

Cabarrus County Government

Cabarrus County Planning and Zoning Commission Meeting
March 15, 2007
7:00 P.M.
County Commissioners Chamber
Cabarrus County Governmental Center

Agenda

1. Roll Call
2. Approval/Correction of February 15, 2007 Minutes
3. New Business – Planning Board Function:
 - (2) A. Exception to Peach Orchard Estates Preliminary Plat Extension Condition
Request: The applicant is requesting an exception to the conditions established for the Peach Orchard Estates Preliminary Plat Extension
 - (b) B. Preliminary Plat Approval - Petition C2007-02 (S) - Roycroft
Provident Development Group
6707 Fairview Road Suite B
Charlotte, NC 28210
4. Directors Report
 - A. Proposed Policy for Noticing Cases
 - B. Proposed Refund and Policy for Refunds
5. Adjournment

Arlena Roberts

From: Chris Moore
Sent: Friday, March 09, 2007 4:35 PM
To: unionst@vnet.net; pgradycookma@carolina.rr.com; adivine@bellsouth.net; ensley@prodigy.net; riverrund@aol.com; lgriffin2@carolina.rr.com; motorsports@ctc.net; jmbbuilding@vnet.net; Lannylancaster@vnet.net; inprin@roushind.com; teporter02@aol.com; barry.c.shoemaker@pmusa.com
Cc: Susie Zakraisek; Arlena Roberts; kochlaw@ctc.net
Subject: Revised Staff Report for Roycroft
Attachments: ROYCROFT PLANNING STAFF REPORT.doc; Case #1386 Roycroft Subdivision (fka Flowes Subdivision)(County) (Resubmittal 1)

**Cabarrus County
Planning Services**

Memo

To: Planning and Zoning Commissioners
From: Chris Moore, Planner
CC: File
Date: 3/9/2007
Re: Revised Staff Report for C2007-02 (S) Roycroft Subdivision Preliminary Plat

I have received revised comments submitted by the City of Concord today, March 9, 2007. Due to the nature and amount of changes the City is requesting, attached you will find a revised staff report. All of the changes are pursuant to an annexation agreement made between the City of Concord and the developer. This agreement should be attached to the original staff report in the packet you received. I have also attached the email from City of Concord staff for your review. If you have any questions about the requested changes, the annexation agreement, subdivision design, or anything else, please do not hesitate to contact me.

Chris Moore
Planner
Cabarrus County Planning Services
PO Box 707
Concord, NC 28026
P: 704-920-2181
F: 704-920-2227

PLANNING STAFF REPORT
CABARRUS COUNTY PLANNING AND ZONING COMMISSION
Thursday, March 15, 2007

Petition: C2007-02 (S) Preliminary Plat Approval

Subdivision Name: Roycroft

Subdivision Type: Residential Subdivision, Amenity Option

Applicant Information: Provident Development Group
6707 Fairview Road Suite B
Charlotte, NC 28210

Zoning: LDR – Low Density Residential

Township: Number 1 - Harrisburg

Property Location: Along the west side of Flowes Store Road, south of the intersection with Zion Church Road.

PIN#: 5537-43-1434

Proposed Lots: 361

Area in Acres: +/- 262.42 acres

Site Description: The proposed site is currently vacant and wooded.

Adjacent Land Uses: The surrounding properties are vacant, wooded, or residential in nature. The properties to the north and west are vacant and wooded. The property to the south is a single family development comprising of several lots that average at least one acre. The property to the east is single family residential.

Surrounding Zoning: The properties to the west and north are zoned Cabarrus County LDR – Low Density Residential. The property to the south and east is zoned Cabarrus County CR – Countryside Residential

Infrastructure: The City of Concord will be the service provider for the site. Utility service has been requested (see intent to serve letter from City of Concord).

Exhibits:

1. Site Map
2. Preliminary Plat
3. Annexation Agreement from City of Concord
4. School Adequacy Worksheet
5. Comments Received

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CABARRUS COUNTY PLANNING AND ZONING COMMISSION
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Code Considerations: The LDR – Low Density Residential district has the following development standards:

- Principal Setbacks
Front- 25 feet (15 feet on corner lots)
Side- 5 feet
Rear- 20 feet
- Accessory use setbacks are the same as principal setbacks
- Minimum average lot width- 60 feet
- Maximum building height- 40'
- Maximum impermeable surface- 35%
- Maximum structural coverage- 30%
- Minimum lot size: 10,000 square feet

This subdivision is designed using the amenity subdivision option, which allows clustering within the neighborhood provided the developer preserves at least 40% of the subject property as open space. Open space must include all areas within the 100 Year Floodplain and the River Stream Overlay Zone.

- Common Open Space Required: 40% (+/- 105 acres)
- Common Open Space Provided: 42.87% (+/- 112.5 acres)
- Active Open Space Required: 4.52 acres
- Active Open Space Provided: 5.42 acres

Adequate Public Facilities: **Cabarrus County Schools- Robert Kluttz:** Schools that serve this area are inadequate at this time. Please see attached school adequacy worksheet for details.

Soil and Erosion Control- Thomas Smith: The applicant will be required to submit soil and erosion plans before commencing any land disturbing activities.

NCDOT- Shawn Riggs: Left turn lanes at both proposed entrances will be required, leaving a two-way turn lane (three lane section) between the entrances. In addition to the left turn lanes, right turn lanes at both entrances must be constructed.

WSACC- Tom Bach: Wastewater flow acceptance will not be considered until approval of final site/civil construction plans by the City of Concord. The City of Concord must request the flow acceptance on behalf of the developer. The WSACC Capital Recovery Fee is required for each service to the development if sewer service is granted.

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The CRP is collected at the time of building permitting and is separate from any connection or tap fees required by the City of Concord.

City of Concord Development Services – Pam Parker: According to Section 11 of the agreement made between the City of Concord and the developer, “the applicant shall comply and be bound and governed by the stricter of the zoning and subdivision ordinances and regulations of either the City of Concord or Cabarrus County in existence or hereafter adopted that are applicable to the property to be serviced by the utilities, and all ordinances and regulations of the City regarding the operation, control, maintenance and protection of subject utilities of the city.” As a result of this agreement, the City of Concord will require the developer to install sidewalks along the frontage of Flowes Store Road and show the City of Concord’s municipal limits on the vicinity map.

City of Concord Engineering Department - Sue Hyde: The developer is requesting both municipal water and sewer services. Currently water is not available to the site, but the City has completed designs to serve the development. The waterline will need to be installed and funded by the developer. (See letter from Concord)

In addition, pursuant to the aforementioned agreement, the City will require the developer to comply with all Phase 2 Stormwater regulations. The city will also require the developer to replace the Cabarrus County typical street cross sections with City of Concord typical cross sections. The City will also require the developer to build sidewalks on both sides of all streets, including cul-de-sacs.

Cabarrus County Fire Marshall’s Office- Steve Langer: If approved, it is requested that a condition be placed on the subdivision so that Covered Bridge Way at the intermittent stream crossing shall be divided so that two separate travelways are constructed. This will help further emergency access in the event that a flood washes out the area.

Staff Analysis:

Staff finds that the proposed subdivision meets all the development standards of the Cabarrus County Subdivision Ordinance and the Cabarrus County Zoning Ordinance.

Staff Recommendation:

Should the Planning Commission grant approval of the subdivision, staff requests that they apply the following conditions:

1. The developer shall enter into a consent agreement with the Cabarrus County Board of Commissioners to address school adequacy. (Schools/APFO)

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2. The developer shall install left turn lanes at both proposed entrances, leaving a two-way turn lane (three lane section) between the entrances. In addition to the left turn lanes, right turn lanes at both entrances must be constructed. (NCDOT/APFO)
3. The developer agrees to pay Capital Recovery Fees that are collected on behalf of WSACC. (WSACC/APFO)
4. Prior to any permit for construction being issued, the developer agrees to enter into a developer agreement with the City of Concord and obtain utility construction plan approval. (CONCORD/APFO)
5. The developer agrees to fund and install all necessary water and sewer lines to serve the property. (CONCORD/APFO)
6. Developer agrees to meet anti-monotony and architectural standards and shall submit sample elevations and drawings of proposed homes prior to commencement of the final platting process. In addition, applicant will work with Planning & Zoning Services to provide an architectural inventory for permitting purposes. (PLANNING)
7. The developer agrees to build Covered Bridge Way as a split travelway at the crossing of the intermittent stream. (APFO/FIRE)
8. The project shall comply with all Phase 2 Stormwater regulations. (CONCORD/APFO)
9. The developer shall design and build all streets according to City of Concord design specifications as defined in the City of Concord UDO. (CONCORD/APFO)
10. The developer agrees to submit a revised preliminary plat for City of Concord and Cabarrus County approval to reflect the following changes:
 - a. Sidewalks will be shown along the frontage of Flowes Store Road (pursuant to Section C.4.2.9 of the City of Concord UDO).
 - b. The vicinity map will be revised to show the City of Concord's municipal limits.
 - c. The Cabarrus County typical street cross sections will be replaced with City of Concord typical street cross sections.
 - d. Sidewalks shall be shown and constructed on both sides of all streets, including cul-de-sacs.

Arlena Roberts

From: Pam Parker [PARKERP@ci.concord.nc.us]
Sent: Friday, March 09, 2007 11:49 AM
To: Chris Moore
Subject: Case #1386 Roycroft Subdivision (fka Flowes Subdivision)(County) (Resubmittal 1)

The following are the comments from City staff:

Development Services Comments:

* According to Section 2 of the Agreement made between the City of Concord and the Developer, "The Applicant shall submit all final plats to the City of Concord. The Applicant shall submit a petition for voluntary annexation to the City 60 days prior to submittal of the first final plat. In no case shall the applicant sell or convey any portion of or lot in the Subdivision before the City can adopt an annexation ordinance.

* According to Section 11 of the Agreement made between the City of Concord and the Developer, "Except as otherwise set out in this Agreement, the Applicant shall comply and be bound and governed by the stricter of the zoning and subdivision ordinances and regulations of either the City of Concord or Cabarrus County in existence or hereafter adopted that are applicable to the property to be serviced by the utilities, and all ordinances and regulations of the City regarding the operation, control, maintenance and protection of the subject utilities of the City."

1. Please show the City of Concord's Municipal Limits on the vicinity map.
2. Sidewalks need to be shown along the frontage of Flowe's Store Road (see Section C.4.2.9 of the City of Concord's UDO).
3. Please provide a mylar copy of the approved preliminary plat to the City of Concord's Development Services Department, that addresses any conditions placed on the plat as part of the approval.

Engineering Comments:

1. The developer will be required to enter into a Developer's Agreement with the City of Concord in regards to the regional pump/lift station for sanitary sewer for the subject project.
2. According to the Developer's Agreement with the City the development will be required to develop to City of Concord Standards. This includes water, sanitary sewer, streets and stormwater. The City uses level terrain classification on all streets unless a variance is granted. The variance request must be in written form and include all the supporting evidence. The City does not wholesale give variance on terrain classifications; they are done on a street by street basis. Additionally, the City is a Phase 2 Stormwater Community.

The project will be required to comply with all Phase 2 Stormwater regulations.

3. Please correct the notes on the plat to reflect City standards including street design and road cross-sections.
4. The City of Concord's Transportation plans shows a collector road from Rocky River Rd to Flowes Store Rd thru this development. Right of way needs to be extended to the property line between lots 103 and 104.
5. Sidewalks will be required on both sides of all streets including cul-de-sacs.

Pam Parker CZO
City of Concord
Development Services Department
P. O. Box 308
Concord, NC 28026-0308
phone: (704) 920-5134
fax: (704) 786-1212

Pursuant to North Carolina General Statutes Chapter 132, Public Records, this electronic mail message and any attachments hereto, as well as any electronic mail message(s) that may be sent in response to it may be considered public record and as such are subject to request and review by anyone at any time.

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Cabarrus County Fire Marshall's Office- Steve Langer: If approved, it is requested that a condition be placed on the subdivision so that Covered Bridge Way at the intermittent stream crossing shall be divided so that two separate travelways are constructed. This will help further emergency access in the event that a flood washes out the area.

Staff Analysis: Staff finds that the proposed subdivision meets all the development standards of the Cabarrus County Subdivision Ordinance and the Cabarrus County Zoning Ordinance.

Staff Recommendation: Should the Planning Commission grant approval of the subdivision, staff requests that they apply the following conditions:

1. The developer shall enter into a consent agreement with the Cabarrus County Board of Commissioners to address school adequacy. (Schools/APFO)
2. The developer shall install left turn lanes at both proposed entrances, leaving a two-way turn lane (three lane section) between the entrances. In addition to the left turn lanes, right turn lanes at both entrances must be constructed. (NCDOT/APFO)
3. The developer agrees to pay Capital Recovery Fees that are collected on behalf of WSACC. (WSACC/APFO)
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6. Developer agrees to meet anti-monotony and architectural standards and shall submit sample elevations and drawings of proposed homes prior to commencement of the final platting process. In addition, applicant will work with Planning & Zoning Services to provide an architectural inventory for permitting purposes. (PLANNING)
7. The developer agrees to build Covered Bridge Way as a split travelway at the crossing of the intermittent stream. (APFO/FIRE)

Chris Moore

From: Thomas Bach [TBach@WSACC.org]
Sent: Wednesday, September 13, 2006 4:33 PM
To: Chris Moore
Cc: Jan Sellers; Mark Lomax; Van Rowell; moores@ci.concord.nc.us
Subject: Preliminary Plat Review For Flowes Subdivision - Provident Development Group, Inc.

Hi Chris,

This is in response to your request for comments outlined in a memorandum dated September 12, 2006, regarding the preliminary plat review for the proposed Flowes Subdivision development along Flowes Store Road.

For most of this proposed development, the existing topography on the site drains north towards Rocky River where there is an existing 30" gravity sewer interceptor line owned and operated by WSACC. It should be noted that Mark Lomax with WSACC must review and approve all direct service connections to this existing gravity sewer interceptor line that are submitted by the developer's engineer (if applicable). All information concerning proposed direct service connections to any existing gravity sewer trunk line owned and operated by the City of Concord should be submitted to them by the developer's engineer. For water service availability to this development, the developer will have to contact the City of Concord's Development Services Department to determine where existing water lines are located along or near Flowes Store Road. The developer will also be required to complete an application in accordance with the City of Concord's Code of Ordinance (Chapter 62) in order to obtain water service to the site.

Information provided with the preliminary plat does not give projected water demand or sewer flows, even though the preliminary plat shows approximately 364 new residential lots are included in this proposed development. This information will be helpful in determining the adequacy of the existing water and sewer line infrastructure.

The followings comments are provided for your information and consideration:

- The proposed development is located in the existing utility service area of the City of Concord. Consideration should be given to insuring that the proposed water/sewer lines will be designed to City of Concord requirements.
- If the developer proposes to install sewer infrastructure for this site in coordination with the City of Concord, actual wastewater "flow acceptance" will not be considered by WSACC until approval of final site/civil construction plans by the applicable Jurisdiction (City of Concord). Flow acceptance must be requested by the Jurisdiction providing the retail sewer service. In addition, flow acceptance is granted in the order that they are received, provided that sufficient wastewater treatment and transportation capacity is available or is reasonably expected to be available.
- Please note that the WSACC Capital Recovery Fee (CRF) is required for each service to the development if sewer service is requested. The fee is collected at the time the building permit is issued, and is separate and not a part of any connection or tap fees required by the Jurisdictional retail sewer provider.

Please let me know if you have any questions regarding this information.

Thanks!

Tom

Thomas A. Bach, P.E.
Utility Systems Engineer
Water & Sewer Authority of Cabarrus County

03/08/2007

Adequate Public Facility Worksheet – Schools

Please fill out the following questionnaire regarding the preliminary plat for the **Flowes Subdivision**. This preliminary plat is up for review. The proposed zoning is Cabarrus County LDR – amenity subdivision. The proposed subdivision will have 364 lots and is located off Flowes Store Road. Your response is required by Monday, September 25, 2006 for inclusion in the staff report to the Commission.

Please see the enclosed proposed preliminary plat for location and information regarding the proposed development. If you need additional information for this project please contact **Chris Moore**.

Questions

1. At present students from the proposed development would attend the following schools:

Elementary - Bethel

Middle - C. C. Griffin

High - Central Cabarrus

2. Using the most recent attendance figures, these schools are at what percent of their stated capacity? **Day 10, Sept. 11, 2006.**

Elementary - 67.11%

Middle - 120.75%

High - 139.55%

3. How many students are expected from this development?

Based on 364 lots

Elementary - 106

Middle - 49

High - 54

4. Including previously approved subdivisions these schools will be at what percent of their stated capacity when the proposed development is completed?

Elementary - 104.35 %

Middle - 181.31%

High - 195.25 %

5. The schools currently available in this area can or cannot accommodate the additional students expected from this development? **(if the answer above is “can”, please stop here)**
6. If this development cannot be served by existing schools, are any steps planned within the next two years to address this service delivery issue? Yes / No. If yes, please describe the steps that will be taken (use an additional sheet if necessary). Are these changes in an adopted capital improvement plan or has funding been identified?

Note Hickory Ridge High School projected to open in August 2007 will provide relief at Central Cabarrus High School. Funding for this school was approved in the 2004 School Bond.

15-Year Facility Plan includes a new elementary school in 2009 southeast of Rocky River Elementary if Grace Dev. Corp. land donation is finalized and another one in 2010 south of Harrisburg but funding has not been identified. These schools would relieve A. T. Allen, Bethel, Harrisburg, and Rocky River. A new middle school is included in the plan for 2009 south of NC Highway 49 that would relieve C. C. Griffin and Mt. Pleasant but funding has not been identified.

7. If there are not plans for new school facilities in the next two years, please describe the additional resources required to adequately serve the proposed development (attach an additional sheet if necessary)?

Additional capital funding needed for two new elementary schools and a new middle south of Harrisburg.

8. Are the improvements described in question 7 above included in an adopted capital improvement plan or has funding been identified? Yes / No

The three schools mentioned in question 7 have been included in the Revised Critical Facility Projects presented to BOE on April 27, 2006. **Funding has not been identified.**

This form was completed by: Robert C. Kluttz Date: September 25, 2006

Cabarrus Soil and Water Conservation District
715 Cabarrus Avenue, West
Concord, N. C. 28027-6214
(704) 920-3300

MEMORANDUM

TO: Chris Moore, Cabarrus County Commerce Department—Planning

THROUGH: Ned Y. Hudson, Chair Ross M. Morrison III, Chair
Board of Supervisors Watershed Improvement Commission

FROM: Dennis Testerman, Resource Conservation Specialist

COPIES:

- Thomas Smith, Cabarrus County Commerce Department—Erosion Control
- Ben Leatherland, Concord Development Services
- Adam Dagenhart, City of Concord Engineering Department
- Randy Plummer, City of Concord Environmental Services Department
- Matt Weiss, City of Concord, Development Services—Planning
- Tony Johnson, Cabarrus County Commerce Department—Erosion Control
- Jason Walser, Land Trust for Central North Carolina
- Robert Ward, County Ranger, NCDENR Div. of Forest Resources
- Peggy Finley, NCDENR, Div. Water Quality—Groundwater Sect., Mooresville Regional Office
- Alan Johnson, NCDENR Div. of Water Quality, Mooresville Regional Office
- Cyndi Karoly, NCDENR, Div. of Water Quality, Wetlands Unit, Raleigh
- Melonie Allen, Project Manager, NCDENR, Ecosystem Enhancement Program
- Amanda Jones, US Army Corps of Engineers, Asheville Regulatory Field Office
- Nancy White, USDA-FSA, Cabarrus-Mecklenburg Service Center Office
- Matthew Kinane, USDA-NRCS, Concord Field Office

NAME OF REVISED SKETCH PLAN: Grady Cook Development Llc. **PLAN TYPE:** Residential **JURISDICTION:** County

LOCATION: Flowes Store Road across from Mexico Road

OWNER: Joe & Martha Shambo, 7050 Garden Terrace Ct., Charlotte, NC 28210-2707

DESIGN CONSULTANT: ESP ASSOCIATES, PO BOX 7030, CHARLOTTE, NC 28241; (704) 583-4949

DATE SUBMITTED: 12/5/05 (orig. filed 10/24/05) **DATE REVIEWED:** 12/13/05 (orig. 10/31/05)

PARCEL #: 5537-43-1434 **TRACT#:** 90353 (former) 4714 **ACRES:** 262.4±

USGS TOPO QUAD MAP: Concord S.E. **LATITUDE/LONGITUDE:** 35° 18' 54"N, 80° 33' 31"W

RECEIVING WATERS: Reedy Creek & Rocky River **WATERSHED:** HU 03040105010050/60 (SR-1)

PERENNIAL OR INTERMITTENT STREAMS PRESENT: Yes No

SOIL TYPE(S): Altavista sandy loam (AaB), Chewacla sandy loam (Ch), Cullen clay loam (CuB2), Enon sandy loam (EnB, EnD), Mecklenburg loam (MeB), Poindexter loam (PoF), Sedgfield sandy loam (SfB)

HYDRIC SOILS: Yes * as possible inclusions in AaB, Ch & SfB No

THE FOLLOWING CHECKED ITEMS ARE MISSING FROM OUR COPY OF THE PLAN—PLEASE SUBMIT:

<input checked="" type="checkbox"/> Start & Completion Dates	<input checked="" type="checkbox"/> Open space covenant document
<input checked="" type="checkbox"/> Soil Type(s)	<input checked="" type="checkbox"/> River Stream Overlay Zone
<input checked="" type="checkbox"/> Start & Completion Dates	<input checked="" type="checkbox"/> Phase 1-3 environmental site assessment
<input checked="" type="checkbox"/> 401/404 wetland permits	

ONSITE INSPECTION: Yes No

PLAN COMMENTS:

- ❑ River Stream Overlay District on Reedy Creek, Rocky River and tributaries will need to be shown on preliminary plat as required by local ordinance and/or permit CESA-W-CO88-N-013-0061 issued under Section 404 of the U. S. Clean Water Act (33 U.S.C. 1413) by the US Army Corps of Engineers. The developer should check with Cabarrus County Planning & Zoning Services. While not required, this stream buffer should be located outside the 100-year floodplain to filter pollutants from stormwater runoff during 100-year flood events.
- ❑ Unless developer has prior authorization from appropriate federal and state authorities to impact waters or wetlands, the proposed project will be in violation federal and/or state law. Permits for disturbance of streams and other wetlands must be requested from N. C. Division of Water Quality and U. S. Army Corps of Engineers prior to any impacts. Relocation of Amenity Site in revised plan incorporates existing pond that would have been removed in original proposal.
- ❑ Cumulative and secondary impacts associated with this proposed development are not known and should be assessed prior to final plan approval.
- ❑ Impacts of stormwater from this proposed project on water quality and water quantity have not been assessed. Increased in density from 1.06 Du/Ac in original sketch plan to current proposed density of 1.44 Du/Ac will likely result in an increase in stormwater runoff associated with impervious area. Low impact development and conservation subdivision design elements should be employed to minimize adverse environmental impacts, including non-point source pollution associated with stormwater runoff.
- ❑ City of Concord has applied to the NC Div. of Water Resources for an Interbasin Transfer of Water permit. Future availability of water for this proposed project is not known.
- ❑ The Upper Rocky River above Reedy Creek received an "Impaired" water quality rating in the 2003 Yadkin-Pee Dee River Basinwide Water Quality Plan for fecal coliform bacteria turbidity and biological impairment. According to the Plan, "Population is projected to increase . . . 53 percent in Cabarrus County. . . between 2000 and 2020. Growth management within the next five years will be imperative, especially in and around urbanizing areas and along highway corridors, in order to protect or improve water quality in this subbasin. Growth management can be defined as the application of strategies and practices that help achieve sustainable development in harmony with the conservation of environmental qualities and features of an area. On the local level, growth management often involves planning and development reviews that are designed to maintain or improve water quality."
- ❑ This project is within a hydrological unit (HU) included in the North Carolina Wetland Restoration Program's Upper Rocky River Watershed Plan area. Every effort should be made to use best management practices to prevent water quality impairment. The erosion and sedimentation control plan for this site should be followed closely once it has been submitted and approved.
- ❑ The following prime farmland soils will be removed from production: AaB, CuB2 & MeB. Farmland Conversion Impact Rating form (AD-1006) must be filed if federal funds are involved.
- ❑ Additional buffering of tributaries to Reedy Creek and Rocky River represent a significant improvement of original sketch plan.
- ❑ The following soil is classified as an important state farmland soil and will be removed from production: Ch, EnB, EnD & SfB.
- ❑ Development of site will remove existing forestland from production and result in loss of environmental benefits from forest land cover.
- ❑ Private well was likely associated with abandoned homestead. **NC form GW-30 must be filed with the Groundwater Section of the N.C. Dept. of Environment and Natural Resources when abandoning a well.**
- ❑ On-site wastewater system associated with abandoned homestead is required to be decommissioned according to procedures recommended by Cabarrus Health Alliance (see attachment).
- ❑ Additional field visits by Cabarrus SWCD and/or its conservation partners may be required, including but not limited to sedimentation and erosion control plan review.
- ❑ The information in the following table indicates the dominant soil conditions, but does not eliminate the need for onsite investigation. The numbers in the value column range from 0.01 to 1.00. The larger the value, the greater the potential limitation. Limiting features in this report are limited to the top 5 limitations. Additional limitations may exist.

Map Symbol	Soil Name	Pct of Map Unit	Dwellings without Basements	Dwellings with Basements	Small Commercial Buildings	Local Roads and Streets	Shallow Excavations	Lawns and Landscaping
			Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value	Rating Class and Limiting Features - Value
AaB	Altavista	80	Very limited Flooding - 1 Depth to saturated zone - 0.39	Very limited Flooding - 1 Depth to saturated zone - 1	Very limited Flooding - 1 Depth to saturated zone - 0.39	Somewhat limited Low strength - 0.78 Flooding - 0.4 Depth to saturated zone - 0.19	Very limited Depth to saturated zone - 1 Cutbanks cave - 1	Somewhat limited Depth to saturated zone - 0.19
Ch	Chewacla	80	Very limited Flooding - 1 Depth to saturated zone - 1	Very limited Flooding - 1 Depth to saturated zone - 1	Very limited Flooding - 1 Depth to saturated zone - 1	Very limited Flooding - 1 Depth to saturated zone - 0.94	Very limited Depth to saturated zone - 1 Flooding - 0.8 Cutbanks cave - 0.1	Very limited Flooding - 1 Depth to saturated zone - 0.94
CuB2	Cullen	80	Somewhat limited Shrink-swell - 0.5	Somewhat limited Shrink-swell - 0.5	Somewhat limited Shrink-swell - 0.5 Slope - 0.13	Somewhat limited Shrink-swell - 0.5 Low strength - 0	Somewhat limited Too clayey - 0.72 Cutbanks cave - 0.1	Not limited
EnB	Enon	80	Very limited Shrink-swell - 1	Not limited	Very limited Shrink-swell - 1 Slope - 0.13	Very limited Low strength - 1 Shrink-swell - 1	Somewhat limited Too clayey - 0.28 Cutbanks cave - 0.1	Not limited
EnD	Enon	80	Very limited Shrink-swell - 1 Slope - 0.63	Somewhat limited Slope - 0.63	Very limited Slope - 1 Shrink-swell - 1	Very limited Low strength - 1 Shrink-swell - 1 Slope - 0.63	Somewhat limited Slope - 0.63 Too clayey - 0.28 Cutbanks cave - 0.1	Somewhat limited Slope - 0.63
MeB	Mecklenburg	80	Somewhat limited Shrink-swell - 0.5	Somewhat limited Shrink-swell - 0.5	Somewhat limited Shrink-swell - 0.5 Slope - 0.13	Very limited Low strength - 1 Shrink-swell - 0.5	Somewhat limited Too clayey - 0.5 Cutbanks cave - 0.1	Not limited
PoF	Poindexter	80	Very limited Slope - 1	Very limited Slope - 1 Depth to soft bedrock - 0.46	Very limited Slope - 1	Very limited Slope - 1 Low strength - 0.22	Very limited Slope - 1 Depth to soft bedrock - 0.46 Cutbanks cave - 0.1	Very limited Slope - 1 Depth to bedrock - 0.46
SfB	Sedgefield	80	Very limited Depth to saturated zone - 1 Shrink-swell - 1	Very limited Depth to saturated zone - 1	Very limited Depth to saturated zone - 1 Shrink-swell - 1 Slope - 0.13	Very limited Low strength - 1 Shrink-swell - 1 Depth to saturated zone - 0.94	Very limited Depth to saturated zone - 1 Too clayey - 0.28 Cutbanks cave - 0.1	Somewhat limited Depth to saturated zone - 0.94

Please provide copies of approval notice and any revisions to this plan to the Cabarrus Soil and Water Conservation District.

CONTACT(S):

- Cabarrus County, Commerce Department, Rodger Lentz, 704-920-2147
- Cabarrus Health Alliance, Environmental Health, David Troutman, 704-920-1207
- Cabarrus SWCD & Watershed Improvement Commission, Dennis Testerman, 704-920-3303
- City of Concord Engineering Department, Adam Dagenhart, 704-920-5425
- City of Concord Development Services, Ben Leatherland, 704-920-5127
- City of Concord Environmental Services Department, Randy Plummer, 704-920-5372
- City of Concord, Development Services, Matt Weiss, 704-920-5155
- Land Trust for Central North Carolina, Andy Abramson, 704-647-0302
- NC DENR Div. of Forest Resources, Robert Ward, 704-782-6371
- NC DENR-Mooresville Regional Office, Groundwater Section, Peggy Finley, 704-663-1699
- NC DENR, Div. of Water Quality, Mooresville Reg. Office, Alan Johnson, 704-663-1699
- NC DENR, Div. of Water Quality, Raleigh, Cyndi Karoly, 919-733-9721
- NC DENR, Ecosystem Enhancement Program, Melonie Allen, (910) 303-2871
- U. S. Army Corps of Engineers, Asheville Regulatory Field Office, Amanda Jones, 828-271-7980 x 231
- USDA-FSA, Cabarrus-Mecklenburg Center, Nancy White, 704-788-2107
- USDA-NRCS, Concord Field Office, Matthew Kinane, 704-788-2107

Chris Moore

From: Shawn P. Riggs [spriggs@dot.state.nc.us]
Sent: Wednesday, January 31, 2007 10:04 AM
To: Susie Zakraisek; Chris Moore
Cc: Ritchie Hearne
Subject: Re: Twin Waters-Roycroft Subdivision
Attachments: Card for Shawn P. Riggs

Pursuant to your request to provide comments regarding the preliminary plat for the subject subdivision located off of Flowes Store Road (SR 1132), the Department has formed the following comments:

- A NCDOT Access Permit will be required and all roadway improvements must be designed to the Department's requirements and standards. The required roadway improvements must be in place before the final plat approval of 40 lots per entrances (80 lots total) is granted.
- All right of way required to accommodate the roadway improvements must be in place prior to the issuance of the NCDOT Access Permit and Final Plat approval.
- In addition to the two way left turn lane, right turn lanes at both the entrances must be constructed.
- A Performance and Indemnity Bond, Bank Letter of Credit, or Certified Check will be required in part of the NCDOT Access Permit to ensure the integrity of the work (amount to be later determined).
- The medians of the entrances along Flowes Store Road shall be shortened to terminate at the back of radius.
- The parkway medians shall terminate 100' each way from the centerline of all internal intersections.
- All vegetation within the median of the divided parkway must not exceed 24" in height.
- A full set of the subdivision internal street plans must be submitted for review and approval.

These comments are just preliminary and are subject to change pending upon further review of subsequent submittals. If you have any questions or require additional information, please advise.

Shawn Riggs
Assistant District Engineer

Susie Zakraisek wrote:

The typicals have not been revised yet in the Ordinance. I am working diligently with the consultant to get the drawings reworked.

I thought that Ritchie agreed in the meeting to take this one as long as there were no plantings in the median.

It is up to you all as to what standards must be met. You are correct in that NCDOT will be taking over the street maintenance.

Please advise as to how you want to proceed.

-----Original Message-----

From: Shawn P. Riggs [<mailto:spriggs@dot.state.nc.us>]
Sent: Wednesday, January 31, 2007 9:23 AM
To: Susie Zakraisek
Cc: Chris Moore; Ritchie Hearne
Subject: Twin Waters-Roycroft Subdivision

I was in the process of reviewing the preliminary plat and noticed that this developments included the old typical street cross sections. Should these cross sections be revised to reflect the NCDOT recommendations sent to you in a fax on January 16, 2007? I assume that we will be maintaining the internal streets. We have some other minor comments, I just wanted to run the cross section requirement by you first. Please feel free to call me to discuss.

Thanks,
Shawn

Chris Moore

From: Steve Langer
Sent: Tuesday, January 30, 2007 3:42 PM
To: Chris Moore
Subject: Roycroft Sub./ Flowes Subdivision

Chris, it seems to me that we have looked at this property before and I think we had come to an agreement with the developer that they would put in a double road where it crosses the flood area. This is no longer shown. My concerns and requirements have not changed so please provide the developer with the following.

1. A condition is placed on the approval of this property that would not allow the development of phase two until another access is provided for the 92 home beyond (Cover Bridge Way) or the code does allow one exception. They can sprinkle all the homes in that section.
2. The two man access points again are not remote. This problem can be addressed.
3. One additional hydrant is needed at the corner of lot 191 at the intersection of Quiet Stream Lane and Rising Pool Place.
4. Hydrant in front of lot 298 should be relocated in front of 300 and the hydrant in front of lot 305 should be relocated near the intersection at lot 307 so that they are all within 500 feet of one another.

Chris Moore

From: Steve Langer
Sent: Tuesday, February 27, 2007 9:18 AM
To: Chris Moore
Subject: Roycroft Sub

Chris, all previous comments have been addressed with the exception of the remote access. Due to D.O.T requirements this is not possible. At this time we are satisfied with the plat that has been provided.

Thanks,

Steven Langer
Asst. Fire Marshal
Cabarrus County
704-920-2561

NORTH CAROLINA

AGREEMENT

CABARRUS COUNTY

THIS AGREEMENT, made effective this the 6 day of May, 2005, by and between Joseph J. Shambo, Jr. and wife, Marsha R. Shambo, whose principal place of business is 3620 Mooreland Farms Road, Charlotte, NC 28226 hereinafter referred to as "Applicant," and the CITY OF CONCORD, a North Carolina municipal corporation organized under the laws of the State of North Carolina, hereinafter referred to as "City:"

WITNESSETH;

WHEREAS, Applicant is the owner of certain realty located southwest of Flowes Store Road and south of Rocky River, (hereinafter referred to as "the Subdivision") a 262-acre tract proposed to be a residential subdivision; and

WHEREAS, in order that the water and sewer systems of the City (hereinafter referred to as "Utilities") will be available to said realty, the Applicant has requested that Applicant be permitted to extend the water and sewer systems of the City to the Applicant's property; and

WHEREAS, Applicant has agreed to comply with all regulations and ordinances adopted or made by the City as to the control, maintenance, and protection thereof; and

WHEREAS, the Applicant has employed a registered professional engineer in the State of North Carolina to prepare such plans in accordance with the interest of the Applicant and the requirements of the City of Concord and the State of North Carolina;

NOW, THEREFORE, in consideration of the terms, conditions and agreements hereinafter set forth, it is agreed by the parties hereto as follows:

1. The City does hereby give and grant unto Applicant the right, license, and permission to extend and to make and maintain connections to the City's presently existing system, provided that the Applicant provides the engineering plans required so that the City may issue permits to extend and connect to the City's water and sewer systems. The Applicant must receive

preliminary plat approval from Cabarrus County prior to being issued any water and sewer permits by the City.

2. The Applicant shall submit all final plats to the City of Concord. The Applicant shall submit a petition for voluntary annexation to the City 60 days prior to submittal of the first final plat. In no case shall the Applicant sell or convey any portion of or lot in the Subdivision before the City can adopt an annexation ordinance.
3. If for any reason the Subdivision, or any portion of the Subdivision, is not annexed by the City prior to approval of any final plat, then the Applicant must convey by deed all easements and rights-of-way (ROW) for any proposed infrastructure that is to be dedicated to or maintained by the City of Concord. All deeds of easement shall be approved by the City Attorney prior to recordation at the Cabarrus County Registry. Deeds of easement shall be recorded before any water and/or sewer extension permit is issued.
4. The proposed utilities, including any required valves, meter boxes, meters, hydrants, water distribution mains, manholes, collector sewer lines, or any other appurtenances necessary in connection therewith as shown on the construction drawings for the Subdivision yet to be filed in the office of the City of Concord Director of Engineering shall be installed by a contractor of the Applicant licensed by the State of North Carolina to make such installations. All installations shall be made in accordance with the ordinances of the City of Concord and the statutes and rules of the State of North Carolina in effect on the date of execution of this contract and the engineering plans, profiles, and specifications for the proposed installation to be approved by the Director of Engineering of the City of Concord and subsequently approved revisions (if any), a copy of which has been so endorsed as to such approval for the Applicant's use and is on file in the Director of Engineering's office. The Applicant specifically acknowledges receipt of the

City's ordinance governing water and wastewater extensions entitled *Chapter 62 Water and Wastewater Utilities*.

5. The installation of the subject utilities shall be subject to the inspection and supervision of the City during construction to assure substantial compliance with the approved plans. Upon completion of construction, Applicant shall provide to City for its review results of all required water infrastructure and sewer infrastructure tests and a video tape of any newly constructed sanitary sewer line(s). Additionally, the connection of the subject utilities to the City systems shall not be permanently made or maintained until the same shall have been tested under supervision of and the written approval of such installation (confirming that construction has been completed according to the plans) given by the Director of Engineering and the Director of Wastewater Resources, or their respective agents and designees and acceptance of such improvements and their associated easements (if any) by the City Council of the City of Concord. After such approval and acceptance, the City shall thereafter repair and maintain the same, except for defects in workmanship or materials appearing within one (1) year after such acceptance, or as a result of noncompliance with the plans and specifications therefor appearing within one year after such acceptance which shall be the responsibility of and done at the sole expense of the Applicant.

6. After completion and acceptance of the subject utilities by the City and the connection thereof to the appropriate City system, all water mains, sewer lines and any valves, manholes, collector sewer lines, or any other appurtenances used in connection with said main or system shall thereupon and thereafter be the entire and sole property of the City and under the sole and exclusive control of the City, after the City accepts the improvements as described in Section 5 above.

7. Neither the Applicant nor any other person shall be entitled to any service laterals from the main or line installed by the Applicant except upon permission of the City and the payment of any sewer connection fees required by any ordinances or regulations of the City.
8. The Applicant warrants that upon completion of the installation and construction of the subject utilities, the same, including any rights-of-way therefor, shall be free and clear of all claims or legal encumbrances of any person whatsoever, subject to matters of record that do not interfere with the use thereof.
9. Installation of the subject utilities shall be done and completed by the Applicant's contractor (or the Applicant, whichever is permitted to make such connections under North Carolina law) at the sole expense and responsibility of the Applicant, free and clear of all claims or encumbrances. The Applicant shall be solely responsible that the subject utilities are installed within said period in accordance with the plans, profiles, and specifications as approved by the Director of Engineering and subsequently approved revisions, and is on file in the Director of Engineering's office.
10. The Applicant shall indemnify and hold harmless the City from any and all loss, cost, damages, expense and liability (including attorney's fees) caused by accident or other occurrence resulting in bodily injury or property damage to any person or property arising from the installation of such utilities by the Applicant or the contractor of the Applicant due to the negligence or willful misconduct of Applicant or its contractor. The Applicant or the contractor of the Applicant shall maintain the following insurance coverage during the construction of the utilities.
 - a. Worker's compensation coverage;
 - b. General Liability Insurance with a contractual coverage endorsement with a single limit of liability of \$3,000,000.00 bodily injury and property damage;
 - c. Automobile Liability Insurance with limits of liability of not less than \$1,000,000.00 per occurrence for bodily injury and \$1,000,000.00 per occurrence for property damage.

The Applicant shall furnish certificates of such insurance to the City with the provision that the City will be given thirty days written notice of any intent to terminate such insurance by either the Applicant or the insuring company.

11. Except as otherwise set out in this Agreement, the Applicant shall comply and be bound and governed by the stricter of the zoning and subdivision ordinances and regulations of either the City of Concord or Cabarrus County now in existence or hereafter adopted that are applicable to the properties to be serviced by the utilities, and all ordinances and regulations of the City regarding the operation, control, maintenance and protection of the subject utilities of the City.

12. The City agrees to accept and review the Applicant's subdivision preliminary plat and construction plans prior to annexation and to provide recommendations to Cabarrus County as to whether the subdivision complies with the provisions of this contract. The Applicant has previously provided conceptual preliminary plat drawings to the City for informational review, and the City has provided the Applicant with initial comments regarding these drawings.

13. In the event of the violation of any of the above agreements in the nature of a public health or safety emergency the Applicant shall promptly abate such violations after receiving notice from the City. For any other material violation of this Agreement, the City shall give the Applicant notice and a 30-day period within which to cure the alleged violation. The City may give the applicant a longer period to cure the violation of this Agreement as may be reasonably required provided that the Applicant promptly commences and diligently pursues such cure.

14. This contract shall be binding upon the parties hereto and upon their respective successors and assigns; provided, however, no assignment of this agreement shall be made without the prior written notification to the City and the payment of any applicable fees, charges or expenses in accordance with applicable City ordinances, policies and regulations, or the

acceptable assignment of such fees, charges and expenses to the City. Approval of such assignment will not be unreasonably withheld.

15. Notices under this contract shall be given to the following parties:

a. IF TO THE CITY: Brian Hiatt, City Manager
City of Concord
P.O. Box 308
Concord, NC 28026-0308

With a Copy to: City Attorney
City of Concord
P.O. Box 308
Concord, NC 28026-0308

b. IF TO THE APPLICANT: Joseph Shambo
3620 Mooreland Farms Road
Charlotte, NC 28226

and/

Grady Cook
3841 Willow Grove Lane
Charlotte, NC 28025

Notices are deemed to be given if faxed or deposited in the U.S. mail, postage prepaid in an envelope addressed to the appropriate party.

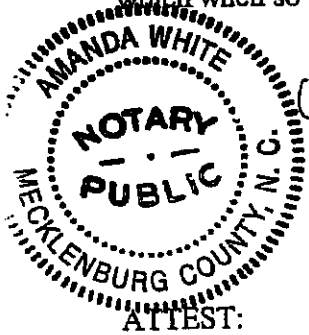
16. Legal disputes shall be brought in either the State courts of Cabarrus County, N.C. or the U.S. courts of the Middle District of North Carolina. The laws of the State of North Carolina shall govern any legal disputes that may arise in regard to this agreement.

17. Utility connection fees are due and payable as provided in Chapter 62 of the Code of Ordinances of the City. The utility connection fees of \$1,600.00 per lot (\$800.00 for wastewater, \$800.00 for sewer) were established in the annual budget ordinance for the fiscal year July 1, 2005 through June 30, 1995.

18. Applicant hereby acknowledges that the City did not require or suggest that the Applicant use or agree to use the electricity provided by the City as a condition of receiving water and wastewater utility services from the City.

19. Both the City and Applicant hereby acknowledge and certify that this Agreement is not assignable except by written permission of both parties. Such written permission shall not be unreasonably withheld.

IN WITNESS WHEREOF, the Applicant has caused this Agreement to be executed, and the City has caused this Agreement to be executed in its name by its City Manager, attested by its City Clerk, and its corporate seal thereto affixed, all in at least two counterparts, each of which when so executed shall constitute one and the same Agreement.



Amanda White
5/6/05
Expires
6/10/06

Joseph J. Shambo, Jr. (SEAL)
Joseph J. Shambo, Jr.
Marsha R. Shambo (SEAL)
Marsha R. Shambo

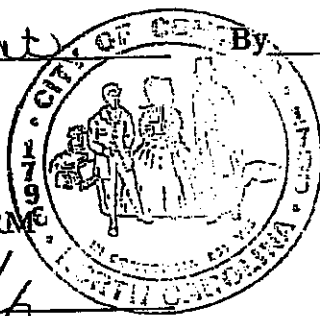
CITY OF CONCORD

Vickie C. Weant
Vicki Weant, City Clerk

(Seal)

APPROVED AS TO FORM

Albert M. Benshoff
Albert M. Benshoff, City Attorney



W. Brian Hiatt
W. Brian Hiatt, City Manager

This instrument has been preaudited in the manner required by the "Local Government Budget and Fiscal Control Act."

Joyce Allman
Joyce Allman, Finance Director

C2007-02 (S)

**Ryocroft
Preliminary Plat
Residential Subdivision
Amenity Option**

**Petitioner:
Provident Development**

**Zoned LDR
Low Density Residential**

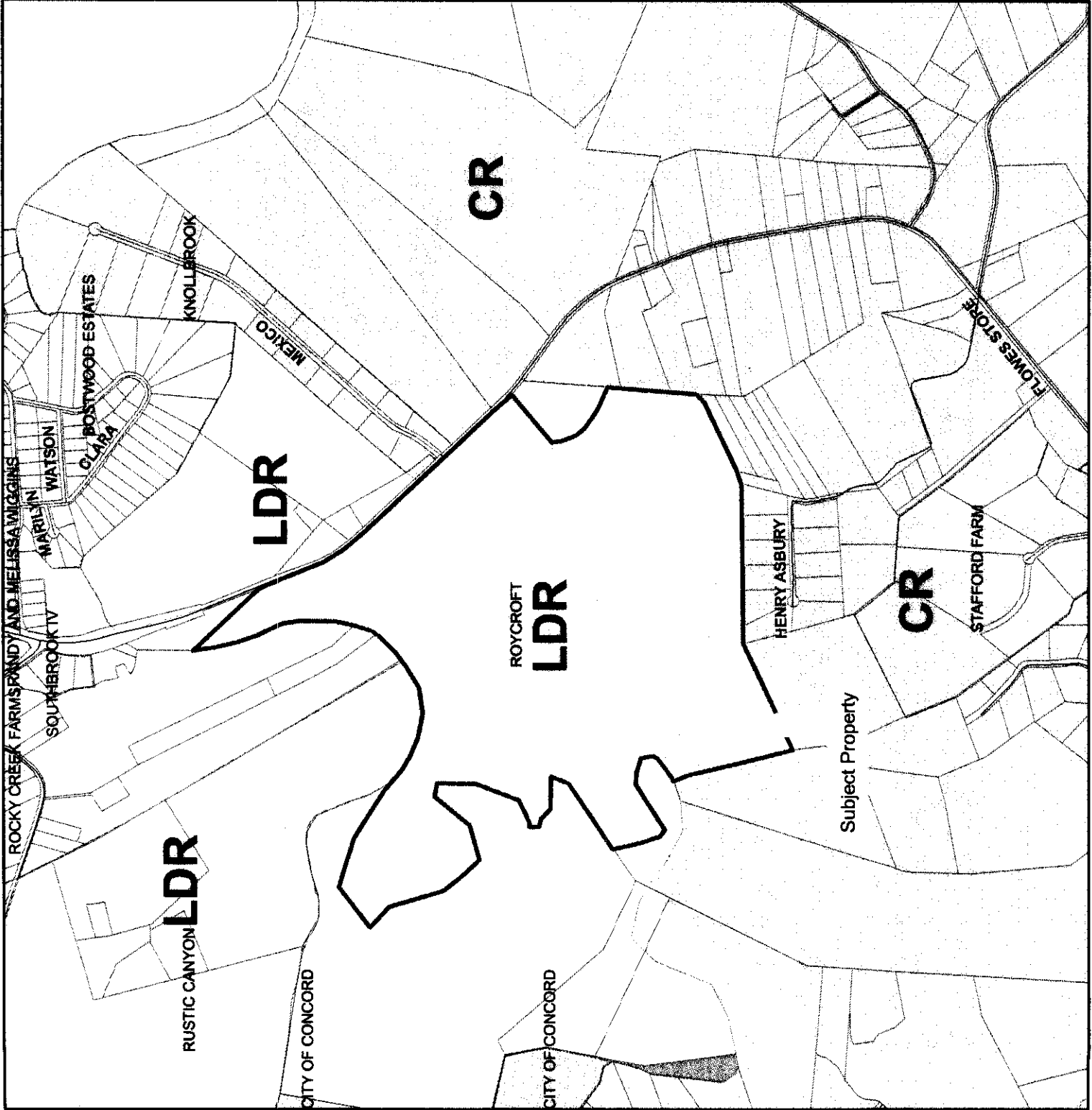
PIN 5537-43-1434



Legend

— StreetCenterline

□ TaxParcel



Memo

To: Cabarrus County Planning and Zoning Board
From: Kassie G. Watts, Planner
Date: 03/08/2007
Re: Request for Exception to Peach Orchard Estates Preliminary Plat Extension Condition

History of the Peach Orchard Estates Subdivision approval:

- The developer of Peach Orchard Estates petitioned the Cabarrus County Planning and Zoning Board in January 2004 for preliminary plat approval. The developer was granted approval for 2 years, making the expiration of the preliminary plat approval January 2006.
- In June 2005, Cabarrus County adopted revisions to the subdivision standards and adopted a new zoning map that changed Peach Orchard Estates property from a zoning classification of LDR to a zoning classification of CR. The Peach Orchard Estates preliminary plat approval (under the LDR zoning designation) was still valid at that time.
- In October 2005, the developer petitioned the Planning and Zoning Board for an extension of their preliminary plat approval. This request was made in anticipation of the preliminary plat approval expiring in January 2006. As a result of the countywide rezoning and new subdivision standards adopted in June 2005, the developers of the Peach Orchard Estates subdivision were asked to agree to several conditions. These conditions were an attempt to keep this subdivision in character with the future developments under the new (current) ordinance. As part of the approval of the extension, the developer agreed to the following conditions:
 1. That the developer be granted a one year extension for the development of this project-setting the new expiration date of January 15th, 2007.
 2. That the developer meet the following additional standards for subdivision development:
 - a. Plant street trees in accordance with Subdivision Ordinance Chapter 4, Section 11, Item 10.
 - b. Buffers comply with the planting and tree preservation requirements of Section 5-8, Item D in the Cabarrus County Zoning Ordinance.
 - c. Open Space areas comply with Section 5-8 of the Cabarrus County Zoning Ordinance.
 - d. Homes within the development meet the architectural requirements found in Section 5-7, Item E and Section 5-8, Items E and F of the Cabarrus County Zoning Ordinance.

3. That the extension is conditioned upon the Cabarrus County Board of Commissioners reaffirming or renegotiating the terms of the original consent agreement.
- In December 2005, the developer renegotiated the consent agreement for Peach Orchard Estates in keeping with condition #3 listed above.
 - The developer submitted a final plat application in May 2006. Through the final plat review process, staff discovered that the preliminary plat, as submitted, did not meet the standards agreed upon by the developer under the October 2005 preliminary plat extension approval. The standards staff identified as non-compliant were the Open Space areas in Section 5-8 of the Cabarrus County Zoning Ordinance.
 - When the first preliminary plat request was submitted in January 2004, the Cabarrus County Zoning Ordinance did not require a RSOZ on intermittent streams, however the preliminary plat application did require that water courses and wetlands be shown on the plat.
 - On December 21st, 2006 the developer requested an exception to the subdivision standards and the conditions of approval for an extension in order to record a final plat. This would extend the preliminary plat approval for another 2 years. The developer was granted approval of the exception request by the Cabarrus County Planning and Zoning Board based on compliance with all other Sections of 5-8 of the Cabarrus County Zoning Ordinance.
 - In January 2007, Cabarrus County Erosion Control notified the Planning Division of the Commerce Department that an intermittent stream was located on the property and would directly impact the development of lots 37 through 41 (approximately). At that time the developer was notified in order to rectify the situation and bring the site into compliance. This directly impacts phase 2 of the development.

Attached, please find a letter from Cindy Traywick, Manager of Equal Development, LLC requesting an exception to the subdivision standards established as conditions for Peach Orchard Estates. The request also includes the most recently approved preliminary plat. The conditions that cannot be met have been outlined in the letter.

February 15, 2007

Cabarrus County Department of Commerce
Attn: Ms. Kassie Goodson
P.O. Box 7074
Concord, NC 28026

Re: Peach Orchard Estates Subdivision

Dear Ms. Goodson:

In October of 2005, Hayden McMahon Development, Inc. ("McMahon"), was in the process of selling the above-referenced property to Equal Development LLC ("Equal"), and requested a preliminary plat extension. The extension was granted subject to the developer meeting certain requirements as outlined in the October 20, 2005 Planning and Zoning Commission Minutes. McMahon renegotiated the consent agreement for the higher development fee and it was assigned and assumed by Equal in May of 2006.

Pursuant to Equal's purchase of the property we diligently procured all required permits and approvals and improved the property as per the plans drawn by Concord Engineering, approved by Cabarrus County. Equal and its General Contractor, Consolidated Construction Services, Inc., have constructed all improvements per the drawings approved by the County authorities and NCDOT. As of today the project is approximately 90% complete.

In November of 2006 Equal submitted for our first plat approval and were notified that some requirements of the Extension involving Zoning Ordinance Section 5-8, entitled "Open Space" had not been addressed. Due to the significant amount of work completed on the property at that time some of the requirements outlined in the Section 5-8 Open Space could not be accomplished without significant costs to Equal. As a result Equal requested an Exception to the buffer requirements included in Section 5-8 Open Space on specific lots in December, 2006, which was granted.

On January 25th, 2007, we were advised that a low lying portion of the property on the east side of Peach Orchard Road is considered by the County to be an "Intermittent Stream," and therefore we are not in compliance with Section 5-8(B), entitled "Stream Buffer Limitations." We had understood that Section 5-8(A) "Open Space" would had to be complied with, but were not aware that Section 5-8(B) would be applicable as well. Again, we were not aware of this requirement prior to January 25th, 2007, and had been proceeding in good faith to complete our subdivision work in what we thought was compliance with all of the required zoning matter. I would also point out that while Section 4-11 is referenced in 5-8(B), neither 5-8(B) nor 4-11 was mentioned in the Minutes of the Planning and Zoning Commission meeting in either October, 2005 or December, 2006.

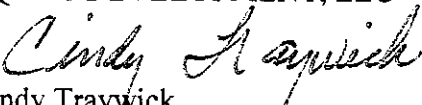
By submission of this letter Equal respectfully requests an Exception to the requirements of Section 5-8(B), and the incorporated requirements of Section 4-11 of the Ordinance based upon:

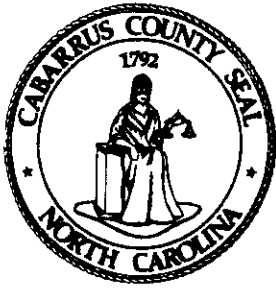
- a) Erosion Control and Grading permit to grade lots in question was issued on 10/23/06 prior to any changes being made to Open Space Section 5-8;
- b) The infrastructure is complete except for the paving;
- c) All County reviews and correspondence since the December, 2006 Planning and Zoning Commission meeting indicated Equal is in compliance with our obligation concerning the Open Space Section of 5-8; it was only on January 25th when we were ready for plat approval was a "intermittent stream" and Section 4-11 mentioned to Equal;
- d) None of the County approved construction plans, permits and authorizations to construct required buffering as specified in Section 4-11;
- e) Section 4-11 would result in the loss of four (4) lots to which the infrastructure is already constructed creating a tremendous financial problem for Equal and quite possibly subject us to contractual problems and legal issues with our builder;
- f) We have been attempting to comply in good faith with these new provisions, and in our previous exception, complying with Section 4-11 was not specifically mentioned either by Concord Engineering, or the Planning and Zoning Commission.

Thank you for your presentation of our request for an Exception to Section 5-8(B), and the attendant requirements of Section 4-11 of the Ordinance at your Planning and Zoning meeting.

Respectfully submitted,

EQUAL DEVELOPMENT, LLC


Cindy Traywick
Manager



Planning and Zoning Commission Minutes
December 21, 2006
7:00 P.M.

Mr. Roger Haas, Chairman, called the meeting to order at 7:00 p.m. Members present, in addition to the Chair, were Mr. Todd Berg, Ms. Brenda Cook, Mr. Eugene Divine, Mr. Larry Ensley, Mr. Danny Fesperman, Mr. Leonard Lancaster, Mr. Thomas Porter, Jr., and Mr. Ian Prince. Attending from the Planning and Zoning Division were Ms. Susie Zakraisek, Planning and Zoning Manager, Ms. Kassie Watts, Planner, Ms. Arlena Roberts, Clerk to the Board, and Mr. Richard Koch, County Attorney.

Roll Call

Approval of Minutes

Mr. Fesperman asked if Mr. Haas was the Chair at the November meeting, the minutes had Mr. Haas as Vice Chair.

The Chair said yes he was Chair.

Mr. Fesperman, **MOTIONED, SECONDED** by Ms. Cook, to **APPROVE** the November 16, 2006, minutes with the correction of Roger Haas as Chairman instead of Vice Chairman. The vote was unanimous.

Planning Board Function:

Exception to Peach Orchard Estates Preliminary Plat Extension Conditions.

Ms. Kassie Watts, Planner, addressed the board stating that this is a request for an exception to the Peach Orchard Estates Preliminary Plat Extension Conditions. She said Marion Sandlin with Concord Engineering and Surveying Inc. (CESI). and Mark Frye from Equal Development are here to speak for Peach Orchard Estates.

Ms. Watts said the original developer of Peach Orchard Estates Subdivision, petitioned the Planning and Zoning Board in January 2004, for preliminary plat approval. The developer was granted approval for 2 years, making the expiration of the approval January 2006. In June 2005, the County adopted the revisions to the subdivision standards and also adopted a new zoning map that changed Peach Orchard Estates from a zoning classification of LDR (Low Density Residential), to a zoning classification of CR (Countryside Residential). She said the Peach Orchard Preliminary Estate Plat approval was still valid at that time under the LDR zoning designation. In October 2005, the developer petitioned the Planning and Zoning Board for an extension of their preliminary plat approval because their 2 years was going to be running out the following January and the request was made in anticipation of that preliminary plat approval expiring the

following year, January 2006. She said as a result of the county wide rezoning and the new subdivision standards adopted in June 2005, the developers of the Peach Orchard Estates Subdivision were asked to agree to several conditions that were proposed by staff. These conditions were an attempt to keep this subdivision in character with future developments under the new (current) ordinance we have now. As part of the approval of the extension, the developer agreed to the following conditions:

1. The developer be granted a one year extension for the development of this project-setting the new expiration date at January 15, 2007.
2. The developer meets the following additional standards for subdivision development.
 - a. Plant street trees in accordance with Subdivision Ordinance Chapter 4, Section 11, Item 10.
 - b. Buffers comply with the planting and tree preservation requirement of Section 5-8, Item D in the Cabarrus County Zoning Ordinance.
 - c. Open Space areas comply with Section 5-8 of the Cabarrus County Zoning Ordinance.
 - d. Homes within the develop meet the architectural requirements found in Section 5-7, Item E and Section 5-8, Items E and F of the Cabarrus County Zoning Ordinance.
3. The Extension is conditioned upon the Cabarrus County Board of Commissioners reaffirming or renegotiating the terms of the original consent agreement.

Ms. Watts said in December 2005, the developer agreed to renegotiate the consent agreement for Peach Orchard Estates, the developer submitted a final application in May 2006. She said through the final plat review process, staff discovered that the preliminary plat that was being used would not meet the standards, the conditions that were agreed upon by the developer under the 2005 Preliminary Plat Extension Approval. She said the Preliminary Plat Approval will become void as of January 15, 2007, if they have not recorded a final plat. The developer is requesting an exception to the subdivision standards and the conditions of approval for the extension in order to record a final plat to extend the preliminary plat approval for another 2 years.

Ms. Watts said included in the Board's packets was a letter from Cindy Traywick, Manager of Equal Development, requesting an exception to the subdivision standards established as conditions for Peach Orchard Estates. Ms Watts said the request also included a newly revised preliminary plat that meets a majority of the conditions agreed to with the extension. Ms. Watts said the conditions that cannot be met have been outlined in the letter as a,b,c and d.

She said they are asking for exceptions on the lots where they have outlined it for the buffer and the open space standard. She said the open space has to be a minimum of 50 feet wide and they also have to meet the 50 foot buffer, so they are asking for an exception on the lots that they listed and they list what they are asking for: a) they are asking for a 25 foot buffer, b) they are asking a 35-45 foot buffer and c) they are requesting a 10 foot buffer on lots 28-31 and d) the last one is a pump station lot that they are asking a 25 foot buffer on. She said they propose to provide some trail easements in the subdivision and they outline where those would be and what lots they would be connecting those too (see Plat in Planning Office).

Ms. Watts said the developer is here this evening, along with Marion Sandlin, of Concord Engineering and Surveying Inc. (CESI).

The Chair said he has three completed cards of those who would like to speak. He said if anyone else would like to speak, please complete a card.

Mr. Prince asked if the final plat was submitted to her (Kassie) in May.

Ms. Watts said yes. She said staff was reviewing the final plat and it went on for several months. She said she reviewed it originally and the developer was still getting together their letter of credit. She said staff had been sending comments back and forth with the surveyor. She went on maternity leave and another planner, Chris Moore was reviewing the plat. She said the plat that she was reviewing was the plat that had never been altered to meet the conditions of the extension. She said when Mr. Moore received the plat, he realized the conditions had not been met.

Mr. Prince asked when she received it.

Ms. Watts said in September or October.

Mr. Lancaster asked what amount the consent agreement was for.

Ms. Watts said the original consent agreement was for \$1008, but when it was renegotiated, it went up to the \$4034. She said that consent agreement will expire with the preliminary plat approval if it is not granted.

Mr. Marion Sandlin, Concord Engineering and Surveying Inc. (CESI), addressed the Board, stating he has been involved in this project since January 2004, when Hayden McMahon first bought the property, at that time it was zoned LDR (Low Density Residential). He said this subdivision was designed to LDR standards. He said this project straddled the line of Mecklenburg and Cabarrus County and they could not get approval from both counties because it straddled the line, which is why in October 2005 they came to ask for an extension. He said in the process he had conversations back and forth with the staff. He said these rules were new to them and did not realize really what they were agreeing too, did not realize they would have to redesign the subdivision. He said they had all of the construction plans approved, and all the permits approved to build

this job. So last year, when they got the extension, Equal Development bought the land from Mr. McMahon thinking that they had a project to go build. He said they did build it and the project is 75% complete, the roads are built, everything is built. He said they submitted the plat in May and they found out last month (November), that the plat did not meet compliance with the conditions. He said they are fine with that, his clients have agreed and they have gone through every lot and agree to adjust most lots to fit the 50 foot width. He said there are certain lots in this subdivision that they cannot build on and the roads are already built. He said they are willing to put in the trees, the trails and to do everything they are supposed to do. They are asking for an exception to widths of the buffers because they do not quite meet them. He said in most cases there is still 25 feet because that is what was required of this plat when it was originally extended. He said a year ago when he asked for the extension of this plat, he did not realize that they had to redesign the sight and the project was started. He said they did not know there was a problem until they went to record the final plat and it was discovered that they did not have 50 feet for the open space. He said if you take 50 foot off the open spaces, then some of the lots will not work. All of the lots they are asking for exceptions for would be unusable lots in this subdivision and they would not have enough buildable space on the lots. He said they are leaving enough buffers in there and have tried to save trees on the back of the lots, everywhere they could.

Mr. Sandlin said rather than ask for an exception to the whole subdivision, they have revised certain lots to meet the 50 foot buffer. They revised every where they could to meet the 50 foot open space and 50 foot buffers. He said they are asking for the exception because the lots will be unusable. There will be roads built with no place to put a lot. He does not understand how something could be 75% built before a problem is found.

Mr. Fesperman said Mr. Sandlin was the engineer on record and asked if Mr. Sandlin's firm should have caught this?

Mr. Sandlin said they designed this preliminary to the old standards, which was LDR (Low Density Residential) and it is currently CR (Countryside Residential). He said last year in October (2005), when they asked for the extension of the plat, he thought that was what they were doing, asking for an extension of the plat. He had some conversations with staff and maybe he misinterpreted it, that is when they went back and looked, maybe we misinterpreted but, he inquired with staff, he even had some emails from staff that said it required a conservation easement, a maintenance plan for the open space, and a homeowners association, and that is what he thought he was doing.

Mr. Sandlin said when he came before the Board the last time, he stressed that the plans (construction drawings) were already approved; he did not have any idea he had to go back and redesign the whole subdivision, he said that is what it would have taken (to meet the conditions). He was asked to do an extension to the plat, to make this happen we would have to redesign everything and the developer would have had to start from scratch again and there is no way you can do that in a year. Any one involved in designing and getting plan approvals and all that kind of stuff would tell you, you just

cannot do it; nobody ever suspected that, and he did not think it was a problem, until this situation came up about the widths.

Mr. Fesperman asked about the Mecklenburg County side.

Mr. Sandlin said the Mecklenburg County side is approved, they do not require a 50 foot buffer or 50 foot open spaces.

Mr. Berg asked if that is why Lots 25, 26, and 27 do not have the buffer like Lots 28, 29 and 30.

Mr. Sandlin said Lots 1 through 27 are all in Mecklenburg County, they just happen to be on the preliminary because they (CESI) do preliminaries for both counties (Cabarrus County and Mecklenburg County) at the same time. He said that is basically where they are and why they are asking for an exception. He said this project is built; they have gone back to some of the lots and added buffers that were not there before and are willing to put in trails. The developer wants it to look good too and they want to have a buffer and they want it to be screened off the other property and they want to do what they are supposed to do. He said they have met the 50 foot requirement on all of the lots that they can and will lose the other lots if the exception is not granted.

Mr. Berg asked if they are complying with all the contingency requirements with the exception of the 50 foot open space width on these 25 lots you have listed; everything else you are complying with?

Mr. Sandlin said that is correct. He said staff has worked with them through this problem.

The Chair asked if there were any questions.

Ms. Watts said the meeting minutes were available if anyone wanted a copy.

Mr. Fesperman said looking at Phase 2 and 3, he asked if there was only one way to come out of this back part toward the road.

Ms. Watts said yes.

Mr. Fesperman said there are a lot of homes in there and he is surprised that during the original planning we would grant this. If you have any type of emergency and there is only one way in and one way out, particularly in a heavy intersection that this is going to draw from this project. He is amazed that this would be acceptable; it is a very dangerous situation in that section. He said if there is an accident, medical or fire, they will not be able to get in and out on that side in those two phases, this is a concern he wanted to bring up to the planning staff.

Ms. Watts said, as a result of issues like that, issues that we have had with some of the subdivisions that were approved prior to the revisions that were made, is why our subdivision standards are a lot more in-depth than they use to be. She said the cluster options under the old ordinance were pretty basic and there were not a lot of requirements. She said we did not have any of the street tree/open space type requirements; it just had to be 30 %, it was minimal. She said all of that is different now; the connectivity issue was not something the developer had to agree to change, that was not something requested by staff at that time.

Mr. Fesperman asked if the intersection has a stop light, Phase I at Peach Orchard.

Ms. Watts said no, she does not believe there is.

Mr. Fesperman said that is going to be a very dangerous intersection, it is heavily traveled now, once this is build in on both sides, he is sure they will have to put a stop light there.

Ms. Watts said NCDOT does get the opportunity to make comments on all the final plats.

Mr. Berg said when the extension was granted, he thinks, there were some neighbors speaking in opposition. He asked if there were any opposition to this.

Ms. Watts said no, she did not receive any calls, pro or con.

Mr. Fesperman asked what type of material they are going to use for the trail.

Ms. Watts said it has to be ADA compliant, so it would have to be some kind of solid surface. She said the County has trail standards, but they have not been officially adopted. She said Mr. Sandlin has a copy of those and they are going to build them accordingly. She said there are different tier levels and they are going look at them to see what would be best. She said there are quite a few options out there for the trails.

Mr. Sandlin said NCDOT reviewed this and, at the intersections, they are requiring a turn lane, so that will help with the traffic. He said as for the trails, the developer has the trail standards that the county has not adopted yet, Tier 1 and Tier 2; they are looking to build the trails to those standards.

Mr. Fesperman asked if they had the water run off planned.

Mr. Sandlin said all of the engineering plans have been approved. He said the project is 75% to 80% complete.

Mr. Porter said you are asking for Item C, a 50 foot buffer to be reduced to a 10 foot buffer for Lots 28-31.

Mr. Sandlin said if you look at those particular Lots 28-31, on the old plat, there was no buffer on those lots, they added a 10 foot buffer so there would be some buffer in-between.

Mr. Porter said, on the original plat, you had referred earlier that most of them were 25 foot buffers.

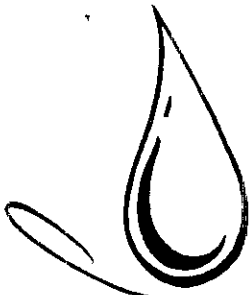
Mr. Sandlin said originally this was designed and approved under the old zoning and no open space was required at that particular spot at the time of approval. He said they have added a 10 foot buffer in there, so there would be some type of buffer, they added all that they could.

There being no further discussion, Mr. Berg, **MOTIONED, SECONDED** by Mr. Lancaster to **APPROVE** the Exception to Peach Orchard Estates Preliminary Plat Extension Conditions. The vote was 7 to 1, with Mr. Prince voting against.

Directors Report

Ms. Zakraisek, Planning and Zoning Manager, addressed the Board, stating that there was an article in the Independent Tribune today (December 21, 2006) by Eric Deines. On Monday night the update of the voluntary mitigation payment draft report was presented to the Board of Commissioners and you have been given a copy. She said the most important part of this is the projected growth for the school district which is approximately 17,300 students by the year 2021; for Kannapolis it is approximately 3,000+ students. She said the information is on page 4. She said the student generation rates have been updated, so the numbers that we see from the schools when considering preliminary plats, that number of students may be shifting slightly towards a higher number. You can see that a single family detached now generates approximately .58 students, a town house is .3 and a multi-family or other, which essentially included condos, is .27. She said based on that information and the collection of information on page 5, the consultant looked at school construction costs, looked at land cost, and then also looked at support facilities and buses; took those variables. She said the total capital cost per student on page 6, if you look at it, the total numbers were actually 22,751 for elementary, 24,255 for middle school and 29,314 for high school, so that is actually the generation, the amount overall. They included a credit so that people were not paying twice; the county already has debt, so essentially that is put in the calculation to keep people from double payment. If they have a new house and they pay taxes, the credit is built in, which gives you the net capital cost per student, then based on that capital cost the generation rates were used to get the maximum supportable voluntary mitigation payment that is on page 7. She said you will see that the total maximum for a single family detached unit is \$12,425.00, a town house is \$6,590.00 and the multi-family or other equals \$5,988.00.

Ms. Zakraisek said based on those numbers, if the board chooses to go to a policy that was 100% of the actual capital cost, it could be that 12,000 number, and that could be what we see in the consent agreements. She said the Board has not decided on the policy,



CABARRUS COUNTY
WATERSHED IMPROVEMENT COMMISSION

715 Cabarrus Avenue, West Concord, N. C. 28027-6214 Telephone: (704) 792-0400 Fax: (704) 795-6432

(704) 920-3300

MEMORANDUM

TO: Roger Haas, Chairman, Cabarrus County Planning and Zoning Commission
FROM: David Settlemyer, Chairman
DATE: March 15, 2007
SUBJECT: Request for Exemption to Peach Orchard Estates Preliminary Extension Condition
COPIES: Jonathan Marshall, Kassie Watts, Susie Zakraisek

At the last several Cabarrus County Watershed Improvement Commission meetings, we have discussed previously submitted plans that were reviewed by Cabarrus Soil and Water Conservation District staff and our October 20, 2005 memorandum concerning the extension request. In particular, we have been focused on a tributary to McKee Creek that flows through Phase 2.

Here's a chronological outline of some key reference points in our discussions:

- The 2003 Yadkin-Pee Dee Basinwide Water Quality Plan issued by the state Division of Water Quality addresses water quality concerns in the McKee Creek watershed. McKee Creek is listed on the federal Clean Water Act (CWA) Section 303(d) list of waters not meeting water quality standards or which have impaired uses. Potential sources identified include land development and urban runoff/storm sewers.
- The Peach Orchard Estates erosion and sedimentation control plan was approved on May 27, 2004.
- Two "field located protected streams" were field indicated on the erosion and sedimentation control plan dated 1/12/05. [Note: There was discussion at the 2/8/07 WIC meeting about the wetland determinations that were performed by private consultant, Len Rindner. The county does not have a copy of the consultant's report.]
- The boundary was sealed on 1/25/05 by CESI engineer Richard Riser.
- The county zoning ordinance was revised on June 20, 2005. CESI staff participated in the public stakeholder process that preceded the adoption of the revised zoning ordinance.
- On 10/20/05, the Planning & Zoning Commission granted a one year extension of the preliminary plat approval. Conditions recommended in a WIC staff memo submitted on the same date were included in the terms of this extension, including:
 - restoration of all unstable segments of streams;
 - a protective River Stream Overlay Zone buffer—not owned by individual homeowners—along all perennial and intermittent water courses;
 - an innovative approach to stormwater management that provides water quality protection, including elimination of potential adverse impacts to neighboring septic systems; and
 - more open space.
- An on-site pre-construction meeting was held on February 16, 2006.
- A Notice of Violations of the Cabarrus County Soil Erosion and Sedimentation Control Ordinance and the Pollution Control Act was issued on August 22, 2006 to the developer. The five violations cited included the following:
 - "Adequate sedimentation and erosion control measures have not been provided on site and visible sediment was observed in watercourse along the back of lots 42 and 43 at the pump station."
 - "Visible sediment was noted in watercourse behind lots 39-42 and in watercourse on downstream property."
 - "Failure to retain along a lake or natural watercourse a buffer zone of sufficient width to confine visible siltation by natural or artificial means within the 25 percent portion of that buffer zone nearest the land-disturbing activity."

- The \$5,000 fine was not contested and was paid on \$4,610 September 14, 2006. The balance was paid on October 12, 2006.
- On December 21, 2006, the P&Z Commission granted an exception to the preliminary plat extension conditions for buffers and open space. The proposed revised preliminary plat prepared by CESI did not show the stream in Phase 2.
- The NC Ecosystem Enhancement Program recently received an option to restore a segment of the unnamed intermittent tributary to McKee Creek that flows through Phase 2. The buffer along the headwaters of this tributary has been impacted by the developer.

In the conclusion of the October 20, 2005 memorandum from our staff concerning the extension of the plan approval, the following four conditions were recommended if an extension was granted:

1. restoration of all unstable segments of streams;
2. a protective River Stream Overlay [District] (RSOD) buffer—not owned by individual homeowners—along all perennial and intermittent water courses;
3. an innovative approach to stormwater management that provides water quality protection, including elimination of potential adverse impacts to neighboring septic systems; and
4. more open space

We understand that these conditions were made part of the extension approval granted on October 20, 2005. However, these conditions have not been reflected in plans submitted since that date. We reiterate our recommendation that the developer comply with these conditions.

The required RSOD buffer appears to have been impacted during the construction of Macallano Drive and the utilities for lots 35-42. Attached are some guidelines that the Cabarrus Soil and Water Conservation District has provided in cases where the Planning and Zoning Division staff has determined that RSOD buffer restoration is required.

Consideration should be given to granting a conservation easement to Cabarrus Soil and Water Conservation District on this McKee Creek tributary in light of the fact that a conservation easement will be place on this stream above the confluence with McKee Creek.

1. *Introduction*

2. *Methodology*

3. *Results*

4. *Discussion*

5. *Conclusion*

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15. *Disclaimer*

16. *Conflict of Interest*

17. *Consent to Publish*

18. *Consent to Participate*

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Wildlife Habitat in Riparian Forest Buffers (Supplement to Job Sheet 391)

USDA – NATURAL RESOURCES CONSERVATION SERVICE – NORTH CAROLINA

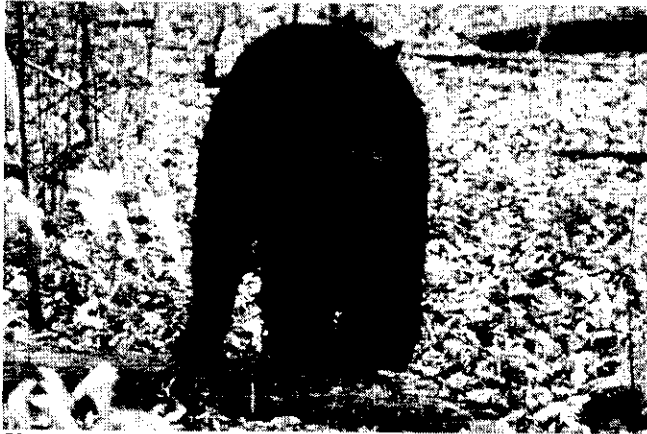


Photo courtesy of Ken Taylor, North Carolina Wildlife Resources Commission.



Photo courtesy of Craig Engelhard, USDA, Natural Resources Conservation Service.

Riparian forest buffers can provide habitat for a tremendous number of wild animals - from big game, to owls and songbirds, turtles, frogs, and insects. All of these creatures and many more may find a place to feed, nest, or breed in the riparian forest ecosystem. The forest buffer's benefits may also extend to the fin fish, shellfish, and invertebrates that inhabit the adjoining water. In order to maximize their benefit for wildlife, riparian forest buffers should have a transition zone of shrubs established between the woody and herbaceous zones. Please refer to Practice Standard 645 (Upland Wildlife Habitat Management) or the Supplement to Job Sheet 386 (Developing Wildlife Habitat in Field Borders) for information on establishing herbaceous zones for wildlife.

This job sheet will help you design a riparian forest buffer that provides optimum wildlife habitat. We suggest considering the following management practices:

- ✓ Select trees and shrubs that provide excellent food and shelter resources for wildlife.
- ✓ To manage and maintain healthy vegetation, use fencing to control livestock access to the buffer.
- ✓ Plant several different kinds of trees and shrubs. Select compatible trees and shrubs and plant them in random combinations, alternating rows, or small blocks of a single kind.
- ✓ Manage pines for sawtimber. Schedule periodic thinning to maintain a basal area of 80 sq. ft. per acre or less. Use prescribed fire to further enhance habitat in pine zones (only on non-hydric soils).
- ✓ Manage hardwoods by group selection or small patch clear-cuts for high value, mature timber. Conduct timber stand improvement removal of trees that compete with desirable fruit or seed producing trees.
- ✓ Space regeneration cuts widely to preserve larger blocks of mature forest habitat.
- ✓ Preserve dead trees (snags) that do not pose a safety hazard to provide nest cavities and forage for insect eaters.
- ✓ Shrub dominated riparian buffers may be preferable for landowners who wish to manage early succession wildlife species.

Trees for Wildlife	Examples of Wildlife Benefited	Cultural Notes
Green ash	Wild turkey, wood duck, cardinal	Prefers moist sites but will survive on dry sites
Bald cypress	Wood duck, black bear, nuthatch	Large trees which do best in pure stands
Flowering dogwood	Bobwhite quail, gray squirrel, bluebird	This tree produces best in partial shade on moist sites
Hackberry or sugarberry	Wild turkey, bobwhite quail, hermit thrush	Best growth on rich moist soils, fruit ripens in September and October
Atlantic white cedar	Black bear, wood duck, cedar waxwing	Grows best in pure stands on very wet sites, will not survive under dense cover
Mulberry	Opossum, gray squirrel, oriole	Fruit ripens in late spring
Overcup oak	Wild turkey, white-tailed deer, barred owl	Fruit matures in one season, will grow in the poorest of bottomland sites
Persimmon	Raccoon, white-tailed deer, gray fox	Will grow in sunny and both moist and dry sites, fruit ripens in the autumn
Pines	Gray squirrel, bobwhite quail, pine warbler	Depending on the species, pines can grow from moist to very dry sites
Southern red oak	White-tailed deer, wild turkey, woodpecker	Will grow on well drained sites, fruit produced at 2 year intervals
Swamp chestnut oak	Wood duck, black bear, raccoon	Fruit matures in one season, prefers moist sites
Tupelo gum (Water tupelo)	Black bear, wood duck, wild turkey	Prefers wet sites, fruit matures in early autumn
Water oak	Gray squirrel, wood duck, blue jay	Prefers moist or wet soils, fruit produced at 2 year intervals
Willow oak	White-tailed deer, wood duck, chipmunk	Prefers moist soils, fruit produced at 2 year intervals

- ✓ Tree stocking rates are not specified in this supplement. Establishment at lower stocking rates will provide desirable habitat diversity as the stand matures.
- ✓ Trees and shrubs may be purchased from nurseries as bareroot and container grown stock. Order plants in spring or summer to ensure best availability. The local Soil & Water Conservation District can provide a list of suppliers.
- ✓ If any existing sod (especially fescue) is present where trees and shrubs are to be planted, it should be killed, if the original purpose of the practice is not compromised. If not possible to

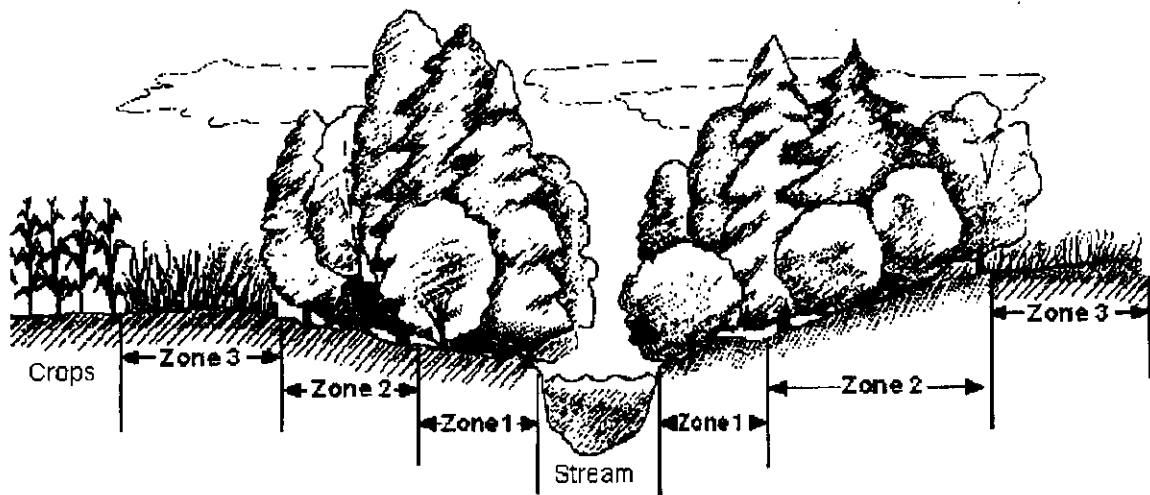
kill all of the sod initially, a minimum four foot wide strip (or a four foot diameter circle) should be killed where trees and shrubs are to be planted. This will enable the new plantings to better compete for light and moisture. Fertilizer is not necessary for new plantings - its application may only boost weed growth.

- ✓ Planting stock must be protected from drying out and warm temperatures. The grower may provide care and handling instructions with your order, if requested. Planting is recommended to take place between 1 November and 15 March.
- ✓ Tree shelters may be used to protect tender trees and shrubs from deer, rabbits, and other species.
- ✓ Site conditions such as soil, drainage, and exposure to sunlight will determine which plants are best suited to grow on your site. Consult the local office of the North Carolina Division of Forest Resources for expert assistance on tree selection and establishment.

Shrubs	Spacing	Examples of Wildlife Benefited	Cultural Notes
Blueberry	4 – 6'	Black bear, raccoon, bluebird	Adaptable to most soils with adequate drainage. Best in full sun.
Chinquapin	8 – 10'	Wild turkey, gray squirrel, chipmunk	Small tree, like chestnut. Good for dry sites, full sun.
Crabapple	10 – 12'	White-tailed deer, gray fox, mockingbird	Small tree. Needs good drainage, full sun.
Elderberry	10 – 12'	Bobwhite quail, white-tailed deer, cardinal	Small tree or shrub. Likes moisture and full sun, but tolerant of shade.
Hawthorn	10 – 15'	Wood duck, wild turkey, sparrows	Small thorny tree or shrub with crabapple-like fruit. Plant in full sun.
Hazelnut	8 – 10'	Gray squirrel, white-tailed deer, chipmunk	Large thicket forming shrub with edible nuts. Good riparian plant.
Holly (American, Inkberry, Winterberry, Yaupon, etc.- all have worth)	8 – 10'	Wild turkey, bluebird, robin	Adaptable. Evergreen and deciduous varieties. Excellent riparian plants. Shade tolerant.
Plum, Chickasaw	2 – 4'	Bobwhite quail, gray fox, blue jay	Thicket forming shrub. Good for dry sites with full sun.
Silky Dogwood	8 – 10'	Wood duck, cottontail rabbit, brown thrasher	Tolerates wetness. Good riparian plant.

Shrub Lespedeza (plants)	2 – 4'	Bobwhite quail, white-tailed deer, juncos	VA-70 or Bicolor. Needs good drainage & periodic mowing.
Sumac	4 – 6'	Cottontail rabbit, wild turkey, bobwhite quail	Prefers well-drained sites, full sun.
Viburnum	4 – 6'	White-tailed deer, wild turkey, cedar waxwing	Very attractive. Prefers moist shady side of riparian buffer.
Wax Myrtle	8 – 10'	Wild turkey, bobwhite quail, towhee	Evergreen. Adaptable to wide ranges of moisture and light conditions.

- > Shrub zones added to forested or grassy buffers help balance the seasonal availability of wildlife foods. Some shrubs produce ripe food in summer and fall. Others provide winter food resources providing edible fruit, seeds, buds, twigs, and bark.
- > Evergreen shrub zones provide valuable winter cover. Thicket forming and thorny shrubs provide safe refuges for nesting and perching.
- > Patches of different shrubs increase the diversity of wildlife food and cover resources. Any of the listed shrub species could be combined in a buffer planting.
- > During early establishment, shrub plantings must be protected from shading from overstory trees, fire, disking, accidental mowing, herbicides, and browsing wildlife.



Cross-section of a three-zone riparian forest buffer.

Zones 1 and 2 should follow NRCS, North Carolina Practice Standard 391 with species selected that will benefit wildlife (see attached species list). Zone 3 is simply a field border or filter strip designed for maximum wildlife benefits. An example of a good species mix would include loblolly pine, wax myrtle, green ash, persimmon, and flowering dogwood. Eventually, the ash and pine will form a closed canopy over the stream, while the smaller trees and shrubs add a diversity of food sources and places to nest.

Additional information is available from your local NRCS office, North Carolina Cooperative Extension Service, North Carolina Wildlife Resources Commission, and various conservation organizations.

This project was a cooperative effort of personnel from the USDA North Carolina Natural Resources Conservation Service, NRCS Watershed Science Institute, the North Carolina Wildlife Resources Commission, and the North Carolina State University Cooperative Extension Service. We gratefully acknowledge Dr. Virgil Kopf, Virginia Department of Game and Inland Fisheries, for facilitating the discussions that took place and eventually resulted in the production of this document.

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NATURAL RESOURCES CONSERVATION SERVICE
CONSERVATION PRACTICE STANDARD
RIPARIAN FOREST BUFFER

(Acre)
CODE 391

DEFINITION

An area of predominantly trees and/or shrubs located adjacent to and up-gradient from watercourses or water bodies.

PURPOSES

- Reduce excess amounts of sediment, organic material, nutrients and pesticides in surface runoff and reduce excess nutrients and other chemicals in shallow ground water flow.
- Create shade to lower water temperatures to improve habitat for aquatic organisms.
- Provide a source of detritus and large woody debris for aquatic organisms and habitat for wildlife.
- Provide protection against scour erosion within the floodplain.
- Restore natural riparian plant communities.
- Moderate winter temperatures to reduce freezing of aquatic over-wintering habitats.
- To increase carbon storage.
- Provide a harvestable crop of timber, fiber, forage, fruit, or other crops consistent with other intended purposes.

CONDITIONS WHERE PRACTICE APPLIES

On stable areas adjacent to permanent or intermittent streams, lakes, ponds, wetlands and areas with ground water recharge that are capable of supporting woody vegetation.

This practice does not apply on forest lands. (See Filter Strip - Code 393).

The Riparian Forest Buffer is a component of a planned land management system that includes nutrient, pesticide, runoff, sediment, and erosion control practices as needed.

CRITERIA**General Criteria Applicable to All Purposes Named Above**

The location, layout, width, length and density of woody plants in the riparian forest buffer will be designed to accomplish the intended purpose and function. See General Specifications for required plant densities for buffer plantings.

Dominant vegetation will consist of existing, naturally regenerated, or planted trees and shrubs suited to the site and the intended purpose. Locally native species will be used where available. Plantings will consist of two or more species with individual plants suited to the seasonal variation of soil moisture within the planned buffer (see Figure 1 on page 2). Plant types and species shall be selected based on their compatibility in growth rates and shade tolerance. Select species from the Plant List, Table 1, located in General Specifications, the NRCS standard for Tree/Shrub Establishment (Code 612), or trees and shrubs listed in the woodland suitability or potential native plant community sections of the soil interpretations record.

All buffers will consist of a Zone 1 that begins at the normal water line, or at the upper edge of the active streambank (if incised), or shore, and extends a minimum distance of 15 feet, measured horizontally on a line perpendicular to the watercourse or water body (see exception relating to maintenance travelways).

Conservation practice standards are reviewed periodically and updated if needed. To obtain the current version of this standard, contact the Natural Resources Conservation Service.

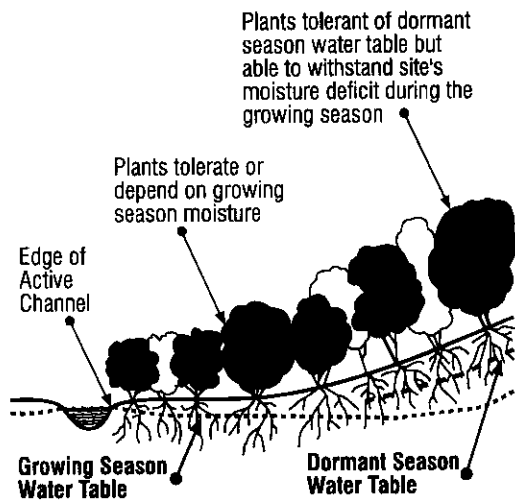


Figure 1. Plant adaptation to soil moisture.

Occasional removal of some tree and shrub products is permitted in Zone 1 provided the intended purpose is not compromised by the loss of vegetation or harvesting disturbance and provision is made to re-establish the trees or shrubs. Felling and skidding of trees shall be directed away from the watercourse or water body. Skidding will be done in a manner to prevent creation of ephemeral channels perpendicular to the stream.

Logging in the buffer will comply with forest practices guidelines. Logging and other overland equipment shall be excluded from Zone 1, except for stream crossings and stabilization work. For unstable areas, streambank protection measures will be planned and conducted as needed in accordance with the standard for Streambank and Shoreline Protection (Code 580).

An adequate upstream or adjacent seed source must be present when using natural regeneration to establish a buffer.

Necessary site preparation and planting for establishing new buffers shall be done at a time and manner to insure survival and growth of selected species. Refer to General Specifications for care, handling, and planting requirements for woody planting stock.

Only viable, high quality, and adapted planting stock will be used.

The method of planting for new buffers shall include hand or machine planting techniques

and be suited to achieving proper depths and placement of planting stock roots.

Site preparation shall be sufficient for establishment and growth of selected species and be done in a manner that does not compromise the intended purpose. See General Specifications for detailed site preparation procedures.

Livestock shall be excluded to achieve and maintain the intended purpose. Stream crossings and livestock watering facilities shall be located and designed to minimize impact on buffer vegetation and shall be fenced. See standard for Fencing (Code 382).

Harmful pests present on the site will be controlled or eliminated as necessary to achieve and maintain the intended purpose.

For optimal carbon storage, select plant species that are adapted to the site to assure strong health and vigor and plant the full stocking rate for the site.

Comply with applicable federal, state and local laws and regulations during the installation, operation (including harvesting activities) and maintenance of this practice.

Initial plant-to-plant densities for trees and shrubs will depend on their potential height at 20 years of age. Heights may be estimated based on: 1) performance of the individual species (or comparable species) in nearby areas on similar sites, or 2) predetermined and documented heights using Conservation Tree/Shrub Suitability Groups, Section II of the Field Office Technical Guide. Planting density specifications are:

Plant Types/Heights:	Plant-to-Plant Spacing in Feet:
• Shrubs less than 10 feet in height	3 to 6
• Shrubs and trees from 10 to 25 feet in height (includes columnar trees)	5 to 8
• Trees greater than 25 feet in height	6 to 15

Plants may be selected from Table 1, the NRCS standard for Tree and Shrub Establishment (Code 612), or soil interpretations records list of

woody plant species (trees and shrubs) commonly associated with and suited to riparian areas. Virginia pine and Fraser Fir will not be used for riparian forest buffers.

Planting sites shall be properly prepared in accordance with the standard for Forest Site Preparation (Code 490) and the additional methods that follow. Site preparation shall be based on soil types and vegetative conditions. Avoid sites that have had recent application of pesticides harmful to woody species to be planted. If pesticides are used, apply only when needed and handle and dispose of properly and within federal, state and local regulations. Follow label directions and heed all precautions listed on the container.

Based on site conditions, procedures include:

Tillable sites with loamy/clayey soils

Sod sites - Sod may be killed by non-selective herbicides the year previous to planting stock. Plant stock in the residue. The site must be visited in mid-summer of the year prior to planting to assess the nature and extent of competing vegetation. The timing and choice of herbicides will be determined based on this site visit.

When hand planting, scalp or strip an area at least 3 feet in diameter and two-to-four inches deep. Place plants in the center of the scalped area.

Small grain or row crop sites - If the site is in a clean tilled small grain, corn, or similar crop, and it is reasonably free of weeds, plant stock in the stubble without prior preparation. If the site is weedy, herbicide treatments may be needed in the summer prior to planting.

Problem sites and/or erosive sites (including sites with undesirable brushy or herbaceous species)

On sites where it is not practical or possible to operate equipment (steepness, rockiness, etc.), the methods listed below may be used. Sites with undesirable brush will need initial treatments that physically removes and kills the brush species to facilitate planting of desired stock and prevent reencroachment of the brush. Suitable methods include hand-cutting and removal, brush hogging, brush-blading, or other equivalent procedure with repeated treatment or use of herbicides to control resprouting.

Machine or hand scalp an area at least 36 inches in diameter with subsequent plant placement in the center of the scalped area.

Kill the vegetation in a 36-inch diameter or larger area or in a 36-inch or wider strip with a non-selective herbicide the year prior to planting and plant in the center or along the centerline of the treated area.

Additional Criteria to Reduce Excess Amounts of Sediment, Organic Material, Nutrients, and Pesticides in Surface Runoff and Reduce Excess Nutrients and Other Chemicals in Shallow Groundwater Flow

An additional strip or area of land, Zone 2, will begin at the edge and up-gradient of Zone 1 and extend a minimum distance of 20 feet, measured horizontally on a line perpendicular to the watercourse or water body. The minimum combined width for any site will be 35 feet (15 ft. Zone 1 and 20 ft. Zone 2). The combined width of Zones 1 and 2 will be increased to 100 feet or 30 percent of the geomorphic (active) floodplain, whichever is less. (Note: The geomorphic active floodplain may be narrower than the valley bottom if the valley formed under different hydrologic conditions.) Figure 2 illustrates examples of Zones 1 and 2 widths for watercourses and water bodies.

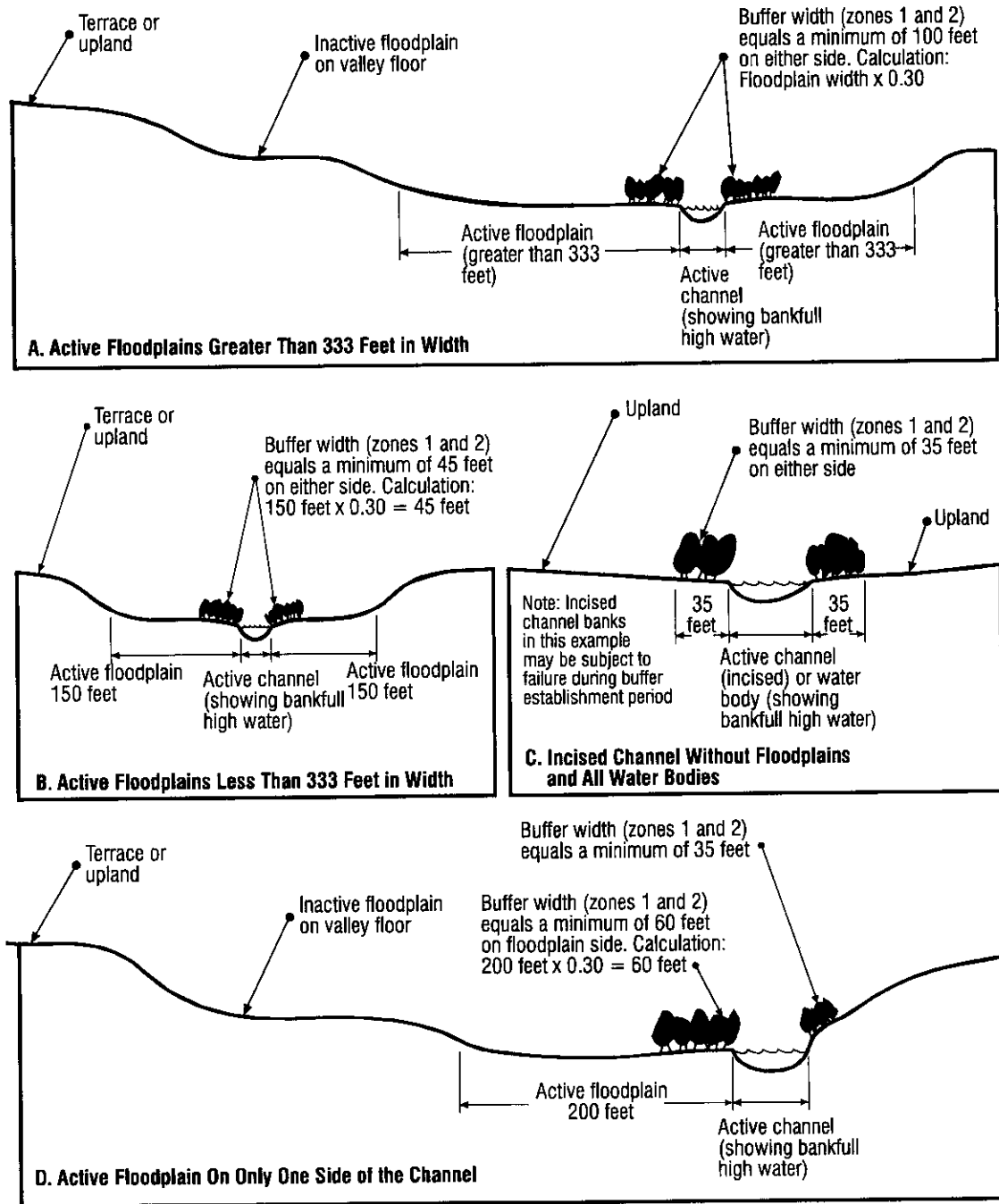


Figure 2. Examples of riparian forest buffer widths for watercourses and water bodies.

In eastern North Carolina travelways for maintenance are required to be maintained immediately adjacent to PL-566 Watershed project channels in accordance with agreements between NRCS and sponsoring drainage districts and corporations. North Carolina General Statute 156 requires sponsoring organizations to maintain drainage by mowing and removal of sediment as needed. Additionally, individual landowners require access to some drainage channels for periodic dip-out and other maintenance.

In such cases, where the primary purpose of the buffer is to reduce nutrients and improve water quality, the buffer (both Zones 1 and 2) may be established on the field side of a vegetated maintenance travelway.

The width of travelway setback for landowner-maintained channels shall be a maximum of 30 feet from the top of the channel bank. For channels maintained by drainage districts or corporations, the maximum setback shall be the width of travelway required for maintenance as designated in the Operation and Maintenance agreement or as-built engineering plans.

Maintenance travelways shall be located on the north and east side of channels, where possible, to minimize shading of the channel. Travelways will be stabilized to eliminate soil erosion.

Zone 2 width may be increased where practical up to 120 feet in high sediment or nutrient producing areas - exceeds T or very high (over 100) P indices.

Criteria for Zone 1 shall apply to Zone 2 except that removal of tree and shrub products in Zone 2 such as timber, nuts and fruit is permitted on a periodic and regular basis provided the trees and shrubs are replaced and the intended purpose is not compromised by loss of vegetation or harvesting disturbance. Old, slow-growing trees in Zone 2 will be removed to maintain a healthy stand of fast growing trees.

Concentrated flow, erosion, excessive sheet and rill erosion or mass soil movement shall be controlled in the up-gradient area immediately adjacent to Zone 2 prior to establishment of the riparian forest buffer (see Figure 3). The Filter Strip standard (Code 393) shall be used.

Riparian forest buffers will be designed to maximize sheet flow and infiltration and impede concentrated flow. Concentrated flows needing treatment must be converted to sheet flow or

subsurface flows up-gradient from Zone 2 or within the upper one-third of Zone 2 through the use of practices such as shaped field borders with closely spaced outlet pipes or level spreaders.

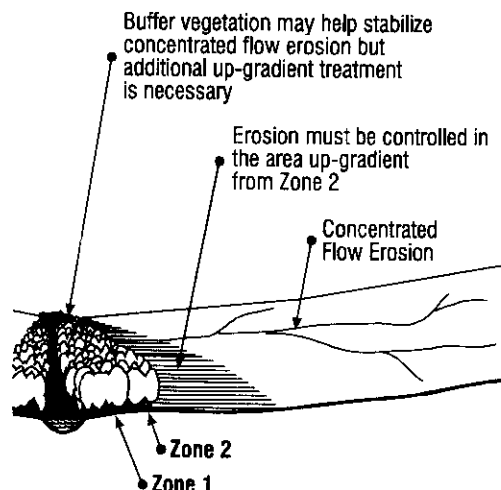


Figure 3. Control of concentrated flow erosion.

All forest harvesting operations shall be in compliance with North Carolina's Forest Practices Guidelines related to Water Quality.

Additional Criteria to Create Shade to Lower Water Temperatures to Improve Habitat for Aquatic Organisms

A buffer for lowering warm-season water temperatures shall consist of at least Zone 1.

Buffers shall be established or maintained on south and west sides of watercourses and bodies insofar as practical. The buffer vegetation shall be established to achieve at least 50 percent crown cover with average canopy heights equal to or greater than the width of the watercourse or 30 feet for water bodies. See Figure 4 on next page.

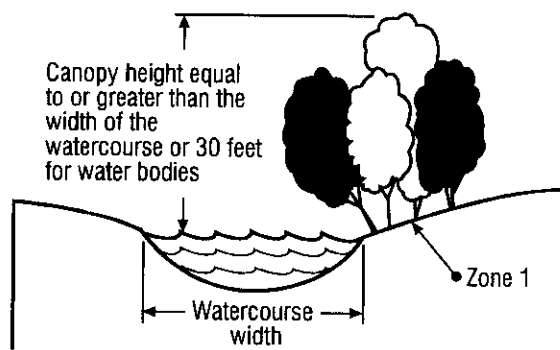


Figure 4. Canopy height for water temperature control.

Buffer species shall include those species from the listed sources with sufficient height potential. Place drooping or wide-crowned trees and shrubs nearest the watercourse or body. Shoreline or channel relief (e.g., deeply incised channels) and topographic shading will be taken into account in selecting species.

Additional Criteria to Provide a Source of Detritus and Large Woody Debris for Aquatic Organisms and Habitat for Wildlife

Within Zone 1 as a minimum, establish, favor or manage species capable of producing stems and limbs of sufficient size to provide an eventual source of large woody debris for in-stream habitat for fish and other aquatic organisms.

Width of Zone 1 and/or Zone 2 will be expanded to meet the minimum requirements of the wildlife or aquatic species and associated communities of concern. See buffer width guide in North Carolina specifications.

Plant selection and design in expanded buffer widths will address the food and habitat needs of targeted wildlife species.

Buffer widths for the selected wildlife species below include the sum of buffer widths on one or both sides of water courses or water bodies and may extend beyond riparian boundaries (in such cases refer to Tree/Shrub Establishment, Code 612, for design of upland forests). These widths are to be used as guidelines where the objective is to provide for the target species.

Species:	Desired Width (Feet):
• Bald eagle	750
• Cavity nesting ducks, heron rookery	600
• Common loon, pileated woodpecker	450
• Beaver, dabbling ducks, mink, salmonids	300
• Deer	200
• Frog, salamander	100

CONSIDERATIONS

Wide widths (75 feet or more) are preferred. They are more effective for the listed purposes and more feasible to manage. Narrower widths within this standard recognize the value of streamside land for farming and limited bottomland acreage in many piedmont and mountain locations.

The severity of bank erosion and its influence on existing or potential riparian trees and shrubs should be assessed. Watershed-level treatment or bank stability activities may be needed before establishing a riparian forest buffer.

Expected upstream urbanization that may affect streamflow during storm events should be considered when selecting vegetation.

Complex ownership patterns of riparian areas may require group planning for proper buffer design, function and management.

Where ephemeral, concentrated flow or sheet and rill erosion and sedimentation is a concern in the area up-gradient of Zone 2, adequate erosion control measures should be applied on the adjacent field. Consider the application of a vegetated filter strip consisting of grasses and forbs. Stiff-stemmed grasses established at the up-gradient edge of Zone 2 will accelerate deposition of sediment. See Figure 5 on next page. When concentrated flow or excessive sheet and rill erosion and sedimentation cannot be

controlled vegetatively, consider structural or mechanical treatments.

Where direct runoff of animal waste is likely, nutrient management must be applied on adjacent fields. Forest buffers should not be planned as a substitute for a management system on adjacent fields.

Use of this practice without other nutrient, pesticide, sediment, and erosion control practices can result in adverse impacts on buffer vegetation, and hydraulics. The expected adverse impacts could be high maintenance costs, frequent need for re-establishment of vegetation, and the delivery of excess nutrients, sediment and other potential pollutants through the buffer by concentrated flows.

Joining of existing and new buffers increase the continuity of cover and will further moderate water temperatures. A mix of species with growth forms that are tall and wide-crowned or drooping will increase moderation effects. For watercourses, buffers established on both sides will often enhance buffer effectiveness.

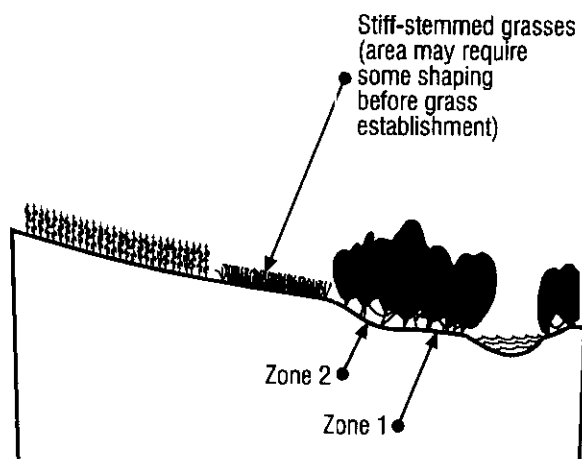


Figure 5. Sediment-trapping above zone 2.

Favor a diversity of tree and shrub species that are native non-invasive, and have multiple values such as those suited for timber, nuts, fruit, browse, nesting, aesthetics and tolerance to locally used herbicides. Consider species that re-sprout when establishing new rows nearest to watercourses or bodies. See NRCS Biology Technical Reference, Use of Native Plants by Wildlife Species (tables).

Tree and shrub species which may be alternate hosts to undesirable pests or that may be

considered noxious or undesirable should be avoided. Species diversity should be considered to avoid loss of function due to species-specific pests. Allelopathic impacts of plants should be considered.

The location, layout and density of the buffer should complement natural features. Avoid layouts and locations that would concentrate flood flows or return flows. Low, flexible-stemmed shrubs will minimize obstruction of local flood flows.

Consider the positive and negative impacts beaver, muskrat, deer, rabbits and other local species may have on the successful management of the riparian and stream system.

Consider the type of human use (rural, suburban, urban) and the aesthetic, social and safety aspects of the area to determine the vegetation selection, arrangement and management. For example, avoid shrubs that block desirable views. Pruning low tree branches near recreation trails allows for ease of use.

Species selection should consider aesthetics including seasonal foliage color, showy flowers and fruit, foliage texture, form and branching habit. The layout and design should be appropriate for the setting as determined by adjacent land uses.

PLANS AND SPECIFICATIONS

Specifications for this practice shall be prepared for each site and recorded using approved specifications sheets, job sheets, technical notes, narrative statements in the conservation plan, references to enclosed plans from other agencies, or other acceptable documentation.

Minimum documentation for this practice includes:

- Species to be planted
- Plant spacing
- Site preparation and planting methods
- Season of the year to be performed
- Soil amendments
- Competition control
- Statement requiring compliance with all federal, state, and local laws
- Operation and maintenance requirements

OPERATION AND MAINTENANCE

The following actions shall be carried out to insure that this practice functions as intended throughout its expected life. These actions include normal

repetitive activities in the application and use of the practice (operation), and repair and upkeep of the practice (maintenance):

- The riparian forest buffer will be inspected periodically, and protected from livestock damage and destructive fire.
- Buffer with trees to be established through natural regeneration should be inspected periodically until establishment of desired species and stocking is ensured.
- Remove debris and sediment from all structures as needed. Inspect after heavy storms. Walk parallel to the stream through each zone of the buffer at least annually. Check for areas where water is concentrating. Disperse concentrated flow by appropriate measures, including placement and repositioning of debris.
- Excess use of fertilizers, pesticides, or other chemicals, vehicular traffic or excessive animal traffic, and the removal or disturbance of vegetation and litter inconsistent with erosion control and buffering objectives must be avoided.
- Whenever possible, stable debris should be conserved except where fallen trees and debris create unstable streambanks.
- Material removed from the stream should be deposited a sufficient distance away from the stream so that it will not be re-deposited by high water into the stream.
- Where debris dams must be removed, useful stable portions which provide fish habitat should be retained when possible.
- Vegetation, undergrowth, forest floor, duff layer, and leaf litter shall remain undisturbed except for removal of trees that represent a hazard to streambank stability, and individual trees of high economic value in Zone 1.
- Harvesting should be planned for Zone 2 as needed to meet landowner wildlife objectives, provide for maximum nutrient uptake, and remove nutrients and pollutants sequestered in the wood of trees.
- Site preparation consistent with good forest management practices may be used within Zone 2 for regeneration purposes.
- Replacement of dead trees or shrubs and control of undesirable vegetative competition will be continued until the buffer is, or progresses to, a fully functional condition.
- As applicable, adequate erosion control shall be maintained in the up-gradient area immediately adjacent to Zone 2 to maintain buffer function.
- Any removals of tree and shrub products shall be conducted in a manner that maintains the intended purpose and in accordance with forest practices guidelines.
- For purposes of moderating water temperatures and providing detritus and large woody debris, riparian forest buffer management must maintain a minimum of 50 percent canopy cover in Zone 1.
- For providing habitat and corridors for wildlife, manage the buffer to favor food, shelter and nesting cover that would satisfy the habitat requirements of the indicator or target wildlife. See NRCS Biology Technical Reference.
- Any use of fertilizers, mechanical treatments, prescribed burning, pesticides, and other chemicals to assure buffer function shall not compromise the intended purpose.
- Additional operation and maintenance requirements shall be developed on a site-specific basis to assure performance of the practice as intended.

REFERENCES

U.S. Department of Agriculture, Forest Service, Northeastern Area State and Private Forestry, 1991. Riparian Forest Buffers -- Function and Design for Protection and Enhancement of Water Resources. NA-PR-07-91. Prepared by: Monte E. Seehorn, Atlanta, GA.

U.S. Department of Agriculture, Forest Service, Southern Region, 1992. Stream Habitat Improvement Handbook. Tech. Publ. R8-TP 16. Prepared by: David J. Welsch. Radnor, PA.

TABLE 1. PLANT LIST: Species Suitable For Planting In Riparian Forest Buffers

		Spacing (Number / Acre)	
Species: Softwoods (Conifers)	Geographic Region*	Minimum	Maximum
Atlantic White-Cedar	CP	680 (8X8)	1210 (6X6)
Bald Cypress	CP, Pied	680 (8X8)	1210 (6X6)
Loblolly Pine	CP, Pied	435 (10X10)	622 (7X10)
Longleaf Pine	CP, Pied	622 (7X10)	800 (6X9)
Pond Pine	CP	435 (10X10)	622 (7X10)
Eastern White Pine	Mtns.	300 (12X12)	622 (7X10)
		Spacing (Number / Acre)	
Species: Hardwoods	Geographic Region*	Minimum	Maximum
Yellow-Poplar	CP, Pied, Mtns	302 (12X12)	435 (10X10)
Sycamore	CP, Pied	302 (12X12)	435 (10X10)
Sweetgum	CP, Pied	302 (12X12)	435 (10X10)
Green Ash	CP, Pied	302 (12X12)	435 (10X10)
White Ash	Pied	302 (12X12)	435 (10X10)
Tupelo Gum	CP	302 (12X12)	435 (10X10)
Cherrybark Oak	CP	302 (12X12)	435 (10X10)
Swamp Chestnut Oak	CP	302 (12X12)	435 (10X10)
Willow/Water Oaks	CP, Pied	302 (12X12)	435 (10X10)
Northern Red Oak	Mtns	302 (12X12)	435 (10X10)
Overcup Oak	CP	302 (12X12)	435 (10X10)
Black Walnut	Mtns, Pied	200 (15X15)	110 (20X20)
Cottonwood	CP, Pied	302 (12X12)	435 (10X10)
Species: Shrubs	Species: Small Trees		
Shrub lespedeza	Dogwood		
Blueberry	Fawpaw		
	Serviceberry		
	Crabapple		
	Black Haw		

*CP = Coastal Plain; Pied = Piedmont; Mtns = Mountains

Hardwood species are site specific. Select species best suited to the soil, drainage, slope elevation and other site factors.

Other tree species may be acceptable if site conditions dictate and they are approved by the local N.C. Division of Forest Shrubs suitable to previously farmed wetland soils that provide food or cover to wildlife. Specific site recommendations vary according to soil and moisture characteristics.

Shrubs suitable to previously farmed wetland soils that provide food or cover to wildlife. Specific site recommendations vary according to soil and moisture characteristics.

Memo

To: Cabarrus County Planning and Zoning Board
From: Susie Zakraisek, AICP, Planning and Zoning Manager
CC: File
Date: 2/28/2007
Re: Proposed Policy for Noticing Cases

- Mr. Archie Smith has requested that a refund be issued for the rezoning case that the Planning and Zoning Board considered on November 16th of 2006. As you may recall, this particular rezoning request was for property that was zoned OI, Office Institutional (in the mass rezoning of 2005) to be rezoned to CR, Countryside Residential.
- At that meeting, Mr. Smith and his family members contended that they were not notified that the rezoning to OI was being considered or that it had already occurred.
- Mr. Archie sent a letter to the Board of Commissioners questioning the County noticing practices for mass rezonings. As a result of that letter, the Board discussed noticing requirements and is asking the Planning and Zoning Board to look at policy options regarding notice of zoning amendments.
- The Board of Commissioners would like for the Planning and Zoning Board to make a recommendation regarding noticing of rezoning cases that involve more than 49 parcels.

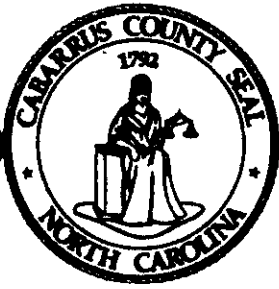
Options for Planning and Zoning Board Consideration:

Maintain the current policy.

- Rezoning requests of more than 49 parcels are noticed in accordance with the established state statutes.

Amend the current policy.

- Rezoning requests of more than 49 parcels are noticed in accordance with the established state statutes. Additionally, each parcel in the rezoning shall be noticed individually by first class mail.
- Rezoning requests of more than 49 parcels are noticed in accordance with the established state statutes. Additionally, each parcel in the rezoning shall be noticed individually by certified mail.



Planning and Zoning Commission Minutes
March 15, 2007
7:00 P.M.

Mr. Roger Haas, Chairman, called the meeting to order at 7:01 p.m. Members present, in addition to the Chair, were Mr. Todd Berg, Mr. Eugene Divine, Mr. Larry Ensley, Mr. Danny Fesperman, Mr. Larry Griffin, Mr. Ted Kluttz, Mr. Thomas Porter Jr., Mr. Ian Prince and Mr. Barry Shoemaker. Attending from the Planning and Zoning Division were Ms. Susie Zakraisek, Planning and Zoning Manager, Ms. Kassie Watts, Planner, Mr. Chris Moore, Planner, Ms. Arlena Roberts, Clerk to the Board and Mr. Richard Koch, County Attorney.

Roll Call

Approval of Minutes

Mr. Danny Fesperman, **MOTIONED, SECONDED** by Mr. Larry Ensley, to **APPROVE** the February 15, 2007 meeting minutes. The vote was unanimous.

New Business - Planning Board Function:

The Chair introduced Petition C2007-02(S) Roycroft - Preliminary Plat Approval-

Mr. Chris Moore, Planner addressed the board stating this is Petition C2007-02(S), Preliminary Plat approval for the Roycroft subdivision. This is a residential subdivision plan using the amenity option. The petitioner is the Provident Development Group out of Charlotte. The property is zoned Low Density Residential (LDR) and it is on the west side of Flowes Store Road, south of the intersection with Zion Church Road. The developer is proposing 361 lots on 262.42 acres and the site is currently vacant and wooded. Mr. Moore said included in the board packet is a site map, a copy of the preliminary plat, a copy of the developer's annexation agreement with the City of Concord, the school adequacy work sheet and several comments received from outside agencies. He said the subdivision was designed using the amenity subdivision option which allows clustering within the neighborhood. He said 40% of the subject property is preserved as open space. He said open space must include all areas within the 100 year Floodplain and the River Stream Overlay Zone. He said the developer is providing 42.87 % of the overall project as open space of which 5.42 acres is active.

Mr. Moore said the Cabarrus County School System reported that the schools that serve this area are inadequate. He said NCDOT did not require a Traffic Impact Analysis (TIA) for this project. However, they are asking that left turn lanes at both proposed entrances with a two-way turn lane be required. He said it would be a three lane section between both entrances. He said NCDOT is also asking for right turn lanes at both entrances.

Mr. Moore said in the City of Concord's annexation agreement, the developer agreed to meet the stricter of the standards for the streets and sidewalks. He said the City of Concord has determined that their street cross sections are stricter and they are asking if the Board approves the subdivision tonight, that the preliminary plat be revised to show the street cross sections that are included in the City's Unified Development Ordinance. He said the City has also requested a connection from this project across Reedy Creek that will be developed in the future as a collector road connecting Rocky River Road and Flowes Store Road.

Mr. Moore said after several months of review, staff has found that this subdivision does meet all of the requirements in the ordinance. If the Board decides to approve this subdivision staff does request that the Board apply the following conditions:

1. The developer shall enter into a consent agreement with the Cabarrus County Board of Commissioners to address school adequacy. (Schools/APFO)
2. The developer shall install left turn lanes at both proposed entrances, leaving a two-way turn lane (three lane section) between the entrances. In addition to the left turn lanes, right turn lanes at both entrances must be constructed. (NCDOT/APFO)
3. The developer agrees to pay Capital Recovery Fees that are collected on behalf of Water and Sewer Authority of Cabarrus County (WSACC). (WSACC/APFO)
4. Prior to any permit for construction being issued, the developer agrees to enter into a developer agreement with the City of Concord and obtain utility construction plan approval. (CONCORD/APFO)
5. The developer agrees to fund and install all necessary water and sewer lines to serve the property. (CONCORD/APFO)
6. Developer agrees to meet anti-monotony and architectural standards and shall submit sample elevations and drawings of proposed homes prior to the commencement of the final platting process. In addition, the applicant will work with the Planning and Zoning Services to provide an architectural inventory for permitting purposes. (PLANNING)
7. The developer agrees to build Covered Bridge Way as a split travelway at the crossing of the intermittent stream. (APFO/FIRE)
8. The project shall comply with all Phase 2 Stormwater regulations. (CONCORD/APFO)
9. The developer shall design and build all streets according to City of Concord design specifications as defined in the City of Concord UDO. (CONCORD/APFO)

10. The developer agrees to submit a revised preliminary plat for City of Concord and Cabarrus County approval to reflect the following changes:

- a. Side walks will be shown along the frontage of Flowes Store Road (pursuant to Section C.4.2.9 of the City of Concord UDO).
- b. The vicinity map will be revised to show the City of Concord's municipal limits.
- c. The Cabarrus County typical street cross sections will be replaced with City of Concord typical street cross sections.
- d. Sidewalks shall be shown and constructed on both sides of all streets, including cul-de-sacs.

Mr. Ensley asked if the school figures were based on the new information given out at the meeting at the Cabarrus Arena.

Ms. Susie Zakraisek said the calculations would have been based on the new numbers, as far as the student generation rates, but as for the actual dollar amounts that they are required to do, to mitigate at this time, that part has not changed. She said the generation rates are based on the new rates.

The Chair opened the meeting for public comment.

Ms. Nicole Storey, with ESP Associates, 1605 Pecan Avenue, Charlotte, NC addressed the Board. She is representing the owner, Mr. Grady Cook, and the applicant, Provident Development Group. She said the process began back in the late 80's when Mr. Joe Shambo began looking at development options for this site. She said it was back in 2005 when he actually actively pursued it with the City of Concord and ended up with a lengthy annexation agreement. She said there is quite a lot of detail in it and she would be available to answer any questions in regard to that document; the summary of which was that they needed to respond to all of the City of Concord's comments, they needed to adhere to the development regulations that were more stringent between the county and the city. She said it has taken them an awful long time to get to the Board and they are happy to be here.

Ms. Storey said, at this point they have set aside all comments that have been provided by all appropriate review agencies, the applicants have agreed to all conditions that have been provided. She said this is an amenity subdivision and they are exceeding the open space requirements. She said they have provided two lot programs within this development, 65 X 154 foot deep product as well as 80 X 154 foot lots. She believes they are the second project to go through the new ordinance with the amenity option and have learned a lot about the new ordinance and appreciates the County's staff patience in working with them as they defined what those regulations meant.

Mr. Tom Waters, with Provident Development Group, Charlotte, NC addressed the Board. He is looking forward to the opportunity of participating in this land, it is a

beautiful piece of property and it would be a great residential opportunity. He said it backs up to Rocky River and the creek and has a beautiful green space. He would be happy to answer any questions in terms of plans or intentions.

Mr. Randol Tilghman, with Provident Development Group, Charlotte Development Group addressed the Board. He echoes the sentiments that Tom Waters talked about. He said we are excited about the project and look forward to working on it.

Mr. David Johnson, ESP Associates, addressed the Board. He is responsible for the preparation of the Preliminary Plat; he is a registered professional engineer in the state and will answer any technical questions the Board may have about this particular project.

Mr. Porter said with the adequate public facilities, primarily the schools, and with the situation the county is in now and has been for several years, doing nothing but playing catch up; he does not see it as acting on the best behalf of the county to continue to move on with large subdivisions and the county with the inadequacies of the schools. He said even though there are several schools on the plans to be built, funding has not been identified and the taxpayers are going to have to be burdened additionally to fund schools in the future if we continue to go on with more large subdivisions after subdivision. He said we will never be caught up; it will be a continual thing.

The Chair agrees, he said it seems that Central Cabarrus especially seems to be the target and it seems that there are more subdivisions that fall into that school assignment area than any where else. He thinks that is a question before the Commissioners now that they are struggling with.

The Chair asked if there were any more questions.

There being no further discussion, Mr. Berg made a **MOTION, SECONDED** by Mr. Klutz to **Approve** Petition C2007-02(S) Roycroft – Preliminary Plat Approval, with the recommended contingency items listed by staff, Items 1 through 10, including 10 A, B, C, and D. The vote was 8 to 1 to **Approve Petition C2007-02 (S) Roycroft**, with Mr. Tommy Porter voting to Deny.

New Business - Planning Board Function:

The Chair introduced the next item on the Agenda, Exception to Peach Orchard Estates Preliminary Plat Extension Condition.

Ms. Kassie Watts, Planner, addressed the Board stating this is a request for Exception for Peach Orchard Estates Preliminary Plat Extension Condition. She said the developer of this subdivision, Mr. Mark Frye and Mr. D. A. Davis with Equal Development and Mr. Marion Sandlin with Concord Engineering and Surveying, Inc. (CESI) are here to answer any questions the Board may have.

Ms. Watts said the developer of Peach Orchard Estates petitioned the Cabarrus County Planning and Zoning Board in January 2004, for a preliminary plat approval. The developer was granted approval for 2 years, making the expiration of the preliminary plat approval January 2006.

She said in June 2005, Cabarrus County adopted revisions to the subdivision standards and adopted a new zoning map that changed Peach Orchard Estates property from a zoning classification of Low Density Residential (LDR) to a zoning classification of Countryside Residential (CR). The Peach Orchard Estates Preliminary Plat approval (under the LDR zoning designation) was still valid at that time.

She said in October 2005, the developer petitioned the Planning and Zoning Board for an extension of their preliminary plat approval. This request was made in anticipation of the preliminary plat approval expiring in January 2006. She said as a result of the county wide rezoning and new subdivision standards adopted in June 2005, the developers of the Peach Orchard Estates subdivision were asked to agree to several conditions. She said these conditions were an attempt to keep this subdivision in character with the future developments under the new (current) ordinance. As part of the approval of the extension, the developer agreed to the following conditions:

1. That the developer be granted a one year extension for the development of this project setting the new expiration date of January 15, 2007.
 2. That the developer meet the following additional standards for subdivision development:
 - a. Plant street trees in accordance with Subdivision Ordinance Chapter 4, Section 11, Item 10.
 - b. Buffers comply with the planting and tree preservation requirements of Section 5-8, Item D in the Cabarrus County Zoning Ordinance.
 - c. Open Space areas comply with Section 5-8 of the Cabarrus County Zoning Ordinance.
 - d. Homes within the development meet the architectural requirements found in Section 5-7, Item E and Sections 5-8, Items E and F of the Cabarrus County Zoning Ordinance.
 3. That the extension is conditioned upon the Cabarrus County Board of Commissioners reaffirming or renegotiating the terms of the original consent agreement.
- In December 2005, the developer renegotiated the consent agreement for Peach Orchard Estates in keeping with condition #3 listed above.

- The developer submitted a final plat application in May 2006. Through the final plat review process, staff discovered that the preliminary plat, as submitted, did not meet the standards agreed upon by the developer under the October 2005, Preliminary Plat Extension Conditions of Approval. The standards staff identified as non-compliant were the Open Space areas in Section 5-8 of the Cabarrus County Zoning Ordinance.
- When the first preliminary plat request was submitted in January 2004, the Cabarrus County Zoning Ordinance did not require a River Stream Overlay Zone (RSOZ) on intermittent streams, however the preliminary plat application did require that water courses and wetlands be shown on the plat.
- On December 21, 2006 the developer requested an exception to the subdivision standards and the conditions of approval for an extension in order to record a final plat. This would extend the preliminary plat approval for another 2 years. The developer was granted approval of the exception requested by the Cabarrus County Planning and Zoning Board based on compliance with all other Sections of 5-8 of the Cabarrus County Zoning Ordinance.
- In January 2007, Cabarrus County Erosion control notified the Planning Division of the Commerce Department that an intermittent stream was located on the property and would directly impact the development of lots 37 through 41 (approximately). At that time the developer was notified in order to rectify the situation and bring the site into compliance. This directly impacts Phase 2 of the development.

Ms. Watts said she attached to the staff report the letter from Cindy Traywick, Manager of Equal Development, LLC requesting an exception to the subdivision standards established as conditions for Peach Orchards Estates; which is specifically the stream buffers outlined in Section 5-8. Ms. Watts said Ms. Traywick outlined other items in her letter. The request also includes the most recently approved preliminary plat which was approved in the December 2006 meeting. The conditions that cannot be met were outlined in her letter. Ms. Watts said, also included in the Board packet was the minutes from the December 2006 Planning and Zoning meeting. She received a memo earlier this afternoon from David Settlemyer, Chairman of the Watershed Improvement Commission and a copy was given to the Planning and Zoning Board this evening. She said the developer is here this evening if there are any questions for them and she would be happy to answer any questions for staff.

The Chair asked if there were any questions. There being no questions, the Chair open the floor for public comment.

Mr. Marion Sandlin, Concord Engineering and Surveying, Inc. (CESI) addressed the Board. He said his client wants to do what is right and is here tonight asking for exception to the lots. Mr. Sandlin said the client before this one was Hayden McMahon and the property was zoned LDR and this plat was approved under those guidelines. He said the night we came to that meeting, way back then, they had comments that night about the river stream overlay. He said in the old zoning ordinance this intermittent

stream does not happen. He said when they came that night to renew the subdivision plat the river stream overlay was mentioned. He does not think Mr. McMahan had time to review what he was agreeing to. He said it was brought to their attention in January that it was a possibility. He said during the preliminary process it was not mentioned, but when they came for the last extension they did not realize it was a problem, then they were advised in January what the problems were. He agrees after researching it, that what the river stream overlay rules calls for are the 75 feet, plus you have to go 20 feet with no build zone. He looked back at the minutes when McMahan had the property and the only problem is there is a 25 foot no build line on the other side of this 75 foot line so you are talking about 95 feet from the edge of the stream. He said they did not know there was a problem until this occurred and that is why his client is asking for an exception, it has to do with four or five lots. They are willing to do anything they can to keep the erosion from going on the other peoples property.

Mr. Sandlin said when the erosion control failed back on August 22, 2006, they went in and redesigned the basin and it is an oversize basin. He said his client wants to do what is right, but they will lose four or five lots that they have committed to sell and that is why they are asking for the exception. He said grading plans were approved on October 24, 2006, they drew the plat and this issue was not brought up then, if this issue had been brought then they could have already addressed this issue. He said they had an approved grading plan on these four or five lots already that did not issue this River Stream Overlay.

Mr. Sandlin said it is his clients' contingent that they have met the additional standards for the subdivision development that was required by the Board at the December 2006 meeting and that they are in compliance.

Mr. Berg asked if the approved grading plan that Mr. Sandlin mentioned showed the intermittent stream.

Mr. Sandlin said it has the stream; it has the flood unprotected spill, and the unprotected stream.

Mr. D. A. Davis addressed the Board stating they are under construction with this project, and are substantially complete with it. They are in the process of closing the lots with the builder; they recorded Phase 4 in November or December and cannot transfer the lots due to this intermittent stream situation. He said they did not realize this situation existed until January. He said they will do what ever they need to do, they built the project and it has been on going for 14 to 15 months. He said if they did not have a grading plan that was approved, permitted and ready to go, they would not have built it like that to start with, but we are where we are. He said they are not here to do things that are not in compliance with everything that they know about, they are trying to follow the rules and trying to do what is right, trying to build it per an approved subdivision plan and they are here to say that they are in the position to do that. He said this is an upscale community and the builder wants to have a good community and wants to be a good neighbor. The

prices out there will be between \$250,000 and \$400,000 plus, and will be a nice looking beautiful community when it is completed.

Mr. Mark Frye, with Equal Development, addressed the Board. He said basically they have tried to work through everything; they have worked with staff directly, sat down with them and asked for their comments and have asked them what they need to do and have followed those things to a "T". He said they think everything is okay and comply with everything then something else comes up. He said when they came in for the exception last time; they agreed to trails, modified the plans so they had excessive open space in addition to what the requirements are and they have tried their best to make sure they build a quality subdivision. He said when they were doing all of this stuff, they were working with staff and they had grading plans for those particular lots on that side. He said they had already submitted the trail designs and things like that to Kassie, they are following through with what they said they would do at the last meeting, which was to have hard surface trails that connect with the open space and they have done that. He said instead of coming in and mass grading the site, they did a selective clearing program on this; they went in lot by lot. He said they left as many trees as they could in buffers, they did not come in and knock every thing down.

Mr. Frye said when there was an issue with the basin on the side where the pump station is located, they did not only dig the basin back out, they redesigned the entire area, oversized the basin so that none of the sediment would come off the site. He said they have gone through the trouble to try to do things right. He said when this stuff came up it caught us all off guard, they had worked through everything with staff, they were given approval and everything looked good, no problems. He said it would not make sense for them to agree to something and then not follow through with what their agreement was. He said if they had agreed to and thought they were in compliance with Section 5-8 Open Space, they really thought they were in compliance with Section 5-8 Open Space. He said if you read through what the requirements were on that first night, it states that they were to comply with Section 5-8 and then a subsection for tree planting. Then it says they were to comply with a 5-8 in a subsection of architectural standards. He said now it is coming back saying they have to comply with all of 5-8, but it does not seem like it makes sense that you would just from the beginning say comply with 5-8. He said why would you go and identify these individual subsections of 5-8 if they had to comply with all of them. He thinks somewhere the interpretation was lost of what the board was asking them to do and as time has gone on, they are looking at complying with additional things; this subdivision was always kind of in a gray area to begin with. He said they do not have the lot square footages, they never did and he does not think it was ever intended too. He said they have been working in this gray area all along and have tried to follow what was given to them by the board and try to do the right thing. He said we are all here tonight because of an interpretation or a change in interpretation.

Mr. Fesperman said crossing water is dangerous these days for developers; anything with sediment becomes a problem. He asked if anyone from the engineering group or any of you with experience think that this was a problem, had it not been identified to you nor did anybody say this looks like a wetland area.

Mr. Frye said it was identified as an intermittent stream; you could look at the FEMA map and see that it was; there is one stream. He said they did not impact any other streams in the subdivision that was the only one that was classified. He said there is another creek that touches their property on the far side but it is in the adjacent subdivision. He said at the time that the subdivision was originally designed there was not an ordinance determining that you had to have a buffer on the intermittent stream.

Mr. Frye said if we had known this in the beginning, then this would have been something they would have addressed the last time they were here. He said if someone had told them it was a requirement then they would have asked for the exception the last time for these same lots. He said they really thought they were in compliance with what the board was asking.

Mr. David Settlemeier, Chairman, Watershed Improvement Commission, addressed the Board. He said the applicant on July 27, 2006, received a letter of approval with modifications for grading. He read the modification as follows: the land disturbing activity described in this plan may be subject to the approval of other local, state and federal agencies, this could include the Division of Water Quality under storm water and water quality regulations, the U S Army Corp of Engineers under article 404 jurisdiction, county, city or town agencies under local ordinances, and other approvals that may be required; this approval cannot supersede any other permit or approval.

Mr. Settlemeier said what it basically comes down to is, the erosion control plan reviewers and inspectors look for the buffer, but the requirement of looking at the plans to see if the buffers are there does not fall under them, they are to look at erosion control measures; the buffer is a planning issue.

He said there were violations in August 2006 as well, the inspectors were Thomas Smith and Tony Johnson, and the violation description read as follows: "visible sediment in the water course behind lots 39 and 42 in Peach Orchard Road."

Mr. Settlemeier said a letter was issued on his behalf after many months of consideration and this has been an issue at the Watershed Improvement meetings for the past 2 or 3 months. He said residents from that area came out to speak to them about what the issues are. He stated some of the key issues: October 25, 2005, the Planning Commission granted the extension, the county zoning ordinance was revised January 20, 2005, he sat in on the engineering meeting for that and there were representatives of the engineer there, they did know of the change in the ordinance; it was presented to that company. He said in December 2004, there was an infrastructure plan put out for Phase 2, 3, and 4 that showed the creek being a field run protected stream. He said in January 2005, erosion control showed it as being a field run protected stream, but for February 11, 2005, the renewal plan does not show the stream at all. He said when it was brought in for renewal it was not even shown.

Mr. Settlemyer said, he is for development, but he is also on the Watershed board because he is worried about the quality of water and life that happens in this county and there are rules set in place to help protect the water we get.

He said another item that is being pushed hard right now is the North Carolina Ecosystem Enhancement Program. He said when they look at these streams, they look from top to bottom, and they want to do things like improve McKee's Creek, to get it into a good stream. He said McKee's Creek, which is where this flows to and has been listed as one of the waters not meeting the Clean Water Act of 2003 for Section 303D, the creek that this flows to is a highly vulnerable stream with problems.

He said when we have these people looking, wanting to help, give us money and to help improve what we have, and they see things going on that they know should not be going on, it makes it hard for them to make the decision in our favor. There are other places and counties where they can spend the money besides with us.

Mr. Settlemyer said when the applicant came before the Planning and Zoning Commission in 2005, the staff from the Watershed Improvement Commission and Dennis Testerman, asked for four conditions:

1. Restoration of all unstable segments of the stream
2. A protective River Overlay District buffer, not owned by individual homeowners along all perennial and intermittent water courses
3. An innovative approach to storm water management that provides water quality protection, including elimination of potential adverse impacts to neighboring septic systems.
4. More open space.

He said it is their understanding that these were approved as part of the conditions. He said it was brought before them at that point, they had time at that point before construction to change what they wanted to do and unfortunately it has not.

He said this is his stand and on be half of the Watershed Improvement Commission.

Mr. Gene Divine, resident 11070 Peach Orchard Road, Harrisburg, NC addressed the board. He feels like he is co-owner of Peach Orchard Estates because he has received enough sediment down the stream that goes through his property. He is in the first stages of working with the State to restore that stream. He said the stream has a constant flow. He does not feel that it is intermittent and he has lived out there over 61 years. He said the damage that has been done to this stream is unforgivable. He does not know how to explain that in this day and time we have to protect our water sources and it is a shame to see something done this way, it is irresponsible.

Mr. Fesperman asked who Mr. Divine held accountable for what we are dealing with tonight.

Mr. Divine said he holds the developers accountable, they have been back and forth with this board, they know what the restrictions are and they agreed to the overlay.

Mr. Randy Hord, resident, 11495 Peach Orchard Road, Harrisburg, NC addressed the board. He has adjacent property to this development and has had numerous problems. He said when problems would occur over there he would wait to see if they would be fixed and they were not, so he would call Dennis Testerman's office and they would do something for him. His family has been in this area for over 200 years and there has always been a creek there. He said it has dumped sediment on his property and is still dumping sediment on his property. He took pictures recently and the creek on the development side is still full of sediment and dammed up in places. He said it has redirected the flow of water and now it is running across places it has never run before. He said when the water comes across his property it is already reaching the banks of the creek. He has a waste treatment system that is close to the creek, it is 75 feet off the creek. He said Cabarrus County Health Alliance worked with the engineers when designing the system, they knew the creek was there and they knew they had to stay off the creek, so they designed the system to protect the creek. He said with the additional water flow and the problems this developer has caused; their concern is and the Health Department has looked at this also and said if they need to they will testify on his behalf, that it has caused problems. He said right now the system is still working fine, but what we see for the future is it could cause a problem if allowed to continue the way it is right now.

He said this is a creek and everybody knew what to do to the creek and Cabarrus County has been begging for water and trying to get transfer from the Catawba Basin; what we need to do is protect our creeks and make sure that developers area doing what they are supposed to be doing.

Mr. Fesperman asked if the county erosion control is monitoring.

Mr. Hord said the problem with the county is they are so overwhelmed because everything is getting passed and they only have two guys that can go out and police this thing. He said when you call them they have great intentions and want to try and get out to you but the squeaky wheel gets the grease, unfortunately they are understaffed.

Mr. Hord said the creek on the developer's side and on his side and all the way down the creek is still full of sediment. He said the developer's side is dammed up and they have built one nice big retention pond that he guesses is temporary. He said it seems to be working but farther up the stream they have not done anything and there is still sediment running across the property and down into the creek. He said where the sediment had run originally was never cleaned up.

Mr. Fesperman asked if the sediment holding pond that is in place is being cleaned properly.

Mr. Hord said someone from Dennis Testerman's office should comment on that issue.

Mr. Ross M. Morrison, III, Former Chairman of the Watershed Improvement Commission, addressed the board. He does not think there is any one here who has not known that we have had stream protection in place since the reservoir. He said if you are not educated on that and sitting on this board he thinks you need to get educated on it. He said on the inter basin transfer, the state is going to ask you to widen your buffers, not reduce them. He said the thing that gets him is the developer tells you that they are high end houses. He said looking at the map the creek basically comes into the middle of the lots. He said if this stuff was not in place like it has been and it has been in place for a long time, and people have been talking about this. He said at every meeting they have had at the Watershed Improvement Commission, they have talked with people from Kannapolis, Concord, from Harrisburg to Mt. Pleasant to try and make them aware of this. He does not see how you oversight something like this, if you have a competent engineering company doing this, you do not oversight it.

Mr. Morrison said he learned a new thing about variances, he did not know what a variance was; where you come before the board to change things. He noticed with this group that it was all reduced to buffers, he is not talking about buffers of the creek; he is talking about buffers against the houses, buffers against the water tank. He said in other words, what you are doing, is letting them expand their lots, the more square footage they have on the lot the bigger the house they can be build on it and the more money they can make.

Mr. Morrison said we are talking about four lots that are right on top of the creek. He said if the board has not seen this they need to go see it. He said unless you are going to stilt these houses and build them over top of this creek; he does not see how you are going to stick them in there unless you put this creek in a culvert. He said runoff problems have existed, the applicant has worked with the staff and worked with the county on that, but when you talk about wanting to get exempt; you will send the wrong precedence if you turn around and exempt somebody for something that has been on the books this long. He said you will also give cannon fodder to the people who are going to take litigation for this inter-basin transfer. He said you just do not do that, if you do not have any more respect for what water you have now, you do not need any more.

He gets a little ticked about it because his family has been here 257 years in this area we are talking about. He said it is not just a certain group of peoples' natural resources, they happen to be a lot of peoples' natural resources. He said if we do not start taking a little consideration of things, we will not have many natural resources to give away. He said you do not side step the laws that are in place, it sets the wrong precedence. He does not know how this got missed as many times as the applicant has have been in front of this board and as many times that they have had people at the Watershed Improvement Commission meeting talking about this. He suggest the Board visit the site before they make a decision, he said if you look at it and let it slide, then he knows where you are coming from. He said a lot of people are watching this and it is a very important decision that is going to be made. He said the ball was not dropped by the County or Dennis

Testerman or any body else who was advising these plans; the ball was dropped by the developer.

Mr. David Bilbro, resident, 10555 Peach Orchard Road, Harrisburg, NC, addressed the board. He said his property does not adjoin this development but they have a development next door to his property on Peach Orchard Road, and also an 88 acre development that is currently being developed by Meridian. He said it borders over 4,000 feet of this McKee Creek, there are numerous flood plain situations along this development and there is no doubt the development community is not watching this situation. He said he has copies of the minutes from October 20, 2005, Planning and Zoning Commission meeting; it was discussed that night that the intermittent stream was there. He does not think there is any question here that that is the case. He showed recent pictures of the stream. He does not know how you define intermittent, but this picture was taken yesterday and it has not rained in two weeks. He said it has a fair amount of water and silt build up in a so called intermittent stream.

Mr. Berg asked to see the minutes from the October 20, 2005 meeting. (Staff stated the October 2005 minutes were included in the December 2006 board packet).

The Chair asked Mr. Koch if included in the 2005 consideration, and the conditions as they were stated by the Watershed Commission said that those conditions would be made part of the extension approval that was granted in October 2005, when they came back for the next approval in 2006, even if they were not stated within that extension as a condition for approval, would those conditions still apply since they were in the original request?

Mr. Koch said yes they would.

The Chair said if they have not met those conditions, even though they were not stated in the latest.

Mr. Koch said, he would have to look back at the minutes, but he thinks they were stated in the December 2006 minutes. He said regardless, unless you specifically said that they were not, they would have been part of the agreement of the developer at that time upon which the original extension was based.

The Chair asked if there were any other questions.

Mr. Porter said as a past member of the Watershed Improvement Commission, the atmosphere has been for many years for water quality in the state and throughout the country. He said there are numerous avenues to get information as far as what would be an intermittent stream, what would be wetlands and so forth. He said for a good many years, if you were intending on any type of development, even if you are an individual homeowner, if it is a low place and water runs through it when it rains you better get some clarification. He wants to reiterate that with the extensions and exceptions coming

before the board several times, it concerns him that things have been overlooked that should not have previously been overlooked.

The Chair said in reviewing the December 2006 minutes those four conditions are listed in there as being conditions for the approval for the extension of the approval.

Mr. Prince said he was the lone vote the last time this group was before us asking for an exception; he does not believe it is the position of this board that we should be absolving all of the errors and omissions of all the developers and engineers in this county.

There being no further discussion, Mr. Prince made a **MOTION** to **DENY** the Request for the Exception to Peach Orchard Estates Preliminary Plat Extension Condition. He finds that it is detrimental to the adjoining properties and it is not reasonable nor in the public interest, the vote was **SECONDED** by Mr. Ensley. The vote was unanimous.

Mr. Rich Koch, Attorney, agreed to prepare findings to support the decision. (See attached Findings)

**EXCEPTION TO PEACH ORCHARD ESTATES PRELIMINARY PLAT
EXTENSION CONDITION REQUEST**

FINDINGS OF FACT

1. In October, 2005, the developer of Peach Orchard Estates petitioned the Cabarrus County Planning and Zoning Commission ("Commission") for an extension of its preliminary plat approval.

2. On October 20, 2005, after much discussion, the Commission approved the extension upon adherence by the developer to certain conditions. One of the conditions was compliance with Section 5-8 of the Cabarrus County Zoning Ordinance.

3. At the October, 2005 Commission meeting, there was discussion during the extension application hearing concerning the intermittent stream that exists in the development in the middle of Lots 38 through 41. The developer was present, as was its engineer. There is no question that the developer was on notice at that time that this intermittent stream would need to be considered in its development plans.

4. The developer submitted a final plat application in May, 2006, which application did not meet the standards agreed upon by the developer as a condition of its extension granted on October 20, 2005, in particular Section 5-8 of the Cabarrus County Zoning Ordinance.

5. On December 21, 2006, the developer requested and received an exception to the subdivision standards with reference to certain setbacks in other parts of the subdivision. At that time the developer told the Commission that if it obtained this exception, it would be in compliance with all other provisions of the Ordinance.

6. Although a river stream overlay zone (RSOZ) was not required on intermittent streams when the developer submitted its first preliminary plat request in January, 2004, the Ordinance did require that water courses and wetlands be shown on the preliminary plat. Subsequently, intermittent streams were required to be preserved as part of the Phase II stormwater regulations and the open space requirements.

7. The evidence indicated that this intermittent stream may even be a perennial stream as persons living in the neighborhood have seen the stream contain water year round.

8. The developer has allowed sedimentation from its land disturbing activities to enter this stream and move downstream to the land of adjacent property owners. The developer has had prior erosion control issues on this property for which it has paid a fine to the County.

9. There appears to be no basis in fact or law to grant this exception to the developer. Although there is a hardship to the developer in that it may lose the ability to sell Lots 38 – 41, it created the situation in which it finds itself by failing to properly consider and design its project mindful of the intermittent stream that exists on its property.

Directors Report

Ms. Zakraisek, Planning and Zoning Manager addressed the board. She stated that in November 2006, the Smith case came to us and after that case was decided the Smith family decided they were going to ask the Planning and Zoning Board for a refund. She said the only entity that could issue a refund currently is the Board of Commissioners. She said the Smith family contacted the Board of Commissioners and that item went forward. It was brought up at a Board of Commissioners' meeting; the board deferred it and put it on a work agenda, they came back to the meeting after the work agenda and now it is on your plate. She said the Board of Commissioners decided that they would like for the Planning and Zoning Board to weigh in on a refund policy. She said the Planning and Zoning Board was given a copy of the Smith letter sent to the Board of Commissioners and also a copy of a memo that Jonathan Marshall sent to the Board of Commissioners, as well as a memo from her with the following potential considerations:

1. Maintain the current policy; let it be decided on a case by case basis by the Board of Commissioners.
2. Request that it be handled on a case by case basis with the Planning and Zoning Board making a recommendation to the Board of Commissioners with the Board of Commissioners making the final decision on the request.
3. Request that it be handled on a case by case basis with the Planning and Zoning Board being the Board that entertains the request and make the decision.
4. No refunds issued because by the time the case is decided there has been considerable expense, not only in advertising, posting signs, sending letters, but also in the actual processing of that request. Especially if it is a conditional use district or conditional use rezoning, those are very entailed reviews.

Ms. Zakraisek said essentially we just need to talk about it. She said the Board of Commissioners wanted it to come back to the Planning and Zoning Board, since you are the ones who consider the cases; to get a feel for what you think about it, do you think we should give refunds, do we not. She said that is part one of the discussion that we are charged with having.

Mr. Griffin said in Jonathan's letter he uses the words "direct notice of all affected property owners would be the best alternative," he takes it he means by that somebody who owns property that has been rezoned in the mass rezoning.

Ms. Zakraisek said no, that would be the second part that we talk about.

Mr. Griffin asked who all affected property owners are.

Ms. Zakraisek said Jonathan's memo addresses two different items, and we have split those items out, one is whether or not to issue a refund and the other is about additional noticing requirements.

Mr. Haas asked if there is any policy in place right now if there is a withdrawal of a petition prior to coming before the commission.

Ms. Zakraisek said she is very limited as to what she can issue refunds for; she can issue refunds if someone applies for a permit and they actually did not need the permit. She said it still has to go through a process. She said this would be specifically related to cases, if someone comes in on one day and the next day they decide to withdraw their case, we possibly could issue them a refund. She said if at any point staff has started to process the case or if we have advertised for the case then we cannot issue a refund. She said it would have to be a situation where the check came in and we still had the check in hand.

Mr. Porter said he was the one who brought up the fact that he did not think it was fair that the Smith's had to pay money to down zone back to Countryside Residential (CR), and according to his understanding, they were not individually notified, it was a countywide rezoning advertised in the paper. He asked if he was correct that letters were not sent to each individual property owner in that countywide rezoning.

Ms. Zakraisek said letters were not sent to the individual property owners because it was not a requirement of the state statutes. She said it was advertised and there were several workshops based on the fact that were we looking at the new maps and looking at new text; letters were sent out to anyone who was out of the general circulation of the newspaper.

Mr. Berg recalls that a couple of those property owners lived in Cary or Raleigh and their claim was that they were not notified or received a letter. He said the issue that he has with all of this is that anyone can come in and say they did not get a letter or did not read the paper; it is very difficult for us to prove they did or for them to prove that they did not. He feels as long as we followed the state statutes then he would be opposed to any refunds.

Mr. Porter feels a little bit different in the fact that there are certain instances, and he believes this is one, where the applicant was asking for a down zoning, not increasing, where they could multiply their profits, some one looking to sell. He feels there are certain instances where people were caught in things that they did not realize their property was being rezoned in this matter or they would have come forward at the proper time. He feels it should be considered on a case by case basis whether or not it is a recommendation from this board to the commissioners or this board makes the final decision, but he thinks it should be on a case by case basis.

Ms. Zakraisek said if that is the route that we go then some type of criteria needs to be established for when you can ask for a refund.

Mr. Fesperman said we are the board who will here the cases and he thinks the Planning and Zoning Board should be the ruling body on the refunds.

Ms. Zakraisek said once the application starts being processed, the wheels are turning. She said we have to advertise a case to meet the statute of 10 and 25 days, we normally try to advertise somewhere between 18 and 20 days, then we are two weeks into the case and already have it advertised. She said advertising is costly and we have already had to shift some of our money around in our budget to cover advertising for this year, we went over budget and we now have to take from wherever we can scrape it from to pay for the cost of advertising because we have been so active this year.

Mr. Berg asked Mr. Koch if someone could prove that a mistake was made somewhere in the process, would they have some other recourse?

Mr. Koch does not know if there is anything in the statutes about that specifically, but he would say the answer to it generally would be yes. He said if it can be shown that we did not comply with the statute in providing them with what ever notice the statute requires, depending on the rezoning, then he thinks they would have recourse and they probably would be given recourse by the this board or the Commissioners, which ever, because if it was a violation of the way in which they were notified and they claim they did not get notice then it would be difficult for us to maintain that they did in fact get notice. He said these situations of course are more difficult because these folks did receive notice in accordance with the statute. He said there was compliance with the statute, whether you consider it to be a sufficient type of notice then that is another issue to consider. He said they were notified constructively at least if not actually, in accordance with what the statute then provided. He said to specifically answer the question he would say yes, but there is not anything specifically in the statute. He thinks that they would have a compelling argument from a evidentiary point of view that if we did not comply with the statute and then technically they did not receive notice. He said this matter of constructive notice really works both ways, if you comply then it is deemed that the person did get notice, whether they actually did or not. He said on the other hand if you did not comply then constructively they did not get notice whether they actually did or not, so it cuts both ways.

Ms. Zakraisek said if we comply with the noticing statues, and if the post office fails to deliver, we still have noticed.

Mr. Prince thinks the second part being discussed to night is far more important, as far as changing the way noticing is done. He thinks that by giving a refund, the door will really be opened. He thinks it is unfortunate that the Smiths got caught up in this. He said they are probably the one applicant that honestly and truly deserved some relief, but unfortunately he thinks to change the whole system for that one exception is too much.

Mr. Haas said he searched the internet trying to find one city or county that gives refunds and he could not find one anywhere in the United States. He found some that would give a fifty percent refund if the petition was withdrawn before it actively went to a certain distance. He could not find any one who issued a refund for any purpose once it is filed and the work begins. He would be inclined to oppose that we would have a policy for issuing any refund.

Mr. Koch said it is a slippery slope, you would get into a evidentiary hearing each time on each one and you are not really equipped to do that in that context. He said the evidence all comes from the one side, the person asking for the refund and there is no investigation that is done.

Mr. Griffin said we complied with the state law, so we had constructive notification.

The Chair asked the board if they wanted to make a decision tonight or table the decision.

Mr. Berg said he is ready to make a decision tonight.

Mr. Berg **MOTIONED, SECONDED** by Mr. Shoemaker to recommend a policy that no refund request be issued as long as the notice requirements comply with the state statutes. The vote was unanimous.

Ms. Zakraisek said you are recommending that the policy be that no refund request will be issued or entertained as long as the county met its obligation of noticing; as long as staff did what they are suppose to do.

Mr. Koch thinks the applicant still has the right to apply for it, what you are doing is setting a policy that they would not get it so long as any inquiry into it showed that the notice requirements had been complied with and any other applicable requirements.

Ms. Zakraisek said as a second part of that, if someone would be able to ask for a refund, does the board want it to come to them and they make a recommendation or do they want it to stay in the current policy that if someone wants to entertain the refund it goes to the Board of Commissioners.

Mr. Koch said the applicant is allowed to ask for a refund, he does not know if we have the right to cut off that request. He said a part of the policy could be that it is entertained by this board.

Mr. Griffin said if that policy were in place and the County had an evidentiary hearing, it would be pretty simple, did the county meet its obligation and if it did the answer would be no refund.

Mr. Haas asked if we had a policy in place now that says there is no refund.

Ms. Zakraisek said currently any refund is handled on a case by case basis by the Board of Commissioners.

Mr. Prince asked if it could be more specific: there will be no refunds for rezoning applications pertaining to the 2005 mass rezoning.

Mr. Koch does not recommend doing that because it would be anticipatorily denying a situation where there might in fact be a meritorious situation in which there may have been a mistake in the notice with reference to that property. He does not think there are any of those out there but there could be.

Ms. Zakraisek said we could propose that there would be no refunds issued for Planning and Zoning Board cases or Board of Adjustment cases. She said if she gets help with the language she can draft something.

Mr. Koch does not think that the board can foreclose a citizen from petitioning the commission or somebody to have this looked into. He said if the policy is in place it certainly will discourage it, but he does not think you can tell them they do not have the right to make some sort of application and ask for some one to at least look at it, even though the result may be a for gone conclusion. He thinks you can make a recommendation to the board to have that be decided at this level.

Mr. Berg thinks that is what we do, establish a policy and have it decided here and if the applicant wants to go beyond that then there is nothing we can do about that.

Ms. Zakraisek said how does this sound? The policy would be that no refund request will be issued regarding Planning and Zoning Board or Board of Adjustment cases as long as the County met its obligation for noticing. She said the second part would be: In the event noticing is challenged the Planning and Zoning Board would hear that request.

Mr. Berg said it sounds fine in concept. He said if the county has met its obligation for noticing do we need to reference the state statutes there?

Mr. Koch said we can but he thinks there may be some effort afoot to impose an additional requirement on the county with reference to some of these rezonings; if that does occur, then he thinks we would have to reference that. He said it has not yet but he thinks that was part of the discussion at the Commissioners meeting, that they may want the county to go above and beyond what the statute requires. He said they have not made a decision on that, but he knows they had a discussion with Jonathan about it.

Ms. Zakraisek said that is what they are going to talk about on the second part. She said the first part is do you want to entertain refunds, what she is hearing is no, as long as we are meeting our noticing obligations. She said then it will be on the applicant to show that the obligation had not been met at the Planning and Zoning Board level. She will draft something and coordinate with Mr. Koch and then take it to the Board of Commissioners.

Mr. Porter said he wants to make sure he understands. He said for example in the Smith situation where Mr. Smith is local and the sisters lived in the Raleigh area, the county would have sent them a letter and Mr. Smith would have been notified by what ever the statutes called for; general circulation, the newspaper or whatever.

Ms. Zakraisek said yes. She said in the case of multiple owners, what we use and what the statute calls for us to use is the current tax information. She said even if they all owned that property, but only one person was listed then the information would be sent to where the tax bill is sent.

Ms. Zakraisek said the second item is about noticing. She said in the letter from the Smith family they said they were not noticed correctly, they did not receive the letters. She said as part of that discussion the Board of Commissioners said what do we do, do we stay with meeting the minimum statues which is what the law says we have to do or do we go above and beyond in some kind of way?

Ms. Zakraisek said these are some considerations:

Maintain the current policy:

Rezoning requests of more than 49 parcels are noticed in accordance with the established state statues which require 1/2 paper ad in the newspaper and has to run four weeks in a row, sending out letters to anyone that is not in the general circulation of that newspaper and we also post here in the building directing them to our office and reposting in the office.

To amend the current policy:

Rezoning requests of more than 49 parcels are noticed in accordance with the established state statues. Additionally, each parcel in the rezoning shall be noticed individually by first class mail.

Rezoning requests of more than 49 parcels are noticed in accordance with the established state statues. Additionally, each parcel in the rezoning shall be noticed individually by certified mail.

She said right now we are only talking about the 49 or greater, if the board thinks there is something additionally that needs to be done for just a general rezoning we can entertain that as well. She said for a general rezoning, the notification is done by first class mail to anybody that is adjacent to the site or across the street from the site. She said it is also advertised in the newspaper and on those, the state statue changed effective January 1, 2007, and now a sign has to be posted, it use to be optional. She said right now for any rezoning case, we put the ad in the newspaper, send letters to the adjacent property owners and anyone across the street and post the property with a sign with the meeting information on it and a number to call for additional information.

Mr. Griffin asked how many people who have had their property mass rezoned have applied to be rezoned again.

Ms. Zakraisek said there have been two so far, Mr. Looper and the Smith case. She said we were approached by some folks in Harrisburg whose property is located across the street from where the Brookdale Shopping Center is located. She said that property was put into the OI zoning designation as well, but they never pursued it.

Mr. Berg asked how many parcels were rezoned as part of the 2005 rezoning.

Mr. Griffin said thousands and thousands, almost every piece of property that was MDR was rezoned, almost 2/3 of LDR was rezoned to Country Residential, essentially everything outside of the city limits except AO and what existed in Country Residential was rezoned.

Mr. Berg guesses the point Mr. Griffin was trying to make is that out of all of those thousands of rezonings, there has only been two requests.

Ms. Zakraisek said in most cases if it is residential to residential we will not hear about it until they actually come in to make some type of an improvement on the property, then it is realized that maybe the setbacks have changed and now they can not meet the setbacks.

Mr. Griffin said there was a case where the applicant came in and asked for some relief on the setbacks.

Ms. Zakraisek said the County Ordinance is very liberal and allows some of those commercial type uses in the residential districts, so if there was a property owner out there holding on to a parcel in anticipation that it could be developed as a certain type of commercial, we may see some of that maybe five years down the road. She said we have not been approached by for now.

Mr. Griffin said we have gotten very very little traffic on this whole mass rezoning.

Ms. Zakraisek said the only ones that keep coming up is the Residential to the OI, because they are seeing such a difference in their tax bills.

Mr. Fesperman said when Looper came back the second time they were taking it out of OI back to Residential and they claimed the whole time that they were not notified.

Ms. Zakraisek said if you remember correctly, Mr. Looper said that he knew about it but he did not realize the extent of it, the engineer was aware of it, he (Mr. Looper) had been selling the property, he was aware that it had changed. She said Kannapolis, which is all around him, is the only ordinance that allows a house in that lot.

Mr. Berg said both of the cases that came before us would have been avoided if the county's ordinance allowed houses in something other than residential.

Ms. Zakraisek said she had a discussion with the Smith's about potentially pursuing a text amendment, they decided they did not want to pursue a text amendment. She said the county does not have much commercial or industrial property. She said the board may have seen in the newspaper the project that Concord did on Highway 49 and Stowe Road, it was industrial property, probably the largest chunk that the county had left and it was annexed into Concord and it is now commercial. She said the County's stance has

been to try and protect the commercial and the industrial districts. She said to put houses in an OI district, it might as well be residential instead of OI because you are just encroaching into it anyway, so that would interpret it as lighter type use and that district was created and intentionally written that way.

Mr. Berg said he agreed with Mr. Griffin, that we do not have a big problem and he does not know why anything different should be done for the noticing.

Mr. Griffin said we comply and put these little ads in the newspaper telling people they can come to meetings and this is going to be a mass rezoning that might affect their property and those kinds of things. He thinks that if were going to do anything, he would look into using the tools that we have more effectively with out increasing the cost very much. He said the size of the ads, what the ads say, put something in the ad that would catch people's attention. He said get some advertising folks to give us a hand to design the ads, maybe it would be more effective than what we have used before. He said the ads he has seen are really mundane.

Ms. Zakraisek's opinion is that it would get into a legal issue because the purpose of the newspaper ad is to give them the information.

Mr. Griffin said you can still give them the information, the first thing is to hit them over the head to get their attention.

Ms. Zakraisek does not know what the ramifications are for that, not for public notice. She said the postcards that were sent out were done that way.

Mr. Griffin asked if there were limitations on what could be said in one of these ads in the newspaper.

Mr. Koch does not think there is anything in the statutes that sets out a specific form for the notice. He said there are certain requirements of the content, but you can certainly go above and beyond that and perhaps do some things in a way that would be more apt to call attention to it, that would not be a violation.

Mr. Griffin said if we were to do anything he thinks that would be reasonable to look at the effectiveness of how we advertise.

Mr. Shoemaker said the state statute says it must be half page newspaper ad and does not specify what page it has to be on. He said if you want to call attention to it you may want to place it where it would be in a prominent position rather than buried in the classified.

Mr. Griffin said if you work with the newspapers they will work with the county government on putting them where you want them if you asked the right way.

Mr. Koch thinks that is true up to a point.

Ms. Zakraisek said some of the newspapers now put everything in the legal section; we still do display type ads to try to call attention, using the seal and things like that, but all of those ads now go to one specific section because they wanted them all to be where they would be easily found.

Mr. Griffin has never read more than one ad in that legal section and decided the rest he wanted nothing to do with.

Mr. Berg thinks what we are saying is that we will maintain the current policy with the advice of looking at ways to make the ads more attention grabbing. He asked if we are maintaining the current policy do we need to take any action for noticing.

Ms. Zakraisek said for 50 or greater.

Mr. Shoemaker asked why 49 is used versus the 50 on the state.

Ms. Zakraisek said that is where that different requirement kicks in and that is where we have had the people say that they were not noticed appropriately. She said we have not had anybody come in and say that they were not noticed on a smaller rezoning, so the focus is on the 49 or greater because when you hit that 49 number and go to 50, then you have to go to the half page ad in the newspaper and you have to send individual letters out to anyone who is not in that circulation. She said on the smaller rezoning, where as anyone adjacent to or across the street, anything up to 49 you just do the direct mail to whoever is adjacent, anybody across the street, post the sign on the property and put the ad in the newspaper. She said it is when you get to that magic number 50 that things kind of change, you do not have to do a direct mail letter to every person involved, only to the people who have an address that would not be within the general circulation of that newspaper.

Mr. Berg thinks for the smaller number we do a whole lot more, he asked if there had been any problems there.

Ms. Zakraisek said no.

Mr. Berg does not think anything different needs to be done there either.

Ms. Zakraisek said the sign has the same regulations for noticing as the newspaper and sending the letter. She said it has to be no more than 25 days, no less than 10.

The Chair asked if there was any place on the county website that rezoning notifications are posted.

Ms. Zakraisek said we post the agenda and the rezoning. She said we have special legislation to be allowed to advertise via the web. She said technically we do not have to notice in the paper because we used the web.

Mr. Shoemaker said if we stay with the status quo, up to 49, you would notify individually. He asked if that is what is being done now.

Ms. Zakraisek said yes, we would notify individually and anybody adjacent. She said that is what is being done now and is what the statute requires. She said you probably will not have another mass rezoning. She said this comes into play when you have a mass rezoning or you have an extremely large development project.

Mr. Griffin believes we need to look into ways of getting peoples attention.

Mr. Shoemaker said maybe we should contact the press and say look, get your reporter out there and do a quick story on this mass rezoning that is getting ready to happen and that there will be a meeting and let them stir up all the contention they want.

Ms. Zakraisek said they did that.

Mr. Berg said there was plenty of press on it.

Mr. Griffin said there was plenty of press on it, out of all of the meetings that were held there may have been 200 that showed up.

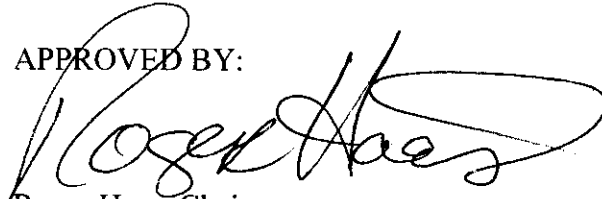
The Chair asked if a vote or consensus was needed since the policy was not being changed.

Mr. Koch said they could do it by consensus but he thinks the Board of Commissioners would like to know what your position is, so he would take a formal vote.

Mr. Berg **MOTIONED, SECONDED** by Mr. Shoemaker to maintain the current policy for Noticing for both the 49 and above and for under 49. The vote was unanimous.

There being no further discussion, Mr. Fesperman, **MOTIONED, SECONDED** by Mr. Shoemaker to **ADJOURN** the meeting. The vote was unanimous. The meeting ended at 8:50 p.m.

APPROVED BY:

A handwritten signature in black ink, appearing to read "Roger Haas", written in a cursive style.

Roger Haas, Chairman

SUBMITTED BY:

A handwritten signature in black ink, appearing to read "Arlena B. Roberts", written in a cursive style.

Arlena B. Roberts

ATTEST BY:

Susie Zakraisek
Planning and Zoning Manager