
INTEROFFICE MEMORANDUM

To: Jeff Kleaveland, Zoning Specialist
Cc: Steve Stewart, Town Manager
Roy Williford, Planning Director
Marty Roupe, Development Review Administrator
Patricia McGuire, Planning Administrator
Re: Private Access Road Located on SR 2213, Tally Ho Trail
From: Adena Messinger, Transportation Planner
Date: February 23, 2009

Members of Town staff have reviewed NCDOT's comments and the applicant's responses regarding the proposal for creating a private access road off of Tally Ho Trail into the proposed Colleton Crossing subdivision (see pages 3-5 of the attached document).

I provide the following for the Board's consideration:

- Addressing NCDOT comments #1 and #3 will likely require that the applicant acquire land, or permission, from the underlying landowners.
- The applicant has made adjustments to the design to address NCDOT comments #2, #4, and #6; staff members await NCDOT's reply to the redesign.
- The applicant has given a justification for NCDOT comment #7; staff members await NCDOT's reply and would like additional time to review this aspect of the design.
- Sungate has indicated that the applicant will need to recalculate their stormwater calculations with regard to NCDOT comment #5.
- Staff members agree with NCDOT comment #9 and acknowledge the applicants efforts to continue communication with the adjoining property owners.

With respect to the LUO, the project application without the private road is considered in compliance. As indicated above, the addition of the private road access will necessitate further staff review prior to their making a decision about the project's compliance with the LUO.

PHILIP

POST

&

ASSOCIATES

Town of Carrboro
 Planning Department
 301 West Main Street
 Carrboro, NC 27510
 Attn: Jeff Kleaveland

February 20, 2009
 #510301

Re: Colleton Crossing
 Proposed Private Access Drive from Tally-Ho Trail

Jeff:

Per your request for additional information regarding the proposed private access drive into the Colleton Crossing Subdivision, I offer the following comments and responses to your questions:

1. Can the proposed driveway be reconfigured to satisfy NCDOT's comments?

(We have addressed most of NCDOT's comments directly and those responses and revisions are attached with this letter. We still have one or two criteria that will need to be modified to completely meet the required specifications, but believe that these can also be met as the design is completed.)

2. How will stormwater quality and quantity requirements for the new impervious surface of the driveway be handled? Is this difficult or easy to address?

(The stormwater quality and quantity requirements will be easy to address in the final design. We will capture the additional runoff into the storm system and take it to the proposed water quality/quantity pond. The proposed ditch flow and piping has been added to our current sketch plan for the drive.)

3. How will the provisions of 15-213(a) be addressed, in particular 15-213(a) 3-c

(We have taken into consideration these same factors and provisions while working within the NCDOT design guidelines for driveway permits and subdivision roads. The comments from NCDOT address these same items and we will work to meet all these provisions as closely as possible. I believe the comments from NCDOT and our responses address the referenced ordinance provisions.)

ENGINEERS
 PLANNERS
 SURVEYORS

401 Providence Road
 P.O. Box 2134
 Chapel Hill, NC 27515-2134
 (919) 929-1173
 (919) 493-2600

PHILIP
POST
&
ASSOCIATES

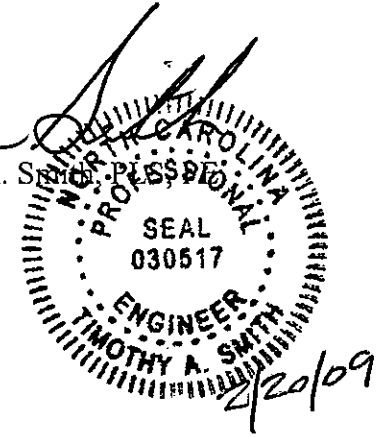
510301LT08

Please let me know if you have any additional comments at this time, or if you need any further information for your use.

Sincerely,

Timothy A. Smith

cc: Church Edwards, NCDOT
Jim Melville





STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE
 GOVERNOR

EUGENE A. CONTI, Jr.
 SECRETARY

February 18, 2009

ORANGE COUNTY

Mr. Tim Smith, PE
 Phillip Post and Associates
 P. O. Box 2134
 Chapel Hill, NC 27515-2134

Subject: Proposed Colleton Crossing Subdivision
 Private Access Road Located on SR 2213, Tallyho Trail

Dear Mr. Smith,

Per your request this office has reviewed the sketch plan for the above subject dated February 4, 2009. We provide the following comments for your consideration.
(Applicant responses indicated in bold "blue" text. – 2/20/09)

The plan depicts a proposed private access road intersecting with Tallyho Trail approximately 115' northwest of the existing intersection of Huntsman Court and Tallyho Trail. The road appears to lie within an existing private easement on existing lot 10 of the Fox Meadow subdivision. If constructed and allowed to operate without restriction, a significant percentage of the site trips from Colleton Crossing would likely utilize this access as it provides a more direct access between the development and the adjacent collector road network. While a second development access could be accommodated by the NCDOT Policy on Street and Driveway Access to North Carolina Highways driveway permit process, the access design as submitted is undesirable for the following reasons:

1. The intersection radii exceed the required edge clearance (E). NCDOT policy requires all portions of a driveway including the returns to be within the boundary lines of the property (in the case the access easement) of the current State road right of way.
(We anticipate being able to meet this requirement upon acquisition and/or permission of the area where the existing access drive is located. We could

revise the design currently to meet this specification, but to do so would shift the proposed intersection closer to that of Huntsman Court. We feel that this design is the more desirable option at this time.)

2. No intersection sight distance easement is provided. It appears that the applicant does not control sufficient frontage to provide the required 10'X70' sight distance triangle at the intersection.
(We have added the proposed site lines to the plans and indicate that adequate site distances will be provided at the proposed intersection.)
3. The return radii are insufficient. A minimum radius of 30' should be used.
(We have met the required 30'R on the south side of the intersection. Upon acquisition and/or permission to utilize the area where the current drive is located, we will be able to increase the north radius to the required 30' as well.)
4. No typical section and pavement design has been provided. NCDOT will require that paved apron meeting NCDOT standard be provided.
(The proposed access drive will be a 20' wide paved section per NCDOT subdivision road standards. A detail has been added to the plan.)
5. No drainage is provided at the intersection.
(The drainage for the intersection has been added to the plan. A cross pipe is proposed to be installed to function with the existing drainage ditch along Tally-Ho Trail.)
6. Given that this road is likely to function as a residential collector road, the centerline radius is insufficient and should be designed to meet NCDOT subdivision road standards to provide improved intersection geometry.
(The centerline radius at the intersection has been increased to fall within the range of the subdivision road standards. Given that this is at a stop condition, the proposed radius is sufficient for this location.)
7. The proposed intersection is too close to the existing intersection of Tallyho Trail and Huntsman Court. This proximity may result in operational and safety issues if the access point is allowed to operate unrestricted.
(Due to the low volume traffic from the Huntsman Ct. cul-de-sac and adequate site distance at both intersections, we do not anticipate any safety or operational issues at these intersections.)
8. No information has been provided indicating if the existing easement allows such a use. Prior to issuance of a driveway permit the applicant will need to provide sufficient verification that the easement accommodates such a use.
(A copy of a letter from the law firm Northen Blue, L.L.P. is attached. The letter affirms the proposed use of the easement.)
9. It appears that the proposed road represents significant impacts to the property owner at existing lot 10. This office encourages both the applicant and the Town of Carrboro to consider the tangible and intangible impacts to this and other adjacent property owners.
(The applicant has discussed this previously with the adjoining property owners, and will continue to do so with regard to the current proposed design.)

Please note that private roads are ineligible for State maintenance. In addition, NCDOT will not be in a position to accept any proposed public subdivision streets within the Town Limits for State maintenance. The applicant is encouraged to discuss construction requirements and maintenance of the internal streets further with the Town of Carrboro.

We will be happy to consider other access design alternatives with you. Feel free to contact me if you have any questions.

Sincerely,

C. N. Edwards Jr., PE
District Engineer

Cc: J. M. Mills, PE
Roy Williford, Town of Carrboro
Adena Messinger, Town of Carrboro

NORTHEN BLUE, L.L.P.
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
THE EXCHANGE AT MEADOWMONT
1414 RALEIGH ROAD
SUITE 435
CHAPEL HILL, NORTH CAROLINA 27517

JOHN A. NORTHEN
J. WILLIAM BLUE, JR.
DAVID M. ROOKS
CHARLES H. THIBAUT
CAROL J. HOLCOMB
VICKI L. PARROTT
EMILY C. WEATHERFORD
STEPHANIE OSBORNE-RODGERS
SAMANTHA HYATT CABE

MAILING ADDRESS:
P. O. BOX 2208
CHAPEL HILL, NC 27515-2208

TELEPHONE (919) 968-4441
TELEFAX (919) 942-6603

E-MAIL: dmr@nbfirm.com

February 18, 2009

(Digitally transmitted to brough@broughlawfirm.com)
Mr. Michael Brough
Town Attorney
Town of Carrboro
301 West Main Street
Carrboro, NC 27510

Re: Colleton Crossing Private Access Easement

Dear Mike:

You asked for our opinion on whether the private access easement recorded at Book 482, Page 439 and shown on the plats recorded at Plat Book 39, Page 154 and Plat Book 41, Page 166 could be used as a private road serving all the property owners in the proposed Colleton Crossing development. I will assume your question goes to whether the proposed use by up to 39 lot owners is within the scope of the grant of easement. I believe that it is.

The scope of a grant of easement is controlled by the terms of the instrument if the grant is precise on the point. Absent a clear expression of the scope in the grant, courts "will interpret the scope and extent of the easement so as to effect a rational purpose and to effectuate the intention of the parties." WEBSTER'S REAL ESTATE LAW IN NORTH CAROLINA, 5th Edition, § 15-22 at 736 (Hetrick and McLaughlin ed., 1998). Among the factors the courts consider are the purpose for which the grant was made, the subject matter of the grant and the situation of the parties, and the courts tend to have an "elastic view" of what purposes were in the contemplation of the parties at the time of the grant. *Id.*

It is clear from the instrument in this case that the parties to the grant anticipated the easement would be used for vehicular access so the question becomes whether the parties anticipated the potential development of the Colleton tract which would increase its use from more than one owner. The history of the Colleton tract and the surrounding tracts is pertinent on this point. The Colleton tract was a single 31.51 acre tract at the time the easement was granted. The Colleton tract and the tracts immediately to the east and north were created in a partition of the Walker family land in 1961. The partition map shows an undefined roadway running across the tract to the east to the eastern line of the Colleton tract but nothing appears to have been done

in the partition action to give the owner of the Colleton tract recorded access to a public right of way. This meant that a purchaser of the surrounding tracts that had been created in the Walker family partition action would take title to the tracts subject to the as yet unasserted claim of the owner of the Colleton tract for a way of necessity or an implied easement connecting the tract to a public road.

One assumes First Tallyhoe Corporation, which developed part of Fox Meadow subdivision, recognized this potential problem when it began acquiring tracts around the Colleton tract for its development and arranged for the grant of easement from the then owner of the tract immediately to the east of the Colleton tract in order to cut off any potential future claims for access by the owner of the Colleton tract. Given the facts that First Tallyhoe was in the business of creating lots at on surrounding property at the time it procured the easement and the width of the easement which is far more than would be required for a driveway, it is fair to say that a court would more likely than not find that the possible subsequent subdivision of the Colleton tract was in the contemplation of the parties at the time the easement was created.

Please call me if you have any questions.

Sincerely,

Northern Blue, LLP



David M. Rooks

DMR/

cc: Jeff Kleaveland
Marty Roupe
Tim Smith
Jim Melville

REVISIONS 1. 2/25/2009 REVISIONS 2. 2/25/2009
 DATE 2/24/09
 CHECKED BY JAS
 DRAWN BY JRM
 PROJECT NO. 1803207
 DRAWING NO. 1803207

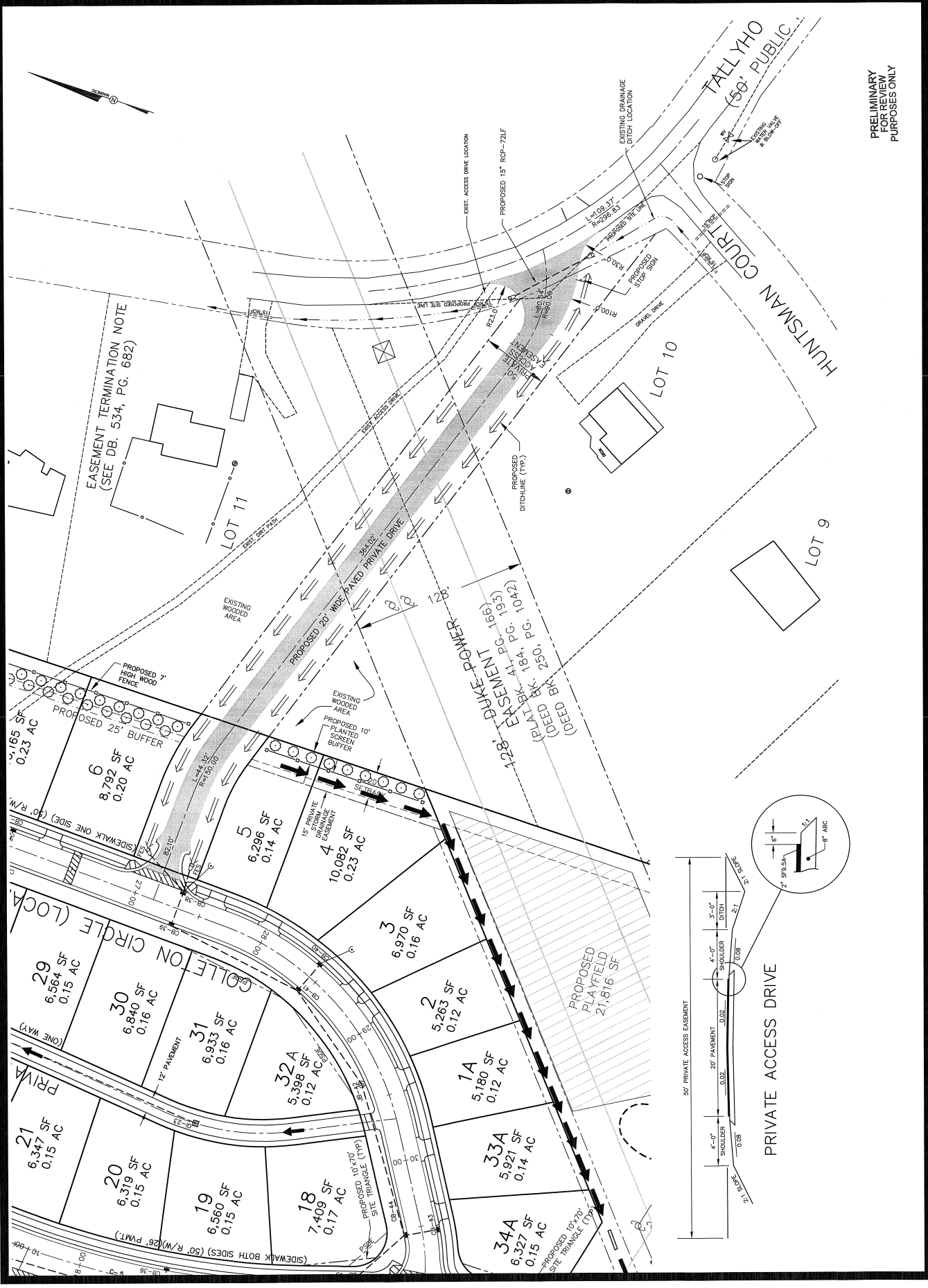
SCALE 1"=30'
 TOWN OF CARBORO
 PROPOSED PRIVATE ACCESS DRIVE
 ORANGE COUNTY, N.C.

SKETCH PLAN
COLLETON CROSSING
PROPOSED PRIVATE ACCESS DRIVE

PHILIP
 POST
 &
 ASSOCIATES
 ENGINEERS
 PLANNERS
 SURVEYORS
 401 Providence Rd. # 200
 Chapel Hill, NC 27514
 (919) 286-1173
 485-2800 550-9662
 (336) 273-7711

PRELIMINARY
 FOR REVIEW
 PURPOSES ONLY

PRELIMINARY
 FOR REVIEW
 PURPOSES ONLY





STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE
GOVERNOR

EUGENE A. CONTI, Jr.
SECRETARY

February 18, 2009

ORANGE COUNTY

Mr. Tim Smith, PE
Phillip Post and Associates
P. O. Box 2134
Chapel Hill, NC 27515-2134

Subject: Proposed Colleton Crossing Subdivision
Private Access Road Located on SR 2213, Tallyho Trail

Dear Mr. Smith,

Per your request this office has reviewed the sketch plan for the above subject dated February 4, 2009. We provide the following comments for your consideration.

The plan depicts a proposed private access road intersecting with Tallyho Trail approximately 115' northwest of the existing intersection of Huntsman Court and Tallyho Trail. The road appears to lie within an existing private easement on existing lot 10 of the Fox Meadow subdivision. If constructed and allowed to operate without restriction, a significant percentage of the site trips from Colleton Crossing would likely utilize this access as it provides a more direct access between the development and the adjacent collector road network. While a second development access could be accommodated by the NCDOT Policy on Street and Driveway Access to North Carolina Highways driveway permit process, the access design as submitted is undesirable for the following reasons:

1. The intersection radii exceed the required edge clearance (E). NCDOT policy requires all portions of a driveway including the returns to be within the boundary lines of the property (in the case the access easement) of the current State road right of way.
2. No intersection sight distance easement is provided. It appears that the applicant does not control sufficient frontage to provide the required 10'X70' sight distance triangle at the intersection.

3. The return radii are insufficient. A minimum radius of 30' should be used.
4. No typical section and pavement design has been provided. NCDOT will require that paved apron meeting NCDOT standard be provided.
5. No drainage is provided at the intersection.
6. Given that this road is likely to function as a residential collector road, the centerline radius is insufficient and should be designed to meet NCDOT subdivision road standards to provide improved intersection geometry.
7. The proposed intersection is too close to the existing intersection of Tallyho Trail and Huntsman Court. This proximity may result in operational and safety issues if the access point is allowed to operate unrestricted.
8. No information has been provided indicating if the existing easement allows such a use. Prior to issuance of a driveway permit the applicant will need to provide sufficient verification that the easement accommodates such a use.
9. It appears that the proposed road represents significant impacts to the property owner at existing lot 10. This office encourages both the applicant and the Town of Carrboro to consider the tangible and intangible impacts to this and other adjacent property owners.

Please note that private roads are ineligible for State maintenance. In addition, NCDOT will not be in a position to accept any proposed public subdivision streets within the Town Limits for State maintenance. The applicant is encouraged to discuss construction requirements and maintenance of the internal streets further with the Town of Carrboro.

We will be happy to consider other access design alternatives with you. Feel free to contact me if you have any questions.

Sincerely,

C. N. Edwards Jr., PE
District Engineer

Cc: J. M. Mills, PE
Roy Williford, Town of Carrboro
Adena Messinger, Town of Carrboro

From: Martin Roupe
Sent: Wednesday, February 25, 2009 2:37 PM
To: Jeff Kleaveland
Cc: Roy M. Williford
Subject: FW: Colleton Development

Jeff,
Please add this to the messages you're compiling.

Thanks,
Marty

From: Thelma Paylor
Sent: Wednesday, February 25, 2009 2:28 PM
To: Roy M. Williford; Martin Roupe; Patricia J. McGuire; Jeff Kleaveland
Subject: FW: Colleton Development

FYI. . .

From: Steve Peck [mailto:speck18@nc.rr.com]
Sent: Wednesday, February 25, 2009 9:52 AM
To: Mark_Chilton@hotmail.com
Cc: zzDept. Mail - Planning, Zoning and Inspection
Subject: Colleton Development

Dear Mr. Mayor:

As a Fox Meadow resident I am dismayed about what I saw last night at the Board of Alderman meeting. Melville Builders has acted in bad faith. Knowing they need a second access road they were granted a delay in February to try to find an alternative. Everyone in the neighborhood assumed and I suspect that many Alderman did the same, that Melville would open discussion with the owners of the easement and the neighborhood. They do not open a dialogue with the homeowners of lot 11 and 10. Instead they go back to their law books and produce a debatable opinion on the use of an easement as an access road for their development.

Another angle that Melville has not pursued is the covenant issue. I know of no one in the neighborhood who signed or has even seen the homeowners covenant for Fox Meadow. The attorney's for Melville told a group of us in February that it was unclear if the covenant for still enforceable given the fact that present owners have never signed or seen the document. Yet in the meeting last night it was dismissed out of hand the notion that Melville could buy a lot/house and use it as a driveway. Buying lot/house number 10 (which is for sale) and compensating or buying lot/house 11 for instance, seems a great compromise. I suspect Melville does not want to

spend the money on the house and take time to challenge the covenant. Instead they appear to prefer using superior financial resources to force the owners of the easement to compromise their properties by allowing, without compensation, a private road.

This has been a 2-year+ process. The homeowners of lots 10 and 11 are senior citizens. The owners of lot 10 have been attempting to sell their property for more than a year. With the easement issue hanging over the property the chances of a sale are compromised. Now the burden of defending their property against the use of the easement as a road looms over them. This is an injustice.

Short of a compromise on the easement acceptable to the homeowners (this seems unlikely) this application should be rejected. The applicant should wait until Carolina Commons is built with a connecting road from Colleton to Claymore or Camden. A scaled back development in terms of number units is also needed, as Carrboro density goals make no sense in terms of the DOT roads existing in the annexed areas of our town. This entire exercise has been fitting a square peg in a round hole.

Please reject this application on April 24.

If possible please include this in the letters section of the application package.

Thank you for your service.

Steve Peck
Suzanne Anderson
Austin Peck
Erin Peck

8124 North Hound Court 919 967 7622

Town of Carrboro, NC Website - <http://www.townofcarrboro.org>

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

(int)

NORTHEN BLUE, L.L.P.
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
THE EXCHANGE AT MEADOWMONT
1414 RALEIGH ROAD
SUITE 435
CHAPEL HILL, NORTH CAROLINA 27517

JOHN A. NORTHEN
J. WILLIAM BLUE, JR.
DAVID M. ROOKS
CHARLES H. THIBAUT
CAROL J. HOLCOMB
VICKI L. PARROTT
EMILY C. WEATHERFORD
STEPHANIE OSBORNE-RODGERS
SAMANTHA HYATT CABE

MAILING ADDRESS:
P. O. BOX 2208
CHAPEL HILL, NC 27515-2208

TELEPHONE (919) 968-4441
TELEFAX (919) 942-6603

E-MAIL: dmr@nbfirm.com

December 23, 2008

Jeff Kleaveland
Carrboro Planning Department
301 West Main Street
Carrboro, NC 27510

Re: Colleton Crossing

Dear Jeff:

Jim Melville tells me he has been asked about the possibility of acquiring a lot in Fox Meadow subdivision on the eastern side of his property which he could use for road access to Colleton Crossing from Tallyho Trail. I do not think this would be possible without the approval of all the lot owners in Fox Meadow Run Subdivision.

The developer of Fox Meadow imposed restrictive covenants on each phase of the development by instruments recorded at Book 482, Page 435, Book 517, Page 541, Book 529, Page 335, Book 569, Page 389, Book 730, Page 547, Book 730, Page 553, and Book 760, Page 272, Orange County Registry. The covenants for each phase are identical to those of the previous phases and each them includes a provision that the property in the subdivision may not "in any way be used for other than strictly residential or agricultural purposes." The restrictions do not permit amendment by a majority or supermajority vote as one sometimes sees.

The North Carolina Supreme Court dealt with a similar fact situation in *Long et al v. Branham*, 271 NC 264, 156 S.E. 2d 235 (1967) where it held that covenants restricting a development to residential use preclude the use of a lot in the subdivision as a roadway to lots outside the development. I believe the logic the Court applied in *Long* would control in this case such that any lot owner in Fox Meadow could prevent the use of lot as a public road by suing to enforce the covenants.

This is different from the private access and utility easement the developers of Fox Meadow granted to a prior owner of a part of what is now proposed as Colleton Crossing because that easement was recorded prior to the restrictive covenants and as a result, takes precedence over the covenants.

NORTHERN BLUE, L.L.P.

I have enclosed a copy of the restrictive covenants and *Long v Branham* for your information.

Please call me if you have any questions.

Sincerely,

Northern Blue, LLP



David M. Rooks

DMR/ccn
Enclosures

Dear Mr. Mayor and Board of Aldermen,

I hereby submit the following concerns for your urgent attention on the proposed development of Colleton Crossing:

1. The proposed connection of this development to the Highlands via Claymore Rd will increase traffic 5 fold to around 1000 trips each day. Most of this traffic is expected to flow through Sterling Bridge Road on its way to Homestead Road. It will also significantly increase the traffic through Tally Ho, which is already over-burdened, even dangerous to drive at times.
2. Neither Claymore Road nor Sterling Bridge Road possess sidewalks or the capacity to handle this amount of traffic. The Highlands is a part of Carrboro and these roads are below Carrboro's standard of "connectors". These roads barely allow simultaneous traffic flow in both directions.
3. The proposed development threatens the fragile ecology of Bolin Creek by infringing on conservation areas in the Upper Bolin Creek Watershed.
4. The Highlands has more than 100 children and is a designated "walk zone" for Chapel Hill High School. The potential risk to human life due to this connector must be evaluated rigorously.
5. I live on Sterling Bridge Road and believe that the connector will pose a significant risk to the lives of my family, which includes two young children ages 1 year and 10 years.
6. Hence, I humbly suggest the following for the proposed Colleton Crossing development:
 - a) As it is a high density development it should have direct access to main thoroughfares without connections that would overwhelm existing neighbourhoods
 - b) If connectivity is required then bike paths and walking trails are safer for pedestrians and the environment
 - c) otherwise reduce housing density 5-fold to avoid an undue burden on connecting neighbourhoods, which threatens safety of humans and the environment

In light of these serious concerns I submit the following requests for information and/or supporting official documents relevant to the proposed Colleton Crossing and Carolina Commons developments:

1. The traffic density and flow analysis reports conducted on Reynard Road, Tally Ho Trail, Claymore Road and Sterling Bridge Road, describing the specific factors measured including, but not limited to, specific location, day of week, time, type of traffic and pedestrians. Specific approach used to estimate changes in traffic density due to Colleton Crossing. Also, documents/communication explaining the impact of this report on the Town of Carrboro planning process including, any assessment of risk of pedestrian injury.

2. The technical engineering reports on any required modifications to Reynard Road, Tally Ho Trail, Claymore Road and Sterling Bridge Road due to the impact of traffic from Colleton Crossing. Also, documents/communication explaining the impact of the findings in this report on the Town of Carrboro planning process.

3. A detailed map of the Colleton Crossing and Carolina Commons development sites signifying the Upper Bolin Creek Watershed, demarcating the stream buffers prescribed by the relevant section(s) of the Carrboro Land Use Ordinance. The map should clearly show the designated buffer areas of the Upper Bolin Creek Watershed as required by the publicly available ordinance or any amendments thereof (proposed or finalized) by Carrboro planning staff. It is requested that this information be provided in scalable vector format (e.g. PDF) or geographical information systems (GIS) compatible format.

4. Documents on alternative access routes considered for Colleton Crossing and Carolina Commons and specific grounds for not considering these during the planning process.

In closing, I have submitted my severe concerns about the human and environmental hazards of the aforementioned proposed developments. I have also requested information that formally and transparently documents the Town of Carrboro planning process with regards to these concerns.

With the power bestowed upon you by the citizens of Carrboro comes a great responsibility to lead the development of Carrboro. I trust you will fulfil this responsibility with due consideration to protecting existing Carrboro communities and their surroundings from foreseeable and preventable risks.

Yours sincerely,

Imran Shah
8405 Sterling Bridge Road
Chapel Hill, NC 27516

BEEMER, HADLER & WILLET, P. A.
ATTORNEYS AT LAW
SUITE 800-B, FRANKLIN SQUARE
1829 EAST FRANKLIN STREET
CHAPEL HILL, NORTH CAROLINA 27514
TELEPHONE (919) 929-0391
FAX (919) 967-3063

WAYNE R. HADLER
CHRISTOPHER M. WILLET

CHARLES G. BEEMER
RETIRED
REX T. SAVERY, JR.
RETIRED

MAILING ADDRESS:
P. O. DRAWER 3150
CHAPEL HILL, NC 27515

February 24, 2009

Michael Brough
Town Attorney
Town of Carrboro
301 W. Main Street
Carrboro, NC 27510

Re: Conditional Use Permit Presented by MBI Development Company LLC for
Colleton Crossing (31.606 acres, Tract No. 2, Plat Book 10, Page 6)

Dear Mr. Brough:

Our office provides legal representation to Sydonia Kaplan and Herbert Kaplan, owners of Lot 10, Section 2, Fox Meadow. MBI Development Company, LLC ("MBI") submitted a conditional use permit application that has relied upon the existence of a 50 foot public easement that traverses my clients' property for the benefit of Colleton Crossing. We understand that MBI has now proposed to construct a paved road and use this easement, which is recorded at Deed Book 482, Page 439 Orange County Registry, as a primary entrance into the Colleton Crossing.

I am in receipt of Mr. Thibaut's April 11, 2007 and Mr. Rooks' February 18, 2009 letters in support of MBI's conditional use permit application. Specifically, Mr. Thibaut opined that "a court of law should support the finding that the easement in question can be used for a public waterline easement, a public emergency access easement, and a private construction access easement." Mr. Rooks' letter provided that "a court would more likely than not to find that the possible subsequent subdivision of the Colleton tract was in the contemplation of the parties at the time that the easement was created" and that the easement could be used as a private road serving the 39 lot owners of Colleton Crossing.

As an initial aside, my clients were very disappointed that they have not received any communication from MBI about its new intended uses for this easement. The last conversation that my clients had with MBI was in 2006 and it solely concerned the use of the easement in question for utilities, as expressly provided for in the easement document.

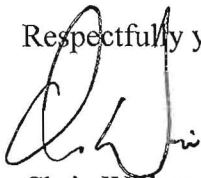
Based upon our office's review of the relevant public records and caselaw, we do not believe that the easement in question can properly be used for a private construction access easement, a public emergency access easement, or as a primary access road into the Colleton tract. By its

terms, the easement was only granted for “ingress, egress, and for construction and maintenance of utilities on both sides of” the 50 foot line further described at Plat Book 39, Page 154. It is well established that a grantee may not increase the servitude of an easement by making greater use of the land than is contemplated in the easement document. See Webster’s Real Estate Law in North Carolina § 15-21, 4th Edition (1994). First, the easement makes no reference to or mention of private construction or emergency access. When the language in an easement is clear and unambiguous, as with the attached document, courts may not insert additional uses the parties chose to omit. See *Weyerhauser Co. v. Carolina Power & Light Co.*, 257 NC 717 (1962). Second, even if the easement is ambiguous as to these uses on its face, a “grant of an easement in general terms is limited to a use which is reasonably necessary and convenient and *as little burdensome to the servient estate as possible for the use contemplated.*” See *Shingleton v. State*, 260 N.C. 451 (1963) (emphasis added). Although it is possible that some subdivision of the dominant tract was reasonably contemplated at the time of the granting of the easement, it is far from established that the intended scope of the easement accords with MBI’s proposed uses. At the time of the granting of this easement, the Colleton tract consisted of only 1 dominant lot which was owned by First Tallyho Corporation, MBI’s predecessor in interest. Under MBI’s proposal, there will be 39 dominant lots to be served by the proposed emergency access easement, private construction access easement, and public access easement across my clients’ property. MBI’s proposed development includes lots that vary in approximate size between .10 and .35 acres. Conversely, my clients’ lot is and has been at all times relevant to this matter, approximately 1.56 acres including the .23 acre easement. The adjacent lots to my clients’ property are approximately 1.84 acres and 1.09 acres, respectively. MBI’s proposed development is drastically denser than the surrounding development at the time of the granting of the easement and now.

In summary, MBI’s proposed uses are outside the scope of the granting language in the easement and would be extremely burdensome to my clients. Thusly we believe that such uses would in all likelihood be prohibited, if my clients are forced to pursue a legal action for a declaratory judgment in this matter.

Please let me know if you have any questions about this matter or if I can be of assistance in any way.

Respectfully yours,



Chris Willett

CC: Sydonia Kaplan & Herbert Kaplan
Charles H. Thibaut & David M. Rooks, Northen Blue, LLP

ENCL

R/S Paid NONE
-25

Prepared by and return to: Lucy D. Strickland, HOGUE AND STRICKLAND, 110 W. Margaret Lane, Hillsborough, NC 27278.

DEED OF EASEMENT

BOOK 482 PAGE 439

RECEIVED

SEP - 5 1984

STATE OF NORTH CAROLINA, ORANGE COUNTY.

THIS DEED, Made this 31 day of August, 1984, by and between LAURA COTTON and MYRTLE WALKER, Co-Guardians for LAURA ALLEN, and THOMAS A. WALKER, Attorney-in-Fact for ARTHUR ALLEN, of Orange County, North Carolina, hereinafter called Grantor, and FIRST TALLYHO CORPORATION, a North Carolina corporation, hereinafter called Grantee, whose permanent mailing address is c/o Barbara Mann, 3938 Dover Road, Durham, North Carolina 27707,

WITNESSETH: That the Grantor, for and in consideration of the sum of ONE DOLLAR and other good and valuable considerations to him in hand paid by the Grantee, the receipt whereof is hereby acknowledged, has given, granted, bargained, sold, and conveyed, and by these presents does give, grant, bargain, sell, convey and confirm unto the Grantee, his heirs and/or successors and assigns, a perpetual fifty (50) foot wide easement for ingress, egress, and for construction and maintenance of utilities on both sides of a line described as follows:

Lying and being in Chapel Hill Township, Orange County, North Carolina, and consisting of a fifty (50) foot wide strip of land lying twenty-five (25) feet on both sides of a center line described as BEGINNING at an iron in the center line of Rogers Road (State Road No. 1729); running thence North 70° 42' 25" West to the western boundary line of the properties of Laura Allen and Arthur Allen and BEING all of that roadway shown and designated as Tallyho Drive on the survey and plat entitled "SECTION ONE, FOX MEADOW", by ENT Land Surveys, dated August 1, 1983, and recorded in Plat Book 39 at page 154, Orange County Registry, to which plat reference is hereby made for a more particular description thereof.

PIN 9870-52-3554.
apl 7.23.C.25

This easement is appurtenant to properties of the Grantee described in Book 462 at pages 94 and 97 and in Book 444 at page 155 and shall run with the lands so described.

TO HAVE AND TO HOLD The above described easement unto the Grantee, his heirs and/or successors and assigns forever.

And the Grantor covenants that he is seized of the premises over which the said easement is granted in fee, and has the right to convey the same; that said premises are free from encumbrances; and that he will warrant and defend the said title to the same against the lawful claims of all persons whomsoever.

When reference is made to the Grantor or Grantee, the singular shall include the plural and the masculine shall include the feminine or the neuter.

IN WITNESS WHEREOF, The Grantor has hereunto set his hand and seal, the day and year first above written pursuant to authority granted by the Superior Court of Orange County (see File No. 83 SP 305) and by authority of power of attorney recorded in Book 375, page 409, Orange County Registry.

Laura Cotton (SEAL)
LAURA COTTON, Co-Guardian for Laura Allen
Myrtle Walker (SEAL)
MYRTLE WALKER, Co-Guardian for Laura Allen

Thomas A. Walker (SEAL)
THOMAS A. WALKER, Attorney-in-Fact for ARTHUR ALLEN

STATE OF NORTH CAROLINA
COUNTY OF Orange

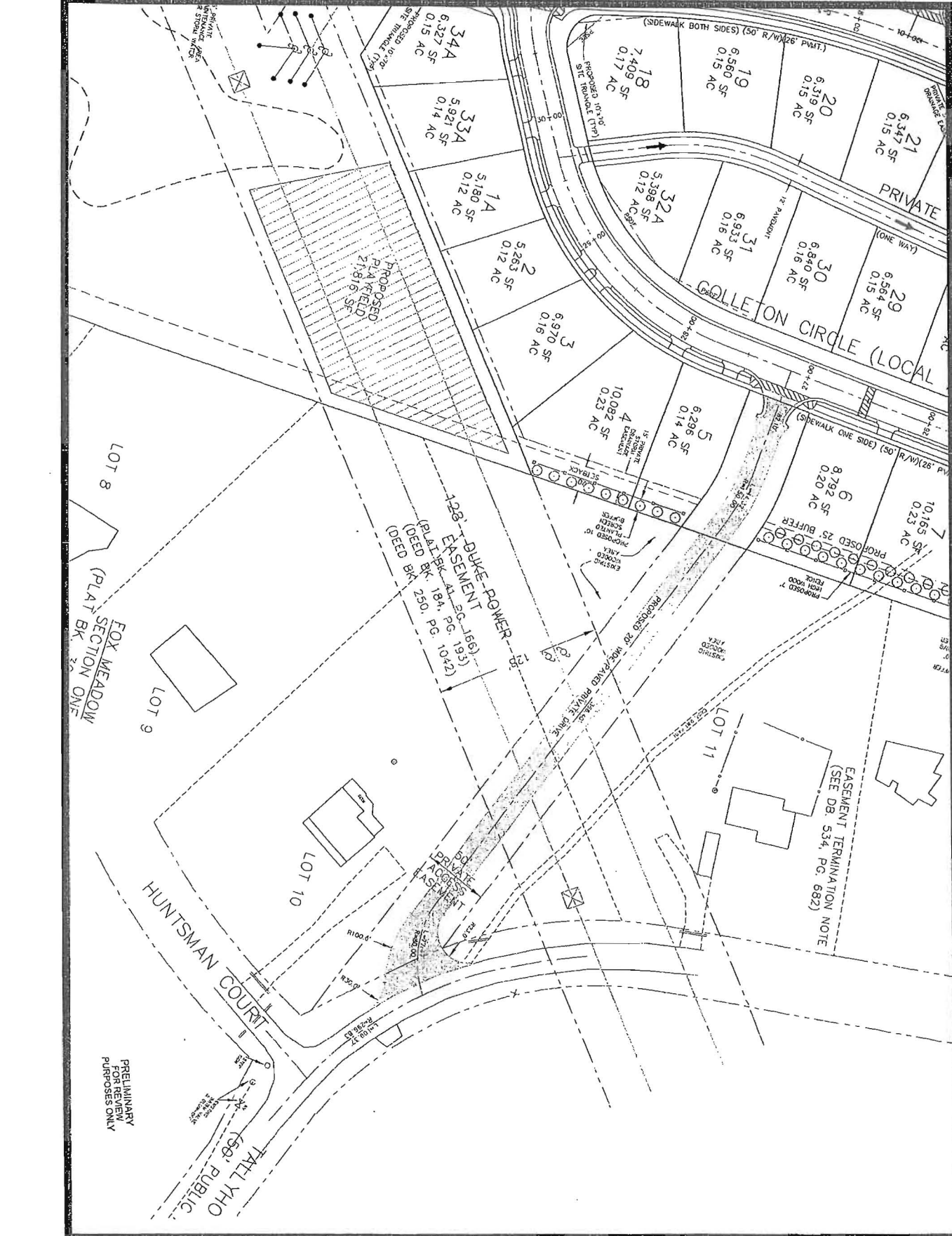
I, Phyllis Marts, a Notary public in and for said County and State, do hereby certify that LAURA COTTON and MYRTLE WALKER, Co-Guardians for LAURA ALLEN, Grantors, personally came before me this day and acknowledged the execution of the foregoing deed.

WITNESS my hand and notarial seal, this 31 day of Aug, 1984.

Phyllis Marts
NOTARY PUBLIC

My commission expires: 2-5-86





NO.	REVISIONS

SCALE: 1"=50'
 DRAWN BY: JCS
 CHECKED BY: JAS
 DATE: 2/1/02
 PROJECT NO.: 010520
 DRAWING NO.: 82025207

SKETCH PLAN
 COLLETON CROSSING
 PROPOSED PRIVATE ACCESS ROAD
 TOWN OF CARBORO GRANDE COUNTY, N.C.

PRELIMINARY FOR REVIEW PURPOSES ONLY

PHILIP
 POST
 &
 ASSOCIATES

ENGINEERS
 PLANNERS
 SURVEYORS
 401 Providence Rd. # 200
 Cary, NC 27513
 (919) 279-1175
 919-250-850-9342
 Greenville, NC
 (252) 752-7711

PRELIMINARY FOR REVIEW PURPOSES ONLY

To: Martin Roupe
Subject: RE: Colleton hearing

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

From: Jacquelyn M. Gist <jmgist@email.unc.edu>
To: lydia@lydialavelle.com <lydia@lydialavelle.com>; 'Dan Coleman' <dan-coleman@nc.rr.com>
Cc: 'Mark Chilton' <Mark_Chilton@hotmail.com>; Steven Stewart; 'Joal Hall Broun' <brounsj@mindspring.com>; 'John Herrera' <johnh@self-help.org>; 'Ranee Haven-O'Donnell' <randee.haven-odonnell@da.org>; Sarah Williamson; Roy M. Williford; 'Michael Brough' <brough@broughlawfirm.com>
Sent: Mon Feb 23 13:01:36 2009
Subject: RE: Colleton hearing

I agree with Lydia and second her request
Jacquie

Jacquelyn Gist
Assistant Director
Non-Profits,Social Work
University Career Services

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

From: lydia@lydialavelle.com [mailto:lydia@lydialavelle.com]
Sent: Monday, February 23, 2009 12:12 PM
To: Dan Coleman
Cc: Mark Chilton; Steven Stewart; Jacquie Gist; Joal Hall Broun; John Herrera; Ranee Haven-O'Donnell; Sarah Williamson; Roy M. Williford; Michael Brough
Subject: Re: Colleton hearing

Steve:

It is my understanding, with previous material we have received, that an additional connector can only be possible by way of purchasing or optioning to purchase a lot or two in the Fox Meadow subdivision and trying to legally make a new connection that way by dealing with the restrictive covenant problem. It was not my understanding that the

additional connector would be through the existing access easement. I thought that avenue was already explored and determined to be legally unsound by the applicant.

Again, if there is additional information from the applicant's attorney about this matter, as was suggested in the packet, if possible, I would like to receive it before tomorrow night.

Lydia

> Mark,
> I'd like to suggest that the public hearing be structured so that we
> get public comment on the additional connector only at the outset. If
> we decide to pursue that option (thereby continuing the hearing), we
> can then decide whether to take comment on other aspects tomorrow or
> to defer them until the continuation date.

> Dan

> Steven Stewart wrote: Hi Dan,

Staff
> discussed this item this morning and recommends that the hearing
> continue tomorrow night as scheduled. This will be an opportunity to
> hear whether or not there is interest in further pursuing the
> additional connector that the applicant was asked to explore. If
> there is no interest, then no additional work needs to be done by
> staff or the applicant on that option. If the Board decides tomorrow
> night to pursue the additional connector, then there will be
additional work required by staff and the

> applicant. Thanks. Steve Stewart, Town Manager Town of
Carrboro, NC From: Dan Coleman

> [mailto:dan-coleman@nc.rr.com]

> Sent: Sunday, February 22, 2009 9:31 AM

> To: Lydia Lavelle; Jacquie Gist; Joal Hall Broun; John Herrera;
Ranee

> Haven-O'Donnell; Mayor Chilton; Steven Stewart; Sarah Williamson;
Roy

> M. Williford; Sarah Williamson

> Subject: Colleton hearing All,

> I spoke with Steve late Friday about the uncertainty of adequate
> information yet being available on the road system to complete our
> evaluation of Colleton this week. I asked Steve to attempt to make a

> determination on this point on Monday to give time to alert concerned
> citizens if there was an expectation that the hearing would again be
> continued (and if the applicant concurred with that expectation).
>
> My suggestion is that, if the hearing will be again be continued
> without a decision, Steve confer with the Mayor on whether we would
> expect to have public comment this round. If not, those who signed up
> in January could be alerted.
>
> -Dan

>
> Town of Carrboro, NC Website -
> <http://www.townofcarrboro.org> E-mail
> correspondence to and from this address may
> be subject to the North Carolina Public
> Records Law and may be disclosed to third
> parties. (ext)

Town of Carrboro, NC Website - <http://www.townofcarrboro.org/>

E-mail correspondence to and from this address may be subject to the
North Carolina Public Records Law and may be disclosed to third parties.

(int)

From: Martin Roupe
Sent: Wednesday, February 25, 2009 4:05 PM
To: Jeff Kleaveland
Subject: FW: Colleton hearing
Attachments: ATTACHMENT - O.pdf; Attachment -U.pdf

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

From: Steven Stewart
Sent: Monday, February 23, 2009 3:19 PM
To: Dan Coleman; jacquelyn gist; Joal Hall Broun; John Herrera; Lydia Lavelle; Mark Chilton; Randee Haven -O'Donnell
Cc: Michael Brough; Roy M. Williford; Martin Roupe; Patricia J. McGuire; Jeff Kleaveland; Adena Messinger; Sarah Williamson
Subject: FW: Colleton hearing

Hi Folks,
Here is further clarification regarding the additional connector road under consideration for Colleton Crossing.
Thanks.

Steve Stewart, Town Manager
Town of Carrboro, NC

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

From: Roy M. Williford
Sent: Monday, February 23, 2009 3:13 PM
To: Steven Stewart
Subject: RE: Colleton hearing

Steve,
I have attached "Attachment O" from the agenda packet which is a letter from Attorney David Rooks explaining that in his opinion it would not be possible due to the Fox Meadow covenants to acquire a residential lot and use it for public access purposes without unanimous agreement from all property owners within the Fox Meadow Subdivision. In a subsequent letter from Mr. Rooks also attached, "Attachment U" of the on-line agenda packet, states that the access easement itself could be used for a private access road serving the proposed Colleton Crossing Subdivision. The recent design under review by the staff and NCDOT was therefore limited to the existing private access easement since no other alternatives seem to be available from the eastern property boundary

of the proposed subdivision.

I hope this helps in clarifying the matter, if not please let me know.

Thanks,

Roy

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

From: Jacquelyn M. Gist <jmgist@email.unc.edu>

To: lydia@lydialavelle.com <lydia@lydialavelle.com>; 'Dan Coleman' <dan-coleman@nc.rr.com>

Cc: 'Mark Chilton' <Mark_Chilton@hotmail.com>; Steven Stewart; 'Joal Hall Broun' <brounsj@mindspring.com>; 'John Herrera' <johnh@self-help.org>; 'Ranee Haven-O'Donnell' <randee.haven-odonnell@da.org>; Sarah Williamson; Roy M. Williford; 'Michael Brough' <brough@broughlawfirm.com>

Sent: Mon Feb 23 13:01:36 2009

Subject: RE: Colleton hearing

I agree with Lydia and second her request Jacquie

Jacquelyn Gist

Assistant Director

Non-Profits,Social Work

University Career Services

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

From: lydia@lydialavelle.com [mailto:lydia@lydialavelle.com]

Sent: Monday, February 23, 2009 12:12 PM

To: Dan Coleman

Cc: Mark Chilton; Steven Stewart; Jacquie Gist; Joal Hall Broun; John Herrera; Ranee Haven-O'Donnell; Sarah Williamson; Roy M. Williford; Michael Brough
Subject: Re: Colleton hearing

Steve:

It is my understanding, with previous material we have received, that an additional connector can only be possible by way of purchasing or optioning to purchase a lot or two in the Fox Meadow subdivision and trying to legally make a new connection that way by dealing with the restrictive covenant problem. It was not my understanding that the additional connector would be through the existing access easement. I thought that avenue was already explored and

determined to be legally unsound by the applicant.

Again, if there is additional information from the applicant's attorney about this matter, as was suggested in the packet, if possible, I would like to receive it before tomorrow night.

Lydia

> Mark,
> I'd like to suggest that the public hearing be structured so that we
> get public comment on the additional connector only at the outset. If
> we decide to pursue that option (thereby continuing the hearing), we
> can then decide whether to take comment on other aspects tomorrow or
> to defer them until the continuation date.

>

> Dan

>

> Steven Stewart wrote: Hi Dan,

Staff

> discussed this item this morning and recommends that the hearing
> continue tomorrow night as scheduled. This will be an opportunity to
> hear whether or not there is interest in further pursuing the
> additional connector that the applicant was asked to explore. If
> there is no interest, then no additional work needs to be done by
> staff or the applicant on that option. If the Board decides tomorrow
> night to pursue the additional connector, then there will be
additional work required by staff and the

> applicant. Thanks. Steve Stewart, Town Manager Town of

> Carrboro, NC From: Dan Coleman

> [mailto:dan-coleman@nc.rr.com]

> Sent: Sunday, February 22, 2009 9:31 AM

> To: Lydia Lavelle; Jacquie Gist; Joal Hall Broun; John Herrera;

Randee

> Haven-O'Donnell; Mayor Chilton; Steven Stewart; Sarah Williamson;

Roy

> M. Williford; Sarah Williamson

> Subject: Colleton hearing All,

> I spoke with Steve late Friday about the uncertainty of adequate

> information yet being available on the road system to complete our

> evaluation of Colleton this week. I asked Steve to attempt to make a

> determination on this point on Monday to give time to alert concerned

> citizens if there was an expectation that the hearing would again be
> continued (and if the applicant concurred with that expectation).
>
> My suggestion is that, if the hearing will be again be continued
> without a decision, Steve confer with the Mayor on whether we would
> expect to have public comment this round. If not, those who signed up
> in January could be alerted.

> -Dan

> Town of Carrboro, NC Website -

> <http://www.townofcarrboro.org> E-mail
> correspondence to and from this address may
> be subject to the North Carolina Public
> Records Law and may be disclosed to third
> parties. (ext)

Town of Carrboro, NC Website - <http://www.townofcarrboro.org/>

E-mail correspondence to and from this address may be subject to the North
Carolina Public Records Law and may be disclosed to third parties.

(int)

From: Martin Roupe
Sent: Wednesday, February 25, 2009 4:16 PM
To: Jeff Kleaveland
Subject: FW: Colleton Crossing Agenda Item correction
Attachments: DOC084.pdf

From: Steven Stewart
Sent: Tuesday, February 24, 2009 10:52 AM
To: Dan Coleman; jacquelyn gist; Joal Hall Broun; John Herrera; Lydia Lavelle; Mark Chilton; Randee Haven -O'Donnell
Cc: Jeff Kleaveland; Roy M. Williford; Martin Roupe; Sarah Williamson; 'Michael Brough'
Subject: FW: Colleton Crossing Agenda Item correction

FYI.

Steve Stewart, Town Manager
Town of Carrboro, NC

From: Jeff Kleaveland
Sent: Tuesday, February 24, 2009 10:48 AM
To: Steven Stewart; Martin Roupe; Roy M. Williford
Cc: 'Melvilbldr@aol.com'
Subject: Colleton Crossing Agenda Item correction

All,

It has come to my attention that the condition #30 should be removed from the staff recommendations per the explanation given by the applicant (Attachment E-6, also, see attached). The applicant no longer feels that the fire suppression sprinklers are economically viable. The condition reads as follows.

30. That the new homes are each provided with fire suppression sprinklers in homes installed to specifications that accord with the local and standards enforced by the Town of Carrboro Fire Department. Accordingly, in the construction plans, the number of fire hydrants may be reduced per the Fire Department's recommendations.

Please strike this condition from your agenda item. My apologies for the confusion.

Sincerely,

Jeff Kleaveland, Planner/ZDS, RLA
Town of Carrboro Planning Department
301 West Main Street
Carrboro, NC 27510
(919) 918-7332 – phone
(919) 942-1720 – fax
jkleaveland@townofcarrboro.org– email
www.townofcarrboro.org – Town of Carrboro Homepage
www.townofcarrboro.org/pzi/zoning.htm -- Zoning Division Homepage

Town of Carrboro, NC Website - <http://www.townofcarrboro.org>

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

(int)

PHILIP

POST

&

ASSOCIATES

Town of Carrboro
 Board of Aldermen
 301 West Main Street
 Carrboro, NC 27510

January 22, 2009
 #510301

Re: Colleton Crossing- Sprinkler Systems

We have been asked to assess the feasibility of a new feature that we understand is desired (but not required under local law)—that is, the installation of sprinkler systems in the planned homes at Colleton Crossing. Regrettably, after careful consideration, we have concluded that this proposed option is not feasible.

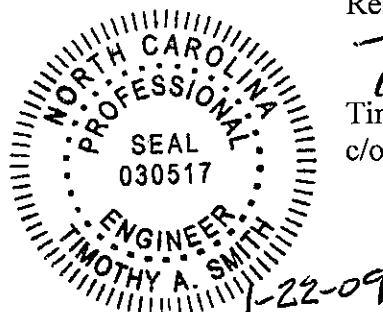
At a time when market conditions are demanding smaller—and more affordable—homes, I am exploring ways to reduce the price point of the Colleton Crossing homes without sacrificing our long-standing commitment to quality. The ideal market for these homes, as well as the homes in the planned adjoining developments, comprises home buyers who want to live in Carrboro, but find it difficult to afford quality homes there—university faculty, public school teachers, other public servants and other hard-working people who can make a vital contribution to the town's future.

Unfortunately, adding discretionary features like sprinkler systems will increase the price of these homes without enhancing their marketability, especially under projected market conditions. Based on the estimates I have obtained from local fire sprinkler contractors, the cost impact of installing sprinkler systems is: 1) \$5,000 to \$6,000 per house for the market rate homes and 2) \$3,500 to \$4,000 per house for the affordable homes. If prospective buyers are unwilling to pay that much more for a new home—a likely scenario if comparable homes lack this feature—our homes will not be competitive.

The incremental cost is even more prohibitive for the affordable homes. In the aggregate, the cost of the six units would be increased by \$21,000 to \$24,000. This cost increase, coupled with any delay in selling the homes (with the corresponding rise in carrying costs) could seriously strain our ability to ensure their subsidy. Ultimately, we fear that it could trigger a tipping point at which the Land Trust could not purchase the units, precisely the kind of unintended result that we would like to avoid. We therefore respectfully request that the proposed condition to sprinkler the homes be removed from the recommendations for this project.

ENGINEERS
 PLANNERS
 SURVEYORS

401 Providence Road
 P.O. Box 2134
 Chapel Hill, NC 27515-2134
 (919) 929-1173
 (919) 493-2600



Respectfully,

Timothy A. Smith
 Timothy A. Smith, P.E.
 c/o Jim Melville, MBI Development

To: Martin Roupe
Subject: RE: Colleton - Owners of Lots 10 and 11

From: Roy M. Williford
Sent: Tuesday, February 24, 2009 9:00 AM
To: Jeff Kleaveland
Cc: Steven Stewart; Martin Roupe
Subject: FW: Colleton - Owners of Lots 10 and 11

Jeff,
Please invite the owners of lots 10 and 11 to the public hearing and then let the applicant know that they were invited to attend tonight's public hearing in addition to the public hearing notice that they have already received.

According to land records, the owners are as follows:
Lot 10 Cydonia and Herbert Kaplan at 8775 20th Street #54, Vero Beach, FL
Lot 11 FW and Kay Hengeveld at 1515 Tallyho Trail

Thanks,
Roy

From: Steven Stewart
Sent: Monday, February 23, 2009 9:41 PM
To: Roy M. Williford
Cc: Martin Roupe; Jeff Kleaveland
Subject: FW: Colleton - Owners of Lots 10 and 11

Roy,
Please follow up with these owners and also let the applicant know about the invitation.
Thanks.
Steve

From: Steven Stewart
Sent: Monday, February 23, 2009 8:55 PM
To: 'lydia@lydialavelle.com'; 'dan-coleman@nc.rr.com'; 'JMGIST@EMAIL.UNC.EDU'; 'brounsj@mindspring.com'; 'johnh@self-help.org'; 'randee.haven-odonnell@da.org'; 'mark_chilton@hotmail.com'
Cc: Roy M. Williford; 'brough@broughlawfirm.com'
Subject: Re: Colleton - Owners of Lots 10 and 11

Lydia,

I'll ask staff tomorrow to invite these owners.

Steve

From: Lydia Lavelle <lydia@lydialavelle.com>

To: Steven Stewart; Dan Coleman <dan-coleman@nc.rr.com>; jacquelyn gist <jmgist@email.unc.edu>; Joal Hall Broun <brounsj@mindspring.com>; John Herrera <johnh@self-help.org>; Randee Haven -O'Donnell <randee.haven-odonnell@da.org>; Mark Chilton <Mark_Chilton@hotmail.com>

Sent: Mon Feb 23 19:34:41 2009

Subject: Colleton - Owners of Lots 10 and 11

Steve:

Is it possible to ask to have the owners of Lots 10 and 11 in Fox Meadow at the public hearing tomorrow night?

Lydia

Town of Carrboro, NC Website - <http://www.townofcarrboro.org>

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

(int)