

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
MAY 1, 2007**

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, County Manager Steve Wyatt, Assistant County Manager Selena Coffey, County Attorney Russell Burrell, and Clerk to the Board Elizabeth W. Corn.

Also present were: Planning Director Anthony Starr, Associate County Attorney Sarah Zambon, Planner Matthew Cable, and Research/Grants Coordinator Amy Brantley.

Absent was: Commissioner Mark Williams

CALL TO ORDER/WELCOME

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

PUBLIC HEARING – VESTED RIGHTS APPLICATION (VR-2007-03) “BILTMORE FARMS HAMMOND TRACT”

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

Chairman Moyer stated this was a vested rights proceeding for application VR-2007-03, Biltmore Farms Hammond Tract, where Thomas A. Williamson is the petitioner. The petitioner was seeking vested rights under Chapter 189 of the Henderson County Code which allows a landowner to establish a vested right for a development project through the approval of a site-specific development plan.

A vested rights proceeding is a public hearing where the petitioner's application is determined under specific rules of procedure adopted by the Board. A vested rights proceeding is one where an applicant seeks to lock in rights which they presently possess to develop certain land. The Board cannot grant the applicant rights greater than they have to presently develop land. However, the Board can, if they see fit, and upon certain conditions set by the Board, grant the applicant the right to develop land under the zoning and subdivision rules as they exist today, based upon what the law calls a “site specific development plan”. If the Board grants such rights, the “site specific development plan” cannot be modified without the approval of the Board.

Under the Henderson County procedures for hearings on vested rights, persons who can demonstrate that they have a substantial interest in the outcome of the proceeding or may be adversely affected by the decision rendered may become parties to this action. However, you do not need to become a party in order to present testimony at this hearing. All persons who are allowed to speak and participate in this hearing, including all witnesses that will be called, must be placed under oath.

The Board asked any persons (other than the petitioner and the Henderson County Planning Staff) who desired to become parties to this action to explain how they would be affected by this proceeding. For example, they may be the owner of an adjoining parcel of property, or have some other special and unique interest that justifies their participation as a party. As stated before, they do not have to be a party in order to testify in this proceeding.

All witnesses and parties were sworn as a group to tell the truth in their testimony.

DATE APPROVED _____

The Board acknowledged the petitioner, Thomas A. Williamson, represented by Susan Taylor Rash and William R. Buie and the Planning Staff represented by Matthew Cable as parties to this proceeding. The Board asked if there were any other persons present who could demonstrate that they have a substantial interest or would be affected by the outcome of this proceeding and who wished to be a party to this proceeding.

Persons who came forward stated their name, address, and how they were affected by the outcome of the proceeding – i.e. adjacent property owners- or their substantial interest in the proceeding. Then Board of Commissioners determined which, if any, would be allowed as parties.

Parties to the Proceeding

Edward R. Doyle, Jr - Adjacent property owner – 331 Old Orr Road, PO Box 1562, Etowah

Roger Rusnak - Adjacent property owner – 1903 Brannon Road, Horse Shoe

Williams A. Ricks - Adjacent property owner – 221 McKinney Point Dr., Lot #7, Etowah

J. David Caudle - Adjacent property owner – 192 Brock Creek Rd., Horse Shoe

William Trimarco - Adjacent property owner – 193 Brock Creek Rd., Horse Shoe

Susan Taylor Rash - Representative for petitioner – P.O. Box 2714, Asheville

William R. Buie - Representative for petitioner – Two Town Square Blvd., Suite 320, Asheville

William A. Williamson – Petitioner – One Town Square, Suite 330, Asheville

Anthony Starr – Planning Staff – 100 N. King Street, Hendersonville

Matt Cable – Planning Staff – 100 N. King Street, Hendersonville

After all testimony was given each party had the right to ask questions. They could not make statements or arguments at this time.

Clerk to the Board Elizabeth W. Corn swore in the parties to the proceeding.

Witnesses to the Proceeding

Richard Freudenberger – 255 Warren Ln., Hendersonville

Ramona Wooldridge – 184 McKinney Rd., Etowah

Mary Jane Pell – 2 Masters Crest Dr., Etowah

Rebekah Farmer – 11 Golfview Dr., Etowah

Linda Johnson – 69 McKinney Rd., Etowah

Steve Monahan – 30 Westside Dr., Etowah

Clerk to the Board Elizabeth W. Corn swore in the witnesses to the proceeding.

Matthew Cable stated that staff was entering into evidence Exhibit A, the Request for Board Action form and its attachments, Exhibit B, a copy of the power point presentation, Exhibit C, the application materials and attachments, Exhibit D, a memo containing staff recommendations and Exhibit E, containing staff recommended conditions for buffering of the development, should the Board wish to grant the development vested rights. Mr. Thomas A. Williamson, Vice President of Biltmore Farms, LLC, applicant, with permission from current property owners Mr. John T. Hammond and Mr. James W. Hammond, and with Mr. Will Buie of William G. Lapsley and Associates, agent to the applicant, submitted an application for statutory vested right under Chapter 189 of the Henderson County Code. The applicant had requested that the vested right be valid for a period of 5 years, if granted.

Notices of the public hearing on the vested rights application were published in the Times-News on April 11, 14, 18, and 20. Signs were posted on the subject property and notices of the hearing, by first class mail, were prepared and sent to the applicant and adjacent property owners on April 18, 2007.

Exhibit C included the application materials and specifically attachment 3, the revised site specific development plan.

The Biltmore Farms Hammond Tract Development is proposed to be located on approximately 504.88 acres of land with a 50 acre tract to be retained by the property owners. The subject property fronts McKinney Road, at the intersection of McKinney Road and Brickyard Road. It appeared to have one-half mile of frontage along McKinney Road. The development is proposed to be located in the Open Use Zoning District. The Open Use District does not propose a maximum density or minimum lot size.

Three aspects to development

- Single-family dwellings
- Multi-family dwellings
- Community Amenities (Clubhouse and Open Space)

Single-family

- Single-family dwellings = 234
- Lot size = 1/3 acre
- Maximum square footage = none provided
- Maximum height = 40 feet
- Setbacks = front (20 feet from edge of right-of-way) side and rear (10 feet)

Multi-family

- Duplexes = 42 structures (containing 84 dwellings)
- Triplexes = 49 structures (containing 147 dwellings)
- Quadraplexes = 47 structures (containing 188 dwellings)
- Lot size = near to building footprint (extending no more than 5 feet in any direction)
- Range of square footage = 1,000 – 3,270
- Maximum square footage = 3,270 per dwelling unit
- Maximum height = 40 feet
- Setbacks = front (15 feet from edge of right-of-way)

Community Amenities

- Clubhouse
 - Includes restaurant, catering facilities, gathering space, meeting space, banquet facilities, workout and recreational facilities, real estate sales and marketing, swimming pool and tennis.
 - Maximum square footage = 14,600
 - Maximum height = 45 feet
 - 40 permanent parking spaces to serve clubhouse
- Open Space
 - 240 acres of open space
 - 8.65 miles of pedestrian trails
 - Sidewalks in vicinity of duplexes, triplexes and quadraplexes

1. Mr. Thomas A. Williamson, Vice President of Biltmore Farms, LLC, stated that Biltmore Farms entered into a contract with the Hammond Trustees on October 31, 2006. The contract called for certain studies and thresholds to be met within a due-diligence period. Costs incurred to date totaled \$569,718.00 certified by the CFO of Biltmore Farms. They had reviewed Exhibit E prior to the meeting and agreed to the exhibit. Mr. Williamson entered agreements with the Etowah Sewer Company for extension of sewer and a letter from the City of Hendersonville indicating water availability for the site. He also entered into evidence a letter from the Planning Department regarding the Master Plan approval for Hammond Tract. This evidence was given to Elizabeth W. Corn, Clerk to the Board, to copy to the Commissioners.

2. William R. Buie of Lapsley and Associates Engineers, representative for the petitioner stated that they had been working with Biltmore Farms on the Hammond Project since October of 2006, in preparation of the Master Plan and the submittals provided at this meeting. They were involved in assisting Biltmore Farms and acquiring the studies for topographical surveys, wetlands delineation, floodplain delineation, and threatening of endangered species. These were acquired and secured before the development of the Master Plan had begun. Mr. Buie spoke in regards to a connector road that would connect the northern part of the property to the southern part of the property. The construction of this road will be through a portion of the floodplain. There is approximately 117 acres of floodplain on the site. They will impact less than 3 acres with proposed development. The primary impact for the floodplain would be the construction of this road. It must be raised up above the floodplain elevation to provide access for the residents in any kind of conditions. They will be filling a bit for a small pump for a couple of sewer pump stations that will connect to the Etowah Sewer Company. They have 3 buildings that are proposed to be in the edge of the flood fringe area. By the County's current ordinance they would be able to impact up to 20% of the flood fringe area. In this case the flood fringe area totals about 48 acres. The remaining portion of floodplain area would be retained in the state that it is in only to be used for recreational areas, construction of trails and things of this nature. The square footage of single-homes maximum range is 6,500 square feet. The Master Plan shows approximately 51% of open space on the property which will have underground utilities and hiking trails. They are attempting to construct trails below power line rights. The plan proposes over 8 miles of trails. Sidewalks are proposed to be in higher density areas to connect the community. They are in the process of preparing a traffic study and have met with the Department of Transportation on several occasions.
3. Susan Taylor Rash, representative for the petitioner, shared background information about Biltmore Farms. They had been in the residential development business and had begun with Biltmore Forest which is now a town. They have developed Biltmore Park, Biltmore Lakes and Randall at Biltmore Forest. To help communities welcome these subdivisions they have established a fund with the Community Foundation of Western North Carolina. One half percent of the sales price for each lot sale and then successive sales goes into the fund at the Community Foundation and is used strictly for the area where the development is located.

In regards to Exhibit E, Ms. Rash requested that rather than the deed requiring membership in the Homeowners Association of each property owner, that restrictive covenants be placed on the property and the deeds all made subject to the restrictive covenants. This is a technical change but would make it easier for them. The primary underlying principal is fairness. It takes time for a land owner to develop property and if the rules change before the land owner has completed the development, the land owner may have to incur substantial cost to complete the development. In some cases the land owner may not be able to complete the project at all, depending on what changes have been made. The North Carolina Statute which authorizes the establishment of vested rights ordinances provides that as a matter of public policy that it is necessary and desirable to establish vested property rights to accomplish the following goals which are sent out in the enabling legislation. The first is ensuring reasonable certainties, stability and fairness in the land use planning process. The second is securing the reasonable expectations of land owners and the authorities fostering cooperation between the public and private sectors in the area of land use planning. It is important that property owners have the ability to develop a land use plan with the expectations that they will be able to complete the plan they have begun even if the zoning ordinance changes. The ability to acquire vested property rights infringe the land owners ability to invest the resources necessary to develop the comprehensive plan and soon developing property in a piecemeal manner. Development pursuant to a master plan benefits the land owners, the county, and neighboring property owners. Biltmore Farms had already devoted substantial time and resources to developing a master plan and the due-diligence for the purchase of the property.

In the enabling legislation the General Assembly has also found that the ability of the land owner to obtain vested rights and the development plan would strike an appropriate balance between private expectations and the public interest while protecting public health, safety and welfare. They are asking the Board to grant vested rights in this master plan, because the plan does strike a balance of expectations of the property owner and the public interest. The master plan is in keeping with the character of the existing development in the area. It will provide roads, water, sewer and amenities such as trails and the clubhouse for its residents.

One of the questions raised in the staff report was how Biltmore Farms would deal with the Land Development Code if the development was not completed within the 5 year period, and they are granted vesting rights for a 5 year period. The developers do not feel that complying with the Land Development Code would be a substantial problem unless there are major changes made before it is adopted. They have a contract that requires them to meet certain deadlines and without knowing that they can move forward with the master plan it would be very difficult for them to meet the deadlines. The master plan as presented is the type of plan that the enabling legislation contemplated. Biltmore Farms has been involved in preparing for this subdivision since May, 2006. The Planning Board and the Board of Commissioners have been involved in developing the LDC during the same time, which is coincidental.

The Board of Commissioners asked the following questions of Mr. Thomas Williamson:

- Exhibit C, Attachment 1, shows an investment of \$150,000 in the project and you have stated a much larger figure. What is the difference?
- How far would the Hendersonville City Water Department have to run the waterline and what is the location of the waterline?
- Would there be an adequate water supply including fire protection?
- Will the empty space be open to the public?

Mr. Williamson answered that more expenses had occurred since February 28, 2007, such as contract deposits and payments to the sewer company for sewer capacity which alone was \$202,000.00. He stated that the water line was located adjacent to the property and that there was an 8 inch water line down McKinney Road as well as Brickyard Road. Hendersonville City Water Department had discussed with them the future plans of upgrading the Etowah System in the following year. They will be raising the water level or the level of the proposed tank in this location which will increase pressure for the Etowah folks and provide more storage. Based on this information they are confident that the city system as it exists today with some minor extensions can easily serve this project including fire protection. Fifty-one percent of open space would be the property of the Homeowners Association but covers a vast majority of the streams which run through the property.

William Buie, Susan Taylor Rash and Mr. Williamson answered questions by the interested parties.

Edward R. Doyle, Jr. had no questions at this time.

Mr. Roger Rusnak asked the following questions:

- How do water and sewer arrive at the property? The water and sewer would travel down existing lines on McKinney and Brickyard Road.
- What the impact on McKinney and Brickyard Road would be? A traffic study had not been completed and the specific impact on the roads was not known at this time. There had been discussions on improvements at the intersection of Brickyard Road and McKinney Road. Traffic signals had also been discussed. NCDOT would require those improvements possibly as a result of the traffic study.

- Is there another access other than McKinney Road planned? There is a possible access to the north, however they do not own or have this property under contract. There is a proposed access on Eubank Road.
- How will the citizens be aware of the different proposals discussed at this meeting? The proposals will be posted on their website.
- Are the duplexes, triplexes and quadraplexes going to be owner occupied or rental? There are no plans for rental property however the restrictive covenants that are in place for the other subdivisions would not prevent someone from renting although they would require that the rentals be for long term as opposed to weekly vacation rental.

Mr. William A. Ricks asked the following questions:

- Exhibit A, Attachment 2, lot #59 is a steep slope for a quadraplex, how will the drainage be handled? A specific development plan had not been completed so no specific answer could be given, however by reviewing the topography for the area it appears that the road located on the property adjacent to Mr. William Ricks property is along a ridge and their intention would be to take the drainage from the front of the units and along the road and pull it all back toward the entrance and away from those homeowners that are closest to the property.
- How many feet from the property line to the back of the quadraplexes? All quadraplexes will be built in the range of 40 feet from property lines with the majority at 50 feet.
- Will buffers be used and are there any provisions for a privacy fence? Staff has suggested, in Exhibit E, requiring certain buffers and plantings which the developers will be using.

Mr. J. David Caudle asked the following questions:

- Mr. Caudles property borders Exhibit A, Attachment 2, lot #14, #29 and in reference to buffering are there any considerations for buffering between the road way and adjacent property owners? What is the road setback on the property? As far as setbacks, all roads set up in the development are with 50 foot right of ways. The minimum road width would be 20 feet and centered in the right of way. When looking at the specifics of the development plan for that section, the right of way will not abut the property line. On any section of road where there is not a connection to the North it will be considered a private road and if there is a connection it will be a public road. It doesn't appear to be a contiguous connection to their property. This will not be known until the final engineering of that section. If there is an abutment and it is a public road he can tie into the road. The size of Biltmore Farms is comparable to Biltmore Lakes.
- What do you estimate this project will contribute to the Community Foundation? Approximately 1-2 weeks prior the folks at the Community Foundation stated that the Biltmore Lake fund was over \$2,000,000.
- Could he purchase a triplex and turn around and rent them? Restrictive covenants for this property have not been established at this time.

Mr. William Trimarco asked the following questions:

- What is the minimum size of the lots? The minimum lot size is 1/3 acre. In Biltmore Lake there are smaller lots than 1/3 acre as well as Biltmore Park.

- Do the developers feel this is a commensurate size of lot in a community such as this? Market studies have not been concluded.
- What is the approximate price range? The townhomes at Biltmore Lakes are starting in the upper \$200,000. The price range will probably be \$250,000 and up for these units. Sales prices for the homes can be foreseen in \$1,000,000 and beyond range.
- What would be the legal procedure if the master plan must be amended?

County Attorney Russ Burrell stated that typically the amendment of a master plan would come back to the Board of Commissioners since they granted the vested rights. Should this Board seek to grant the vested rights, a condition could be set that any additional accesses be approved by the Board of Commissioners.

Chairman Moyer discussed that a request had been made that rather than the deed requiring membership in the Homeowners Association of each property owner that restrictive covenants be placed on the property and the deeds all be made subject to the restrictive covenants. He read from documents "The County Attorney must approve the Declaration of Covenants." Mr. Moyer was under the impression that the County Attorney's position was the same of the Board of Commissioners in that the documents are suitable for their proposed purpose and not that he would approve the documents. He asked what the Staff position was on this.

Matt Cable stated that it could be included in the restrictive covenants and the staff did not have a problem with it not being in the deed. They had used the language generally used for a special use permit approval.

When reviewing the application and plan for the develop rights, Mr. Cable suggested the Board consider the following information.

The subject property is located within the Conservation Area and Rural/Urban Transition Area according to the CCP. The Conservation Area designation is applied primarily to the eastern portion of the project site, largely because of the presence of floodplain in this area. The site-specific development plan indicates that most of this conservation area will remain in open space, connected by a system of trails. The CCP does show that portions of three (3) residential structures will be located with the floodplain. The Rural/Urban Transition designation of the Growth Management Strategy is applied to the subject property. (Mr. Cable pointed out the three residential structures on the map for the Board)

The CCP also states that, "the primary factor preventing urban development in the RTA is the absence of sewer and water service." The applicant is proposing public water (City of Hendersonville) and private sewer service (Etowah Sewer Company) for the development.

The Draft Land Development Code Zoning Map shows the subject property as being located within the Residential Two (R2) zoning district. The LDC proposes a standard density of one (1) unit per acre for single-family residential uses and a maximum density of two (2) units per acre for multifamily residential uses. The site-specific development plan indicates a density of 1.39 units per acre. Draft 8 of LDC zoning map, which the Board began considering at the last workshop, replaces this with R1 zoning. R1 zoning would allow the density and other uses proposed in the development plan as far as residential uses.

Staff recommended approval of the development's vested rights based on the consistency with the CCP, LDC, access to public and private sewer services, conformance with the Henderson County Codes and staff suggested conditions. Staff had prepared Exhibits D and E recommending conditions. The Board is not obligated to grant development vested rights. All of the conditions suggested by staff are in an

attempt to mitigate any of the negative impacts that the development may have on public health, safety and welfare. There was a possibility that other conditions raised at this meeting by citizens that should become conditions should the Board determine such. Exhibit D and E included the following recommendations from staff:

- No structure be placed within the floodplain nor any fill occur within the floodplain except that which is associated with proposed trails, roads or underground pump stations.
- The applicant must provide public water and private/public sewer to the development.
- The applicant is vested to only those specific uses identified by the applicant for the clubhouse at the time of application to preserve the rights to locate the uses within the clubhouse.
- The applicant is vested only to the number of units described for each type of use as a maximum number of units to prevent expansions which are not in conformity with the vested rights.
- The single-family lots be no less than 1/3 of an acre, as indicated by the applicant, in order to be in keeping with the overall intent of the site-specific development plan.
- The applicant use the specific information provided as to the number of parking spaces to be provided to the clubhouse in order to accommodate residents and employees of the development and prevent expansions which are not in conformity with the vested rights.
- The applicant is vested to buildings that do not exceed the square footage or building heights that were outlined by materials that the applicant submitted.
- Building height is measured as a vertical distance from the finished main floor to the highest point of the building.
- The applicant is vested to the minimum front yard setback as indicated in the site-specific development plan and accompanying application materials, and as measured from the edge of right of way.
- The applicant provide minimum distance between structures which are to be no less than permitted by North Carolina State Building Code for public safety purposes.
- All structures be placed no less than 20 feet from any exterior property line as provided by the site-specific development plan.
- Only single-family residences are placed along McKinney Road.
- Any uses and/or aspect of the development of the subject property, beyond that included in the site-specific development plan, will be subject to applicable existing regulations at the time such use/aspect of development is to be applied for and installed by the property owner.
- A minimum of 240 acres of open space be provided.
- A minimum of 8.65 miles of pedestrian trails be provided and the applicant will provide sidewalks along at least one side of the road in areas of attached units to increase connectivity.
- A buffer is provided along the perimeter of the project, including the buffer's composition, minimum width, location, and installation time.

Mr. William Buie stated that the developers only concern was the condition related to the floodplain. The site specific development plan was based on density. If the developer is not allowed to place the units, as discussed, in the edge of the floodplain and fill for the units, the developer would look at moving the units to other locations on the site. He was concerned that these locations would be steeper than the locations adjacent to the floodplain. The developer requested that they be allowed to abide, before the County's current ordinance for floodplain that the Planning Board approved. The floodplain areas for North Carolina are currently being studied and the developer anticipates receiving a new floodplain map sometime this year. The floodplain may increase or decrease. He requested, for vested rights, the developer be allowed to retain the 3 units in the floodplain area.

Chairman Moyer stated that the parties could now ask the staff questions.

Edward R. Doyle, Jr. had no questions for the staff.

Roger Rusnak had no questions for the staff.

William Ricks had no questions for the staff.

J. David Caudle asked the staff to recommend that any adjoining property owner follow the same buffering recommendations as provided for the development.

Matt Cable indicated, from the staff prospective, they would not be opposed to any additional buffering for the roads however, the buffering is generally used to provide visual screening from elevated structures.

Mr. William Buie stated that the developer would not generally have a problem with extending this condition. It appeared that there were only 2 locations where the road would possibly connect adjacent to the property line, on the south side of the property near Eubank Road and the north side of the property.

William Trimarco had no questions for the staff.

Chairman Moyer noted that at this time the other parties would have a chance to make their statements and present their testimony.

Edward R. Doyle, Jr. requested that the Board deny the application for vested rights based on an incomplete and deficient site specific development plan that fails to address not only the minimum plan requirements, which the staff recommendations have shown, but both existing and future significant impacts to safety, health and welfare of adjacent property owners, the Etowah community, and the environment in general that this plan as submitted will incur. Mr. Doyle voiced concerns in regards to the following:

- The impacts of sediment and soil erosion and storm water runoff, designated wetlands, river basin areas, existing wildlife and natural waterfalls during construction and post-construction on adjacent property
- The issue of traffic safety and congestion issues
- The impacts of unresolved issues of water expansion and permitting and future associated costs from affected property owners, the community and county taxpayers, as well as the impact on the French Broad River basin
- The impacts on hydro-geological conditions on existing adjacent property and community well water sources and future associated costs for adjacent property owners in the community
- The impacts on existing wildlife and existing native species of plants in areas currently designated as conservation and wetlands in a unique river basin in a watershed supply area including the future cost for the adjacent property owners in the community
- The impacts on the health and well being due to air quality degradation for adjacent property owners, their children and the community including a significant increase in motor vehicle traffic and exhaust, open burning of trash, debris, brush and other incidentals, increased dust and the future cost to everyone in that regard
- The impacts of future tax burdens for adjacent property owners in the community to pay for these and other unforeseen costs in negative impacts on existing quality of life for the adjacent property owners and the Etowah community as a whole
- The calculation and limits for the estimated forty parking spaces and additional impervious services for this 14,600 square foot, 40 foot high clubhouse and development community center
- Additional parking for employees and families of residents living in an assisted living residence, continuing care retirement community, hospice or a nursing home
- The assurance regarding this intensive development plan that suggests city water from Hendersonville
- The plan not including NCDENR phase II best management practices
- No application to NCDENR for the expansion of the Etowah Sewer service
- Disregard of the growth management strategy with regards to homes per area

No questions were asked in regards to Mr. Doyle's statements.

Mr. Roger Rusnak did not present a statement.

Mr. William A. Ricks did not present a statement.

Mr. J. David Caudle did not present a statement.

Mr. William Trimarco did not present a statement.

Chairman Moyer requested that the Clerk to the Board, Elizabeth W. Corn call the witnesses.

Richard Freudenberger stated that he was concerned with fire protection, possible tax increases, and runoff from hard surfaces.

Ramona Wooldridge did not present a statement.

Mary Jane Pell asked if the vested rights would keep them from having to follow new rules being drafted into the LDC. She was against the approval of the vested rights application.

Anthony Starr stated that if new rules regarding zoning were placed in the future they would not be subject to them. If new environmental rules were set in place they may be subject to them.

Rebekah Farmer lives two streets over from the proposed development and was concerned that Holly Springs was the cut-through road. The traffic flow has increased dramatically over the last five years. There was concern with the possibility of another increase in rates for sewer. Ms. Farmer noted that a lot of the residents were not full-time residents and would not be concerned about the county.

BREAK

A five minute break was taken in order to change video tapes.

Linda Johnson was in favor of the development and felt it would be an asset to the community. She asked if she would be able to walk on the trails within the community and was answered no, she would not as it was for the people who lived in the community.

Steve Monahan stated that you can't stop progress. He was concerned with the traffic situation.

Chairman Moyer observed that a number of people had touched on the road and traffic issue. He expressed that this had also been an issue for the Board of Commissioners and they could plan and they could tell NCDOT what they want and need and they will respond with the money available what can and can't be done period. Counties do not control roads. They have no authority over the NCDOT and are prohibited by statute from spending money on roads or sidewalks in North Carolina.

Chairman Moyer invited the petitioner William Buie to the podium to make closing remarks.

William R. Buie said regarding traffic the developers were studying all roads around the development. They are required to pay \$2300.00 per sewer tap for each of the units which must be paid upfront. The CCP shows that the majority of the conservation land to be identified as open space. They will be providing storm water measures required by the County's watershed ordinance, as well as, storm water retention ponds and storm water wetlands specifically in the areas where there is higher density, multi-family units. Biltmore Farms has their staff that patrol and police the sedimentation and erosion control.

Susan Taylor Rash addressed the statements in regards to the developers rushing to beat the LDC. She stated that when the developer began contract negotiations they did not realize that a new LDC was in progress.

The maps showing which district they would be in were not available until they were already pretty far into the process.

Chairman Moyer asked Mr. Williamson if he had any closing remarks.

Thomas A. Williamson stated that there were no plans for a hospice or retirement center in the development.

Chairman Moyer asked if the change of use were made from residential to retirement would it require the developer to come back before the Board for a complete new plan.

Anthony Starr stated that if it was a different use than the use being vested for this project, then yes the different use would require the Boards approval again.

Mr. Edward Doyle submitted that the application should be denied.

No further statements were made by Mr. Rusnak, Mr. Ricks, Mr. Caudle, or Mr. Trimarco.

Matt Cable stated that the vested rights had given the Board the opportunity to go above and beyond what would be required by the floodplain ordinance. Fill will be allowed for roads and pump stations.

Commissioner Messer made the motion for the Board to go out of public hearing. All voted and the motion carried.

Board Discussion Followed.

Commissioner McGrady noted that he was inclined to grant vested rights but needed additional time to review materials presented at this meeting. He was in agreement with staff in regards to information on the floodplain. Commissioner McGrady recommended that staff be directed to draft findings of fact to support the application based on the evidence presented including all areas that both the applicant and planning staff have agreed upon.

Commissioner Young also felt that more information was necessary.

Commissioner Messer stated that more information was needed before a decision could be made.

Chairman Moyer also agreed with the comments expressed by the Board and has a tendency to lean toward approval of the application. Chairman Moyer expressed to County Attorney, Russell Burrell that he would like to see a draft order prepared. If it can be done legally he would like it to specifically state that a change of use or access roads would require the developer to come back to the Board for approval. He also requested that there be no build or fill in floodplain. No decision was made and was deferred subject to certain conditions and would be discussed at the May 16 Board Meeting.

ADJOURN

Commissioner McGrady made the motion to adjourn. All voted in favor and the motion carried.

Attest: