

REQUEST FOR BOARD ACTION

HENDERSON COUNTY PLANNING BOARD

MEETING DATE: Thursday, September 20, 2007

ATTACHMENTS:

1. Staff Report
2. Vicinity Map
3. Subdivision Application
4. Combined Master and Development Plan
5. Water and Sewer Line Plans
6. Fox Glen Vested Rights Ordinance

SUBJECT: Revised Combined Master and Development Plan for Fox Glen

SUMMARY OF REQUEST:

Mr. Gary Corn, agent, submitted a revised Master Plan and a revised portion of the Phase I Development Plan for the Fox Glen subdivision. This portion of Fox Glen is located on approximately 6.21 acres of land currently zoned R-15. The applicant has proposed 10 lots within this portion of Phase I. This area was originally approved to be apartment buildings and is now proposed to be condominiums. The applicant is proposing lots around each condominium building for financing purposes. Private roads, public water (City of Hendersonville) and public sewer are proposed. Please see the attached revised Master Plan and Development Plan for more information.

PLANNING BOARD ACTION REQUESTED:

Staff has found that the proposed Combined Master and Development Plan appears to meet the technical standards of the Henderson County Subdivision Ordinance except for the comments listed in the Staff Report (See Attachment 1). Staff recommends approval of the Combined Master and Development Plan subject to the developer addressing any issues raised by the Planning Board and addressing the comments listed in the Staff Report.

Suggested Motion:

I move that the Planning Board find and conclude that the Revised Master and Development Plan appears to comply with the provisions of the Subdivision Ordinance;

And

I further move that the Revised Master and Development Plan be approved subject to the following conditions: the applicant satisfies any conditions that may result from the comments listed in the Staff Report (Attachment 1) and any other comments that result from discussion at the Planning Board meeting.

Henderson County Planning Department Staff Report**Revised Combined Master and Development Plan Review for Fox Glen Major Subdivision
(File #2007-M30)**

**Glade Residential, LLC, Applicant
Gary Corn, Gary L. Corn, Inc., Agent**

Project Overview:

Mr. Gary Corn, agent, submitted a revised Master Plan and a revised portion of the Phase I Development Plan for the Fox Glen subdivision. This portion of Fox Glen is located on approximately 6.21 acres of land currently zoned R-15. The applicant has proposed 10 lots within this portion of Phase I. This area was originally approved to be apartment buildings and is now proposed to be condominiums. The applicant is proposing lots around each condominium building for financing purposes. Private roads, public water (City of Hendersonville) and public sewer are proposed. It appears that most of the water, sewer, and road infrastructure is in place (see attached water and sewer line plans). See the attached revised Master Plan and Development Plan for more information.

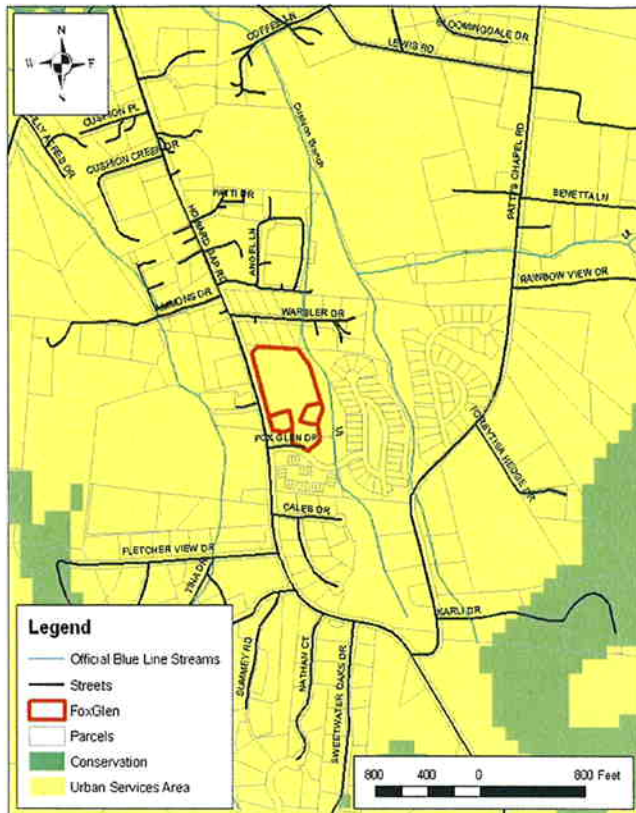
Fox Glen is currently operating under a Vested Rights Ordinance granted by the Board of Commissioners in 2004. In the Vested Rights Ordinance, Phase I allowed for 100 apartments on one parcel of land. At the September 4th Board of Commissioners meeting, the Board amended the Fox Glen Vested Rights Ordinance to permit 80 condominium units in place of the 100 apartments. Prior to the Board of Commissioners approval, Glade Holdings subdivided two lots off the Phase 1 area. Upon consultation with Planning Staff and the County Attorney, the developer recombined these lots into the current Phase 1 area. Additionally, another change to the Vested Rights Ordinance was to allow the property to be managed by a condominium Association instead of the proposed apartments being held by the developer.

Master Plan & Development Plan Comments:

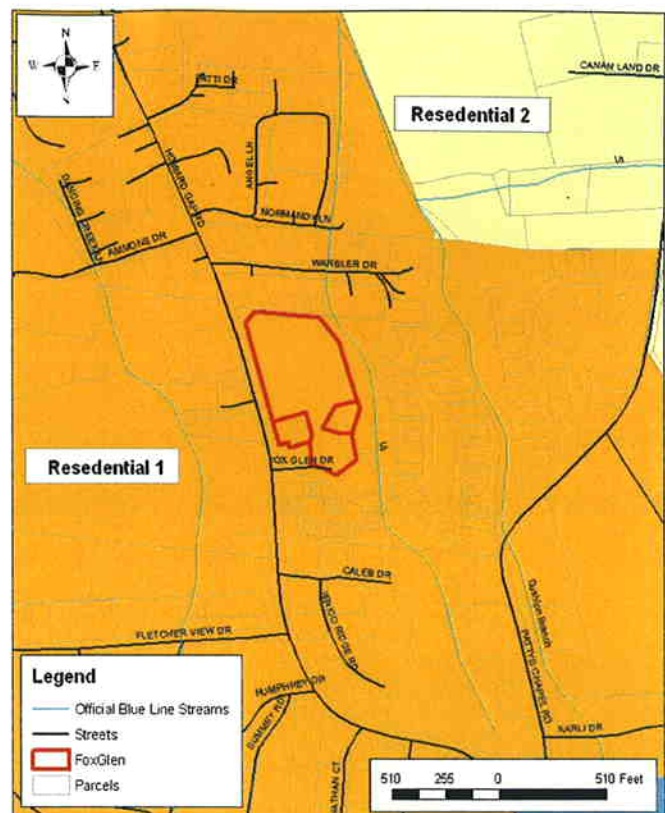
Staff has reviewed the submitted Revised Master Plan and Development for Fox Glen, taking into consideration county ordinances, recommendations of Henderson County's Land Use Plan (the Henderson County 2020 Comprehensive Plan) and Draft Land Development Code and offers the following comments:

1. County Comprehensive Plan (CCP). The Future Land Use Map of the CCP shows the project site as being located within the Urban Services Area (USA) (See Map A: CCP Future Land Use Map). The Urban Services Area is that area within which most urban services and urban scale development is currently concentrated. Wide ranges of residential densities will exist. Over the long term, land use regulations and policies should favor higher density development, consistent with natural constraints and the availability of urban services. The proposed density appears to be consistent with the recommendations of the CCP.

Map A: CCP Future Land Use Map



Map B: Draft Land Development Code Map



2. **Land Development Code (LDC).** According to Proposed Draft 10 of the Land Development Code Zoning Map the proposed project site for this development is located entirely in the Residential Zoning District 1 – (R1) (See Map B: Draft Land Development Code Map). The current draft of the Land Development Code (LDC) allows for a density of four (4) units per acre (average lot size of 0.25 acres) for single-family residential development and sixteen (16) units per acre for multi family residential. According to the plan, the project would have a density of 1.61 units per acre (average lot size of 0.62 acres). This would be in keeping with the densities generally proposed for the property by the Land Development Code.

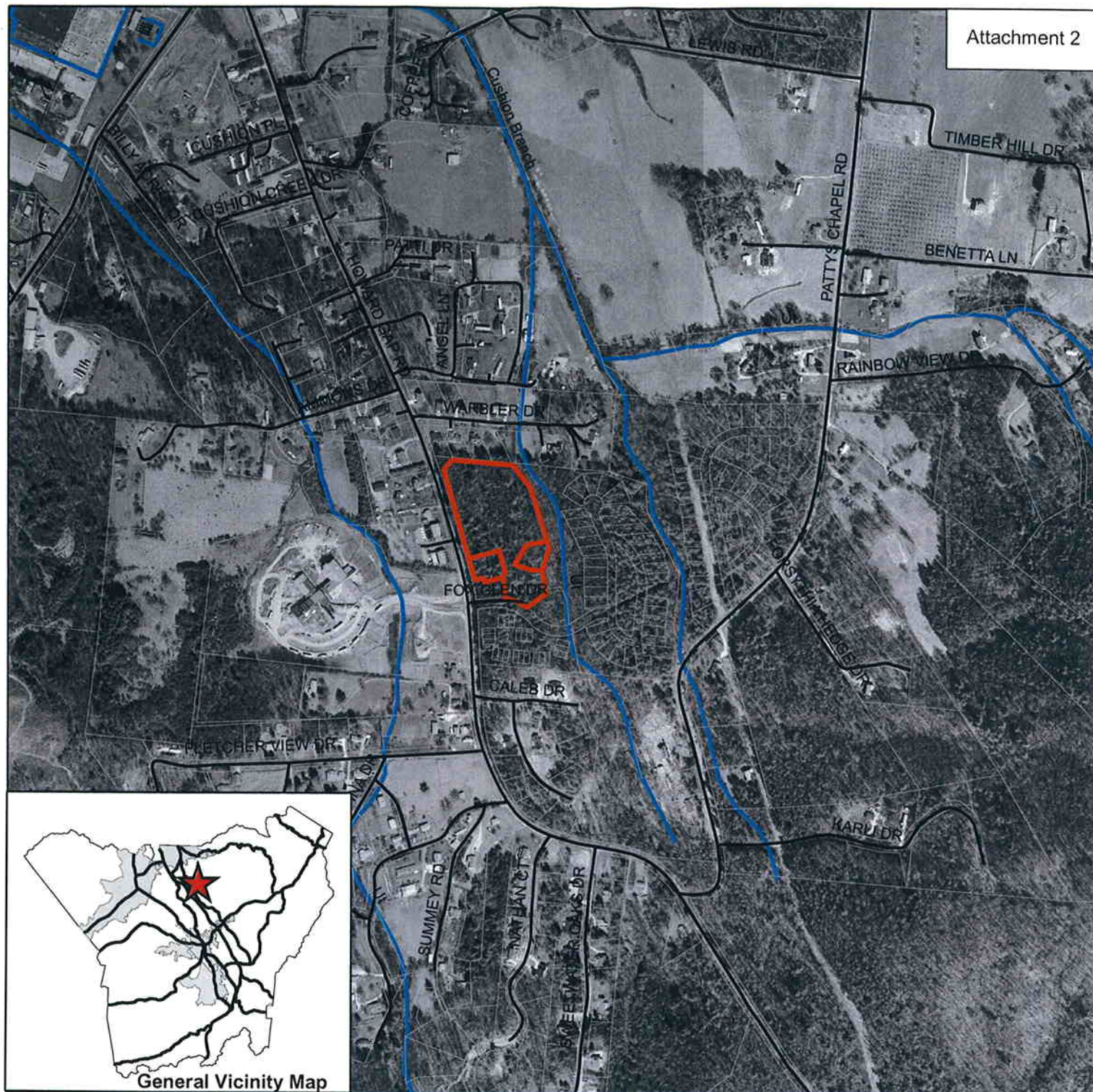
Development Plan Comments:

1. **Final Plat Requirements.** The final plat(s) must meet the requirements of Appendix 7 of the HCSO.
2. **Vested Rights Ordinance.** The applicant must continue to abide by the terms and conditions of the Vested Rights Ordinance. As a condition of the Vested Rights the applicant must provide the Zoning Administrator an annual report stating the development activity that has occurred in the project on each anniversary date of such Vested Rights approval for a period of 5 years or completion of the project, whichever occurs first. Upon completion of the project the Applicant shall file a final report with the Zoning Administrator. Said report shall include a summary of recorded open space which shall equal the required amount. The annual report must be provided by December 6, 2007 to the Zoning Administrator.

3. **Private Road Standards.** The applicant has proposed private roads which appear to meet the minimum standards for private roads. All roads must be built and constructed pursuant to the standards of Section 170-21 of the HCSO.
4. **Recombination of Lots.** As mentioned in the Staff Report, the applicant is subdividing lots for financing purposes. Staff feels that the applicant should recombine all lots into one lot when the project is complete and built out. The Planning Board may require this as a condition if the applicant agrees to these terms and if the Planning Board feels that it is necessary. The Planning Board may want to discuss with the applicant the intentions for this project.

Review Agency Comments:

Staff may have additional comments at the meeting.



Fox Glen

OWNER/Developer: Chestnut Land Fund

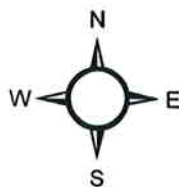
ZONING: R-15

WATERSHED: None

WATER SYSTEM: Municipal

SEWER SYSTEM: Municipal

ROAD SYSTEM: Private



Legend

— Streets

Fox Glen

Parcels

— Official Blue Line Streams

HENDERSON COUNTY SUBDIVISION APPLICATION FORM

8-17-07
Date of Application

Subdivision Name

Application Number

* Major Subdivision

* Minor Subdivision

* Other

Property Owners Name:

GLADE RESIDENTIAL (CHESTNUT LAND FUND)

Address:

475 SOUTH CHURCH STREET

City, State, Zip:

HENDERSONVILLE, N.C. 28792

Owner's Agent:

GARY L. CORN

Telephone No:

696-9840

PIN

9652-82-9723

Deed Book/Page

1174/225

Zoning District

R-15

Fire District

FLETCHER

Watershed

NO WATERSHED FOUND.

Location of property to be divided:

20 FOX DEN COURT

Type of Subdivision: (☒ Residential) () Commercial () Industrial Present Use

No. Lots Created 10 Original Tract Size 6.21 New Tract Size No. New Lots 10

Road System:

() Public

(☒ Private)

() Combination Public and Private

Water System:

() Individual

() Community

(☒ Municipal)

Sewer System:

() Individual

() Community

(☒ Municipal)

Cemetery on Property:

() Yes

(☒ No)

Fee: \$ 850.00

Paid YES

Method

CHECK

I certify that the information shown above is true and accurate and is in conformance with the Henderson County Subdivision Ordinance.

Gary L. Corn
APPLICANT (OWNER OR AGENT)

8-17-07

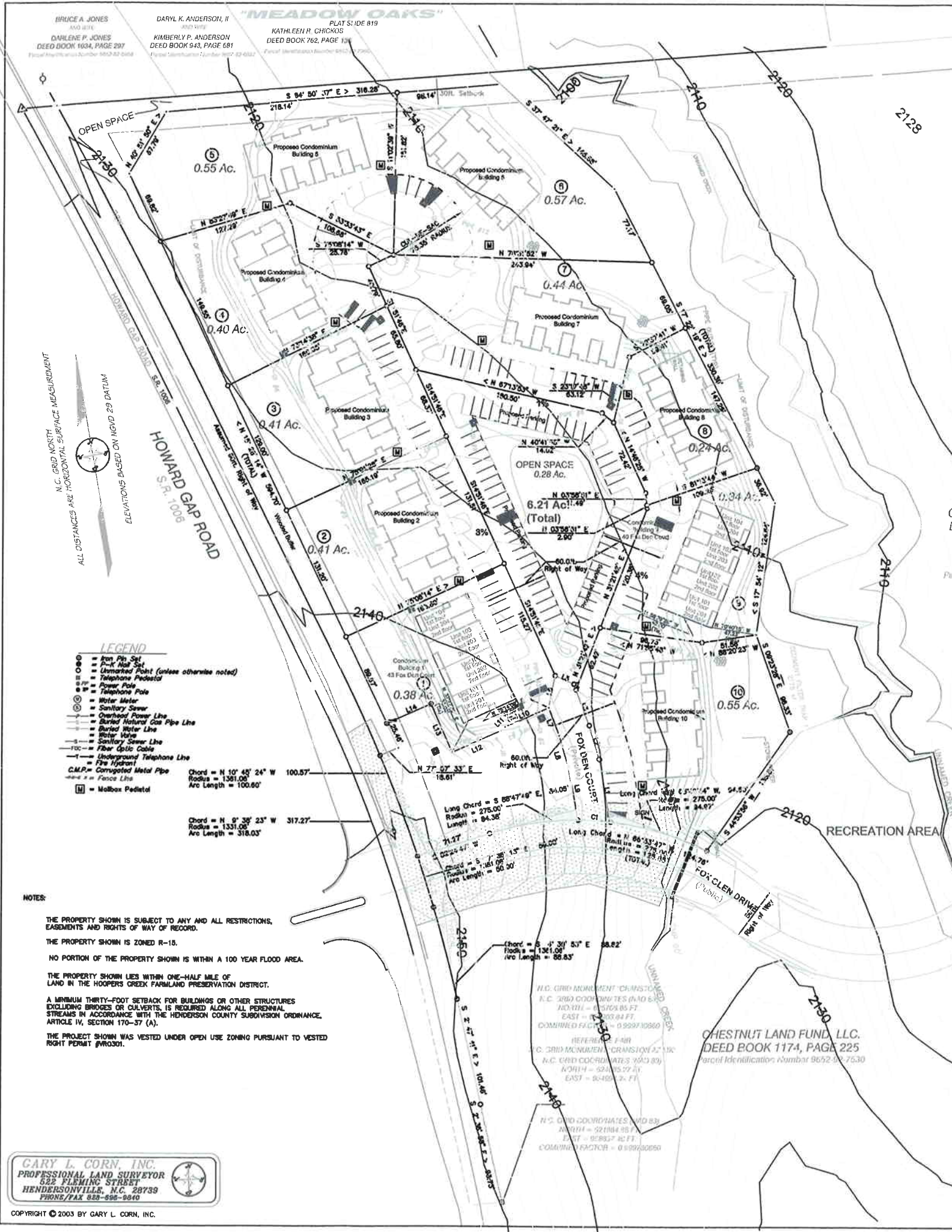
DATE

Development Plan Approval / Conditions

Final Plat Approval:

Plat Recorded

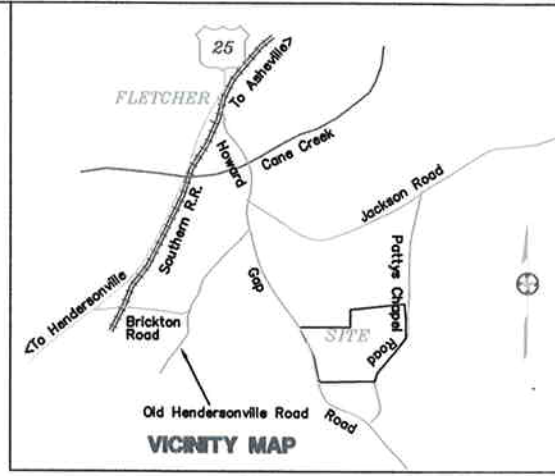




PROJECT SUMMARY - CONDOMINIUMS

Total Project Area:	6.21 Ac.
Existing Zoning:	CU
Proposed Use:	Residential
Units Proposed:	10 Units
Maximum:	37 Ac.
Minimum:	31 Ac.
Water:	Public (on site)
Sewer:	Public (on site)
Trash Collection:	Private
Fire District:	Fletcher
Pin No:	9652-92-7530
Parking:	115 spaces
Handicapped Parking:	10 spaces
Length of Private Street:	1,071 Ft.
Setbacks:	30'

1) No portion of the property is within a 100 year flood area.
2) Maintenance of common properties will be by the Property Owners Association.
3) Road & drive construction shall meet NC DOT Design Standards. As Applicable.



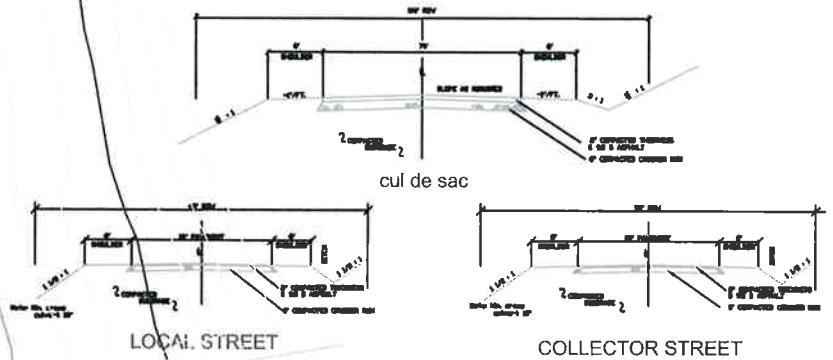
CHESTNUT LAND FUND, LLC.
DEED BOOK 1174, PAGE 225
FOX GLEN
PLAT S.L.S.S. 6204 A & 6204 B
Parcel Identification Number 9652-92-7530

CURVE TABLE

Curve	Radius	Chord Bearing	Distance	Arc Length
C1	278.00'	S 78°47'22" E	30.87'	30.87'

LINE TABLE

LINE	BEARING	DISTANCE
L1	N 00°28'40" W	29.43'
L2	N 08°26'12" W	33.17'
L3	N 10°43'00" W	39.85'
L4	N 10°43'00" W	8.60'
L5	N 58°28'06" W	19.30'
L6	S 21°10'38" E	20.77'
L7	S 10°43'00" E	27.86'
L8	S 08°26'12" E	30.48'
L9	S 00°28'40" E	30.48'
L10	S 78°10'00" W	44.87'
L11	S 56°27'40" W	4.83'
L12	S 78°10'00" W	50.78'
L13	N 13°48'02" W	48.47'
L14	S 78°10'00" W	45.34'



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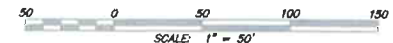
COMBINED MASTER & DEVELOPMENT PLAN
FOR THE
CONDOMINIUMS
AT

FOX GLEN

OWNER/DEVELOPER
GLADE RESIDENTIAL, LLC
475 SOUTH CHURCH STREET
SUITE 100, BEACON COMMONS
HENDERSONVILLE, N.C. 28792

Parcel Identification Number 9652-92-7530
DEED BOOK 1174, PAGE 225

HOOPERS CREEK TWP. HENDERSON COUNTY, N.C.



AUGUST 16, 2007

GARY L. CORN, INC.
PROFESSIONAL LAND SURVEYOR
622 FLEMING STREET
HENDERSONVILLE, N.C. 28739
PHONE/FAX 888-595-9810

**ORDINANCE TO GRANT A DEVELOPMENT VESTED RIGHT
GLADE LAND FUND, LLC, GRANTEE
TO DEVELOP A PLANNED RESIDENTIAL COMMUNITY KNOWN AS FOX GLEN**

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HENDERSON COUNTY, NORTH CAROLINA:

SECTION 1. FINDINGS OF THE BOARD: The Board of Commissioners makes the following findings:

- A. The Board of Commissioners ("Board") held a duly advertised quasi-judicial public hearing to consider the request of Gaston Campano, on behalf of Glade Land Fund, LLC ("Grantee") for a development vested right to develop a planned residential community known as Fox Glen, based upon a site specific development plan, pursuant to the Henderson County Vested Rights Ordinance found in Chapter 189 of the Henderson County Code ("Vested Rights Ordinance"), and N.C.G.S. § 153A-344.1. The public hearing was convened at 5:00 p.m. on January 14, 2004 ("January 14 Hearing"), and was subsequently reconvened at 6:00 p.m. on October 5, 2004 ("October 5 Hearing"), which October 5, 2004 hearing was continued to and reconvened at 6:00 p.m. on October 20, 2004 ("October 20 Hearing"). The January 14 Hearing, October 5 Hearing and October 20 Hearing (collectively the "Proceeding") were all held in the Meeting Room of the Board, located in the County Administration Building, 100 North King Street, Hendersonville, North Carolina.
- B. Parties to the Proceeding included (without objection):
 - a. Gaston Campano, appearing on behalf of Glade Land Fund, LLC, Grantee, having an address of 101-C Chadwick Square Court, Hendersonville, NC 28739. Mr. Campano attended the entire Proceeding.
 - b. Karen C. Smith, Planning Director for Henderson County, having an address of 101 East Allen Street, Hendersonville, NC 28792. Ms. Smith attended the entire proceeding.
 - c. J. Kenneth Long, 72 Normandy Lane, Fletcher, NC 28732. Mr. Long lives just down stream from this project. Mr. Long attend the January 14 Hearing.
 - d. Carl (Skip) S. Brewer, Jr., 23 Jericho Ridge Road, Fletcher, NC 28732. Mr. Brewer lives in a subdivision that abuts the Subject Property, as defined hereinbelow. Mr. Brewer attended the January 14 Hearing.
 - e. Valerie (Vickie) Edmonds, 87 Caleb Drive, Fletcher, NC 28732. Ms. Edmonds owns property adjacent to the Subject Property, as defined hereinbelow. Ms. Edmonds attended the January 14 Hearing and the October 20 Hearing.

- f. Donna Reilly, 38 Pattys Chapel Road, Fletcher, NC 28732. Ms. Reilly owns property on which apartment buildings are located, which property is directly across Howard Gap Road from the Subject Property, as defined hereinbelow. Ms. Reilly also owns two lots on Patty's Chapel Road. Ms. Reilly attended the entire Proceeding.
 - g. Bruce Thompson, 1216 Pebble Court, Fletcher, NC 28732. Mr. Thompson owns property on Caleb Drive in Beth Eden Subdivision, which subdivision is adjacent to the Subject Property, as defined hereinbelow. Mr. Thompson attended the entire Proceeding.
 - h. Jane Berry and Berry Boys, Inc., 65 Pattys Chapel Road, Fletcher, NC 28732. Ms. Berry and Berry Boys, Inc., own property adjacent to the Subject Property, as defined hereinbelow. Ms. Berry attended the January 14 Hearing and the October 20 Hearing.
 - i. Kathleen (Kathy) Cheekos, 6 Warbler Drive, Hendersonville, NC 28732. Ms. Cheekos owns property that is adjacent to the Subject Property, as defined hereinbelow. Ms. Cheekos attended the January 14 Hearing and the October 5 Hearing.
 - j. Ronald (Ron) Raiola, 96 Caleb Drive, Fletcher, NC 28732. Mr. Raiola owns property on Caleb Drive in Beth Eden Subdivision, which subdivision is adjacent to the Subject Property, as defined hereinbelow. Mr. Raiola attended the January 14 Hearing.
 - k. Jeffrey (Jeff) Kluttz, 44 Jericho Ridge Road, Fletcher, NC 28732. Mr. Kluttz owns property on Caleb Drive in Beth Eden Subdivision, which subdivision is adjacent to the Subject Property, as defined hereinbelow. Mr. Kluttz attended the January 14 Hearing.
 - l. Steven Moore, 111 Jericho Ridge Road, Fletcher, NC 28732. Mr. Moore owns Lot 14 in Beth Eden Subdivision, which is adjacent to the Subject Property, as defined hereinbelow. Mr. Moore attended the January 14 Hearing.
- C. All Parties to the Proceeding were properly before the Board, and were properly sworn or affirmed.
 - D. All notices required by the terms of the Vested Rights Ordinance and the Henderson County Board of Commissioners Rules of Procedure for Quasi-judicial Proceedings for the entire Proceeding were given and advertised.
 - E. Grantee is the owner of that tract of land, consisting of +/- 47 acres, located between and abutting both Howard Gap Road and Pattys Chapel Road, having a Tax Parcel Identification Number of 00-9652-92-7461-55, and having an address of 145 Pattys Chapel Rod, Fletcher, NC 28732 (hereinafter and hereinabove "Subject Property").

- F. On December 8, 2003, Grantee, by and through its agent Luther Smith, submitted an application to the Henderson County Planning Department, application #VR-03-01, said application being signed by Gaston Campano, on behalf of Grantee, for a development vested right to develop a planned residential community to be known as Fox Glen ("Original Application"). As part of the Original Application, Grantee submitted a project summary entitled, "FOX GLEN Project Summary", ("Original Project Summary"). Also included with the Original Application was a site plan for the proposed Fox Glen development, said site plan being dated 12/08/03, ("Original Site Plan").
- G. Grantee amended the Original Application without objection by any other parties on three occasions. At the January 14 Hearing, a revised project summary entitled, "FOX GLEN Project Summary (Revised 01/12/04) ("1/12/04 Project Summary"), and a revised site plan for the proposed Fox Glen development, dated 12/8/03, revised 01-12-04 ("1/12/04 Site Plan") were submitted by the Grantee. At the October 5 Hearing, a revised project summary entitled, "FOX GLEN Project Summary (Revised 10/05/04) ("10/5/04 Project Summary"), and a revised site plan for the proposed Fox Glen development, dated 10-05-04 ("10/5/04 Site Plan") were submitted by the Grantee. On 10/20/04, a revised site plan, dated 10/5/04 showing a revision of 10/7/04 ("10/7/04 Site Plan") was submitted by the Grantee. A copy of the 10/5/04 Project Summary is attached hereto as Exhibit A, said Exhibit A being incorporated by reference as if fully set forth herein. A copy of the 10/7/04 Site Plan is attached hereto as Exhibit B, said Exhibit B being incorporated by reference as if fully set forth herein. The Board of Commissioners hereby finds that the application being approved as part of this Order includes the 10/5/04 Project Summary and the 10/7/04 Site Plan. Unless specifically indicated otherwise, all references hereinbelow to the Application will be deemed to refer to the Original Application cover sheet, the 10/5/04 Project Summary and the 10/7/04 Site Plan.
- H. The planned residential community proposed by the Application is Fox Glen. Fox Glen will be developed on the Subject Property and will consist of 198 housing units, consisting of 100 apartments, 24 Town-homes, 34 single family Villa lots, and 40 single family Cottage lots, resulting in a gross density for the project of 4.2 units per acre. Additionally, Fox Glen will include a community recreation center and pool, open space and play grounds areas, and sidewalk connections from all neighborhoods to Howard Gap Road and Fletcher Elementary School. A small community store (without gas pumps) and management office with laundry and community room will be located adjacent to the Howard Gap Road entrance. The proposed locations of the apartments, town homes, Villa homes, Cottage homes, community recreation center and pool, and community store and management office are shown on the 10/7/04 Site Plan.

- I. The 10/7/04 Site Plan delineates three phases of Fox Glen: Phase I to consist of the apartments, the villa lots, the community recreation areas, and the community commercial area; Phase II to consist of the Cottage lots, and Phase III to consist of the Town-home lots.
- J. The Subject Property is currently zoned Open Use pursuant to the Henderson County Zoning Ordinance, Chapter 200 of the Henderson County Code. Pursuant to the requirements of the Open Use District, the Grantee could develop Fox Glen Development as proposed without the requirement of a Zoning Permit. The Open Use District does not contain any specific standards which would be applicable for the development of the Subject Property as shown on the 10/7/04 Site Plan or as described in the 10/5/04 Project Summary.
- K. The Subject Property adjoins a County R-20 Zoning District to the northeast. It is close to a rural conservation or RC County zoning district to the northeast and east. The Subject Property is currently a part of the land use study being conducted by the Henderson County Planning Board for the US 25 North study area, which study could ultimately result in zoning changes for the Subject Property.
- L. The Subject Property is bordered by Beth Eden Subdivision on the southern border.
- M. Grantee's proposed hours of operation for the commercial uses to be located in Fox Glen are 6:00 a.m. until 11:00 p.m. Grantee has also proposed that no owner or operator of the commercial uses shall offer alcohol or tobacco products for sale.
- N. Grantee has proposed a 30 foot setback around the entire perimeter of the property. The 30 foot setback is shown on the 10/7/04 Site Plan. Grantee has agreed to construct a wood fence around those portions of the perimeter in which it is possible to do so without cutting down existing trees in order to provide a visual barrier between the Subject Property and adjacent occupied properties including, but not limited to, the residents of Beth Eden Subdivision.
- O. Access into Fox Glen will be provided from both Howard Gap Road and Pattys Chapel Roads. Patty's Chapel Road will provide access to the lower density Cottage neighborhood while Howard Gap Road will provide access to the apartments, the Town-homes and the Villa lots. No lots will have direct access onto Howard Gap Road or Pattys Chapel Road. Proposed design and

construction parameters proposed for the entrances from both Howard Gap Road and Pattys Chapel Road are shown on the 10/7/04 Site Plan.

- P. Grantee has proposed that each housing unit within the Cottages, Villas and Town-home areas will have a minimum of 2 parking spaces per unit including garages. Guest parking within the Town-home areas will be adjacent to the access driveway. No on street parking will be provided in the Cottage or Villa home areas except at park areas. Parking within the apartment area will be adjacent to the access drive. Grantee has proposed a minimum of one and one half spaces for each apartment unit. Parking for commercial and recreational facilities will be based, at a minimum, on one space per 200 square feet for commercial uses and one space per 400 square feet for recreational uses.
- Q. There are two streams which flow north to South through the Subject Property. Grantee has proposed a 30 foot protected buffer zone on each side of both streams.
- R. Fletcher Elementary School is located across Howard Gap Road from the Subject Property.
- S. Local and collector streets within Fox Glen will be designed and constructed to North Carolina Department of Transportation standards for secondary roads, including construction, drainage and alignment standards so that they may be dedicated to NCDOT. Specific construction and design parameters proposed for the internal street system proposed for the Fox Glen development are shown on the 10/7/04 Site Plan, and are more particularly described in the 10/5/04 Project Summary. There is no internal road connection proposed that would allow through traffic between Howard Gap Road and Pattys Chapel Road.
- T. Common areas within Fox Glen are proposed to be owned, maintained and managed by a master property owners association or subordinate associations. Areas associated with the apartments proposed will be maintained and managed by a private owner.
- U. Grantee has proposed approximately 40% of the area of the Subject Property to be common open space, available to all members of the Property Owners Association for use. Additionally, Grantee has proposed a sidewalk system connecting all neighborhoods within Fox Glen to the Howard Gap Road entrance, and to the community recreation facility and community store and management office.

- V. The heights of the structures proposed by Grantee are as follows. The height of the recreational structures, Cottages, Villa homes and town homes will not exceed 35 feet as measured from the average ground elevation to midway between the roof eave and peak. The height of the apartment buildings will not exceed 50 feet as measured in the same manner.
- W. NCDOT is in the process of planning improvements for Howard Gap Road. Therefore, improvements to Howard Gap Road as shown on the Original Site Plan including a deceleration lane and a left turn lane in at the Howard Gap Road entrance to the Subject Property have been placed on hold by the Grantee and are not shown on the 10/7/04 Site Plan.
- X. The drain field and repair area for the septic system serving the apartments owned by Donna Reilly are located adjacent to Howard Gap Road.
- Y. A major gas line owned by Public Service Gas Company crosses the property.
- Z. Grantee is proposing to construct Fox Glen in five stages: the first stage consisting of the collector access road, the main line infrastructure, and the commercial and recreational facilities. Development of the housing neighborhoods is proposed to be developed in subsequent stages. The Grantee anticipates, and has submitted a market study as evidence to indicate, that completion of the Fox Glen development will require five years.
- AA. Grantee had, as of the 10/5/04 Hearing, obtained the following permits and approvals:
 - a. Driveway access from NCDOT to access to the Subject Property from both Howard Gap Road and Pattys Chapel Road.
 - b. Creek crossings and wetlands delineations from the US Army Corp of Engineers.
 - c. Sedimentation and Erosion Control plan approvals from the North Carolina Department of Environment and Natural Resources for Phases I and II of the development of Fox Glen.
 - d. Conditional Master Plan approval and conditional development plan approval pursuant to the Henderson County Subdivision Ordinance for Phases I and II of the development of Fox Glen.
 - e. Water system plan approval for the primary supply line from Howard Gap Road and the distribution lines for the Villa Homes from the City of Hendersonville.
 - f. Approval of the development plans adjacent to the Public Service Gas Co. right-of-way across the Subject Property.

- BB. The Application meets the requirements and the definition of a Site Specific Development Plan as contained in Chapter 189 of the Henderson County Code and N.C.G.S. § 153A-344.1.

SECTION 2. GRANT AND TERM:

Subject to the terms and conditions of the Vested Rights Ordinance, Chapter 189 of the Henderson County Code, and the other terms and conditions of this Ordinance, Grantee is hereby granted a development vested right, as that term is defined in Section 189-2 of the Henderson County Code, as amended, for the Subject Property, hereinafter "Development Vested Right". The 10/7/04 Site Plan and the accompanying 10/5/04 Project Summary are hereby approved as the Site Specific Development Plan for the Subject Property. Based on the extenuating circumstances and the marketing study presented by the Grantee, the Development Vested Right shall be for a term of five (5) years from and after the effective date hereof.

SECTION 3. TERMS AND CONDITIONS GOVERNING THE DEVELOPMENT VESTED RIGHT GRANTED BY THIS ORDINANCE

Grantee shall be allowed to develop the Subject Property as shown in the 10/7/04 Site Plan and 10/5/04 Project Summary, provided the following terms and conditions are complied with:

- A. Term. This Ordinance shall continue in force and effect for a period of five (5) years.
- B. Exemption from Zoning Applicability of Other Laws. This Ordinance shall exempt the Subject Property, to the extent it is developed in accordance with the 10/7/04 Site Plan and 10/4/04 Project Summary and the terms and conditions of this Ordinance, from future changes in the zoning of the Subject Property except as otherwise provided in the Vested Rights Ordinance, or as provided hereinbelow. Development of the Subject Property shall, in all respects, be required to comply with all other applicable laws, ordinances, policies and/or regulations. This Ordinance shall not be deemed to exempt the Subject Property from any such other applicable laws, ordinances, policies and/or regulations.
- C. Public Health, Safety and Welfare. In order to protect the public health, safety, and welfare, Grantee shall be required to comply with the following terms and conditions:
 - 1. Site Development. Development of the Subject Property shall conform in all respects with the Site Specific Development Plan as approved in Section 2

above, except as allowed by the terms of this Ordinance. Where the terms of this Ordinance, in particular this Section 3, conflict with the Site Specific Development Plan, the terms of this Section 3 shall control.

2. Location of all structures within Fox Glen shall conform to the standards set forth in table attached as Exhibit C, said Exhibit C being incorporated by reference as if fully set forth herein.
3. The location, arrangement and size of structures shall be as generally indicated on the 10/7/04 Site Plan, but may be shifted on the lot provided there is no encroachment within the setbacks and is in conformance with the standards established in the attached Exhibit C, or on detailed Development Plans as approved under the Henderson County Subdivision Ordinance (HCSO).
4. Project density shall not exceed a total of 198 residential units in the categories (apartments, Town-homes, Cottages, Villas) and 1 commercial structure as indicated on the Master Plan. Actual unit number for any development area may be adjusted, except the apartment area which shall not exceed 100 units, so long as the total number of units approved does not exceed 198.
5. Recreation structures within common areas shall conform to established setbacks and height limitations, shown on Exhibit C. Minimum heated square footage for the primary recreation structure for Fox Glen shall be 1000 square feet. Future accessory structures not shown on the 10/7/04 Site Plan, including but not limited to recreation accessory structures shall comply with the then current, regulations of the Henderson County Zoning Ordinance (HCZO).
6. Parking requirements for Fox Glen shall conform to minimum requirements established in the attached Exhibit C. Parking areas and access drives may be allowed within setback areas.
7. Open space shall be defined as all lands within Fox Glen not included within proposed road right-of-ways, fee simple lots, parking areas and drives, the foot print of any heated structure, or within the commercial parcel. Limited common open space shall include land areas within the boundaries of the Town-home community parcel and the apartment community parcel. Common open space shall include all remaining lands. Sidewalks (not within road right-of-ways), pedestrian bridges, trails, gazebos or other ornamental enhancements, signs, lighting, or recreational accessories may be located within open space areas. The entire Fox Glen development shall include not less than 40% open space.

8. There shall be a 30' setback/buffer area maintained along the entire exterior boundary of the Fox Glen development. Said 30' setback/buffer area may fall within lots shown on the 10/7/04 Site Plan. Within common open space areas, the 30' setback/buffer shall be maintained with existing vegetation. Within areas of private ownership, the 30' setback/buffer area shall be maintained with existing vegetation or landscape plantings and/or fencing as shall be determined by the individual property owner. Notwithstanding, and in addition to the foregoing, Grantee shall be required to construct, or cause to be constructed, a wood fence along the perimeter of the Subject Property where construction of a fence is possible without cutting down trees, in order to provide a visual barrier between the Subject Property and adjacent occupied properties, including but not limited to, Beth Eden Subdivision.
9. The Grantee and/or the Property Owners Association shall maintain the 30' buffer area along existing streams in a natural condition. However, foot trail paths sitting areas, gazebos or other ornamental enhancements may be developed and maintained within the stream buffer areas.
10. Street and general area lighting shall be of a type, and located in such areas as to provide appropriate security or traffic safety, where required while minimizing impact on residential properties. Lighting within the commercial parcel shall be placed to pose no safety hazard to traffic and minimize impact on adjacent residential properties. Lighting on signs within Fox Glen shall be indirect, exterior lighting.
11. Hours of public operation for commercial uses shall be 6:00 a.m. until 11:00 p.m. No owner or operator of a commercial facility shall offer alcohol or tobacco products for sale. Any facility used by the residents of Fox Glen or their guests shall have no limits placed on the hours of operation by this Ordinance.
12. Development plans for all areas within the Fox Glen project shall conform to the standards set forth in the Henderson County Subdivision Ordinance as applicable.
13. The Henderson County Zoning Administrator shall have access to the property, during normal business hours to determine whether development is occurring in accordance with the Vested Rights approval.
14. The Applicant shall provide the Zoning Administrator an annual report stating the development activity that has occurred in the project on each anniversary date of such Vested Rights approval for a period of 5 years or completion of the project, whichever occurs first. Upon completion of the project the Applicant shall file a final report with the Zoning Administrator. Said report shall include a summary of recorded open space which shall equal the required amount.

15. All free standing signs within Fox Glen shall be governed by Laws & Ordinances which may, at the time of installation, be applicable.
 16. The entrance off of Howard Gap Road shall be the design approved by NCDOT. Grantee is encouraged to dedicate to NCDOT the land necessary for the improvements to Howard Gap Road where such improvements abut the Subject Property.
 17. Parking areas, ingress and egress drives, trails, utilities, lighting structures, drainage structures, fencing, signage, ornamental enhancements, and similar items incidental to the development of the project or any lot, shall be allowed within the setback areas defined.
 18. No individual lots shall have direct access to Howard Gap Road or to Pattys Chapel Road.
- D. Termination/Suspension of Development Vested Right. The Development Vested Right granted by this Ordinance may be terminated as provided in Section 189-6 of the Henderson County Code, as amended.
 - E. Vested Rights Ordinance. The development of the Subject Property under this Ordinance shall be governed by the terms of this Ordinance and the Vested Rights Ordinance which shall be read in conjunction herewith. In addition, Grantees shall be bound by any and all amendments to the Vested Rights Ordinance in the development of the Subject Property.
 - F. Severability. In the event that any Section, paragraph, or clause of this Ordinance is deemed unenforceable or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

SECTION 4. GRANTEE'S REPRESENTATIONS AND COVENANTS:

The acceptance of this Ordinance by Grantee shall constitute representations and covenants by Grantee that:

- A. Grantee accepts and agrees to all provisions of this Ordinance and those instruments incorporated herein by reference.
- B. Grantee, through its authorized officers and agents, has examined all the provisions of this Ordinance and the Vested Rights Ordinance and waives any claims that any provisions hereof are unreasonable, arbitrary or void.

- C. Grantee, through its authorized officers and agents, recognizes the right of the County to make reasonable amendments to the Vested Rights Ordinance as it now exists and as it is amended during the term of this Ordinance, providing that no such change shall compromise Grantee's ability to perform satisfactorily its obligations or rights under this Ordinance.
- D. Grantee acknowledges, through its authorized officers and agents, that Grantee's rights hereunder are subject to the police power of Henderson County to adopt and enforce general ordinances necessary to the safety and welfare of the public; and Grantee agrees to comply with all applicable general laws enacted by Henderson County pursuant to such powers.

SECTION 5. ACCEPTANCE OF ORDINANCE:

This Ordinance shall not be valid unless accepted by Grantee within thirty (30) days of the effective date, said acceptance to be in writing and in such form and executed in such a manner to be a valid and legally binding acceptance.

SECTION 6. EFFECTIVE DATE:

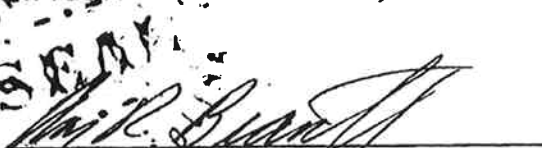
This Ordinance shall be in full force and effect on and after the 6th day of December, 2004.

IN WITNESS HEREOF, the all parties have hereunto set their hands and seals;

APPROVED AS TO FORM:


County Attorney

ATTEST: (COUNTY SEAL)


Clerk

HENDERSON COUNTY

BY: 
Chairman, Henderson County
Board of Commissioners

ACCEPTANCE:

The undersigned, do hereby accept and approve the foregoing and attached Ordinance and all of its terms, conditions, and amendments; and in consideration of the benefits and privileges granted to, and do hereby agree to abide by, carry out, observe, and perform all of the obligations and things provided to be carried out and performed by them this Ordinance.

This the 24 day of January, 2004.

GLADE LAND FUND, LLC

BY: 
Gaston Campiano, Member (title)

State - NC County - Henderson
24th Day of January, 2004
Raymond V. Dick Expires
Notary 7-31-08




Exhibit A

FOX GLEN

PROJECT SUMMARY

(Revised 10/05/04)

I. GENERAL

PROJECT DESCRIPTION:

FOX GLEN is a Planned Residential Community offering 198 housing units on 47.19 acres, for a gross density of 4.2 units per acre. Proposed units include 100 apartments, 24 town-homes, 34 single family villa lots, and 40 single family cottage lots. Additionally, **FOX GLEN** will include a community recreation center and pool, open space and play ground areas, and sidewalk connections from all neighborhoods to Howard Gap Road and Fletcher Elementary School. A small community store (without gas pumps) and management office with laundry and community room will be located adjacent to the Howard Gap Road entrance.

Access into **FOX GLEN** will be from Howard Gap and Patty's Chapel Roads. Patty's Chapel Road will provide access to the lower density Cottage neighborhood while other housing areas will use the existing signaled intersection on Howard Gap Road as access. Improvements to Howard Gap Road will include improvements as approved by NCDOT.

Housing within **FOX GLEN** will range from \$115,000 to \$225,000 and apartments will be 1, 2, & 3 bedroom units, renting from \$575.00 to \$800.00 per month.

II. SITE DESCRIPTION

The **FOX GLEN** property is wooded with a 30-50 year old mixed forest. Two unnamed creeks, flowing south to north through the property, divide the property into three relatively flat ridge development areas. The stream areas and a small low lying area at the north end of the property, appear to be jurisdictional wetlands. Low lying but high flood plain areas adjacent to the creeks provide an opportunity for substantial open space corridors separating housing neighborhoods.

The property is bounded by Howard Gap Road to the west and Patty's Chapel Road to the east. Land use around the property is a mix of low to mid density residential, undeveloped lands, and the Fletcher Elementary School on the west side of Howard Gap Road.

An abandoned farmhouse and barn complex exist in the eastern portion of the property near Patty's Chapel Road. Additionally an underground cross country gas line crosses the property near the eastern stream and Patty's Chapel Road.

III. DEVELOPMENT STANDARDS

UTILITIES:

FOX GLEN will be served by public water and sewer in addition to the normal service utilities. Garbage and trash collection will be private. Emergency water supply services shall meet applicable Henderson County regulations.

ROADS, STREETS & DRIVES:

Local and collector streets within **FOX GLEN** shall be designed and built to NCDOT construction, drainage, and alignment standards for secondary roads for dedication to NCDOT.

Drives and parking areas within the town-home and apartment areas will be constructed to meet private road construction standards as defined in the Henderson County Subdivision Ordinance. Drives within the town-home area will lie within a 30 ft. easement area and will be owned and maintained by the Townhome Association and will remain private.

All streets and drives will meet applicable access requirements for emergency services.

Approved road names include:

Fox Glen Drive	Fox Trot Path
Fox Creek Drive North	Sly Fox Drive
Fox Creek Drive South	Swamp Fox Lane
Fox Briar Drive	White Fox Drive

PARKING:

Each housing unit within the cottage, villa home, and town-home development areas will have a minimum of 2 parking spaces per unit including garages. Guest parking within the town-home area will be adjacent to the access driveway. No on street parking will be provided in the cottage or villa home areas except at park areas.

Parking within the apartment area will be adjacent to the access drive. A minimum of one and one half spaces will be provided for each apartment unit.

Parking for commercial and recreational facilities shall be based, at a minimum, on one space per 200 sf for commercial uses and one space per 400 sf for recreational uses.

HEIGHT OF STRUCTURES:

Height of recreational structures, cottages, villa homes and town-homes shall not exceed 35 ft. as measured from the average ground elevation to midway between the roof eave and peak.

Height of apartment structures shall not exceed 50 feet as measured in the same manner.

AMENITIES:

FOX GLEN will offer a community building (minimum 1000 sf heated floor area) and pool complex for use by the residents and, approximately 40% of the property will be common open space. Open space areas are available to all members of the Property Owners Association for use. Additionally, the developer will install a sidewalk system connecting all neighborhoods to the Howard Gap Road entrance, community recreation facility, and community store and management office.

MAINTENANCE:

Common areas within FOX GLEN will be owned, maintained, and managed by the Master Property Owners Association or subordinate Associations. Areas associated with the Apartments will be maintained and managed by a private owner.

HOUSING TYPES:

FOX GLEN will include apartments, villa homes, town-homes and cottages. The villa homes average lot size will be .14 ac. (6,100 sf); cottage average lot size will be .27 ac. (11,800 sf); townhouse average lot size will be .03 ac. (1,300 sf).

NATURAL FEATURES:

Streams within the property will have a 30' protected buffer zone on each side. Additionally, wetland areas within the stream corridor area have been mapped and identified for protection.

IV. DEVELOPMENT SCHEDULE

FOX GLEN is intended to be developed as a five phase project. The initial phase of construction will include the collector access roads, main line infrastructure, and commercial and recreational facilities. Development of housing neighborhoods will be developed as subsequent phases. The pace of development for each phase will be adjusted to match market demand. It is anticipated that the entire project will be completed in 5 years.

V. PERMITTING

As of October 1, 2004, the following permits and approvals have been secured for **FOX GLEN**.

NCDOT - Driveway access for Fox Glen Drive and Fox Creek Drive

US Army Corps - Creek crossings and Wetland Delineation

NCDENR - Sedimentation & Erosion plans for all portions of the project except the Townhome area

Henderson County - Preliminary Subdivision plans approval for all portions of the project except the Townhome area

City of Hendersonville - Water system plan approval for primary supply line from Howard Gap Road and distribution lines for the Villas area

Public Service Gas Co. - Approval of Development plans adjacent to PSG right-of-way