

**HENDERSON COUNTY
PLANNING BOARD MINUTES
October 24, 2005**

The Henderson County Planning Board met on October 11, 2005 for a special called meeting at 4:05 p.m. in the Board Room of the Land Development Building, 101 East Allen Street, Hendersonville, NC. Board members present were Tedd Pearce, Chairman; Tommy Laughter, Renee Kumor, Mike Cooper, and Mark Williams. Others present included Lori Sand, Project Manager; Autumn Radcliff, Planner; Matt Cable, Planner; Matt Card, Planner; and Kathleen Scanlan, Secretary. Also present was Russell Burrell, County Attorney and Chuck McGrady, Commissioner and Liaison to the Planning Board. Planning Board members Paul Patterson, Stacy Rhodes, Gary Griffin and Jonathan Parce were absent.

Chairman Tedd Pearce presided over the meeting and called the meeting to order. He turned the meeting over to Lori Sand, Project Manager. Ms. Sand informed the Board members that there has been a conflict in the date of one of the small area community meetings, so therefore the dates will be changed for both meetings and everyone will be advised as to the change.

Ms. Sand stated that Staff has incorporated all the comments from the last meeting regarding Articles II, III, and IV into the Ordinance. There was no indication of any further revisions of these sections.

Article V. Subdivision Regulation. Ms. Sand reviewed the substantial changes made in the subdivision regulations.

**Elimination of all references/requirements for master plans and development plans
Only Preliminary and Final Plats are required, reviewed and approved**

Chairman Pearce asked, "What was the thinking on eliminating the master and development plans?" Ms. Sand said that they were trying to simplify the process. Chairman Pearce said, "Is there a down-side in doing this?" Mr. Card said not that he could tell it just streamlines the process. Chairman Pearce said that this had been talked about previously about streamlining but also having more things approved administratively.

Require certification that public records have been searched and the subdivision name is not substantially identical or similar to cause confusion with another subdivision

Chairman Pearce asked, "Who is going to provide that certification?" Ms. Sand said that the owner would need to certify on the plat that the public record has been searched and that the name they have chosen is not in conflict with other subdivisions.

Creation of Technical Review Committee for Subdivision Review

Mr. Cooper said these various committees that are referred to in the LDC, is the Technical Review Committee going to be a Staff committee or is that a committee that you will be forming of Planning Board members? Ms. Sand said that the technical review committee is the only one we created and that it will be reviewed later in the meeting.

Addition of Conservation Subdivision Option

Ms. Sand said that this is not a requirement, but is an option.

Conservation Subdivision Option:

Permitted to develop at maximum density permitted in the Overlay District in which the development is located

Conservation Subdivision requires Technical Review Committee approval

Requires a minimum of 50% open space

Ms. Sand said that no more than half of the open space could be in primary conservation area. She said floodways are unbuildable, so you wouldn't be able to use that in your density calculation. The floodway fringe is developable based on our Flood Ordinance, but if you set aside the 100-year floodplain or the 500-year floodplain, that will count as open space. Chairman Pearce said, "In the calculation of density in any district, you are excluding the amount of ground that is unbuildable?" Ms. Sand said, "Yes." Chairman Pearce said, "So the maximum density, if you had 100 acres and 40 acres of that would be undevelopable, you would still count it on the 60%?" Ms. Sand agreed, but said the CCP Plan outlines density ranges. We have outlined density ranges to the overlay district. In order to build to your maximum density allowed in that overlay district, you would need to have a conservation subdivision or planned developments, because they have additional requirements including the provision of affordable housing. She said there are other things above and beyond the requirements of the Ordinance that you can do to build to the maximum density of that range. Ms. Kumor asked, "Do you get to build the maximum density of the thirty acres that are left?" Ms. Sand said yes. Ms. Kumor said so you get thirty acres to develop at a maximum density. Ms. Sand agreed. Mr. Cooper said you can't use undevelopable land as part of your calculations and there is a lot of reference in this Ordinance about land greater than 20% and to not develop land over 20% slope. He feels that there is not enough land to develop in Henderson County that is 20%, if that is the part of the undevelopable portion of the property. He mentioned that he is concerned with the discrepancy in what is steep slope and to give some clarification. He added that in a lot of these mountain subdivisions, there will not be a lot of land developable according to that term of 20% and he is concerned about that. Ms. Sand said that this Ordinance is moving from minimum lot size requirements to density based in order to calculate how many units you would be able to construct in a particular piece of land. Chairman Pearce feels that this minimum density is less than what we were anticipating and should balance with the CCP Plan. He added that not only are we taking away the undevelopable ground out of the calculation, conceptually, he felt that PUDs and things of that nature were a way to consolidate a development and keep the roads from disturbing as much ground as possible. It allows you to increase your density to pay for the rest of the ground, because the ground is expensive whether you use it, as there is an expense factor in the vacant ground that you purchased. He said you have to make up some of that unusable space by getting a little more density and consolidating that density. Chairman Pearce shared his concerns that the densities of the Land Development Code are not reflective of the recommended densities of the CCP Plan. Tommy Laughter also agreed on this issue. Ms. Sand said that Staff would go back and check with the CCP Plan and do any adjustment that needed to be made. Chairman Pearce asked that Staff come back at the next meeting with what they have found in calculations and what the CCP Plan says regarding this matter. Mr. Williams asked that a comparison table be made showing the difference between the CCP Plan and the Land Development Code calculations regarding densities. Mr. Cooper said a conservation easement inside a subdivision might be more popular than the other option of a conservation subdivision. Both Chairman Pearce and Mark Williams feel that the County is having trouble meeting services in the outer areas of the County and allowing high densities in these areas means we cannot provide adequate services. After some discussions among Board members about percentage of slopes, Chairman Pearce suggested 40% slopes would make a more acceptable definition for steep slope for the reasons of compliance and affordable housing. Mark Williams agreed. Ms. Sand said that the densities you are talking about are only

in that Rural Agricultural Overlay District because in the RTA and the Urban Service Overlay District they go considerably higher. Chairman Pearce stated that the one sentence about excluding unbuildable land is a major change in the way we have been thinking. He added it might not be wrong but how we are going to define it and if we are giving enough bonus and allow some of that to be used in the calculations in exchange for clustering services, (such as emergency services) so it's easier to administer them from a County government standpoint instead of having it stretched out so many miles. Mr. Williams said one of our main issues is the clarification of what is unbuildable land. Chairman Pearce said that the CCP Plan should address the fact that unbuildable ground is part of the County's plan to exclude unbuildable ground from calculations. Ms. Sand said that Staff will forward our CCP Plan justifications back to the Planning Board with your comments and that will somehow incorporate the components of the CCP that we based these decisions on that you are disagreeing with. Chairman Pearce said that we aren't totaling disagreeing as explaining the difference and how much difference are we creating here. Ms. Sand said that the Growth Management Strategy section of the CCP outlines a variety of items and one of which, consistent with the Urban Service Area, the Rural Transition Area and the Rural Agricultural Area, is acknowledging the presence of sensitive natural areas which are indicated as floodplains, wetlands, steep topography, excessive steep topography and other cultural and natural assets and strive to protect these areas from development that would damage them or diminish their integrity. She said we are basing these decisions on this. Mr. Laughter suggested that the map that was shown in the CCP would be helpful to refer to in this discussion. In summarizing, Ms. Sand stated that Staff would revisit the densities, do the math and make any necessary adjustments. She stated she would forward the Planning Board comment that the unbuildable land should not be calculated into the overall densities and to clarify the definition of unbuildable. Mr. Williams said that is a major change and needs to be recognized and highlighted so that the Commissioners can clearly see that as well as the public.

Primary Conservation Areas

Ms. Sand said some of the features in this area are the floodplains (100-year and 500-year) and steep slopes. As suggested by the Board members, we will forward the Planning Board's recommendation that steep slopes should have the consistency of 40%.

Secondary Conservation Areas

Ms. Sand said these areas include site features such as farmland, natural areas and wildlife habitats, slopes of 15 to 25 percent, historic and archeological sites, recreational areas and scenic view sheds. She said this is where you would take some of the open space out of the secondary conservation area. Ms. Kumor asked what is being done with cemeteries? Are they part of historic and archeological sites? Ms. Sand said that they could be, but doesn't believe that all cemeteries would qualify as historic, but if they found that they were historic, the owner would get credit for that property.

General Location Standards

Ms. Sand said that these are more of the standards in deciding during the review process, how we would go about working with the developer to do a conservation subdivision. She said that we would be looking for undivided preserves, contiguous parcels, connectivity between adjacent parcels such as parks, greenways - anyway that we can get contiguous open space would be better. Options for protection of the open space would be fee simple dedication to the County, ownership by a homeowners association, up to eight-five percent of the conservation land within a subdivision may be designated for individual private ownership and all conservation land would be permanently protected through conservation easement. Ms. Sand said that the advantage of the eighty-five percent in private ownership would be for example if one were to do a conservation subdivision around a working farm, we would want that farmer to maintain ownership. There would be a conservation easement placed on it, but ownership would stay as private ownership. Chairman Pearce was unclear why no more than

eight-five percent of lands can be in private ownership and suggested that 100% of lands can be in private ownership as the conservation easement rules apply.

Ms. Sand stated that there are some things that you can be done to maintain open space that would include reforestation, pasture or cropland management, buffer area landscaping, stream bank protection or wetlands management. Mr. Cooper said that to do a conservation subdivision presently, they need to show any land that is in the floodway, any land over the designated slope percentage, show rock-out croppings, open land, wooded land, natural land and the decision of how much land that would be developable, is that correct? Ms. Sand said the way you design a conservation subdivision is to go in and identify all of the areas that you want to conserve and then place the home sites and the final step would be to connect them with a roadway system.

Mr. Cooper said that the Planning Board has been involved in the number of lots for consideration as a collector road, will the number of lots be changed in this Code? Chairman Pearce agreed and suggested that the number of lots be increased before a road becomes a collector road. Mr. Cooper further stated that the ability to flex this road standard would be helpful, particularly for a conservation subdivision.

Article XIII – Review Processes and Procedures

Ms. Sand said that the major changes to this section are the creation of the Technical Review Committee, Planning Board approval of Conditional Use Permits, and Site Plan requirements. She reviewed who has approval authority over what areas as follows:

Zoning Administrator Approval:

Communication Facility Site Plan
Site Plan Levels 1 and 2
Category 1, 2, 3 or 4 Communication Facility Permits
Floodplain Development Permits
Manufactured Home Park Construction Permits
Manufactured Home Park Completion of Improvements Permits
Sign Permits
Special Intensity Allocation
Temporary Use Permits –

Ms. Sand stated that this used to go through the Zoning Board of Adjustment, but will now be approved administratively.

Water Supply Watershed Permits
Watershed Compliance Permits
Zoning Permits

Subdivision Administrator Approval:

Preliminary Plat for Minor,
Expansion and Nonstandard Subdivisions
Final Plats

Technical Review Committee Approval:

Manufactured Home Park Site Plan
Site Plans Levels 3 and 4
Preliminary Plat for Major Residential Subdivisions of 49 or fewer lots
Conservation Subdivisions

Ms. Sand stated that the Technical Review Committee will consist of six regular members. Members will be the following department heads and staff or their designated representatives as follows: Building Inspector, Environmental Health Supervisor, Fire Marshal, Planning Director, Solid Waste Director and Zoning Administrator. She added that we would request participation from the County Attorney, EMS Director, Henderson County School Superintendent, NCDOT Representative, Parks and Recreation Director, Sheriff and/or Soil and Water Conservationist. She said that the Planning Director would chair this Committee and they would adopt rules and regulations and governing procedures. The Committee would approve, approve conditionally or deny any application that came before them.

Chairman Pearce questioned the number of lots (49) and where did it come from? Ms. Sand said that they took a look at the average size of subdivisions and wanted to place the break where the impact would be felt because there are other items we added to the Planning Board duties. We looked at it with respect to taking the Planning Board out of subdivision review and into more planning oriented projects. Ms. Kumor was concerned with how often the Technical Review Committee will meet. Ms. Sand suggests a monthly or bi-monthly meeting will be likely but that this will be outlined by the Chair when formal rules are established by the Committee. Mr. Cooper feels that the County Engineer should be a member of the Technical Review Committee. Chairman Pearce was concerned with the number of lots (49-50) distinguishing a Major subdivision with the Technical Review Committee review from a Major subdivision with Planning Board Review. Ms. Kumor was concerned that the Subdivision Administrator has the option to forward a smaller Major subdivision onto the Planning Board at his/her discretion. In discussion among Board members, Chairman Pearce suggested language that would require some type of notification regarding the property that is proposed to be subdivided as he feels there should be something so that people will know what is going on adjacent to them. Tommy Laughter and Mark Williams agreed. Mr. Burrell suggests the Board of Commissioners could set a fee for the posting in order to avoid additional costs to the County. Chairman Pearce also suggested including language that would require the applicant for the subdivision to mail notice to adjacent property owners. Chairman Pearce asked Staff, "What is the thinking of eliminating notification to property owners?" Ms. Radcliff points out that the applicant must bear the expense and show proof of certified mailing to adjacent property owners. Ms. Radcliff added that if the property owner meets all of the requirements of the Ordinance regardless of what the neighbors say, what would be the justification for denying it, based on public input. Mr. Burrell stated that this would be up to the Board of Commissioners to make a recommendation. Ms. Radcliff stated that the Communications Tower Ordinance requires whoever is putting that tower up be the one responsible for contacting all of the adjacent property owners their notification or signifying that they did this in an allotted timeframe. Chairman Pearce as well as Tommy Laughter feel that a similar process should be used for subdivisions as they feel it is important to have notification. Mr. Williams added that some type of form letter could be created by Staff for the purpose to be provided to the applicant.

Planning Board Approval

Preliminary Plat for Major Residential Subdivisions of 50 or more lots
Category 5 and 6 Communication Facility Permits
Conditional Use Permits

Zoning Board of Adjustment Approval

Variances (Floodplain, Watershed, Zoning)
Appeals
Board of Commissioners' Approval
Comprehensive Plan Amendments
Ordinance Amendments
Water Supply Watershed Text and/or Map Amendments
Special Called Meeting Minutes - October 11, 2005 – Draft

Special Fill Permits
Special Use Permits and Special Use District Zoning Map Amendments
Statutory Vested Rights

Board of Commissioners' Approval

Comprehensive Plan Amendments
Ordinance Amendments
Water Supply Watershed Text and/or Map Amendments
Special Fill Permits
Special Use Permits and Special Use District Zoning Map Amendments
Statutory Vested Rights

Chairman Pearce suggested putting common law vested rights In the Vested Rights section of the Code.

Chairman Pearce scheduled the next meeting for Thursday, November 10, 2005 at 5:00 p.m. to discuss Articles 7,8, and 9.

Adjournment. There being no further business, the meeting adjourned at 7:50 p.m.

Tedd M. Pearce, Chairman

Kathleen Scanlan, Secretary