

**HENDERSON COUNTY
PLANNING BOARD MINUTES
SPECIAL CALLED MEETING
September 12, 2006**

The Henderson County Planning Board met to continue the special called meeting from September 5, 2006, regarding the Land Development Code. Board members present were Tedd Pearce, Chairman; Gary Griffin; Renee Kumor; Stacy Rhodes; and Mark Williams. Others present included Anthony Starr, Planning Director; Matt Cable, Planner; Matt Card, Subdivision Administrator; Anthony Prinz, Planner; Sarah Zambon, Associate County Attorney; Richard Smith, Consultant with Benchmark CMR, Inc.; and Larry Rogers. Board members John Antrim; Mike Cooper; Tommy Laughter; and Jonathan Parce were absent.

Comprehensive Plan Amendments.

Chairman Pearce called the meeting to order and began by informing the Board of a discussion he had with Richard Smith following the September 5, 2006 Special Called Meeting. Chairman Pearce explained that he had suggested possibly reordering the articles of the zoning portion so that all of the text is together and so that the Table of Uses and Supplemental Requirements come at the end of the zoning section. He felt that it would flow better and look less ominous. Further, he noted that his point of view was to get the LDC completed at the same time as the zoning map and before the changes to the CCP. Mr. Starr agreed that by completing certain elements of the zoning map, the CCP map amendments would likely be ready; however, in regard to changes to the CCP text, it would be advantageous to wait and send forward all CCP amendments later. Chairman Pearce does not feel there will be much in the way of CCP changes.

Mr. Starr then proposed a process that he felt would be efficient for developing the zoning map. According to Mr. Starr, once a draft of the zoning map is complete, indexed maps will be made available for the members of the Planning Board to come by the office and review at the parcel level. He pointed out that if an individual Planning Board member identifies a problem, Staff can correct the problem if it agrees, and handle modifications to this informally. He added that, where Staff does not agree, then those issues will be brought back for the full Board to consider. Chairman Pearce interjected that the Planning Board does not have time to really get site specific as a group as this would be a six month project. He specifically encouraged Staff to avoid split parcels; except where the split is terrain-based and on a large parcel. Mr. Starr said Staff would try to avoid those as much as possible.

Zoning Regulations Organization.

Mr. Richard Smith pointed out that he agreed with Chairman Pearce about the issues surrounding the flow of the zoning section which they discussed after the meeting on September 5, 2006. He felt that the document flows better with those changes. He further pointed out that earlier in the day he met with Staff about their concerns with the draft and that similar issues regarding the flow of the document were raised. All were in agreement that the document would flow better with the Table of Uses and Supplemental Requirements at the end.

Mr. Smith then went over *Consultants Proposed Article I* modifications as proposed by Staff. Chairman Pearce suggested he did not see any problem with the modifications, as long as the information is there, and further noted that he would personally acquiesce to the recommendations of Staff and the consultants in this regard.

Mr. Smith pointed out that he agreed with Staff's suggestion about pulling the contents of *Consultants Proposed Article II* into *Consultants Proposed Article III*, as opposed to having a

separate article for this information. Mr. Starr added that the Permitted Use Table and Supplemental Requirements could then become a separate Article. Chairman Pearce suggested that the "Zoning Ordinance" should simply be one Article. Mr. Starr agreed that this could be done with subparts like were done in other articles. Ms. Kumor agreed, saying that was confusing her as well. Mr. Williams suggested that this would simplify the LDC. Chairman Pearce further noted that most people's interests are going to be zoning and subdivisions, so the information related to these interests should be grouped where possible.

Mr. Starr then introduced Sarah Zambon, Associate County Attorney who will be working with the Planning Board on a regular basis. The Board members welcomed Ms. Zambon.

Mr. Smith then concluded his overview by asking for feedback from the full Planning Board.

Manufactured Home Park Regulations.

Chairman Pearce indicated that Mr. Rhodes had some concerns. Mr. Rhodes pointed out concerns with the supplemental requirements for Manufactured Home Parks (page 20), specifically the "Exceptions to Municipal Water and Sewage Disposal System Connection Requirements." Mr. Rhodes pointed out that he did not like the clause, "Where the MHP Administrator finds it would not be *economically feasible* for an MHP to be connected to a municipal water supply and/or sewage disposal system, other systems may be used..." because what makes it economically feasible? Mr. Rhodes suggested that, where this is at the discretion of the Zoning Administrator, it is necessary to define and give clear cut criteria as to where it is feasible. Mr. Card pointed out that there is no clear definitive method for determining the similar clause of the Subdivision section. The Board then discussed that this feasibility is approved by the Planning Board. Chairman Pearce felt that economic feasibility would obviously be a cost issue. Ms. Kumor added, or when the City of Hendersonville said no to extending water or sewer. Chairman Pearce agreed that maybe some method of defining this was needed. He pointed out that the County has been running with this like it is already. Ms. Kumor suggested that distance requirements exist in the section and exceptions are allowed. Mr. Starr suggested that we simply delete the Zoning Administrator discretion and if it is a hardship then they can request a variance. Mr. Williams asked what the cost is for 5000 feet of waterline or 2500 feet of sewerline. Mr. Rhodes said 32 to 36 dollars per foot for water. Mr. Starr suggested it would be closer to 40 dollars per foot for sewer. Chairman Pearce said it would not be run to something if you had eight lots. Mr. Starr asked, so why not just remove the exception, as we are not getting that many mobile home parks anymore. Mr. Griffin felt that manufactured home parks should be reviewed by a Board. Mr. Starr pointed out that, since clear standards are provided, why have manufactured home parks go through that process. Chairman Pearce, returning to the issue of the Zoning Administrator's discretion, said he hated to make someone get a variance because of common sense. Mr. Griffin agreed. Mr. Rhodes again noted that he just wanted to get some clarification on this point so that the burden was on the Zoning Administrator. Chairman Pearce argued that land is too expensive and is making development of manufactured home parks unlikely; simply leaving this alone rather than making this an automatic variance.

Mr. Rhodes also noted a concern with the requirements for Manufactured Home Spaces (page 21) for Manufactured Home Parks, specifically the clause, "Prepared and graded so that there is a slope of no more than three (3) percent where the home is to be placed" and concerns with the verification of this provision. Mr. Starr pointed out that there are three individuals in the Zoning Department would handle the inspection. Mr. Cable pointed out that the permitting process for manufactured home parks requires a construction permit as well as a certificate of completion permit. He added that the construction permit would outline that this is required and the certificate of completion would only be given upon inspection of the manufactured home park.

Mr. Rhodes then pointed out an additional concern with the requirements for Manufactured Home Spaces (page 22) for Manufactured Home Parks, specifically the clause, “Clearly marked at all corners so that visual establishments of boundaries can be made during inspection/approval processes.” He pointed out that most space around a manufactured home park is some sort of common land around the units. Chairman Pearce asked Mr. Rhodes if, when he surveys a manufactured home park, if he surveys out each individual plot. Mr. Rhodes responded by saying yes, if it is requested, but usually it is after the road is in. At this point Chairman Pearce asked Staff why we really care if each individual plot is marked out. Mr. Starr responded that this is done to see if they conform with the site plan that was done. Chairman Pearce said the real concern is with separation, density, roads and common area and that his feeling was that the clause should be stricken.

Supplemental Requirements.

Mr. Rhodes pointed out that the supplemental requirements for Gasoline Pumps (page 26) should probably be changed to “Fuel Pumps.” The Board agreed this should be changed throughout.

Mr. Rhodes noted the supplemental requirements for Private Boathouses (page 30) should say “mean water level” instead of “mean sea level.” The Board agreed with this modification.

Mr. Rhodes then asked why Docks/Piers (page 30) were limited to only one per lot. Chairman Pearce asked why someone would need more than one. Ms. Kumor said often docks with multiple slips are all one unit. Mr. Starr agreed that this would likely be the interpretation.

Mr. Rhodes then pointed out concerns with the language of the section regarding “Interpretation of District Boundaries” (page 2). Mr. Starr suggested that this is all pretty standard legal language.

Mr. Rhodes also questioned how summer camps and temporary camps would be dealt with; as many other things were covered by the supplemental requirements. Ms. Kumor felt that summer camps needed to have flexibility to maintain the setbacks. Mr. Starr pointed out that, without special requirements, summer camps can do whatever they want to within the setbacks of the parcel and as long as they adhere to limitations of building code. Chairman Pearce asked if Mr. Starr could meet with Commissioner Chuck McGrady to discuss this issue and see, from his experience, if he feels a need for supplemental requirements and glean some information from him that would aid us there.

Setback Measurement Regulations.

Mr. Rhodes questioned the measurement of setbacks. Mr. Starr pointed out that this goes back to cross referencing as the definitions of the setbacks tell you where they are measured from. Mr. Rhodes suggested that perhaps this could be added in the table somehow. Mr. Starr explained that internet hyperlinks will resolve many of these issues. Mr. Rhodes said he had nothing else. Chairman Pearce thanked Mr. Rhodes for his efforts and pointed out that they were all helpful.

Impervious Surface Regulations.

Chairman Pearce then brought up the fact that there was some disagreement with eliminating the impervious surface regulations. Mr. Starr pointed out that the County currently has impervious surface limits so that, if we do away with the regulations now, we will be getting rid of standards that are already in place now. Further, Mr. Starr added, last weeks flooding is a perfect example of what impervious surface causes—urban flooding. Chairman Pearce argued that this was not the only cause but Mr. Starr contended that it is a primary cause. Mr. Starr continued, stating that his recommendation is to leave some of the impervious surface

requirements in there and, when a stormwater ordinance is in place, look at the impervious surface area requirements in the context of that ordinance and decide whether it is justified to reduce the limits for impervious surface.

Chairman Pearce suggested that, if the Planning Board left them, there be something in place about the developer submitting an engineered plan which would, if the Zoning Administrator accepted it, could allow approval of waiving the limits. Mr. Starr suggested that this type of approval was more in the context of a stormwater ordinance. Chairman Pearce suggested the Board's feeling was it should do anything it could do to get stormwater management in place quicker. Mr. Starr pointed out that Staff and the Board has too much on our plate to really spend the appropriate time to draft a Stormwater Ordinance. Further, he felt the County should wait until spring to make a more informed decision about what the local ordinance should be. Chairman Pearce again stated that he felt impervious surface requirements should not be in the zoning section of the LDC. Mr. Starr noted that most zoning ordinances do contain impervious surface limits and they are in the section with dimensional requirements. Chairman Pearce then asked the members of the Board their position. Ms. Kumor felt that the County is putting people at risk until it puts stormwater management in place. Mr. Rhodes said that he sees where Mr. Starr is coming from, but is uncertain what percentage to go with.

Chairman Pearce asked, generally, what percentage should be used. Mr. Starr suggested 70 percent is the highest we should go without any other kind of controls; the watershed allows for a maximum of 70 percent. Mr. Smith added that 80 percent is common as a top-out elsewhere. Chairman Pearce asked for clarification on the standard and maximum requirement outlined by the draft. Mr. Prinz pointed out that this was a carry over from the old draft which based this difference on the Quality Development Score, having since been removed. Mr. Starr said we simply need a maximum percentage. Mr. Smith said he suggested 80 percent earlier, because if you are not in the watershed you are not being penalized as if you were in the watershed. Chairman Pearce asked if everyone was in agreement with an 80 percent limit on all commercial districts and the office institutional and industrial districts. The Board members agreed. Mr. Starr added that the same 80 percent limits should be applied to multifamily developments, through the special requirements section. Chairman Pearce felt that would be appropriate and the Board agreed.

Land Development Code Updated Draft.

Chairman Pearce requested that the Planning Board receive updated copies of all sections. Mr. Starr said that at the next meeting, on Thursday, September 21, 2006, the Planning Board would receive a draft of the entire document. Chairman Pearce asked that this draft not show markups, that it just show a complete document from this point forward. The members also agreed to bring in their old binders in which the new document could be placed.

General Commercial Zoning District Regulations.

Mr. Smith brought up concerns, raised by Staff, regarding the General Commercial District (page 93). He pointed out that Staff suggested this district, as originally discussed, serve as a district that takes nonresidential uses that would become nonconforming by the application of residential zoning districts. This would predominantly take into account reducing nonconformities created by this Chapter otherwise. Mr. Starr noted that someone could apply for the district if the use did not comply with the residential district and was in place at the time of adoption of this ordinance; it would allow them to continue that nonresidential use on and expand within the limits of the district and the original property. Mr. Starr added that it would not be used for anything but this purpose. Chairman Pearce felt that this option makes sense because the County does not want to create a great deal of nonconformity. Mr. Griffin and Ms. Kumor agreed. Mr. Starr noted that, where uses are easily identified for this district the district would be proactively setup; but will set it up in a way so that if we miss something someone can

still come in and apply and get that district. He noted that Staff did not have the resources or the time to do a survey of the entire County to determine every situation where this might occur so these people will simply have to prove that the use was in existence at the time of adoption of the ordinance.

Conditional Zoning District Regulations.

Mr. Smith explained the difference between Conditional Use Districts and Conditional Zoning Districts; and that the Conditional Use District, as written, would require quasi-judicial process. Mr. Starr explained that by going to a Conditional Zoning District option, this would remove the quasi-judicial process as the applicant and County would agree on terms and special conditions and would be rezoned—this is basically legalized contract zoning. Mr. Smith said that the level of flexibility and negotiation is wide open with this option. Chairman Pearce asked Ms. Zambon if there would be a legal problem with this and she said, while she would have to look, her first instinct would be no.

Enforcement, Violations and Appeals Standards.

Chairman Pearce briefly reviewed this section and noted that simplification had occurred and this was appreciated. Chairman Pearce suggested he was comfortable with approving this section and no objection came from the Board. Mr. Starr pointed out that this just simply clarifies more.

Decision Making, Administrative and Advisory Bodies Standards.

Chairman Pearce began over viewing the section. Ms. Kumor asked why Special Fill Permits went to the Planning Board. Mr. Starr said that the current Flood Damage Prevention Ordinance has this requirement currently because the Board of Commissioners approves this permit. Mr. Rhodes left the meeting.

Ms. Kumor then raised concerns about the Technical Review Committee. She thought that individuals beyond County staff would be included, such as a citizen appointee. Mr. Griffin agreed. Chairman Pearce felt that it did not make sense to have a Board of Commissioner appointee because they need to have someone with some expertise. Mr. Griffin said he thinks they need to have a Planning Board member or Zoning Board of Adjustment member. Mr. Starr noted that this would exclude these Board members from hearing any appeals because of ex parte communication. Mr. Smith suggested that the County may want to have someone appointed to the TRC by the Board of Commissioners who is from an area such as engineering professional, surveyor, etc.

Chairman Pearce noted that the biggest problem would be that the TRC would generally meet during the day and Mr. Starr added that these meetings will be held a couple times a month. Chairman Pearce asked if this would be a set time and place. Mr. Starr said that it would as this is a public body holding public meetings that would have to be advertised. Chairman Pearce then asked Ms. Zambon if the appeal was not a quasi-judicial proceeding if an appointed Planning Board member would have to be excluded from an appeal. Ms. Zambon said, for quasi-judicial proceedings the member would be excluded from an appeal. Mr. Starr said they would have to be excluded in all cases, even if not quasi-judicial, as it would be the basis for reversible error if they wanted to sue over the case due to lack of impartiality.

Mr. Starr added that the most appropriate way would be for the Planning Board to assign someone as a liaison to the TRC and make them a non-voting member of the Planning Board. Mr. Smith said that Planning Board members serving on a TRC are usually ex-officio members. Chairman Pearce asked Mr. Smith how often he sees a citizen appointee. Mr. Smith said very regularly. Mr. Starr said that the key thing is to make sure someone is available. Mr. Griffin is concerned that there is a double review section. Mr. Starr feels that this is a process that makes

it easier for the developers, having the TRC. Mr. Smith said it actually turns into a better communication process because you have the regular meetings.

Chairman Pearce concluded that, in addition to Staff members, the Board of Commissioners may choose to appoint a citizen representative and that the Planning Board also may reserve the right to have an ex-officio member to the committee. Ms. Kumor said she thought it was important for a citizen representative to be there because, while it is a public meeting, without any kind of citizen presence, it leaves the Board of Commissioners at risk of being accused of not knowing what is happening and prevents citizen participation from being blocked from the process.

Review Processes and Procedures Regulations.

Mr. Starr pointed out that the subdivision processes and procedures have already been looked at and did not need to be reviewed again. Ms. Kumor asked if the County currently has this level of enforcement and fines already in place. Mr. Starr said the County does, but usually does not issue fines as typically, fines are not terribly effective. He added that voluntary compliance usually works best once people are aware of the requirements.

Landscape Regulations.

Mr. Starr began by pointing out neither Staff nor the consultant has been able to identify any good examples of a point system for landscaping. Chairman Pearce suggested that, at this point, he thinks the Board just has to go with what it has here. Mr. Griffin felt that the specific requirements are just ridiculous. Chairman Pearce said he does not know how else you do it. Mr. Prinz pointed out that there is the alternative compliance section. Mr. Griffin asked what his options are if he wants all shrubs instead of trees in an alternative plan for alternative compliance approval. Mr. Starr added that circumstances, such as overhead utilities or high tension wires, will play a key role in permitting alternative compliance. Mr. Williams asked if there was a way to get out of the rigidity of the requirements without getting into a point system.

Chairman Pearce responded that you either put down requirements or you do not put down requirements. Mr. Starr said that buffers are both a screening issue and an aesthetic issue and that aesthetics are a legitimate purpose for government regulation. Chairman Pearce added, in a buffer, the screening function will be an issue. Mr. Griffin argued that aesthetics and screening are totally different issues and that what people feel is aesthetically appealing varies from person to person. Mr. Starr pointed out that there are more choices in the landscaping sections that do not relate to screening/buffering. Mr. Starr pointed out that on the front of a property, along a street, you can do small or large deciduous or evergreen trees. Mr. Griffin then asked why shrubs cannot be used in place of trees in a buffer. Mr. Starr added that these requirements are baseline and are very minimalists as written, that two trees every 100 feet will not obstruct views of businesses.

Mr. Griffin brought up the case of the Texaco Station on Upward Road, asking if they would be required to plant trees instead of the shrubs they currently have. Mr. Starr responded that, if he built that station under the new LDC, every 100 feet of buffering would have two trees. Mr. Griffin did not think it should be dictated whether the tree has to be small or large or whether it has to be a tree or a shrub. Mr. Starr did not feel comfortable requiring shrubs in lieu of trees because there are many benefits trees offer that shrubs do not, including streetscapes, shading and cooling among others. Chairman Pearce asked what the advantage is in terms of attractiveness; what about four or five shrubs counting toward one tree. Mr. Williams again stated that he did not want the landscaping standards to be so rigid and that applicants need to have more room for choice because of differing opinions of what we think looks nice. Mr. Starr pointed out that the alternative compliance section adds flexibility while making the requirements straightforward. He added that if the County does not require trees no trees will be planted.

Ms. Kumor asked for an explanation of alternative compliance. Chairman Pearce interjected his thought is to allow shrubs in place of trees, at a rate of six shrubs per tree, but only in the case of the planting strip section, and otherwise leave the rest of the landscaping requirements section alone. Chairman Pearce discussed site distance problems with trees and the fact that the planting strip section is the only place where shrubs will be allowed in place of trees. Ms. Kumor asked why not just leave the provisions of alternative compliance to deal with this issue. Chairman Pearce responded that, if we do this, we would be going to the full point system which is something the Board does not have time for.

Adjournment. There being no further business, the meeting adjourned at 6:07 p.m. and all members were in favor.

Tedd Pearce, Chairman

Matt Cable for Kathleen Scanlan,
Secretary