

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
OCTOBER 19, 2006**

The Henderson County Board of Commissioners met for a special called meeting at 6:00 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 Mark Williams, Associate County Attorney Sarah Zambon, Assistant County Manager Selena Coffey, Public Information Officer Chris Coulson and Clerk to the Board Elizabeth W. Corn. County Manager Steve Wyatt arrived late in the meeting.

Also Present were: Planning Director Anthony Starr, Senior Planner Autumn Radcliff, Planner Matt Card, and Planner Matthew Cable.

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.

PUBLIC HEARING – Text Amendment Application #TX-2006-01

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

Chairman Moyer stated this is a public hearing with respect to Text Amendment Application #TX-2006-01. He called Planning Director Anthony Starr to the podium.

Anthony Starr explained that on July 14, 2006, Angela Beeker on behalf of her clients, Jeff Naber, Rodney Rogers, and the Sedgewood Property Owners Home Association submitted an application to amend sections 200-21 (C2 neighborhood commercial), 200-22 (C4 Highway Commercial District), 200-23 (I1 Light Industrial), and 200-24 (General Industrial Zoning District) of our Zoning Ordinance. Mr. Starr informed the Board that Planner Matt Cable would provide an overview of the application with Staff and Planning Board recommendations.

Matt Cable informed the Board that notices of the Public Hearing regarding the Text Amendment Application were published in the Times News on September 27 and October 4, 2006. On October 4 notices of the hearing were sent to the applicants as well. The Henderson County Planning Board considered the Text Amendment Application at its regularly scheduled meeting on August 15, 2006. During that meeting the Planning Board voted 7 to 2 to send a favorable recommendation, with all modifications suggested by Staff, for text amendment application #TC-2006-01, to amend Sections 200-21, 200-23, and 200-24 of the Zoning Ordinance.

Text Amendment Application #TC-2006-01, which was submitted on July 14, 2006, requests that the County amend four sections of the Henderson County Zoning Ordinance (HCZO). The

DATE APPROVED _____

proposed amendments include:

1. An amendment to HCZO Section 200-21, to eliminate light industrial uses and junkyards as conditional uses in the C-2 (Neighborhood Commercial) zoning district.
2. An amendment to HCZO Section 200-22, to add mini-storage facilities to uses allowed by right in the C-4 (Highway Commercial) zoning district.
3. An amendment to HCZO Section 200-23, to add mini-storage facilities to uses allowed by right in the I-1 (Light Industrial) zoning district.
4. An amendment to HCZO Section 200-24, to add mini-storage facilities to uses allowed by right in the I-2 (General Industrial) zoning district.

Anthony explained that it was staff's position to address this issue with the new draft of the Land Development Code but the applicant desired to proceed with the application. Therefore it was processed and evaluated based on merit, and the Planning Department does support the application. Anthony stated there was a situation related to this matter regarding an existing case at Highway 191 and Mountain Road intersection, and that Mr. Dorn had applied for a mini-storage facility there and was initially approved by the Board of Adjustment and that case was now being reviewed by a court. He remanded back to the Board of Adjustments for a rehearing. Staff's position, based on case law, is that even with the approval of this text amendment Mr. Dorn would still be entitled to have his case heard under the old rules.

Chairman Moyer questioned if it was still the Staff's position that the Board should adopt the text amendment if it did not apply to this case, considering a new code would be adopted soon.

Anthony Starr responded that he felt at this point it depends if the Board wants to wait until the new code is in place, that will address the issue, or if there were issues somewhere else in the County that may come along in the next two to four months between now and when the Planning Department gets the Land Development Code in place. The text amendment would apply in that respect and would apply as any industrial uses that might be applied for in a neighborhood commercial district which might occur in the time between. Based on the case itself the Planning Department does support the text amendment principles and will incorporate the principles into the Land Development Code.

Chairman Moyer noted that with the current draft Land Development Code he did not see the changes requested here.

Anthony Starr informed the Board that the text amendment removes the industrial uses from the neighborhood commercial district.

Public Input

1. Craig Justus – Mr. Justus lives at 11 N. Market Street in Asheville. He is here as an attorney representative for the property owner with the target on his back, Mr. Dorn. Dennis Dorn is a lifelong resident of Henderson County. Mr. Dorn is the property owner for the development on Mountain Road that has raised the controversy with the folks

along Mountain Road. Mr. Justus stated that it is his understanding from talking with Anthony Starr that not only case law would support the application being judged based on the rules that played at the time of application, but also it was the custom of Henderson County that changes on pending applications would also be judged by the rules in place at the time of application. It is the law of North Carolina based on Robin versus Town of Hillsborough's case and a case that it relies on from Curry Beach that applicants are judged based on the rules in play at the time they apply for a permit. The reason for this rule of law is evident in this case. Mr. Justus felt it was important that his client's application not be applied retroactively to the project. In March of 2006 his client approached Henderson County Staff and inquired about the uses of property on Mountain Road at Highway 191, specifically the use of mini-storage and was told that mini-storage use was allowed in C-2 as a conditional use. The applicants were informed to go through the Board of Adjustment in order to get a permit but it was historically treated as a warehouse use as long as you crossed your T's, dotted your I's and presented good evidence to the Board. So based on the due diligence his client purchased the property and spent \$295,000 for the tract of land at the corner of Highway 191 and Mountain Road. After purchasing the property his client engaged an engineer and a surveyor to come up with a plan of development. Between March and May he spent thousands of dollars in reliance of the rules at play at the time. May 1st he applied with the Board of Adjustment for a Conditional Use Permit. A hearing was held in May, 2006 with the Board of Adjustments and at that time a lot of people came out from Mountain Road and spoke against the project and a number of those people are here today. Questions were raised regarding storm water, sedimentation and erosion control, entrance of the project on Highway 191 and Mountain Road, and architectural rendering of the projects. The Board of Adjustment basically continued the hearing to allow the applicants an opportunity to address the neighbors or the people along Mountain Road's concerns. After that hearing his client spent several thousand more dollars hiring engineers to come up with a sedimentation and erosion control plan, applying with the State to come up and look at storm water measures, and applying with the State of North Carolina Department of Transportation for a permit to allow reasonable access to the property which addressed concerns of the folks. His client asked for a continuance in June in order to allow more time to revise the plans to address the concerns of the folks. In July his client was not aware that the folks had gone behind the scenes and applied for this text amendment. His client was not aware they were asking the County to change the rules or that the Planning Board had a meeting where it was brought up and discussed. If his client had known about the meeting he would have attended and debated the opposition of why it wasn't a good thing to change the rules. He did not have that opportunity. He first became aware of this effort at the August Board of Adjustment meeting and by then the Planning Board had already made their recommendation. He brought this up because he thinks there is an element of fairness of why the rules should be applied to them at the time of their application. At the August public hearing they presented their provisions based on the comments given to them by the opposition and at the end of the day they convinced all of the Board of Adjustments members their project was not going to be detrimental to the public health and safety of the community. The

Board of Adjustment didn't just lay on their backs like passive Board of Adjustment members they were very aggressive in conditioning the project. They went through a list of buffering concerns. They imposed a condition that added buffering requirements on the property. They addressed elevation concerns and how visible the building would be from the residential area. They addressed how long the lights on the sign would be on. They checked off the concerns expressed at the meeting and the condition of the development of the project. The developers agreed to all of the conditions. The Board of Adjustment, all five members, decided that based on these conditions the development would not be a detriment to the public health and safety and welfare of those folks. Obviously they don't want the development there and they were not satisfied so after the Board of Adjustment approved the permit they filed a lawsuit the next day, and the next day an injunction was in place. They had a hearing and it was thrown out on a technicality and they were mended back to the Board. The technicality being that the permit application was in the name Dennis Dorn and was not the same as the name on the deed, which said LLC, but was owned by Dennis Dorn. The application was sent back for the Board of Adjustment to consider again because the application was completed by Mr. Dorn rather than him filling it out for the LLC or at least putting the LLC on the application. They will be back before the Board of Adjustment again next week. This will be the third opportunity to present evidence as to why the development would be a detriment to the public health and safety. The developers would like the opportunity to present their evidence and show why they would not be a detriment to the public health and safety and welfare. In fact, the Developers meet all the rules that were in play at the time they applied and that were in play at the time they spent more than \$10,000 in reliance on those rules to address their concerns. The three options the developers asked to be considered were:

- It is correct to consider the adoption of the Text Amendment with the understanding of who it applies to. The developers believe that based on the Robins versus Town of Hillsboro's case and Henderson County's existing custom; if you agree with change it should not apply retroactively to this project and application.
- If the Board decides this is a comprehensive change or should be part of the comprehensive change and placed in the November hearings, then the developers would support this. They do think that this should be debated and would have liked to have had the opportunity at the Planning Board. They do think that this sort of throws the baby out of the bathwater because you would have to convince yourself that the Board of Adjustment really didn't make good decisions because this mini-storage is going to present a problem for the public health and safety and welfare. There is no way any mini-storage could be at this property pursuant to a conditional use permit.
- There are other light industrial uses that you could think about that might not be appropriate regardless of how much conditions are imposed but for this particular project they think it is a fine project at this location. The five impartial appointees of the Board of Adjustment are going to be presented with information regarding traffic, crime, etc. in which the developers

addressed during two public hearings.

Mr. Justus presented the Board of Commissioners with a packet, which is included as an attachment to these minutes, including the case law referred to from Robins versus Town of Hillsborough and the Curry Beach case, the current zoning map, (which shows how much of the property is C-2), and minutes from both public hearings to show that it wasn't two pages of debates, it was pages upon pages of debate that went on, and at the end of the day the Board of Adjustment unanimously agreed that requirements had been met. Mr. Justus also included a copy of the affidavit submitted by his client to the court showing that \$40,000 every month is going out the door of loss because he had not been able to get his project up and running based on the rules at play. The developer does not support the application presented at this meeting if it is going to be applied to this property.

2. Jeff Naber –Mr. Naber resides at 11 Wexford Drive in Hendersonville. He spoke before the Board once prior during public comment. Mr. Naber presented four photographs to the Board which included the proposed site, the intersection of Mountain Road and 191, his drive and his house. He is one of the applicants for the Text Amendment and understands that the Text Amendment is not just for his neighborhood but for all of Henderson County. When you drive down Haywood Road it is one of the remaining residential corridors in our community. The others are Kanuga Road and Highway 25 South in some part. People are drawn to their neighborhood on Haywood Road because of the value of the property and the beauty of the neighborhood. All of the proposed units of the mini-storage will be visible from the highway with a neon sign until 11:00 PM. The property is just about surrounded by C-2 property that is neighborhood residential or neighborhood commercial district property such as Sheila Dale's Beauty Salon, Greg Huskey's Chiropractic Clinic, and Haywood Animal Hospital. These are the types of businesses they welcome in their neighborhood. They do not want an industrial site in the neighborhood. The Zoning Board took issue as to whether or not this was an industrial site that would be going into the neighborhood. Under the warehouse definition he thinks it comes up under light industrial. Our County is growing tremendously in residential growth. Mr. Naber and his neighbors feel that it is time that the zoning ordinances come up to speed with the growth of the community. The houses in his community see an annual increase in value of about 14 percent. His house is appraised at approximately \$200,000. What used to be a wooded area across the street from his home is now open daylight. Mr. Dorn is proposing having buildings 60 feet from his yard and having lighting and a 24 hour warehouse operating 60 feet from his yard. The potential for his property value and his neighbors property value decreasing is likely with this industrial site going into his neighborhood. The Planning Board Staff in their August 15 staff report quotes "uses currently permitted by the district may need to be removed in order to protect adjacent residential development." It also says that Staffs position is that "light industry uses do not seem to be in keeping with general and commercial activities as such uses are often industrial in nature and include machining and assembly operation, storage plants and tanks, warehouse, junkyards, tire recapping,

truck terminals, laundries, and outdoor advertising signs.” This will not impact the value of Mr. Dorn’s home at all (approximately 6 miles away) but will highly impact our neighborhood. Mr. Naber and his neighbors are asking the Board to take action now to help them keep the value in their property and to keep their quality of life.

County Manager Steve Wyatt arrived.

3. Rod Rogers – Mr. Rogers lives at 6 Wexford Drive in Hendersonville. He moved here a year and a half ago to raise his kids. One of the reasons they chose the subdivision was because no business could be established nor were cats and dogs allowed. Looking out his front window within 90 feet would be the sight of the mini-storage, if built. He understands that a man must make a living, possibly Mr. Dorn could entertain another type of business such as a Doctor’s office or McDonalds. He doesn’t feel that Mr. Dorn followed procedures. The homeowners were informed that he was to take so much acreage down at a time while he was getting approval and this didn’t happen or there was a mix up in the paperwork. There were several issues that were brought to the attention of the Zoning Board of Adjustment. The illuminated sign will shine right into his daughter’s bedroom. It is sad that something like this could happen.
4. Robert Payne – Mr. Payne resides at 70 Hounds Chase Drive in Hendersonville. He is the president of the Foxwood Property Owners Association located near this project. He is in agreement with the Text Amendment and making it retroactive because industrial uses do not belong in neighborhoods. The industrial uses that were allowed in the original C-2 category are really inappropriate for residential neighborhoods such as the ones along both Mountain Road as well as along Haywood Road. The situation that has come up is unfortunate. The Board is faced with knowing that under the comprehensive plan they are going to adopt in three to four months this type of use would be totally inappropriate in the long term plans for this county in terms of zoning. Mr. Dorn started his preliminary process several months before the Board of Adjustment hearing. Obviously he had to do some planning, outlining, and figuring out what needed to be done. In the process he had no permits to proceed in the first few months that he did. He cleared all of the trees off of the property without a state permit. Erosion did occur on the lot and impact the streams that flow through the property.
5. Angela Beeker – Ms. Beeker works at 120 West Allen Street in Hendersonville. She thanked the Board for continuing to allow the application to proceed which was submitted in July when the Land Development Code was still in process. She also thanked Mr. Starr and his staff for their willingness to proceed. Ms. Beeker and her client have been very diligent in their efforts with regard to this issue because this is a very emotional issue with the residents of Sedgewood. This is the sole reason they have been challenging the mini-storage use and the reason they have presented the Text Amendment. The Text Amendment came up after the application and it brought to light in the minds of these people “what else might happen?” This is not the only C-2 piece of property that borders their subdivision. We don’t want to win a battle against one use but

then lose sight of what else could happen, so yes it is targeted at this use but yes it is also long-sighted in hoping to bring some protection to the community. Ms. Beeker feels that it is important to proceed because the length of time needed to complete the Land Development Code is unknown. The residents of Sedgewood know what they are doing. They are not people who have lived in an area that was not zoned and waited for some egregious use to come up and then at the last minute say "please help us". These are people who bought property in an R-20 district with the expectation that they would have some protection from a zoning perspective. It wasn't until this particular use came up that they were even aware that a light industrial use might locate next to them. Ms. Beeker and her clients are not asking the Board to change the rules. It is their position that a warehouse is not a mini-storage facility. It is their position, and they made the argument to the Zoning Board of Adjustment, and would have made the argument to the court had it not been remanded, that they don't believe the mini-storage facility is a warehouse and thus they don't believe it is permitted anyway. They are coming to the Board for clarification on that issue. As far as it being a custom of Henderson County to single out applications, she doesn't remember this being a custom where it was even discussed in a rezoning or text amendment. Typically her recollection is that the Board has added and proceeded without saying whether it's retroactive or not. There is a whole body of case law, common law, vested rights that came about to address this very situation. The bottom line is this community is asking for your help. This community is asking for your help to protect them from a single use and from long term what could happen. She has seen this and other Boards rise to the occasion to assist communities when other uses have come up and the communities have come to the Board and asked the Board for help. If this use is allowed and the Zoning Board of Adjustment rules in their favor and they are unsuccessful it will severely impact the quality of life for her clients. If they are successful it is going to be a monetary issue and going to hit Mr. Dorn's pocketbook. She and her clients would ask the Board to consider this and weigh in favor of the individual and not a business. As far as the technicality of this being reversed the superior court judge did not feel that the court had subject matter jurisdiction nor did she. It was just a technicality because application was made in an individuals name when it is a corporation that owns the property. Mr. Dorn has very competent legal representation. Mr. Justus is very familiar with the likelihood that a Text Amendment could be applied for. Mr. Justus has been involved in cases on the other side. They certainly have not been put at a disadvantage. She and her clients also have very competent legal representation. She and her clients have not done anything unfair or behind anyone's back in seeking this text amendment. The text amendment was advertised.

Chairman Moyer asked Ms. Beeker if her position was that the Board adopt the text amendment and let the law sort it out.

Ms. Beeker stated that this is her position and that the Board should adopt the Text Amendment without addressing whether it is retroactive or not. Both sides would have an argument if it were to go to court as to whether it applies retroactively or not.

Anthony Starr said that it has been the custom in the past that Staff and the Board of Adjustment allow applicants to proceed even with zoning map amendments such as in this case and others and process their applications. It would have been up to the courts to flush that out had it been challenged. The interpretation of warehousing and whether self-storage is included in that definition on a zoning administrator level and on a Board of Adjustment level there are prior interpretations at the County level that warehouse did include mini-storage or self-storage. It would take a court to reverse that interpretation and say that Staff and Board of Adjustment were incorrect in that interpretation.

Mr. Craig Justus commented on the statement by Ms. Beeker in regards to approving the Text Amendment and letting the courts settle it. His concern is that these folks are not going to be excited about another Board of Adjustment hearing especially if they go through it and don't win. They are likely going to challenge it. If the Board does not give a clear signal of whether or not this applies retroactively, Mr. Justus's concern is they are going to seek an injunction that prevents the Board of Adjustment from having their hearing next week saying that has been adopted and applies in order to prevent them from going forward with the Board of Adjustment. They are going to fight that battle and the County's resources are going to be applied. They will await that decision and then ultimately go back to the Board of Adjustment. Mr. Justus is alerting the Board to these possibilities.

Chairman Moyer did not recall every retroactively applying to change a definition or interpretation in the fourteen years he has served.

Ms. Beeker stated that they were not planning to seek an injunction to stop the Zoning Board of Adjustment.

5. Wanda Edney – Ms. Edney lives at 124 Twin Brook in Hendersonville across the street from the planned mini-storage facility. Currently they are doing everything in their power to keep somebody from getting killed on that corner because of the high traffic. She doesn't feel that the area needs anymore traffic.
6. Bobbie J. Killilane - Ms. Killilane resides at 111 Castleton Lane in Hendersonville. She opposes the mini-storage. She loves the area as is and doesn't want to see a mini-storage from her yard.

Commissioner McGrady supported the Board of Commissioners accepting the Planning Board's recommendation with respect to three of the four proposed amendments.

Commissioner Baldwin was in acceptance of the proposed amendments and felt that the Board would be moving closer in the direction they would like to go by accepting the proposed amendment.

Commissioner Young supported the Board of Commissioners accepting the Planning Board's recommendation.

Commissioner Messer was in agreement.

Chuck McGrady moved to accept the application with the Staff suggested modifications as recommended by the Planning Board to amend sections 200-21, 200-23 and 200-24 of the Zoning Ordinance and further moves that the Board deny the amendment to section 200-22 of the Zoning Ordinance as suggested by the Staff and recommended by the Planning Board. All voted in favor and the motion carried.

Five Minute Break

QUASI-JUDICIAL PUBLIC HEARING – Special Use Permit Amendment Application #SP-05-01-A1

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

Chairman Moyer explained that a quasi-judicial proceeding is somewhat like a court proceeding and that anyone who wished to speak should come forward to explain how this project would affect them. The following were named as parties to the proceeding:

Anthony Darity
Mary Cunningham
Odell Suber
Matthew Card
Matthew Cable
Autumn Radcliff
Anthony Starr

Those individuals came forward and were sworn in by the Clerk to the Board.

Matthew Cable informed the Board that Mr. Don Hunley with William Lapsley and Associates, on behalf of Windsor-Aughtry Company and Mr. Drew Norwood, the applicant, and Windsor-Aughtry and Mr. Kevin Minish, property owners, had submitted an application to amend the special use permit SP-05-01 for the planned unit development (PUD) known as River Stone and located near the intersection of North Rugby Road and Butler Bridge Road, to allow for the addition of a portion of a parcel of land (PIN 9652-10-1814) totaling approximately 3.68 acres. The PUD known as River Stone is located in an R-10 (High Density Residential) zoning district and an R-15 (Medium-Density Residential) zoning district (See Attachments 2 and 3, Site / Current Zoning Map and Aerial Photo Map). The PUD, as originally proposed, was to contain 175.52 acres of land, 524 single-family detached dwellings on individual lots, and approximately 45 acres of open space (See attachment 1, Special Use Permit Order SP-05-01). The PUD, as a result of the amendment, is proposed to contain 179.22 acres of land, 538 single-family detached

dwelling on individual lots, and approximately 47 acres of open space.

Pursuant to §200-33.A of the Henderson County Code, before the Board of Commissioners may act on such a request, this matter requires “the advice and recommendation” of the Henderson County Planning Board. On August 2, 2006, the Henderson County Board of Commissioners accepted and referred the Special Use Permit Amendment Application (SP-05-01-A1) to the Planning Board for its review and recommendation. During the August 15, 2006 Planning Board meeting, amendment application SP-05-01-A1 was reviewed and the Planning Board offered a recommendation to the Board of Commissioners. The Planning Board recommendation, along with Staff comments, was submitted as evidence to the Board of Commissioners during the public hearing.

In accordance with Sections 200-56D and 200-70A (6) of the Zoning Ordinance (See Attachment 4, Required Findings of Fact), the Board of Commissioners must make findings of fact regarding compliance with the ordinance in order to grant a Special use Permit Amendment and may impose conditions on the permit to assure that a proposed use will meet the requirements of the Zoning Ordinance. Section 200-56D lists the general site standards that apply to all special uses. If a general site standard cannot be met and, based on evidence provided during the hearing, the Board finds that imposing conditions (such as increasing minimum specific site standards), will allow such general site standards to be met, then the Board may impose the conditions. However, the applicant does not bear the burden of demonstrating that all of the general site standards have been met. Section 200-70A (6) requires that the Board of Commissioners also make findings to demonstrate that the proposed use complies with any specific requirements for the use and that provisions have been made for the following, if applicable: ingress/egress; parking and loading; utilities; buffering; playgrounds; open spaces; yards; access ways and pedestrian ways and building and structure location, size and use.

In accordance with the Henderson County Zoning Ordinance, notices of the hearing on the Special Use Permit Amendment Application (SP-05-01-A1) were published in the Times-News on Wednesday, September 27, 2006 and on Wednesday, October 4, 2006 (See Attachment 5, Notice of Public Hearing). On October 4, 2006 the Planning Department posted notices at the project site to advertise the hearing. On October 4, 2006 the Planning Department sent notices of the public hearing via certified mail to the applicant and adjacent property owners.

Since the matter requires a quasi-judicial public hearing, the Board of Commissioners must consider the evidence presented at the hearing and make findings of fact based on that evidence in order to take action on the Special Use Permit Amendment Application. The Board must issue a written decision within 45 days of the conclusion of the hearing.

Matt Cable – “The staff has provided a Power Point and we’ve indicated there the addition of section 11 by the red highlighting. The Amendment request is to add a 3.68 acre portion of a tract which is currently owned by Mr. Minish to the Planned Unit Development. The property to be added is located adjacent and to the Northeast section of the Planned Unit Development as it exists now between the North entrance at Butler Bridge Road and the East entrance at North

Rugby Road. The property to be added is referred to as section 11. The Development narrative which is included in Exhibit C as Attachment 2 provides a detailed account of section 11 and its relationship to the remainder of the Development and I am going to summarize that briefly for you now. Section 11 um, which is shown in Exhibit C Attachment 5 and also on the slide will contain the total of fifteen lots. The addition of Section 11 will bring the total number of lots for Riverstone to 538 as it will result in the addition of fifteen lots within Section 11 and the removal of 1 lot um, lot number 607 from the original Development to allow for access by a new River Road. Um, a 30 foot driveway easement is located on the northern portion of the section which is proposed to be used as a second access to the remaining portion of Mr. Minish's property and for all intensive purposes we consider it to be a 5 lot – it might be part of the Planned Unit Development. As noted in the development sequence which is Attachment 3 of Exhibit C, Section 11 is to be constructed along with Sections 3, 4 and 9 and that it was tentatively scheduled to occur in 2007. I would now like to enter Exhibit D which includes the Planning Board and Staff recommendations regarding the Amendment Application.”

Chairman Moyer – “Charlie”

Matt Cable – “On August 15, 2006 the Planning Board reviewed the application and voted 9 to 0 to send a favorable recommendation to the Board of Commissioners. The Planning Board, by their favorable recommendation, requested that the applicant provide additional information which Staff would review to ensure the adequacy of the provisions. Uh, Should the Board of Commissioners approve the application, Staff and Planning Board recommend that such approval would be subject to the following recommended conditions in addition to any other conditions that are discussed during the hearing and any conditions that the Board of Commissioners may impose? Staff recommended conditions and comments include: As related to ownership - Proper Assurances (a legal title or binding sales agreement for Section 11 Property). Um, for ownership of the McKinnish Property should be provided prior to construction. As related to height limitations - the applicant indicated a two story limit for structures within Section 11 uh, which relates to privacy and the protection of adjacent property owner's privacy. We would also include that as a condition. As related to Privacy Fencing and Cut Slopes - they are proposed along the Northern and Eastern boundaries of Section 11. As noted on this slide the applicant is proposing a fence along the Northern boundary of lot 8, Staff suggests that a fence of the same type be provided along the Northern boundary of lot 9 to provide additional privacy measure for the adjacent property entrance to the North. The applicant is proposing a six foot “Dog Ear” Fence for lot 8 and again Staff is suggesting that they provide the same fencing along the Northern portion of lot 9. The applicant has also proposed cut slopes uh, that they say will be approximately 12 feet in height um, along the boundary of lots 9, 10, 11, 12, 13, 14 and 15 and Staff suggests that all the privacy measures would be a condition of the approval. As related to Perimeter Requirements – Staff suggests that to provide reasonable privacy the 15 foot rear and side yard setbacks be applied to the Northern and Eastern Perimeter of Section 11 and that's indicated by the red line on the slide. Um, again just to those portions of those lots as they would abut um (could not understand – coughing in room). Staff is specifically recommending that a 15 foot rear yard setback be applied to lots 9, 10, 11, 12, 13, 14 and 15 and also we ask that the Board consider applying the 15 foot side yard setback on lots 8

and 9. This would be a 5 foot increase in rear yard setbacks and would require a 10 foot increase in side yard setbacks from what's already required within the Planned Unit Development uh, order. As related to compliance with the original orders, Staff suggests that Section 11 should adhere to the conditions of the original Special Use Permit order um, which would of course need to be revised to reflect the addition of acreage, lots and open space to the Development. I would like to also enter Exhibit E which includes additional Staff comments um, which did not result in any proposed additional conditions for the Development. Uh, just to ensure that everyone knows that it was reviewed thoroughly and not allowed the requirements of our ordinance and I would certainly be glad to answer any questions that you may have."

Chairman Moyer – "Anybody have any questions for Matt at this time? What we will do as each party presents their uh, statement or evidence the other parties, under Quasi-Judicial, will have the uh, right to ask them any questions, you don't make statements now, but you have the right to ask the other party any questions you have with respect to what they said. Does the applicant have any questions for Staff at this time? Does the applicant have any questions, not statements, now I mean questions for Staff at this time? Mr. Norwood you're gonna need to come to the mic come to the phone, indic - no there, indicate who you are and uh, what your question is."

Drew Norwood – "My name is Drew Norwood and I am President of Windsor-Aughtry Company and the applicant and the only questions I had was why we would have a 15 foot setback on Northern boundaries of 8 and 9 – 9 in particular since we have 30 feet of driveway all the way to the adjoining property owner and we're also gonna put up a fence. That seems excessive to me."

Matt Cable – "Again Staff was just suggesting this condition. It's based on the adjacent zoning of the property to the North which is R-15. Um, as the Board is aware um, as the Board is aware there is 20 foot uh, buffer setback required along a near by properties with a three to four foot swell. It's again only an increase in 10 feet um, it's a suggested condition to ensure privacy measures for those adjacent property owners at that density."

Chairman Moyer – "Was that condition supported by the uh, Planning Board?"

Matt Cable – "When it was initially presented there wasn't a strong clarification from them on that point of view. It was specifically indicated for the Eastern portion of that property and at that time there was question about where that boundary line was gonna exist at the flag lot. The applicant had since revised the um, subdivision plat to add a flag lot so there wasn't a very precise and clear um, recommendation on that Northern boundary with the 15 foot setback that, but on the Eastern boundary it was very clear that they supported that."

Commissioner Baldwin – "I have a question for Matt if I may. Um, Matt after you subtract the right of way out of that uh, 4.68 parcel what's the density? Do you know?"

Marr Cable – "Um, we calculated on a project wide basis."

Commissioner Baldwin – “But you don’t know for that individual piece what the density is.”

Matt Cable – “I wouldn’t be able to tell you for that specific piece again we used the whole development.”

Commissioner Baldwin – “Thank you.”

Chairman Moyer – “Are there other questions for Matt at this time? Mr. Darity, Mary Cunningham, Mr. Suber do you have any questions in respect to what’s been presented so far? All right, we will then move to uh, petitioner applicants statement and evidence. You can just start and pass it off to the next when you’re ready. You’ve already been sworn just when you get there introduce who you are, each of you, and then speak.”

Drew Norwood – “I’m Drew Norwood I’m President of Windsor-Aughtry Company and I’m the applicant. Um, first of all I’d like to talk about this all came about in which is that Mr. Minish who lives in the house, well you can’t see it there but, right there, came to me after we started construction and said uh, I didn’t know about this didn’t know it was happening, it’s my own fault, I was out of town, I’ve got some things I’d like you to do to help me. One of which is to buy this part of this property and give me a driveway access and then give me some screening. I agreed to do the screening round in front of this house which we will do when we get over to that part of the development. And uh, so we, he and I entered into agreement for me to buy the property so I could get to it being included in the Special Use Permit. Um, so that’s at this point all I’ve got to say about it uh, I think Mr. Minish would like to.”

Chairman Moyer – “What’s the issue with respect to ownership that was referred to in Staff conditions?”

Drew Norwood – “Well, we have it under contract with him, so it’s subject to this being approved. If this is approved we’ll close it.”

Chairman Moyer – “I see, okay all right.”

Drew Norwood – “After that Don Hunley will talk about the technical aspects and answer any of those questions... (Left the mic and drifted off)”

Kevin Minish – “Good evening I’m Kevin Minish uh, the property owner. I wanna show you over here currently”

Chairman Moyer – “You’re gonna need to go back to speak, you can point and you have to go back because we don’t pick you up.”

Kevin Minish – “If you look um, to where the house is now you can see that...”

Chairman Moyer – “Stan can, may be able to help you there. Can you?”

Commissioner Young – “On the TV here”

Chairman Moyer – “Can you point on your screen? Come on up here and point if you would please.”

Kevin Minish – “My driveway comes in”

Commissioner Young – “Point on the TV, we can’t see that on the wall.”

Kevin Minish – “From um, the best way I know to describe it from the right side of the property there my drive comes uh, I access through an apartment complex it’s a forty unit apartment complex that I share a drive with. So, it was my desire to sell this piece of property to Mr. Norwood to gain access through his development versus this apartment complex I’m having to share my drive with. So, that was my incentive uh, to sell this property Mr. Norwood. Um Uh, I think it uh, would certainly uh uh, help my property value to be able to enter through that development versus the current situations.”

Don Hunley – “Good evening I’m Don Hunley, Project Engineer with William G. Lapsley and Associates and I’d like to address how we design the buffers in conjunction with Mr. Minish’s desires and I’m available to answer any other questions that y’all might have. Basically what we’ve outlined (he left the podium and mic)”

Chairman Moyer – “We’re not getting ya.

Commissioner McGrady – “You, because of the television and the speaker”

Don Hunley – “I’m with you.”

Chairman Moyer – “You have to sorta hold it in front of you and that’s”

Don Hunley – “Let’s see if I can do this”

Chairman Moyer – “Yeah that’ll be close”

Don Hunley – “Where this addition to the PUD shares a boundary with neighboring property owner that’s not Mr. Minish we’ve proposed to put up a six foot privacy fence much as we’ve put at other locations in the PUD that was originally supported. Um, where the boundary will be shared with Mr. Minish there’s been discussion with him about providing screening down here at his house but he hasn’t requested any type of buffer or screening where the boundary would be with him. Um, in particular to um, to the 15 foot setback, as Staff has requested in addition to that fence for this lot right here would make that one extremely narrow in terms of building and for this one right here it would actually make it too narrow to build upon using the the layout that we presented last year to you all with the five foot setbacks in either, both side lines.”

Chairman Moyer - "Well, on that map are there homes on the other, well you have do you have names there I see or something"

Don Hunley - "Right this is the only property that's gonna border the project directly and there is a home there and that's where the fence is laid out to be. Along this boundary there homes appears Mr. Minish's driveway will provide a 30 foot buffer naturally for that and then he hasn't indicated any need for anything else for his property."

Chairman Moyer - "But Staff has and you're questioning that - Staff has requested that and you're challenging that."

Don Hunley - "Yes, yes we feel like that's in excess to what was approved last year and uh, and there was no real discussion of that in the Planning Board meeting."

Commissioner Baldwin - "What is the density on that piece of property when you take out the right of way on the 4.68 acres?"

Don Hunley - "If someone has a calculator they could divide the uh, basically the 14 lots into 3.68 acres. Because we're taking"

Commissioner Baldwin - "Do you have 14 or 15 lots?"

Don Hunley - Well there's 15 lots laid out but portions of the lots down here are being taken out of the original property."

Commissioner Baldwin - "Its 3.68 acres.

Don Hunley - "3.68 acres"

Chairman Moyer - "Anthony will have that in a minute."

Commissioner Baldwin - "But after you subtract the right-of-way out from the 3.68 what square footage is left?"

Don Hunley - "Right, the 3.68 does not include that right-of-way."

Commissioner Baldwin - "Gotcha"

Don Hunley - "Because it's not actually gonna be (couldn't understand - coughing) its gonna be retained.

Chairman Moyer - "What is the answer Anthony? From that"

Matt Cable – “It’s um 3.8 units per acre in that particular section.”

Commissioner Baldwin – “3.8 units per acre?”

Chairman Moyer – “Okay, anything else”

Don Hunley – “Well I think that’s the basic thing that we just feel that those buffers are unnecessary in this case given where we’re gonna put the fence.”

Chairman Moyer – “All right”

Don Hunley – “and I’m available for any other questions”

Chairman Moyer – “Well will the Board have any questions at this time? Staff – Commissioner Baldwin do you have a question?”

Commissioner Baldwin – “Yea I was going to ask the chosen house model for those lots what’s the square footage? Do you have a typical?”

Unsure – left the microphone.

Commissioner Baldwin – “How many bedrooms?”

Drew Norwood – “Probably in the 1800 to 2500, three and four bedroom has two baths, two car garage.”

Steve Wyatt – “Make sure that you use the microphone uh, when you because we’re not picking it up.”

Chairman Moyer – “Any other questions?”

Commissioner Baldwin – “Yep one more. The houses that you are proposing uh, which market are looking for uh middle income families with children, retirees, based on your bedrooms.”

Drew Norwood – “If you if you recall back to when we talked about the original one we got 525 now and add fourteen – twenty four – add fourteen 538. We originally said we were going to have about 220 of our 250 starter homes about 125 retirement homes and about 140 of what we call first move-up. We have revised that we’ve taken away from the starter family homes reduced it down to about 176 and increase the retirement homes up to about 225. But these homes in this section right here would be more specifically targeted to families in this little cul-de-sac here.”

Commissioner Baldwin – “Okay”

Commissioner Young – “Uh, Mr. Norwood are are these houses gonna be larger than the ones previously or the same or the same size?”

Drew Norwood – “Previously what sir?”

Commissioner Young – “The previous development the one that you came before us last year.”

Drew Norwood – “There will be this is the section where as I said where we we have three different neighborhoods in here. We have a retirement neighborhood, patio homes in a 1500-2000 square foot range. We have the starter what we call the starter entry level home which runs about 1300 up to about 1800. And then we have what we call the third neighborhood would be the first move-up and that would take you up from about 1800 up to about 2800 square feet and that’s, this cul-de-sac falls in that section where that we haven’t started yet, won’t probably start for a couple of years. Hopefully”

Commissioner Young – “I guess the reason I was asking that was in the previous proposal last year or whenever uh, the best I can remember that we you were gonna put a house uh, on basically twenty hundredths of an acre five houses to an acre and now your looking at basically four houses with an acre is gonna be on twenty five hundredths of an acre. Is that right?”

Drew Norwood – “Well eh, all our lots in there those are bigger than the most of those are bigger than the other lots just because the way the property is shaped. But the they’re basically you know 7500-8000 square foot lots. The the program back then was to reduce it down to smaller lots and then therefore have the open space. So they basically the same lots they a little bit bigger than the lots in the rest of the community.”

Commissioner Young – “That’s what I was thinking according to what he had said 3.8 houses an acre and I remember it was about five houses to an acre on the previous”

Drew Norwood – “No it wasn’t five houses an acre was it?”

“Someone answered no”

Drew Norwood – “We got the same density that’s what there we were we can eh eh we’re asking for the same density that we would had in the rest of the development.”

Chairman Moyer – “Are there any other questions for Mr. Norwood at this time?”

Commissioner Messer – “Mr. Norwood in the open space your gonna increase it from 47 or 247 from 45. Where does that space come from?”

Drew Norwood – “I can address that. There were just a couple uh, things that needed to be changed and one of the slides, it was not actually an increase in the open space, in our very initial application we said approximately 45 acres and then it ended up being 47 – so it’s not an actual

increase in that, it's just we were approximating when we said 45 and I think that was the very first application. It was also a slight inaccuracy I think in one point it said that 132.12 and that actually should be 134.2 on one of Matt's that same slide the these are just minor numerical errors."

Chairman Moyer – "Any other questions from the Board? Staff do you have questions for Mr. Norwood or any of his witnesses? All right again Mr. Darity, Cunningham, Suber do you have any questions for Mr. Norwood or any of his people? All right! We will then give each of you starting with Mr. Darity a chance to make a statement if you would like to or whatever. Anything further? Ms. Cunningham? All right! Mr. Suber? Okay! Technically we now get to the point where each of the parties can have a chance to make a closing remark if they wish. I would assume we are to the point where we don't need that but I'll give each of the parties a chance and start – Mr. Norwood you have closing comments to make. Staff"

Matt Cable – "I just wanted to eh point out clarification. The reason that we are suggesting fencing along lot 9 why there is a physical buffer the 30 foot separation created by the driveway there would be no visual buffer from that property for those adjacent owners that would just be again a physical separation."

Drew Norwood – "We don't object to the fence or we would gladly put in the fence we just object to the 15 foot side setback on that lot given that we got a fence and we gotta 30 foot buffer with Mr. Minish's future driveway.

Commissioner McGrady – "Mr. Matt could you address that issue? Why the recommendations with respect to lots 9 through 15 uh, particularly given the fact that the adjoining land owners in requesting this"

Matt Cable – "Again on 9 lots 9-15 we did suggest that to the Planning Board. Um, we were trying to take into consideration the zoning that does exist on that parcel and the potential for that parcel to be developed at higher densities as well. Um, thinking of the current owner as well as future potential owners and providing that 15 foot setback along those properties seemed to be in keeping with the adjacent properties as they were zoned R-15 in that case.

Chairman Moyer – "You look like your not finished Commissioner McGrady and I'll give you some time."

Commissioner McGrady – "Go ahead"

Chairman Moyer – "Well we're gonna close the hearing so"

Commissioner McGrady – "I know"

Chairman Moyer – "All right! Thanks Matt. That's certainly an open issue that we need to discuss further. All the evidence has been presented. All the parties have had an opportunity to

make their closing statements and ask any questions they want. Um, now it's appropriate for the Board to discuss um the issues presented. We can 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. I remind the Board however that the Board must have a written decision within 45 days of the conclusion of this hearing. Can we motion to go out of public hearing?"

Commissioner Messer – *"So moved."*

Chairman Moyer – "All in favor say aye"

In unison – "Aye"

Chairman Moyer – "We are out of public hearing, We cannot have any further participation from the parties or anybody here but now the Board will discuss the issues and decide how they wish to proceed."

Board discussion followed.

Commissioner McGrady recommended approval of Special Use Permit Application with conditions established by the Planning Board and recommended by Staff but striking of recommendation for fencing on Eastern edge of lots 9, 10 ,11 ,12, 13, 14 and 15 but requiring a vegetative buffer on lots 8 and 9 and striking all Perimeter Requirements.

Commissioner Baldwin recommended that the motion be amended to specify the size and species of vegetative buffer.

Commissioner McGrady directed Staff to provide the Board with specific language with respect to appropriate species of plants and size in the order that will come forward.

Chairman Moyer stated that a motion was on the floor to give guidance to attorney and Staff with respect to drafting of an ordinance. All voted in favor and the motion carried.

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

Attest:

Terry Wilson, Deputy Clerk to the Board

William L. Moyer, Chairman