

HENDERSON COUNTY
Planning Department

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MEMORANDUM

TO: Henderson County Board of Commissioners
Steve Wyatt, County Manager
Selena Coffey, Assistant County Manager
Russ Burrell, County Attorney

FROM: Autumn Radcliff, Senior Planner

CC: Anthony Starr, Planning Director

DATE: August 23, 2007

SUBJECT: Land Development Code – Additional Proposed Text Options Requested at the
8-2-07 workshop

At the Board of Commissioners Land Development Code workshop on Thursday, August 2, 2007, several of the proposed text and map options were discussed. Enclosed for the Boards consideration are four additional options and/or additional information that the Board requested Staff prepare.

The enclosed options (Residential Issue 3A: Suburban Overlay District Alternative; Residential Issue 6A: Subdivisions Reviewed and Approved by the Board of Commissioners as a Conditional Zoning District; Residential Issue 10: Gated Communities; and Legal Issue 2: Nonconforming Commercial and Industrial Uses/Structures within the former Open Use (OU) Zoning District) should be added to the materials you received on July 2, 2007.

This information will be available on the County website, in the Planning Department, and at all branch libraries.

*LDC Residential Issue 3A: Suburban Overlay District Alternative

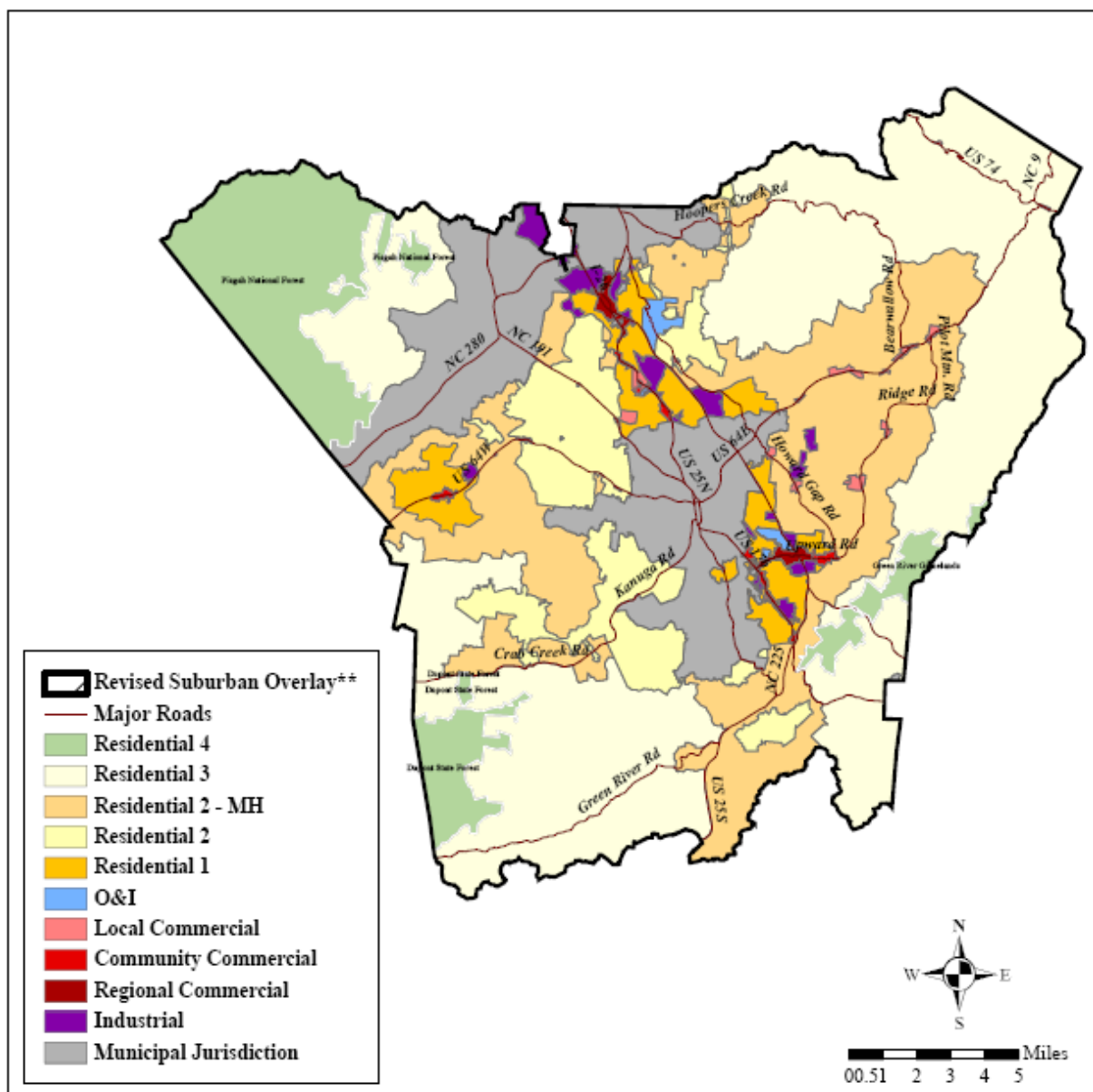
Issue:

The concern is that the Suburban Overlay District is proposed to be applied to all lands currently zoned R-40 and R-30.

Recommended Solution:

Apply the Suburban Overlay District to only those lands formerly zoned R-40 and located in the vicinity of Kanuga/Crab Creek Road.

Map A: Revised Suburban Overlay District



New Map Option as requested by the Board of Commissioners at the BOC August 2 Workshop.

***LDC Residential Issue 6A: Subdivisions Reviewed and Approved by the Board of Commissioners as a Conditional Zoning District**

Issue:

The concern is that the Board of Commissioners should review and approve larger subdivisions.

Summary of Recommended Solution:

Add language to the Land Development Code that would require that major subdivisions with 300 or more lots/units to be reviewed and approved by the Board of Commissioners as a Conditional Zoning District. Recommended language is consistent with that of §200A-304, review of major residential subdivisions and §200A-310, C, map amendments.

Recommended Solution:

Make the following modifications (See Language below).

§200A-304. Review for Major Residential Subdivisions and Conservation Subdivisions of Thirty-Five (35) **to Two Hundred Ninety-Nine (299)** ~~or More~~ Lots and any Commercial, Office Institutional, Industrial or Mixed-Use Subdivisions **of Less Than Three Hundred (300) Lots**

Add the following section (See Language below).

§200A-305. Review for Major Residential Subdivisions, Conservation Subdivisions, Commercial, Office Institutional, Industrial or Mixed-Use Subdivisions of Three Hundred (300) or More Lots

- A. Approval Authority. Board of Commissioners.
- B. Approval Type. Map Amendment approval as a Conditional Zoning District.
- C. Application.
 - 1. Pre-application Conference. Each *applicant* shall meet with the *Planning Director* in a pre-application conference at least 15 days prior to the submission of any application for a major subdivision of 300 or more lots and accompanying map amendment application. The purposes of the conference are to: (1) acquaint the *applicant* with the application process, (2) review the sketch of the proposed development, (3) allow for the free exchange of information between the *applicant* and the *Planning Director*, (4) explore how the *applicant* intends to design the development, and (5) identify contemplated density levels, areas

* New Text Option as requested by the Board of Commissioners at the BOC June 12 Workshop.

proposed for preservation and existing nature features on the property to be subdivided. The *applicant* should be prepared to discuss the development plans for the entire *tract* and any adjacent property under the same ownership. Each *applicant* shall bring to the pre-application conference a site analysis sketch which shall:

- a. Be prepared based on aerial photography, visual observations and an on-site inspection of the *tract* and which may be prepared (at the *applicant's* request) with the general guidance of Planning Staff or professionally (although neither is required);
 - b. Be at a scale which is clearly legible and provides sufficient detail to describe the general location of proposed development and the stated features for discussion purposes; and
 - c. Identify (for the entire *tract*) the following features: streams, creeks, ponds, reservoirs, *floodplains*, *wetlands*, *steep slopes* (those greater than 25 percent), *unique natural areas*, rock outcroppings, farmland, pastureland and wooded/forested areas.
1. Application. Applications, including all application materials (subdivision and map amendment), master plan(s) (see §200A-305 (Master Plans)) and/or development plan(s) (see §200A-306 (Development Plans)) shall be submitted on or before the date required by the Planning Department for review at the next Planning Board meeting. The map amendment application shall also include: (1) the name(s) and address(es) of the owner(s) of the property in question; (2) the location of the property; (3) the *PIN* as shown on the County tax listing; (4) a description/statement of the present and proposed district; (5) a description of the property in question sufficient to unequivocally describe and identify said property (such description may take the form of a property survey, a legal description or a legible copy of a County cadastral or composite tax map clearly annotated with district lines which follow political boundaries, geographical features or property lines); and where an *applicant* chooses to appoint an agent to speak on their behalf, (6) an agent form. In the opinion of the *Planning Director* if an application is incomplete, the *Planning Director* may return the application to the *applicant* identifying the specific omissions, without invoking the review time requirement. The *Planning Director* may modify applications as necessary. Incomplete applications must be resubmitted on or before the date required by the Planning Department for review at the next Planning Board meeting.
 2. Review Schedule. Applications for major subdivisions of 300 or more lots shall have a minimum 45 day processing period for review by the *Planning Director* before the first consideration by the Planning Board. Applications involving more than one (1) parcel not under common ownership by the *applicant* shall be forwarded to the Board of Commissioners at its first regularly scheduled monthly meeting. (The Board of Commissioners will review the application and determine if it should proceed or, due to the size of the area, number of parcels or number of property owners, if the scope of the application will require a *Small Area Zoning Study*. If the Board of Commissioners agrees that the application calls for a *Small Area Zoning Study*, a directive for such will be issued by the Commissioners and direction will be provided as to how to proceed with the amendment application).

3. Withdrawal of Application. Each application for a major subdivision of 300 or more lots which is withdrawn by the *applicant* after the first newspaper notice appears shall not be considered for a *map amendment* within the following six (6) months.
 4. Application Resubmittal.
 - a. Resubmittal of Any Application. The Planning Board and the Board of Commissioners will not consider an application (by a property owner or owner's agent) when, within the previous 12 months, the *map amendment* request was denied by the Commissioners.
 5. Fees. Any review fee established by the Board of Commissioners shall be submitted with the application.
- D. Staff Review. The *Planning Director* shall: (1) process and review the subdivision application, master plan and/or development plan(s), and map amendment request; (2) present the application to the *TRC* for its comments and recommendations; (3) schedule the matter for consideration by the Planning Board and notify the *applicant* (in writing) of that time; (4) forward a copy to any review agency for information purposes or for comment; and (5) prepare a recommendation on the proposed amendment. Formal review of the major subdivision of 300 or more lots shall not begin until the *Planning Director* has verified that the application is complete. Such verification should, when possible, be made within three (3) business days of its receipt.
- E. Formal Review. The *Planning Director* shall prepare a recommendation on the application and supply a copy of the recommendation to the *applicant* before review by the Planning Board. Prior to amending the Official Zoning Map, the Commissioners shall consider the Planning Board's recommendation which must be in writing and must address consistency with the *Comprehensive Plan*. The Planning Board shall have 45 days after the first consideration of an application for a major subdivision of 300 or more lots to submit its written recommendation to the Commissioners. Failure of the Planning Board to submit a written recommendation within the 45 day period shall constitute a favorable recommendation, except that, if by agreement of the Planning Board and the *applicant* that 45 days is insufficient due to the size of the area, the complexity of the request or similar circumstances, the Planning Board shall have 60 days to submit its written recommendations.
- F. Public Hearing. Prior to amending the *zoning map* the Commissioners shall hold a public hearing on the amendment in accordance with *NCGS* §153A-323, as amended (See §200A-333 (Legislative Process Standards)).
- G. Public Notification. Public notification of the Planning Board meeting shall comply with the provisions outlined in §200A-333 B (3) (Posted Notice), for posted notices. Public notification of the Commissioners public hearing shall comply with the provisions of *NCGS* §153A-323 and §153A-343, as amended (See §200A-333 (Legislative Process Standards)). Planning Staff shall be responsible for all necessary public notifications.
- H. Amendment Validity. The amendment is effective immediately following the decision of the Commissioners. The Commissioners shall issue a written statement on all *map amendment* decisions (both adoptions and rejections) addressing reasonableness, consistency with the *Comprehensive Plan*, and public interests furthered.

***LDC Residential Issue 10: Gated Communities**

Issue:

The concern is that new residential subdivisions not be permitted to be gated communities.

Summary of Recommended Solution:

Add provisions which would prohibit the placement of gates for residential subdivisions. Where a residential subdivision is gated at the time of adoption of the Land Development Code, such gate would be rendered nonconforming and would thereafter adhere to the provisions provided for nonconforming structures. Special use permits for gating residential subdivision is not recommended as it would be difficult to determine residential subdivisions which should be allowed gates from residential subdivisions which should not be allowed gates.

These proposed provisions would not apply to individual private lots or to nonresidential subdivisions. Nonresidential subdivisions were excluded as these uses may need to be secured for protection of the public health, safety and welfare.

The revisions, as proposed, would permit the gating of condominium developments and apartment complexes provided such are not part of a residential subdivision. (Should the Board wish to prohibit gates on condominium developments and apartment complexes, the following modification to SR 3.7 (1) could be made "Gates shall not be permitted on any residential subdivision or other residential development.")

Recommended Solution:

Make the following revisions to the following provisions of the Draft Land Development Code (See Language below).

SR 3.7. Gate and/or Guardhouse

- (1) Operations. *Gates and/or guardhouses* shall be for the purpose of serving residents/occupants and visitors to a private property, complex, **or** development; ~~manufactured home park or subdivision~~. **Gates shall not be permitted on any residential subdivision.**
- (2) Accessibility. The developer/**property owner** and ~~homeowners' association~~ shall:
 - a. Provide unfettered access to all private *roads* by emergency and law enforcement *vehicles*. Access procedures must ensure immediate access through the *entry gates* for emergency and law enforcement *vehicles* responding to emergencies without need of special keys or codes. This may be done by *access control device* approved by the County. As an alternative the developer/**property owner** ~~or homeowners association~~ may provide a *person* to provide immediate access to emergency service personnel on a 24 hour basis. The developer/**property owner** and ~~homeowner's association~~ shall

* New Text Option as requested by the Board of Commissioners at the BOC August 2 Workshop

provide and annually update documentation necessary to provide this access to the Henderson County Fire Marshal and Sheriff's Department that proposed *entry gates* and access procedures meet all County standards for access by emergency and law enforcement *vehicles*. If the **property owner** ~~homeowner's association~~ fails to maintain reliable access for the provision of emergency or other public services, the County may enter the gated ~~residential development/property~~ and open, disable or remove any gate or device, which is a barrier to access, at the sole expense of the **property owner** ~~homeowners' association~~. ~~The declaration of covenants, conditions and restrictions and any other relevant documents of the homeowners' association shall include a statement to this effect.~~

- b. Reasonably guarantee access to all private *roads* by Henderson County and State of North Carolina employees operating within the scope of their official duties to perform zoning, inspections and other governmental regulatory activities, and to all public utility companies to perform installation and maintenance activities of public utility infrastructure. A statement to this effect shall be filed with the Henderson County Sheriff's Department and appear on the **plan or final plat** of all new development.

(3) Structure. Gates and/or guardhouses shall:

- a. Be *setback* sufficiently far from *public road* access to allow for the stacking of at least three (3) *vehicles* out of the public travel lanes on the *public road*;
- b. Have an additional *setback* between the point of the *access control device* and the *entry gate* to allow a *vehicle* which is denied access to safely turn around and exit onto a *public road*;
- c. Be provided adequate *setbacks* and proper alignment of approach and departure areas on both sides of a gated entrance to allow free and unimpeded passage of emergency *vehicles* through the entrance area;
- d. Have sufficient minimum gate widths and openings to allow safe passage of all *vehicles*;
- e. Where the gate crosses a travel way which permits:
 - 1. Two-way travel, such gate shall open so as to provide a minimum width of 18 feet of passage; or
 - 2. One-way travel, such gate shall open so as to provide a minimum width of 12 feet of passage; and
- f. Provide a minimum thirteen feet six inches (13.5 feet) *vertical clearance* at its lowest point.

§200A-77 C (7) Gates. **Entry gates shall not be permitted on any residential subdivision of land (minor or major).** Where permitted, all *entry gates* shall be constructed and maintained as required by and in accordance with this Chapter and Chapter 89 of the Henderson County Code, *Entry Gates*. All proposed *entry gates* must be shown and noted on development plans, the size and type of which must be provided to ensure adequacy with applicable County regulations. The standards noted in SR 3.7 (Gates and/or Guardhouses) shall apply.

***LDC Legal Issue 2:**

Nonconforming Commercial and Industrial Uses/Structures within the former Open Use (OU) Zoning District

Issue:

The concern is that existing uses/structures established in the former Open Use zoning district by the issuance of a special use permit and made nonconforming by the adoption of this Chapter and its associated zoning map would then be able to maintain, improve, alter, expand, remodel and repair the uses/structures without restriction except for dimensional requirements and setbacks applied by the applicable district under the Draft Land Development Code dependent upon interpretation.

Recommended Solution:

Make the following clarification to §200A-264 (Nonconforming Commercial and Industrial Uses/Structures within the former Open Use (OU) Zoning District) to ensure the nonconforming uses/structures currently permitted by and operating under a special use permit continue to operate under the provisions of the special use permit.

§200A-264. Nonconforming Commercial and Industrial Uses/Structures within the former Open Use (OU) Zoning District

- A. Maintenance, Improvement, Alteration, Expansion, Remodeling, Repair and Reconstruction. Commercial and industrial *uses/structures* legally established in the former Open Use zoning district and made *nonconforming* by the adoption of this Chapter and its associated *zoning map* shall be allowed to be maintained, improved, altered, expanded, remodeled, repaired and/or reconstructed in adherence with the dimensional requirements and *setbacks* of the current applicable district. ***Uses/structures established in the former Open Use zoning district by the issuance of a special use permit and made nonconforming by the adoption of this Chapter and its associated zoning map may be allowed to be expanded or reconstructed only with the amendment of the special use permit or issuance of a new special use permit unless the use/structure is allowed by right in the current applicable district. The procedures set forth in §200A-319 shall govern the amendment or issuance of any special use permit.***
- B. Discontinuance of Nonconforming Use. Standards found in §200A-263 (Nonconforming Uses) shall apply.

* New text option for purposes of clarifying the intent of §200A-264 of the Draft Land Development Code