

# HENDERSON COUNTY PLANNING BOARD MINUTES September 21, 2004

The Henderson County Planning Board met on September 21, 2004, for its regular meeting at 7:04 p.m. in the Meeting Room of the Henderson County Land Development Building, 101 East Allen Street, Hendersonville, NC. Board members present were Tedd Pearce, Chairman; Mike Cooper, Vice-Chairman; Leon Allison, Tommy Laughter, Jonathan Parce, Renee Kumor and Vivian Armstrong. Others present included Karen C. Smith, Planning Director; and Kathleen Scanlan, Secretary. Board member Paul Patterson was absent.

Chairman Pearce acknowledged the resignation of Leon Allison to the Planning Board and presented a picture as a token for his service on the Planning Board. All Board members wished him well.

Approval of Minutes. Chairman Pearce presided over the meeting and called the meeting to order. He asked for the approval of the meeting minutes for August 3, August 16 and August 17, 2004. He made a motion to approve all three sets of minutes as presented. Renee Kumor seconded the motion and all members voted in favor.

Annual Election of Officers/Appointment of Secretary. Chairman Pearce presided over the annual election of officers and asked the members to offer nominations for officers. Tommy Laughter stated that he would like to maintain the same officers as the Board presently has. Renee Kumor seconded the motion and all Board members voted in favor. Chairman Pearce reappointed Kathleen Scanlan as Secretary to the Planning Board. The officers for the coming year are Tedd Pearce, Chairman; and Mike Cooper, Vice Chairman. Kathleen Scanlan is the Secretary.

Adjustment of Agenda. There were no adjustments.

Staff Reports. There were no Staff reports.

## **OLD BUSINESS:**

US 25 North Area Study Update – Planning Board. Ms. Smith asked Chairman Pearce to schedule the next meeting for discussion on US 25 North. After some discussion among Board members, Chairman Pearce scheduled the next meeting for this subject on Monday, October 11, 2004 at 6:00 p.m. in the Land Development Building meeting room.

Discussion of Meeting Date for a Public Input Session and Consideration of Zoning Map Amendment Application # R-04-03. Ms. Smith reminded the Board members that this is the County's application with the School Board and NCDOT. She stated that the first consideration was at the Planning Board's August, 2004 meeting, Board members at that time wanted to look at the agenda for their October meeting and decide at the September meeting if the Board wanted to schedule the public input session for the Board's regular October meeting or schedule it as a Special Called meeting. She reviewed what there might be so far for the October's agenda. After some discussion among Board members, the public input session was scheduled as part of the agenda

for the regular Planning Board meeting of October 19, 2004 at 7:00 p.m. Chairman Pearce asked Ms. Scanlan to check on larger facilities to hold the meeting, such as the Board of Education Building.

### **NEW BUSINESS:**

Development Parcel Review – Carriage Park Planned Unit Development (PUD), Section 19, Phase 1 – Located off Highway 191 (Haywood Road) – 16 Proposed Single-Family Detached Units – Dale Hamlin, Agent for Carriage Park Associates, LLC. Chairman Pearce stated that this will be conducted as a quasi-judicial proceeding and the proceeding will consider plans for a development parcel known as Section 19, Phase 1, Carriage Park Planned Unit Development. Chairman Pearce also explained what a quasi-judicial proceeding is and asked all persons who would speak and participate, including any witnesses that will be called, to be placed under oath. Mr. Hamlin of Carriage Park Associates, LLC, interrupted at this time and stated that he wished to withdraw the development parcel reviews for Section 21 and Section 22. Chairman Pearce asked Ms. Smith whether she objects to them withdrawing Sections 21 and 22? Ms. Smith asked Mr. Hamlin whether he was counting the 45-day clock starting today for a decision, also, are you even thinking of opening consideration of these two sections? Mr. Hamlin said no. Chairman Pearce made a motion to allow the developer for Carriage Park Associates, LLC, to withdraw agenda items 9 and 10 (Sections 21 and 22, Carriage Park Planned Unit Development parcels). Mike Cooper seconded the motion and all members voted in favor. Chairman Pearce then asked all parties to the proceeding. Chairman Pearce then asked all parties to the proceeding, and Karen Smith, Planning Director to be sworn in. Chairman Pearce noted that the parties to the hearing are James Bandelin, Resident and Architectural Committee Member for Carriage Park, Dale Hamlin (applicant), Karen Smith (Staff) and Bob Grasso (witness for the applicant).

Ms. Smith presented background information regarding the Carriage Park Planned Unit Development of Carriage Park and briefly reviewed the application for Section 19, Phase 1. She stated that Staff reviewed the plans under the *Subdivision Ordinance, Water Supply Watershed Ordinance, Zoning Ordinance* and Special Use Permit # 93-13. She stated that the applicant provided Staff with information that there were no property owners within one hundred feet of the boundary of Section 19 that were outside of Carriage Park, which, under the Special Use Permit, would need to be notified. She stated that there were no owners of property outside of Carriage Park that had to be notified but Staff did notify by mail adjacent property owners and others regarding this section. Chairman Pearce asked Mr. Grasso to address the development and show on a map Section 19, Phase 1. He stated that this section will consist of 16 single-family lots for detached homes and it is located between West Carriage Park Way and the preserve. He said that this area is what Carriage Park dedicated as part of their mitigation plan when it permitted the dam. He said that Section 19 is just below the dam and the preserve splits the two phases of Section 19. He said that according to their mitigation plan, the preserve will remain undeveloped. He said that they have the survey and will provide a copy for documentation. He said that the density in this section is 2.1 units per acre, the length of the road is 930 feet and will be privately maintained. He said that the lots will be served by public water and sewer and the zoning district is R-30. He said that he calculated that 2.47 acres of open space is required and that they have more open space available in the development to make up for the difference. Ms. Armstrong asked regarding the mitigation, what they are mitigating for? Mr. Grasso said

that the mitigation is for 290 linear feet of Bowing Mill Branch that they disturbed because when there is a disturbance of more than 150 linear feet of stream, there are plans that need to be submitted to the Division of Water Quality as well as the Corps of Engineers. He added that the developers have done four different sites regarding mitigation. He said one was this preserve. He said there were two areas that they enhanced by adding plant material and stabilizing the banks of two streams and the third is the rerouting of a stream below Section 10 where it was heavily loaded and they put it back into the proper form where it should be. He said that this was done through the Division of Water Quality and was approved after one year.

The other parties to the proceeding had no questions. Ms. Smith offered the following comments regarding Section 19, Phase 1:

1, *Erosion Control Permit*. Evidence of approval of an erosion and sedimentation control plan needs to be submitted, if required, to the Planning Department prior to the applicant beginning construction.

Mr. Grasso said that the Erosion Control Plan is under review along with a Corps permit because there is a culvert with a small stream. Both are pending at this time.

2. *Water and Sewer Plan Approval*. A letter from the Hendersonville Water and Sewer Department regarding capacity to provide water and sewer service for the entire PUD project was provided in 1993. The applicant should provide evidence that the water and sewer plans serving Section 19, Phase 1, have been approved by the City of Hendersonville Water and Sewer Department and NCDENR prior to the approval of the final plat.

3. *Private Roads*. The applicant provided the private road statement on the plan. On the final plat, the applicant also should include a note stating: *The private roads indicated on this Final Plat may not meet requirements of the North Carolina Department of Transportation for acceptance into the state road system*. The applicant also needs to provide certification that the road grade does not exceed 18% prior to or at the time of final plat approval.

4. *Road Standards*. The Special Use Permit requires that roads be constructed to NCDOT standards for vertical alignment and grade. The applicant has indicated that all proposed roads in Section 19, Phase 1, would be built to NCDOT standards. The applicant shall also provide evidence of the responsibility for road maintenance and repair prior to the recordation of any plat representing lots or units having direct access to said roads.

5. *Road Names*. The applicant has proposed a new residential street to serve the lots in Section 19 and will need to provide a road name. Prior to the recordation of the final plat, a road name will need to be submitted and approved by the Henderson County Property Addressing Office.

6. *Site Information*. The applicant indicated that the proposed development parcel is zoned R-20, but the GIS mapping system shows R-30 and this will need to be corrected prior to the beginning of any construction on a revised development plan. The applicant shows a different directional north arrow on the large development plan compared to the smaller 11 X 17 development plan. The applicant should show the correct zoning district, north arrow and that the development parcel is also located in a Water Supply

Watershed District (WS-IV) on a revised Development Plan.

7. *Open Space.* The PUD concept allows the applicant the flexibility to create lots which do not meet the minimum dimensional requirements of the zoning districts where PUD is allowed, to cluster dwelling units, to include multi-family dwellings, etc. The applicant has to compensate for the lot size reduction with common area/open space areas. Based on the proposed 16 lots, 11.02 acres of land is necessary to meet the R-30 density requirements. The Phase 1 portion of the development parcel is 7.61 acres. The difference constitutes a 3.41-acre land shortage. The applicant has specified 2.47 acres of open space are required, which is a shortage of open space by 0.94 acres. The 0.94 acres of land should be dedicated as open space somewhere else in Carriage Park to meet the open space requirements. The plan notes that 1.44 acres of open space is provided from an adjoining stream mitigation preserve. The applicant should provide more information about such preserve. The applicant, prior to submittal of the development application for Section 19, Phase 1, provided the Planning office with documentation that currently there is 1-acre more of common area/open space on record than required based on the current level of development in the entire PUD. The required open space will need to be put on record prior to or concurrent with the recordation of the lots in Section 19, Phase 1.

8. *Evidence of Permits Required.* The plan shows a lake with a dam near Carriage Park, Section 19, Phase 1. The Special Use Permit does not directly address the creation of a "person made" lake, pond, etc. The permit does require the applicant to submit all pertinent federal, state, or local permits, including sedimentation and erosion control permits or evidence of submission of such permits with an application for development parcel approval. Prior to approval of the final plat the applicant should provide copies for all appropriate permits, including those related to the lake and dam.

Board members noted that just the permits without the backup is sufficient evidence of permits.

9. *Evidence of Infrastructure Development.* Ms. Smith stated that under the Special Use Permit for Carriage Park they need to show that they bring utilities to the edge of the development parcel, but that Staff does not get involved in the construction of the utilities in the development parcel, Staff only needs plans for it. The applicant needs only to prove that they have gotten it to the development parcel. Ms. Smith stated that Staff needed to know where the nearest water connection and sewer lines will be made.

Mr. Grasso showed on the map provided by Staff that most of the water is located just off West Carriage Park Way. He mentioned that the sewer lines are also located in that same area. Ms. Smith stated that this should be made clear on the revised Development Plan and they also can provide an improvement guarantee if for some reason they were not close to the development parcel.

Ms. Smith noted that there was no evidence of drainage areas or culverts on the plan. Mr. Grasso stated that those items will be included with the erosion control plan and that they have been designed to NCDOT standards.

10. *Final Plat.* The applicant must record a Final Plat for Section 19, Phase 1, if the Development Parcel Plan is approved that meets the *Henderson County Subdivision Ordinance* requirements for a non-standard subdivision.

Ms. Smith said that the Staff suggests that the applicant provide a plan depicting the entire boundary of the proposed Section 19 and how Phase 1 and Phase II relate to one another as this will assist the applicant in illustrating how the phases will be developed.

Ms. Smith stated that the Staff recommendation is for approval of the Phase 1 portion of Section 19 if the applicant can satisfy the conditions mentioned and any other comments or questions that might come up.

Mr. James Bandelin stated that the three resident members of the architectural committee have reviewed this plan and this section and it meets with their agreement.

None of the parties had closing remarks.

Chairman Pearce made a motion that the Planning Board find and conclude that the Development Parcel Plan submitted for Section 19, Phase 1, of Carriage Park Planned Unit Development complies with the provisions of the Henderson County Zoning Ordinance, Water Supply Watershed Protection Ordinance, Subdivision Ordinance, and the Special Use Permit regulating the Planned Unit Development (#SP-93-13, as amended) except for those matters addressed in the technical and procedural comments section of Staff's memo (and any other issues raised during the hearing) that have not been satisfied by the applicant. He further moved that such Plan be approved subject to the following conditions: Comments 1, 6, and 9 being satisfied prior to the beginning of any construction and comments 2 through 5, 7, 8, and 10 being satisfied prior to the approval of the Final Plat and/or on the Final Plat for Section 19, Phase 1. In addition, Chairman Pearce added that Staff's suggestion that the applicant provide a plan depicting the entire boundary of the proposed Section 19 and how Phase 1 and Phase II relate to one another be added as comment 11. Mike Cooper seconded the motion and all members voted in favor. Chairman Pearce closed the proceeding and requested that the Order be prepared for the next Planning Board meeting in October.

Review of Open Meetings Law – C. Russell Burrell, Assistant County Attorney. Mr. Burrell reviewed with the Board members the procedures for Commissioner-appointed boards and committees. He stated that the Open Meetings Law applies to any group that has two or more members that is authorized to perform any of the following functions: Acts in a legislative, policy-making, quasi-judicial, administrative or advisory function. He said that only the Planning Board's official meetings are subject to this. Mr. Burrell said that an official meeting is a meeting, assembly, or gathering or the simultaneous communication by conference call of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting public business. He said for instance if Board members get together on the street tonight after this meeting is over and talk about what is pending in front of them, that is considered an official meeting and would be subject to the Open Meetings law requirements. Chairman Pearce asked if that would include four members? Mr. Burrell said that five members would make up an official meeting if the members talk about anything that is in front of you. He stated that to comply with Open Meetings Law there needs to be two things that happen regarding a meeting it needs to be open and appropriate public notice needs to be given. He discussed the types of public notice such as regular meeting notice, which consists of the Clerk to the Board of Commissioners maintaining a schedule of regular meetings. He said with regard to special meetings, a notice of the meeting must be mailed to the media and the sunshine

list and must be posted on the principal bulletin board of such public body at least 48 hours in advance. He said that for emergency meetings, called because of unexpected circumstances that require immediate consideration by the public body, notice shall be given immediately to the sunshine list and the members. Only business covered in the notice may be conducted. He said that if you have more people attending than the place will hold and you want to move the meeting elsewhere, either in a couple of hours or days, this meeting can be recessed. Chairman Pearce asked whether the Board could continue a recessed meeting like a regular meeting? Mr. Burrell said it could be. Chairman Pearce asked that on the 48-hour notice, would a telephone call be adequate or does it need to be in writing also? Mr. Burrell said he suggested it should be in writing and note the place of the meeting as this can be used as proof that you did notify the people concerned.

Ms. Armstrong asked whether subcommittee meetings are required to keep minutes? Mr. Burrell said yes. Ms. Armstrong asked that when you referred to members talking about "stuff" must there be a majority? Mr. Burrell said that when you are talking about your business there needs to be a majority of whatever the group is. Ms. Armstrong felt that Mr. Burrell's presence regarding this matter was possibly prompted by e-mails from various Board members. She asked what his thoughts are regarding this and whether members should avoid this type of communication as a group? Mr. Burrell said that it all depends on how quickly you respond to the e-mails. If you respond to them immediately, then it could be considered a meeting, and would not suggest doing so. .

Special Use Permit Application # SU-04-01 - Leoni's Mountain Lake Homes Planned Unit Development – Located off South Lakeside Drive and Bonner Street, Across from Lake Osceola – 26 Lots on 12.01 Acres Located in a R-20 Zoning District (Low Density Residential) – Luther E. Smith, Agent for Camp Riley, Inc., Owner. Ms. Smith said that the Board has seen this property before through the course of two conditional use permit applications for camps as well as a rezoning application that was denied. She stated that the parcel is owned by Camp Riley, Inc., and sits between South Lakeside Drive and Bonner Street, both being State roads. The applicant has applied for a Special Use Permit for a Planned Unit Development. She stated that the zoning is R-20 and this designation will come into play as far as the number of lots and the open space that needs to be provided. She stated that Todd Leoni is the applicant and part owner of Camp Riley, Inc., and Luther Smith and Associates is serving as the agent for the applicant. The property is a 12.01-acre tract and is not located in a Water Supply Watershed protection area. Ms. Smith said that they are proposing 26 single-family lots, some of them will be villa lots and some will be cottage lots. She said that the villa lots are being designed on a zero lot line basis, which means that they slide the unit over to one lot line so that there is zero setback on that side and there is a ten-foot setback from the other side lot line. Then they slide the next unit to the side lot line. She stated that the cottages are proposed to have fifteen feet between the structures. There is a total of 4.65 acres of open space proposed. Referring to a Staff memo, she stated that this application has been reviewed under the *Henderson County Subdivision Ordinance* as well as the *Henderson County Zoning Ordinance*.

Ms. Smith stated that in terms of the *Subdivision Ordinance* and the Master Plan the topographic and boundary survey were looked at jointly as a Master Plan and Development Plan and Staff suggested the applicant submit a revised a combined master and development plan so that Staff can make sure that all of the features that are required for both plans are on there.

She stated that the project summary does on the Master Plan not provide the length of the road or the distance to public water or sewer connections and these would need to be shown on a revised combined master and development plan prior to beginning construction. She stated that the development plan provides the zoning districts bordering the subject property but shows the Osceola Lake zoned R-15, which may be the City's R-15. She said that the lake is shown on the County's GIS as being a part of the City of Hendersonville's extraterritorial jurisdiction and this will need to be clarified on a revised plan.

Staff comments on the Development Plan from the Staff memo were as follows:

- a. Project summary. The applicant needs to provide the length of the road or the distance to public water or sewer connections on a revised combined Master and Development Plan, to be submitted to the Planning Department prior to beginning construction.
- b. Boundary area. The applicant needs to show on the revised Master and Development Plan to be submitted to the Planning Department prior to beginning construction that the zoning for Osceola Lake is within Hendersonville's ETJ.
- c. Soil Erosion and Sedimentation Control. Ms. Smith said that under the Subdivision Ordinance the applicant needs to submit a notice from NCDENR that a soil erosion and sedimentation control plan has been received prior to beginning construction.
- d. Water Supply. The applicant needs to provide a letter of capacity from the City of Hendersonville Water and Sewer Department to the Planning Department prior to beginning construction. The applicant must meet the City of Hendersonville's minimum requirements for fire hydrant installation. Final approval of the water supply system must be provided and such system must be installed ( or an improvement guarantee for the system must be posted) prior to the Final Plat approval.

Chairman Pearce said that sewer extension is not mentioned in the comment here. Ms. Smith said that it is mentioned in the zoning section. Chairman Pearce asked whether the sewer extension is beyond the distance requirements, based on the distance? Ms. Smith stated that Staff checked that and Mr. Luther Smith can talk to the Board concerning this matter.

- e. Culverts and Drainage Plan. The plans did not show culverts and drainage structures along the proposed road and they would need to be designed to NCDOT standards and shown on a revised combined Master and Development Plan to be submitted to the Planning Department prior to beginning construction.
- f. Private Roads. A note stating: *The private roads indicated on this Final Plat may not meet requirements of the North Carolina Department of Transportation for acceptance into the state road system* should be included on the Final Plat.
- g. Road Grade. The applicant needs to certify on the Final Plat that the road grades along the proposed private local residential road conform to the standards of the Subdivision Ordinance.
- h. Project Sign. The applicant has proposed two project signs for the proposed PUD, one at each entrance, and Ms. Smith stated that they are allowed to have private signs under the *Subdivision Ordinance*. There is no formal standards that apply to on-premise signage in the County and Staff have interpreted that signs

for subdivision entry are permitted and incidental to the subdivision, but we make sure they are kept out of the right-of-way. She stated that the signs should be located in dedicated sign easements and shown on the Final Plat.

- i. Common Area/Open Space. The applicant has designated 4.65 acres of open space in the proposed PUD and proposes group septic systems within the common areas. Ms. Smith stated that the applicant has mentioned the possibility of recreational areas and would like the applicant to further discuss this later. She stated that anything they do construct, other than the septic tanks, above ground (buildings or structures) would need to meet the setback requirements for the *Zoning Ordinance* and would be subject to conditions imposed by the Board of Commissioners if the Special Use Permit is approved. If no specific conditions are imposed, then the Special Use Permit should require that development within common areas/open space must conform to the requirements of the Henderson County Zoning Ordinance and be clearly identified for their designated use on the Final Plat.
- j. Flag Lot. There is a flag lot proposed, Lot 4, and it will need specific approval by the Planning Board.

Ms. Smith indicated that Staff has received documentation of approval of driveway access off South Lakeside Drive and Bonner Street from NCDOT. She stated that there was a question about lots 13 and 15 having sufficient frontage and right-of-way access to Bonner Street. She stated that according to the applicant's agent, both lots 13 and 15 have the required right-of-way depicted on the preliminary Development Plan. She stated that the preliminary Development Plan shows a strip of land adjacent to Bonner Street, which is labeled "reserved for future ROW." The applicant has explained that NCDOT once proposed to expand the Bonner Street right-of-way but was not able to do so because of local resident opposition. She stated that the applicant wants to reserve the area for potential expansion of Bonner Street and still meet the setback if it was expanded.

Ms. Smith stated that comments from the Valley Hill Fire and Rescue Department, Inc., Chief stated he would like the applicant to install a fire hydrant near the Osceola Way entrance off South Lakeside Drive.

Ms. Smith stated that comments were also received by the Henderson County Environmental Health Department, which provided several suggestions for the applicant to consider and recommended that the applicant connect to public sewer, if possible. She added that the comments indicate that the Health Department has not seen many examples of the type of system the applicant is proposing and that the applicant will need to go through the State permitting system to determine what sewer system will be appropriate.

Ms. Smith stated that regarding the subdivision plans for Leoni's Mountain Homes Lake Homes, Staff recommends approval of the Master Plan and Preliminary Development Plan subject to the satisfaction of the above-listed items and subject to approval of the Special Use Permit application by the Board of Commissioners.

Ms. Smith stated that regarding the *Zoning Ordinance*, there was a pre-application conference held on August 17, 2004. On September 1, 2004, the applicant submitted a formal application for a Special Use Permit to the Board of Commissioners and to the Planning Board in accordance with the *Zoning Ordinance*. On September 7, 2004, the



Board of Commissioners referred the application to the Planning Board for review and recommendations. Ms. Smith reviewed the following comments on the special use permit application from the Staff memo:

Ownership. Ms. Smith stated that this requirement has been satisfied.

Density Requirements. Ms. Smith stated that this requirement has been satisfied.

Height Limitations. As a PUD, the *Zoning Ordinance* requires that no building or structure shall exceed 35 feet in height and the applicant has proposed single-family units with heights no greater than 35 feet, meeting the height limitations within a PUD, but she needed to bring this up as she did not find that on the plan and the agent can address this matter.

Required Distance Between Buildings. Ms. Smith stated that the *Zoning Ordinance* allows the Planning Board to permit the minimum separation between single-family detached buildings to be reduced below the minimum specified provided that the buildings are not closer than 10 feet, that they meet the N.C. building codes for construction of adjacent walls and that the area between buildings remains open and unobstructed. She said that the applicant has asked for side-to-side separations of 10 feet for the Villa lots and 15 feet for the cottage lots and will need special approval for those standards.

Water and Sewer Plans. Ms. Smith stated that the applicant must submit plans and other documentation to ensure that a professional engineer has designed the water and sewer systems and that such systems have been approved by appropriate local and state agencies.

Off-street parking. Ms. Smith stated that the plan does not specifically address the requirements for off-street parking required from the *Zoning Ordinance*, that 2 parking spaces be provided for each dwelling unit for single-family dwellings and two-family dwellings. The applicant should show this on a revised combined Master and Development Plan to be submitted to the Planning Department prior to beginning construction.

Erosion Control. Ms. Smith stated that the applicant must submit documentation of approval of the sedimentation and erosion control plan for the project prior to beginning any construction.

Emergency Services. Ms. Smith stated that the applicant has provided letters to the Henderson County Emergency Medical Services Department and the Fire Chief of Valley Hill Fire and Rescue Department asking them about the adequacy of the proposed facilities for emergency medical and fire services. The Valley Hill Chief has provided comments to the Planning Department. The developer should submit the required documentation prior to beginning construction.

Dwelling Unit Access. Ms. Smith stated that it appears the applicant has met this requirement regarding sufficient frontage on Bonner Street for lots 13 and 15, but the Planning Board needs to review this item.

Perimeter Treatment. Ms. Smith stated that the applicant should address what type, if any, fencing, screening or other materials will be used around the perimeter of the development.

Conveyance of Open, Recreational Areas and Communally Owned Facilities. Ms. Smith stated that these shall be guaranteed by a restrictive covenant describing the areas and facilities and their maintenance and improvement, running with the land for the benefit of residents of the PUD or adjoining property owners or both. The applicant must submit to the Board of Commissioners the legal documents which will produce such guarantees and, in particular, will provide for restricting the use of common areas and facilities for the designated purposes.

Maintenance. Ms. Smith stated that Planned Unit Developments shall be approved subject to the submission of an instrument setting forth a plan for permanent care and maintenance of permanent open spaces, recreational areas, easements, right-of-way and communally owned facilities which would be legally enforceable. The developer shall create a homeowners' association and submit bylaws and rules and regulations governing the association. The developer shall be required to include in every deed he makes that membership be mandatory for each home buyer. The County Attorney or Assistant County Attorney must approve the Declaration of Covenants and Restrictions for Leoni's Mountain Lake Homes and the Bylaws of the Leoni's Mountain Lake Property Owner's Association as to form and the Board of Commissioners must approve the same documents as to their suitability for the proposed uses.

Recreation Areas. Ms. Smith stated that the project suggests the possibility of limited recreation facilities in open space areas, but no recreational structures are shown on the development plan. The applicant should address this item further with the Planning Board.

Regarding the applicant's proposed preliminary Development Plan for the PUD, Ms. Smith reviewed the proposed setbacks within the project and said that Staff suggests that the Planning Board consider recommending the setbacks as a condition to the Board of Commissioners. She also stated that regarding the side to side separation between structures proposed as 10 feet for the Villa lots and 15 feet for the Cottage lots, Staff suggests that the Planning Board consider recommending this as a condition to the Board of Commissioners with additional language that states that the construction of adjacent walls must conform with the N.C. Building Codes and that the area between buildings must remain open and unobstructed.

Ms. Smith stated that in addition to the specific standards that Planned Unit Developments need to meet in the R-20 requirements, there are also general standards that have been added to the Zoning Ordinance and most dealt with the health, safety, and welfare. She stated that in 2001, with the adoption of the Open Use District a list of general standards for all special uses was added. Most of them are very general and deal with the health or safety of the persons residing or working in the neighborhood of the proposed use and with the use not being detrimental to the public welfare or injurious to property or public improvements in the neighborhood. She gave examples such as:

1. That they minimize effects of noise, glare, solar access and odor on those persons residing or working in the neighborhood; traffic congestion.

2. That they are located and conform to all applicable federal, state, and local laws, rules and regulations.
3. That they are in conformance with the Comprehensive Land Use Plan.
4. That they are consistent with any approved official Thoroughfare Plans of Henderson County or any municipality therein.

Tommy Laughter asked whether sidewalks are required in this development? Ms. Smith said that in the City of Hendersonville they are, but not in the County. Ms. Armstrong said that what is before the Planning Board tonight is a Development Plan and a Special Use Permit. Ms. Smith said that is correct and that the Planning Board needs to make a recommendation to the Board of Commissioners on the Special Use Permit. Ms. Armstrong asked, "The only reason they need that is because they are doing a PUD in a traditional zoning district?" Ms. Smith said yes. Ms. Armstrong said that when this was brought to the Planning Board before, there was a requirement in the Ordinance regarding the property being a certain amount of feet from an existing sewer line and that they are required to hook onto it. Mr. Cooper said that it states no more than ½ mile. Chairman Pearce said that the Board does not have the information to answer that. Ms. Armstrong asked whether this development is entitled to 26 lots under the traditional zoning? Ms. Smith said yes. Ms. Armstrong asked whether there is any requirement for the Health Department to approve these special septic systems? Ms. Smith said she does not know at this time what their specific requirement is, but that the State has to issue approval of it. Ms. Armstrong asked whether the road in the development is public or private? Ms. Smith said it is proposed as a private road. Ms. Armstrong said that in the application document it indicates that they will be public? Ms. Smith said that she believes that is not right, but will have the agent verify this. Ms. Armstrong asked, "Who will eventually review the covenants and for what will they be reviewed?" Ms. Smith said that the legal staff will review those. Mr. Burrell said legal staff will review that the homeowner's association is set up properly and that everyone is required to join the association so that the common areas and the private roads will be properly maintained. Ms. Armstrong asked whether this development is in compliance with the adopted Comprehensive Land Use Plan? Ms. Smith said yes and that it is in the Urban Services Area.

Mr. Luther Smith, agent for Todd Leoni, reviewed the comments for which Ms. Karen Smith needed clarification. Mr. Smith said that the project is served by public water and she showed where the six-inch and two inch lines run on the project map. At this time the City Water Department is testing the pressure at those points and will determine which one they want to run it from. Mr. Smith said that there will be at least one fire hydrant in the center of the project, because the City requires that every structure must be within one thousand feet of a fire hydrant. He said that when they make that determination from a pressure standpoint, they will be able to run the water in there. Mr. Smith said that the closest gravity sewer is approximately 7,000 feet away (at the intersection of Mud Creek and Erkwood Drive). He said that at the intersection of Lake Drive and Willow Street there is a lift station, which is approximately 4,000 feet away at a development. The lift station was sized just enough to serve that development there so even though we could get to it, the City of Hendersonville will not let us tap into it because it is undersized. He said that because of that, they decided to go with a group septic system and also because this area was a camp for many years. He said there has been a soil analysis of the property and it had several areas that were suitable for a

septic system (which he showed on a map). He said that the owner is currently in the process of additional testing to determine how many units can be served. He said that when it comes back and the systems are designed, they may not be able to support a certain area of the project. Then they will be able to build only the sites that are approved. Mr. Smith said that it would be a common system with lines that collect to two pumping points that pump these areas to a typical underground distribution system, like a normal septic field. He noted systems like these in other areas of the County. He said that these type of systems are approved on the State level, because of the size of the system. Mr. Smith stated that regarding lots 13 and 15 dealing with frontage issues, he noted that there is a thirty-foot right-of-way on Bonner Street but said that they will meet all frontage requirements. Chairman Pearce asked whether there will be any structures in the open space? Mr. Smith said that there are no plans for any structures, just open space and general recreational area. Mr. Smith said that the owners have approval from NCDOT for the driveway permits to connect and he is also under the impression that the owner has approval from NCDENR for erosion control, but it was sent to the owner directly. Chairman Pearce feels that this project should be an acceptable usage to most and will alleviate most of the concerns that the Board continually heard about this piece of property. Mr. Smith added that regarding the maximum building height, it will be less than thirty-five feet, as the development intends to be all single-family homes and the owner will have a profile of recommended house plans suitable for this project.

Ms. Armstrong asked why this is not being built as a traditional R-15 or R-20 zoning subdivision? Mr. Smith said that the principal reason is because of the septic field. Ms. Armstrong said that there is no way that you could max-out on your density? Mr. Smith said no. Ms. Armstrong asked whether the minimum items mentioned would be included in the maintenance responsibility of the homeowner's association such as: private and internal streets, the septic system, the lift stations and the exterior maintenance of the homes? Mr. Smith stated that the exterior maintenance of the homes depends on the type of development the owner decides on. The developments with zero lot line usually offer a package with all of the exterior maintenance that will be handled through the association, but he is not sure whether it will be so in this case. Mr. Smith said that regarding all of the other items mentioned, normally the homeowner's association will own and maintain the roads and will have an established homeowner's fee. He said it will also be required to maintain all of the open space areas. Each unit will have its own septic tank, which will be the responsibility of the homeowner to have it pumped out and maintained. He said that from that tank, the line that normally goes to the drainfield will go to a collection system and the homeowner's association will maintain and own that collection system and will also maintain and own the group field system. He said that the only thing that the homeowner will maintain regarding his sewer system will be his septic tank and the homeowner will also be responsible for maintaining his lot, unless the homeowner's association offers a package. There were some further discussions regarding the sewer system.

Ms. Smith stated that the applicant seems to have met the general standards. She said that Brenda Coates is on the Board of the Property Owners Association for Lake Osceola and she has been informed of this application and has let the neighbors know about the proposed development. Ms. Kumor asked, "Should the approval come for only twenty-two lots and the Board of Commissioners have accepted twenty-six lots, at the time in seven or eight years when sewer line is available, can those lots be activated?" Ms. Smith said that there is a provision in the Zoning Ordinance under the PUD section that talks about the development schedule. She added that they have a

certain period of time that they need to begin construction and the Board of Commissioners can add conditions or stipulations regarding matters such as this. Ms. Kumor said that because the spaces are there, it seems that at some point that because under the conditions, he is only asking for fewer lots. Mr. Smith said that a final subdivision plan has to come back to the County and at that time we need to have the final septic approval. If at that time they say that they can only have twenty-two, they can only show twenty-two lots on the plat that gets recorded and the rest of the lots become open space. Ms. Smith said that although the Board has forty-five days from its first consideration, if the Board is ready tonight to make a motion on this development, she suggested that when they make a motion on the subdivision, a condition that could be made is that the Special Use Permit be granted and then make a recommendation on the Special Use Permit. Ms. Smith said that she wants to make sure that the Planning Board has enough time to make a decision on this project. Chairman Pearce asked the Board members whether they have had enough time and information about this project? All members basically said that they were fine with the project. Chairman Pearce suggested that it would be good to have less open conditions when it is sent to the Board of Commissioners. Ms. Smith said that on other projects that Mr. Smith has worked on, he has submitted items to the Staff that satisfied some of the conditions that the Planning Board recommended prior to the Board of Commissioners hearing and, with Planning Board's approval, Staff can take them off the list of conditions. If approved tonight, the Special Use Permit application would be sent to the Board of Commissioners for its October 4<sup>th</sup> agenda just to set a hearing. She added that the Commissioners would not look at the materials until late October, or early November. Ms. Smith suggested that two motions be made, one on the subdivision and the other on the Special Use Permit recommendation. Mike Cooper made a motion regarding the subdivision plans for Leoni's Mountain Lake Homes, to approve the Master Plan and Preliminary Development Plan subject to the satisfaction of the conditions mentioned in Staff's memo and subject to approval of the Special Use Permit application by the Board of Commissioners and that Lot 4, the flag lot, specifically be approved. Tedd Pearce seconded the motion. Tedd Pearce, Mike Cooper, Leon Allison, Tommy Laughter, Renee Kumor and Jonathan Parce voted in favor of the motion. Vivian Armstrong opposed the motion. The motion carried 6 to 1.

Jonathan Parce made a motion to send a favorable recommendation to the Board of Commissioners regarding Special Use Permit # SU-04-01 subject to Staff comments in the memo being satisfied. Renee Kumor seconded the motion. Tedd Pearce, Renee Kumor, Jonathan Parce, Tommy Laughter, Mike Cooper, and Leon Allison voted in favor of the motion. Vivian Armstrong opposed the motion. The motion carried 6 to 1.

Subcommittee Assignments and Meeting Dates. Chairman Pearce stated that in addition to the other meetings scheduled and discussed earlier, the Land Use/Zoning Study Subcommittee scheduled a meeting at 5:45 p.m. for October 11, 2004 before the main meeting that begins at 6:00 p.m., to approve minutes from prior subcommittee meetings.

Adjournment. There being no further business, Tedd Pearce made a motion to adjourn and Leon Allison seconded the motion. All members voted in favor. The meeting adjourned at 9:00 p.m.

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Tedd M. Pearce, Chairman

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Kathleen Scanlan, Secretary