

# **REQUEST FOR BOARD ACTION**

## **HENDERSON COUNTY**

### **BOARD OF COMMISSIONERS**

**MEETING DATE:** 23 March 2005

**SUBJECT:** Referral of US 25N moratorium ordinance

**ATTACHMENT(S):** 1. Draft ordinance  
2. Memorandum

#### **SUMMARY OF REQUEST:**

This draft ordinance is in furtherance of the order ceasing the granting of land use permits of all sorts in the US 25 North zoning study area pending adoption of a limited moratorium ordinance. A required procedure for this type ordinance is its referral to the Planning Board for review and recommendations prior to your consideration. You have already scheduled a public hearing on the review of this moratorium ordinance (in some form) for your 4 April 2005 meeting.

This resolution refers the draft ordinance to the Planning Board, and requests their response in advance of your 4 April 2005 public hearing.

#### **COUNTY MANAGER RECOMMENDATION/BOARD ACTION REQUESTED:**

County staff will be present and prepared if requested to give further information on this matter. The County manager supports this proposal.

**RESOLUTION  
REFERRING DRAFT ORDINANCE  
TO PLANNING BOARD**

WHEREAS, pursuant to the Henderson County Code, amendments to the Henderson County Zoning Ordinance must be referred to the Henderson County Planning Board for review prior to consideration by the Board of Commissioners; and

WHEREAS, the Board of Commissioners has initiated an amendment process to the limited extent of a moratorium on certain land use permits in the US 25 North zoning study area; and

WHEREAS, a public hearing on such moratorium is scheduled for 4 April 2005.

NOW, THEREFORE, IT IS RESOLVED that the attached draft ordinance is hereby referred to the Henderson County Planning Board for its review and report. The Planning Board is requested to provide its response in time for the public hearing on this matter scheduled for 4 April 2005.

Adopted by the Henderson County Board of Commissioners, this the 23<sup>rd</sup> day of March, 2005.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: \_\_\_\_\_  
WILLIAM MOYER, Chairman

Attested to:

\_\_\_\_\_  
CLERK TO THE BOARD

[SEAL]

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# MEMORANDUM

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To: Board Of Commissioners

From: Karen C. Smith, Planning Director  
Charles Russell Burrell, Acting County Attorney

Re: US 25 North Zoning Study

Date: 18 March 2005

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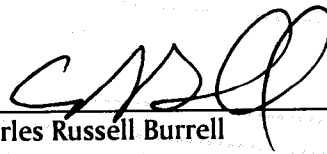
There is attached a draft, intended for submission by you to the Planning Board for comment, of an "Interim Development Ordinance" for the U.S. Highway 25 North zoning study area. It is our attempt to comply with your direction at your 9 March 2005 meeting.

As you will note, the draft as it currently exists has two main but limited thrusts: (1) it imposes a temporary halt on any rezoning requests throughout in the zoning study area; and (2) it temporarily limits and in certain cases temporarily eliminates some "intense" development within the portions of the zoning study area which are currently zoned "open use".

Because of time constraints, this document is necessarily a work in progress. Your Planning Board is scheduled to consider this document at a 29 March 2005 special meeting for this purpose. It is anticipated that staff may add proposed modifications (which will be shown as separate documents to avoid any confusion) up to and through your Planning Board's meeting, and that final recommended document you receive from your Planning Board for public hearing and, if desired, action at your 4 April 2005 regular meeting will include any proposed amendments suggested by staff and by your Planning Board.



Karen C. Smith  
Planning Director



Charles Russell Burrell  
Acting County Attorney

**AN INTERIM DEVELOPMENT ORDINANCE  
FOR THE U.S. HIGHWAY 25 NORTH ZONING STUDY AREA**

WHEREAS, Henderson County ("the County") has been experiencing substantial growth occasioned by extraordinary population growth, development and construction within its area, reflected in ever larger numbers of applications for development approval; and

WHEREAS, the North Carolina Department of Transportation has undertaken the improvement of the portion of United States Highway 25 lying within the County north of the corporate limits of the City of Hendersonville ("US 25N"); and

WHEREAS, as a result, greater growth and development of the areas adjacent to and in the vicinity of US 25N (such area hereinafter "the 25N Zoning Study Area") is expected to occur, and in the absence of more extensive land use planning, and significant new land use planning tools to allow the County to implement such planning, such growth would occur in ways causing critical problems for the County and its citizens, which problems could otherwise be avoided by proper planning and implementation; and

WHEREAS, planning for and implementing ordinances and regulations for land use and development in the 25N Zoning Study Area is urgently needed to meet and avoid critical problems of inappropriately sited and adjacent uses of land, inadequate transportation facilities and transportation access management, loss of open space and environmental degradation, lack of site and appearance standards, and flooding and inadequate storm water management; and

WHEREAS, due to unabated growth pressures throughout the County, it is imperative that the County take appropriate action before problems become unsolvable and planning options are irretrievably lost; and

WHEREAS, adequacy of public facilities including, but not limited to, schools, transportation and transportation access management, storm water management and sewer and water provision are of immediate concern; and

WHEREAS, the continued development in the 25N Zoning Study Area without actions taken to manage growth, establish appropriate uses, intensities, design, compatibility, environmental protection, ensure the adequacy of public facilities in the County and other county, city, state or regional service providers, poses an immediate threat to the public health, safety and general welfare of the County; and

WHEREAS, the County is authorized by Chapter 153A of the North Carolina General Statutes to prepare, adopt and amend a zoning ordinance, subdivision regulations and other land use related administrative regulations and ordinances, as necessary, to implement its Comprehensive Plan and its objectives and to take action to protect the planning process; and

WHEREAS, the County's Comprehensive Plan, and the County's Strategic Plan, anticipate concluding and adopting a complete update and re-writing of its Zoning Ordinance, Subdivision

Ordinance, and other land use related administrative regulations and ordinances within the time frame of this Interim Development Ordinance (“IDO”); and

WHEREAS, the completely updated and rewritten Zoning Ordinance, Subdivision Ordinance, and other land use related administrative regulations and ordinances (collectively, “the Land Development Code” or “LDC”) will provide the County with new and better tools with which to implement the planning necessary to meet the emergency found herein; and

WHEREAS, the County recognizes that the planning process for the update, adoption and implementation of the LDC, including adopting zoning maps, will require approximately eighteen (18) months, during which time the applications for certain zoning ordinance text and map amendments, land development approvals and permits (all as detailed below) will not be accepted, processed or approved until the termination of this IDO; and

WHEREAS, the County has determined that this IDO should be and hereby is adopted and put into effect until the planning process is complete, including but not limited to the adoption and implementation of the LDC; and

WHEREAS, the IDO does hereby prohibit, restrict, or regulate the processing and approval of certain zoning ordinance text and map amendments, land development approvals and permits (as detailed below); and

WHEREAS, certain applications for land use approval may result in disputes over the existence and scope of vested rights for said amendments and land use approvals pursuant to N.C. Gen. Stat. § 153A-344.1 and the common law; and

WHEREAS, this ordinance will promote the health, safety, and general welfare of the citizens of the County, allow the proper implementation of the County’s Comprehensive Plan within the 25N Zoning Study Area, avoid undue concentration of population, facilitate the adequate provision and location of public facilities and services, including consideration to provide for the management of growth; and

WHEREAS, the County has determined that it is necessary that all applications for certain zoning ordinance text and map amendments, land development approvals and permits (as detailed below) in the County, be subject to the provisions of this IDO.

**NOW, THEREFORE**, be it ordained that the Board of Commissioners of Henderson County, North Carolina, hereby adopts this Interim Development Ordinance, effective immediately and applicable to certain development in the 25N Zoning Study Area, as follows:

#### SECTION 1. TITLE

This Ordinance shall be known and may be cited as the “Interim Development Ordinance of Henderson County, North Carolina” (hereinafter “IDO”) and is hereby adopted as an emergency ordinance.

#### SECTION 2. PURPOSE AND INTENT

The purpose and intent of the IDO is:

- a. to declare an emergency in order to protect against imminent and immediate threats to the health, safety, and the general welfare of the residents of the County;
- b. to protect the planning process during the studies, citizen forums and public hearings necessary for the formulation, adoption and implementation of the LDC;
- c. to establish permanent standards for development in the 25N Zoning Study Area so as to ensure the availability and location of concurrent and adequate public facilities by state, county, regional, or other service providers (including transportation, storm water management, sewer, water, telephone, emergency services, parks, open space, library and schools) consistent with the Henderson County Comprehensive Plan and the County Commissioners' Strategic Plan and their objectives; and to evaluate appropriate levels of service and the proper regulation of developments to protect the health and safety of current and future residents;
- d. to maintain predictability, vested rights and fairness for affected landowners within the 25N Zoning Study Area.
- e. to differentiate within the 25N Zoning Study Area among unlike parcels, most limiting immediate development to those parcels with the most potential to create the anticipated problems giving rise to this IDO.

### SECTION 3. FINDINGS

- a. The Board of Commissioners hereby finds that the likely amount, rate, and intensity of new development in the 25N Zoning Study Area will cause serious problems affecting the environment, flooding, transportation, congestion, school overcrowding and other public facility decreases in level and quality of service, creating the probability, in the absence of this IDO, of immediate and future harm to the health, safety and welfare of the residents of the County; and
- b. The Board of Commissioners hereby finds that certain development in the 25N Zoning Study Area prior to the completion and adoption of the LDC may result in inadequate and poorly located schools, sewer and water facilities, transportation facilities; open space preservation, inadequate environmental protection and storm water management as well as the inability to provide adequate fire, law enforcement and emergency services to meet the public health, safety and welfare, so that any later attempt to implement the LDC will be ineffectual and result in a concomitant harm to the County as a whole.

### SECTION 4. DEFINITIONS

- a. To the extent that the words and terms used herein are as defined in the Zoning Ordinance and Subdivision Ordinance, and other land use related administrative regulations and ordinances of the County, as amended (together such ordinances and regulations are "the current land use regulations"), they shall be accorded the same meaning and definition.
- b. To the extent there is a conflict between the definitions of words contained herein and words defined in the current land use regulations, the definitions set forth herein shall prevail.
- c. The following words and terms used herein shall have the meaning set forth below:
  - i) Applicant: The property owner, or duly designated agent of the property owner who files an application for a vested rights determination pursuant to this IDO.

ii) Board of Commissioners: The Board of Commissioners of Henderson County, North Carolina.

iii) Vested Rights Determination: A determination made pursuant to N.C. Gen. Stat. § 153A-344.1 or other applicable common law principles of vested rights, estoppel or contractual right.

iv) IDO. The Interim Development Ordinance of the County.

## SECTION 5. APPLICABILITY

a. Term of Ordinance. 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 within the 25N Zoning Study Area of the LDC, whichever is sooner.

b. Affected Area. Except for Section 8, which shall apply to all land within the 25N Zoning Study Area (as shown on the Henderson County Geographical Information System (GIS) as the "US Hwy 25 N Zoning Study Area" district layer), this Ordinance shall apply to all land with the 25N Zoning Study Area except as follows:

i) those areas within the corporate limits or extraterritorial jurisdiction of a municipality.

ii) those areas within existing county zoning use districts other than the Open Use (OU) district.

iii) those areas on the zoning map recommended by the Henderson County Planning Board on November 22, 2004, to remain within the Open Use (OU) district.

c. Types of Uses and Land Use Approvals Not Affected. This Ordinance shall not apply to the following:

i) existing uses and proposed uses of land, buildings and structures that were legally established under applicable local, state and/or federal regulations (including those approved in the form of a zoning permit or a building permit);

ii) repairs, renovations, additions to and/or replacement of existing buildings and structures and expansions of existing uses of land, as allowed by current local, state and/or federal regulations, provided the use of such buildings, structures (or new portions thereof) or land does not change the current use to another use that would be regulated under this IDO;

iii) bona fide farms, as defined by the Henderson County Zoning Ordinance;

iv) new establishments classified by the North American Industry Classification System (NAICS) as being in the following sectors, provided they comply with other applicable local, state and/or federal regulations:

1) "Sector 11, Agriculture, Forestry, Fishing and Hunting"

2) "Sector 22, Utilities (Providers of electric power, natural gas, steam supply, water supply and sewage removal services)"

3) "Sector 92, Public Administration"

- v) new accessory buildings and/or accessory uses, both as defined in the Henderson County Zoning Ordinance, provided they comply with other applicable local, state and/or federal regulations;
- vi) customary incidental home occupations, as defined in the Henderson County Zoning Ordinance, provided they comply with the standards contained within such definition;
- vii) residential dwellings on lots of record existing as of the effective date of the moratorium, in accordance with current zoning and other local, state and/or federal regulations;
- viii) development of lots and other land in major subdivisions (as defined by the Henderson County Subdivision Ordinance) for which a master plan has been approved or approved with conditions by the Planning Board under the Henderson County Subdivision Ordinance, current zoning and other local, state and/or federal regulations, as of the effective date of the moratorium;
- ix) development of lots and other land in commercial or industrial subdivisions for which a master plan has been approved or approved with conditions by the Planning Board under the Henderson County Subdivision Ordinance, current zoning and other local, state and/or federal regulations, as of the effective date of the moratorium;
- x) new residential development, including manufactured home parks, that does not require the subdivision of land under the Henderson County Subdivision Ordinance or which would be classified and reviewed as a non-standard subdivision under the Henderson County Subdivision Ordinance, provided the density of such new residential development does not exceed two (2) units per acre and such new residential development is approved under applicable local, state and/or federal regulations;
- xi) approval and development of lots and other land in subdivisions other than those classified as “major,” “commercial” or “industrial” or “non-standard” by the Henderson County Subdivision Ordinance, provided the residential density of such development does not exceed two (2) units per acre and provided such approval is granted and development occurs in accordance with the Henderson County Subdivision Ordinance, current zoning and other applicable local, state and/or federal regulations;
- xii) replacement of a manufactured home existing at a location as of the effective date of the moratorium with another manufactured home in the same location, whether on an individual lot or within a manufactured home park, provided such replacement is made in accordance with applicable local, state and/or federal regulations;
- xiii) set up of a manufactured home on a “manufactured home space” (as defined in the Henderson County Manufactured Home Park Ordinance) that legally existed prior to the effective date of the moratorium;
- xiv) buildings, structures, uses and/or activities on property owned by local, state or the federal government;
- xv) schools, churches and buildings and facilities for providers of emergency services (EMS, fire, law enforcement, etc.);
- xvi) communications towers, provided they comply with applicable requirements of the Henderson County Zoning Ordinance and the Henderson County Communications Tower Ordinance;



xvii) temporary real estate signs advertising the sale or rental of property on which the signs are located; temporary signs for construction, landscaping and similar service providers located on project sites where work is actively being performed; political signs; and temporary signs which serve to replace signs removed or obstructed by the widening project of US Highway 25 North by NCDOT, provided all such signs comply with other applicable local, state and/or federal regulations (could list other standards, if needed, such as those related to type, number, size, lighting, motion, number of sign faces, etc.);

xviii) signs associated with uses allowed by the moratorium provided they comply with other applicable local, state and/or federal regulations (could list other standards, if needed, such as those related to type, number, size, lighting, motion, number of sign faces, etc.);

xix) governmental and directional signs, and signs required by other local, state and/or federal regulations;

xx) new buildings, structures, uses and/or activities in projects for which a development vested right has been granted by the Henderson County Board of Commissioners under Chapter 189 of the Henderson County Code, provided such vested right is still in effect and development is proceeding in accordance with such vested right and other applicable local, state and/or federal regulations.

d. All exempted matters are nevertheless subject to the existing zoning and subdivision regulations and ordinances, which are otherwise being pre-empted by this ordinance.

#### SECTION 6. LIMITATION OF CERTAIN ACTS

Pending expiration of this IDO, the following acts are not permitted in the Affected Area:

a. New outdoor advertising signs as defined by and that would require a permit under the Henderson County Outdoor Advertising Sign Control Ordinance.

b. New signs that would not require a permit under the Henderson County Outdoor Advertising Sign Control Ordinance, but which are not intended to be permanently affixed to a building, a structure or the ground, except as provided in Section 5.

c. Any new residential development not specifically excluded in Section 5, above.

d. New commercial and industrial subdivisions of land that would be subject to the Henderson County Subdivision Ordinance

e. New uses (or expansions to legally existing uses) listed in Section 200-32.1 of the Henderson County Zoning Ordinance (the Open Use District) as being “Uses permitted with standards” (vehicle graveyards and mobile/manufactured home graveyards), uses requiring a “Special Use Permit,” or “Prohibited uses.”

f. Unless otherwise excluded, new uses classified by the North American Industry Classification System (NAICS) as being in the following Sectors:

i) “Sector 21, Mining”

ii) “Sector 23, Construction”

iii) “Sector 31-33, Manufacturing”

- iv) "Sector 42, Wholesale Trade"
- v) "Sector 44-45, Retail Trade"
- vi) "Sector 48-49, Transportation and Warehousing"
- vii) "Sector 51, Information"
- viii) "Sector 52, Finance and Insurance"
- ix) "Sector 53, Real Estate and Rental and Leasing"
- x) "Sector 54, Professional, Scientific and Technical Services"
- xi) "Sector 55, Management of Companies and Enterprises"
- xii) "Sector 56, Administrative and Support and Waste Management and Remediation Services"
- xiii) "Sector 61, Educational Services (Except Subsector 6111, Elementary and Secondary Schools"
- xiv) "Sector 62, Health Care and Social Assistance"
- xv) "Sector 71, Arts, Entertainment, and Recreation"
- xvi) "Sector 72, Accommodation and Food Service"
- xvii) "Sector 81, Other Services (Except Public Administration)"

xviii) Filling, grading, dredging and development activities within areas identified as floodways, A zones and B zones by the Federal Emergency Management Agency (FEMA) in its Flood Hazard Boundary Map (FHBM) or Flood Insurance Study (FIS) and its accompanying flood maps such as the Flood Insurance Rate Map(s) (FIRM) and/or the Flood Boundary Floodway Map(s) (FBFM) for Henderson County dated March, 1982, except that the following uses shall be allowed in A and B zones:

- (a) General farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farms, and other agricultural, wildlife and related uses.
- (b) Lawns, gardens, play areas, and other similar uses.
- (c) Golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, hiking, biking or horseback riding trails, open space and other similar private and public recreational uses.
- (d) Necessary roads and bridges.
- (e) Storm sewer systems, sanitary sewer systems, water distribution systems, railroads, electric power transmission and distribution lines, telephone conduit and distribution lines; and cable television transmission and distribution lines provided a "HEC-RAS" analysis has been completed and submitted to and is accepted by the Floodplain Administrator.

## SECTION 7. ADMINISTRATION

- a. Enforcement. The IDO may be enforced by the County by any appropriate means authorized by N.C. Gen. Stat. § 153A-123 and County ordinances including, but not limited to, declaratory and/or injunctive relief, fines, withholding of land use approvals and revocation of land use approvals.
- b. Amendments. Changes to and/or extensions of this IDO must be made in the same manner as its adoption. Nothing herein precludes the Board of Commissioners or limits its discretion to make such changes or extensions of time at any time, if deemed necessary or desirable.
- c. Fees for Processing. The current Henderson County fee schedule for zoning and subdivision permits and approvals shall remain in effect during the effective date of the IDO. No application for land use approval or a vested right determination shall be processed pursuant to the IDO unless the Applicant has first or contemporaneously paid the applicable processing fee established by the Board of Commissioners.
- d. All processing fees paid shall be non-refundable.
- e. Time Limits. The time limits set forth in this Ordinance are mandatory and of the essence; provided, however, that the Board of Commissioners may extend such time periods for a reasonable period of time upon consent of the applicant. Such extension shall indicate the reason for the extension, the additional period of time needed for review, and the purpose for which the application review will be conducted.
- f. Appeals. Appeals shall be allowed, pursuant to N.C. Gen. Stat. § 153A-345.

## SECTION 8. ZONING CHANGE MODIFICATION

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 25N Zoning Study Area shall be received, processed or approved.

## SECTION 9. VESTED RIGHTS DETERMINATION

Eligibility. Any applicant for a land use approval claiming entitlement to application approval on the basis of vested rights under common law or accrued pursuant to N.C. Gen. Stat. § 153A-344.1 or the Henderson County Code prior to the date of adoption of this IDO may submit an application for a Vested Rights Determination to the Henderson County Zoning Administrator, with right of appeal to Zoning Board of Adjustment, on the following grounds:

- a. Claiming entitlement to a land use approval on the basis of established principles of common law vesting, equitable estoppel or contractual rights development agreement) provided the applicant proves by a preponderance of evidence that the owner or contract purchaser, acting in good faith reliance upon some act or omission of the County, has made a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right to develop or to continue the development of the property; or
- b. Claiming entitlement to development approval on the basis of other vested rights principles under N.C. Gen. Stat. § 153A-344.1.
- c. An application for a Vested Rights Determination shall be filed within Thirty (30) days after the effective date of this IDO. An application for a Vested Rights Determination shall include the following:

- i) A technically complete, sworn application on a form prepared by the County, together with a non-refundable fee of Two Hundred and Fifty (\$250.00) Dollars;
- ii) The name and address of the applicant, who shall be the owner, contract purchaser or a person authorized to apply on behalf of the owner; if the property is owned by more than one person, any owner or an authorized agent of the owner may apply;
- iii) A legal description and survey of the property which is the subject of the application, or other map of the property acceptable to the Henderson County Zoning Administrator;
- iv) The name and address of each owner and contract purchaser of the property;
- v) Identification by specific reference to all site specific development plans, approvals, applications, letters, maps or other documents; or any ordinance, resolution or other action of the County, or failure to act by the County, upon which the applicant relied and which the applicant believes to support the owner's vested rights claim notwithstanding such land use approval would not be granted under the terms of the IDO;
- vi) A statement of facts which the applicant intends to prove in support of the application; and
- vii) Such other relevant information that the County may request.

#### SECTION 10. EFFECT ON EXISTING ORDINANCES; CONFLICT

- a. Effect. This IDO is not intended to amend or repeal any existing County ordinance or regulation. To the maximum extent possible, the requirements of this IDO shall be deemed to be supplemental to, and not in substitution of, existing County ordinances and regulations. Wherever possible, all shall be given effect.
- b. Conflict. To the extent of any conflict between other County ordinances or regulations and this IDO, the more restrictive is deemed to be controlling.

#### SECTION 11. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this IDO is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this IDO.

#### SECTION 12. DECLARATION OF EMERGENCY

The Board of Commissioners hereby finds, determines and declares that an emergency exists for the reason that continued development within the 25N Zoning Study Area prior to the adoption and implementation of the LDC will cause significant harm to the public health, safety and general welfare, and there is a need to protect the integrity of the planning process, amendments to the , and the passage of this IDO is necessary for the immediate preservation of the public health, safety and general welfare, and that this IDO shall be in full force and effect upon final adoption.

**DULY PASSED AND ADOPTED** BY the Board of Commissioners of Henderson County, North Carolina, this 4<sup>th</sup> day of April 2005.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: \_\_\_\_\_  
WILLIAM MOYER, Chairman

ATTEST:

\_\_\_\_\_  
CLERK TO THE BOARD

[SEAL]

DRAFT