

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
MAY 5, 1997

The Henderson County Board of Commissioners met for a Special Called 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 Renee Kumor, Commissioner Don Ward, County Manager David E. Nicholson, Assistant County Manager/Staff Attorney Angela M. Skerrett, and Clerk to the Board Elizabeth W. Corn.

Also present were: Planning Director Matt Matteson, Planner Stacy Merten, and Assistant Staff Attorney Jennifer Jackson.

General Manager of Carriage Park Dale Hamlin, Land Planner Luther Smith, Council for Carriage Park Ron Lassiter, and Director of Development John Jeter.

Absent was: Commissioner Vollie G. Good

CALL TO ORDER/WELCOME

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

The purpose of this meeting was a work session on Carriage Park, to review the project prior to the Public Hearing scheduled for 7 p.m. the same night.

PLANNED UNIT DEVELOPMENTS

Matt Matteson briefly reviewed Section 700 of the Zoning Ordinance regarding Planned Unit Developments (PUDs). The zoning ordinance allows certain things to be done in certain districts. In residential districts, clustering is allowed in four of the residential zoning districts. Clustering means that in a residential development you can develop more densely in one section of your development but overall you cannot have any more units than you could under a normal subdivision type process.

In order to construct a PUD, you have to have a review by the Board of Commissioners, you must have a plan to put before the Board, the plans are reviewed by the Planning Board, guidelines must be met and the formal review process followed. A Public Hearing must be held by the Board of Commissioners. There are also minimum requirements that must be followed regarding height limitations and

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distance between buildings. Privacy, buffering, and open space are also factors to be considered.

CARRIAGE PARK DEVELOPMENT

Matt Matteson reminded the Board that the Carriage Park application was initially submitted in 1987. The Board of Commissioners issued the permit, (87-2) in 1988. There have been several owners and several developers since that time.

The permit was amended by the Board of Commissioners in 1992. The changes in the permit were front yard set backs, total number of units, and set numbers at 268 single family dwellings, 189 attached dwellings, and 120 condominiums (multi-family)dwellings.

In August of 1992 the Carriage Park Development Corporation was born and 40 additional acres of land were acquired. The Corporation requested a revision of the permit to allow more development in the newly purchased land. The number of units was increased to 663 units on 377 acres. The permit was reviewed by the Planning Board and the Board of Commissioners held Public Hearings in the fall of 1993. The permit was granted in October of 1993.

SPECIAL USE PERMIT CONDITIONS FOR CARRIAGE PARK (SP 93-13)

The permit was amended in 1994 to relocate a road. The conditions of the Special Use Permit (SP 93-13) fixed the number at 663, they set a 30' exterior perimeter undisturbed buffer, defined the development parcels (25 total), defined the types of buildings more specifically than in the zoning ordinance (set forth specific definitions for single family dwellings, town homes, and apartments), set the maximum number for each specific type of home. The site standards were revised and the road standards. The conditions also required that open space be put on record as the number of units were submitted for final approval. The permit requires that the collector roads be built or bonded up to the entrance of each development parcel. The review process that goes before the County Planning Board was under the Quasi-Judicial process. There was a notification requirement. One condition was that additional conditions could be recommended by the Planning Board. The Board of Commissioners became the ultimate authority for review of any development parcel.

EXTENT OF DEVELOPMENT TO DATE BY PRESENT OWNERS OF CARRIAGE PARK

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Luther Smith showed maps and plans for the development, former and current. He pointed out changes in the development over the years. He pointed out the master road system which does not carry traffic through all the housing areas. He pointed out the small neighborhoods (small towns) throughout the development. He showed the areas for the different types of dwellings.

To date, under the new permit, Carriage Park has had six different parcels approved.

Mr. Smith discussed open space and the requirements for designating open space.

Dale Hamlin handed out brochure packets and showed examples of the small neighborhoods in the development.

QUASI-JUDICIAL PROCEDURE

Angela Skerrett reminded the Board that a quasi-judicial proceeding is a proceeding held by the Board in which the Board has discretion to apply ordinances or local law to an individual person's set of facts and circumstances to determine that person's rights. The proceedings include a lot of things, including special use permits under the zoning ordinance.

There are some reasons the law requires the Board to act in a quasi-judicial capacity. The main one is that you must protect the persons (or petitioners) due process rights. Things like the right to offer evidence, the right to cross examine witnesses and to inspect documents. The petitioner could waive the right by voluntary participation in a hearing.

The Board must base their critical findings of fact upon competent evidence. The Board must draw conclusions based on the findings of fact and they must give a decision.

For a special use permit, section 907 of the zoning ordinance requires the Board to conclude three things. The Board had to conclude these things with respect to Carriage Park:

1. That the special use permit would not adversely affect the health and safety of the persons residing or working in the neighborhood of the proposed use.
2. That the special use permit would not be detrimental to the public welfare.
3. That the special use permit would not be injurious to property or public improvements in the neighborhood.

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Ms. Skerrett reviewed the typical agenda for a quasi-judicial hearing. She also reviewed five things that the court would look for if the Board's decision were to be appealed:

1. Review the record for errors of law.
2. Insure that procedures specified by statute and ordinance are followed.
3. Insure that due process rights were protected - the right to offer evidence, cross-examine witnesses, and inspect documents.
4. Insure that decisions are supported by competent material and substantial evidence in the record (evidence offered under oath).
5. Insure that decisions are not arbitrary and capricious.

Following considerable discussion, the meeting was adjourned.
ATTEST:


Elizabeth W. Corn, Clerk


Robert D. Eklund, Chairman