any of the other people that spoke. Seeing no heads or hands I’m assuming you don’t. Um, now I’m gonna call on uh, Dale Hamlin from uh, Carriage Park Associates.”

Dale Hamlin – “Mr. Chairman, members of the Board. Um, I have been the developer at Carriage Park since June of 1992. And I have been in all those quasi-judicial and all those workshops and participated in the creation of the current PUD document that we operate under. I do uh, have no objection whatsoever to the proposed amendments, either the appeal process going to the Zoning Board of Adjustments, or the other amendment which takes away the quasi-judicial status of the hearings. I do think that we have exhibited over the years a tendency to do things right, to do things properly, and I wanna suggest to you that your Staff, especially the Planning Staff and their legal council have done an exceptionally good job of combing through the documents, especially the Planned Unit Development document that we operate under which is very complex, and creating exceptionally detailed orders that we must follow. I think that the process of going to the Planning Board would be served better if we didn’t have quasi-judicial hearings because more people could say more things and the Staff would hear all that and, and perhaps the Board would um, would put even better proposals into the order, the eventual order that we operate under. Uh, I’m just very impressed with the way the Staff uh, keeps our feet to the fire and I have no problems whatsoever with these two amendments. Thank you.”

Chairman Moyer – “Now each of the parties that were mentioned before, I think you know now the procedure, have the right to ask Mr. Hamlin any questions that you’d like. Any of the parties, Mr. Theron?”

Daniel Theron – “I’d like to ask Mr. Hamlin, Mr. Chairman, uh, the land that was taken off from the hill that was torn down...you plan to build on those two...”

Chairman Moyer – “Mr. Theron, that is really not the purpose of this hearing. I’m gonna have to cut off your question.”

Daniel Theron – “It is a very important question.”

Chairman Moyer – “But it is not the question for this evening. I’m sorry. When that parcel came up, that, well I’m not gonna let him answer, it’s not relevant to the two matters we have before us. Are there any other questions that deal with this matter? Alright does any, do any of the parties uh, I’ll start with Staff, Matt, do you have anything else that you wanna add?”

Matt Card – “No, I don’t think so.”

Chairman Moyer – “Alright. Do any of the parties have additional comments, closing, in the way of closing arguments they’d like to make. Think you’ve all spoken well, I think your issues are clear to us. Does anybody else have anything they’d like to uh, to say at this time? Alright, let’s indicate that none of the parties have any further um, comments they uh, they wish to make. Now it’s time for the Board, uh, all the evidence is in and it’s time for uh, closing comments are in for the Commissioners to discuss the issues presented today.”

Commissioner Baldwin – “I’ve got a couple of questions for Matt. I, hopefully it will help clarify some things.”

Chairman Moyer – “Alright. Then we’ll, we’ll go back to that. Matt.”

Commissioner Baldwin – “Matt, Matt just briefly will you, briefly, in general, describe the difference between a standard subdivision process approval and uh, a PUD approval.”

Matt Card – “Alright um.”

Commissioner Baldwin – “As, as it is right.”

Matt Card – “As it is right now, uh the informal process is a presentation to the Planning Board where um, Staff gives a very, you know, brief presentation about what’s, what the proposal is, how many units and, and that type of thing. Um, and then the developer can get up and answer any questions that the Planning Board may have or that other, you know, anybody else may have. Um, and then kind of, usually after that there’s a, a period for public input where um, you know, concerned property owners or, or whome, whomever can get up and, and speak about the proposal. Um, and then generally from there the Planning Board will make a decision. With this, this special use permit for Carriage Park, of course it requires a quasi-judicial hearing um, and you have to go through, you know, what we, we’ve, what we’ve done tonight. And uh.”

Commissioner Baldwin – “Let me, let me interrupt. What, why is this subdivision required to have um, a quasi-judicial hearing when other subdivisions do not.”

Matt Card – “Because it’s specifically written in the special use permit that they have quasi-judicial hearings for um, the review of development parcels. Um, of course under this proposed amendment there would be no changes to the appeals or amendment process, which would still be quasi-judicial, but as far as the review of devl, development parcels, um, the special use permit’s specific that, you know, it be handled in a quasi-judicial way.”

Commissioner Baldwin – “Let, let me, let me see if I can say it this way. Right now a person can apply for uh, approval for a subdivision, and they do not have to secure a special use permit. Is that correct?”

Matt Card – “That’s correct.”

Commissioner Baldwin – “If you want a Planned Unit Development, does that require you go secure a special use permit?”

Matt Card – “Right. Correct.”

Commissioner Baldwin – “Okay, so in Carriage Park’s case, this was a Planned Unit Development and they had to apply for a special use permit.”

Matt Card – “That’s correct.”

Commissioner Baldwin – “That’s why there’s a public hearing associated with the special use permit.”

Matt Card – “Um hum.”

Commissioner Baldwin – “Correct?”

Matt Card – “That is correct.”

Commissioner Baldwin – “Okay. We’re not changing the fact that a public hearing is required for Carriage Park. What is being proposed is a change be made that the body that hears the case is no longer the Commissioners but uh, first of all the Planning Board and then to the BOA for a public hearing?”

Matt Card – “For a public hearing um, if it were amendment to the special use permit or an appeal to a development parcel or decision that the Planning Board made.”

Commissioner Baldwin – “Okay. So any new applications or any changes to the existing special use permit as proposed would go to the Planning Board for an informal meeting, hearing, and then it would go to the Board of Adjustment for a final quasi-judicial hearing. Is that what you’re saying?”

Matt Card – “Um, amendments and appeals would. They would, they would have to get a recommendation from the Planning Board to be, and then go to the Zoning Board of Adjustments. Um, development parcel review, you

know, like sections within Carriage Park, would just um, require a, a hearing at the Planning Board level, and that's when they would be approved or denied."

Commissioner Baldwin – "Okay so if there's developable land left within the subdivision it would not go through the uh, special use permit process. It would uh, just simply go for an informal hearing before the Planning Board."

Matt Card – "That is correct."

Commissioner Baldwin – "Is that correct?"

Matt Card – "That's correct."

Commissioner Baldwin – "So we are treating differently development process within this development. Whereas before it was all under a special use permit, now developable land does not have to have a quasi-judicial hearing, it just has to go through an informal hearing before the Planning Board."

Matt Card – "In Carriage Park."

Commissioner Baldwin – "In Carriage Park."

Russ Burrell – "The, the change would actually say on a development parcel, there wouldn't, the first step in front of the Planning Board would not be quasi-judicial."

Commissioner Baldwin – "Define development parcel Russ."

Russ Burrell – "There's 20ish, I'm not actually sure of the exact number, 20ish sections of Carriage Park. I don't remember the exact number but use my example let's say there's 20. Whenever they're ready to build in any one of those 20 sections that's, that's for the improvement of a development parcel. Those, that, that section. Right now under the existing situation, there's a quasi-judicial uh, hearing in front of the Planning Board followed by, if any party to that appeals, another quasi-hearing hearing in front of the Zoning Board of, excuse me, including in front of the Board of Commissioners. What this amendment would do would make the first hearing in front of the Planning Board to be an informal hearing. Subject to any party appealing that now to the Zoning Board of Adjustment for the full quasi-judicial hearing. There, the situation you have know is something you would not have in any real court case which is two trials. You have a quasi-judicial hearing in front of the Planning Board, appealed to a whole new trial, a whole new quasi-judicial hearing. What you normally have is one informal and then one formal. That's what this sets up now, is one informal in front of the Planning Board. If anyone appeals that, a formal quasi-judicial hearing in front of the Zoning Board of Adjustment."

Commissioner Baldwin – "I'm, I'm still confused. If, if some of the land is left to be developed within Carriage Park."

Commissioner McGrady – "Which there is."

Commissioner Baldwin – "And there is, uh, needs to be uh, and, and the developer wants to develop that, um, he will have to go through a quasi-judicial or ..."

Russ Burrell – "If there's appe, if there's an appeal..."

Commissioner Baldwin – "Only if there's an appeal."

Russ Burrell – "If and only there's an appeal of the, by anybody, by him or by anyone opposing the development in front of the Planning Board."

Commissioner Baldwin – "Okay."

Russ Burrell – “The Planning Board hears it first as informally.”

Commissioner Baldwin – “How would they appeal? How easy is it to appeal?”

Russ Burrell – “Give notice to the Planning Staff. They would fi, sign a document that’s three lines long. ‘I appeal to the Zoning Board of Adjustment’.”

Commissioner Baldwin – “Okay so if anybody appeals the informal case then it goes before the Board of Adjustment.”

Russ Burrell – “Anyone with a very, very broad view of standing. The same kind of rules you with who makes up a, of a party. They, they would, the only first threshold they’d have to show is they have some interest other than just living in the same County as Carriage Park. But that first hurdle is not a huge hurdle. It’s the same hurdle you would have in front of you, naming a party at a zoning, at a um, quasi-judicial hearing. That would be the first issue the Zoning Board of Adjustment would hear, does this person have standing to make this appeal. Presuming the answer is yes and certainly a resident of Carriage Park the answer would be yes, presuming the answer is yes, um, given the standards that we’ve set, they would have standing to make the appeal. Then they go on with a full quasi-judicial hearing in front of the Zoning Board of Adjustment.”

Commissioner Baldwin - “So who would, who would rule whether or not they have standing?”

Russ Burrell – “The Zoning Board of Adjustment would rule.”

Commissioner Baldwin – “The BOA would.”

Russ Burrell – “They’d make that ruling. That’s correct.”

Commissioner McGrady – “And presumably any Carriage Park resident would have standing and any adjoining land would have standing.”

Russ Burrell – “I think, I think by the terms of the special use permit those, those two classes would always.”

Commissioner McGrady – “...it would be presumptive.”

Russ Burrell – “Yeah, those, those folks would always have, have standing to make the appeal.”

Commissioner Baldwin – “So if anyone within the development, or anybody adjoining the development.”

Russ Burrell – “Correct.”

Commissioner Baldwin – “Were to appeal then that piece that the developer desires to be developed then would go through a full quasi-judicial hearing before the Board of Adjustment.”

Russ Burrell – “That’s correct.”

Commissioner McGrady – “Yeah.”

Commissioner Baldwin – “Okay.”

Chairman Moyer – “Any further questions of Matt, Shannon, at this time?”

Commissioner Baldwin – “Yes one, one more. Matt, um, explain to us and just, just help us the difference between uh, uh, the staff time it takes to prepare and educate this Board to hear a case versus the time it takes to educate and present a case to the BOA which is a Board that hears this, hears cases monthly.”

Matt Card – “Um, the staff time is much more involved for coming to the Board of Commissioners. Um, of course you have different steps that you have to take to, to get to the Board of Commissioners. You have to go to the Planning board first for a recommendation and um, of course you have to prepare agenda items for that and uh, also agenda items to, for the Board of Commissioners to schedule public hearings and uh, that type of thing. So, you know, with the Zoning Board of Adjustments they meet, I believe the fourth Wednesday of each month so it's, it's scheduled, there's a, you know, a set time frame that you, that you would meet. Um, and that, you know, it's, it's more, it's, it's a quicker process to get on to the Board of Adjustments than it would be the schedule of the Board of Commissioners.”

Commissioner Baldwin – “And the function of the BOA is to hear these cases and other things like appeals and variances and so forth. That is their function.”

Matt Card – “That's correct.”

Commissioner Baldwin – “Okay. Thank you.”

Chairman Moyer – “Thanks Matt. Discussion's open to the Board.”

Commissioner Messer – “Mr. Chairman I, I, I would like to ask the President of the Association a couple questions. Jack uh, uh, Jack how long have you been the President of the Association.”

Jack Osterberg – “About uh, oh, four months.”

Commissioner Messer – “Four months?”

Jack Osterberg – “Yes. I was on the Board for a year before I became President.”

Commissioner Messer – “Okay uh, let me ask how many homes are in this Carriage Park?”

Jack Osterberg – “How many homes?”

Commissioner Messer – “Right.”

Jack Osterberg – “Approximately 300 homes, 350 lots are sold, 300 homes.”

Commissioner Messer – “Uh, and you're saying you're here representing those people.”

Jack Osterberg – “I'm here representing the Board of Directors that.”

Commissioner Messer – “Right.”

Jack Osterberg – “Right.”

Commissioner Messer – “Uh, I guess that's it. Thank you.”

Russ Burrell – “I would note that I sent a letter to every property owner in Carriage Park about this hearing setting out what these two amendments. So, and encouraging them to talk to property, their property owners association because that'd be the most efficient way to get their input back to you is what I really wanted to do.”

Commissioner McGrady – “Mr. Chairman I'll speak to this because uh, I've got uh, pretty clear views on this. Um, despite uh, what uh, we've heard from Ms. Burke and Mr. Theron, who's views I respect I've, I've heard from them when I sat on the Planning Board. Um, I don't think the quasi-judicial procedure has served us well here. Um, it has been a colossal waste of time, and actually has oft times frustrated the ability of the Planning Board to hear from people how have, had good views. Um because of the rules of evidence uh, that had to apply, oft times

we didn't hear from people that wanted to be heard because they didn't have standing um, they didn't own the right property, and they weren't adjoining land owners but they had opinions. And I think a more informal process um, like that used in every other um, uh, hearing that we have um, on similar sorts of, of uh, of uh, uh hearings, on other special use permits is the appropriate way to go here. Um, so with respect to the issue as to using quasi-judicial procedures I think that is a absolute no-brainer, um in my opinion. Um, we've been lucky, or unlucky um, that we've had a, you know, some lawyers who chaired to Planning Board over the years. But asking non-lawyers to try to rule on evidentiary motions, um, and try to figure out what's relevant and what's not relevant as, as things are put forward. And tonight I think is the best example of it um, as where, people are coming forward and you know, now you've got a right to cross examine somebody else um, I mean this is a perfect example of why we ought not to have quasi-judicial procedures used um, in, in this sort of manner. So the question, the first issue that is whether we ought to have quasi-judicial procedure used in this just one instance um, I think is just, just very, very easy. Um this will be much easier to handle going forward if we don't handle this one subdivision in Henderson County this way. Um, and I think we'll get a better process. And I would say that to you Ms. Burke and Mr. Theron, I think you'll get you an, questions answered better if we don't tie it up in legal knots. And uh so I, I very much support changing that process. I think the second issue is a little tougher. I, I mean the sort of small 'd' democrat in me, um, you know, I, I do want um, public decisions to be made by public officials. Um, and I can go either way on the issue of whether this ought to be ob, publicly, you know, ultimately decided by the Board of Commissioners or by the, the uh, Zoning Board of Adjustment. Um, this, the, the fact is that the, this one subdivision generates more um, decisions than probably any um, subdivision in Henderson County. Um, and I know that, and the Chairman knows that from the years we sat on the Planning Board. Um, it's probably in far part because of it's size but it's also a function of its history. Um and its slope, um and probably a range of other different things. Um, but in fact, um, there are more hearings on Carriage Park I suspect than on any other subdivision in Henderson County. Um, and whether that, that uh,, brings you to the conclusion that we ought to um, send it to one group of people that can hear those things constantly um, or send them to this group of body that can hear those things constantly um, I don't know. Um, and I really would uh, wait to hear from my fellow Commissioners on, on that issue. I can go either way on, on that second, second point. But I really, we need to make this something other than a quasi-judicial hearing. We mead, need to make the, the job of the Planning Board um, an easier job and I think it'll be better for the citizens of Henderson County if it's not a quasi-judicial hearing."

Chairman Moyer – "Further discussion?"

Commissioner Baldwin – "I'll weigh in if somebody else. Um, a couple things, I think what, what is being proposed is, is more of a procedural change and not one that changes the substance of the special use permit. Procedural not, not substance to the special use permit as it exists. Many places will have a standard subdivision review where the Planning Board will review it, uh, they'll hear the applicant speak and they'll make a decision based on what's presented in the application and the plans that are submitted. If you choose to go with the Planned Unit Development, whittle, which allows you to do certain things but there have to be assurances given, to make sure that the developer, the applicant is held accountable for the things that he desires um, that usually passes through a quasi-judicial hearing automatically. Um, other counties may do it, but this is the first time I've seen a review process where it would be sent directly to the Planning Board and the, a special use permit, and the Planning Board would have the sole responsibility of making a decision on it. Usually it goes on to the Board of Adjustment, or, or a Board that holds a quasi-judicial hearing. So I am a little in, um, uh, I'm in disagreement a little bit with what's being proposed in that I in agreement with Commissioner McGrady would tell you that I would love for this Board to completely do away with hearing these cases and send them all to the Planning Board or the Board of Adjustment. We have a number of issues that we have to try to deal with and this is just one small one. And, but it takes us time to understand all the detail and all the issues because of the nature of what we do for this County. A Board of Adjustment is designed to do just that. Um, you can, you can serve as a Chairman and you can be a good Board of Adjustment uh, member without being an attorney. Uh, it comes through experience. Um, I don't think, feel like you have to have a Board stacked full of attorneys in order to hear these cases. I think you just have to have interested people who are knowledgeable who'll spend time doing the research. So I don't have a problem with sending special use permits to the BOA. A first step process would be let the Planning Board review it and make a recommendation, then send it to the BOA. But I would love to completely do, to do away with that from, from having these cases heard here by the Board of Commissioners. So, as far as what's being proposed, yes I agree. I would love to send all the Carriage Park to the Board of Adjustment. Uh, and let it go through the um,

Planning Board as a first step, but I think as what's being proposed, is that uh, is the Planning Board will hear the case informally and if, should they decide and there's no opposition, that will be the, the, they'll make the final decision. I would feel more comfortable of routing this to the BOA automatically, and having a drop off or a stopping period at the Planning Board to review it and make recommendation to the BOA rather than us send this directly to the Planning board to let them make a decision. I do think that there's a safeguard in place that if anybody wants to appeal at that informal hearing they can do so and it will automatically kick it to the BOA. So I do think there's a safeguard built in there for you if the Board chooses to do that. But I personally would much rather, if we're gonna amend this, I'd rather amend it to send it to the Board of Adjustment and route it through the Planning Board for a recommendation."

Chairman Moyer – "Commissioner Young."

Commissioner Young – "Let me say something that uh, I, I live um just outside the city limits of Hendersonville in the ETJ, what is called the ETJ and I was elected as the representative from the county to the Hendersonville City Board of Adjustment, and I served on that Board until being elected to the Commissioners. And it was, I heard a statement that maybe you didn't get the same quality of hearing through the Board of Adjustment that you would the County Commissioners and that's not so. The Board of Adjustment that I served on had nine members with two alternates and one most cases we had to have more than a majority. In other words it was like you had to have seven votes out of nine to, to get um, things changed. Then that was appealed, if you wanted to appeal you could to Superior Court. The Board of Adjustment is governed by the same rules and regulations that we are in a quasi-judicial hearing. And the Board, anybody that offers testimony at that hearing is sworn just like they are here. So, I'm saying that whether it goes to the Board of Adjustment of the County Commissioners, there's not any difference as far as the quality of the hearing. Now, it may be yes, that you could hold us accountable when the elections come, but hopefully the Board of Adjustment which we appoint is gonna do the job that needs to be done for the County. And that's what I would do if, if uh, if we made the decision. I would try to render the best decision I could for the uh, citizens of the County. So I think that when we talk about the Board of Adjustment, you're probably getting more people involved in a better quality hearing than you are here. Because you've got more members to do that."

Chairman Moyer – "Anyone else?"

Commissioner Messer – "I wanna say uh, of course a lot's been said in the last hour or so but I agree with my fellow Commissioners on this. With a special use permit, that Carriage Park's been entitled to for all these years, and like our attorney said had been through two or three different land or, that's not the question here. The question here is to change the process of hearing these the Planning Board and the Board of Adjustments. And you know I agree, I think we, with Mr. Young's statements, those people on that Planning Board, Board of Adjustments are very qualified. They hear these things all the time. Uh, you know, and, and like I say, uh, I don't think that we're dodging a bullet by giving them the authority to do a good job. Cause I know in the, in our municipalities throughout the County you know, they go through the same process. And this process, if it's appeal, you know, it works. Uh, so really I would not have a problem with agreeing with the other four Commissioners that's uh, you know, spoke. Mr. Moyer."

Chairman Moyer – "Well we can either vote today, directing Staff to bring back findings of fact and conclusions consistent with the decision to a future meeting of the Board for our review, or we can continue our discussion until a later date. We must issue a written decision within 45 days of the conclusion of this hearing. Anyone wish to make a motion?"

Commissioner Baldwin – "I would move that we uh, I would move that we change the process so that the special use permits for Carriage Park, um, any additions to the development, uh, any amendments to the existing special use permit, uh, would, would be heard in a quasi-judicial hearing before the Board of Adjustment after an informal hearing with the Planning Board where the recommendation, uh, is uh, is made by the Planning Board to the Board of Adjustment. Now the rest is, is legalese but I think what I'm proposing is not, what I'm making a motion to change it, uh, it's, it's not in harmony what, with what's being proposed by staff tonight. So I wanna make that clear."

Chairman Moyer – “But I don’t.”

Commissioner Baldwin – “I’m proposing a different process.”

Chairman Moyer – “But I don’t understand how it’s different. If it goes before the Planning Board and the Planning Board considers it in an informal proceedings and makes a recommendation. If no one objects, why go through the, I mean if it’s a fairly routine matter and no one objects why.”

Commissioner McGrady – “Why go through the quasi-judicial.”

Chairman Moyer – Why go through the quasi-judicial at the Zoning Board of Adjustment?”

Commissioner Baldwin – “Because I, because I think what I’ve heard, that there are folks in the development that are concerned, that um, um, I think there’s, there’s a trust issue. And I wanna make sure that their concerns are being addressed by saying that, that the final decision will be made in a quasi-judicial hearing by a Board that has the authority to, to do that. And I think what I’m proposing will safe guard and ensure that their concerns are addressed. It’s that, that simple.”

Commissioner McGrady – “And I’m. I understand what Commissioner Baldwin is saying, but I’m not willing to, to go there. Um, and so I’m supportive of the staff recommendation.”

Chairman Moyer – “Commissioner Young.”

Commissioner Young – “Let me say this that uh, the Board Az, Board of Adjustment is the appeal Board for the Planning Board.”

Commissioner McGrady – “That’s right.”

Commissioner Young – “And if we don’t let that Board function then we’re denying you one of the processes also. I think that the, the, uh, matter needs to go before the Planning Board on an informal appeal and then if you have a problem with their decision then it needs to be appealed to the Board of Adjustment and let them function as they need to. Because that’s what their, they are is the appeal Board for the Planning Board.”

Chairman Moyer – “Commissioner Baldwin do you want to leave your motion as stands?”

Commissioner Baldwin – “Yeah, I’ll let it stand.”

Chairman Moyer – “Alright, is everybody clear on the motion? All in favor of Commissioner Baldwin’s motion say aye.”

Commissioner Baldwin – “Aye.”

Chairman Moyer – “Opposed?”

Chairman Moyer, Commissioner Messer, Commissioner Young, Commissioner McGrady – “Aye.”

Chairman Moyer – “Alright, it fails four to one.”

Commissioner McGrady – “I will move uh, the, I will move the uh motion proposed by staff which I understand to be um, first that uh, we uh, um do away with the quasi-judicial proceeding um as currently reflected in the um, in the uh, special use permit and two, um.”

Chairman Moyer – “At the Planning Board level.”

Commissioner McGrady – “At the Planning Board level. Um, and two um, uh now um, uh, provide for um, Planning Board informal um, review of uh, development plans and uh, an appeal of any decision made by the Planning Board to the um, Zoning Board of Adjustment um, and then the, um, any uh, appeal taken of a Planning Board decision will um, then be um, a quasi-judicial proceeding.”

Commissioner Young – “I just wanted to state this so that they would understand it that any party to that hearing at the Planning Board, informal or whatever, they have the right to appeal that decision to the Board of Adjustment. It’s, in other words any party that’s a party of that, right?”

Commissioner McGrady – “Um.”

Chairman Moyer – “The only, the only qualification to that Commissioner Young would be if the Planning Board let somebody speak, let’s say that lives in Edneyville that felt, you know it’s very informal.”

Commissioner Young – “Yeah I.”

Chairman Moyer – “Zoning Board of Adjustment may say they don’t have standing to appeal that’s the only.”

Commissioner Young – “I’m talking about people that actually have a part in the decision.”

Chairman Moyer – “Yeah, I understand. I thought that’s what you meant I just wanna be sure that.”

Commissioner Messer – “Well my question is, and I think that we should in Carriage Park in the motion so that way in would eliminate.”

Commissioner McGrady – “Well, that’s not true either um, Commissioner Messer because there could be adjoining land owners that would in fact have standing to, that’s, that’s what I’m saying. Um, and I, again I think the determination as to what parties would have standing, the Zoning Board of Adjustment can make that call.”

Commissioner Messer – “Well they can, I agree.”

Chairman Moyer – “Alright motion is on the floor to basically to adopt the um, the staff’s recommendation. All in favor of that motion say aye.”

Chairman Moyer, Commissioner Messer, Commissioner Young, Commissioner McGrady – “Aye.”

Chairman Moyer – “Opposed?”

Commissioner Baldwin – “Aye.”

Chairman Moyer – “Alright that passes four to one.”

Chairman Moyer – “Motion to go out of public hearing.”

Commissioner McGrady – “So moved.”

Chairman Moyer – “All in favor of that motion say aye.”

In unison – “Aye.”

Commissioner McGrady – “Motion to adjourn.”

Chairman Moyer – “All in favor of that motion say aye.”

In unison – “Aye.”

Chairman Moyer – “We are adjourned.”

Attest:

Elizabeth W. Corn, Clerk to the Board

William L. Moyer, Chairman