

**HENDERSON COUNTY
PLANNING BOARD MINUTES
December 21, 2004**

The Henderson County Planning Board met on December 21, 2004, for its regular meeting at 7:00 p.m. in the Board Room of the Land Development Building, 101 East Allen Street, Hendersonville, NC. Board members present were Tedd Pearce, Chairman; Mike Cooper, Vice-Chairman; Renee Kumor, Gary Griffin, Paul Patterson, and Mark Williams. Others present included Karen C. Smith, Planning Director; Russell Burrell, Assistant County Attorney; Chuck McGrady, County Commissioner; Anthony Prinz, Autumn Radcliff and Matt Card, Planners; Natalie Berry, Zoning Administrator; and Joyce Karpowski, Acting Secretary. Board members Tommy Laughter and Jonathan Parce were absent.

Approval of Minutes. Chairman Pearce called the meeting to order and asked for the approval of the October 19, 2004 regular meeting minutes, the November 16, 2004 regular meeting minutes and the November 22, 2004 special called meeting minutes. Mike Cooper made a motion to approve the three sets of minutes (October 19, November 16, and November 22, 2004) and Mark Williams seconded the motion. All members voted in favor.

Adjustment of Agenda. There were no adjustments made.

Staff Reports. Ms. Smith informed the audience that the microphones do not amplify but only record, so it will be necessary to speak at the podium. Ms. Smith introduced Chuck McGrady, liaison from the Board of Commissioners and Joyce Karpowski, Board of Adjustment Secretary, filling in tonight. She also noted that Stacy Rhodes has been appointed to the Planning Board filling the vacancy on the Board. Chairman Pearce welcomed everyone and said that reviews of subdivisions will be conducted informally unless the applicant or anyone qualified to participate in the proceeding requests that such review be conducted as a formal quasi-judicial proceeding.

OLD BUSINESS:

US 25 North Area Study Update and Written Report – Planning Staff. Mr. Prinz passed around copies of a reference document, including public input, minutes of other meetings, and a reference to the 2020 Comprehensive Plan, which is cited in the draft report Planning Board members had previously received. The Board discussed what was included in the draft report. Mr. Prinz said that Staff is basically now looking for comments on the draft. He said they are still refining the document and finding errors. Mr. Prinz said that Planning Board comment entails a motion that Ms. Kumor made during the last meeting where the Board recommended the proposed zoning map. It basically states that once a Zoning Ordinance Rewrite has been completed the Planning Board requests the ability to revisit the Study Area to refine its recommendations. Chairman Pearce said that information necessary to properly evaluate some of the other properties for consideration had to do with access management, flood control, design standards, and others included in Staff comments. Chairman Pearce wanted to reinforce these comments and the fact that the Planning Board felt it needed those additional tools. Ms. Smith said the comments were on page 39 in Staff Comments. Mr. Prinz asked if the final draft should be sent to all members for approval? Chairman Pearce said to send it to Board members for comment. He said he feels everyone is very comfortable with the document presented so far.

Chairman Pearce said the document is put together very well with good organization and he hopes to use this as a guideline for other study areas – it is a good format for the presentation of the information. Ms. Smith asked if anyone signed up for Public Input. Scott Jarvis signed the public input sheet but did not comment at this time. Chairman Pearce made a motion to accept the draft US 25 North Zoning Study as presented with additional Planning Board comments regarding some additional areas of concern and reiterating Staff Comments on Page 39. Mr. Prinz said that the Board may want to add that Staff will continue to refine it and correct typos and verbiage. Chairman Pearce amended the motion to say Staff has permission to make minor changes to the document and that Staff would notify the Planning Board before presentation to the Board of Commissioners of any substantial changes to the document. Renee Kumor seconded the motion. Tedd Pearce, Mike Cooper, Renee Kumor, Mark Williams, and Gary Griffin voted in favor. Paul Patterson voted against the motion. The motion carried five to one. Ms. Smith reported to the Board that the Board of Commissioners is scheduled to have a workshop on this matter on January 12, 2005. Chairman Pearce asked Ms. Smith to clarify if Planning Board members need to attend. Ms. Smith said the draft would probably go out the beginning of next week. Chairman Pearce thanked both Mr. Prinz and Ms. Radcliff for their tremendous work on the study.

NEW BUSINESS:

Zoning Map Amendment Application (# R-04-04) to Rezone Approximately 5.64 Acres Located at the Intersection of NC 191 and North Rugby Road, from an R-30 (Low-Density Residential) Zoning District to a C-2 (Neighborhood Commercial) Zoning District - William G. Lapsley & Associates, P.A., Agent for Conomo Properties, LLC, Applicant. Ms. Radcliff said that the application was submitted on November 19, 2004, requesting the County rezone a 5.64 acre (approximate) portion of the parcel located at the intersection of NC 191 and North Rugby Road from R-30 (Low-Density Residential) zoning to a C-2 (Neighborhood Commercial) zoning district. The original application and property owner was Conomo Properties, LLC, and Applicant's Agent was William G. Lapsley & Associates, P.A. Ms. Radcliff said everyone has received a memo with attachments. Chairman Pearce said that there is a change of applicant and counsel is here tonight for questions. Mr. Lapsley sent an amended application yesterday indicating that there was a change of ownership and that owner's name needed to be changed on the application. Chairman Pearce said there is a question of whether a new application is needed or if this application can be continued with a change of owner. If a new application is needed, the new application received yesterday would be in time for the 30-day cutoff, but would not be able to be heard today. Assistant County Attorney Burrell gave an analogy of one person buying a piece of property and taking over the rights of another in court, saying it happens all the time with the new name substituted. Chairman Pearce said the Board should probably vote to accept the name change on the application before going any further. Renee Kumor made a motion to accept the application with the change of ownership and the new name indicated on the application. Gary Griffin seconded the motion. All members voted in favor.

Ms. Radcliff said that on Friday, December 17, 2004, the subject area parcel was sold to Ingles Market, Inc. The nature of the rezoning application has not changed and Ingles has requested that the Board continue on. The amended application is attached including a letter from Ingles' attorney appointing Charles Murdock and William G. Lapsley as the

agents for Ingles in all matters relating to this rezoning application from here on. Ms. Radcliff referred to Attachment #3, Site/Current Zoning Map, which shows the location of the subject area. The request is for a 5.64-acre portion of the total parcel of 10.93 acres. The subject parcel is located at NC 191 and North Rugby Road. It is located in a R-30 Low Density Residential zoning district and WS-IV Watersupply Watershed. Ms. Radcliff referred to Attachments # 4 & 5, which are the Vicinity and Current Zoning Map and Watershed Map for the area. Ms. Radcliff described some of the allowable uses in the R-30 Zoning District and pointed out that commercial uses are not allowed. She described some of the uses in the C-2 zoning district, which is what the applicant is requesting. Shopping centers and light industry are permitted with a Conditional Use Permit. The C-2 zoning district has no minimum lot size but does have maximum permissible lot coverage where the ground area covered by the building shall not exceed 40% of the total area of the lot. The Watershed Ordinance provides for all commercial and non-residential development to be at a maximum of 24% built upon area – this is the impervious surface. The built upon area could go to 36% upon qualification for a natural drainage and filtering system bonus. A minimum 30-foot vegetative buffer for development (100-foot for development using the special allocation provision), is required along all perennial streams indicated on the USGS topographic maps. If an SIA application was made, it could go up to 70% built upon area. Ms. Radcliff addressed Attachment # 6, Current Land Use Map, and described the current uses in the vicinity of the subject area (single family residential, agricultural, undeveloped, and community-cultural). A number of residential subdivisions are adjacent or in close proximity to the subject area. It is important to note that The Historic Johnson Farm, Rugby Middle School, and West Henderson High School are all located within 1 mile to the east of the subject area, and there are a number of commercial activities located approximately 1.5 miles southeast of the subject property at the intersection of Mountain Road and NC 191. The subject area has direct access to City of Hendersonville public water and public sewer is not yet available. The subject area has approximately 550 feet of frontage along NC 191, and approximately 250 feet of frontage along North Rugby Road. The 2004-2010 NCDOT Transportation Improvement Program (TIP) recommends the widening of NC 191 to a multilane road south of Mills River at Kensington Road. The Henderson County Board of Commissioners and the Henderson County Transportation Advisory Committee recommendations to NCDOT for the 2006-2012 Draft TIP recommends that this project remain a TIP project and that no further planning or design work be done on this project until after the County and City Transportation Plans have been completed and approved. Ms. Radcliff referred to Attachment #2, the Staff report, Section 6, previous rezoning applications. This rezoning request is similar to previous ones, but is a brand new application. The Henderson County 2020 Comprehensive Plan (CCP) is addressed in Attachment #2, Section 7.2, and the 2020 Comprehensive Plan map is in Attachment #8. Ms. Radcliff asked for questions on these sections and there were none.

Ms. Radcliff continued with Staff Comments and Recommendations. Staff reports for previous rezoning applications for the subject area have addressed the following question to the Board: Is commercial development appropriate and should it be expanded at the intersection of NC 191 and North Rugby Road? If the Board concludes it is and that it should be expanded, then the question becomes: Is the scale of commercial development permitted within a C-2 zoning district appropriate at the intersection of NC 191 and North Rugby Road, or is there a more suitable zoning district for this location? Staff's position on previous rezoning applications for the subject area was based on the 1993 CLUP, and

concluded that commercial development at this intersection was appropriate, but staff felt that the Board might want to consider a less intensive commercial node such as C-1 or C2-P. Both the text and map of the 1993 CLUP identify the area as being suitable for commercial development and for community-facilities, although no recommendation was given in terms of a specific zoning district or the size and scale of the commercial development. There is an existing C-2 zoning district adjacent to the subject area across NC 191. This district was created as part of a rezoning application, # R-23-95, in 1995. Staff's opinion at the time was that it was appropriate for "local commercial" development and suggested that a C-1 district might be a more appropriate choice. A conditional use permit was issued in July of 1996 for a convenience store with gas pumps. Both the text and map of the 2020 CCP identify the subject area as being located in the Urban Services Area and show a Community Service Center node encompassing the area around this intersection. Ms. Radcliff referred the Board to Attachment # 8. Ms. Radcliff described the Urban Service Area. The Community Service Center node is described as intensive, efficient defined concentrations of mixed services that meet the needs of the surrounding community and defined service area. Staff feels that this area is probably most appropriate for a local commercial based on traffic and the infrastructure and lack of sewer. Chairman Pearce said that would be identified as C-1. Ms. Radcliff said Staff supports this as local commercial. Ms. Radcliff said the 2020 CCP states the County will continue to accept rezoning applications within this area where it is anticipated extensive growth will occur. The recommendations and action strategies are founded upon key principles of growth, including balance of sustainable growth, accessibility, efficiency, and the provision of services, facilities, and resources. As part of this balance of sustainable growth, the plan identifies an objective of the County is to establish a desirable balance between the development and preservation that will allow the community to continue to grow. One of the key principles that is an objective is to ensure that all people have access to and use of the community facilities and services and that as good stewards of the community's resources, we must plan for the efficient development of these services and facilities and direct our growth and economic development to areas that can be served efficiently by discouraging development in areas that cannot be efficiently served. We must also understand the physical and economic limitations that may influence growth and factor these limitations into the planning so as to avoid mistakes which will cause damage to our established communities.

Chairman Pearce asked if Staff knows the timeline for the commercial-industrial study that Henderson County is anticipating completing. Ms. Smith said it is scheduled to begin in the next few months with completion sometime in 2005. She said there could be some adjustments as the Board of Commissioners looks at its work plan. Chairman Pearce read Section 8.4 citing particularly the last 4 words, "without damaging established communities". He asked if it was Staff's opinion that a commercial establishment could be done on this property "without damaging established communities" and if Staff has a position on that? Ms. Smith said the Board has to look at what the specific application will be. Chairman Pearce discussed the different commercial districts in relation to those four words. Ms. Smith said Staff believes that the C-1 district does the most of the commercial districts to try to protect adjacent residential neighborhoods.

Ms. Radcliff said that, aside from the proximity to established residential uses, the Board of Commissioners has scheduled a Public Hearing for the C-2 rezoning application for the intersection at Stoney Mountain Road and Mountain Road, where the landfill is located, for

January 3, 2005. The Board did recommend, with some modifications to the application, for C-2 to be at that intersection.

Ms. Radcliff said that Staff suggests that if the Board supports the rezoning request, that it vote in favor of the rezoning application with modifications and recommend to the Board of Commissioners that the subject area be rezoned to the centerline of NC 191 and North Rugby Road (total area 6.45 acres). Staff also reminded the Board that it must consider the range of uses that could be developed in a proposed district and not one use in particular. Staff's position is that the 2020 CCP supports a commercial node at this intersection, although no size and use limitations are indicated. The Board should give careful consideration to the types of uses allowed in the C-2 zoning district and their impact on the surrounding residential development. Staff also suggests that the Board may want to consider a C-1 or C-2P zoning district as opposed to the C-2 district. If the Board considers the C-1 district, it is important to note that the size of the area to be rezoned should be reduced to no more than 5 acres. There were no questions for Ms. Radcliff.

William Lapsley introduced himself as the authorized agent for the original applicant, Conomo Properties, LLC. (Mr. Arthur Cleveland and his family from Spartanburg). He said Ingles Supermarkets has had the property under contract for some time. Last year an application was submitted for rezoning of the entire tract and, after discussion with the Planning Board, was reduced and was then withdrawn before final action by the Board of Commissioners. Ingles closed on the property last Friday and immediately contacted Ms. Smith and filed the amended application. Mr. Lapsley now represents Ingles Supermarkets, the new owner of the entire 23.3-acre property. He said the Cleveland family has owned several tracts of land in this area starting in 1935. He showed tracts of land previously owned by the Cleveland family, such as West Henderson High School and Sweetwater Hills Subdivision. Mr. Lapsley said this area was looked at for zoning in 1966 by a Haywood-Rugby Zoning Committee and action taken by the Board of Commissioners in 1967. He said there was a public hearing at the time but he could find nothing stating that the property owners were notified about the action the Commissioners were considering. They were only required to publish a public hearing notice in the newspaper. Mr. Lapsley said he doesn't know if the Cleveland family (living in Spartanburg, SC) knew of this action by the Board of Commissioners. He said in 1993 the first County Comprehensive Land Use Plan was done and that intersection was designated for potential commercial uses. In 1995 the property immediately across from the subject property was rezoned to C-2. Both the Planning Board and Board of Commissioners approved the rezoning. A conditional permit was issued for a gas station, convenience store, and other uses on the site and is still in place. Mr. Lapsley said that last year when this project started through the Planning Board, it was much larger and it included a rezoning application for the entire tract of land. Based on the comments at the meetings, Ingles scaled back the project, eliminated an outparcel, eliminated the gas pumps, and shrunk the size of the area requested to be rezoned to the 5.64 acres in the application. Mr. Lapsley said they could not shrink it down to 5 acres for the C-1 district and accomplish what they need, and he understands that they cannot rezone a piece of property for a specific use.

Mr. Lapsley read briefly from North Carolina General Statutes 153A-341 specifically relating to Counties and their zoning powers, "Zoning regulations shall be made in accordance with a Comprehensive Plan [which he feels Henderson County has done].

Regulations shall be made with reasonable consideration as to, among other things, the character of the district and its peculiar suitability for particular uses.” He said the applicant is asking the Board to keep that in mind in making a decision on this particular application.

Mr. Lapsley said if the parcel is zoned R-30, why not develop it as residential? Mr. Lapsley cited Sweetwater Hills, a nearby subdivision, with house lot values on the tax books of \$325,000 and up. The land value goes from about \$40,000 per lot and up. The tax records also show the property immediately across the street from the subject property has a land value of \$33,000, one at \$26,000 and the house lot combination are valued at \$154,000 to \$160,000. In Mr. Lapsley’s opinion, the big difference is due to the traffic and vehicle count, on North Rugby Road and NC 191. Mr. Lapsley said the vehicle count on North Rugby Road in 2004 is at or above 5000 vehicles per day. On NC 191 the traffic is 12,000 vehicles per day. Mr. Lapsley said, in the R-30 zoning by his calculations, 11 lots could be placed on the subject property. He feels it is not reasonable that people would buy those lots considering the traffic. They feel the value of the lots for residential purposes is severely diminished. They feel that is the major reason the Planning Board and Board of Commissioners supported commercial zoning at this location. Since the applicant has reduced the area to 5.64 acres, that represents approximately 45.5% of the total area of this tract of land. The balance of the parcel, 6.75 acres, would be used as a buffer and for a septic system. The site has been checked and the soil will support a septic system for the proposed use. He said the applicant believes that the high traffic volume on both roads warrants the commercial use of the property. He said the applicant would restrict any rezoning to what they particularly want to do and eliminate the concern that light industry would be there. Mr. Lapsley said they would appreciate the Board’s consideration.

Mr. Patterson asked if part of the tract were to be used for a septic system for a commercial use, why wouldn’t it still be considered commercial and zoned as such? He said they had discussed that parking could be put in a residential district and that bothered him at the time. Mr. Lapsley said that he could assure him that all parking and all development, other than the septic system, would take place within the red area on the plan. There is no plan to put anything impervious outside the red area. Mr. Patterson asked if there was justification that it shouldn’t be zoned commercial as well. Mr. Lapsley said if it is zoned residential that prohibits any future commercial uses in that area. He said they checked with the previous Zoning Administrator and it is possible to put the septic system outside the commercial zone. Mr. Lapsley said the green area on the application plan is in the control of the NCDOT and all the applicant can do in this area is make a connection to the State road with their permission. Mr. Patterson asked if there was controlled access to NC 191. Mr. Lapsley said they need a driveway permit from the NCDOT and they have indicated preliminarily the 2 locations shown originally, which is the same shown here, would be acceptable along with turn lanes, etc.

Chairman Pearce asked Mr. Lapsley about the phrase “without damage to established communities” and if this were rezoned to commercial how it would meet the Comprehensive Plan? Mr. Lapsley said that Ingles Markets has a specific use in mind and the site would be graded to the level of NC 191 and the balance of the area would be a buffer, not commercially developed, and provide protection to the adjacent property owners. Chairman Pearce asked if all the cuts would be done on the 5.64 acres. Mr.

Lapsley said no, that the solid black line on the plan is the top of the cut slope. Chairman Pearce asked if the cut slope extends to the adjacent subdivision. Mr. Lapsley said yes.

Chairman Pearce asked if the applicant can restrict themselves on a rezoning application. Mr. Burrell said not at this point. This was discussed.

Chairman Pearce opened public input on this matter.

Ron Swartzel. Mr. Swartzel said the property is on bedrock and clearing it will be a big deal – taking out rock and finding the flow for the septic system. Mr. Swartzel said 169 acres of the tract were sold last year with plans to develop it as R-30. The gated residential community, Sky Top Farms, has begun Phase I. This is well-planned, expensive residential property and he sees no reason for change. He contends property values are not diminished. Mr. Swartzel said they submitted a petition with 1300 signatures opposing this rezoning. They submitted a report with 32 issues of concern that have not been resolved at this time. Mr. Swartzel cited a map and said the right-of-way was 50 feet from the property line on NC 191 and C-2 requires a 75-foot right-of-way. Also on Rugby Road they show a 30-foot right-of-way and C-2 requires a 60-foot right-of-way. It was explained that no building can occur within that 75 feet or 60 feet, and the green area is State right-of-way. Mr. Swartzel discussed the size of the site and believes that the whole parcel will be used for commercial. He said it is extreme, too large, and interferes with residential development. He said the only change he sees is no gasoline tanks. He said they will again submit a 32-point opposition report to the Board of Commissioners. Mr. Swartzel said that the 2020 Land Use Plan has as many points to support their stand that this is an overdevelopment of commercial property as it does to support rezoning the property to C-2. The commercial property on the other side of the road is enough. The residents don't want any more commercial area and are opposed to the rezoning and ask the Planning Board to turn it down.

Martha Sachs. Ms. Sachs is a homeowner living ½ mile from the intersection and has several reasons for objecting to any commercial zoning at this location. This is the last remaining greenway entrance from the North to Hendersonville and commercial zoning would change the character of the district. It is contrary to the long-range plan limiting strip development. Run-off could flood the intersection. The area is zoned R-30 and R-40 and homeowners expect this zoning to protect them from commercial encroachment. They purchased here because there was zoning. Commercial development would increase already heavy traffic. There would have to be an entrance on NC 191 and on Rugby Road. The entrance on Rugby Road would be by a blind curve on Rugby Road and increase danger. Ms. Sachs anticipates that Ingles, if built there, would then want annexation to Hendersonville to sell liquor. She would not like to see that so close to schools. There is an Ingles being built on NC 280 that is 4 minutes away and it takes 6 minutes to get to the Ingles on US 25. There is no reason for another Ingles at this intersection. If commercial zoning is permitted here, then no neighborhood is safe and the Long Range Land Use Plan isn't worth the paper it's written on. If this is built here, the property will have to be taken down to road level and blasting the bedrock will possibly damage basements in the area. She hopes the Board will not change the character of the neighborhood. Sky Top Farms is selling lots for \$95,000 to \$225,000. The commercial area across from the subject property should not have happened and doesn't belong there. If it wasn't there, we wouldn't be dealing with this today.

Dave Walters. Mr. Walters lives on North Hills Drive, northwest of Haywood Knolls. There are 8 families there and the area crosses Mud Creek flood plain. He is concerned about the runoff from the project. If this plan is similar to previous plans all the impervious surface will drain into the flood plain. Mill Pond Creek is a nice stream but becomes a raging torrent after a couple inches of rain. One bridge downstream needed replacement after the hurricanes this year. Mr. Walters said the Board should question the impact of runoff on the flood plain.

Jack Oechslin. Mr. Oechslin said he has resided on North Hills Drive since 1957. He said that Mill Pond Cemetery is diagonally across the road from the proposed Ingles. He gave a history of the present C-2 property that is in place. He said that is not an argument to put C-2 zoning across the road from the present C-2 zoning.

Bill Cutler. Mr. Cutler said he lives in Sweetwater Hills. He said within 3 miles of this area there is commercial property – US 25, US 64 and Mills River. Why do we need more commercial property so near those locations?

Chairman Pearce announced the end of public input and asked for discussion.

Mr. Patterson said they can't look at Ingles building here but have to look at the big picture. He said they have to look at homes here, the major intersection with high traffic count and the safety issue. He said the high traffic count contradicts what was done in the rezoning of US 25 North. He said he is not a fan of a cut bank 30-40 feet high through a parking lot. Mr. Williams said they should go back to the Comprehensive Plan and what people want was the criteria for that plan. He said the majority of people here don't want this commercial area in their neighborhood. He feels they should listen to the people. Ms. Kumor said they used the Comprehensive Plan to drive their decision on US 25 North and felt that there could be residential development on a five-lane road. She feels they should stick with the Comprehensive Plan because that is the only direction they have. Mr. Patterson said they have to look at what is best for the community and Planning Staff is recommending a C-1 district. He feels cut banks should be in commercial areas, not residential. He said he's not sure what's best for that area. Ms. Kumor said what Mr. Patterson said makes a lot of sense. She feels they should stick with the Comprehensive Plan. Mr. Patterson said he doesn't think they are forced to zone the property commercial, but they should consider it. Chairman Pearce said in the US 25 N zoning study they didn't zone residential except where property owners specifically requested it. Where RC zoning was placed they were looking specifically at farmland preservation and floodwater situations, more so than residential and 80-90% of the property was in the 100-year flood plain. Ms. Kumor said she feels they should follow the spirit of the plan, which is what Staff did, and specifics should be between the Commissioners and the citizens. She said the citizens don't seem ready for commercial development there and we should represent the citizens' and petitioner's opinions to the Commissioners and both sides have validity. Mr. Cooper asked if the zoning was C-1, limited to 5 acres, could parking be off the 5 acres? Ms. Smith said it could go up to 120 feet off the C-1 area and a buffer would have to be provided between the parking area and the residential district. She explained access to the parking area. Mr. Cooper said it could possibly work with C-1 zoning, but defeats the purpose of the residential owners wishes. Ms. Smith said Staff looks at the zoning districts from the perspective of all uses allowed. Mr. Cooper said he doesn't see the

effect of the C-2 or C-1 zoning and how they need C-2 to make their project work. Mr. Cooper said the Comprehensive Plan calls for a commercial node at the intersection and there are numerous commercial nodes within a mile radius of the area also. Ms. Smith said there are several other things the Board will be looking at in the future: a commercial-industrial study, a new Zoning Ordinance, plus other projects that are coming. Mr. Griffin said the traffic is a big issue and asked how many commercial nodes do we approve before they are all down the road. Chairman Pearce said there are 2 different numbers being talked about: the tax records show 10.93 acres and then 12 + acres. Ms. Smith said tax records do not include rights-of-way. Ms. Smith said the survey is probably a little more accurate. Chairman Pearce said he is concerned they are doing more major rezonings without studying the entire area. There is a commercial-industrial study scheduled for 2005. He doesn't believe the board should worry about the bedrock or tax values of adjacent properties. He questioned if they should be concerned about runoff and erosion issues. Ms. Smith said because the Board is not looking at a specific use, they don't know how the property will be graded. Chairman Pearce also does not believe the County is liable for any damage someone might do on their property that affects someone else. He also said an applicant has the right to come before the Board for rezoning as often as is legal with guidelines. He said he believes the Board of Commissioners and the CCP call for commercial at this intersection. He feels that C-2 is excessive for the area and would not support C-2 or C-2P. Chairman Pearce said he does not see any reason not to favor a C-1 recommendation at this point. He said this is not supposed to be a major commercial area. He said personally he is not in favor of the rezoning request as proposed. Chairman Pearce said there are two choices: take action now or send it to a subcommittee, but there has to be a decision by February 3, 2005. He doesn't feel there will be any new information.

Ms. Kumor said she would like to make two motions. The first motion is to turn down the request for the C-2 zoning. The second motion is to make a recommendation to the Board of Commissioners that if the recommendations of the Comprehensive Plan are to be followed, this body, having listened to the community, suggests that the only valid commercial zoning for the area would be C-1 and, without regard to anything else, that the Commissioners be respectfully requested to take into consideration the concerns of the community with regard to traffic, the geology of the land, and any other factors that might better help them define their decision and if, in fact, they see it should be rezoned, the Board recommends C-1. Ms. Kumor explained her reasoning for the motions.

Chairman Pearce addressed the motions one at a time. He said the first motion is to make a recommendation to deny the rezoning request for C-2 zoning for Application # R-04-04. Mr. Williams seconded the motion. There was no discussion. Tedd Pearce. Paul Patterson, Renee Kumor, Mark Williams, and Gary Griffin voted in favor. Mike Cooper voted against the motion. The motion carried five to one.

Chairman Pearce said the second motion is basically that we recommend that in light of the CCP recommendation that commercial zoning is recognized in this area, the Planning Board's recommendation is that the county look at C-1 as a possible commercial zoning district for this area and also take into account the wishes of the residents of the area, the topography, the traffic counts, plus other concerns of the neighbors in making a decision. Chairman Pearce seconded the motion. Mr. Patterson said parking outside a commercial district in a residential district does not make sense to him. There was discussion about

the different commercial district recommendations and the CCP and appropriate businesses for the area. Tedd Pearce, Mike Cooper and Renee Kumor voted in favor. Paul Patterson, Mark Williams and Gary Griffin voted against the motion. The vote was split on this motion. Chairman Pearce declared the matter closed.

Chairman Pearce called for a five-minute break.

Chairman Pearce said that if anyone needed to look at any maps (because they were facing the Planning Board), they were welcome to stand behind the Board members. Ms. Smith introduced Matt Card who will be presenting the subdivisions to the Board.

Kenmure, Phase V (File #04-M19) – Revised Master Plan and Development Plan Review – Phase V., Lots # 244, 257 – 282) – Located in Kenmure on the South Side of Pinnacle Peak Lane – Jon Laughter, Agent for Kenmure Properties, Inc., Owner. Mr. Card said that Kenmure Properties, Inc. along with Jon Laughter has submitted a revised Master Plan and Development Plan for said lots in Phase V and pointed out the location of the lots on the site plans. The total Master Plan project area will be on 119 acres with 82 proposed lots. The Development Plan shows 27 lots on 44.6 acres of land served by public water and individual septic systems. Private gravel roads are proposed. This portion of Kenmure is located in a County Open Use zoning district. There is a perennial stream located in the eastern portion of the project area, but the property is not within a designated Water Supply Watershed. Staff has reviewed the Revised Master Plan for Phase V and offers the following comments: Master Plan – No comments – it appears that all requirements have been satisfied; Development Plan – Stream Setbacks – A minimum thirty-foot setback is required for all structures and buildings along the perennial stream; The applicant has proposed public water and the applicant must provide evidence that the water supply plans have been approved by the appropriate agencies. There is also a comment under other Final Plat requirements. Therefore Staff recommends approval of both the Revised Master Plan and Development Plan for Phase V, lots 244 and 257-282, of Kenmure. There was no one representing the applicant present.

Mr. Cooper asked the minimum distance a lot has to connect to the road. Ms. Smith said the frontage is 30 feet. There was a question on the frontage of lot # 261. It was decided it met the 30-foot minimum. Mr. Patterson questioned the size and type of a storm pipe halfway down Chatsworth Court. Mr. Card said it had been brought to his attention and it was supposed to be revised. Mr. Card also said that there were some lot line frontages missing. The Board suggested making these conditions. Chairman Pearce made a motion to accept Staff's draft motion adding additional Development Plan requirements: that the length, type and size of pipe at lot 272-273 area be stated and minor lot line lengths be added to a Revised Development Plan. Mr. Patterson seconded the motion. There was no discussion. All members voted in favor.

White Oak (File #04-M20) – Master Plan and Phase 1 Development Plan Review – (120 Total lots – Located off Zeb Corn Road – Paul Patterson, Agent for White Oak Park, Inc., Owner, and Sheldon Chaplin, Developer. Mr. Patterson asked to recuse himself. The Board voted on their approval. Mr. Card presented the overview. White Oak Park Inc., owner of White Oak Manufactured Home Park, intends to divide the existing property into a total of 120 lots. The project site is located on 33.37 acres of land off of Zeb Corn Road between Howard Gap Road and North Clear Creek Road. The main access for the

proposed White Oak Subdivision is Middle Street, off of Zeb Corn Road. Paved private roads are proposed.

Phase I will consist of 22 new lots on 6.70 acres of land. It will be accessed by Middle Street, which is the only proposed collector road for the project. Existing homes in Phase I currently have individual septic, but public sewer (City of Hendersonville) is proposed.

The White Oak Subdivision will be developed in five Phases. Phase V, which is currently undeveloped, will have its own access from Zeb Corn Road.

The project site is located in a County OU Open Use zoning district, which does not regulate residential uses of land. They propose public sewer and also public water. The existing 56 homes currently have individual septic systems. The proposed subdivision is located within a half mile of the Clear Creek Farmland Preservation District.

Staff has reviewed the submitted Master Plan and Phase I Development Plan for the proposed White Oak Subdivision for conformance with the Henderson County Subdivision Ordinance (HCSO) and offers the following comments:

Master Plan

1. No Comments. It appears that all requirements have been satisfied.

Development Plan

1. Cul-De-Sac Design. Alternative culs-de-sac may be approved by the Planning Board based on sound engineering design and public safety concerns (HCSO 170-21, Table 1, Note 2). Paul Patterson, agent and project engineer for White Oak Subdivision, has certified the cul-de-sac design.
2. Sewer and Water. The applicant has made contact with the City of Hendersonville to discuss the availability of sewer and water. Both sewer and water are available on the project site. According to the Henderson County Subdivision Ordinance (HCSO), the applicant must provide evidence that the water supply and sewer system plans have been approved by the appropriate agency. All public or private (community) water supply and sewerage systems shall be installed and shall meet the requirements of the Henderson County Health Department or other government authorities having jurisdiction thereof. The development plan may be approved contingent on final approval from such agencies; however, the final plat shall not be approved until all such final approvals have been obtained. (HSCO 170-20)
3. Storm Pipes. A storm pipe note has been included on the Development Plan. The Final Plat should include the length for all the storm pipes in this notation. The project engineer has stated that existing pipes will be replaced with pipes of the same length.
4. Farmland Preservation District. The Final Plat should include a notation that the property is within ½ mile of land in a Farmland Preservation District. (HCSO 170-35 and Appendix 7)

5. Other Final Plat Requirements. In addition to the items noted above, the Final Plat(s) for Phase I must meet the requirements of Appendix 7 of the Subdivision Ordinance.

The plans and other application materials appear to satisfy the requirements of the Subdivision Ordinance; therefore Staff recommends approval of both the Master Plan and the Development Plan for Phase I of White Oak Subdivision subject to the above listed comments being addressed as noted and the developer addressing any issues raised by the Planning Board.

Howard George said this is a retirement community and the lots are leased. The proposal is to be able to place modular housing there. The residents have difficulty selling their homes on a leased lot. The home and lot would be packaged together. Chairman Pearce asked if the lots would be purchased. Mr. George said yes, although they are leased now. They decided to file under the Subdivision Ordinance.

Mr. Williams asked what would happen to the existing homeowners. Mr. George said they could continue to rent. He said they will offer to sell the lot for the same price as the rent would be. Chairman Pearce said that additional lots would be subdivided. Mr. George said yes and continue with the same community.

There were no further questions. Chairman Pearce said for the record that Paul Patterson is the project engineer. Chairman Pearce made a motion to accept Staff's draft motion. Mr. Williams seconded the motion. Mr. Cooper pointed out that there was a 30-foot right-of-way with 14 feet of pavement and it says it is limited local, but on the typical road section, it shows 16 feet of pavement? Mr. Patterson said that it is a combination of roads and once you get to a certain point you can break it down to a smaller one and he did that for a reason. If you look at the length of 34.2, there is a little rectangle, that is an existing garage and he prefers not to rip it up – it would go with the existing mobile home on lot # 2. It had to be reduced so it didn't start hitting buildings. He explained the sizes of the roads are the best they can be with existing building and Ordinance requirements. The widths of limited local and local roads in the typical road section tables were found to be reversed.

Chairman Pearce said the Board would add Item # 6 to the motion also to correct the typical road section table. He amended the motion to include Item # 6 and also to specifically state that in approving this we are in fact also approving an alternate cul-de-sac design, which has been certified by an engineer. All members voted in favor.

Chairman Pearce stated for the record that Mr. Patterson rejoined the board.

Blacksmith Run (File # 04-M21) – Master Plan and Development Plan Review – (187 total lots) – Located off US Highway 64 East (Chimney Rock Road) - Norman Divers, III, Senior Project Manager with Brooks & Medlock Engineering, PLLC, and Ed Nunez, Agent for Vista Developers, LLC, and Catexor, Inc., Owners.

Mr. Card said that the total project area for Blacksmith Run is 82.04 acres on two parcels of land, as 187 lots are proposed. The use for Blacksmith Run will be single family residential. Access for Blacksmith Run is off of US Highway 64 (Chimney Rock Road). The applicant

has proposed a gated entrance. All the roads are proposed as private but built to NCDOT standards. The developer indicates that Blacksmith Run will be served by public water (City of Hendersonville) and community sewer. The Land Planner for Blacksmith Run, Mr. Norman Divers with Brookes & Medlock Engineering, said that they have applied for a NPDES Discharge Permit, which would allow a wastewater treatment plant and sewer collection system.

The proposed subdivision is located in an Open Use (OU) zoning district, which does not regulate residential development. The property is not within a designated water supply watershed, but it is less than one-half mile from the Edneyville, Fruitland and Clear Creek Farmland Preservation Districts. According to the plans and other application materials, portions of the subject property along Lewis Creek are located within the 100-year floodplain. The developer has indicated some open space along this portion of Lewis Creek. Lewis Creek, according to the plans, is designated as Class C Trout Waters by the State of North Carolina and borders the north side of Blacksmith Mountain and the northeast section of Blacksmith Run.

Staff has reviewed the submitted Combined Master Plan and Development Plan for the proposed Blacksmith Run for conformance with the Henderson County Subdivision Ordinance (HCSO) and offers the following comments:

Combined Master Plan and Development Plan

1. Soil Erosion and Sedimentation Control. The Developer should submit notice from NC DENR that a soil erosion and sedimentation control plan has been received or provide documentation that no plan is required prior to beginning construction. Shawna Riddle of the North Carolina Department of Environment and Natural Resources (NC DENR), Land Quality Section, stated in an e-mail that DENR has an approved erosion control plan for Tatham Woods Phase I. She did not have anything showing the name change from the existing Tatham Woods to Blacksmith Mountain or to Blacksmith Run for the new phases. The developer should submit documentation of such approval from NC DENR prior to beginning construction. (HCSO 170-19)
2. Community Sewer. The developer has applied for a NPDES Discharge Permit, which would allow a wastewater treatment plant and sewer collection system. The developer should notify NC DENR of the name change to Blacksmith Run, regarding the NPDES Permit.
3. Water and Sewer. According to the HCSO, the applicant must provide evidence that the water supply and sewer system plans have been approved by the appropriate agency. All public or private (community) water supply and sewerage systems shall be installed and shall meet the requirements of the Henderson County Health Department or other government authorities having jurisdiction thereof. The development plan may be approved contingent on final approval from such agencies; however, the final plat shall not be approved until all such final approvals have been obtained. Any subdivision served by a public water system shall meet the respective county or municipality's minimum requirements for fire hydrant installation (HSCO 170-20).

4. Farmland Preservation District. The Final Plat should include a notation that the property is within ½ mile of land in a Farmland Preservation District. (HCSO 170-35 and Appendix 7)
5. Stream Setbacks. A minimum thirty-foot setback for buildings or other structures is required along all perennial streams. The thirty-foot setback must be noted on the final plat (HCSO 170-37, A).
6. Private Roads. Because private roads are proposed for Phase I, the final plat must contain a note stating: *The private roads indicated on this final plat may not meet the requirements of the North Carolina Department of Transportation for acceptance into the state road system.* (HCSO 170-21B and Appendix 7)
7. Other Final Plat Requirements. In addition to the items noted above, the Final Plat(s) for Phase I must meet the requirements of Appendix 7 of the Subdivision Ordinance.

Staff found that the proposed Combined Master Plan and Development Plan for Blacksmith Run appears to meet the technical standards of the Subdivision Ordinance. Staff recommended approval of the Combined Master Plan and Development Plan subject to the above listed-comments being addressed and/or discussed and the developer addressing any other issues raised by the Planning Board.

Mr. Card said they have proposed a “curb and gutter” road design. Ms. Smith said the County’s private road standards chart deals with a shoulder type design but, as part of Section 170-21, after the Table 1 standards, it talks about if the design and construction is not specifically dealt with in Table 1, then construction of private roads should be reviewed by the Planning Board based on the standards and requirements of DOT and with local DOT district engineer policy modifications. It refers to the Subdivision Roads Manual by DOT for a copy of the cross-section. Staff has looked at that, in terms of its design for “curb and gutter” type roads. The Planning Board probably needs to make that acknowledgement.

Ms. Kumor asked if they would discharge into Lewis Creek. There was discussion and the applicant wished to respond.

Norman Divers, representing Brooks and Medlock, said they feel very confident with the review Staff has made and accept the conditions of approval and the comments that have been made for the project. He said the soil erosion control people inspected the road construction being cut in for Phase I that was previously approved by this Board at the last meeting. It does not have any bearing on this project. This project is Blacksmith Run, which is 2 tracts of land down on US 64. They are being developed by the same owner and were at one time part of Tatham Woods, Phases 2 & 3. The name change was discussed at the last meeting. Mr. Divers said the sewer discharge to Lewis Creek would be a post-treated discharge and they are awaiting the risk base analysis done by DENR to establish the effluent limits that the treatment plant will have to meet to discharge to a trout stream. Once that is established, then the treatment plant design will be performed to adhere to those standards. Ms. Kumor asked about the soil and erosion people going to the other part of the subdivision. Mr. Divers said that was part of Phase I and he is not the

Planner for that project. He said they conduct monthly inspections of projects as construction occurs. He said he believes there are a few unsatisfied neighbors that they have to deal with on a daily basis. Chairman Pearce said he is not certain that the Planning Board has any control over the soil and erosion, other than they are required to get certifications, etc. from DENR. Ms. Smith said any calls are referred to DENR. Chairman Pearce asked if they are not complying with DENR regulations, can you deny them final plat approval? Ms. Smith said if they don't have their plan approved, it could be denied, but as far as construction standards, she not aware they have any. Mr. Cooper said that it is a work in progress – something can be put on paper that doesn't work and is then modified. Chairman Pearce said the Board is always aware of soil and erosion and how stressful it is to adjacent neighbors and he hopes they will be good citizens and solve problems. Mr. Divers said he believes their owner is very dedicated to meeting the needs and requirements of DENR, as proven on other projects, and he doesn't feel that will be a concern. Mr. Patterson asked about the type of pipe. Mr. Divers said RCP but because of private streets it may be HDPE. It depends on pricing, and will not be CMP. Mr. Williams asked if the entrance ties into Tatham Woods. Mr. Divers said that it ties into Carriage Drive and will be a secondary entrance. The primary entrance will be off US 64 through a gated guardhouse with a berm and landscaping across the front to screen US 64 from the subdivision. The exact site of the entrance was discussed. Mr. Cooper asked if the second entrance would be gated. Mr. Divers said yes.

Chairman Pearce made a motion to approve the stated motion with addition of Note # 8, specifically noting that the "curb and gutter" design would meet the Subdivision Ordinance, and Note # 9, to clean up any pipe details not stated. Mr. Patterson seconded the motion and all members voted in favor of the motion.

Mr. Williams said that farms are being turned into houses and we need some incentives to preserve the farms. Chairman Pearce agreed but, if the Subdivision Ordinance is met, it can be done. With the newer land use studies being done, incentives should be looked at for availability. There was some discussion on these issues.

Summit Springs (File # 04-M22) – Master Plan and Phase 1 Development Plan Review – (385 Units Total) – Located Between the Intersection of I-26 and NC 225 - Luther Smith, Agent for Hosanna III, LLC, Owner. Mr. Card said Luther Smith, on behalf of Hosanna III, LLC, has submitted an application for a Master Plan and Phase I Development Plan for a proposed subdivision to be named Summit Springs. Hosanna III, LLC, is the developer of the subdivision.

The project site is on approximately 125 acres located between the intersection of I-26 and NC 225 near the end of Interchange Drive. The project site consists of 3 parcels of land. All 3 parcels, owned by Hosanna III, LLC, will be used for the proposed Summit Springs Subdivision.

Summit Springs has proposed a mixed residential subdivision with single-family homes, apartments, and condominiums. The project site will initially be subdivided into 13 lots. Hosanna III, LLC, intends to construct the access roads, general infrastructure and site improvements to and for the 13 lots. The lots will then be sold to developers and community organizations who build affordable housing. The developer has projected that a

total of 385 residential dwelling units may be built. Open space has been proposed and the developer has expressed the possibility of a community building.

Summit Springs Loop, the proposed main access collector road, will start from near the end of Interchange Drive (SR 1891). Summit Springs Loop will be public, but roads within the individual 13 lots may be private or public. The developer plans to build in three phases. If the plans are approved, the first Phase is intended to begin in the spring of 2005. Phase I will include parcels 1, 2, and 3 and a portion of Summit Springs Loop to the creek in the northwestern section of the plan. There is a stream between Phase 1 and Phase 2. The developer also intends to have public water (City of Hendersonville) and Public or Community Sewer. According to the project summary, subsequent phases of the development will be determined based on market demand.

The project site has a perennial stream that flows through the northwestern corner. The property is not within a designated Water Supply Watershed. The project site is located in a County OU Open Use zoning district, which does not regulate residential uses of land. The proposed subdivision is located within half a mile of the Blue Ridge Farmland Preservation District.

Staff has reviewed the submitted Master Plan and the Phase I Development Plan for Summit Springs for conformance with the Henderson County Subdivision Ordinance (HCSO) and offers the following comments:

There were no comments dealing with the Master Plan as it appears that all requirements have been satisfied.

Development Plan

1. Sewage Disposal. The applicant has proposed either public or community sewer. Don Sides, the recently retired Director of Hendersonville Water and Sewer Department, has commented that public sewer will not be available because the project site is outside the Urban Service Area. The City of Hendersonville Manager has provided similar comments. The developer is pursuing the option of applying for a NPDES Discharge Permit, which would allow a wastewater treatment plant and sewer collection system.
2. Water and Sewer. According to the Henderson County Subdivision Ordinance (HCSO), the applicant must provide evidence that the water supply and sewer system plans have been approved by the appropriate agency. All public or private (community) water supply and sewerage systems shall be installed and shall meet the requirements of the Henderson County Health Department or other government authorities having jurisdiction thereof. The development plan may be approved contingent on final approval from such agencies; however, the final plat shall not be approved until all such final approvals have been obtained (HSCO 170-20).
3. Utility Lot. A utility lot is shown on lot 3 of the Phase I Development Plan. The HCSO requires that a special use lot must be clearly identified for its designated use on the final plat (HSCO 170-31, B).

4. Temporary Turnarounds. According to the HCSO, the Planning Board may require a temporary turnaround at the end of a phased project or a partial turnaround along any road that exceeds 1,500 feet in length (HCSO 170-21, H). A temporary turnaround is proposed at the end of the Summit Springs Loop Road in the Phase I Development Plan. Staff recommends that the developer discuss with the Planning Board the construction of the turnaround regarding future development.
5. Farmland Preservation District. The Final Plat should include a notation that the property is within ½ mile of land in a Farmland Preservation District. (HCSO 170-35 and Appendix 7)
6. Stream Setbacks. A minimum thirty-foot setback for buildings or other structures is required along all perennial streams. The thirty-foot setback must be noted on the final plat (HCSO 170-37, A).
7. Other Final Plat Requirements. In addition to the items noted above, the Final Plat(s) for Phase I must meet the requirements of Appendix 7 of the Subdivision Ordinance.

Staff found that the proposed Master Plan and Phase I Development Plan appear to meet the technical standards of the Subdivision Ordinance. Staff recommended approval of the Master Plan and Phase I Development Plan subject to the above listed-comments being addressed and/or discussed and the developer addressing any other issues raised by the Planning Board.

Chairman Pearce asked if there were any comments to be made about the temporary turnarounds. Mr. Card said he would leave that with the developer, but would like the developer to discuss with the Planning Board the construction of the turnaround regarding future development and future phases. Mr. Patterson said this would be large lots sold for development. Ms. Smith said the Subdivision Ordinance requires that, if it's shown as future development, they have to come back with Master Plans and Development Plans for each of those sections.

Luther Smith, Planner, representative of Hosanna III, said their intent is to stage another Villages of King Creek type of development. There are 13 development sites and Housing Assistance (Corporation) is interested in several sites. Each site will be sold to an outside developer, who would then come back through the review process. Hosanna will be putting in the main loop road and provide water and sewer service to each development parcel. As far as sewer, at first they thought it was all right, but then found out they were outside a certain boundary. They have had some meetings with the city and may be able to get a discharge permit, but may also push for public sewer. They are waiting for a response from DENR. Mr. Cooper asked if public sewer would be going down Tabor Road. Mr. Smith said yes, about 5000 – 6000 feet. Mr. Smith said this property is in an ideal location for affordable housing. It was farmed and the remainder is woodland.

Chairman Pearce asked about the temporary turnarounds. Mr. Smith said that at the end of a phase they put in a temporary cul-de-sac, which disappears as the road is continued. That is what is shown on the plan. Mr. Smith said it would be gravel and meet design standards, then disappear as the road is extended. Chairman Pearce asked if they no

longer need Item # 4, if it is clarified enough. Ms. Smith said yes, if it is all right with the Board. Mr. Patterson asked about pipe lengths. Mr. Smith they are not on there – they are part of the erosion control plan but not the development plan. Chairman Pearce asked if there should be a generic checklist for applications. Ms. Smith said there is, and this was discussed. Chairman Pearce said that Item # 7 is covering all those little things. Ms. Smith said that the sewer issue would become an issue again because, if the City decides to extend the sewer, the City asks the County to comment on any extensions within the County. They will entail consulting the Comprehensive Plan.

Chairman Pearce made a motion to accept the stated suggested motion, deleting Item # 4. Mr. Cooper seconded the motion and all members voted in favor.

Public Input:

Scott Jarvis. Mr. Jarvis said he had an issue for clarification on US 25 North zoning map on Twin Springs Road. He said that he understood the I-1 district went to the end of the road and the objector was Mr. Patterson. Then he noticed that the map had it backed up. He is trying to have it surveyed and wants to work with it. Ms. Smith said there is a change Mr. Jarvis would like to see on the recommended map. Either the Planning Board can address it or Mr. Jarvis can take it up with the Commissioners. Chairman Pearce said, at this point, it would be more appropriate to take it to the Commissioners. Between now and then, if Staff would put together the information so it would be easy for the Board of Commissioners to understand and make an adjustment for the mistake or misunderstanding. Ms. Smith asked if the Board wanted it in the form of a memo to go along with the report approved tonight. The property was pointed out on the map. It was discussed where the zoning line should be.

Chairman Pearce made a motion that the information on the Jarvis property on Twin Springs Road be reviewed by Staff (their notes and recollections) and adjusted as appropriate based upon the topography and Staff changes the map to reflect I-1. Mr. Williams seconded the motion and all voted in favor.

Adjournment. There being no further business, the meeting was adjourned at 9:59 p.m.

Tedd M. Pearce, Chairman

Joyce Karpowski, Acting Secretary