

**HENDERSON COUNTY PLANNING BOARD**  
**September 16, 2010**

The Henderson County Planning Board met on September 16, 2010 for their regular scheduled meeting at 5:30 p.m. in the King Street Meeting Room located at 100 North King Street, Hendersonville, NC. Planning Board members present were Jonathan Parce, Chair; Steve Dozier, Rick Livingston, Mike Cooper, Tommy Laughter, Suprina Stepp and Marilyn Gordon. Others present included Anthony Starr, Planning Director; Autumn Radcliff, Senior Planner; Parker Sloan, Planner; and Sarah Zambon, Associate County Attorney. Board members absent were Wayne Garren and Stacy Rhodes.

Chairman Parce called the meeting to order of the Henderson County Planning Board. He asked for the approval of August 19, 2010 meeting. Steve Dozier made a motion to approve the minutes and Suprina Stepp seconded the motion. All members present voted in favor (6-0).

Annual Election of Officers and Appointment of Secretary. Tommy Laughter made a motion that the present officers, Jonathan Parce, Chairman and Tommy Laughter, Vice-Chairman remain for another year and that Kathleen Scanlan is appointed as the secretary. Steve Dozier seconded the motion. All members present voted in favor (6-0).

Adjustment of Agenda. There were no adjustments to the agenda.

**NEW BUSINESS**

Rezoning Application # R-2010-01 – Rezone Approximately .024 Acres of Land – Located near the intersection of Spartanburg Highway and Upward Road, from the City of Hendersonville’s Relinquished Jurisdiction to a Community Commercial Zoning District – Philip and Maria Furino, Property Owners – Initiated by Henderson County Planning Department – Presentation by Parker Sloan, Planner. Mr. Sloan stated that this is a staff initiated rezoning for the County to rezone approximately .024 acres of land located near the intersection of Spartanburg Highway and Upward Road. The subject area is owned by Philip and Maria Furino and the reason for the rezoning was due to a mapping error by the City of Hendersonville. He said that on August 23, 2010, the City of Hendersonville removed the subject area from their jurisdiction and currently it is not zoned. Mr. Sloan explained that the proposed Community Commercial (CC) zoning would be a part of a contiguous zoning district. Staff supports the rezoning request as it is consistent with the recommendations of the County’s 2020 Comprehensive Plan. Mr. Sloan added that the Technical Review Committee considered the rezoning request at their meeting on September 7, 2010 and voted unanimously to send forward a favorable recommendation to rezone the subject area to a Community Commercial zoning district.

Tommy Laughter made a motion that the Planning Board recommend approval of rezoning application # R-2010-01 to rezone the Subject area to a Community Commercial (CC) zoning district based on the recommendation of the Henderson County 2020 Comprehensive Plan. Rick Livingston seconded the motion and all members present voted in favor (6-0).

Etowah-Horse Shoe Community Plan Zoning Map Amendments – Autumn Radcliff, Senior Planner.

Ms. Radcliff stated that the Etowah-Horse Shoe Communities Plan was recommended by the County’s Comprehensive Plan. Ms. Radcliff said the County’s Comprehensive Plan that was adopted by the Board of Commissioners indicated that the County did a series of community plans. The community plans are community specific comprehensive plans which address a wide range of areas including land use and development; transportation; natural and cultural resources; community facilities and public services; economic development and agriculture and housing. She said that the Etowah-Horse Shoe Community Plan was the first community plan called for in the comprehensive plan and that was based on the amount of growth which was expected to occur. The Board of Commissioners advertised and took applications for people who lived in that area who owned a

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business or resided there to submit applications to be on an advisory committee. She said of those applications, the Board of Commissioners selected four members from the Etowah area and four members from the Horse Shoe area with one Planning Board liaison, which was formed on September 4, 2007. She said the advisory committee had the responsibility for drafting a plan. They met once a month for over a year including holding two public input sessions. They met with the Planning Board on a joint meeting to discuss their draft plan for recommendation to the Board of Commissioners. The Board of Commissioners also held two workshops and a public hearing on the plan. The Board of Commissioners, by resolution, took action on the Etowah-Horse Shoe Communities Plan on September 16, 2009 and directed various staff and boards to begin implementation of the plan with some modifications from the original draft. The Planning Board began its discussion and review of the Plan in January 2010. The proposed zoning map amendments are based on the recommendations of the Etowah-Horse Shoe Communities Plan, the County Comprehensive Plan and discussion by the Planning Board. The proposed map amendments would rezone approximately 7,400 acres and approximately 3,000 property owners will receive mailed notices 10-25 days ahead of the Board of Commissioners hearing. Ms. Radcliff said the Planning Board and the Technical Review Committee must provide a recommendation to the Board of Commissioners on the proposed map amendments to the Board of Commissioners. The Technical Review Committee met on September 7, 2010 and reviewed the proposed map amendments and voted unanimously to send forth a favorable recommendation.

Ms. Radcliff provided a PowerPoint presentation with an overview showing maps of the proposed amendments. The description of the zoning map amendments are as follows:

**Residential Zoning Amendments**

- Residential Zoning: Expand the existing R1 (Residential 1) zoning to include the Etowah Valley Golf course and parcels to its south. Change zoning of properties north of US Hwy 64W and east of the Etowah community to R2 (Residential 2) from current R2R (Residential 2 Rural) and R-40 (Estate Residential) zoning. Change zoning of properties along Folly Rd to R3 (Residential 3) from R-40 (Estate Residential).
- LC (Local Commercial): Change zoning of properties along Morgan Rd and US Hwy 64W (from Avery's Dr to Cummings Rd) to LC (Local Commercial). Change zoning along US Hwy 64W (from S Rugby Rd to All Star Ln) to LC (Local Commercial).
- CC (Community Commercial): Change zoning of properties along Etowah School Rd and Old US Hwy 64 to CC (Community Commercial). Change zoning of properties along and south of US Hwy 64W near the Henderson/Transylvania County line to CC (Community Commercial).

Ms. Radcliff noted that a letter which Planning Staff received today by Carolyn Griffin, was provided to the Planning Board members. The letter indicates Ms. Griffin's opposition to the zoning opposite of Sunny Acres Drive, which is currently R-1. The Board reviewed the map of this particular area. Chairman Parce opened public input.

Phyllis Fitzsimmons – Ms. Fitzsimmons whose mother is 84 years old and could not attend this meeting, lives at 300 Etowah School Road (area G3). She stated that her mother opposes the change and said that the property, which is approximately 61 acres is a hay field and she has no intension to do anything else with the property and would prefer its present use than a business. She also feels that it would be a tax increase for her mother.

John Dellinger – He lives at 68 East Turkey Fox Lane and is the President of the Homeowner's Association for Hunters Glen and Hunter's Cove which is behind the Horse Shoe post office and the

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entrance is to the post office. He said the land adjacent to the post office and across the street to the McGraw property has been proposed as Local Commercial. He said the request to rezone that land to Local Commercial would increase the traffic congestion, create access problems and there is floodplain concerns. He showed photos of examples of the floodplain problems that have occurred (There were a number of property owners present in this area that share the same concerns).

Mr. Charlie Sneed – He lives at 34 Larchmont Drive in Horse Shoe, near South Rugby Road. He is concerned with the change from R-40 to R-2 which would increase traffic. R-40 is a rural low-density area and feels that it is more consistent with the area than R-2.

Diane Fish – Ms. Fish lives on the corner of Sunny Acres (Area G2) and is against the proposed Community Commercial expansion.

Bill Rogers – Mr. Rogers who lives in Sunny Acres (Area G2) is opposed to the changes and he is concerned with tax increases if the rezoning goes through.

Mary Haze – Ms. Haze resides at 421 Hunters Glen Lane is opposed to the change from residential to commercial. She is the fifth house on the left in Hunters Glen/Hunters Cove area and has the view of the fire station and their bright lights shining into residential windows. She said she is not opposed to growth but is concerned with lights and traffic congestion, which is increasing everyday. She believes in positive growth but not in these circumstances.

Dan Griffiths – Mr. Griffiths lives at 3668 Brevard Road, which is proposed for Local Commercial and explained the heavy traffic getting on and off of 64 West. If it is changed to commercial, there will be more congestion and problems in the area and he does not want anything but residential in that area.

The Board reviewed the various areas discussed in the public input. Ms. Radcliff was asked to address the public input questions. She reviewed and explained that these zoning changes were recommended by the County Comprehensive Plan, the Etowah-Horse Shoe Communities Plan and the Planning Board. She said the zoning is only one component of determining the tax value. She said the zoning is based on what the community is going to look like and the growth expectancy and where the community will go in the next fifteen years. She said that this is a fifteen year vision for this community and stressed the fact that the zoning changes had nothing to do with the incorporation efforts that have been going on. She reviewed the zoning districts of R-40 and R-2 and their uses for each. Mr. Starr addressed the comment regarding the R-40 district. He said when the Land Development Code was adopted in 2007, there was discussion that occurred regarding the R-40 district that it would remain for the time being, but eventually be done away with. When each community plans were undertaken, those citizens from those community areas would take a look at what should change, if any and this committee came up with removing the R-40 district. He said in terms of development potential, there really isn't a difference between R-2 and R-40. He said they have the same density, they both allow multi-family development. The R-40 district at present, could allow for multi-family development in the highway 64 area, but would need to be reviewed by the Board of Adjustment, after holding a public hearing, a quasi-judicial hearing, and that does not necessarily entitle a property owner to that use since it requires a special use permit. Rick Livingston noted that this plan was not created by the Planning Board, but by the Etowah-Horse Shoe Committee, made up by citizens of the community – four from Horse Shoe and four from Etowah and Tommy Laughter added that after this process, this plan moves forward and there will be notification to all property owners, then you will go before the Board of Commissioners and they will make the final decision. This has been discussed and studied for a long time as to what will be in fifteen years. He said a lot of things have changed since the dissolving of the Seven Falls Development. When the committee was going through this process, they took into account what future growth was going to

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look like in Etowah and by in large they were going to do everything that they have done to protect the interest of everyone in the area community plan.

Marilyn Gordon stated that this plan has been a long-term, on-going process for the County and that there was an outcry from the community for some planning and zoning and especially for some long-range thinking. She feels that the committee gave this a tremendous effort and lots of thought. She added that it is very difficult when you are trying to rezone this many different parcels because when you are nearing the end of the process, you are impacting many people. She said that nothing will change unless someone sells their land or changes the use of the property.. She said that commercial sites will only happen if they are needed in the community and not because someone put the designation on the map. Ms. Gordon said the Planning Board only makes a recommendation to the Board of Commissioners so they can make a decision after discussions and holding a public hearing.

Tommy Laughter made a motion that the Planning Board recommend the Board of Commissioners approve the proposed map amendments, as presented and discussed, for the Etowah and Horse Shoe area based on the recommendations of the Etowah-Horse Shoe Communities Plan and consistency with the County Comprehensive Plan. Rick Livingston seconded the motion and all members present voted in favor (7-0).

2010 City of Hendersonville ETJ Expansion. Mr. Starr stated that the City approached the County regarding the possibility of expanding its extraterritorial jurisdiction (ETJ) and its ability to regulate the minimum housing code, zoning, subdivision, and other development-related items. He said under North Carolina Statute, a municipality may expand its ETJ up to one mile without the permission of the County board if the County does not exercise zoning, subdivision and building inspection in the area they are expanding for, but in this case, we provide all three of these services. He said in this case, they would need to get the permission from the County Commissioners but the County Board would not need to hold a hearing, but they can. He said that the County Commissioners are not obligated to approve it as this is purely a policy decision. Mr. Starr said, because Hendersonville is of a certain population, it can extend it's ETJ up to two miles, with the permission of the County. He said the City of Hendersonville has mapped out a proposed area and plan to ask the County formally to expand the ETJ, right up to their two-mile limit along the Upward Road corridor, going out past I-26 Interchange to approximately Upward Elementary School. He said they have tried to follow the parcel boundaries in most cases. If the ETJ expansion is approved by the County Commissioners, the City has to hold a public hearing and then enact their ordinance to extend their ETJ, after they get permission from the County Board. They then will need to hold a rezoning hearing. He said the City of Hendersonville plans on holding their hearing on October 7<sup>th</sup> and will take public comment and formally request the County to allow the expansion of the ETJ. Mr. Livingston asked whether there would be any differences in regulations between the City and County. Mr. Starr said he was not aware of any huge differences. Mr. Cooper stated that this might be perceived as an insult to this Board and to the Commissioners because the City might not feel that the County has enough knowledge to manage the growth of that area. He also feels that this could be taken as a land seizure gesture by the City because if the County lets them extend their ETJ, without having them extend their City limits, they won't need to spend any money to control how it grows. Mr. Cooper asked if a property owner who was zoned under the County and received permission to build on their property would have vested rights under this ETJ expansion. Mr. Starr stated that in terms of their current building, they would be vested in what they have, not the same non-conforming rules that the County has, but the City could change the zoning or they may go with the same zoning, which could impact future development. Mr. Starr stated that their site plan would still be valid even under the change, until the permit extension act expires. After further discussion, Mike Cooper made a motion that the Planning Board recommend that the ETJ expansion proposal not be approved by the County Commissioners. Rick Livingston seconded the motion and all members present voted in favor (7-0).

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Land Development Code 2010 Annual Text Amendments (TX-2010-02). Ms. Radcliff stated that primarily the proposed amendments involve reorganizing the subdivision regulations and addressing some of the Planning Boards' concerns with special subdivisions. She said that the only substantive modifications to the existing subdivision regulations and standards are highlighted in gray, in the agenda materials sent out. The special subdivision changes involved the following:

1. That the requirement for the Certificate of Understanding be made as part of the subdivision application. This amendment would require the certificate of understanding for all subdivisions types as part of the application and eliminate it from the final plat requirements.
2. Allowing credit for existing roads that have a travelway width of less than 12 feet. The amendment would allow upon inspection and approval by the Planning Director, an existing road of no less than 9 feet to be used to access a special subdivision. Some improvements such as 4-inches of gravel may be required and dedication of right-of-way per the subdivision road standards would apply. Existing roads would need to have adequate shoulder and vertical clearance to be accessed by emergency vehicles.

She said other changes to existing subdivision regulation and standards were:

- (1) The Cemetery Advisory Committee requested new subdivisions require existing cemeteries be deeded as a separate lot with road access. Cemetery lots are non-standard and will not count toward overall density calculation. The proposed amendment requires existing cemeteries be deeded as a separate lot with a minimum 20 foot wide private or public easement. Major subdivisions shall provide access with a minimum 20 foot wide right-of-way (ROW) and a 12 foot wide travelway.
- (2) Ms. Radcliff said the Planning Board was concerned that no provisions were provided to address illegal land disturbing activity in conjunction with a subdivision. A provision would be added that unapproved land disturbing activity in conjunction with a subdivision is a violation of the LDC and may be subject to County penalties as described in Article XII of the LDC.
- (3) She stated another concern of the Planning Board was that due to the 3 year expansion hold, minor subdivisions that expanded before this time limitation would have to reapply as a major subdivision regardless of the number of lots created. In addition, they were also concerned that the after the allotted time, an expansion could occur without any improvements to the existing private roads; allowing applicants to serve lots on roads that would not meet the minimum subdivision road standards. The Planning Board recommended removing these time limitations so applicants would be aware and required to upgrade existing private roads (within the subdivision) to meet County regulations. The proposed regulations would allow previously approved subdivisions to be expanded without reapplying as a major subdivision provided that certain criteria have been met (removes time limitations that would exempt previously approved subdivisions).
- (4) She said the County has inspected roads which appeared to not meet subdivision regulations. The burden of proof is always the responsibility of the applicant. The proposed regulations add a provision that the Subdivision Administrator may require engineering certification that the new road meets the LDC requirements and further may request a core sample in certain circumstances were no engineering certification exists.
- (5) Ms. Radcliff said the Planning Board and staff expressed concerns that the existing road standards (based on the number of lots served) did not correspond with the number of lots served by subdivision types. For example, a special subdivision (5 or fewer lots) would have to meet the standards for limited local roads if serving only 4 or fewer lots, and the standards for local roads if proposing 5 lots. In addition, the Board stated concerns that special subdivision had no other alternatives to constructing a new road. To address these concerns,

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she said staff recommends correcting the number of lots served by limited local and local roads, and adding a provision for using private driveway easements and alleys.

- a. Alleys. The use of alleys allows flexibility in subdivision design but would require some minimum standards. Staff recommends adding a provision that alleys may be used to access lots within a subdivision provided that those lots have frontage on a private or public road that is accessible. The alleys would be required to have a minimum 20 foot wide right-of-way and 12 foot wide travelway that could be paved or graveled.
- b. Private Driveway Easements. The existing conservation subdivision standards allow for the use of private driveway easements serving up to 2 lots. This amendment would increase the number of lots served by a private driveway easement to 3 lots and would allow all subdivisions (including special subdivisions) to propose private driveway easements (existing standards for private driveway easements would apply).
- c. Private Subdivision Limited Local Roads.
  - i. Number of lots served. To address the issue with the number of lots served verses the type of subdivision, the private subdivision limited local roads will be amended to serve up to 5 lots instead of 4 lots (will match the special subdivision standards).
  - ii. Right-of-Way restrictions. The Planning Board had discussed adding a provision that would require the dedication of a 45 foot right-of-way (in lieu of a 30 foot right-of-way) to accommodate required road improvements for future subdivision expansion in situations where the maximum density could achieve more than 5 lots. This provision would allow for a special subdivision to be expanded in the future without having to acquire additional right-of-way.
- d. Private Subdivision Local Roads. To address the issue with the number of lots served verses the type of subdivision, the private subdivision local roads will be amended to serve up to 6 lots instead of 5 lots (will match the special subdivision standards and the amendments to the limited local roads).

Amendments to the Improvement Guarantee Standards:

The proposed subdivision amendments made substantial modifications to the improvement guarantee section and existing standards (this section is a subpart of the subdivision regulations). These changes will provide the County a better mechanism for covering costs associated with completing required improvements (includes associated costs with administration, construction and project management) if the applicant is unable to complete the project. Below is a description of the substantive modifications to the improvement guarantee standards.

- (1) Application Requirements. The proposed changes require that before an applicant can apply for an improvement guarantee the following apply:
  - a. A minimum of 50 percent of the required improvements (based on total project cost that the applicant is guaranteeing) is in place (includes rough grading of proposed roads subject to the improvement guarantee).
  - b. All local, state and federal permits for the development must be approved and copy of said approval provided to the Subdivision Administrator (includes Army Core permits, stream and wetland mitigation fees/permits, water and sewer permits, etc.).
  - c. All associated design plans and construction specifications for the required improvements (i.e. roads, bridges, water and sewer infrastructure, stormwater

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infrastructure, pedestrian infrastructure, etc.) are submitted to the Subdivision Administrator.

- (2) Cost Estimate Standards. Add a provision requiring the applicant to include the following:
  - a. Separate estimates for roads, bridges, water and sewer infrastructure, stormwater infrastructure, pedestrian infrastructure, etc. consistent with submitted design plans construction specifications.
  - b. All associated fees for remediation work required for the proposed improvements (unless proof of payment for remediation fees is provided to the Subdivision Administrator).
  
- (3) Improvement Guarantee Instrument. Amend the existing standards requiring the applicant to guarantee in the amount of 150 percent, instead of 125 percent, of the cost to complete the work as determined by cost estimate amounts. This provision would also apply to extensions. The additional 50 percent covers inflation and additional costs (costs associated with violations, sedimentation and erosion control, administrative and project management) that may be required to complete the project. Existing standards allow for portions of the guarantee to be released as work progresses. This provision would also require the applicant to provide a new cost estimate detailing the work that has been completed and that is remaining when requesting a release.
  
- (4) Terms of the Improvement Guarantee. Add a provision requiring the following terms be expressly stated in the performance agreement and that the lending institution be a national association or FDIC registered group. The following terms shall be stated in the performance agreement:
  - a. The applicant shall be provided 15 days to identify a new security provider or prove alternate security where the security provider is in default, bankruptcy, or otherwise determined to be insolvent by the County after which time the County may call the improvement guarantee.
  - b. The applicant shall provide the County with specific benchmarks for completion of work and, as a term of the agreement, should the applicant fail to meet the self-imposed benchmarks the County may call the improvement guarantee.
  - c. If in violation of any other provision of this Chapter 200A, Henderson County Land Development Code, where the applicant has been notified of the violation, and the applicant has been provided the period for remediation authorized by the approving agency, and where applicant is in continued violation, the County may consider this to be a breach of the agreement and call the improvement guarantee to prevent further violation of Chapter 200A, Land Development Code.

Violations and Penalties. Add a provision that if an applicant of a subdivision is in violation of any County regulations (including Soil Sedimentation and Erosion Control Permits) the County will not release the improvement guarantee prior to the expiration date unless the violations are corrected.

She added that this provision would also add language allowing the County the ability to charge costs associated with construction and project administration for any executed improvement guarantee. The County may currently do this but the proposed change will state this as part of our regulation.

Mr. Cooper asked whether the legal department has reviewed the section on Improvement Guarantee added provisions and he wanted to know whether they will hold water on some of them. Ms. Zambon stated that she had reviewed them and discussed them with the County Attorney, Russ Burrell and we had modified and changed some of the language based on the discussions we had and from past experiences. Mr. Cooper asked whether it refers to finished plans or schematics. Mr. Starr stated that

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you don't need the finished plans when you get the development approval, this is later on in the process, but we do need the finished plans because if the developer defaults, we want to take the plans and go to bid with them and complete the improvements as opposed to paying an engineer to finish the project which adds to the expense. This would only be for the part that is bonded. Mr. Starr said that this is not a prerequisite to start construction, but a prerequisite to record the plats and start selling the lots. There was further discussion on this matter and members felt that some of these provisions were too restrictive to have a development in this County and feels that we need some leniency when the economy does turn around. Mr. Cooper especially had concerns with offsite utility portion, because now the proposed provisions states that you have to have the designs down and complete in order to sell a lot, that process takes quite awhile. Mr. Starr stated that most of the concern is not on the design, as it is dictated by City or County specifications and regulations, its how much are they going to pay, and they need to know how it's going to be designed. Mr. Cooper realizes that the brunt of the cost is placed on the developer, but he has concerns with the additional 50 percent to cover inflation and additional costs to complete the project. Mr. Starr said that he is flexible with changing the percentage to something lower. Ms. Gordon felt that the Planning Board needed more time to consider this and the Board should continue its discussion at the October's meeting. After some more discussion, Chairman Parce asked that Planning Staff get some feedback from engineers, particularly Bill Lapsley, on the subject of the proposed amendments dealing with improvement guarantee standards for October's meeting and any other comments from Staff and board members. Chairman Parce made a motion to continue the discussion of the proposed LDC amendments at October's meeting. All members present were in favor

Staff Reports. Mr. Starr stated that the Dana Plan is nearing the end of the process and will have a public input session in November for the Committee and the draft plan review as early as December with the Planning Board.



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Adjournment There being no further business, the meeting was adjourned at 7:30 p.m. All members voted in favor.

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Jonathan Parce, Chairman  
Henderson County Planning Board

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Kathleen Scanlan, Secretary