

**HENDERSON COUNTY  
PLANNING BOARD MINUTES  
March 29, 2005**

The Henderson County Planning Board met on March 29, 2005 for a special called meeting at 7:05 p.m. in the Board Room of the Land Development Building, 101 East Allen Street, Hendersonville, NC. Board members present were Tedd Pearce, Chairman; Mike Cooper, Vice-Chairman; Tommy Laughter, Jonathan Parce, Renee Kumor, Gary Griffin, Stacy Rhodes and Mark Williams. Others present included Karen C. Smith, Planning Director; Anthony Prinz, Planner; Kathleen Scanlan, Secretary; C. Russell Burrell, (Acting) County Attorney and Chuck McGrady, Commissioner and liaison to the Henderson County Planning Board. Board member Paul Patterson was absent.

Review and Develop Recommendations on a Draft Moratorium (Interim Development Ordinance) Regarding Zoning Changes and Other Land Use Issues within the US Highway 25 Highway North Zoning Study Area. Chairman Pearce opened the meeting and stated that the Board was at the meeting to recommend to the Commissioners a draft Moratorium (Interim Development Ordinance) regarding US 25 Highway North. He said that he has a hard time including the entire study area in a moratorium for a lot of reasons. He feels that the people in this area, especially those whose parcels have been recommended for residential zoning and have gone through a lot and are tired of the rezoning process and it needs to be finished for them. Chairman Pearce said that what these residents do on their property is not going to affect the Highway or traffic congestion anymore so than anyone else's property in Henderson County. The new road and the subsequent development of property adjacent to US Highway 25 North will have a significant impact on traffic and appearance of this entrance into the County. He said that the forth coming Land Development Code is going to address such things as access management; sign management and numerous other things. It will also affect the size, type and the extent of the commercial development on this highway and because of that, he said that he had come up with a significantly reduced concept of what areas a possible moratorium should affect. Chairman Pearce questioned the Board members and asked whether they wanted to include the entire study area in the moratorium for the Planning Board's recommendation to the Board of Commissioners, or should they recommend a reduced area? Ms. Kumor asked that the new reduced map of the area for moratorium be discussed in greater detail. She feels that the Board needs to know what the proposed Interim Development Ordinance (IDO) is proposing for this area. Chairman Pearce said that the IDO is proposing to suspend the issuance of permits for new commercial and industrial development but in this reduced draft map; he said he is proposing to reduce the area affected by the (IDO). Two maps were shown to the Board members, one showing the outline of the area the Planning Board recommended to the Board of Commissioners subject to the rezoning through the US Highway 25 North Zoning Study. Ms. Kumor said this map shows that there are some existing districts other than Open Use in the study area map. The white areas indicate areas zoned Open Use. The other map shown was a scaled down map. Ms. Smith said that the draft Ordinance the Planning Board members received prior to this meeting show a proposed study area that excludes areas where existing zoning, other than Open Use is currently present and outlines parcels that are in the municipality of the Town of Fletcher. She said that it also took out the parcels that the Planning Board recommended to remain Open Use under the US 25 North Zoning Study (areas of Park Ridge Hospital, and properties owned by the Layman Foundation). Ms.

Smith said that this was the study area that went to the Board of Commissioners and there were no other definitive areas beyond the US Highway 25 North Study Areas to start with. Chairman Pearce stated that what is colored in green on the draft map are the parcels he recommended for the moratorium. Chairman Pearce came back with the question for the Board members, "Does the Board want the entire area in the moratorium or should the Board try to make an effort to reduce that area?" He added that if the Board is going to look at recommending a substantially reduced affected area, then the Board needs to review the new IDO draft that was given out at tonight's meeting. Mr. Parce asked Chairman Pearce, "How did you come up with the dark green area?" Chairman Pearce said his recommendation tried to account for the parcels the Commissioners are most worried about, primarily areas where commercial development is expected along US Highway 25 North. He added that the biggest problem the Planning Board ran into in making recommendations to the Board of Commissioners was our lack of options and standards in current commercial zoning districts. He said that instead of trying to place a moratorium on everyone in that area, he feels that the Board should try to protect the corridor from problems that the current zoning Ordinance does not address, especially in commercial areas. He feels that the corridor will mainly be developed as commercial and industrial uses. Currently there are residential uses throughout the study area and at present they are significant enough that we need to protect them. He said that the people on Brookside Camp Road and Howard Gap Road area should not be affected by a moratorium, as they are not adversely affecting US Highway 25 North. Chairman Pearce said that with respect to the rest of the study area that consists primarily of residential uses, the Board needs to stress to the Commissioners to hold public hearings and act on the Planning Board's recommendations to give residents in these areas closure. Ms. Kumor said that the areas shown on the map that Chairman Pearce has recommended for a moratorium are not only areas where commercial development is expected but flood prone areas as well. Chairman Pearce said that in addition to properties anticipated for commercial developments, he also included properties recommended as RC District by the US Highway 25 North Zoning Study for two reasons. One of the reasons the Planning Board chose the RC District was because the Board felt it did not have a better tool to work with nor did we have a Flood Ordinance to address the development of those properties. He said that the Board will soon be reviewing and making recommendations on the first phase of a Flood Damage Prevention Ordinance. He said properties recommended as RC District are contiguous to the US Highway 25 North expansion and he felt it appropriate to include those properties in the moratorium.

Ms. Kumor inquired about the red lines on the map going parallel with the Highway. Chairman Pearce said that the red line designates a 300-foot highway buffer. He said for instance, that if someone has a forty-acre piece and you only restrict the first 300 feet, you haven't solved the problem, in fact the larger the piece of land, the more effect it has on the Highway. Mr. Laughter said that what Mr. Pearce has done to reduce the number of parcels in the moratorium is a significant improvement. He added that he agrees with Mr. Pearce's revised recommendation for areas in the moratorium. Mr. Laughter asked, "What type of timetable for resolution do the people on US 25 have who will be part of this moratorium?" Chairman Pearce said that the Planning Board can recommend any kind of timeframe, but the fact of the matter is by the time all of these things get done, it will take at least 18 months to develop and implement the Land Development Code and that is being optimistic. He feels it is better to give enough time than not enough, and to add more time if needed. Mr. Laughter said it is also good for the majority of people in the

study area to be able to get on with their lives. Chairman Pearce said he feels that the Board of Commissioners will listen to the Planning Board's recommendation. He said that the Board of Commissioners wants clear decisive recommendations from the Planning Board.

Board members looked at the comparison of the map showing the existing zoning and the *scaled-down* draft moratorium map by Chairman Pearce. Mr. Cooper brought up the property near US 25, which is zoned industrial and is not recommended by Mr. Pearce to be in the moratorium. Chairman Pearce said that these businesses are established industrial uses (such as Cranston, Sadisco) and felt that they would not adversely affect the highway, as they are presently industrial operations. In further reviewing the map, Mr. Laughter referred to the property in the southern portion of the study area owned by Mr. Bayless, which recommended being part of the moratorium, and asked the reasoning why it was included. Chairman Pearce said the reason why he kept that area in the moratorium is because it is a large piece of commercial property, which could have a significant impact on the traffic on US 25 North. Ms. Kumor said that if we look at an 18-month window for the moratorium, what impact would that have on properties in the study area being annexed by either one of the municipalities? If a parcel were annexed, would they be removed from the moratorium? Chairman Pearce said that both of the municipalities (City of Hendersonville and Town of Fletcher) have better land use controls for dealing with commercial and industrial development than our jurisdiction. Ms. Kumor verified that if a property owner made a request for voluntary annexation, those properties would be taken out of the moratorium? Chairman Pearce said that they would. Chairman Pearce asked Ms. Kumor, "Are you worried in doing so that we are forcing them to have these properties annexed?" Ms. Kumor said, "No and she further said that if they wanted to be annexed they will need to respond to some type of commercial-designed standards and other types of standards? She added that we are only asking for that timeframe in order to develop the same types of standards that the other jurisdictions have. Mr. Parce asked, "Is the 18-month period a realistic timeframe for the Board of Commissioners to act on our recommendation or will they reinvent the wheel?" Chairman Pearce said that we would hope it is enough time and that Staff having worked with the Commissioners on this as well as previous Boards, have a good idea as to where this is going and what the Board of Commissioners hopes to achieve in the development of a land use ordinance. Mr. Parce added that he hopes that the Commissioners will do it sooner, so that those residents affected by the IDO would not be in limbo for 18 months. Ms. Smith said that part of the issue is that the Ordinance is going to be County-wide and so therefore we need to look at it from that perspective and not just from the US 25 North area. She said that once that ordinance is done and to the Commissioners, they have to hold a hearing, act on it, then apply it to the US 25 North area. Ms. Smith said that Staff approached the Commissioners during development of their strategic plan and stated that we would have an ordinance to them in late fall or December, but Staff is really pushing it for the fall. She said that it would then be up to the Commissioners to review and hold a hearing. Ms. Smith added that this is the first small area plan priority and that is not scheduled to change. Chairman Pearce asked Commissioner McGrady about this process and timeframe. Commissioner McGrady said that Ms. Smith told the Commissioners that they would have something by December 1, 2005, or hopefully before then, and Chairman Moyer has committed to moving it as quickly as possible. Ms. Kumor asked, "Is there anything that the Planning Board can do to move it along?" Chairman Pearce said, "No." Ms. Smith said that Staff's

plan is to bring a complete draft to the Planning Board rather than piece-meal, because we want to bring you something that you can react to in its entirety.

Ms. Kumor made a motion to recommend to the Board of Commissioners the reduced draft map as presented at tonight's Planning Board meeting, which is designated as the parcels colored in green that are recommended for moratorium by Tedd Pearce. Tommy Laughter seconded the motion. Mr. Griffin was concerned that most of the way on the map, the green portion touches US Highway 25 North but some of it doesn't. He said he knows the logic to this, but in some cases the neighbor across the way may not know the reasoning. He added that on a lot of these parcels there is residential which has already been developed and the houses are fixed and not much in left is Open Use. He asked to make it fair, why not have it covering both sides of the road all the way through? Chairman Pearce said, "Why should we tie them up if we felt we gave them the right recommendation the first time, unless we were wrong about it. The people who have the southern parcels specifically asked the Planning Board to keep them residential, knowing they had the highest and best use financially to request commercial. There is no way to make it equal." Ms. Kumor said she thought the Board was looking at this for two reasons in trying to justify a moratorium. One of the reasons is that we know that there is a proposal out there to get serious about design standards and commercial designations and with access issues. She said that if it is zoned residential, that is not going to come into this discussion unless it is changed. She said that if anyone comes to the Commissioners and requests to be rezoned to commercial, then they would fall into a moratorium. She feels that this map is good because the properties that are highlighted would be commercial and come under that designation that the Commissioners are looking for in regard to commercial with its design and access standards and other things that we might have along this road. She added that the flood areas have also been highlighted along the road because the Commissioners are in the process of looking at a Flood Damage Prevention Ordinance, so therefore we are suggesting that this Board is supporting a moratorium for areas that would be affected by two projects that are coming to the Commissioners within the next 18 months. Mr. Cooper questioned the property owned by Mr. Bayless in that it is already zoned, but still in the moratorium. He wondered if there were any other parcels like him that are zoned and in the moratorium? Chairman Pearce said that Mr. Bayless did not object for his property to be in the moratorium.

Mr. Laughter said that the Board had some difficulty in getting a zoning district for the cemetery. He asked that when this new ordinance is being studied, there should be consideration for a proper classification and in that sense, he feels Shepherd Memorial Park should be included in the moratorium. Chairman Pearce said that when we look at the current recommended or existing zoning this might be a valid reason to put that property back in. He said he feels that a moratorium would not have any effect on opening a gravesite. Mr. Cooper asked, "Could it affect expansions to the property?" Ms. Smith said that it depends on how the text is read. She said that the way it is now, expansions to an existing use is allowed. Mr. Laughter said that the moratorium would take care of their unique situation or anyone else that had a similar situation. Mr. Cooper asked whether the Land Development Code would revamp all of the existing residential zonings? Ms. Smith said yes. Mr. Cooper said that the rewrite will affect everyone in Henderson County. Chairman Pearce said that he would consider the discussion regarding the cemetery property. Mr. Williams said should a large company come into this area and picked out a site within the moratorium area, how would that be handled? Chairman Pearce said that

would be up to the Board of Commissioners. Ms. Smith said that the Board of Commissioners might send the IDO back to the Planning Board for consideration. Ms. Kumor said that what Mr. Williams is talking about is the text portion of the moratorium. Chairman Pearce said that if the company was for commercial use, the moratorium primarily affects those type of uses.

Chairman Pearce requested that the motion made by Renee Kumor and seconded by Tommy Laughter be amended to include in the moratorium the Thomas Shepherd Memorial Park parcels located on the corner of US Highway 25 North and Rugby Drive. Ms. Kumor and Mr. Laughter agreed to the amendment to the motion. Renee Kumor, Tommy Laughter, Mike Cooper, Stacy Rhodes, Tedd Pearce and Jonathan Parce were in favor of the motion. Gary Griffin and Mark Williams opposed the motion. The motion carried six to two.

Ms. Smith reviewed the version of the Draft Interim Development (IDO) Ordinance distributed at the meeting and explained that this revised draft changed the term *the 25 N Zoning Study Area* to *25 N Interim Development Area*, which will be identified on a map and have an attached parcel listing by the April 4, 2005 Board of Commissioners hearing. Chairman Pearce asked, "Do you feel like anything the Board has done in the scaled-down version affects the legal intent?" Ms. Smith said that Staff has already revised it to reflect that. Mr. Burrell said that in reference to the attached map mentioned in the text, it refers to what you just approved. Ms. Smith said that the inclusions and exclusions would now only apply to the green area on the revised draft moratorium map.

The Board reviewed and began editing the revised Interim Development Ordinance. Mr. Parce asked, "How are they going to determine these findings?" Mr. Burrell said that the Commissioners will have a public hearing and will bring their own experiences to a public hearing. Mr. Laughter asked about the meaning of Section 2: *Purpose and Intent* where it states *the purpose and intent of the IDO is (d) to maintain predictability*. Ms. Smith said that with zoning you know what can and can not occur in an area. Ms. Kumor said that we are trying to put some kind of restrictions on properties, but also to allow some level of flexibility so if there needs to be a quick response the Commissioners can act on it. Mr. Burrell said that the Commissioners could modify this document at any time. Mr. Parce said that previously we spoke about properties that fall into the extraterritorial jurisdiction of a municipality and it was mentioned that they were able to deal with a moratorium, but under *Section 5, Applicability*, the sentence was struck as an exception to the area. Ms. Smith said that the green area right now does not cover any of those areas. Mr. Parce asked, "What if they do?" Ms. Smith said that the County's regulations would stay in place for sixty days unless the City or Town moved a little quicker on zoning. Mr. Parce said after the sixty days, would that area then be dropped from this moratorium? Mr. Burrell said that after it is annexed. Mr. Parce said we do not need that exception in the text because after sixty days it would not be any longer in the County's jurisdiction. Chairman Pearce asked Commissioner McGrady if he had any thoughts as the Board is reviewing this text? Commissioner McGrady said that his only interest is in seeing a relatively united position, if possible, from the Planning Board as that will help immensely with the Commissioners. Mr. Williams said he noticed that the document reads that it is okay for government to build, but no economic development is allowed and he feels that they are playing by a different set of rules. Mr. Parce asked whether there were any local, state or federal government properties located within this study area? Ms. Smith said that in the

study area there were some. Mr. Prinz said that there were some post offices within the corridor. Mr. Williams said that the section he was referring to regarding government facilities is under Section 5, Applicability, c. (iv) 3 "Sector 92, Public Administration." Again, during the discussion regarding changes to the text, Mr. Williams reiterated that should a company come into Henderson County want to build on a site in the US Highway 25 North corridor that is under a moratorium and it would benefit the County economically, how would that be handled as well as what would the procedure be? Chairman Pearce said that it would need to be petitioned to the Board of Commissioners, but he said that the slight problem would be that the County does not allow contract zoning. Ms. Smith said that if the property was going to change to something that might be classified as industrial it might be allowed. Chairman Pearce said that he feels that the Commissioners would be disinclined to add more industrial space than what has been designated until they finish their industrial study and make some recommendations on that. He said that purposely we have excluded the industrial parcels from the moratorium, so we would possibly be looking at a large-scale commercial use coming into the area rather than industrial, because of the price of land. Chairman Pearce said that the proposed property would need to be excluded from the IDO by the Commissioners and a public hearing would need to be held. Mr. Williams said he hates to see a moratorium, as it would hurt economic development. Mr. Cooper questioned the text under *Section 8. Zoning Change Modification* that says *During the term of this IDO, no applications for amendments to the Official Zoning Map of Henderson County, North Carolina, affecting land lying within the 25 N. Interim Development Area shall be received, processed or approved.* Mr. Burrell said that this would not stop someone from getting their parcel removed from this Interim Development Ordinance, which would put it back into the Open Use District or whatever other district it was in. Chairman Pearce said that Staff and the acting County Attorney did a tremendous job of trying to make this document with all of the flexibility as possible to handle unforeseen situations.

The changes to the draft IDO distributed to the Planning Board on March 29, 2005 that were recommended by the Planning Board are as follows:

Eliminate all reference to "schools" in the Resolution section and elsewhere.

Under Section 5. Applicability. Term of Ordinance, adjust (in bold) as follows: *This IDO shall remain in effect from its effective date until the earlier to occur of 15 October 2006, or the date of adoption and implementation (by rezoning) **of the LDC** within the 25 N Interim Development Area, whichever is sooner.*

Strike out: Under Section 5., Applicability, c (iv) 3 "Sector 92, Public Administration."

Strike out: Under Section 5., Applicability, c (xv) "schools, churches and."

Strike out: Under Section 5., Applicability, c (xvii) "(could list other standards, if needed, such as those related to type, number, size, lighting, motion, number of sign faces, etc.)"

Strike out: Under Section 5., Applicability, c (xviii) "(could list other standards, if needed, such as those related to type, number, size, lighting, motion, number of sign faces, etc.)"

Add: Under Section 6, Limitation of Certain Acts, f (xvii); "Sector 92, Public Administration"

Add: Language to designate that the Zoning Administrator is the person who will administer the IDO.

Consider adding a definition of "IDA" to the Definitions Section (Section 4) or doing some sort of cross-reference to another section.

Ms. Smith said that in the definition section we want to put a "catch-all" about referring to the Henderson County Code definitions. Chairman Pearce said that this is authorized and will be included in the Planning Board's recommendations unless objected there was an objection.

Mr. Williams said that he feels that this is unusual to him that the Planning Board is going to make a recommendation, yet has not had the opportunity for public input. He asked if the opportunity for public input first occur at the Board of Commissioners April 4<sup>th</sup> public hearing? Ms. Smith said yes. Mr. Williams said so the Planning Board is making a recommendation without hearing from the public and he feels that it puts the Commissioners in an awkward position. Commissioner McGrady said that in talking with a couple of Commissioners, they have said that they have heard very little regarding this matter in the way of objections or concerns. Chairman Pearce said that unfortunately there is a tight timetable. Commissioner McGrady said that his expectation is that this will fly. He further added that he had a strong sense coming into this meeting having talked with several County Commissioners that they were looking for something a little more narrow than the first draft they received. He said that the Planning Board's adoption of the map that restricts less parcels is a significant step in that direction.

Tommy Laughter said, "Is the next step for the Planning Board to approve the wording that has been reviewed?" Chairman Pearce said yes. Chairman Pearce said we will make the motion to recommend the draft IDO to the Board of Commissioners, subject to the changes and modifications the Planning Board made (as defined earlier) to the text and additions that Staff has already recommended. He said that in addition, any insignificant changes or corrections that Planning or Legal Staff feel needs to be added to the document could be added. Mr. Laughter made this as a motion. Renee Kumor seconded the motion. All members voted in favor.

Chairman Pearce made a motion to recommend to the Board of Commissioners to continue the public hearing process on the remaining portion of the US Highway 25 North Zoning Study Area, and to recommend that they vote on those recommendations at the earliest possible time consistent with the Planning Board's earlier recommendations. Renee Kumor seconded the motion. Ms. Smith said that since this Board had started the study, there was a rezoning in the area of Stoney Mountain Road, for property owned by the County, the State and others to C-2. Therefore, one parcel within the area affected by the rezoning fell into the Planning Board's US Highway 25 North Zoning Study Area. She asked whether the Planning Board wants to modify the study area boundary to exclude that piece that was just rezoned? Chairman Pearce said that the Planning Board will leave the study area alone and, to the Board of Commissioners that parcel remain C-2. All members voted in favor of the motion.

Mr. Williams said he feels that everyone wants this moratorium to come to an end as quickly as possible and therefore wants these Ordinances written in a timely manner. All Board members agreed. Ms. Smith stated that Chairman Pearce plans to attend the hearing and that information will be on the website. She added that everyone in the study area received notice of the moratorium hearing and the website reference, so they will be able to pull it up as well. Mr. Laughter said he feels that it should be noted that it has been

very helpful that Commissioner McGrady has been present at the Planning Board meetings for this process as it shows his interest for the people of that area. Commissioner McGrady said that he feels that all of the Commissioners want to show a real deference to this Board and try to think it through and work together.

Adjournment. There being no further business, Chairman Pearce made a motion for the meeting to be adjourned. The meeting adjourned at 8:35 p.m.

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Tedd M. Pearce, Chairman

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Kathleen Scanlan, Secretary