

MINUTES

**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS  
NOVEMBER 2, 1998**

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 5:30 p.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Bob Eklund, Vice-Chair Grady Hawkins, Commissioner Vollie G. Good, Commissioner Renee Kumor, Commissioner Don Ward, County Manager David E. Nicholson, Assistant County Manager Angela Skerrett Beeker, County Attorney Don H. Elkins, and Clerk to the Board Elizabeth W. Corn.

Also present were: Finance Director J. Carey McLelland, Planning Director Matt Matteson, Staff Attorney Jennifer O. Jackson, Public Information Officer Chris S. Coulson, and County Planner Karen Collins.

CALL TO ORDER/WELCOME

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

PLEDGE OF ALLEGIANCE

Commissioner Hawkins led the Pledge of Allegiance to the American Flag.

INVOCATION

In the absence of the scheduled Minister, David E. Nicholson gave the invocation.

DISCUSSION/ADJUSTMENT OF AGENDA

Commissioner Kumor requested that item "B" from Discussion Items be moved up to INFORMAL PUBLIC COMMENTS - "Nursing/Adult Care Homes Community Advisory Committee".

It was the consensus of the Board to approve the change requested.

NURSING/ADULT CARE HOMES COMMUNITY ADVISORY COMMITTEE -  
Planned Seminars @ Library Auditorium

Lorraine Finley addressed the Board on behalf of the Nursing/Adult Care Homes Community Advisory Committee with an invitation to a public information meeting to be held at the Henderson County Library. This meeting will be on "The EDEN Alternative" for Nursing Homes. This plan is being put into effect in lots of Nursing Homes throughout the United States. It has been proven that the people are living longer, are happier and need less medication. The meeting is scheduled for November 24 at the Library, once at 2 p.m. and then again at 7 p.m.

INFORMAL PUBLIC COMMENTS

1. Chuck McGrady - Mr. McGrady spoke in favor of an agenda item - "New Consortium Agreement for the Mountain Area Service Delivery Area".

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**CONSENT AGENDA**

Commissioner Hawkins made the motion to approve the Consent Agenda. All voted in favor and the motion carried. The CONSENT AGENDA included the following:

**Notification of Vacancies**

The Board was notified of the following vacancies which will appear under "nominations" on the next agenda:

1. Hendersonville City Zoning Board of Adjustment - 1 vac. (alternate)
2. Henderson County Hospital Corporation Board of Directors - 3 vac.
3. Laurel Park Board of Adjustment - 2 vac.
4. Laurel Park Planning Board - 1 vac.
5. Henderson County Travel & Tourism Committee - 4 vac.
6. Henderson County Zoning Board of Adjustment - 2 vac.

**Routine Sewer Extensions Granted**

The Board of Commissioners adopted a Resolution on February 18, 1998 which authorized the County Manager to approve certain sewer extension requests. Paragraph 3 of that Resolution requires that the County Manager report to the Board on any sewer allocations granted.

The County Manager approved several sewer line extension requests as itemized in the Utilities Department Letter reviewed. Each of these sewer extension requests were routine in that they did not fall within any of the exceptions to the County Manager's authority.

A letter from the Utilities Department reflecting the total allocations granted was submitted for review.

No Board action was necessary.

**Donation of Property - Brown**

At the Board's meeting on October 21, 1998, the Commissioners approved the acceptance of a deed from Mr. and Mrs. Elbert S. Brown for 0.5 acres adjacent to Kunz Park. It was reported during the meeting that there would be no restrictions in the deed; however, the Browns do wish to have a "parks and recreation" restriction in the deed. Staff had assumed that the desire for this restriction may be for tax deduction purposes.

As the rest of the Kunz Park has an identical deed restriction, this restriction should not impede the intended use of this property.

**Tax Collector's Report**

Terry F. Lyda, Tax Collector, had submitted a collection report as of October 29, 1998, for the Board's review.

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**ITT Automotive, Inc. Assignment**

The County Manager had received a letter dated October 7, 1998, advising Henderson County of the sale of ITTAutomotive, Inc. to Continental Teves, Inc. This letter served as notice to Henderson County of the assignment of the November 22, 1996 Agreement for economic incentives that the County entered into with ITT.

Continental Teves, Inc. is legally obligated under the November 22, 1996 Agreement to honor the commitments for capital investment and creation of employment positions as outlined in the Agreement. Staff will continue to monitor their progress.

No Board action on this matter was necessary.

**NOMINATIONS**

Chairman Eklund reminded the Board of the following vacancies and opened the floor to nominations:

**Nursing/Adult Care Home Community Advisory Committee - 6 vac.**

There are no appointment applications for this Committee at this time. This item was rolled to the next meeting.

**Henderson County Zoning Board of Adjustment - 4 vac.**

Chairman Eklund stated that we have one vacancy in the Kanuga area and we are waiting to see if Diane Grant qualifies for that vacancy. He asked Commissioner Hawkins if he had found this out. Commissioner Hawkins had not but stated that he would try to pursue that.

There are also vacancies for alternates, one each from :

- East Flat Rock area
- Lake Summit area
- Bearwallow area

There were no nominations at this time so this item was rolled to the next meeting.

Commissioner Hawkins stated that he felt it would be appropriate to look at the structure of the Zoning Board of Adjustment to include representatives from the unzoned areas because there are portions of the county that are not zoned. This Board also doubles as the Watershed Review Committee. Also persons in the unzoned areas may be without representation regarding the Tower Ordinance without representatives from the unzoned areas.

**Henderson County Planning Board - 1 vac.**

There was one resignation and there should be an appointment to fill the unexpired term. Commissioner Hawkins nominated Mr. Bill Blalock. Commissioner Good made the motion to suspend the rules and appoint Mr. Blalock. All voted in favor and the motion carried.

### **NEW CONSORTIUM AGREEMENT FOR THE MOUNTAIN AREA SERVICE DELIVERY AREA**

Angela Skerrett Beeker reminded the Board that Henderson County has been a part of a Service Delivery Area developed under the Job Training Partnership Act, consisting of Buncombe, Madison, Transylvania, and Henderson Counties, called the Mountain Area Service Delivery Area (SDA). Recently, the Federal Government began a program called Welfare to Work and has chosen the Service Delivery Areas to be the agencies to accept and award monies under the Welfare to Work Program. In order for the Mountain Area SDA to be able to handle the monies, the Consortium Agreement must be amended to incorporate the Welfare to Work program as part of the SDA's responsibilities. A new agreement was reviewed as well as a Resolution approving the new agreement.

Henderson County is slated to received \$130,000 from this program for the FY 98-99 federal fiscal year. A local committee comprised of representatives from the ESC, BRCC, Henderson County DSS, Henderson County, SSEACO, and Vocational Rehabilitation has been working to put together a local plan for use of this money. The Mountain Area SDA will be sending out RFPs for Counties to use to submit their local plan for use of the monies for approval by the SDA. We should receive the RFP shortly.

A representative from the SDA, Helen Beck, Executive Director of the Mountain Area Job Training Services, was present to answer any questions. Also present was Patti Leonard from our local Work First Program. Our local Work First Program has put together a plan that has been submitted to the SDA Board.

Helen Beck stated that legislative was passed last year. North Carolina is receiving \$25,300,000 of which the Consortium will get \$709,000 and Henderson County \$145,000. The Job Training Partnership Act has been replaced by new legislation which is the Work Force Investment Act. Ms. Beck stated that she will be submitting a new Resolution incorporating that program into this since it does replace the Job Training Partnership Act and that Board requires a Commissioner member.

Patti Leonard reviewed a table with the Board entitled "Work First Goals for Henderson County". She also distributed copies of the same, a copy of which is attached as a part of these minutes.

Commissioner Hawkins made the motion to approve the new Consortium Agreement and the Resolution as presented. All voted in favor and the motion carried.

Ms. Beck stated that they are very proud of the programs that Henderson County does.

### **BOARD OF ELECTIONS**

Jennifer Jackson reminded the Board that at the Board's meeting on October 21, the Board of Commissioners authorized the Board of Elections to look for some property to lease so that the

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Elections Office and the storage of the voting machines could be located in the same building. The Board of Elections has found a building for lease that will meet their needs.

The building is located at 120 South Grove Street and is approximately 5,400 square feet. It contains both warehouse space, which will nicely accommodate the voting machines, and an open plan office and reception area. The Board of Elections does anticipate that some renovations will have to be done as outlined in a letter which was reviewed. If the Board is willing to act quickly on the leasing of this building, then staff time will be saved in moving the voting machines. The lease has been drafted to enable the County to take possession of the building on November 3, 1998.

Staff had modified a lease agreement that the Board approved for the McAllister Building to include the terms applicable for the Board of Election's lease. This agreement was reviewed. The lease has been structured as a term lease for eight months (ending June 30, 1999) at \$2,500 per month with annual extensions at the rate of \$2,500/month for the first year's extension and \$2,850/month for the second year's extension. This will enable the Board to evaluate the lease each year when the Board considers the budget.

A draft resolution was presented for the Board's consideration.

#### **CLOSED SESSION**

Commissioner Ward made the motion for the Board to go into Closed Session as allowed pursuant to NCGS 143-318.11 for the following reason:

(a)(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. To consult with an attorney employed or retained by the public body in order to consider and give instructions to the attorney with respect to a claim.

All voted in favor and the motion carried.

#### **Following Closed Session**

Commissioner Ward asked to be excused from the vote on this item. Commissioner Good made the motion to excuse Commissioner Ward from voting on this matter. All voted in favor and the motion carried.

Following some discussion, Commissioner Hawkins made the motion to authorize the lease for immediate housing of the voting machines. The Board of Elections offices may or may not be able to move now. All voted in favor and the motion carried. Commissioner Hawkins was concerned about the amount of funds that might be involved to make the building serviceable for the Board of Elections' use.

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David Nicholson reminded the Board that the Commissioners had budgeted \$24,800 toward the project. We will need about \$20,000 of that just to pay the lease. We are also responsible for the utilities and any renovations.

### **DRAFT ORDER GRANTING VARIANCE TO ROBERT CARNES**

Jennifer Jackson reminded the Board that at the October 24 meeting the Commissioners considered the Application for Variance from Section 504.7 of the Henderson County Land Development Ordinance submitted by Robert Carnes, owner of a 1.1 acre tract off Big Willow Road and applicant for the variance.

The Board conducted a Quasi-Judicial Proceeding to consider the requested variance. After hearing all of the testimony the Board discussed the matter and voted to grant the variance.

The Board had directed Staff to prepare proposed findings of fact and conclusions of law consistent with the information presented and with the Board's discussion and vote to grant the variance. The proposed order with attachments was submitted for the Board's review and consideration.

Mrs. Jackson reviewed the Findings of Fact and the Conclusions with the Board, a copy of which is attached as a part of these minutes.

The County Attorney approved the Order as to form.

Commissioner Hawkins made the motion to approve the Order Granting Variance to Robert Carnes as presented. All voted in favor and the motion carried.

### **UPDATE ON PENDING ISSUES**

#### **1. Pardee Hospital**

Mrs. Jackson was pleased to report to the Board that on October 29, 1998 we had a closing between Henderson County, Margaret R. Pardee Memorial Hospital, and the Henderson County Hospital Corporation. Effective November 1, the Henderson County Hospital Corporation is now in charge of the hospital.

#### **2. Joint Sewer Meeting**

Commissioner Kumor distributed a hand-out of her presentation for Water and Sewer Discussions. Henderson County wants to sit down with all the county municipal governments because we want to start building a consensus for our community. Part of it is to find out where Henderson County and all of its municipalities want to be going with water and sewer and the next phase would be looking at some regional issues with the Regional Water Authority and with MSD. It is important to first have a unified position within the our county.

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Following her presentation, a tentative joint meeting was scheduled for November 10. She suggested that each Board identify one elected member and one citizen and that those ten people elect a Chairman and direct this community to start developing an interlocal agreement. The Goals of the Interlocal Agreement should be:

- Establish Working Agreement
- Develop Policies
- Develop Needs Criteria
  - Prioritize Needs
  - Prepare long range service/development plan
- Detail Issues
  - Rates
  - Governance
  - Maintenance
  - Expansion
  - Financing

Commissioner Hawkins had worked with Commissioner Kumor in developing this presentation. He stated that one of the most critical areas, in addition to all the other infrastructure needs we have from schools to jails in the long run, is probably going to be our water and sewer.

### 3. Legislative Goals

David Nicholson up-dated the Commissioners on some of the actions we have heard from the County Commissioners' Association regarding their legislative goals. About half of them have either been looked at or are scheduled to be looked at.

The Setting up of a Human Resources Board was reviewed by one of their standing committees, the Human Resources Steering Committee. It was one of three from across the State that was recommended to be approved to the Legislative Goals Committee.

On Wednesday of this week one of their committees is going to look at three of our goals:

- Trespassing on private property
- 911 Surcharge
- Annexation and how it affects volunteer fire departments

Angela will be in Raleigh the day of that meeting and will represent the County at that committee meeting.

The next one has been scheduled for November 12. The Taxation and Finance Steering Committee will look at the Non Residency Homeowners Issue. Commissioner Kumor will be present for that and possibly Mr. Nicholson.

The next step is that the goals will go from the Steering Committees to the Legislative Goals Committee which will start meeting sometime in late November and into December. January 14 and 15 the Statewide Legislative Goals Conference of the County Commissioners' Association will be held in Raleigh.

#### **4. Children At Risk**

David Nicholson informed the Board that Chairman Eklund had received a letter from Mr. Frank Blazey, Chairman of the Board of Social Services. The Board had previously asked the Department of Social Services as well as the Community Child Protection Team to look at setting up a Task Force to look at children who seem to be falling through the crack from the standpoint of receiving medicaid funded mental health programs.

The Board of Social Services had reviewed such an idea and set a purpose of the Task Force, legal authority of the Task Force and Composition of the Task Force. They recommended the following composition of the Task Force:

- Director of Social Services or his designee
- Director of TREND or his designee
- Two members of the Board of Social Services
- Two members of the TREND Mental Health Board
- One member of the Community Child Protection Team
- One member of the Board of Commissioners
- One member of Pisgah Legal Services
- Two members from the community at large

The Board of Social Services, through the authority of the Director of Social Services, would appoint the ad hoc committee (Task Force).

There might be some Task Force facilitation that may be required due to confidentiality and they asked that the County cover any costs associated with that.

At this point in time they asked if the Board of Commissioners agrees in principal with the more detailed presentation regarding the purposes and function of the committee.

There was a consensus of the Board that they agree in principal.

#### **5. Commissioners' Office Space**

Commissioner Kumor stated that two Commissioners use the office space provided even though the County Manager's intention had been space for four Commissioners. Commissioner Kumor stated that she felt that would have been inappropriate under the Open Meeting Laws that four Commissioners share the same space because often times they are here around the same time. She expressed hope that the County Manager will be looking for space for two additional Commissioners to have office space.



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Mr. Nicholson stated that if the Board of Elections offices move, he had considered their current office space for some additional office space for the County Commissioners as well as some storage space for Administration and the Clerk to the Board, etc.

### **IMPORTANT DATES**

A work session was scheduled for 5:30 p.m. for Monday, November 16, 1998. It was the consensus of the Board to set a Subdivision Regulations work session at the November 18 meeting.

Chairman Eklund called a 10 minute recess.

### **PUBLIC HEARING - Request to Amend the Official Zoning Map Rezoning Application #R-05-98 by Albert M. Moreno**

Commissioner Ward made the motion for the Board to go into Public Hearing. All voted in favor and the motion carried.

Karen Collins reminded the Board that this public hearing is on an application by Albert M. Moreno (#R-05-98) to amend the Official Zoning Map of Henderson County. Mr. Moreno had requested that the County rezone approximately 2.6 acres of property on West King Street in East Flat Rock from a T-15 (medium density residential with manufactured homes) district to an I-1 (light industrial) district.

On September 29, 1998, the Henderson County Planning Board voted unanimously (7 to 0) to send the Board of Commissioners a favorable recommendation on the application as submitted.

In accordance with Section 1204 of the Henderson County Zoning Ordinance and State law, a notice of the public hearing was published in the October 21, 1998 edition of the Times-News. A second notice was scheduled for publication in the Times-News on October 28, 1998. The Planning Department mailed notices of the hearing to the subject property owner as well as the owners of adjacent and nearby properties on October 19, 1998. On October 23, 1998, the Planning Department posted two signs advertising the hearing on the subject property.

Rita Moreno Johnson, was present to represent her Father, Albert M. Moreno and answer any questions.

### **Public Input**

There was no-one who had signed up to speak. Two persons did fill out Optional Public Comment Forms, both were owners of adjoining property. David Nicholson summarized the comments as follows:

1. Eva S. Blythe - "I wish to grant his desire to rezone it to I-1".

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2. Mr. & Mrs. Ralph E. Case, Sr. - "I prefer that no trailers or junkyards be placed on the property. We would like to see property used in a way that it will not lower the value of our property".

Following some discussion, Commissioner Ward made the motion for the Board to go out of Public Hearing. All voted in favor and the motion carried.

Commissioner Kumor made the motion to approve the rezoning request as presented. All voted in favor and the motion carried.

**PUBLIC HEARING - Bond Order Authorizing the Issuance of \$21,000,000 Refunding Bonds of the County of Henderson**

The Finance Director, J. Carey McLelland, reported to the Board of Commissioners that the bond order entitled, "BOND ORDER AUTHORIZING THE ISSUANCE OF \$21,000,000 REFUNDING BONDS OF THE COUNTY OF HENDERSON," which had been introduced on October 21, 1998, had been published on October 25, 1998, with notice that the Board of Commissioners would hold a public hearing thereon on November 2, 1998, at 7:00 o'clock, P.M. The Finance Director also reported that he had filed in the Clerk's office a statement of debt complying with the provisions of The Local Government Bond Act, and such statement as filed showed the net indebtedness of the County to be 0.52% of the assessed valuation of property in Henderson County.

Commissioner Hawkins moved that the Board of Commissioners proceed to hold a public hearing on the refunding bond order and the advisability of issuing the refunding bonds. All voted in favor and the motion carried.

At the direction of the Chairman of the Board of Commissioners, the Finance Director read the bond order and the published notice of hearing.

After the Board of Commissioners had heard all persons who requested to be heard in connection with the foregoing questions of which there were none, Commissioner Kumor moved that the public hearing be closed. The motion was seconded by Commissioner Hawkins and was unanimously adopted.

Commissioner Kumor moved that the Board of Commissioners adopt, without change or amendment, and direct the Clerk of the Board of Commissioners to publish as prescribed by The Local Government Bond Act the bond order entitled, "BOND ORDER AUTHORIZING THE ISSUANCE OF \$21,000,000 REFUNDING BONDS OF THE COUNTY OF HENDERSON," introduced at the meeting of the Board of Commissioners held on October 21, 1998. The motion was seconded by Commissioner Good and was adopted by the following vote:

AYES: all

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NAYS: none

**PUBIC HEARING - To Consider Codification of the Local Laws, Ordinances, and Certain Resolutions in Henderson County, NC**

Commissioner Hawkins made the motion for the Board to go into Public Hearing. All voted in favor and the motion carried.

Jennifer Jackson reminded the Board that staff had previously distributed to the Board of Commissioners a copy of the proposed Code of Henderson County. The Code is the product of many years of hard work on the part of the Board. Prior to adoption of the Code, the Board must hold a public hearing which has been scheduled for this date. The public hearing has been advertised in accordance with law and a copy of the Notice of Public Hearing was submitted for review.

The Planning Board, at its October 27, 1998 meeting, met and considered the codification of the County's ordinances and resolutions as presented and voted unanimously to forward a favorable recommendation to the Board of Commissioners. The recommendation was also submitted.

Copies of the adoption ordinance as presented by General Code Publishers have previously been distributed to the Board. The General Code Publishers ordinance has been modified by staff in order to accommodate North Carolina law and matters particular to Henderson County. The revised adoption ordinance was presented for review and consideration.

This public hearing is to allow the Board to receive public comment on the Adoption Ordinance and the Code of Henderson County.

Staff felt that the Board may wish to schedule a work session to review this material in more detail and proposed that such work session be scheduled for the Board's November 18, 1998 meeting.

Jennifer Jackson reviewed the Adoption Ordinance with the Board.

**Public Input**

Dutch Burdette - Mr. Burdette stated that 9 months ago he addressed the Board with a concern about where the county was headed. According to his information the population of Hendersonville was 7,250 in February of 1998. There were 550 employees which amounts to one for every 139 persons in the county. There are also 259 temporary employees. As of September of 1998 the county has 568 employees. That is an increase of 18 employees. He asked who they were, has the Board met them and did they have any part in hiring them? On July 6, 1993 the Board at that time gave the County Manager the power to appoint officers, employees and agents of Henderson County without first securing the approval of the Board of Commissioners.

The Board is in the process of adopting this new code. He stated that he hopes the new code is the same as the old one was, the statute. "We will have a new board in December and hopefully you will

give them the opportunity of selecting the manner in which new employees are to be hired, with their approval or without their approval.” He referred to NCGS 153A-82.

Mr. Burdette thanked Bob Eklund and Vollie Good for their efforts in trying to do what they felt was best for our county.

Commissioner Kumor made the motion to close the public hearing. All voted in favor and the motion carried.

### **REPORT FROM COALITION SEEKING SOLUTIONS FOR SCHOOL FACILITIES**

Ann Feldstein was present. She informed the Board that on October 3, 1998, the Coalition Seeking Solutions for School Facilities held a forum to discuss school facilities. The forum was sponsored and supported by eight community organizations. The forum was held at East Henderson High School. It was not meant to be a debate but an exchange of ideas.

Those in attendance were divided into groups (13 in all) following the key note speaker who was Dr. Penny Smith from the Dept. of Educational Leadership and Foundations/Western Carolina University. Her message was “Facilities can affect student performance”. The groups were structured to discuss three questions and Ms. Feldstein summarized the opinions as follows:

#### **#1. What kind of facilities do you feel are necessary for children to receive good education in the Henderson County Schools?**

That facilities should be well planned and expandable for long term use and meet recognized standards. They should be educationally suitable providing a climate for learning. Students and the community should be able to take pride in them. The need for safe, clean, comfortable, accessible and well maintained buildings was repeatedly stressed. Buildings should avoid extremes, not palaces but not just bare necessities either. There should be enough space for all curriculum needs, media, physical education, computers, special needs and be adaptable for future changes in technology.

#### **#2. What factors are important for you in considering a revenue plans targeted for school facilities?**

The primary considerations for support of revenue proposals were good planning, cost effectiveness and that these proposals be affordable and equitable. It was strongly felt that the public needed to be well informed and convinced of the above. The need for short and long term planning for all the schools was stressed including long term funding sources for new buildings as well as expansion, repair and maintenance of existing buildings. A variety of revenue sources should be considered. Raising property taxes was not generally ruled out but all other possible sources should be considered, existing revenues, sales tax, etc. Costs should be shared by all segments of the community with avoidance of excessive debt.

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**#3. What do you need from your elected officials to support ANY school facility project and/or revenue plan?**

Responses from the participants had a recurring theme: elected officials should provide leadership but be open and honest with no hidden agenda. Elected officials must provide the forum for building public input, consensus, and trust. The groups also recognized the need for both immediate and long-range plans for the schools, not only K-6 and middle school levels but also the high schools will need attention and future needs addressed. Overwhelmingly the participants strongly indicated that it is vital that there be more and better communication between elected officials and the public to gain support for any future proposals.

There was some concern that teachers and parents were not well represented among forum members. There is a need to reach out to all segments of the community including teachers and parents and involve them in the decision making process.

Some suggestions the committee offered:

- To obtain honest input from teachers, staff, and administrations, a survey with similar content and questions might be offered to them with the responses sent to the committee with no identification and tabulated by the committee or some other group.
- It is suggested that the Boards consider setting up a specific schedule for group dialogues that will be facilitated by a neutral party and be specific to a special topic. Having someone available to answer questions related to the particular topic would be a means of educating and informing the community.
- People feel that they have great ideas and solutions; however, these ideas may not be implemented because of state laws or restrictions all the time. Offering information and just discounting the idea serves two purposes: listening and educating and keeping communication lines open.

A facilitator was used. Evaluation forms were also filled out by the participants and indicated a high degree of satisfaction with all aspects of the forum. There were approx. 130 people registered for the forum.

She expressed the committee's gratitude to the Board of Commissioners and the members of the Board of Education, Staff, and Administrators for their support in the process of preparing and presenting this forum.

**REPORT FROM MILLS RIVER STAKEHOLDERS GROUP**

Bill Eaker distributed a hand-out entitled "Mills River Partnership Grant Application". Mr. Eaker is director of environmental programs with the Land of Sky Regional Council in Asheville. Tonight he was representing the Mills River Partnership, recently a name change from the Mills River Stakeholders Group. He introduced some other members of the Partnership: John Humphrey with Carolina Mountain Lands Conservancy who is also a landowner in the Mills River Watershed, and

Bob Carter with the Henderson County Soil & Water Conservation District who also lives in the Mills River Watershed, and Gary Tweed who is the Henderson County Engineer and has been representing the county at these meetings over the last few months.

The Mills River Partnership was formed to develop an initiative to preserve and improve water quality in the Mills River Watershed which serves as the water supply for much of Henderson County and soon a part of Buncombe County.

Partnership members include Henderson County, Hendersonville, Henderson County Soil and Water Conservation District, Carolina Mountain Land Conservancy, Regional Water Authority of Asheville, Buncombe and Henderson Counties, the Land-of-Sky Regional Council and US Forest Service.

They have been meeting over the last few months to put together a grant application to the NC Clean Water Management Trust Fund. Several years ago the state legislature established the Clean Water Management Trust Fund to assist local communities and conservation organizations state-wide to improve water quality across the state. It is their understanding that this December the Trust Fund will award approximately \$40 million state-wide to local governments and communities across the state for projects.

Project Elements to Date:

- Stream Vegetative Buffers - Partners will work with willing landowners to preserve and/or restore stream buffers and stabilize eroding stream banks. These measures will be cost shared with landowners.
- Pesticide Loading Facilities - Up to 8 pesticide mixing/loading areas will be replaced with state-of-the-art agricultural handling facilities to eliminate any potential spills. Cost share provided.
- Erosion Control Initiative - Partners will cost share erosion control measures on sites throughout the watershed. A Soil Conservationist position will be hired by the SWCD to assist farmers and landowners.
- Watershed Education Program - Partners will sponsor educational workshops and treatment plant tours and develop and distribute educational fact sheets, brochures, etc.
- Long Term Watershed Protection Management Strategy - Partners will develop a strategy to address long term management needs and action including storm water management, onsite wastewater systems, point source discharges, etc.

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The Partnership is planning to ask for \$800,000 plus from the Clean Water Management Trust Fund. This figure is subject to change. They have approximately \$250,000 lined up in Local Match/In Kind Support to date. They requested the Board's endorsement so they can list Henderson County in the list of partners in the application and they would welcome any match or in kind support.

Following discussion, it was consensus of the Board that they need time to review this proposal. They will respond before the December 1 deadline.

#### **PARDEE HOSPITAL FINANCING AGREEMENT**

The Board of Trustees requested that the Board of Commissioners approve a submitted written Agreement stating the terms to reimburse Pardee Hospital for the land purchased next to Blue Ridge Community College.

Mr. Frank Aaron was present to answer any questions.

Following discussion, it was the consensus of the Board to change the payment date.

Commissioner Kumor made the motion to adopt the Agreement as presented with only a change of the payment date to the end of December. All voted in favor and the motion carried.

#### **PARTNERS IN HEALTH - Condominium Documents**

At the Board's June 2, 1997 meeting, the Board approved a special use permit allowing Four Seasons Hospice to construct an in-house care facility on County-owned property located at South Allen Road and College Drive, near Blue Ridge Community College. The hospice care facility will be connected to the skilled nursing facility that Pardee Hospital is currently constructing on the same site. This endeavor, now known as Partners in Health, recently won one of the National Association of Counties (NACo) awards for innovative programs.

Mr. Sam Fritschner, Attorney, who represents Hospice of Henderson County, Inc., informed the Board that the Hospital and Hospice have outlined an agreement, in letter format, which describes the relationship between the two adjoining facilities. This agreement contemplates that a condominium will be declared for the two facilities. Henderson County, as the owner of the property, must actually declare the Declaration of Condominium. Once declared, Henderson County will be expected to convey the Hospice unit to Four Seasons Hospice pursuant to NCGS 160A-279. The letter dated October 15, 1998 requested that the Board approve the Declaration of Condominium and the conveyance to Hospice.

The County Attorney has reviewed this document and has had some discussions with Mr. Fritschner. Staff requested that the Board consider approving the Declaration of Condominium subject to the review and approval of the final plat by the County Attorney. The final recordable plat is expected to be completed within the next week.

Mr. Fritschner apologized for Barbara Stewart who is ill and unable to be at this meeting to answer questions.

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Don Elkins offered his assistance working with the Partners in Health to bring this item to a conclusion.

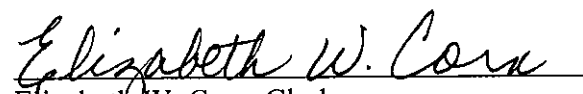
Following discussion on the matter, Commissioner Kumor made the motion to:

- 1) approve the Declaration of Condominium, subject to the approval of said document and the final plat by the County Attorney; and
- 2) approve the conveyance of the Hospice unit to Four Seasons Hospice subject to the requirements of NCGS 160A-279; and
- 3) adopt the proposed Resolution doing the above.

All voted in favor and the motion carried.

There being no further business to come before the Board, the meeting was adjourned at 8:30 p.m.

ATTEST:

  
Elizabeth W. Corn, Clerk

  
Robert D. Eklund, Chairman



STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

BEFORE THE HENDERSON COUNTY  
BOARD OF COMMISSIONERS

IN THE MATTER OF THE APPLICATION FOR VARIANCE  
OF ROBERT CARNES,  
Applicant,

to the

HENDERSON COUNTY BOARD OF COMMISSIONERS

---

**ORDER GRANTING THE APPLICATION FOR VARIANCE**

The HENDERSON COUNTY BOARD OF COMMISSIONERS having held a quasi-judicial hearing on October 21, 1998, to consider an application for a variance from the Henderson County Land Development Ordinance submitted by ROBERT CARNES and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

**FINDINGS OF FACT**

1. Robert Carnes, hereinafter referred to as "Applicant" is the owner of a 1.1 acre tract of land located on Big Willow Road (S.R. 1210) in Henderson County, North Carolina. The tract is accessible by a prescriptive easement over an existing 10 foot gravel drive which abuts Big Willow Road and runs along most of the western line of the tract. This gravel driveway known as St. Ives Lane and previously known as Lacey Lane, is used by two other properties adjacent to the subject tract. The back of the subject tract abuts on Hemlock Lane which is a private road to which the Applicant has not been able to obtain a right-of-way. The frontage on Big Willow Road is narrow.
2. The Applicant desires to subdivide the tract into two lots of approximately one-half acre each. The subject tract is configured in such a way as to permit a front lot (fronting on Big Willow Road) and a rear lot, but that further development on this tract is very limited.
3. In order to ensure that the rear lot has road access, a dedication of a right-of-way is needed. The Land Development Ordinance requires that a 45 foot wide right-of-way be dedicated across the front lot for that purpose; however the shape and size of the 1.1 acre tract will not accommodate such 45 foot wide right-of-way, but will accommodate a 15 foot wide right-of-way.

4. Section 504.7 of the Henderson County Land Development Ordinance provides that the Board of Commissioners may grant variances from the Land Development Ordinance provisions.
5. Robert Carnes submitted to Henderson County an application for variance on September 14, 1998, requesting a variance from Section 504.7 of the Land Development Ordinance, a copy of which is attached hereto as Exhibit A. That the nature of the variance requested was for a 15 foot wide dedicated right-of-way from the centerline of the existing gravel driveway towards the subject property.
6. The existing driveway is situated in the only practical or reasonable location for the same, due to unique conditions peculiar to the site, specifically the narrow frontage on Big Willow Road and the use of the driveway by the adjacent properties.
7. Access to the subject property over the private road Hemlock Lane is not feasible in that the Applicant was unable to secure a legal right-of-way to the road and the geographic limitations restrict access over that section of the subject tract due to steep slopes and the required placement of a septic drain field at the rear of the tract.
8. Applicant intends to place individual driveways, off of the existing gravel driveway, to serve the two lots on the subject property and to situate those driveways in such a manner as to allow the turning around of solid waste collection vehicles.
9. Applicant intends to be fully responsible for the maintenance of the existing gravel driveway and, when each of the two lots are conveyed, place restrictions in the deeds requiring the property owners of the two lots to share equally in the maintenance of said gravel driveway.
10. It would be beneficial to all properties utilizing the existing gravel driveway to execute and record a road maintenance agreement outlining the responsibilities of all property owners, with regard to the maintenance and improvement of the common driveway.
11. The Planning Board heard the Applicant's request for a variance on September 29, 1998, and unanimously recommended to the Henderson County Board of Commissioners that the 15 foot wide right-of-way variance sought by Applicant be granted.
12. The 10 foot wide existing driveway is suitable for access by emergency equipment and the 15-foot wide road dedicated right of way from the centerline towards the subject tract would enhance the emergency access.
13. The granting of this variance will accommodate unique conditions peculiar to this development site, will accommodate design flexibility, and will avoid unnecessary

hardship. All of these positive results will not in any fashion jeopardize the public health or safety, or the general public interests.

### CONCLUSIONS OF LAW

1. That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance.
2. That the variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.
3. That in granting the variance, the public safety and welfare have been assured and substantial justice has been done.

**NOW THEREFORE**, ROBERT CARNES, Applicant, is hereby **GRANTED** a variance from Section 504.7(c) of the Henderson County Land Development Ordinance to allow access to the rear lot of his proposed two-lot subdivision over a dedicated right-of-way on the subject property not less than 15 feet wide, **CONDITION UPON** the following:

1. That the Applicant will use all reasonable and legal means to ensure that the existing gravel driveway is in driveable/serviceable condition and will convey any deed to the subject tract or any part thereof subject to a restriction requiring the owner(s) of the subject tract to maintain the driveway in a driveable/serviceable condition and to share equally in the cost of maintaining the existing gravel driveway in such condition.
2. That the Applicant will use all reasonable and legal means to provide individual driveways to serve the two lots situated in such a manner as to permit the turning around of solid waste collection vehicles.

**THIS** the 2nd day of November, 1998.

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

BY: \_\_\_\_\_  
Robert D. Eklund, Chairman

**ATTESTED BY:**

\_\_\_\_\_  
Elizabeth W. Corn, Clerk to the Board

[OFFICIAL SEAL]

COUNTY OF HENDERSON  
STATE OF NORTH CAROLINA  
APPLICATION FOR A VARIANCE TO THE  
HENDERSON COUNTY LAND DEVELOPMENT

Exhibit A

SEPTEMBER                      14                      1998  
Month                              Day                      Year

Applicant Name: CARNES ; WOODARD BUILDERS, INC. / ROBERT CARNES Phone: 607 0439  
Address: P.O. BOX 1610 SKYLAND NC 28776

Location of property: From HVL HWY 64 T/L CUMMINGS RD - TO END -  
T/R BIG WILLOW RD - 50 YDS ON LEFT

TO THE HENDERSON COUNTY PLANNING BOARD:

I, ROBERT CARNES (owner/agent), hereby petition the Henderson County Planning Board for a VARIANCE from the literal provisions of the Land Development Ordinance of Henderson County. I request a variance from the following provisions of the ordinance cite paragraph numbers: HENDERSON COUNTY L.D.O. SECTION 509.7 (45' RIGHT OF WAY) TO ALLOW ACCESS TO A SECOND LOT (NEW) USING AN EXISTING DRIVEWAY WITH NO STATED RIGHT-OF-WAY, ONLY THE WIDTH OF THE DRIVEWAY (APPROX 12 FT.).

The following attachments are submitted herewith: PLAT OF PROPERTY

MM

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:

The Henderson County Planning Board does not have unlimited discretion in deciding whether to grant a variance. The Board should reach three conclusions as a prerequisite to the issuance of a variance: (a) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, (b) that the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and (c) that in granting the variance, the public safety and welfare have been assured and substantial justice has been done. In the spaces provided below, indicate the facts that you intend to show and the arguments that you intend to make to convince the Board that it can properly reach these three required conclusions:

(a) THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THE ORDINANCE IN SIMILAR MATTERS RELATING TO LAND USE. The courts have developed three rules to determine whether in a particular situation "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following:

(1) If he complies with the provisions of the ordinance, the property owner can secure no reasonable return from or make no reasonable use of his property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.) \_\_\_\_\_

(2) The hardship of which the applicant complains results from unique circumstances related to the applicant's land. (Note: Hardships suffered by the applicant common with his neighbors do not justify a variance. Also, unique personal or family hardships are irrelevant since a variance, if granted, runs with the land.) BECUSE OF THE PHYSICAL SHAPE OF THE PROPERTY (BORROWING BIG WILLOW RD) DOES NOT ALLOW FOR A WIDER RIGHT-OF-WAY. FURTHERMORE, A LARGER RIGHT-OF-WAY WOULD NOT ALLOW ENOUGH ROOM FOR NECESSARY SEPTIC LINES.

(3) The hardship is not the result of the applicant's own actions. \_\_\_\_\_

(b) THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE AND PRESERVES ITS SPIRIT. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.) GRANTING THE VARIANCE WOULD ALLOW FOR (2) APPROX. 55 ACRA LOTS AND (2) SINGLE FAMILY HOMES THAT WOULD BE THE SAME QUALITY OR ABOVE, THE SURROUNDING HOMES.

(c) THE GRANTING OF THE VARIANCE SECURES THE PUBLIC SAFETY AND WELFARE AND DOES SUBSTANTIAL JUSTICE. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.) GRANTING A VARIANCE WOULD IN NO WAY AFFECT PUBLIC SAFETY.

3875

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information, and belief.

*Robert Lawry*

Applicant's Signature

9/14/98

Date

Applicant's Agent (If Applicable)

Date

*Wendy Morrison*

Henderson County Land Development Administrator

9/19/98

Date

IN THE EVENT THAT ANY DISCREPANCIES EXIST BETWEEN THE CRITERIA OUTLINED ON THIS FORM AND THE LAND DEVELOPMENT ORDINANCE OF HENDERSON COUNTY, THE ORDINANCE SHALL PREVAIL.



RECEIVED  
9/17/98

*Carnes & Woodard Builders, Inc.*

Miller Road • P.O. Box 1610  
Skyland, North Carolina 28776-1610  
(704) 687-0443

September 11, 1998

Matt Matteson  
Hendersonville Department of Planning  
145 Fifth Avenue East  
Hendersonville, NC 28792

Dear Mr. Matteson:

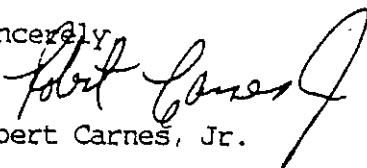
As per our phone conversation we are applying for a variance on the parcel detailed on the enclosed plat. We would like to divide the 1.1 acre parcel and construct two single-family homes.

Over the past several weeks we have contacted, Henderson Co. Health Dept., lending institutions, and our attorney to evaluate the feasibility of building two homes on this property. Jerry Robinson at the Health Dept. has approved the property for the septic systems for two homesites. Larry Oliver at Centura Bank assured us of financing availability for two new homes on this particular building site. Richard Kania, our attorney, assured us there would be no problem getting title insurance on the two new homes.

We feel our request for a variance is reasonable in that there is a legal, deeded right-of-way for the property, and the physical characteristics of the property preclude a larger right-of-way.

Thank you for your consideration.

Sincerely,



Robert Carnes, Jr.

## Sections 206 and 509 of the Henderson County Land Development Ordinance

### Section 206 Waiver of Requirements/Variances

The Planning Board, upon written request from the applicant and in conjunction with the review of this application for subdivision or land development approval, may recommend such exceptions from the requirements for approval as it may deem reasonable and within the general purpose and intent of the provisions for land development review and approval, but, only if the literal enforcement of one or more of said provisions are impractical or will exact undue hardship due to particular conditions of the land in question. The Planning Board shall include its findings of fact and conclusions in the recommendation and shall forward such findings to the Commissioners for final action with respect to a request for a variance.

Where, because of unique conditions peculiar to the site or to accommodate design flexibility, strict adherence to the provisions of this Ordinance would cause unnecessary hardship, the Board of Commissioners, upon the recommendation of or appeal from the Planning Board, may authorize a variance to the terms of this Ordinance only to the extent that is absolutely necessary and not to an extent which would violate the intent of this Ordinance.

### Section 509 Access Requirements

All subdivisions shall meet or exceed the minimum road frontage and right-of-way requirements within the boundaries of the property developed as set forth below:

<u>Type Road</u>	<u>Parcel/Subdivision Size</u>	<u>Frontage On Public Road</u>	<u>Right-of-Way Requirement</u>
Local Residential Subdivision Roads	0-30 Acres	45 Feet	45 Feet
Local Subdivision Roads	Over 30 Acres	50 Feet	50 Feet
Residential Collector Roads	All	60 Feet	60 Feet

Standards are based on NCDOT requirements for roads with shoulder sections. If curb gutter is proposed, right-of-way requirements may be reduced accordingly.

If a property owner is subdividing land abutting an existing road which does not meet the minimum right-of-way width requirements of this Ordinance, the developer may dedicate as minimum, one half of the required right-of-way on his property measured from the centerline of the road right-of-way, provided that such adjacent property is otherwise undeveloped and the developer can document that there are no existing physical or legal restrictions that would preclude such development.



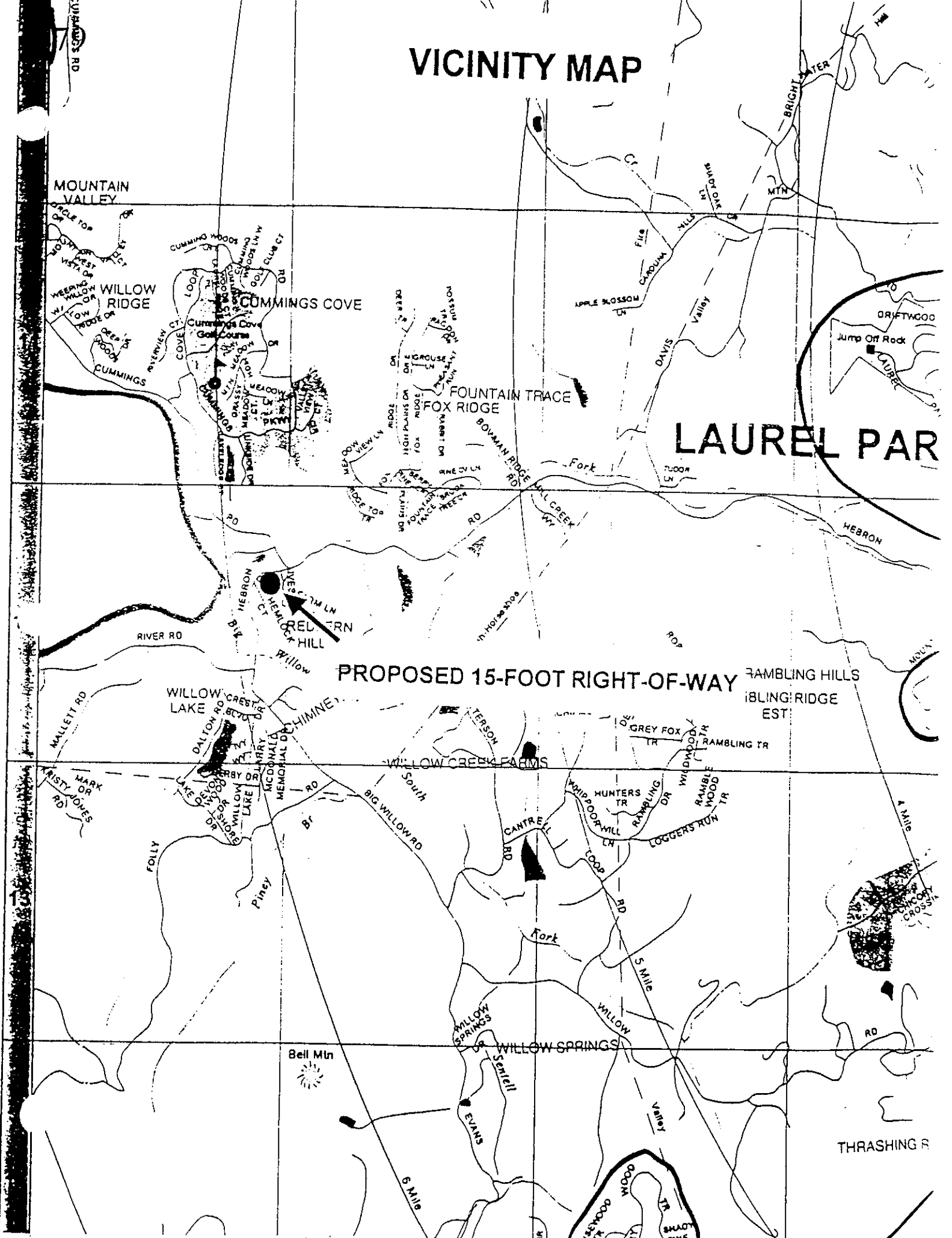
## Summary of Planning Board Action

- On September 14, 1998 Mr. Bob Carnes submitted an application for a variance from Section 509 of the Henderson County Land Development Ordinance.
- On September 29, 1998 the Henderson County Planning Board reviewed the request for a variance.
- Staff stated that Mr. Carnes proposed to subdivide a lot that is accessed by a recorded right-of-way with no stated width. The access is a 12-foot wide driveway that is used to access two other lots. It was stated that Mr. Carnes proposes to subdivide a tract into two lots and use the driveway as access to those lots, too. If the variance was granted, the 12-foot wide driveway would access a total of four lots. Staff demonstrated that the property line for the tract that is to be subdivided is also the centerline of the driveway. Staff felt that a stated right-of-way width should be recorded on the piece of property that Mr. Carnes proposed to subdivide.
- Section 509 of the Henderson County Land Development Ordinance requires a minimum of 45-foot right-of-way and 45-foot frontage be recorded for each tract.
- Mr. Matt Matteson stated that if the proposed Subdivision Ordinance were passed, Mr. Carnes would only have to dedicate a 30-foot right-of-way.
- Mr. Carnes stated that the request for the variance is necessary because of the unusual shape of the property and because it is impossible to get a 45-foot right-of-way on a piece of property that only has approximately 12 or 14 feet of road frontage. He said that the Henderson County Health Department granted approval for septic fields on the proposed building sites. He felt that if the tract were subdivided into 1/2 acre lots that it would be in keeping with the surrounding area and stated that surrounding neighbors were comfortable with using the driveway to access a total of four lots.
- Mr. Chuck McGrady made a motion to recommend to the Board of County Commissioners that, a variance be granted to allow a 15-foot right-of-way from the centerline of the driveway on the subject property. Michael Case seconded the motion.

# VICINITY MAP

## LAUREL PAR

### PROPOSED 15-FOOT RIGHT-OF-WAY



OWNER:  
ROBERT A. HELLUND  
 TO BE CONVEYED TO:  
AIR VENT EXTERIORS, INC.



( IN FEET )  
 1 inch = 40 ft

TAX MAP #9538-73-4737

THIS PROPERTY IS NOT LOCATED IN A DESIGNATED FLOOD HAZARD AREA

	STATE OF NORTH CAROLINA HENDERSON COUNTY CRAB CREEK TOWNSHIP	DAVID C. HUNTLEY & ASSOC. LAND SURVEYING P.O. BOX 579 FLAT ROCK, NC 28731 (878) 693-7077
	DIVISION OF TRACT TWO AS SHOWN ON PLAT SLIDE 2435	SURVEY DCH DRAWN MAC SCALE 1" = 40 FT DATE: 10/8/98 DWG. NO. H-3055

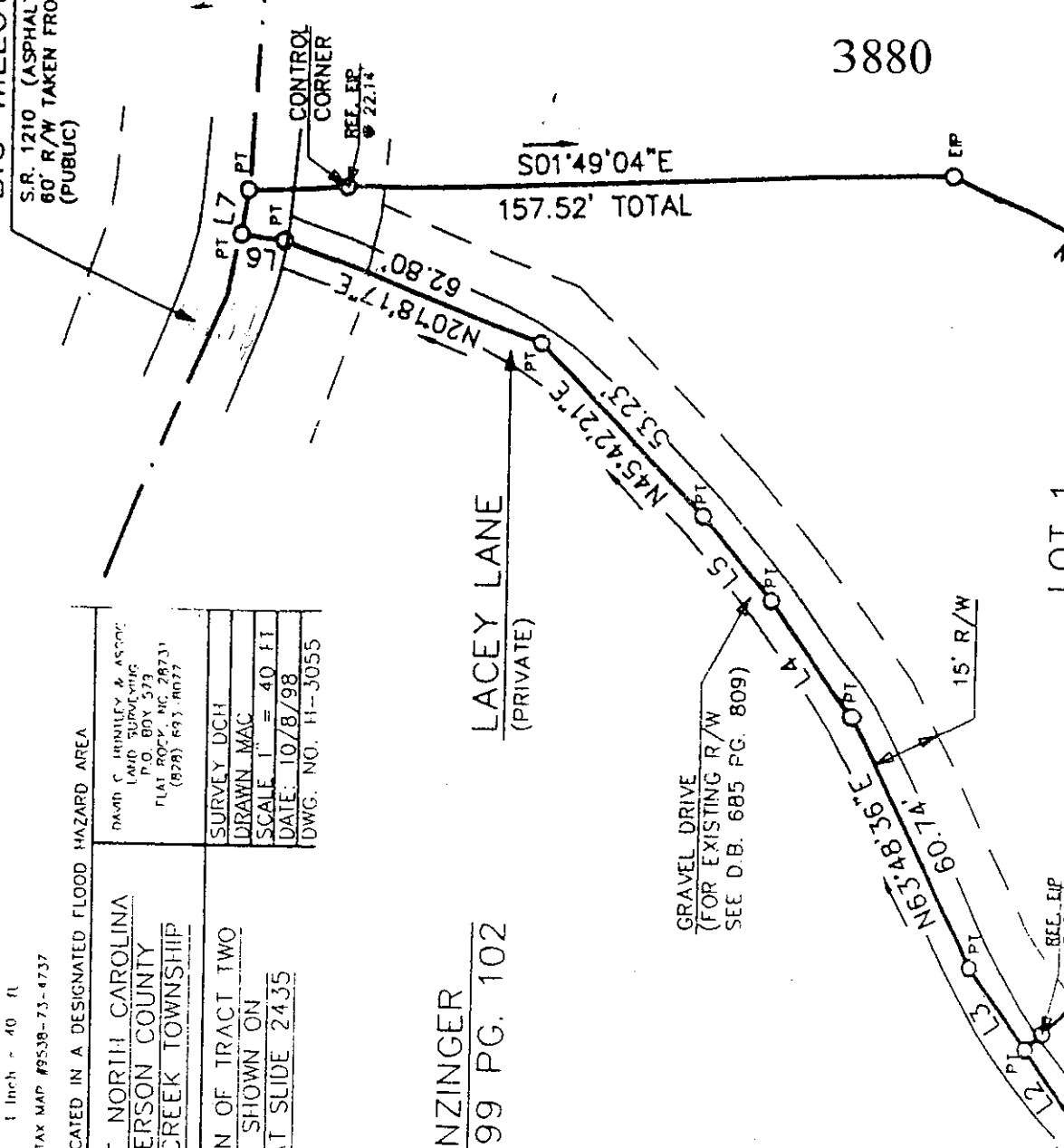
LEGEND  
 P 1 TING IRON PIN  
 P 2 IRON PIN  
 L UNMARKED POINT  
 C CONCRETE MONUMENT  
 P POWER POLE  
 L LIGHT POLE  
 C CENTER LINE  
 S A FOOT OF WALL  
 C CONCRETE  
 REF REFERENCE  
 M OVERHEAD UTILITIES

RANZINGER  
D.B. 899 PG. 102

LACEY LANE  
 (PRIVATE)

BIG WILLOW  
 S.R. 1210 (ASPHALT  
 60' R/W TAKEN FROM  
 (PUBUC)

3880

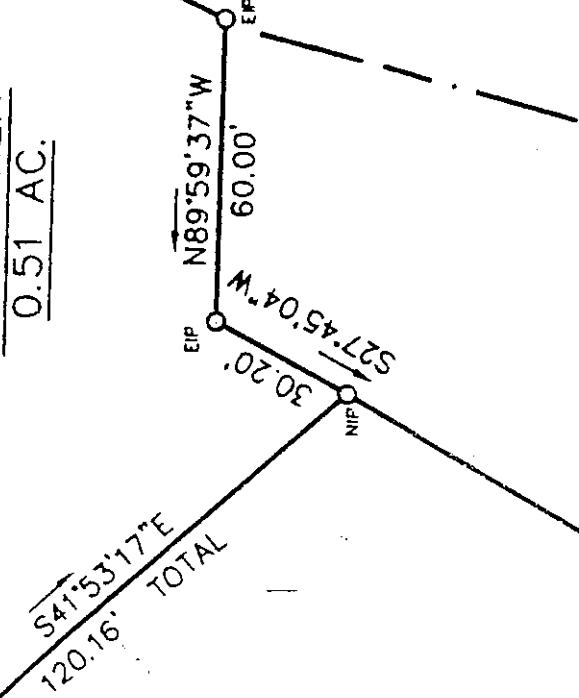


GERHART  
D.B. 610 PG. 507

LOT 1

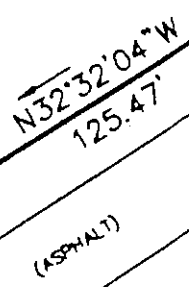
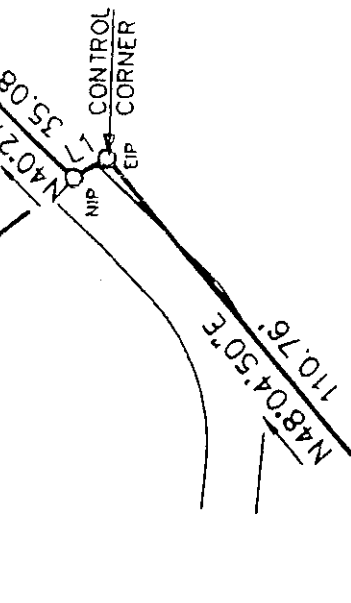


0.51 AC.

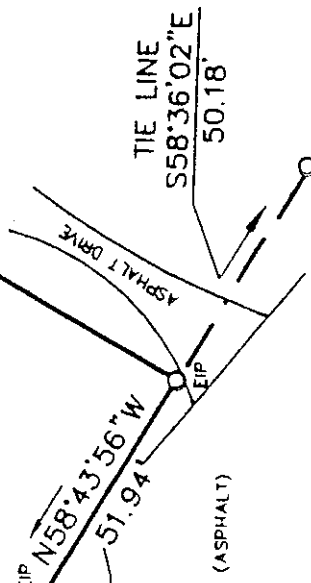


JOHNSON  
D.B. 924 PG. 522

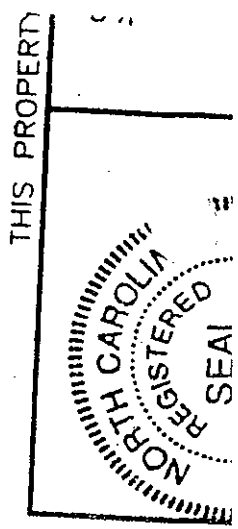
LOT 2  
TOTAL AREA  
0.59 AC.



OCK LANE  
AS SHOWN ON PLAT  
RN HILL RECORDED IN  
A SLIDE 346 A



EIP: BEING THE EASTERN MOST CORNER OF LOT 2  
REDYERN HILL AS SHOWN IN PLAT CAB A SLIDE 346 A



LEGEND

- EIP EXISTING IRON PIN
- NIP NEW IRON PIN
- PT UNMARKED POINT
- MON. CONCRETE MONUMENT
- IP POWER POLE
- LP LIGHT POLE

THIS PROPERTY

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

100 North King Street  
 Hendersonville, North Carolina 28792-5097  
 Phone 828-697-4808 • Fax: 828-698-6183  
 TDD: 828-697-4580

BOB EKLUND  
 Chairman  
 GRADY HAWKINS  
 Vice-Chairman

VOLLIE G. GOOD  
 RENEE KUMOR  
 DON WARD

**RESOLUTION**

**WHEREAS**, the Board of Commissioners at its June 2, 1997 meeting, approved a special use permit allowing the construction of an in-house hospice care facility by Hospice of Henderson County, Inc. d/b/a Four Seasons Hospice adjoining a skilled nursing facility being constructed by Margaret R. Pardee Memorial Hospital on County-owned property located at South Allen Road and College Drive, near Blue Ridge Community College;

**WHEREAS**, this joint endeavor is now known as Partners in Health and has received recognition from the National Association of Counties (NACo) as an innovative program;

**WHEREAS**, Pardee Hospital and Four Seasons Hospice requested that Henderson County declare, pursuant to Chapter 47C of the North Carolina General Statutes, a condominium for the two (2) facilities located on Henderson County property and convey, subject to NCGS 160A-267 and 160A-279, the Hospice unit to Four Seasons Hospice;

**WHEREAS**, Henderson County desires to declare the Partners in Health Condominium; desires to maintain ownership (subject to any lease agreements entered into by and between Henderson County and the Henderson County Hospital Corporation) of the unit that Pardee Hospital will be occupying, and desires to sell and convey, subject to NCGS 160A-267 and 160A-279, the Hospice unit to Four Seasons Hospice;

**WHEREAS**, the operation of the skilled nursing facility and the in-house hospice care facility are public purposes;

**NOW THEREFORE BE IT RESOLVED** by the Henderson County Board of Commissioners as follows:

1. The Chairman of the Henderson County Board of Commissioners and the Clerk to the Board are hereby authorized to execute the Declaration of Condominium of the Partners in Health Condominium which is attached hereto as "Exhibit A", the terms of said Exhibit being incorporated herein by reference as if fully set forth herein and expressly agreed to by the Board of Commissioners, after the completion of the final recordable plat and upon the approval of the County Attorney.
2. The County Attorney, Staff Attorney and Clerk to the Board are hereby authorized to prepare and publish such notices as are required under NCGS 160A-267 and 160A-279, for the conveyance of the Hospice unit to Four Seasons Hospice.
3. The Chairman of the Henderson County Board of Commissioners and the Clerk to the Board are hereby authorized to execute and deliver a deed to Four Seasons Hospice for the condominium unit which will be occupied by Hospice, upon the satisfaction of all statutory requirements of NCGS 160A-267 and 160A-279, the receipt of the agreed upon consideration, and upon the approval of the County Attorney.

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4. The Chairman, County Attorney, the Clerk to the Board, the County Manager, and the Staff Attorney are authorized to take any further actions necessary to accomplish the Declaration of Condominium for the Partners in Health Condominium and the conveyance to Four Seasons Hospice, as long as such actions are consistent with the intent expressed herein.

THIS the 2nd day of November, 1998.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: *Robert D. Eklund*  
Robert D. Eklund, Chairman

ATTEST:

*Elizabeth W. Corn*  
Elizabeth W. Corn, Clerk to the Board

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DECLARATION OF CONDOMINIUM  
OF  
PARTNERS IN HEALTH CONDOMINIUM  
A North Carolina Condominium  
511 South Allen Road  
Flat Rock, North Carolina 28731

DECLARATION made \_\_\_\_\_, 1998, by Henderson County, North Carolina, a North Carolina body politic, (the "Developer") for itself, its successors, grantees, and assigns.

(1) The purpose of this Declaration is to submit the lands herein described and the improvements to be constructed thereon to the condominium form of ownership and use in the manner provided by North Carolina General Statutes Chapter 47C, herein called the *Condominium Act*.

(a) The name by which this condominium is to be identified is Partners in Health Condominium, a condominium, herein called the "Condominium", and its address is 511 South Allen Road, Flat Rock, North Carolina 28731.

(b) The condominium shall be situated in Henderson County;

(2) The condominium association shall consist of owners of the two condominium units. The Association shall be governed by a board of directors, as more particularly described in the bylaws thereof. The board of directors shall consist of five members, of whom three shall be appointed by the owner of Unit 1 and two shall be appointed by Unit two in such manner as each such owner may determine.

(3) The real property included in the condominium is described in Exhibit A attached hereto and made part hereof by this reference.

(4) The maximum number of units which the declarant reserves the right to create is two.

(5) A description by reference to the plats or plans described in G.S. 47C-2-109) of the boundaries of each unit created by the declaration including the unit's identifying number, is attached hereto as Exhibit B and includes Exhibit B unit 1 and Exhibit B Unit 2:

(6) The condominium shall have no limited common elements;

(7) No real estate may be allocated subsequently as limited common elements;

(8) The declarant reserves no right to develop either Unit of the Condominium;

(9) Other than as set forth above, Unit 2 may be developed within ten years of the

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date hereof; if any development right is exercised in any portion Unit 2, that development right must be exercised in all of the remainder of Unit 2;

(11) Unit 1 shall be allocated 85% of the undivided interest in the common elements and unit 2 shall be allocated 15% of the undivided interest in the common elements. Unit 1 85% of the common expenses of the association and Unit 2 shall be allocated 15%.

(12) Each unit may be used only for the purposes of providing health care or for administration of health care facilities to be conducted by the unit owner within North Carolina;

(13) The recording data for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject by virtue of a reservation in the declaration are:

(14) The declarant may not maintain signs on the common elements advertising the condominium.

(15) The budget provided in N.C.G.S. § 47C-3-103(c) or its successor must be ratified by 100% of all the unit owners.

(16) The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase, or word, or other provision of this Declaration and the Articles of Incorporation, Bylaws, and regulations of the Association shall not affect the validity of the remaining portions thereof.

(17) This Declaration may be amended in the following manner:

(a) Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

(b) Either the Board of Directors or the members of the Association may propose a resolution adopting a proposed resolution. Directors and members not present in person or by proxy at the meetings considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be by not less than 75% of the entire membership of the Board of Directors and by not less than 75% of the votes of the entire membership of the Association.

(c) No amendment shall discriminate against any unit owner unless the unit owner so affected shall consent. No amendment shall change any unit nor the share in the common elements appurtenant to it, nor increase the owner's share of the common expenses, unless the record owner of the unit and all record owners of liens thereon shall join in the execution of the amendment.

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(d) A copy of each amendment shall be certified by the President and Secretary of the Association as having been duly adopted and shall be effective when duly recorded in the office of the Registrar of Deeds of Henderson County, North Carolina.

Done in Henderson County, North Carolina this \_\_\_ day of \_\_\_\_\_ 1998.

HENDERSON COUNTY

by: \_\_\_\_\_  
Chair, Board of Commissioners

Attest: \_\_\_\_\_  
County Clerk  
STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

I, a notary public in Henderson County, State of North Carolina, do hereby certify that \_\_\_\_\_, in h\_\_ capacity as Chair of the County Commission of Henderson County, and \_\_\_\_\_ in h\_\_ capacity as County Clerk, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal this \_\_\_ day of \_\_\_\_\_ 1998.

\_\_\_\_\_  
Notary Public

My commission expires:

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## Exhibit A

BEGINNING at the southeastern corner of that property described in deed of record in Deed Book 932 at Page 470 in the Office of the Register of Deeds for Henderson County, North Carolina, said beginning point also being located South 04 deg. 17 min. 30 sec. East 299.29 feet from a spindle located at the intersection of College Drive (State Road 1920) and a 60 foot right-of-way, and running thence from said beginning point South 05 deg. 55 min. 35 sec. East 133.12 feet; thence South 05 deg. 32 min. 03 sec. East 32.36 feet; thence South 07 deg. 06 min. 45 sec. East 114.37 feet; thence North 75 deg. 10 min 51 West 130.29 feet; thence South 82 deg. 03 min. 22 sec. West 62.76 feet; thence South 61 deg. 14 min. 53 sec. West 48.43 feet; thence South 02 deg. 27 min. 19 sec. East 28.22 feet; thence North 87 deg. 22 min. 55 sec. West 36.70 feet; thence South 79 deg. 00 min. 09 sec. West 62.74 feet; thence South 62 deg. 22 min. 06 sec. West 86.06 feet; thence South 49 deg. 29 min. 39 sec. West 39.03 feet to a new iron pin; thence South 82 deg. 12 min. 41 sec. West 450 feet to a new iron pin; thence North 13 deg. 00 min. 00 sec. West 315 feet to a new iron pin; thence North 05 deg. 00 min. 00 sec. East 320 feet to a new iron pin; thence South 85 deg. 00 min. 00 sec. East 650 feet; thence South 84 deg. 58 min. 16 sec. East 199.76 feet to an existing iron pin; thence North 05 deg. 40 min. 47 sec. E 186.94 feet to the aforementioned spindle located at the intersection of College Drive (State Road 1920) and a 60 foot right-of-way; thence South 04 deg. 17 min. 30 sec. West 299.28 feet to the point and place of BEGINNING and containing \*\*\* acres more or less as shown on map plate of entitled survey "Survey For Margaret R. Pardee Memorial Hospital" prepared by Freeland-Clinkscapes & Associates, Registered Land Surveyors, dated June 29, 1998.

CONVEYED AND DECLARED ALSO is an easement twenty (20) feet in width for the purposes of constructing and maintaining a sewer line from the above-described tract to the public sewer system, the center line of said easement being more particularly described as follows: BEGINNING \_\_\_\_\_ and running thence South 85 deg. 42 min. 39 sec. West 103.86 feet; thence South 27 deg. 09 min. 53 sec. West 62.70 feet; thence South 27 deg. 09 min. 53 sec. West 249.37 feet; thence South 64 deg. 55 min. 11 sec. West 300.95 feet; thence South 72 deg. 12 min. 42 sec. West 308.62 feet; thence South 73 deg. 36 min. 12 sec. West 212.80 feet to \_\_\_\_\_.

ALSO CONVEYED AND DECLARED herewith is an easement for the purposes of ingress, egress and regress between the above-described tract and College Drive (S.R. 1920) and for the additional purpose of parking motor vehicles, said easement being more particularly described as follows: BEGINNING at 5/8" rebar located at \_\_\_\_\_ and running thence from same beginning point South 85 deg. 00 min. 00 sec. East 469.25 feet; thence North 03 deg. 29 min. 53 sec. West 80.33 feet to a 5/8" rebar in the right-of-way of College Drive; thence South 84 deg. 20 min. 59 sec. West 154.03 feet; thence South 87 deg. 31 min. 26 sec. West 46.09 feet; thence South 85 deg. 11 min. 39 sec. West 264.17 feet to a 5/8" rebar, being the point and place of BEGINNING.

BEING a portion of that real property described in deed record in Deed Book 937, at Page

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224 and Deed Book 937 at Page 227 in the office of the Register of Deeds for Henderson County, North Carolina.

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## EXHIBIT B

## UNIT 1

## UNIT 2

Commencing at a spindle at the intersection of the centerline of College Drive and Allen Street and running South  $26^{\circ} 14' 03''$  West 359.42 feet to the northeastern corner of a 1 story brick building which is the Point of Beginning; thence from the Point of Beginning (POB) South  $86^{\circ} 15' 00''$  West 10.80 feet to a building corner; thence North  $03^{\circ} 45' 00''$  East 1.00 foot to a building corner; thence South  $86^{\circ} 15' 00''$  West 13.90 feet to a building corner; thence South  $03^{\circ} 45' 00''$  West 3.80 feet to a building corner; thence South  $86^{\circ} 15' 00''$  West 11.80 feet to a building corner; thence North  $03^{\circ} 45' 00''$  East 3.80 feet to a building corner; thence South  $86^{\circ} 15' 00''$  West 13.00 feet to a building corner; thence South  $03^{\circ} 45' 00''$  West 1.00 foot to a building corner; thence South  $86^{\circ} 15' 00''$  West 12.30 feet to a building corner; thence North  $03^{\circ} 45' 00''$  East 23.80 feet to a building corner; thence North  $86^{\circ} 15' 00''$  East 5.50 feet to a building corner; thence North  $03^{\circ} 45' 00''$  East 13.90 feet to a building corner; thence South  $86^{\circ} 15' 00''$  West 3.90 feet to a building corner; thence North  $03^{\circ} 45' 00''$  East 11.60 feet to a building corner; thence North  $86^{\circ} 15' 00''$  East 3.90 feet to a building corner; thence North  $03^{\circ} 45' 00''$  East 13.90 feet to a building corner; thence South  $86^{\circ} 15' 00''$  West 9.20 feet to a building corner; thence North  $03^{\circ} 45' 00''$  East 4.00 feet to a building corner; thence South  $86^{\circ} 15' 00''$  West 14.50 feet to a building corner; thence North  $03^{\circ} 45' 00''$  East 2.40 feet to a building corner; thence South  $86^{\circ} 15' 00''$  West 8.50 feet to a building corner; thence North  $03^{\circ} 45' 00''$  East 10.00 feet to a building corner; thence South  $86^{\circ} 15' 00''$  West 25.20 feet to a building corner; thence South  $03^{\circ} 45' 00''$  West 13.90 feet to a building corner; thence North  $86^{\circ} 15' 00''$  East 3.90 feet to a building corner; thence South  $03^{\circ} 45' 00''$  West 11.70 feet to a building corner; thence South  $86^{\circ} 15' 00''$  West 3.90 feet to a building corner; thence South  $03^{\circ} 45' 00''$  West 26.60 feet to a building corner; thence North  $86^{\circ} 15' 00''$  East 3.90 feet to a building corner; thence South  $03^{\circ} 45' 00''$  West 11.80 feet to a building corner; thence South  $86^{\circ} 15' 00''$  West 8.00 feet to a building corner at a fire wall; thence running with a fire wall, South  $03^{\circ} 45' 00''$  West 32.60 feet to a building corner; thence North  $86^{\circ} 15' 00''$  East 8.00 feet to a building corner; thence South  $03^{\circ} 45' 00''$  West 39.60 feet to a building corner; thence North  $86^{\circ} 15' 00''$  East 46.10 feet to a building corner; thence North  $03^{\circ} 45' 00''$  East 3.80 feet to a building corner; thence North  $86^{\circ} 15' 00''$  East 11.80 feet to a building corner; thence South  $03^{\circ} 45' 00''$  West 3.80 feet to a building corner; thence North  $86^{\circ} 15' 00''$  East 26.50 feet to a building corner; thence North  $03^{\circ} 45' 00''$  East 3.80 feet to a building corner; thence North  $86^{\circ} 15' 00''$  East 11.50 feet to a building corner; thence South  $03^{\circ} 45' 00''$  West 3.80 feet to a building corner; thence North  $86^{\circ} 15' 00''$  East 14.00 feet to a building corner; thence North  $03^{\circ} 45' 00''$  East 25.10 feet to a building corner; thence South  $86^{\circ} 15' 00''$  West 3.40 feet to a building corner; thence North  $03^{\circ} 45' 00''$  East 7.20 feet to a building corner; thence North  $86^{\circ} 15' 00''$  East 3.40 feet to a building corner; thence North  $03^{\circ} 45' 00''$  East 24.20 feet to the Point of Beginning.

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