

HENDERSON COUNTY PLANNING BOARD MINUTES May 18, 2004

The Henderson County Planning Board met on May 18, 2004, for its regular meeting at 7:05 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; Walter Carpenter, Vice-Chairman; Leon Allison, Paul Patterson, Mike Cooper, Tommy Laughter and Todd Thompson. Others present included Brad Burton, Zoning Administrator; Karen C. Smith, Planning Director; and Kathleen Scanlan, Secretary. Board members Cindy Daibaibeh and Vivian Armstrong were absent.

Approval of Minutes. Chairman Pearce presided over the meeting and called the meeting to order. He asked for the approval of the regular meeting minutes of April 20, 2004. Tommy Laughter made a motion to approve the minutes and Paul Patterson seconded the motion. All members voted in favor.

Adjustment of Agenda. Ms. Smith requested that Item # 5 dealing with the US 25 North Area Study Update be moved after Item # 9, in the interest of time. All Board members agreed

Staff Reports. There were no Staff Reports.

OLD BUSINESS:

Zoning Map Amendment Application # R-04-02 to Rezone Multiple Parcels of Land Totaling Approximately 25 Acres off Hoopers Creek Road, from RC (Rural Conservation) to R-10 (High Density Residential) – William G. Lapsley & Associates, P.A., Agent for Kenneth G. Bagwell and Buddy Wayne Bagwell, Applicants. Ms. Smith stated that in the packet, Ms. Radcliff prepared a memo indicating that Kenneth G. Bagwell and Buddy Wayne Bagwell requested a withdrawal on this rezoning application because the Town of Fletcher has annexed their property. Chairman Pearce made a motion to acknowledge the withdrawal of Application # R-04-02 by Kenneth G. Bagwell and Buddy Wayne Bagwell. Leon Allison seconded the motion and all members voted in favor.

NEW BUSINESS:

Request for a Conditional Use Permit (# CU-04-08) to Expand (internally) a Pre-existing Manufactured Home Park in T-15 Zoning District on Crest Road – Christopher Stepp, Esq., Agent for Crestview LLC/Crestview Estates, Owner. Zoning Administrator Brad Burton reviewed the report provided to the Planning Board and Chairman Pearce noted the Board would accept Mr. Burton stipulating to the facts in the report. Mr. Burton noted that Capital Six Associates, Inc. had received from the County confirmation that it had a vested right for a 93-unit manufactured home park. The vested right transferred with the sale of the park to Mr. Norman Allen and others on May 21, 1996 and then to Crestview, LLC, in 1998. Mr. Burton said that at some point in time between 1998 and the present, the total number of spaces constructed in the park increased to one hundred and thirteen, twenty more than allowed by the vested right as granted by the County. Mr. Burton stated that in the packet, Exhibit 6 is the original sewer plan on which the vested right was issued to Capital Six and added that the park has changed dramatically from what that looks like now. He said now they have City water and City sewer in the park. Mr. Burton stated that Exhibit 7, in the packet, shows how the park appears at present. Mr. Burton explained that there were 93 spaces that were permitted to be

established in the manufactured home park per a vested right and the area was unzoned at the time. He said that the area then became zoned T-15 and Capital Six transferred the title of the 93-space manufactured home park to Mr. Norman Allen. Somehow another 20 more spaces were built without any governmental approval and this has been an issue over the years. Mr. Burton said that one of the remedies continuously discussed is for Crestview, LLC, to make application for a Conditional Use Permit, as it is allowed in a T-15 Zoning District, for expansion of a pre-existing manufactured home park under the *Henderson County Zoning Ordinance* which also refers to Article 4 of the *Henderson County Manufactured Home Park Ordinance* as far as the way the park is laid out, drainage, road standards and other issues. Mr. Burton said that on April 7, 2004, Mr. Christopher Stepp, agent for Crestview, LLC, made the application to the Zoning Board of Adjustment for a Conditional Use Permit for expansion of the park. Mr. Burton said that Staff is trying to make the expansion legal by having the applicant call an area (as indicated on the map) the expansion area and having it comply pursuant to the *Henderson County Manufactured Home Park Ordinance*, Article 4. Chairman Pearce asked regarding Exhibit 6, "Was the park configured anything like what appears on this map?" Mr. Burton stated that they had originally planned for the areas indicated as "well sites" and "future septic tank" but he doesn't feel that the park was actually constructed in this way. Chairman Pearce asked, "In this original configuration, was there an approved configuration for this subdivision?" Ms. Smith said that she believes the plan accompanied a letter that is in the packet (from Edward Krause). Chairman Pearce said that he read the letters and understands that but asked if there were no submittals because there were no requirements at the time? Ms. Smith said that it was unzoned at the time when it was first established. Mr. Burton said that what started the interest in the vested right was that there was interest in zoning this area and that they were trying to protect themselves. Mr. Carpenter said basically they got confirmation from the County that they agreed they would not take any zoning action that would prohibit the use of the real property. Chairman Pearce said they could build 93 units, but how they designed them or built them made no difference because that was legal then. Ms. Smith said that zoning was not part of the Planning Department at that time. Mr. Burton said that this is not a "cut and dried" issue but Mr. Allen has retained counsel and is trying to work with the County. He added that the County could pursue other zoning issues, such as the layout of the park at present as it is not indicative of the original vested right, but we are trying to come to some agreement for this expansion. Chairman Pearce said that he has a problem with calling this a new development area. He said that looking at his profile, at one time this was close to the configuration, as shown in Exhibit 6, of the park and he assumes that this is how they expected to put it together. He said that there was a time because of water and sewer situations, that they reconfigured the place and now it resembles Exhibit 7. Chairman Pearce asked, who did that, the present owner or one of the former owners? Mr. Burton replied that it was his understanding that it was Mr. Allen and his organization. He added that the reconfiguration and the additional twenty spaces were both done without governmental approval however they have made a very good faith effort and have met on numerous occasions with Staff regarding the matter. Chairman Pearce said that he feels that it either needs to remain a 93-unit park or it needs to come forward in total as a manufactured home park and come under the *Manufactured Home Park Ordinance* as written. He added that the 93 units are grandfathered in and they had a right to do it with no ordinance. He said they were just reconfigured and reapportioned at some time. Mr. Burton agreed but said that in order to try to fix this situation, Staff has taken the position that if the owners can show us that they can conform to the County's ordinance and they wish to expand, the County will try to oblige. Mr. Burton said that basically he has no problems with the plan except for the buffering, which he feels would likely be required because of the internal expansion. He also mentioned that on the plan it illustrates common area, but that the size of this area is unknown. After some discussion, Chairman Pearce asked, how many units are empty in the park shown on Exhibit 7? Mr. Burton said that there are approximately fourteen. Mr. Laughter asked how many are empty in the yellow shaded area? Mr. Burton said that there are four units. Chairman

Pearce asked, "How many units in the park will not be in compliance with the existing code?" Mr. Burton said he did not know as has focused his attention on the yellow shaded area (expansion). Mr. Burton showed on a map a drawing of the expansion area only, which he referred to as the Phase 1 expansion of Crestview Estates Mobile Home Park. Mr. Burton said that with how it is drawn, everything is in compliance and, in addition he has gone out to the site and has measured everything. He said that it appears to meet the separation standards from the road and between the homes and it has well-maintained roads that are eighteen feet wide with four-foot shoulders. He added that is hard to compute the actual density for this section, as the acreage of land is not provided and Mr. Allen will need to address this issue. In closing, Mr. Burton said that the position he is taking on this issue is focusing on just the expansion area of the 20 units. Chairman Pearce said that he is not against the plan but his point is would the Planning Board be better in serving everyone involved, including the subsequent owners, if it approves the layout of Crestview Estates Manufactured Home Park as expanded and just recommended to the Board of Adjustment that it accept the entire park with the maximum of 113 units rather than try to isolate the additional spaces into an area that isn't an expansion area. He said it has no resemblance to the previous layouts because everything else differs as well. He feels that the Board would do more justice if it would look at the park in total instead of trying to look at it in some made-up area. Ms. Smith said that everyone should understand that the Board of Adjustment does not have to approve this because if they find reasons under the Conditional Use Permit standards to deny it, they can do that. This application is one option that Staff has discussed with the County's attorney. She added that the plan is not really that different. Chairman Pearce said that he feels it is some different. Mr. Cooper added that Mr. Allen had the right to do the 93 units in any fashion he wanted to do it, but if we go back and have him comply with today's ordinance to meet 113 units, he said it won't. Chairman Pearce said that it does, quantity-wise. Mr. Cooper said that is true, but not the layout of it.

Mr. Christopher Stepp, agent for Crestview, LLC, said he doesn't know a way to approach this old problem other than calling it an expansion. He said that they have worked closely with the Zoning Administrator to arrive at some way to do this right and to conform to the laws of this County. He said that when this project originated there were no zoning issues to be addressed and the history, without going into details, is a complicated one but he wanted everyone to be assured that it was his client's intention to do the right thing and to conform. Mr. Stepp said it is their intention to finish this project and the expansion is the only method in reading the current codes whereby he can accomplish this task. He referred to a letter from August 1998, where Mr. Allen was requesting to increase the amount of spaces for mobile homes and noting that he had eliminated the well sites and installed city water lines. He said that this was an attempt to do what was the correct thing. He added that this was not addressed but was sent to the County office and was part of the file. Chairman Pearce asked, "What happened to that and was anything done?" Ms. Smith said that in 1998 the Planning Department was taking care of the zoning under the former Planning Director, Matt Matteson, and Suzanne Vernon as Zoning Administrator. Mr. Burton referred to a chronology of Mr. Matteson's where it stated that in August 1998, Mr. Allen requested an expansion of spaces and also submitted a plan showing the existing lots, proposed lots, occupied lots and vacant lots. He said that they ascertained the deviation of the vested right plan with what was developed and what was proposed. Mr. Burton said that the next item on the chronology refers to November 1998 where the zoning administrator had sent a letter to Mr. Allen informing him that his park had reached its 93 unit capacity and that the County would not be issuing any more permits until a site plan was provided. Mr. Burton further mentioned that Mr. Allen submitted a sketch plan on March 4, 1999 with a different number for the vested right plan. Chairman Pearce asked that since 1998, Crestview has known what to do, but it just hasn't happened until now? Mr. Burton said that he has correspondence from the former County Attorney, Jennifer Jackson, where she had a conversation with Mr. Harley Stepp concerning pursuing the conditional use permit. Chairman

Pearce asked if it was safe to say that since 1996, when the park was purchased, it has been reconfigured into this shape? Mr. Stepp said, referring to Exhibit 6, the only change of the layout of the project is that the road shown on the original site plan curved downward. It does not actually do that, it just dead-ends. Chairman Pearce asked whether the connections for water, sewer and electricity were set up for the 113-lot and when did it get configured like this? Mr. Stepp said that from the inception except for the exclusion of this road. Mr. Norman Allen, one of the owners of Crestview Estates, said that the original map shows proposed well sites. He said that originally when this park was started, 49 units were allowed on one well, based on the regulations and two well sites were needed if you went over 49 units. He said that before a second well site was put into place they bought the park and he went to the City of Hendersonville to get City water and brought it to the park. He also mentioned that he put a fire hydrant in and proceeded to put in individual meters and at that time, the zoning was such that there was a 40 x 100 foot space requirement for a mobile home (1997). Chairman Pearce asked, "Is that when you did your reconfiguration and taps?" Mr. Allen said that it was expanded from that point and said that the whole park was not developed when he bought it. It was developed to a point and when they took over, they developed from there, according to regulations at the time. Chairman Pearce asked, "Can you tell me approximately what portions were developed and not developed?" Mr. Allen said that the lower half was developed and the upper half was not finished. Chairman Pearce asked if the Board had any questions? Mr. Allison said that he does not have any questions and feels that the Board should treat this issue as an expansion, but was interested in knowing what the density and buffer requirements would be? Mr. Burton said that he would research that.

Mr. Stepp said that they are characterizing this as an internal expansion and using the submitted plan to show the Board what units to consider for the conditional use permit. He said it is truly an internal expansion as no one on the outside of this park would be affected in any manner and that there would be no disturbance of any ground and no installation of any utility as everything is already in place. He feels that this is the best use for this property. He asked that the Board give them a positive review.

Mr. Carpenter said that this Board is giving a recommendation to the Board of Adjustment. Mr. Burton referred to the density and buffer issue mentioned by Mr. Allison and said that referencing Article 4, Section 114-14 of the *Manufactured Home Park Ordinance*, it states, "*The maximum permitted overall density for manufactured home parks is six units per acre.*" He said as per what Mr. Allen has mentioned, his total expansion area is 4.4 acres and with twenty additional units and 4.5 units per acre, he would be well under maximum amount of units. Mr. Burton said that the only stipulation that the *Manufactured Home Park Ordinance* states regarding density is, "*The applicant of any park with an overall density greater than four units per acre shall provide common area and a buffer.*" Mr. Burton mentioned said that he might need to have a buffer. Chairman Pearce said they would be only buffering from themselves." Mr. Burton added that there is a residential use next door to the park and pointed the area out on the referenced Exhibit 7 (the entrance to Leisure Lane and Lot # 1), which indicates the property as owned by a Justus (Exhibit 6). Mr. Burton mentioned that it is a residential lot in a T-15 zoning district and Staff would like the Planning Board to consider buffering that area, and the buffering should be as defined in the *Manufactured Home Park Ordinance and Zoning Ordinance*, which would be a planted buffer strip. Mr. Allison asked, "That adjoining property is zoned T-15 and would require a buffer even though it is a mobile home?" Mr. Burton said yes. Ms. Smith said that the *Manufactured Home Park Ordinance* does not distinguish different types of buffering are allowed. The Planning Board noted that there was a gas line in the area where a buffer might be required. Chairman Pearce asked, "What type of regulations were enforced in 1997 regarding manufactured home parks?" Ms. Smith said that the Zoning Ordinance required a conditional use permit for manufactured home parks in T-15 and T-20 and she added that

they did not have a separate manufactured home park ordinance and that the standards were only spelled out in the *Zoning Ordinance*. Chairman Pearce asked, "What year did things change?" Ms. Smith said that the *Manufactured Home Park Ordinance* was adopted April 5, 1999, and the *Zoning Ordinance* was amended. Chairman Pearce asked, "If they wanted to expand in 1998 in a T-15 zoning district, they would have no requirements except for the conditional use permit requirements. What was the only standard at that time?" Ms. Smith said that they would have had a list of standards such as space size; separation, road construction widths, and they would have had to provide a site plan, etc. Mr. Cooper asked whether there have ever been more than 93 units in this park? Mr. Burton said that to the best of his knowledge there has not. Mr. Patterson was asking what was the lot above lots 3, 5, and 7? Mr. Burton said that is designated as "open space." Mr. Carpenter asked Mr. Burton if he felt what has been submitted and provided is sufficient for his purposes? Mr. Burton said it is sufficient for his purposes. Regarding whether it fits what is required, he feels there is a deficiency regarding item previously specified from Article 4 of the *Manufactured Home Park Ordinance*. Mr. Carpenter said that what we are dealing with is a conditional use permit. Mr. Burton said that is right and a conditional use permit section of the *Zoning Ordinance* which states it has to comply with Article 4 of the *Manufactured Home Park Ordinance*, which are the same requirements a person constructing a manufactured home park in an Open Use District must follow. He said when constructing a park in one of the zoned areas that allows a park, one is referred to Article 4 of the *Manufactured Home Park Ordinance*. Ms. Smith said that a site plan is noted in the *Zoning Ordinance* but it doesn't give any details as to what needs to be provided on the plan, although it should show compliance with the standards. Chairman Pearce said that anything that the Board approves would need to meet the Ordinance requirements for submittal. Mr. Stepp stated that Mr. Allen drew his plan from the information on the conditional use permit application form. Mr. Patterson asked about lots 31 and 33, which are not included in the yellow area of the expansion, and said he can see putting one unit but not two, in that location. He asked if they were planning on using them for two units? Mr. Stepp said that there are two existing units there now and they are not proposing them as part of the expansion. Mr. Patterson also said that lots 25, 27, 29 and 35 might not be in compliance with the setbacks. Mr. Stepp stated that he thinks they all comply with the setbacks and separation requirements and they can comply with the density requirement, the common area requirement and the fire protection requirement. Mr. Allison asked, "What does the Board legally need to do?" Chairman Pearce said that the Planning Board makes a recommendation. While he did not feel that there is proper documentation, he was not certain that the Board could make a recommendation that the proper documentation be received before any decision is made. He said that there are a number of ways that the Board can send forward a recommendation. Leon Allison made a motion to send forward a favorable recommendation to the Zoning Board of Adjustment to approve Conditional Use Permit # CU-04-08 for an internal expansion to the Crestview Estates manufactured home park without the buffering requirement and no other conditions. Todd Thompson seconded the motion. Mr. Carpenter stated that he could only vote for it if there was a provision that a plan be submitted that shows the things required under Section 114-9B, which states the items that need to be submitted, which includes a site development plan. Mr. Burton said that this is specifically for a manufactured home park to be developed in an Open Use District. This application process does not apply. Mr. Carpenter said that he thought that the Conditional Use Permit requires that it meet the requirements of the *Manufactured Home Park Ordinance*. Mr. Burton said it is Article 4 of that Ordinance. After some discussion between Chairman Pearce and Walter Carpenter and Mr. Burton reviewing the standards required and what the applicant needs to provide for the Conditional Use Permit, Mr. Carpenter and Chairman Pearce agreed that the applicant should submit something to comply with the road standards for manufactured home parks. After discussion, Todd Thompson, Paul Patterson, Leon Allison, Tommy Laughter and Mike Cooper voted in favor of the motion. Tedd

Pearce and Walter Carpenter opposed the motion because it did not contain the caveat regarding the plan showing road standards. The motion carried 5 to 2.

Request for a Conditional Use Permit (#CU-04-10) to Construct a Manufactured Home Park in T-15 Zoning District on Holbert Road – Don Elkins, Esq., Agent for John F. Cely, III, Owner. Mr. Burton stated that this is the same format as the Crestview application. He asked if he could stipulate to the facts in the packet. He said that he has made a request of County counsel as to whether or not the past experiences of this park were applicable to the current application based upon Mr. Cely indicating previously that he was the on-site, manager and caretaker while his father who is now deceased, was the owner. Mr. Burton said that up to December, 2003, for seventeen years, since 1986, it operated under a Conditional Use Permit and was the subject of frequent notices of violation. The former Conditional Use Permit was revoked on December 12, 2003, after an investigation and based on findings of fact and conclusions drawn from the testimony of all parties at the Board of Adjustment meeting. Mr. Burton specifically noted in the conditions dealing with the revocation of the park permit as follows: Condition # 3, *That the property located on Holbert Road no longer has a conditional use permit to operate a mobile or manufactured home park; Condition # 4, As of May 1, 2004, all occupants, except for one manufactured home, must be moved and the use of the premises as a residential Manufactured Home Park shall cease; and Condition # 5, No further occupancy of homes from this date shall be permitted and those homes which are presently occupied must be completely unoccupied and removed from the premises by no later than May 1, 2004.* Chairman Pearce asked, “Approximately what date did John F. Cely, III, take control?” Mr. Burton said that it was January 14, 2004. Mr. Carpenter asked, “When did the father die?” Mr. Burton said that it was January 4, 2004. Chairman Pearce asked whether Staff had any contact with Mr. Cely, III, with regard to the termination of the park prior to January 14, 2004? Mr. Burton stated that there was some conversation on the phone and he believed at that time that he had no intentions of reopening the park until he had called and come by the office discussing his plans. Mr. Burton said that he made him aware at that time that those homes needed to go before he continued with his plans. Mr. Burton said that Mr. Elkins, Mr. Cely’s agent, submitted an application on May 4, 2004 that would remedy the situation. Mr. Burton said that he indicated to Mr. Cely that he did have an issue regarding moving some of the units and trying to put the park in place. Mr. Cely mentioned that he is looking to put the park back into place. Chairman Pearce asked, “Were all units, except for one manufactured home, unoccupied by May 1, 2004?” Mr. Burton said, “As best as he can tell. He added that there are occupants in unit # 16 that are still there and there has been some evidence of possible occupancy of one of the other trailers in the past week, but to my knowledge there is no further occupancy of homes.” Chairman Pearce said that none of the units have been removed, to the best of your knowledge? Mr. Burton said that this is correct. Mr. Burton said that Jon Laughter, surveyor, provided Staff with a park plan. He said he reviewed the application and site plan for compliance with Article IV of the Henderson County *Manufactured Home Park Ordinance* and had also compared them to Appendix A section of the *Manufactured Home Park Ordinance*. He reviewed his comments as follows:

Phasing – Applicant has illustrated three phases of construction is illustrated and complies with this section.

Road Frontage and Off-Site Access – Adequate road frontage as required. Based on his knowledge of the prior park, there is clearance for emergency vehicles. The road grade as noted on the plan, shall in no portion exceed 15%.

Density – Mr. Laughter has demonstrated on the plan where the park is 4.97 acres with 20 homes planned. The density is 4 units per acre, and the site plan indicates .44 acres of common area.

Common Area – Not applicable to this application but the plan illustrates .44 acres of common area described as a playground and a central trash collection point where dumpster will be located.

Buffers – Not applicable to this application because the density is 4 units per acre.

Separation and Setback requirements – Mr. Burton said that he broke this down into the three phases indicated and his comments are based upon the site plan submitted. Mr. Burton in particular reviewed from his report the concerns for each phase and demonstrated these on a map to the Board members. Mr. Carpenter asked whether those homes will be located where they are presently located on the ground, or is that different? Mr. Burton said that this would be different in some instances. Mr. Burton said that # 1, 2, and # 3 are similar. Chairman Pearce asked whether the same units would be left on the site? Mr. Burton stated that Mr. Cely expressed that he had the desire to use the same units that are on the site to incorporate into his new park and added that this is another issue. Mr. Burton mentioned various units in each phase that encroach on the boundary setback.

Municipal water supply and sewage disposal system – Mr. Burton stated that the property has City water and there is no municipal sewage disposal system within 2500 feet of the park so there is no requirement to connect. Mr. Burton added that he does not know if the plan layout is going to be conducive to using the same septic systems or whether new septic will need to come in.

Fire Protection – Mr. Burton stated that there are no hydrants or similar fire-suppression devices on the site plan.

Utility Easements – Mr. Burton said that there are no easements for utilities illustrated on the plan.

Erosion and sedimentation control - Mr. Burton said he feels that any construction will probably not fall under the state requirements.

Stormwater drainage - Mr. Burton stated that there is no detailed drainage plan incorporated into the site plan, but this is only because he didn't ask Mr. Laughter to do one. Mr. Burton added that he does have some related stormwater issues to discuss.

Parking – Mr. Burton said that the parking cross-section is illustrated on the plan and is adequate.

Driveways – Mr. Burton said that there do not appear to be any driveways as everything is working off the internal service roads.

Internal Road Standards - Mr. Burton stated that they were shown on the plan.

Road Names, Road name signs and other regulatory signs – Mr. Burton said that “Flintwood Lane” is the main road through the proposed park. He said currently there is “Aspenbrook Lane” is on the County’s property addressing system. No other roads are named on the plan though they are illustrated.

Park Identification sign – Mr. Burton said that the site plan shows two identification signs.

Manufactured Home Park name – Mr. Burton said that the proposed name is “Cely Trailer Park” and that there is not another park by that name.

Setup – Mr. Burton said that it is not applicable at this time, but it will be applicable when units are set up and noted the photos for a unit on Lot 19 where the unit is chained to a tree.

Nonresidential uses – Mr. Burton said that this is not applicable at the time.

Solid Waste Disposal - Mr. Burton said that there is a dumpster site and that it appears to comply with the *Solid Waste Ordinance*.

Unit Type - Mr. Burton referred to Exhibit # 4, which shows a printout from the Henderson County Assessor’s office of the listing of manufactured homes on the parcel for the park previously known as the Sleepy Hollow Manufactured Home Park. Mr. Burton states that the *Manufactured Home Park Ordinance* indicates that no more than 25% of the spaces in a new manufactured home park shall be occupied by mobile homes. Mr. Burton said a mobile home is defined, according to the Ordinance, as one that is constructed prior to the HUD standards going into effect. Mr. Burton stated that there are fourteen homes that are pre-1976. The

applicant's site plan shows 20 homes proposed for the park and to conform to the requirements of the Ordinance, only five mobile homes shall be allowed. All other homes that are to occupy lots in the park must be post-1976 HUD-certified housing. Chairman Pearce said that in looking at the list, five are in compliance. Mr. Burton said yes, but the other nine homes cannot be utilized as homes for this park. Mr. Burton said that because of the condition and lack of placards on many of the homes located on the property, it is his position that the applicant shall be required to provide verifiable documentation to the Zoning Administrator that can confirm the age of each unit to be sited in the park. Chairman Pearce asked, "If this conditional use permit were approved, is the owner able to put on the power and allow people to move into the units, or does each one of these units need to go through the Inspection Department for approval before occupancy permits can be issued?" Mr. Burton said that there are no zoning permits for any of those. Chairman Pearce asked if the occupancy permits had been revoked. Ms. Smith said that the entire park permit has been revoked and the applicant will have to start over with permits. Mr. Thompson asked about the septic tanks on the property? Mr. Burton said that Environmental Health would have that information but on Lot # 1 there was a septic tank failure, which they rectified, but then the unit burned down. He added that this was the only septic-related issue, which initiated the last investigation that ended up with the revoking of the entire Conditional Use Permit. Tommy Laughter stated that he feels he needs to recuse himself because of his friendship with the son of Mr. Elkins. Chairman Pearce asked Mr. Laughter whether it would affect his opinion or vote on this matter? Mr. Laughter said no. Chairman Pearce said that it is his opinion that he does not feel Mr. Laughter needs to be recused. Chairman Pearce made a motion not to recuse Mr. Laughter and all members voted in favor.

Mr. Don Elkins, agent and attorney for Mr. John Cely, III, stated that he considers his client a new owner of the property and did not know what the situation was when his father had the park, but he obviously had let it go downhill for quite a few years. Mr. Elkins said that his client should have a fresh start and should demonstrate to the Board what he is proposing to do. Mr. Elkins then reviewed each photo that was enclosed in the Planning Board's packet and what his client's plans are for each unit as follows:

Lot # 1 – Proposed as a playground

Lot # 2, # 3, # 4 – Units will be removed

Lot # 5 – Vacant Lot

Lot # 6 – New Manufactured Home will be on this lot which will comply with the County's regulations

Lot # 7 – Unit will remain there

Lot # 8 – Unit will be removed

Lot # 9 – Unit will be moved to another location in the park

Lot # 10 – Unit will be removed

Lot # 11 – Unit will be kept as is, with some cleaning up

Lot # 12 – Unit will be kept and repaired

Lot # 13, # 14, # 15 – Unit will be kept

(Mr. Elkins noted that the estate now owns the mobile homes and that they have not been transferred over to John Cely, III. Mr. Elkins said that the real estate goes to John Cely, III instantly, so whatever that means as far as complying with the law, this is for the Board's information).

Lot # 16 – Unit will be kept

Lot # 17 – Unit will be removed

Lot # 18 – Unit will be kept

Lot # 19 – Regarding this situation (photo showing unit chained to tree and setup not stable), Mr. Elkins said that he mentioned to Mr. Cely that this would not look good to the Board. He mentioned that it takes a few months with an estate going through the probate system to free up monies for Mr. Cely to operate and to get things like this straightened out. Mr. Elkins said that

they were in the process of moving the home onto the property when the park was under consideration by the Board of Adjustment and they were in the process of setting it up. Mr. Elkins said that they plan to keep the home.
 Lot # 20, # 21, # 22 – Units will be removed
 Lot # 23, # 24 - Units will be kept

Mr. Elkins said that the applicant, John Cely, III, up to January 4, 2004, did not own any of the property as his father was in full control. Mr. Elkins handed out the latest inventory of the estate's financial condition which showed that Mr. Cely, III is the sole heir. Mr. Elkins said that he told Mr. Cely that he would represent him if he would go by his recommendations and he has. He told Mr. Cely that he needed an accountant and an engineer to help him plan and an attorney for this situation. Mr. Elkins said that he feels Mr. Cely is acting on good faith and has confidence to run a mobile home park because he has been involved in it for most of his childhood and his early adult years. Mr. Jon Laughter said that he feels that there is room on this site to do what Mr. Cely proposes but that the map will need to be drawn to show the proper setbacks. Mr. Laughter added that the proposed park does have City water and that each unit has a septic tank which will be reviewed by the Health Department as to whether they will be able to use them or not. Chairman Pearce asked if the layout of the units took into consideration the individual septic fields? Mr. Laughter said yes, but on the map they didn't have the setbacks right and he added he doesn't know how that will affect a particular septic tank or drain field now, but a new permit will be needed before anything is turned on. Chairman Pearce said that since there will be a new application on each one of the lots, are they required to have a repair area also? Mr. Laughter said yes. Chairman Pearce asked about the effect on the lot sizes? Mr. Laughter said that the original drawings and placements of septic tanks were done over 25 years ago and there was not a requirement for a repair area. Mr. Laughter said that the soil on the property is suitable and therefore back then there was no need of a repair area but now, every system will require a repair area. Mr. Burton said that on Lot 1, that is being proposed as a playground area, previously a home was sitting in part of the drain field and when they made the repair to it they were told that whenever they move that home, the next one will need to be located differently. Mr. Thompson asked, regarding Lot 2, it shows a size for a home for that lot of 14 X 50' to work, so would they plan on taking one of the 14 X 50' mobile homes they are keeping and put it in that spot? Mr. Laughter said yes. Mr. Thompson continued and said, "Suppose the 14 X 50' home burnt, can a home that is 14 X 60' go in that lot?" Mr. Laughter said that he feels it could, but he needs to work on the map and would try to make a 14 X 50' or 14 X 60' work in that space. He added that the septic tank is based on the number of bedrooms. Ms. Smith said that Mr. Cely is not held to the size of the unit that is on this plan, but rather the setbacks. Mr. Thompson said, "How would you know the size of the septic that is under the ground?" Mr. Laughter said that the Health Department would have records on each lot. Chairman Pearce said there would need to be records to prove that they have an adequate system. Mr. Elkins said that in closing, he would like to see a positive recommendation by the Planning Board as Mr. Cely has the means and the experience and would like to make up for the past and make the County proud of his park. Ms. Smith said that one of the issues the Board of Adjustment will need to look at is what will need to be removed and when prior to the County issuing permits and what will need to be completed in order for those permits to be issued since Phase 1 is in the center of the project. Ms. Smith added, for example, that the road would need to be constructed to the County's standards before any permits will be issued. Chairman Pearce said that one of his initial viewpoints concerning this conditional use request is that the executor could have taken care of this ahead of time, but by the same token, he needs to get some legal counsel to ascertain whether the executor would have had access to the funds to remove the things that should have been done or could have been expected to have access. He added that he feels there has been an extreme negligence on bringing this property into compliance. He said that according to Mr. Elkins Mr. Cely, III, had

not taken title, but as an executor, in theory, he would have had access to the funds available. Mr. Carpenter said that with him being the only heir they could have been accessible unless they were tied up in some fashion. Chairman Pearce said that he finds this part disconcerting. Mr. Thompson commented, "Why would you clean it up if you didn't know what you could do with it." Chairman Pearce replied, "Because there was a Board of Adjustment Order to do so." Mr. Elkins stated that in looking at the Order, # 4 states, "As of May 1, 2004, all occupants, except for one manufactured home, must be moved and the use of the premises as a residential manufactured home park shall cease." Mr. Elkins said that this sentence refers to occupants not units. Mr. Elkins further said that in # 5 of the Order it states, "No further occupancy of homes from this date shall be permitted and those which are presently occupied must be completely unoccupied and removed from the premises by no later than May 1." Mr. Elkins said that they have complied with that, but the "removed" indication is vague to him – is it the occupants or the units, and it gives the date "May 1" but no year. Chairman Pearce said he doesn't feel it is vague, it is referring to the homes. Mr. Elkins said that he is arguing this on Mr. Cely's behalf and he added that you cannot imply too much in an Order. You are restricted to what the Order says or you amend it. Chairman Pearce asked, "Can you tell the Board the reason if the applicant had access and means, he did not comply to the Order?" Mr. Elkins said that this would only qualify after January 14, 2004 and he said it came to his attention some time in February 2004 and there needed to be sometime to research the matter and find out what was going on. He added that the permit for the park had already been revoked when he came into the situation. Mr. Elkins said when Mr. Cely, III, came to his office after talking with the Zoning Administrator, he really didn't understand what was being told to him, so if there is any blame, it should be on the shoulders of Mr. Elkins. Mr. Burton addressed the issue of # 4 of the Order, and said that although it was somewhat vague, it is obviously implied in the Order about getting rid of the homes but there are also two references in the approved minutes of the meeting that state that all homes except for one, must be removed off of the parcel, except for one unit by May 1. He said in the context of the approved minutes this was a grace period that was given to them from December 2003 until May that did not have to occur. Chairman Pearce he doesn't believe that because the previous owner did certain things that anyone who takes title to the property should be considered to have the same problems or continue the same way. He added that giving a Conditional Use Permit is a special privilege that is being extended, which means that the County needs to step forward and take on faith that the person is going to abide by the terms of the Conditional Use Permit and he doesn't feel that it has been justified yet. Ms. Smith said that it is her understanding that the Conditional Use Permit has to be granted if it meets the standards and if there would be some reason that they could not meet the standards, there could be a condition imposed to allow the standards to be met. She added that there are basic standards for health, safety and welfare and that general findings would need to be made. Chairman Pearce asked if John Cely, III, can come with a fresh application for a Conditional Use Permit and can meet all of the standards, that is all the Board should consider tonight and nothing else regarding the previous Order? Mr. Burrell, Assistant County Attorney, said that the County has an enforcement action it can take regarding the previous Order, but has delayed the enforcement action to deal with this new application. He said that any past history comes into that enforcement action. In terms of the conditions, if all of the conditions are met, the Board needs to forward a recommendation for approval of the Conditional Use Permit to the Board of Adjustment. Mr. Burrell said that he does not feel that the County will commit one way or the other now as to whether it will bring any court action as he doesn't feel that this decision has been made. Chairman Pearce said that a lot of effort has been made in bringing forth the facts of the previous situation and now it really does not have anything to do with this present application. Mr. Burrell said that if the Board finds that it has some impact on what is in front of Board, then it has some relevance. Mr. Burrell said that if this application complies with the Conditional Use Permit requirements, then from a legal standpoint the Board could recommend that it be issued. Mr. Carpenter suggested adding a condition that they show

compliance with the prior Order prior to that. Ms. Smith said that the Board shouldn't do that but the Board can put a condition on it that no more than "X%" of the units can be pre-1976. Mr. Burrell said that by mandating that the Conditional Use Permit meet current standards, the Board would enforce it one way or another. Mr. Burton said that he provided what is in the Planning Board's packet as background information and the remedy for the situation is the Conditional Use Permit being granted. Chairman Pearce made a motion to recommend approval to the Board of Adjustment of application CU-04-10 subject to all new and current requirements for a conditional use permit under T-15 zoning rules. Mike Cooper seconded the motion. Mr. Carpenter said this approval would include all separation and setback requirements. Chairman Pearce said that is correct. Chairman Pearce, Walter Carpenter, Mike Cooper, Todd Thompson, Tommy Laughter and Leon Allison voted in favor. Paul Patterson voted against the motion. The motion carried 6 to 1. (Mr. Leon Allison left the meeting at this time).

Proposed Amendment to the Water Supply Watershed Ordinance – Planning Staff. Ms. Smith said that the Planning Board's Subcommittee, which includes two members of the Mills River Planning Committee, met twice and tried to work through issues related to the Watershed Ordinance and found that the only change they thought should be made to the Ordinance was to work on the allocation of the 10/70 or Special Intensity Allocation (SIA) acreage. The Subcommittee proposed the County consider reserving for projects within the Town of Mills River certain percentages of the acreage available for SIAs in each of the watersheds. Most of the SIAs approved have been located within the WS-III area and this area encompasses a corridor in Mills River that the Mills River representatives on the Subcommittee felt would develop more once a planned sewer interceptor is built there. The Subcommittee decided to recommend that the County consider reserving within those watersheds that encompass parts of the Town of Mills River, 13% of the balance of the SIA acreage in the WS-II watershed, 100% of the balance of the SIA acreage in the WS-III watershed and 26% of the balance of the SIA acreage in the WS-IV watershed. The Subcommittee did not see a need to change the other procedures in Section 192-13G of the Water Supply Watershed Ordinance for granting SIAs and asked Staff to look into whether the Town of Mills River could approve SIAs in Category 3 for projects within the Town, rather than the Henderson County Board of Commissioners. The Subcommittee noted that if this was not possible then perhaps the Board of Commissioners could ask for input from the Town of Mills River on Category 3 SIA applications that involve land within the Town. She said that the Subcommittee also acknowledged that there might be a time in the future when the Town of Mills River has to approach Henderson County for an adjustment in the WS-II and WS-IV SIA acreages available for projects within the Town. Chairman Pearce said that the Ordinance amendment is the main thing that the Board is here to approve. He said as a member of the Subcommittee, he felt that this was by far the most judicious means of addressing the issues and since Mills River was most significantly impacted by most of this, he made a motion that the Planning Board approve the proposed amendment to the Water Supply Watershed Ordinance to revise Chapter 192, Part 1 of the Henderson County Code regarding watershed protection. Walter Carpenter seconded the motion. Ms. Smith said that Planning Department Staff consulted with the County Attorney regarding the Subcommittee's recommendation and found that it appears that the most straightforward manner in which to accomplish the reservation of SIA acreage for the Town of Mills River under the County's Water Supply Watershed Ordinance is for the County to amend its Water Supply Watershed Ordinance and to have the Town of Mills River and Henderson County amend the interlocal agreement. Members present that voted in favor were Mr. Carpenter, Mr. Cooper, Mr. Thompson, Mr. Patterson and Chairman Pearce. The motion carried.

US 25 North Area Study Update – Planning Staff. Ms. Smith said that after the last Planning Board meeting, Chairman Pearce sent to the Board of Commissioners' Chairman a letter requesting direction regarding how the Planning Board should proceed with its evaluation of the consultant's recommendations for the US 25 North study area. She said that the Board of Commissioners agreed to grant the Planning Board more time to do detailed studies of each portion of the study area and wanted the Planning Board to report back on how it proposed to break it up into priorities. The Commissioners agreed to a time frame of 90 to 120 days. Ms. Smith also mentioned that the corrected amount of acreage of the study area is 5,000 acres. Chairman Pearce said it seems like the same size as the last study (Howard Gap). Ms. Smith said the last study was about one-half the size of this study and added that if they were to split this study area using I-26, there are roughly 2500-2800 acres on each side. Ms. Smith said that she is trying to figure out how, in less than 120 days, to break this into manageable areas. Chairman Pearce said that until the Planning Board has a report, he feels the Board has no clock. Ms. Smith said that the Board has the recommendations but not the background information. Chairman Pearce asked if they knew that these were final recommendations and added that the Board does not have a final report and he doesn't know whether the Board agrees with the rest of the report. He feels it is hard to start any more clocks and give any more promises on this subject. He feels that the Planning Board needs to report to the Board of Commissioners that as of May 18, 2004, it has no report for the US 25 North study and no final recommendation and until it receives final copies of the recommendations and maps, the Board does not feel it is prudent to make any estimations on when it will be able to complete its recommendation to the Board of Commissioners. Ms. Smith noted a map distributed to the Board members with some proposed divisions of the study area. Chairman Pearce asked, "If you were to break this up into four parcels, how would you recommend doing it?" Ms. Smith said that originally they looked at the areas north and south of I-26 to get two parcels, and they also looked at Mud Creek as a potential boundary. Chairman Pearce asked if the study were sent to the Land Use Subcommittee, would it be totally impractical to look at it in one lump and go out and work on the area? Mr. Cooper said that to turn around something quick that the County Commissioners would like to see on the corridor, that is going to be tough to do. Ms. Smith said that Staff could get a van from the maintenance department and invite the press to go along on a tour of the study area. After some further discussion about touring the area, Mr. Patterson said that it would be nice to have tax maps because you can spot several smaller parcels better in the area. Ms. Smith asked if the Planning Board Subcommittee wanted to have the input sessions on the consultant's recommendations? Chairman Pearce asked, "Do we need input sessions?" After some further thoughts, Chairman Pearce said that he feels this study needs to be sent to the Land Use Subcommittee and that it should set up a tour and come up with some land use recommendations for the Planning Board and then let the Planning Board decide if it wants to go any further with it. He said he feels that it is not practical to have the entire Planning Board go through this process, lot by lot. Mr. Carpenter said that what the Planning Board frequently did previously was start with a blank sheet of paper in the boardroom, putting all of the parcels in the study area on it without anything designated as far as the zoning and have the public come in and look at the map and discuss the area with the Planning Board members. Ms. Smith said that there were two input sessions early on, but there were no maps for people to draw on. Ms. Smith said that the input session did not get into detail on individual pieces of property but they did discuss the area and this had something to do with what the input the consultant put into his report. She said that now we are to the point of reacting to his report. Chairman Pearce said that basically the way he understands the procedure is that the consultant makes the report, the Planning Board does not write his report, it just recommends approval or disapproval of it or gives alternatives. After some further discussion, it was decided that the Land Use Subcommittee will look at the land use portion of the study only (even if it requires several tours) and make recommendations to the Planning Board after the Subcommittee members have discussed and toured the area. He further said that the

entire Planning Board could then discuss the text and then have some public hearings to iron out the land use portion and then after the text has been discussed and the land use portion has been worked on and recommended, it will then go to the Board of Commissioners. Mr. Carpenter said he feels that the Board needs to have a public input session with the material the consultant provides early on the Board's decisions and tell the public what is going on out there. Chairman Pearce asked, "Before the Subcommittee meets?" Mr. Carpenter said that he feels that it would naturally fall into the Subcommittee's first meeting. Chairman Pearce said he feels that if the Subcommittee is familiar with the land first they will have a better handle on the area. Mr. Carpenter added that after the Subcommittee members have gone out and looked at the area they can say to the public this is what we find, but we want your comments and this can come before or after the van tour. Chairman Pearce added that the Board can hold a public hearing in general and listen to people or the Subcommittee can immediately report back to the Planning Board and the Board can listen to the public input about it. He added that the Board hopes to make the timetable of 120 days and that the Planning Board could act, whenever it gets a final report, at its next regular meeting on June 15, 2004. He added that the Board will then try to make recommendations on the text portion of the study and then try to work on the map portions within the 120-day timetable. The people on the Land Use Subcommittee are Tommy Laughter, Mike Cooper and Tedd Pearce. Chairman Pearce said the Subcommittee will set the date and time of their meeting at the Joint Committee meeting on Thursday, May 20, 2004.

Subcommittee Assignments and Meeting Dates. There were no meetings scheduled at this time. Chairman Pearce reminded the Board members of the CCP meeting for Thursday, May 20, 2004, at 3:00 p.m.

Adjournment. There being no further business, Leon Allison made a motion to adjourn and Vivian Armstrong seconded the motion. All members voted in favor. The meeting adjourned at 9:25 PM.

Tedd M. Pearce, Chairman

Kathleen Scanlan, Secretary