

# PUBLIC INPUT SIGN UP SHEET

8-14-07

PUBLIC INPUT SHALL BE LIMITED TO  
THREE (3) MINUTES PER PERSON.

EACH PERSON SHOULD:

- (1) STATE YOUR NAME
- (2) IN WHAT AREA OF THE COUNTY YOU LIVE
- (3) SPEAK IN A CLEAR AND COURTEOUS MANNER.

*Please Print:*

	<u>NAME</u>	<u>ADDRESS</u>	<u>ISSUE</u>
1.	David Weintraub	ofc 121 Third Ave W Huila	Moratorium
2.	MARITANE PELL	ofc 121 THIRD AVE W HUULA	Moratorium
3.	Susan Stewart	Carrage Betty Park, Huila	Moratorium
4.	Chris Berg	ofc 121 Third Ave Huila	Moratorium
5.	FIELDING LUCAS	50 Squind Trail	Glen
6.	Eva Ritchey	1928 Brevard Rd	Moratorium
7.	Bill Ramsey	583 Viewcrest Dr	Glen Vote
8.	Bill Alexander	559 N. Justice	Glen
9.			
10.			
11.			
12.			
13.			

**IT IS HEREBY ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HENDERSON COUNTY, NORTH CAROLINA as follows:**

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

**ORDER DENYING VESTED RIGHTS**

THIS MATTER, Henderson County planning file VR-2007-01, came on to be heard before the Henderson County Board of Commissioners on 22 May 2007. The hearing was continued and evidence heard on 7 June 2007, 28 June 2007 and 24 July 2007. The Board began its deliberations on this matter at its meeting on 14 August 2007. After hearing and deliberations, the Board makes the following findings and conclusions, and enters the following conditional Order.

Findings

1. The Henderson County Board of Commissioners (“the Board”) accepted the application of Beverly-Grant (made through Jerry Grant, CEO), for vested development rights pursuant to Chapter 189 of the Henderson County Code, on 5 February 2007. Park Ridge MOB, LLC, was substituted as the applicant. A public hearing, pursuant to Chapter 189 of the Henderson County Code, and pursuant to the Rules adopted by the Board for hearings under Chapter 189, was scheduled for 22 May 2007.
2. Notice of the public hearing was published in *The Times-News* newspaper on 7 March 2007, 10 March 2007, 14 March 2007 and 17 March 2007. On 7 March 2007, personnel from the Henderson County Planning Department posted notice at the project site advertising the public hearing. Notices of the public hearing were sent to the applicant and to the owners of real property adjacent to the site of the development proposed by the Applicant on 7 March 2007 and 1 May 2007.
3. The hearing was originally to commence on 26 March 2007 but due to the number of people in attendance, the meeting had to be continued until 2 April 2007. At the 2 April 2007 the Board of Commissioners set the first date at which the Board would hear evidence as 22 May 2007 at the Blue Ridge Community College.
4. All members of the Board were present for the hearing on 22 May 2007 and the subsequent hearing dates. As such, all the Commissioners participated in the deliberations regarding the hearing and the final vote.
5. At the commencement of this hearing, the Board inquired as the persons or entities who believed they should be parties to this proceeding, in addition to the Applicant and the Henderson County Planning Department. Bill Alexander, attorney for the applicant objected to any other person becoming parties to this action besides the County and the Applicant. The Board heard this objection and overruled it. The following persons, all adjacent property owners, requested to become parties to this hearing, which request was granted by the Board:

Fritz McPhail (represented by Boyd Massagee)  
659 Crab Creek Road  
Hendersonville, NC 28739

Kenneth R Erb  
709 Crab Creek Road  
Hendersonville, NC 28739

John Cherry  
7 Curtis Drive  
Hendersonville, NC 28792

Misty McDowell  
131 Pearl Lane  
Hendersonville, NC 28739

Bill Knowlton  
95 Mountain View Estates Road  
Hendersonville, NC 28739

6. All parties to the proceeding, and all other witnesses, gave oath for their testimony. The Board received Exhibits A-H from Henderson County Planning Staff, plus Exhibits from the Applicant and from Mr. Massagee representing Mr. McPhail.
7. The Applicant proposes a residential development to be located on property identified by Henderson County parcel identification numbers 954651420 and located on Crab Creek Road (SR 1127) (“the subject property”). The subject property is approximately 132.73 acres in size.
8. The Applicant has proposed a package plant to serve the development. The applicant has proposed the possibility that public water could serve the site (if the cost of extending public water does not exceed \$1,339,300.00, all necessary easements and encroachments can be obtained, and there are no unforeseen engineering factors preventing installation), but has not committed definitely to a plan including the same. Otherwise the Applicant proposes installing wells to serve the development.
9. According to the Henderson County 2020 Comprehensive Plan (CCP), the property consists of three areas:  
Rural Agricultural Area, Rural/Urban Transition Area (RTA), and Conservation Area.
  - a. Conservation Area designation is applied to the majority of the southern portion of the property. The CCP encourages areas with this designation to remain largely rural and in the natural state. This section of the development is planned for single-family homes and townhomes.
  - b. Rural/Agricultural Area (RAA) encompasses the remainder of the southern portion of the property. The RAA is intended to be predominantly rural with a general density of 5 or more acres per dwelling and package plants are discouraged in the RAA. The average density of this project is 2.4 units per acre and the Applicant has proposed a package plant.
  - c. The Rural/Urban Transition Area (RTA) is applied to the northern portion of the property. The main reason for this designation is because of the lack of public water or sewer to a parcel. The subject property is 2.36 miles from the nearest waterline and 4.36 miles from the sewer line.
10. Slopes on the subject property may be in excess of 25% and as much as 45% in some areas of the development. Steep slopes increase the opportunity for soil erosion; stormwater runoff; reduced soil stability; and increased risk for landslides.
11. Concerns were raised by the Planning Department regarding a strain on emergency services due to the nature of the project, being a continuing care facility, and the distance to the nearest hospital of 7.1 miles. Response time by emergency services was calculated at 14 minutes. The optimal time is 9 minutes or less for emergency response. The Applicant presented testimony suggesting that the response time was less than the estimate provided by the Planning Department

12. Testimony was presented that Crab Creek Road, a windy, two-lane public road with blind curves and steep shoulders, currently has problems with traffic accidents and congestion which would be exacerbated by a development of this size with the type of drivers anticipated in conjunction with the project both during and after construction and thus would be against public safety to grant vested rights. Contrary evidence was presented by the Applicant which was evaluated by the Board of Commissioners and discounted.
13. Other Parties presented evidence that the small rural character of the community would be adversely impacted by a development of the size proposed by the Applicant and would thus be contrary to public welfare.
14. Evidence was presented regarding the development's impact on water quality for Mud Creek because of potential problems with the package plant, soil erosion both during and post-construction, depletion of the aquifer should the development use well water, and the inability to recapture stormwater because of the amount of impervious surfaces on the development. For these reasons, granting vested rights to the development would be adverse to public health, safety, and welfare. Evidence was presented by the Applicant regarding the potential for using public water and environmental controls put in place to mitigate storm water and soil erosion damage.
15. While conflicting and sometimes contradictory evidence was presented to the Board showing that the development as proposed would have no substantial impact on Mud Creek, the area aquifer, or the road system which would serve the development, the Board weighs both the credibility of the witnesses and their testimony and the overarching need to protect the public interest in finding that the risk of a development at the density level as proposed here would be contrary to the public health, safety and welfare.

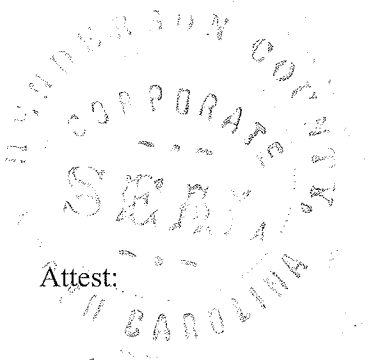
#### CONCLUSIONS


1. All parties, and all persons entitled to notice, have been given proper notice of this hearing and afforded the right to be heard.
2. The standard for the granting of vested rights is what is in the interest of the public health, safety, and welfare.
3. The proposed development's impact on the adjacent property owners and rural character of the community is against public welfare.
4. Soil erosion, stormwater runoff, reduced soil stability, and increased risk for landslides exacerbated by the development both during and post-construction on steep slopes is against public safety and welfare.
5. Traffic congestion exacerbated by the development both during and post-construction is against public safety and welfare.
6. The impact on Mud Creek and the aquifer from the development including soil erosion, stormwater loss, the potential impact of the package plant and the possible use of wells is against public safety, welfare, and health.
7. Construction contemplated by the development on steep slopes creates hazards and is adverse to public health and safety.

**WHEREFORE, IT IS ORDERED** that the Board of Commissioners hereby deny a grant of vested rights in the case of vested rights application.


As ordered by the Board upon motion duly made and adopted this the 14<sup>th</sup> day of August, 2007.

HENDERSON COUNTY BOARD OF COMMISSIONERS



By:   
WILLIAM MOYER, Chairman

Attest:

  
ELIZABETH CORN, Secretary to the Board

# Henderson County Soil Erosion and Sedimentation Control

Status report to the Commissioners  
August 15, 2007

As a result of the adoption of the Henderson County Soil Erosion and Sedimentation Control Ordinance with the effective date of October 1, 2007, Henderson County submitted an application to the North Carolina Division of Land Resources to establish a Local Program. We were approved to hold a contract to provide enforcement of the local ordinance as submitted for state approval. Funding was provided in the form of a start up grant that was split evenly between Henderson, Caldwell and Lincoln Counties.

Henderson County adopted a Budget for the 2008 Budget year in the amount of \$194,124. Part of this budget will be funded by money from the start up grant in the amount of \$33,785 not to exceed 40% of the start up cost first year. These expenses must be made not before our start date of October 1<sup>st</sup> and April 1, 2008. The balance of the funding is to be collected in the form of permit fees.

As of today Natalie Berry has been selected as Soil Erosion and Sedimentation Control Chief. She has an extensive background in Building Code, Erosion Control and Storm Water Enforcement with the city of Asheville, North Carolina. The selection process has started for an Enforcement Field Technician position. A Permit Specialist position will also be filled to complete the division staff.

Training opportunities are being offered the first of which was held at the Hendersonville Home Builder meeting on August 9<sup>th</sup>. Natalie presented the program as an intro to the builders and followed up with a question and answer session. Other training will be provided by our staff and the State for Developers, Design professionals, Grading and Building Contractors.

Temporary offices will be set up until the Old Court House is occupied by the governing body and Managers staff. At this time we expect to set up the more permanent offices that will be vacated near the other Building Services Divisions.

hand-out  
8-14-07

**HENDERSON COUNTY**  
**Planning Department**

---

213 1<sup>st</sup> Avenue East • Hendersonville, NC 28792  
Phone 828-697-4819 • Fax 828-697-4533

**Memorandum**

**TO:** Henderson County Board of Commissioners  
Steve Wyatt, County Manager  
Selena Coffey, Assistant County Manager  
Russ Burrell, County Attorney

**FROM:** Henderson County Planning Staff

**DATE:** August 14, 2007

**SUBJECT:** Planning staff comments regarding possible conditions should the Board be inclined toward approval of vested rights for VR-2007-01

---

Enclosed for the Board's consideration are staff comments regarding possible conditions should the Board be inclined toward approval of vested rights for the Glen and Highlands at Flat Rock. The enclosed materials should be added to the materials you have already received from the Office of the County Attorney, regarding proposed conditions if the Board of Commissioners grants vested rights to the Glen and Highlands at Flat Rock, dated August 9, 2007.

No.	Proposed Condition	Party Suggesting Condition, and comments
1	<p>The applicant only be vested to the number of units described for each type of use as a maximum number of units (i.e. 17 units of elderly living care, 165 units of independent living, 80 beds for “full support service,” 16 townhome dwelling units (duplex, triplex or quadraplex), 75 single-family homes without lots, 45 single-family homes with lots) to prevent expansions which are not in conformity with the vested rights.</p>	<p><b>Suggested by: Staff</b></p> <p><b>NOTE FROM STAFF:</b></p> <p>Staff suggests the following revision to address the applicant’s concern:</p> <p>The applicant only be vested to the number of units described for each type of use as a maximum number of units (i.e. 17 units of elderly living care, 165 units of independent living, 80 beds for “full support service,” 16 <b>attached townhome</b> dwelling units (duplex, triplex or quadraplex), 75 single-family homes <b>with or</b> without lots, 45 single-family homes with lots) to prevent expansions which are not in conformity with the vested rights.</p> <p>Staff recommends that the applicant be specific about uses otherwise the applicant would have unlimited ability and latitude to recommend a number of uses not contemplated in the current review of the development vested rights application and site-specific development plan. The applicant should indicate specific residential uses for the entirety of the development and only be vested to those specified uses.</p>
3	<p>The applicant be vested to only those specific structures, and the uses specified for such structures, as identified by the applicant at the time of application or on the Master Plan dated May 22, 2007.</p>	<p><b>Suggested by: Staff.</b></p> <p><b>NOTE FROM STAFF:</b></p> <p>Staff recommends that the applicant be specific about uses otherwise the applicant would have unlimited ability and latitude to recommend a number of uses not contemplated in the current review of the development vested rights application and site-specific development plan. The applicant should indicate specific residential and non-residential uses for the entirety of the development and only be vested to those specified uses.</p>
8	<p>The applicant is vested only to buildings which have a building footprint not exceeding twice the calculated average square footage per level.</p>	<p><b>Suggested by: Staff.</b></p> <p><b>NOTE FROM STAFF:</b></p> <p>Staff suggests the following revision for clarification:</p> <p>The applicant is vested only to buildings with the indicated approximate size; however, the footprint shall not exceed 200% of the size indicated on the plan.</p> <p>Staff remains concerned that the applicant be specific about uses and provide a clear indication of their intent with regard to their plans for development.</p>



15	<p>The developer shall only have vested rights for the uses specified in the developer's application for vested rights. No vested rights shall be granted regarding any environmental ordinances, including but not limited to any Stormwater Ordinance, Sedimentation and Erosion Ordinance, Watershed Protection Ordinance, Flood Damage Prevention Ordinance, Protected Mountain Ridge Ordinance or similar ordinances previously or hereafter adopted by Henderson County. In addition, this project will still be subject to any adequate public facilities ordinance, impact fees or the like should the County adopt any such ordinances during the term of this Ordinance and Order.</p>	<p><b>Suggested by: Staff.</b></p> <p><b>NOTE FROM STAFF:</b></p> <p>See Notes from Staff in Condition 3.</p>
30	<p>The following language shall be incorporated into the restrictive covenants for "the Highlands" prior to the beginning construction on said portion: Construction Site and Erosion Control: Prior to commencing any construction upon any lot, the Owner shall submit a site survey (including but not limited to: elevation notations, topographical maps, anticipated water runoff courses, and a tree inventory of all trees having a base trunk diameter in excess of eight inches) to the Architectural Committee for approval. The Architectural Committee shall not approve any improvements to be placed upon, or any soil disturbing activities upon, any sloped portions of any Lot whose slope exceeds thirty-five percent (35%) without first receiving and approving, which approval shall not be unreasonably withheld, an engineered plan for improvement that is designed to mitigate the affects of accelerated storm water run-off and to retain storm water in a reasonable fashion. Furthermore, any such plans and specifications submitted to the Architectural Committee shall be certified by a licensed professional engineer. Furthermore, at all times before, during and after construction the Owner shall take all reasonable steps necessary to control water runoff upon their Lot as may be necessary to prevent or mitigate erosion, and to prevent such runoff (which would be in excess of that occurring from an unimproved lot) from departing their Lot. The Committee shall have the right to impose reasonable rules and conditions to accomplish this goal. Where any owner fails to adhere to the provisions of this paragraph, the Association shall have the right, but not the obligation, to take such actions as may be necessary to control runoff or mitigate erosion for any such owner's lot; Any and all costs incurred by the association be a lien vs. the lot and collectable using any and all remedies provided for herein or by law for assessment. In no events shall any residences be built upon slopes in excess of 45%.</p>	<p><b>Suggested by: applicant.</b></p> <p><b>NOTE FROM STAFF:</b></p> <p>Staff is concerned that this is an arbitrary process that does not provide any protection of these slopes and further does not fully address the issues contemplated by Condition 6 (which the applicant recommends not be included).</p>
31	<p>The Applicant shall be required to provide public water to the Project if all three of the following three (3) contingencies are met:</p> <p>(a) The total cost to Applicant in installing the public water system not exceeding \$1,339,300.00</p> <p>(b) Obtaining necessary encroachment agreements and other easements from or through the State of North Carolina, and</p> <p>(c) No unknown physical or engineering factors developing which would prevent installation of the system.</p>	<p><b>Suggested by: applicant.</b></p> <p><b>NOTE FROM STAFF:</b></p> <p>Staff recommends that the contingencies (a, b, and c) be removed from the suggested condition. Staff is not necessarily recommending that public water be extended to the subject property; however, should the Board be inclined to recommend extension of public water, the proposed contingencies leave a number of opportunities for the applicant not to provide public water to the</p>

	<p>In the event public water is not required due to the failure of one of the contingencies provided in Paragraph 2 above, the Applicant shall be permitted to install a community well system, including a collection of wells, a storage tank, pumping stations and water lines as necessary to serve the Project. At the time the draw down test is performed for the Applicant's application to the State for the community well system, also monitor the water levels in any private wells located within 1000 feet radius of the Applicant's Project wells whose owner's request and consent to such monitoring. It is specifically noted that such owners, as part of the monitoring, will be required to refrain from water usage during the 24 hour period during which the draw down test is performed.</p>	<p>development. Staff remains concerned that the applicant be specific about provision of services and provide a clear indication of their intent with regard to their plans for development.</p>
32	<p>To the extent permitted by State and Federal laws, Applicant shall amend its Articles of Organization to provide that Applicant does not have the power to convert to a nonprofit corporation. Additionally, by accepting this vested right, Applicant represents to the Board of Commissioners that (1) Applicant will not apply for Medical Care Commission bonds, nor any other type of financing for the Project that would result in any portion of the real property to qualify for tax exempt status under the North Carolina Machinery Act, as such may be amended; and (2) All of the living units within the Glen portion of the Project will be conveyed in fee simple ownership to their occupants, and thus should remain taxable, subject only exemptions within the Machinery Act that may apply to such individual occupants.</p>	<p><b>Suggested by: applicant.</b> <b>NOTE FROM STAFF:</b> Staff would note, as given in testimony during the public hearing, there are no conditions this Board could impose which would prevent the sale of this development to a nonprofit organization. Further, while the conditions imposed upon the applicant run with the land for the duration of the vested rights, following the termination of the vested right ordinance, the conditions of the vested rights ordinance would no longer apply to the applicant or any successive owner of the development.</p>
35	<p>Applicant shall be required to provide to the County if Applicant receives any determinations by the State of North Carolina Division of Water Quality that the wastewater treatment plant serving the facility is out of compliance with State laws, rules, or regulations.</p>	<p><b>Suggested by: applicant.</b> <b>NOTE FROM STAFF:</b> Staff would recommend that the applicant provide such determinations to the Planning Department specifically.</p>
37	<p>With regards to parking requirements for the Glen portion of the Project, the following shall be provided by Applicant:</p> <p>Single family home – 2 car parking (in garage) (75 units x 2 = 150 spaces)</p> <p>Townhomes – 2 car parking (in garage or in front of unit) (16 units x 2 = 32 spaces)</p> <p>--Visitor parking for homes and townhomes would be on-street parking or in-driveway parking.</p> <p>Center Parking –</p> <p>--Independent Living Units – 1 car parking on grade or in lower level parking under the buildings. (165 cars)</p> <p>--Assisted Living Units – no resident cars, visitor parking only.</p> <p>--Visitor and staff parking –</p> <p>----Center General – 12 cars</p> <p>----Resident visitors – 30 cars</p>	<p><b>Suggested by: applicant.</b> <b>NOTE FROM STAFF:</b> Staff would suggest that the methodology suggested by the applicant in calculating required parking would require additional administration of the vested rights ordinance. Staff's recommendations for calculating parking (Condition 5) are intended to make standards consistent with the Draft Land Development Code and to provide adequate parking for the development.</p>

	<p>----Staff- 9 cars</p> <p>Maintenance, housekeeping, and services – 15 cars plus 2 truck loading bays.</p> <p>Health Care</p> <p>--Visitors – 15 cars</p> <p>--Staff- 20 cars</p> <p>Simply stated:</p> <p>Homes and townhomes: 2 cars per unit (91 x 2) = 182 cars</p> <p>Center and Independent Living Units: 1.3 cars per unit (165 x 1.3) = 215 cars</p> <p>Health Care: .45 cars per bed (80 x .45) = 36 cars</p> <p>Maintenance, housekeeping, and services: 15 cars plus 2 truck loading bays</p> <p>Total minimum parking required: 412 cars plus two truck bays until the Health Center is built.</p> <p>Total minimum parking required: 448 cars plus two truck bays when the Health Center is completed. (Note: the Health Center is to be built 4 to 5 (we are asking for a 5 year window) years after the CCRC opens.)</p>	
45	<p>The restaurant planned for the facility may not be located on the _____ floor(s) of the Main Building.</p>	<p><b>Suggested by: a member of the Board during the hearing as a possible plan improvement.</b></p> <p><b>NOTE FROM STAFF:</b></p> <p>Staff would note that, from the perspective of life safety as related to fire hazard, having a restaurant on the upper floor would reduce the number of residences located above the restaurant in the event of a fire.</p>
47	<p>The applicant shall noise screening for the sewage treatment plant planned for the facility consistent with public safety and the Henderson County Noise Ordinance as may be amended from time to time.</p>	<p><b>Suggested by: indirectly by the applicant during the hearing.</b></p> <p><b>NOTE FROM STAFF:</b></p> <p>Staff recommends that the applicant provide a plan for screening of the sewage treatment plant within 120 days of approval of this order for approval by the Planning Department or Board of Commissioners.</p>
48	<p>The parking for the development be constructed in accordance with the requirements of the Draft Land Development Code including “Article VI. Off-Street Parking and Loading Standards” and “Article V. Landscape Design Standards” (specifically Subpart B. Parking Lot Landscaping Standards).</p>	<p><b>Suggested by: Staff</b></p>

# Whitmire & Beeker

hand-out  
8-14-07

Robert L. Whitmire, Jr., J.D.  
(1926-1993)

Angela S. Beeker, J.D.  
beekera@bellsouth.net

August 14, 2007

Mr. William L. Moyer, Chairman  
Henderson County Board of Commissioners  
100 North King Street  
Hendersonville, NC 28792

RE: Procedure at the August 14, 2007 Meeting.

Dear Chairman Moyer:

I write on behalf of the Applicant, Parkridge MOB, LLC, concerning the vested rights application for the Glen and Highlands at Flat Rock.

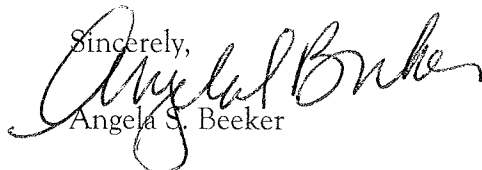
I printed off the agenda item for this evening's meeting concerning the proposed conditions for the project, including staff's conditions and all of those submitted by any other party. I am requesting that, in the event that the Board is inclined to grant the vested rights, that the parties to be directly affected by a proposed condition be allowed to briefly address the conditions as proposed. Since the last meeting, additional conditions have been proposed by the staff, and by the other parties which we have not had an opportunity to comment on. In addition, there are a few corrections that need to be made in the materials in your agenda packet. In the past, as conditions are being considered by the Board, the Board has solicited input from the applicant as to whether the condition as imposed may have some unintended impact on the developer, and we respectfully request that that practice be continued this evening.

In the event that parties are not allowed to speak, this evening, I have prepared and attached hereto applicant's additional comments for the Board's consideration.

Lastly, we would also request that the parties be given an opportunity to comment on the draft order once one is prepared.

Thank you for your kind consideration.

Sincerely,



Angela S. Beeker

Cc: the Board of Commissioner members and parties to the proceeding

Additional Applicant Comments  
The Glen and Highlands at Flat Rock  
August 14, 2007

1. It must be clear as to which conditions apply to the Glen portion of the project, and which conditions apply to the Highlands portions.
2. It must be clear that applicant can is approved and can proceed with the development, with the failure to abide by a future condition resulting in a revocation of the vested right, rather than having such future conditions delay the effective date of the approval.
3. Please note that many of the conditions in your packet are alternatives to other conditions stated.
4. Regarding Condition 1, we wish to combine the 16 townhome dwelling units and 75 single-family homes into 1 number of dwelling units for the Glen: 91. This does NOT include the 45 single family homes with lots that will be a part of the Highlands or the living units within buildings A, B, and C. We request that the conditions applicable to the 91 dwelling units for the Glen, and the units for A, B, and C, be addressed in a separate condition than those for the 45 single family homes in the Highlands.
5. Condition 5: Applicant proposes an alternative to this condition in Condition 37.
6. Condition 6. Applicant proposes an alternative to this condition in Condition 30.
7. Conditions 27, 28, and 29 were proposed by Mr. McPhail. Obviously we object to conditions 27 and 28. As to condition 29 we will be subject to the County's sedimentation and erosion control ordinance anyway.
8. Condition number 30 is an alternate to Condition 6.
9. Condition number 33 is suggested in addition to Condition 16. The table in the agenda packet refers to Condition 33 being related to Condition 30, which we belief to be a typographical error.
10. Conditions 38, 39, and 40: Pearl Lane is an NCDOT state maintained road. We therefore believe that improvements if any will be made by NCDOT. NOTE: In the event the Board does impose condition 40, we would ask that the certificate of occupancy limitation not apply to construction trailers. Lastly, we do not know what the AASHTO site standards are.

11. Condition 41: The applicant needs to be able to put in the community system if the public water system is not available.
12. Condition 43: This condition was suggested by Mr. Erb. It is too onerous, and would prevent attractive vegetation being planted in the buffer.
13. Condition 44: The applicant objects to this condition.
14. Condition 45: The fire department has suggested that the restaurant be located on the highest floor so that if a fire were to break out the living units would be separated by a floor.
15. Condition 46: The applicant is not in a position to commit to this condition at this time.
16. Condition 47: The applicant will be bound by the Noise Ordinance regardless. Screening for public safety is too vague to be enforceable.