

**DRAFT MINUTES**

**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS  
APRIL 1, 2008**

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 Historic Courthouse.

Those present were: Chairman Bill Moyer, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner Chuck McGrady, Commissioner Mark Williams, County Manager Steve Wyatt, Assistant County Manager Selena Coffey, County Attorney Russell Burrell, Communications Officer Pam Brice and Clerk to the Board Elizabeth W. Corn.

Also present were: Associate County Attorney Sarah Zambon, Planner Matt Card, Planning Director Anthony Starr and Land Records Supervisor Pam Carver.

**CALL TO ORDER/WELCOME**

Chairman Moyer called the meeting to order and welcomed all in attendance, stating that the purpose of this meeting was a Public Hearing for the Realignment of Pleasant Grove Church Road and consideration of a Proposed Development Agreement for Seven Falls Golf and River Club.

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

**PUBLIC HEARING – Realignment of Pleasant Grove Church Road and Consideration of a Proposed Development Agreement for Seven Falls Golf and River Club**

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

Chairman Moyer recognized Anthony Starr to give a brief overview of both of these items.

Anthony Starr stated that we are here to receive public comments as required by General Statute 153A-241 for the possible road realignment of Pleasant Grove Church Road. Notice was given in accordance with that statute including advertisement in the newspaper as well as sending notices to adjacent property owners via certified mail, in addition to posting signs on the property, all done consistent with State Statute.

Anthony Starr stated that the developer proposes to relocate a section of Pleasant Grove Church Road from its existing location to a point further west. It would still intersect with Pleasant Grove Road and would pick up with a portion of the existing Pleasant Grove Church Road. At no time, with what the developer is proposing or what staff is recommending in terms of a draft order that is in the packet, would Pleasant Grove Church Road become un-accessible to the public. Before the old section could be closed the new section would have to be constructed, built and accepted by NC DOT as a condition of approval. After that, with their Master Plan that was approved by the Planning Board last year, they are proposing that the old right-of-way would become part of their development which would involve residential development, part of their village area perhaps and part of the golf course area.

Anthony Starr stated that the other item is the development agreement that the Board is considering. Several months ago the developer requested to enter into a development agreement. NCGS 153A-439

DATE APPROVED \_\_\_\_\_

permits local governments to enter into development agreements whereas a variety of issues can be addressed. They had originally requested vested rights for 20 years. The Board was concerned about that so that agreement was not moved upon. A new revision has been submitted by the developer which would provide for a five year vested rights with a possible five year extension if certain conditions are met. Some of the terms the developer agrees to:

1. He would agree to build a fire station that would serve this development and the surrounding community. It would be given over to the county for use by the Etowah-Horse Shoe Fire Department at no cost to the county. They would also provide the land for that fire station.
2. They would also agree to convey the water and sewer system in the development to the county at some point, should the county start providing that service in the area.

There are a couple of other provisions in the draft development agreement which has been available to the public.

Anthony Starr stated that as required by statute we must hold a public hearing and gather comments on both of those items prior to taking any action. After that the Board can modify those, approve them, or disapprove them, based on the comments received.

Chairman Moyer stated that we would take comment first on the realignment of Pleasant Grove Church Road. When folks signed up there was only one sign-up sheet. Chairman Moyer felt that there had been some concern expressed with respect to the road realignment that work has already started on this project and people are wondering how this could take place when we hadn't had the public hearing yet or any official action taken. Chairman Moyer asked Bill Lapsley, representative for Seven Falls Development, to address that issue.

Bill Lapsley came forward and stated that his name is William Lapsley and he is a consulting engineer and the authorized agent on behalf of Seven Falls LLC which is the developer of Seven Falls Golf and River Club and the applicant for the project under consideration (both items). Regarding the relocation of Pleasant Grove Church Road – this proposed relocation was submitted to the county Planning Board about a year ago as part of the Master Plan for this community. Obviously we knew at that time that the relocation of an existing state road requires action by the County Commissioners. After the Master Plan was approved in June 2007 they proceeded to work on the design of this new road location with NCDOT doing all the engineering work, submitted that to NCDOT in September 2007, those plans were reviewed by the District Office and the Division Office. Those plans were approved January 16, 2008. Once NCDOT's approval was received, within a week or so a letter was submitted to the County requesting this hearing. Bill Lapsley stated that the approval of relocation of the road is subject to the approval of the County Commissioners. The applicant is interested in having this done as quickly as possible. He decided, at his expense, to move forward with grading of the roadway. Should the Board of Commissioners decide that this is not acceptable and this road would not be relocated that would be an expense he would bear. Obviously the road cannot be finished and turned over to NCDOT unless this Board approves it. Hopefully the Board will decide to proceed and if so, then it will not be long before the road can be paved and NCDOT can review it and accept it.

Bill Lapsley stated this road relocation project was presented about a year ago to the Planning Board. The project involves moving the existing road about 500 feet to the west, as shown on the plan. NCDOT reviewed and approved the plans and they were presented to the County. As he understands the process, the Board of Commissioners must decide that this is in the public's interest to relocate the road and that it would not cause a problem. If the Board so chooses to do that then the new road would be constructed to NCDOT standards, NCDOT would have to review the final product checking inspection work and core drillings etc. and once that is done to NCDOT's satisfaction and they agree that the finished product is

acceptable, then it would be submitted, with the County Commissioners' approval, to NCDOT Board of Transportation in Raleigh to be accepted into the NCDOT secondary road maintenance program. Once that occurs then the new road would actually become part of the State Secondary Road Program. After that date, then the existing road can be closed and the public right-of-way on that road would be removed. It would be removed in the sense that upon the closing of a roadway (should the Board so choose to do that) the property owners on each side of the road would gain that land. So in that case the entire section of the existing Pleasant Grove Church Road, the applicant owns both sides of the road. The procedure is:

- Board approval

- Build the road

- NCDOT inspects and reviews

- NCDOT accepts the road

- The road is moved and traffic is moved onto the new road

- The existing road is officially closed and the pavement is removed and it goes away

The new road involves about 3900 lineal feet of road. The new road will be 22 feet wide compared to the existing road which is 18 feet wide. It has fewer curves in the road. They believe it will be safer because of its width and the alignment. The curves are more sweeping and in conjunction with NCDOT standards. It will also eliminate about 1200 feet of an existing private road which is called High Peak Road. He showed the road on a map. High Peak Road is a soil/gravel roadway maintained by the property owners that are accessed by that road. That section of road would also be eliminated and the existing High Peak Road would be connected to the new State Road at this location (again showing on a map). That section of road does not meet DOT standards nor county standards and it would be eliminated. The folks that have to use that road now would access the new road on top of the hill. In conjunction with this road relocation project is a new proposed fire substation (on the left hand side of the map) location that Anthony referenced earlier in his comments. That site will be graded in conjunction with this project. It is a part of this road relocation project and the grading associated with it. Should the Board so approve of this road relocation project they expect that the road will be completed sometime in the middle to the end of May. It would be paved and the process would be started to turn it over to NCDOT. Over the past few weeks Mr. Lapsley has received phone calls from property owners on Pleasant Grove Church Road indicating they had questions and concerns about the project. He sent out a letter to try to alleviate some of those questions and concerns (to about 75 property owners that own property that access this road directly onto Pleasant Grove Church Road and sent them a map. The existing road will remain in service completely until the new one is constructed and accepted by NCDOT. At no time will they stop or interrupt traffic on existing Pleasant Grove Church Road while this is constructed. They can build the entire road without disturbing the existing road and once it is accepted by NCDOT then they can make the connection. There was a question about the access of the existing Pleasant Grove Baptist Church cemeteries and the Pleasant Grove Baptist Church itself as it relates to this road. Neither of these properties are impacted by this road relocation at all. William Lapsley stated that covered the highlights of this project and stated he was available to answer questions from the Board.

William Lapsley answered questions from the Board some of which were questions regarding the map in the packet.

In response to questions about a cemetery on the property, William Lapsley answered that regarding the existing cemetery that was adjacent to the Fullam Dairy property, they found that no-one claimed ownership. The Fullams didn't own it and nobody seemed to own/claim it. Mr. Lapsley's client and his legal council doing title search found that no-one owned it so they have filed a deed to claim ownership and to be responsible for it. He showed the location of the cemetery on a map, stating it is about  $\frac{3}{4}$  of an acre. He explained that since the Planning Board approved the Master Plan of the project last June, they have worked with the County's Cemetery Advisory Committee with Jay Jackson and others. He referred

to three pictures in the packet, one before they worked on the cemetery showing trees and undergrowth and a barbed wire fence around the grave sites; one with the site cleaned up and trees taken down, with grass planted and a white fence surrounding the area and a third with a crane showing how they took the tree down one-third at a time so as not to allow any trees to fall across the graves. Mr. Lapsley stated that they found six or eight graves located outside the barbed wire fence and they cleaned out further and extended the boundaries of the cemetery. He stated that anyone that wants to come visit this cemetery is welcome at any time, day or night, seven days a week, 365 days a year. No-one will be denied the opportunity to visit the cemetery.

Chairman Moyer explained the procedure for hearing public comments. He explained that he would like to try to keep the first part of the comments on the Pleasant Grove Road realignment. The Clerk to the Board will call the names in the order signed up. He stated that if anyone wished to address the Development Agreement, just state that you'll speak later and we'll move on. We can go back to those people after discussion of the Development Agreement.

### **Public Input**

1. Dave Anness – Mr. Anness was confused about the closure of the road. When the new road is constructed and opened he asked what would happen to the Pleasant Grove Road.

Chairman Moyer answered that they had indicated that they would close Pleasant Grove Road at that time but not until the new Road is finished and turned over to the State.

Mr. Anness asked why they were closing it at any point?

William Lapsley stated that the only project on the table tonight is Pleasant Grove Church Road, not Pleasant Grove Road. Regarding Pleasant Grove Church Road, his client owns both sides of the road of the existing Pleasant Grove Church Road and is constructing a golf course in that area. The reason for relocating the road is so the use of his property on both sides (being a golf course) they think would be a public safety hazard to have people hitting golf balls on both sides of the state road. There is nothing that would prohibit them from doing so but they feel it is a hazard. They feel it is better for the public and safer for the public using Pleasant Grove Church Road to move it over, away from the golf course as much as possible onto property that the applicant owns to get it away from the golf course.

2. Richard Freudenberger - Mr. Freudenberger questioned why they could start building the road without getting approval first. If it's not approved they will put things back, well he said they are disturbing soil and crating run-off. He stated that it is also assuming a self jurisdiction that he doesn't think was intended.

His second point was with regard to safety. He understands that the road is going up to 20-22 feet in width but he felt that wider lanes just mean faster traffic, not necessarily safer traffic.

Thirdly, right now the request is to move and realign the Pleasant Grove Church Road. Next July it will probably be Pleasant Grove Road and who know in 2009 it may be let's move the French Broad River. He feels at some point we have to stop this request business and leave it alone.

3. Angela Fernandini – Ms. Fernandini asked “As a citizen if I came to you tonight and I told you I had already started putting in a road without a proper permit what kind of repercussions would I face? Certainly something.” They've admitted to putting in a road that they don't have a permit for so she asked the Commissioners to think about what repercussions they face. She questioned

the safety concerns for the road, stating that if there are concerns then NCDOT should have taken care of them before now. Etowah citizens have been using that road for the past 25 years, some every day of their life. She asked "Are the existing conditions not providing for public safety right now? Does DOT have any report documenting the current situation as not being safe? How does existing road alignment not provide for current land owners safety and access? How a new alignment provides better access and safety and what are the impacts related to this realignment? What are the other alternatives to this realignment? Have they thought of any alternatives? Possibly the alternative is not doing anything. Yes, today we're talking about Pleasant Grove Church Road but they can't deny they already have ideas for Pleasant Grove Road and gentlemen I'm asking you to stop the buck here."

4. Linda Johnson – Ms. Johnson is the Chairman of the Incorporation of Etowah group. She stated that there were some letters sent out and a postcard. She personally did not see the letter but she did see the postcard that was sent out. She stated that the people for the incorporation of Etowah did not send these cards out. She has had many calls about this situation. The incorporation group had nothing to do with this. She quoted something she used to hear as a small girl – "You can't make a silk purse out of a sow's ear" and said that Seven Falls used to be a pig farm and she thinks that they are pretty much making a silk purse out of it. She stated that the incorporation group has embraced Seven Falls. She said that Etowah residents need to work together with this new community and need to come together and be in acceptance of this project. The citizens need to step up to bat and get this all smoothed out so these people can go ahead and get their work done. They have 400 job opportunities coming up in the near future, 200 of which will be full-time jobs with benefits. She stated that was more than anybody had offered in that community in a long time.

Chairman Moyer asked Ms. Johnson if her group had a position on the relocation of the road.

Ms. Johnson stated that they had talked about it and she understands how some of the people in the community feel but she also understands that nobody who has lived somewhere for a long time likes change but if they would only look at the change and see what's coming. She stated "We've got to have better roads, we have to."

5. Roger Freeman – Mr. Freeman stated he didn't have anything to say on the road.

Chairman Moyer asked Mr. Freeman to come forward and introduce himself because Mr. Moyer had a question for him.

Mr. Freeman is the Chief of the Etowah Horse Shoe Fire Department.

Chairman Moyer asked Mr. Freeman if the Fire Department uses the existing road in connection with the movement of vehicles. Mr. Freeman answered that they do. He stated it is difficult due to what was explained with some of the curves and the banking of the road as you go through. Some of the larger apparatus that they would have to take up onto the mountain side would be difficult. Their district goes all the way to the intersection of Jeter Mountain and Pleasant Grove Church Road. He said it is very difficult to go up through there and this would improve their response time. The location of the proposed substation would also benefit that area.

6. Bruce Hatfield – Mr. Hatfield passed on the road realignment issue.

7. Audrey Paulin – Ms. Paulin asked how changing the road affects High Peak property owners regarding right-of-way? She also asked how it will affect picking up and dropping off children at the school bus stop?

William Lapsley showed on the map where the school bus stop is at the intersection of High Peak Road and Pleasant Grove Church Road. He said “Assuming that this project is approved, the school bus would not travel this road. It would travel the new road and the new location where the school bus would drop the children off is up here at the top of the hill (again showing on the map) where the old red house was that Bruce Banks had. That’s where the new road would go across and that would be the stopping point so this is probably 800 feet or 1,000 feet closer to the houses than it is today.

Mr. Lapsley stated that the existing High Peak Road is a recorded right-of-way. It’s a private roadway. It’s not a part of the NC DOT system. When the new road is constructed and DOT assumes maintenance under the secondary road’s maintenance program, the proposal would be for the existing High Peak Road right-of-way to match up with the new right-of-way so there are no gaps. The private road would be shorter than it is today and then they would proceed to apply to close that section of the existing High Peak Road right-of-way. This is the same situation, his client owns both sides of the road. He stated that they believe once the new road is built and all the folks on High Peak see that their access is improved tremendously, that the next step would be to close that section of High Peak Road.

8. Pam Banks – Ms. Banks stated that the aforementioned hog farm belonged to her Dad and Grandfather and the aforementioned Bruce Banks property was her Dad. She said that if her Dad was still living we probably wouldn’t be here this evening. She said her Grandfather was the original owner of the Banks farm property, the hog farm. He lived to be 93 years old and he made sure that she (Pam Banks), her brother and her sister had property and were all able to move back there before he passed away. Many years ago, when she was very young, her Grandfather had (being from the old school) the foresight to understand that sure would be a beautiful golf course in that valley and said that many times. He also had the foresight to tell the grandchildren that someday they would sell bottled water. She said “So here we go again, both of his visions have come true.” Ms. Banks said leaving that property was very hard for them. She said they all lived there. They could either live in the middle of it or sell to the golf course. She had the piece in the middle, on both sides of the road that has been referred to tonight. She stated “With due respect to the community, I think it’s an awesome opportunity for Etowah. I think it is better than alternative developments that could have come and done the same thing without the planning and without the strict and high restrictions that Seven Falls is going to bring to our community. I will tell you that I am much in favor to relocate the road. I can remember that road when it was gravel. I can remember driving down that road when it was paved with tears in my eyes so understanding I’ve seen a lot of things go on there, being raised on that farm. We should go forward and hopefully request that the Seven Falls show the same due respect to the folks that do live there and not encumber them in any way during the construction but let’s move forward with out progress.”
9. Fred Mathis – Mr. Mathis lives just above the Seven Falls area, up on Little Willow Road. His concerns on this proposed project really has to do with the relocation as it does with traffic on the road. “Is Seven Falls gonna access their property off of the new road or are they gonna have an entirely road system within the development?”

William Lapsley explained that regarding this section of the proposed relocation of Pleasant Grove Church Road, there is no access whatsoever to the Seven Falls Development planned off this road. Further up Pleasant Grove Church Road, about  $\frac{3}{4}$  mile to a mile there is a short section of the Development, the former Alema Jenkins property abuts Pleasant Grove Church Road and there will be what we call the west gate on the Master Plan. There will be some access there. But there are no access points along this section of the road.

Mr. Mathis asked "Who's paying for all this, tax payers or Seven Falls?"

William Lapsley stated that Seven Falls LLC is paying 100% of the cost of the road construction as they did with the land acquisition to build the road.

Mr. Mathis asked "Do they have a plan or is there gonna be a plan for the increased traffic due to the Village and the golf club, not only Pleasant Grove Church Road but Pleasant Grove Road?"

William Lapsley answered that prior to the approval of the Master Plan by the County Planning Board last year, the applicant hired a traffic consultant out of Raleigh who came to the site, put out traffic counters, did a study of the development as it exists today, as it exists when the development occurs, and as it exists with no development but increased growth in the area for normal development. That traffic study was done and came out with a number of recommendations, one of which was if this road is in fact approved that it be built to NCDOT standards for a speed limit of 35 miles an hour which generated the width of the road etc. The second point that the developer be responsible for the improvements to existing state maintained roads in the area at three locations: 1. At the intersection of Pleasant Grove Road and Etowah School Road at the bridge that goes across the French Broad River that a turn lane be installed at that location, 2. An improvement of a right hand turn lane at the intersection of Etowah School Road and Etowah Park Road which is adjacent to the Ingles Store in Etowah, a right hand turn lane from Etowah School Road onto Etowah Park Road, and 3. At the intersection of Etowah Park Road and US Hwy. #64, at the Texaco, that an exclusive right hand turn lane be installed at that location and a traffic light be installed at that location. Those points were accepted and agreed to by the developer. Those three improvements have been designed, four including the traffic light. Those plans have been submitted to DOT. They have gone back and forth with some revisions to the plan. Mr. Lapsley anticipates an approval of the design from DOT on those items in the next week or so. Once that approval is obtained they will talk to the land owners at two of the locations because they will require gaining some additional right-of-way. Once the plan is approved and they know how much right-of-way is needed in order to make the improvements, they will talk to the land owners and seek to obtain the right-of-way. Assuming the right-of-way is obtained those improvements will be constructed in accordance with the time schedule that DOT has dictated to them as a part of the project. Those are conditions that have been imposed as part of a street access permit for the first phase of the development.

Mr. Mathis asked "I notice there's a couple of little steep places. What is the maximum grade going to be on the new road?"

William Lapsley stated that on this road he knows it is less than 15%. He believes it is 12 or 14% on the steepest part. Again that's a DOT requirement for the type of road and the traffic count. It's no more than 15% and most of it is 12% or less.

10. Bruce Gosnell – Mr. Gosnell lives on Pleasant Grove Road. He stated he doesn't have a big problem with moving Pleasant Grove Church Road but he does have a problem with later when

they want to move Pleasant Grove Road. He said Pleasant Grove Road would be moved in the flood plain which they have the plans for and it's all gonna tie in together. He doesn't think that he should have to drive out of his way and go through a floodplain and then create flooding on the other side of that river with the next road that's coming through.

"Secondly the 800 feet that's been talked about being discontinued, who's gonna take ownership of that right-of-way that exists right there right now. Is Seven Falls gonna get it or are they gonna buy it from somebody or what?"

William Lapsley answered that it is the same with regard to the public right-of-way as it is with the Pleasant Grove Church Road as he described earlier, the way the state law reads as he understands it, if a section of existing platted public right-of-way is approved to be abandoned by the Board of County Commissioners then when that abandonment occurs the existing land owners on each side of that road, that right-of-way, would get control of the land from the center line of the right-of-way to the edge on their side of the road. In this case of the relocation of Pleasant Grove Church Road and in the case of the section of High Peak Road the land owner on each side of the road is Seven Falls LLC so if the Board so chooses to allow that right-of-way to be closed, once that abandonment and closure take place Seven Falls LLC would then become the land owner of the entire public right-of-way. If there was a different land owner on one side versus the other, then whoever owns that side would get that half of the right-of-way.

Bruce Gosnell "Is this road being relocated, is that gonna be part of the argument for relocating Pleasant Grove Road, because you've already done this?"

William Lapsley stated that "These are two different projects. The Board of Commissioners will make their decision on each project separately. One is not linked to the other whether it's legally or Master Plan or otherwise. They are two different locations and we are not presenting any issues with regard to Pleasant Grove Road to the Commissioners at this time.

Chairman Moyer "And sir I can assure you that if they do, it will have to come for a public hearing just like this and we'll remember what is said and I'm sure we'll hear from you again."

Commissioner McGrady stated that they had started construction on the new road, is the grading and all the land disturbing activities that are occurring, to your knowledge, in compliance with the applicable state and local ordinances and regulations regarding the soil erosion and the water quality issues.

William Lapsley "Yes sir, we have a county issued soil erosion and sedimentation control permit which allows us to build a road."

Commissioner McGrady "And there've been no complaints or violations of the plan that's in place, is that true?"

William Lapsley "Not to my knowledge. I met with Natalie Berry, Division Chief, yesterday and we talked about it and she expressed no concerns whatsoever with what we were doing."

Charlie Messer "If I can get something clarified. If you would state again what the developer said when he started the process for building the road. You know, there's some doubt about the time and so forth on that matter."



William Lapsley “The timing of this entire development or this specific project referenced the Planning Board approval of the concept of the road back last June. It was submitted in April, March or April but the Master Plan wasn’t approved until June 2007. Shortly thereafter I proceeded to design the proposed road, submitted it to NCDOT to meet their criteria, probably sometime in September, in that time frame, about 2-3 months later submitted the full design of the road. The district office and the division office reviewed those plans. That took about 60 days.” It was around early December when our district DOT indicated that they would accept the design. It went to the division and Mr. Lapsley received the written documentation on January 16, 2008, that the road, if built to the standards as shown on the plans and if approved by the County Commissioners, would be accepted into the system. Shortly thereafter Mr. Lapsley submitted a letter to Chairman Moyer (February 8) requesting that this hearing be held to discuss the road relocation. For whatever reason, issues delayed the public hearing until this date. About the end of February, when they received notice of the public hearing, the applicant proceeded to solicit bids from a contractor to do the road. Bids were received at the end of February. Shortly thereafter the Commissioners set this hearing date and the applicant had to make a decision whether to delay starting construction until after the hearing or to start construction. If construction is started and the Commissioners decide not to approve this road, then he will have expended those funds for naught. And if the Board sees fit to approve the application then the completion of the road will be done that much quicker. It was totally at his expense and his risk.

*Commissioner Williams made the motion for the Board to go out of public hearing. All voted in favor and the motion carried.*

Chairman Moyer stated that it was clearly indicated that what is before the Board is just the relocation of Pleasant Grove Church Road. Looking at the curves in the road and the additional widening, he stated that there are so many roads that are so narrow without shoulders that are unsafe. We heard from the Chief of Etowah Fire Department about how it will expedite the response time and public safety issues with respect to fire and emergency responders. There will be people there, people working there and it is important that we be able to get our emergency services into the area to serve the whole community and this will help in that regard. Chairman Moyer stated that he is in support of the resolution on relocating this road.

Commissioner McGrady stated that the Board can only decide the issue before them. It is helpful that it has been identified that the Board may be looking at other road closures but he doesn’t want to use this road closure as influencing the next set. He stated he is pretty sensitive to that. The developer went forward with his eyes open, he knew he was taking a risk and the Board could turn this down. He felt that the applicant had put forward the reasons for the move, safety, etc. He stated we would also support the resolution.

#### **Action**

Following Board discussion, *Commissioner Williams made the motion to approve the closure of Pleasant Grove Church Road contingent upon: (1) the new section of Pleasant Grove Church Road being constructed in accordance with NCDOT standards; (2) NCDOT officially accepting the new section of road; and (3) the order granting approval is not recorded in the County Registrar of Deeds Office until the above conditions have been completed and approving the Public Easement Closing. All voted in favor and the motion carried unanimously.*

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

**PUBLIC HEARING for consideration of a Development Agreement for the Seven Falls Golf and River Club**

Chairman Moyer stated that the Board had just approved the realignment of Pleasant Grove Church Road only, in accordance with Commissioner Williams' motion, unanimously. We're now moving into the issue of the Development Agreement. Anthony Starr talked about that earlier in the meeting. Chairman Moyer asked William Lapsley to give a brief overview of the issue.

William Lapsley stated that the Master Plan for the Seven Falls Golf and River Club was presented to the County Planning Board in March 2007 and approved in June 2007. The Master Plan and the first few phases that have subsequently been approved and recorded were prepared in accordance with the County's Land Use Ordinance in effect at that time. The zoning classification of all of the property within this development at that time was open use. The developer, Seven Fall LLC, recognizes both now and at that time that this is a large project and it will take many years to develop. Obviously the development of the project depends on lot sales and home sales and those things are driven by the local market conditions which are beyond the control of the developer. The NC General Assembly recognized the need for the counties in the State to have the flexibility in the application of land use regulations for projects that will take many years to complete such as the Seven Falls Project. It is unreasonable for a land owner and a developer to enter into the financial obligations to undertake a large project such as Seven Falls if the rules change and commitments to land purchasers cannot be kept over this long period of time. The tool which the General Assembly enacted to give counties this flexibility is called a Development Agreement. This is a tool similar to the current vested rights regulations option that the Board has at its disposal; however, the difference between a vested rights agreement and a development agreement is that the County Commissioners have the option to negotiate with the developer the terms and conditions of such an agreement and in exchange for those agreed upon conditions the application of land use regulations that were in effect at the time the Master Plan was approved are able to stay in place with regard to this particular project involved with the agreement over a longer period of time giving the developer a chance to complete the project within a reasonable period. They presented a proposed development agreement in June 2007. They spent a considerable amount of time with county staff between April and June 2007 negotiating the conditions of that draft development agreement and included in that agreement was a suggested term of twenty years. That is allowed for under the General Assembly's actions. This was presented to the County Commissioners in July 2007 but as the Chairman stated the proposed term was too long and the Board requested that they reconsider the time period. Since July 2007 county staff has continued to have dialogue with Mr. Lapsley and with the council for the applicant and they have subsequently prepared the revised agreement for the Board's consideration. That is the agreement being considered tonight.

Bill Lapsley reviewed the major points in the agreement:

- The developer would be able to proceed in accordance with the approved Master Plan. That involves the number of units, density, the proposed golf course and all the amenities that are shown on the Master Plan. In exchange the developer has agreed to do a number of things. The key one is the proposed development of a substation for the Etowah Volunteer Fire Department. The location of that substation, as shown on the relocated Pleasant Grove Church Road, will be graded and under the terms of the agreement the

substation would be constructed by the applicant and the inside will be finished and it would be ready to receive equipment furnished by the Etowah Volunteer Fire Department. That is a substantial commitment to the county and to the department. It's also good for the future residents of the Seven Falls community.

- The key point with regard to the term of the agreement, they have proposed a two-tiered time schedule. First a five year initial period and should certain goals and things be met including the construction of this proposed fire substation, then the Commissioners would reassess how this development is proceeding and would then allow for the agreement to be renewed for another five year period. So the total term of the agreement is ten years maximum and it is split into two five year periods. The applicant thinks that is reasonable and has no objection to it at all.

Mr. Lapsley said there are other things included in the agreement but he thinks these are the two key points. The applicant intends to construct and develop the project as shown on the Master Plan approved by the Planning Board and has stated that on numerous occasions.

Mr. Lapsley asked permission to allow the legal council for Seven Falls, Mr. Jay Devaney, to make comments regarding the project.

Mr. Jay Devaney, Attorney with Nexsen Pruet Adams Kleemeier, had drafted the Development Agreement. Mr. Devaney stated that the agreement had been reviewed by Sarah Zambon and Anthony Starr and other county staff. He reviewed some of the highlights of "What's in it for the County?" and why the county should consider executing a Development Agreement for this project. They have done a number of Development Agreements since the statute was changed in North Carolina authorizing these agreements between counties, cities, and developers. Prior to the enactment of this statute there was no ability to negotiate. South Carolina has recognized these agreements for twenty years.

#### What's in it for the County?

- **Stability** of a project itself. This allows a developer to attract significant financing that's required because the lender can feel assured that the rules aren't going to change and that the developer will be able to proceed to develop the project in accordance with the original Master Plan.
- There's the ability to ensure **oversight** because the development agreement says that the county planner will have the right to review the development on an annual basis and give comments back to the developers as to whether or not they are fulfilling the terms of the development agreement.
- There will either be a **public water system or a community water system**, not individual wells, as required by the development agreement.
- There will be a **community sanitary sewer system** rather than individual septic tanks.
- There's an agreement in the development agreement that if Hendersonville agrees to connect its water system to this project then the **water lines will be conveyed to the City of Hendersonville for \$1**. Likewise there's an agreement that **if the County ever has a public sanitary sewer authority, then the sanitary sewer lines in this development will be conveyed to that authority for \$1** and that the lines cannot be conveyed to any other sewer authority without the county's consent.
- There's also an agreement to install a **200,000 gallon water tank** that if the City of Hendersonville agrees to connect its water lines to this project will become property of

the City of Hendersonville for free. That will add greatly to the water pressure, not only for this project but also to surrounding properties in Etowah.

- Mr. Lapsley reviewed the reasons for the **development of the Fire Station site** of 1.5 – 2 acres to be given to the County for that site and then the building to be constructed and there's a time limitation for that building to be complete.
- **Pedestrian facilities.** An agreement in this development agreement provides that there will be one linear foot of walking trail for every two feet of roadways to be constructed within the project.
- The **minimum number of units** is so the County can see that the development proceeds, it doesn't stop and look like it's been abandoned. Platted units and development lots, 150 in the first year and 250 by year three, 350 by year five, 450 by year eight, and 550 by year ten. This is all subject to the renewal at year five.
- **Elevation Agreement.** There is an agreement that the ridge ordinances would be protected, that any unit over 2400 feet in elevation would not be more than 35 feet in height. That protects your view.
- There is an agreement to **comply with any new stormwater requirements** that the county or the state might enact. There's an agreement to **comply with any new environmental or watershed or erosion control ordinances** that the county might apply to any properties within the county so that those environmental sensitive issues, if technology changes or if the County's ordinance changes, then Seven Falls has agreed to comply with those going forward.
- There's also an agreement to comply with any new **adequate public facilities ordinance**, if the county should enact a future adequate public facilities ordinance so that this property will not be exempt from that.
- There is an agreement to have **20% open space** throughout the project. Considering the size of this project, not less than 280 acres will be dedicated to open space which will be always protected.

Mr. Devaney said that all these agreements will be specifically enforceable by the county. There is a contract that is specifically enforceable by injunctive relief or any other remedies and they have provided that the agreement will be recorded and will have covenants running with the land to be enforceable as land covenants.

Mr. Devaney said the State allows vested rights each time a plat is approved for two years with no concessions being made by the developer. Likewise, Henderson County has an ordinance that allows you to consider additional vested rights without any concessions or agreements being made by a developer. They feel this is much in the county's favor. The developer is willing to do so simply because it gives stability to this project that's required for the long term.

Mr. Devaney stated that one of the landowners feels that they need a little more time in order for this to be considered. At their request, he asked that the Board's vote on this be delayed until the April 16 meeting.

A question was raised as to what percentage of the open space is simply the golf course.

William Lapsley didn't have the breakdown of open space with him but guessed that the 280 acres of open space mentioned includes common open space in the parks, golf course (both the

championship golf course and the practice area which is adjacent to Pleasant Grove Road) and the area where the three large lakes are on the left hand side of the drawing. The lake areas are not part of the golf course but there are probably 70-80 acres in that area that is in the floodplain that will be part of a park. Numerous parks are scattered throughout the development. He thinks the golf course is about 160 – 180 acres, the balance would be the parks and the area along the French Broad River. The open space is clearly open to the residents of the subdivision but the parks and the open space generally are not available to nonresidents except the golf course.

Commissioner McGrady also asked what specially is being sought here, why do you need to operate under the old regulations that were in place, the old zoning. Mr. Lapsley stated that on the Master Plan that the Planning Board approved a year, they showed a number of fourplex units, four units to one common building. That would not be a permitted use under the new land use development code. That was probably the primary issue. There was some discussion about what is called “the village area” which is the high density development that was approved on the Master Plan about whether that would be a permitted use under the new land development code. Some would say that the Master Plan was approved so therefore those were approved. He thinks it should be clear. The land use plan for this entire development, from a density standpoint, meets the current and newly adopted land development code. From the big perspective, they think it is fine, it is fine by density but there are some minor points that some could contest doesn’t meet the current land development code. One other point Mr. Lapsley made was that under the current vested rights regulations, the applicant really doesn’t have to put anything on the table. What the applicant has agreed to do in addition to all the things that council has outlined here, is the fire substation. We think it’s a good thing and the applicant has agreed to do that at his expense totally, to grade the site, build the building and get it ready at no expense to the county. Under the current vested rights regulations he would not be required to do that. That is an offer he has put on the table as part of the negotiation.

Commissioner McGrady agreed that it is a good thing, noting that the residents of Seven Falls will be the primary beneficiaries of the new fire substation that is being put in there.

Chairman Moyer asked for some clarification in the agreement that would make it clear that parking lots and roads are not considered open space.

William Lapsley stated that the calculation in the agreement, that he did, included the golf course, the flood plain area that is park and open space, all of the park lands that are proposed in the development and are shown on the Master Plan. It does not include roads, rights-of-way, road shoulders, or parking lots.

Chief Roger Freeman, Fire Chief for Etowah Horse Shoe Fire Department, was asked to come forward. He had reviewed the agreement. Chief Freeman stated that Etowah Horse Shoe is a class IV rated department by the state. The lower the rating the better rate a homeowner in the fire district receives on their homeowner’s policy. The harder they work and strive for a lower rating is a benefit to every one of the taxpayers inside their fire district. With the addition of this new substation, it will improve their response time. This station needs to be in place to help them maintain the current rating they have now. He stated that the big question now is the timeframe of getting the station open. It was communicated to him via the developer that once this

agreement is passed they are willing to start construction as early as June 1 of this year. Chief Freeman stated this is almost a \$370,000 investment by Seven Falls just for the Etowah Horse Shoe area.

Chairman Moyer stated that the paragraph on public facilities would require that the station be built and the land and station turned over in ready to move in condition within 12 months after the adoption of the agreement by both parties. Mr. Lapsley stated that they are fine with this paragraph.

### **Technology Problems**

Chairman Moyer made an announcement that we were having problems with our videotaping equipment. Our video tape has just broken.

Chairman Moyer called a five minute recess so the tape could be changed.

When we returned following the recess, Chairman Moyer explained that this would not be on videotape but the machine has broken and we can't fix it ourselves so *Chairman Moyer made the motion to continue this public hearing until April 16, a regularly scheduled meeting, at 11:00 a.m. The April 16 meeting will be at the Historic Courthouse. All voted in favor and the motion carried.*

Chairman Moyer explained that any of the participants who cannot make it to the April 16 meeting, if they would send in written comments, he would have someone read it into the record and submit it as part of the meeting record.

Attest:

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Elizabeth W. Corn, Clerk to the Board

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William L. Moyer, Chairman