

Re-recorded

BK 553 PG 442

BK 465 PG 469

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FILED FOR REGISTRATION

May 27, 2004 9:05 A.M.

RE DATE TIME
AND RECORDED IN BOOK 553 PAGE 442

M. BRENT SHOAF, REGISTER OF DEEDS

DAVIE COUNTY, NC

BY Carol J. Jonist
Deputy

FILED FOR REGISTRATION

February 14, 2003 9:58 A.M.

DATE TIME

AND RECORDED IN BOOK 465 PAGE 469

M. BRENT SHOAF, REGISTER OF DEEDS

DAVIE COUNTY, NC

BY Doris C. Williams
Assistant

Edited by Gilbert T. Davis, Jr.

Mail back: Donald Jay Boyd, 196 McAllister Rd., Mocksville, NC 27028

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
HAWKS LANDING

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made by Donald Jay Boyd (hereinafter referred to as the "Declarant"), for himself, his successors and assigns, this the 14 day of Feb., 2003

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Davie County, North Carolina, which is more particularly described on Exhibit A attached hereto and incorporated herein by referenced, and recorded as a subdivision identified as Hawk's Landing in Plat Book 8, page 9, 10 (Slide No. 305) Davie County Registry; and,

WHEREAS, Declarant hereby declares by this Declaration that the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, liens and charges which are for the purpose of enhancing and protecting the value and desirability and attractiveness of, and which shall run with the real property and be binding on all parties having any right, title or interest in the property identified as Hawks Landing; and,

WHEREAS, as a part hereof, the subdivision will provide a common recreational service consisting of an airport and runway easement over portions of the existing lots, all of which is shown more explicitly on the plat, with safeguards for its operations and maintenance by owners having an interest in the property described at Exhibit A; and,

WHEREAS, a special use permit has been granted to the Declarant for an airport/runway and each and every owner will be subject to the further restrictions found therein as applicable to each respective lot and the use thereof for the airport in the subdivision. A copy of which permit is attached hereto as Exhibit "B" and incorporated herein by reference; and,

Being re-recorded to add exhibit B
27 MAY 2004 DONALD JAY BOYD Donald Jay Boyd

WHEREAS, a private roadway is being constructed to service four of the respective lots, and each and every one of those lot owners in the platted subdivision shall have an obligation to jointly maintain the roadway and improvements thereon.

NOW, THEREFORE, Declarant hereby declares that all of the land described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, liens, and charges which are for the purpose of enhancing and protecting the value and desirability and attractiveness of, and which shall run with, the real property described on Exhibit A and shown on the recorded plat, and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any lot or living unit which is part of the Properties as defined herein, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2. "Properties" shall mean and refer to that certain real property herein before described in Plat Book 8, page 9/10, and as shown on Exhibit A.

Section 3. "Common Property" used by all of the subdivision owners will consist of the airport and the respective runway easements. Furthermore, the respective easement for ingress, egress and regress serving Lots 1-4 as shown on the recorded plat and identified thereon as a private roadway, shall be exclusive and beneficial only to the respective four owners and their invited guests, and not others with ownership rights in the properties. Expenses for that maintenance shall be born only by those four respective owners.

Section 4. "Common Expenses" shall mean and include:

a. All maintenance, improvements and expenses necessary and desirable for the upkeep of the private airport and runway easement. Such common expense shall be expressed in writing by a majority of the owners.

b. Any hazard, liability or other insurance premiums as the respective owners shall purchase for the common good and on which the majority of the respective owners have agreed in writing to purchase.

c. Expenses agreed by the respective owners to be common expenses for the owners of the four lots sharing the private roadway for ingress, egress and regress on the north side of the subject subdivision. Such consent will be expressed in a written document in all cases.

Section 5. "Lot" shall mean a physical portion of the community designated for separate ownership and occupancy by an owner.

Section 6. "Declarant" shall mean and refer to Donald Jay Boyd, his successors and assigns, to which the rights of Declarant are specifically assigned by recorded document of assignment or by specific assignment within a deed of conveyance of such rights.

ARTICLE II

PROPERTY RIGHTS AND LIENS FOR COMMON EXPENSES

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the private roadway and airport/runway easement which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (a) The right of the Declarant, in his sole discretion, and at no cost to any Owner, to use any of the Common Area for the installation of utility lines of all types, drainage ditches or swales, lighting, to grade and pave roadways or easements of access, and to do all things and acts necessary to finish the development of the properties, together with the right to grant easements to the proper utility and/or governmental authority for such use;
- (b) Each owner and his successor, by the recording of a deed, agrees that the enforcement of the maintenance provisions for the airport/runway and the private roadway will subject these respective lots to a materialsman lien under the North Carolina General Statutes, Article 44; and the failure to pay within 30 days after a due date is established by the majority of the owners will give rise to the lien and a right to reasonable attorney fees for the owners pursuing the lien under Chapter 44.
- (c) It is expressly understood and provided that the maintenance of the runway shall be the common expense of all owners within the subdivision; the maintenance of the private roadway will be the responsibility of the owners of only Lots 1-4 of the subdivision; and that in the event of the addition of any expansion of Lot 5 will necessitate that any independent lot thereby created will be bound by the terms hereof as an independent owner.

ARTICLE III**ARCHITECTURAL CONTROL****Section 1. "Architectural Control".**

(a) Purpose. To assure the quality of the Development, the Declarant will have complete control of architectural matters. Until the Development is completely built out, finished, all architectural control shall be exercised by the Declarant. Thereafter, the Declarant may continue to exercise control over architectural matters or may assign this right to the Owners.

(b) Extent of Control. Unless expressly authorized in writing by the Declarant, no building, fence, wall, driveway or other structure nor any exterior addition or alteration to any existing structure, nor any clearing or site work shall be commenced, erected or maintained upon the designated property, until plans and specifications therefore showing the shape, dimensions, materials, basic exterior finishes and colors, location on site, driveway, parking, floor plan, and elevations therefore (all of which is hereinafter referred to as the "Plans"), shall have been submitted, in duplicate to and approved in writing, as to the harmony of external design and location in relation to any surrounding structures and topography, by the Declarant. The Declarant shall have the absolute and exclusive right to refuse to approve any such Plans and specifications which are not suitable or desirable in the opinion of the Declarant for any reason, including purely aesthetic reasons which in the sole and uncontrolled discretion of the Declarant shall be deemed sufficient; provided that the Declarant shall not refuse to approve any Plans and specifications which are substantially similar to any other Plans and specifications which previously have been approved for or constructed on any other Lot which is similarly situated within the Development. However, if the Declarant denies a request, he shall articulate its reasons for denial.

(c) Plan Review Procedure. At least thirty (30) days prior to the commencement of any construction, the Plans shall be submitted to the Declarant. The approval or disapproval shall be in writing within thirty (30) days. In the event no action is taken within thirty (30) days, the plan will be deemed to be approved.

Section 2. Restriction on Use

(a) Permissible Uses No Lot shall be used except for residential purposes, and no building of any type shall be erected, altered, placed, or permitted to remain on any Lots other than one residential dwelling, which includes garage and any other appurtenances customary to a single-family detached dwelling which shall comply with any applicable zoning regulations. Moreover, no Lot shall be used for access to any adjoining Lot or other Property. When construction of any building, structure, improvements, or addition has once begun, work thereon shall be pursued diligently and continuously, and completion shall occur within twelve (12) months.

(b) All hangars erected, constructed or maintained upon any of the lots in Hawks Landing subdivision shall be fully enclosed permanent structure and shall not exceed 3,600 interior square feet, which size shall include any space allocated for workshop, restroom facilities, storage area or any other purpose. The Declarant may reject any design feature of the hangar for any reason whatsoever not consistent with the above provisions.

Any tie-down space located next to the hanger area is to be used by visitors. No person who is not an owner shall be permitted to store, tie down or hangar any aircraft on Hawks Landing property on a permanent basis.

(c) Division of Lots. No Lot shall be further subdivided without the prior consent of the Declarant. The Declarant expressly reserves the right to subdivide Lot 5 into a total of three lots. The new lot will be subject to the terms and conditions hereof in all respects except the road maintenance provisions.

(d) Minimum Square Footage. In no event shall any living unit contain less than the following minimum square feet of heated living area; however, the requirements herein referred to shall be exclusive of outside and screened porches, garages, breezeways, terraces and basement areas, whether heated or not. This minimum square footage requirement can be waived by the Declarant in his sole discretion.

- (i) The main level of a one-story dwelling in Hawks Landing shall contain at least 2,200 square feet.
- (ii) The main two levels of a two-story dwelling shall contain at least 3,000 square feet with no less than 1,500 square feet of such space on the first level of the dwelling.
- (iii) The main or first level of a one and one-half story dwelling shall contain at least 2,000 square feet on the first level.
- (iv) No split level dwellings shall be allowed to be built.
- (v) Roof pitches shall be 7/12 or greater.

(e) Exterior Material. All foundations, front porches, steps and retaining walls shall be constructed from brick or stone and are subject to approval by the Declarant. No construction will allow cinder block or cement to be seen from the outside of the structure.

(f) Antennas. In the event cable television service is made available to the Properties, no television antennas, radio receiver or sender, or other similar device shall be attached to or installed on the exterior portion of or detached from any living unit. Satellite dishes, not to exceed 18" in diameter, may be allowed if placement is not able to be viewed from the street or any adjacent Lot, subject to approval by the

Declarant. No large short wave radio or other types of antennas shall be permitted except as approved by the Declarant.

(g) Unsightly Conditions. It is the responsibility of each Owner to prevent any unclean, unsightly, or un-kept conditions on the grounds of a Lot of any Owner which shall tend to substantially decrease the beauty of the Properties specifically and/or as a whole.

(h) No Offensive Activity. No noxious or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner, tenant or guest thereof, on any portion of the Properties.

(i) Animals and Pets. Except as otherwise permitted herein, or in any supplementary declaration hereto, no plants, animals, or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of other Lots by any Owner, tenants, or guests thereof, may be maintained. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, or permitted to become a nuisance to the development. Dogs, cats and other household pets shall be confined and maintained on the Owners Lot and will not be allowed to wander throughout the development. The pet housing, if existing outside, shall be located directly against the back of the main dwelling. Pets shall be kept on a leash outside the owner's lot. At all times pets shall be prohibited to be upon the Hawks Creek Runway except with a leash. There will be no horses allowed upon the properties as a permanently kept animal.

(j) Driveways. Driveways shall be either asphalt or concrete.

(k) Fencing. No fencing may be located closer to any street than the closest point of the living unit to any such street. No chain-link fencing shall be allowed on any lot. Wooden fences shall be allowed on any lot subject to the approval of the Declarant.

(l) Signage. No sign of any kind shall be displayed to the public view on any Lot except one (1) sign with dimensions of not more than two (2) feet by three (3) feet advertising any Lot for sale or rent. All other signs on any Lots must be approved in writing by the Declarant.

(m) Trees and Hedgerows. No clear cutting of trees will be-permitted. Clearing limits shall be set forth on the plans approved by the Declarant.

(n) Garages. Garages must be made of the same material as the house and must be architecturally approved.

(o) Commercial Vehicles. No commercial or recreational vehicle (including boats), construction, or like equipment shall be kept or permitted to remain on any Lot of the Properties, unless approved by the Declarant or subsequent Board, and stored in an

enclosure away from view, which definition "Away from View" shall be in the sole discretion of the Declarant.

(p) Set Backs. The set backs for all improvements will be controlled by the Davie County Zoning Ordinance as it now exists or later may be amended. Furthermore, any improvements will be a minimum of 150 feet from the external edge of the runway shown on the plat.

(q) Garbage and Refuse. Trash cans and garbage storage will be kept out of the front yards and street right of way except for the pick-up day established by the utility provider.

(r) Mailboxes. The Declarant shall establish rules and regulations regarding the location and appearance of mailboxes and newspaper boxes, if allowed by such rules subject only to Federal postal laws and regulations.

(s) Outbuildings. No outbuilding, garage, shed, tent, trailer, barn or building, detached structure or unit of any kind, temporary or permanent, shall be erected, constructed, committed or maintained on the premises except in accordance with this Declaration and the applicable consent of the Declarant. Any permitted outbuilding shall be of the same material, quality, general appearance and workmanship as the residence on the lot and shall be built as approved by the Declarant. The location and materials of all airplane hangars shall be considered outbuildings.

(t) Gas Tanks. All propane tanks and related fuel storage will be located away from visibility from the front of the residence.

(u) Special Use Permit. The restrictive conditions herein are further restricted by the attached Special Use Permit at "Exhibit B" where applicable.

ARTICLE IV **EASEMENTS**

Section 1. Utilities Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat, and the properties shall be further subject to such additional easements for installation and maintenance of utilities and drainage facilities as are reasonably necessary for the construction of dwelling units by Declarant and purchasers of undeveloped Lots from Declarant. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the utilities or which may change the direction of flow or drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels. Easements as required to correct drainage and utility installation are reserved by the Declarant over the Common Area and for a distance of ten (10) feet along and with all Lot lines. If corrections are necessary over a Lot that has been conveyed and improved, the party performing the

correction shall repair and replace any damage to the landscaping and improvements in a reasonable manner.

Section 2. Easements Reserved to Declarant. Declarant reserves and retains nonexclusive easements for ingress, egress and regress and for the installation of all types of utilities and drainage over the easements defined as common areas and Lots necessary and desirable in the development of the subdivision to completion and for access over all roads until the Property is totally developed with completed dwellings on each lot.

ARTICLE V

GENERAL PROVISIONS

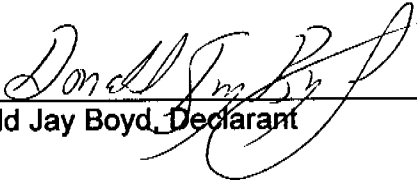
Section 1. Enforcement. The Declarant, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration.

Failure by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment by Owners. This Declaration may be amended by the Declarant so long as the amendment does not alter the general purposes and plan for the community. It may be further amended by the owners with unanimous approval after the last lot is sold by the Declarant.

WITNESS WHEREOF, the Grantor has hereunto set his hand and seal the day and year first above written.

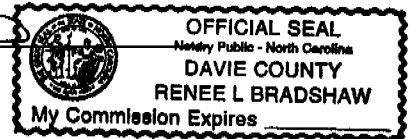

_____(seal)
Donald Jay Boyd, Declarant

NORTH CAROLINA
DAVIE COUNTY

I, a Notary Public of Davie County and State aforesaid, certify that Donald Jay Boyd, Declarant, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 14 day of FEBRUARY, 2003.

My commission expires:
03-26-05

Renee L. Bradshaw
Notary Public



The foregoing Certificate(s) of Renee L. Bradshaw NP of Davie County is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

M. Brent Shoaf REGISTER OF DEEDS FOR DAVIE COUNTY

By: Aria C. Williams Deputy Assistant-Register of Deeds

EXHIBIT "A"
JAN RANDLE AND WIFE, KAREN RANDLE
TO
DONALD JAY BOYD AND WIFE, VICKIE BOYD

That tract containing 56.59 acres, more or less, composed of two contiguous parcels located in Calahan Township, Davie County, North Carolina, and more particularly described as follows:

FIRST PARCEL: BEGINNING at a stone, J.H.B. Dwiggins corner in J.W. Dwiggins line and running East 02 degs. South with J.W. Dwiggins line 12 chains to a stone; thence North 30 degs. East 9 chains and 13 links to a stone in the road; thence North 65 degs. West 17.50 chains to a Sweet Gum stump, J.H.B. Dwiggins corner; thence South 03 degs. West with his line 15.09 chains TO THE BEGINNING, containing 17.22 acres.

SECOND PARCEL: BEGINNING at a stone, Wesley McClamrock, a corner, North 3-1/2 degs. East 6.63 chains to a Poplar; thence North 77-1/2 degs. West 3.75 chains to a Spanish Oak, North 28-1/2 degs. East 8.19 chains to a stone at branch, Cowans corner; thence South 86 degs. East 10.35 chains to a stone, Cowans corner; thence North 04 degs. East 4.62 chains to a stone, E.H. Pass corner in Cowan line; thence South 81 degs. East 14.80 chains to a Sweet Gum, E.H. pass line; thence South 02 degs. West 15.08 chains to a stone, Pass corner, McClamrock line, West 1-1/2 degs. variation 25.94 to THE BEGINNING, containing 42-3/4 acres, more or less.

SAVE AND EXCEPT FROM THE SECOND PARCEL the following land conveyed February 1, 1978 to Herman Rose Rollings et ux by deed recorded in Deed Book 104, page 31: BEGINNING at a railroad spike in the right of way of NCSR 1148, said spike being located North 87 degs. 46 min. 55 sec. West 787.55 feet from the Southeast corner of that 17.22 acre tract (see Deed Book 22, page 20) and runs thence North 87 degs. 46 min. 55 sec. West 216.77 feet to an iron in the Northern right of way margin of NCSR 1148; thence North 39 degs. 23 min. 08 sec. West 411.62 feet to a 20 inch marked Pine tree; thence North 24 degs. 50 min. 54 sec. East 184.38 feet to an iron; thence South 61 degs. 57 min. 57 sec. East 494.56 feet to an iron; thence South 07 degs. 56 min. 16 sec. West passing through an iron in the Northern right of way margin of NCSR 1148 a total distance of 265.62 feet TO THE BEGINNING, containing 3.38 acres, more or less, as surveyed by F. B. Greene 12-22-77. See Last Will of John R. B. Dwiggins recorded in Will Book 4, page 327, Office of Clerk of Superior Court and also Deed Book 19, page 545, Davie County Registry.

EXHIBIT "A"

BEGINNING at a stone, the Southwestern corner of the within-described tract, the Northwestern corner of Donald J. Boyd (DB 190, page 192), said stone also being in the line of Helen W. Barneycastle (DB 82, page 372), said stone is also further located North 05° 57' 32" East 304.92 feet from a 1/2" rebar, a corner of Donald J. Boyd, the Southeastern corner of Helen W. Barneycastle; thence from the BEGINNING with the Barneycastle line North 5° 57' 32" East 227.77 feet to an iron pin, the Northwestern corner of the within-described tract, the Barneycastle line, Southwestern corner of David G. Tutterow (DB 56, page 40); thence with the David G. Tutterow line South 86° 14' 38" East 725.86 feet to an iron pin, the Northeastern corner of the within-described tract in the line of David G. Tutterow, the Northwestern corner of Raymond E. Livengood (DB 204, page 292; DB 83, page 15; DB 91, page 760; DB 71, page 355); thence with the Livengood line South 03° 56' 54" West 329.87 feet to an iron pin, the Southeastern corner of the within-described tract, Southwestern corner of Livengood; thence North 78° 18' 24" West 740.60 feet to the POINT AND PLACE OF BEGINNING, containing 4.675 acres as shown on a survey by Grady L. Tutterow dated June 28, 2001, (drawing #18601-3).

SEE Tax Map I-3, parcel 43. See also Deed Book 65, page 132.

Prepared by and return to Davie County, 123 S. Main Street, Room 307, Mocksville, NC 27028

**NORTH CAROLINA
DAVIE COUNTY**

**DAVIE COUNTY, NORTH CAROLINA
SPECIAL USE PERMIT**

On the date(s) listed below, the Board of Adjustment of Davie County met and held a public hearing to consider the following application:

Applicant: Donald J. and Vickie O. Boyd
Record Owner(s): Donald J. and Vickie O. Boyd
Property Location: 196 McCallister Road, Mocksville, NC
Tax Map & Parcel # Map I-3 Parcel 45 **Acreage:** 55 acres
Deed Reference: **BOOK** 190 **, PAGE** 192
Type and Intensity of Use: Private recreational airport
Board Meeting Date(s): January 7, 2002; April 1, 2002
Approval Date: December 2, 2002

SECTION 1. FINDINGS: Having heard all of the evidence and arguments presented at the hearing, the Board of Adjustment, at its regular meeting, finds and determines that the application is complete, and subject to the conditions imposed below, the following findings are made:

1. Will not adversely affect the health or safety of persons residing or working in the neighborhood of the above listed use.
2. Will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood.
3. The use meets all required conditions and specifications.
4. The use will not substantially injure the value of adjoining or abutting property or that the use is a public necessity.
5. See additional findings, attached hereto, pursuant to the Public Hearing of January 7, 2002 and April 1, 2002 as well as Superior Court decision of October 18, 2002, file no. 02 CVS 381.

SECTION 2. CONDITIONS: Now, therefore, the application to make use of the above described property for the purpose indicated is hereby approved and granted, subject to all applicable provisions of the Davie County Zoning Ordinance, Section 3 of this permit, and the following special condition(s) which the Board of Adjustment finds to be in the public interest:

1. No commercial activity of any kind(which includes flight schools, aircraft or pilot training, plane rental, mechanical repair and the like).

Page 1 of 3- NOT TO BE SEPARATED

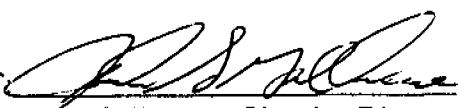
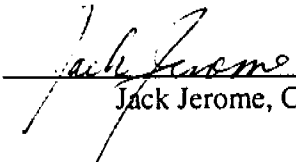
This page is an integral part of the Special Use Permit issued 12/2/2002 by the Davie County Board of Adjustment, Mocksville, NC.

2. No bulk fuel storage(over 100 gallons) or sale. Incidental fuel storage for private/personal aircraft stored on the property may be permitted, subject to applicable North Carolina State Building and Fire Codes.
3. Each property owner shall be limited to 2 workable and viable planes per dwelling, either owned or leased, and based at the property; this limitation shall not pertain to temporary visitors.
4. All planes shall be tied-down and hangared when not in use. Hangars shall be completely enclosed with no open sides and be able to be secured at all times.
5. No organized events, including, but not limited to, fly-ins, charity events, or similar events generating additional air traffic and/or public gatherings or assembly.
6. No take-offs or landings between thirty minutes after sunset and thirty minutes before sunrise, except in emergencies as defined by the Federal Aviation Administration.
7. An evergreen landscaped buffer shall be planted along the common property line with the property to the eastern end of the runway. The buffer shall be planted with two staggered rows of evergreen trees, with trees planted 7 feet on center, with such rows spaced no more than 10 feet apart. Evergreen shrubs shall consist of white pines or similar variety, and shall be a minimum height of four feet growing to a maximum height of 8 to 12 feet.
8. The maximum runway length shall be 2000 feet as shown on the submitted site plan.
9. The permit for the use of the airport shall be limited to not more than seven users with resident status on the site.
10. The development of the tract shall proceed in conformity to all plans and design features submitted as part of the special use permit application and kept on file by the Davie County Planning Department; and
11. The petitioner shall comply with all regulations as specified in the Davie County Zoning Ordinance before a Certificate of Occupancy can be obtained.

SECTION 3. VESTED RIGHTS. Approval of this permit confers upon the property the right to develop with the type and intensity of use as herein described and as shown on the approved site plan. Development of the property, however, shall be subject to any and all future amendments to the Davie County Zoning Ordinance which do not effect type and intensity of use (e.g. landscaping, design standards, screening, etc) as herein approved.

SECTION 4. SEVERABILITY AND RECORDATION. Invalidation of any one or more of these conditions shall not adversely affect the balance of said conditions, which shall remain in full force and effect.

ATTEST


John Gallimore, Planning Director
Jack Jerome, Chairman**CERTIFICATE**

Page 2 of 5- NOT TO BE SEPARATED

This page is an integral part of the Special Use Permit issued 12/2/2002 by the Davie County Board of Adjustment, Mocksville, NC.

I, John Gallimore, the duly appointed, qualified, and acting Clerk of the Davie County Board of Adjustment do hereby certify that the attached Extract from the Minutes of the Regular Meeting of the Board of Adjustment of said County held on January 7, 2002 and April 1, 2002 at 7:00 PM, is a true and correct copy of the original minutes of said meeting on file and of record in my office insofar as said original minutes relate to the matters in said attached extract. I further certify that the copy of the Special Use Permit appearing in said attached Extract is a true and correct copy of said permit adopted at said meeting and on file and of record in my office.

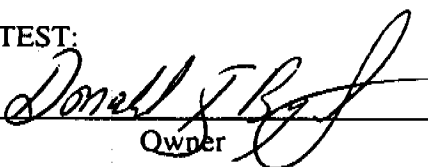
~~IN WITNESS THEREOF I have hereunto set my hand and the seal of said County at Mocksville, NC, this 12th day of December, 2002.~~

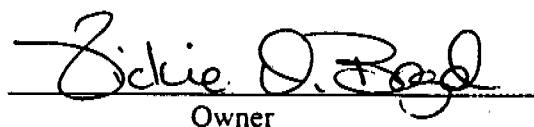

Clerk

(County Seal)

DONALD J BOYD VICKIE O BOYD, owner(s) of the above identified property, do hereby acknowledge receipt of this Special Use Permit and agree to the conditions stated within. The undersigned owner(s) do further acknowledge that no work may be done pursuant to this permit except in accordance with all of its conditions and requirements and that this restriction shall be binding upon them and their successors in interest and shall run with the land in perpetuity.

ATTEST:


Owner

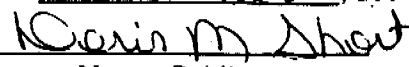

Owner

NORTH CAROLINA

DAVIE COUNTY

I, Doris M. Short, a Notary Public in and for said County and State, do hereby certify that Donald J Boyd, Vickie O. Boyd, personally appeared before me this date and acknowledged the due execution of the foregoing instrument.

WITNESS my Hand and Notarial Seal this the 16 day of December, 2002.


Notary Public

My Commission Expires: April 8 2004

FINDINGS OF FACT

1. The existing use as presented is on a tract of land approximately 55 acres in size, with road frontage along McCallister Road, presently zoned residential-agricultural, located in western central Davie County in an area comprised generally of scattered single-family housing and predominantly agricultural farming uses (livestock, wooded lands, etc.). Prior to the adoption of the present zoning ordinance, the original owner, Mr. Jan Randall, graded an area on the 55 acre tract which, since that date, has been used for airplane departures and landings by the respective owners and others that have been allowed use from that location (the "landing strip"). No permits were issued at the time of the grading, and no permits were required by Davie County from the inception of this use. Since before the present ordinance, that use has been continuous and uninterrupted.
2. The applicant purchased this property in 1996, and continues to use the property as a grass landing strip for his private airplane and for the use of his private guests. This facility is listed with the FAA and carries a designation of Boyds Hawk Creek, with LOC ID No. 4NCO as FAA site number.
3. The property is presently occupied by a single family home, an airplane hanger and associated outbuildings. The existing private airstrip is situated in the center of the property. "Airports" are allowed in the Residential Agricultural zone by special use permit.
4. The Application as presented was complete, and due notice was given of the hearings in this matter.
5. Adjoining the property to the east is a vacant 5-acre tract which would permit a single family residence and associated accessory buildings. Adjoining the property to the west are large undeveloped tracts of land with wooded and cleared areas. The slope of the land drops away from the western end of the property.
6. The airstrip is approximately 1950 feet in length and 60 feet in width. The airstrip is a grass surface. The eastern end of the airstrip is approximately 68 feet from the adjoining property. The airstrip is used only for small single engine airplanes. Planes currently take off and land from both ends of the airstrip. The applicant announced there was no plan to extend the runway, add lighting, or make any change to the existing runway as a result of the petition, at the present time.
7. There is one plane hangared on the property at the present time, which is owned and used by the Applicant. The site is not lighted and cannot be used for larger planes. However, it could be used at night under some circumstances.
8. The Applicant proposes to divide this property into four to seven lots of greater than five acres for single family residential use. This proposed division is allowed by the ordinance and does not present an issue.
9. The new lots subdivided at the site are to be marketed primarily to pilots. It is planned that those buying lots will have their own hanger. No commercial flying use is planned for the property. A 50-foot right of way would provide road access to the subdivided lots. There was no commitment as to how many planes each parcel of property would house.
10. The applicant proposes to grant access as of right to his landing strip to purchasers of his lots with all owners to share in maintenance, and it is this proposed use which is before this Board.
11. Air traffic would not just be limited to the proposed homeowners in the subdivision. Applicant stated that some airplanes could land and take off to fly elsewhere.
12. The Applicant proposes minor changes to the runway at some point in the future. Minor changes would include paving the runway and adding lighting. There are approximately 16 identified airstrips in Davie County.
13. In December 2001, the Applicant was asked by the zoning office to submit an application for a special use permit, based upon the determination of the zoning officer that the proposed use of the

Page 4 of 5- NOT TO BE SEPARATED

This page is an integral part of the Special Use Permit issued 12/2/2002 by the Davie County Board of Adjustment, Mocksville, NC.

landing strip by multiple owners constituted a change in use, and that by the provisions of the ordinance, a Special Use Permit was required.

14. The Applicant submitted his application, which was the subject of a hearing on January 7, 2002. At the hearing, a number of witnesses appeared and testified.
15. A number of neighbors testified in opposition to the proposed use and stated concerns as to expanded use of the runway. There was testimony as to noise from planes which had used the runway in the past and concerns as to privacy, safety and diminishment of current agricultural nature of land.
16. Following this hearing, at which the Board took this matter under advisement, the Applicant and his counsel requested a written decision from the zoning office as to why a Special Use Permit was required.
17. The zoning officer rendered his written decision, in which he took the position that the present use of the property was allowed under the ordinance either as a valid accessory use to single family residential ownership of a large tract or as a valid non-conforming use as an "airport," but that the proposed plan constituted a change in use which required a permit.
18. The Applicant, through counsel, appealed the decision of the zoning officer, contending that the proposed plan either did not constitute a change in use or that the change was, at most, permissible intensification of use so that a permit was not required.
19. A Special Use Permit is required, the proposed use being either a change of use from a valid accessory use to a use requiring a permit or an enlargement or expansion of a pre-existing nonconforming use which is prohibited by the Davie County zoning ordinance.
20. There was no credible evidence that an increase in the number of homes from one to seven on this tract of 55 acres, with each home having access and use of the existing runway would adversely affect the health, safety, and welfare of the community.
21. Issuance of the permit with conditions will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood.