

**MINUTES**

**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS  
JUNE 12, 2007**

The Henderson County Board of Commissioners met for a special called meeting at 7:00 p.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Bill Moyer, Commissioner Larry Young, Commissioner Chuck McGrady, Commissioner Mark Williams, County Manager Steve Wyatt, County Attorney Russell Burrell, and Clerk to the Board Elizabeth W. Corn.

Also present were: Communications Officer Pam Brice, Associate County Attorney Sarah Zambon, Planning Director Anthony Starr, Planners Autumn Radcliff, Matt Card, Sloan Parker and Alexis Baker.

Absent were Vice Chairman Charlie Messer and Assistant County Manager Selena Coffey.

**CALL TO ORDER/WELCOME**

Chairman Moyer called the meeting to order and welcomed all in attendance at approx. 7:04 p.m. He explained that the first item on the agenda was a carry over from a previous meeting – Maintenance of Effort Funds for Mental Health. At the last meeting there was some discussion about the status of the pharmacy and it got a little off track. He asked the County Manager to clarify the issue.

**MAINTENANCE OF EFFORT FUND ALLOCATION**

Steve Wyatt explained that there are two pharmacies in question but only one presently. Last fall Western Highlands worked with a group called PSC to develop a pharmacy assistance program. We located an office for these folks in the Health Department. They got up and running and in about a 60 day period they indicated that they did not have enough clientele to facilitate keeping the office open full time. They decided to serve the clients they had out of their Asheville office. Mr. Wyatt explained that they also opened up an office in Rutherford County in Forest City which they are still operating. That local pharmacy closed and has not reopened. They have said that if there was demand that merited reopening, they would revisit that. This is separate from the Community Health Network (CHN) Pharmacy Assistance Program that is local and is up and running.

At the June 4, 2007 meeting, the Board of Commissioners discussed the allocation of the \$140,342 remaining in the FY 2007 budget for the provision of mental health services.

Arthur Carder, CEO of Western Highlands LME had provided the following recommendation for the funds:

Blue Ridge Community Health Services	\$45,000.00
Community Health Network (CHN)	\$45,000.00
Sixth Avenue Psychiatric Rehabilitation Partners	\$50,000.00

Following discussion at that meeting, the Board allocated \$45,000 to Blue Ridge Community Health Services and \$50,000.00 to Sixth Avenue Psychiatric Rehabilitation Partners and requested to see the complete funding applications for the remaining provider requests.

DATE APPROVED \_\_\_\_\_

Amy Brantley had provided copies of the funding applications for the Board's review. Staff requested the Board determine the allocation of the remaining \$45,342 in Maintenance of Effort (MOE) funds, and direct Staff to distribute those funds.

Steve Wyatt stated that the providers had really stepped up to the plate and the worst case scenario has been awarded. The Board of Commissioners can be credited by making some strategic investments with the MOE funds. We are at the end of the fiscal year. If the Board decides to emphasize prescription assistance, it would make sense to work with the CHN as the existing provider here.

Ann Marie Lester came forward and addressed the Board. She stated that they requested the MOE funds in the October cycle for the behavioral assistance program which is a therapist at the Health Department. This is in addition to that money. She explained that this Prescription Assistance Program has a very limited formulary which targets depression, mental health issues, diabetes, and asthma. It is more of a resource network versus being a full service pharmacy. It is a dispensing pharmacy, staffed by a pharmacist for the hours they are open and they actually dispense medications to patients. It is located on the Pardee Hospital campus in their Medical Office building. It is donated space so there is no rent. They are the only resource for reduced fee meds for the mentally ill. They charge \$3.00, everything else is subsidized by the program CHN. They have been blessed with a Federal Grant that is ending in two weeks so those funds have been depleted. Today they just received word that they got funded for their pharmacist and the pharmacist assistant from the Kate B. Reynolds Foundation. Staffing has been secured effective today although their medications needs have skyrocketed.

*Commissioner Larry Young made the motion to put the \$45,000.000 into their funding to run through October 31. All voted in favor and the motion carried.*

#### **LAND DEVELOPMENT CODE WORKSHOP**

Chairman Moyer explained that there have been numerous sessions of public comment, a workshop for the Board and the issues have been discussed at some of the regular Commission meetings. The attempt will be to bring all these issues together at this meeting. There will be no vote to resolve the issues at this time.

#### **Chairman's Comment**

Chairman Moyer explained that Commissioner Charlie Messer has a serious family situation which makes it impossible for him to be at this meeting. The Board wishes him the best and does not want to take action without Commissioner Messer on this issue.

Anthony Starr began with review of the map options:

**Map Option 1:** Local Commercial Node at Intersection of NC Highway #191 and Mountain Road. There has been no change from the April 24 workshop. This node is designated as local commercial instead of community commercial which was what was in the draft seven map that the Planning Board recommended. It revolves around an issue of the permitted uses. Community commercial are more permissive than those in local commercial. The issue of self storage units was brought up and they are allowed in community commercial but are not allowed in local commercial. There was a text amendment to the current zoning ordinance that reflected this change.

**Map Option 2:** Local Commercial Nodes along US Highway #64 East. This map shows local commercial nodes along highway #64 east. No changes have been made to this particular map although he had met with Commissioner Williams and he stated he would highlight some changes later, in a few minutes. This map identifies three areas, one at St. Paul's Road out near the Justus Academy, another one

at South Mills Gap Road and Highway #64, and the third one where the mini storage was that the Board approved just the other night.

**Map Option 3:** Local Commercial Node along US Highway #74 in Gerton Community. This was modified from the last workshop. The only change was that an aerial photo was added.

**Map Option 4:** Local Commercial Node along US Highway #74 in Bat Cave Community. Anthony Starr stated that this was the same, the aerial photo was just added.

**Map Option 5:** Local Commercial Node at Intersection of Dana Road and Upward/Ridge Road in Dana Community. One tract of land was added on the west of the map where it says Dana Road. The parcel has a non-residential use now. The change just reflects what the current use is, otherwise there was no change.

**Map Option 6:** Local Commercial Node along Upward Road to Howard Gap Road. There were a couple of changes to this map. One was the parcel at the corner of Crest Road and Upward Road, it was added. One was to the east of Howard Gap Road which was also added. There was a question raised and discussion and the Board asked Anthony Starr to take a look at the area on this map where the Regional Commercial goes direction into Local Commercial rather than transitioning to Community Commercial.

**Map Option 7:** Industrial in the vicinity of Asheville Regional Airport. No change from the last workshop on April 24. This area around the airport is currently zoned Open Use and Commercial.

**Map Option 8:** Residential Zoning District Four (R4) in the vicinity of Pisgah National Forest. This is part of the R4 zoning district recommendation of the Planning Board. At the Planning Board's March meeting they recommended that a fourth residential rural zoning district was needed and it be an average density of one dwelling unit per five acres. The Board also suggested that areas within and near public land, such as the Pisgah National Forest, DuPont State Forest, and Green River Gamelands and land with extremely steep slopes and key watershed areas to be given the R-4 zoning designation. They took that recommendation into consideration and the Planning Board directed staff to do it.

Chairman Moyer asked that discussion be held on the R4 zoning until the other map options had all been reviewed regarding commercial and industrial zoning. Anthony Starr asked the Board to skip map options #8-11 and turn to 12.

**Map Option 12:** Industrial and Local Commercial Nodes along US Highway #64 West in Etowah-Horseshoe Community. Based on existing uses, subject area 1 was added to the community commercial district. Also added was some local commercial parcels in subject area 2 along Hwy #64 near the intersection of Morgan Road to reflect some existing commercial uses that have local commercial designation. Also added was the area in purple in subject area 2 to reflect the Etowah Industrial Park which has some existing industrial uses. Also subject area 3 includes some local commercial including some existing businesses.

**Map Option 13:** Additional Local Commercial Nodes along US Highway #64 East, between Fruitland Road and Gilliam Road. This is a new map from the April 24 workshop, based on the conversation with Commissioner Williams. Subject area 1 reflects some areas where there are some non-residential uses and some potential land that could become commercial in nature just past Chestnut Gap Road on the right and the left on Highway #64 going towards Edneyville. Similar situations exist in Subject area 2 between Forest Park Drive and Stepp Acres Lane.

**Map Option 14:** Additional Local Commercial Nodes along US Highway #64 East, between Pace Road and South Mills Gap Road. These weren't reviewed as a Commissioner skipped right to the next map.

**Map Option 15:** Local Commercial and Industrial Nodes along Howard Gap and Sugarloaf Roads. Commissioner Williams addressed some additional industrial property as subject area 3, stating it is an addition, taking in the All Juice Plant which is a current industrial use and the adjoining property has been requested to be included. He stated that there is water and sewer available. Anthony Starr also pointed out subject area 1 and 2 which are two more local commercial nodes, one at Sugarloaf Road and Howard Gap Road and the other one at Dana Road and Howard Gap Road. There are some current commercial uses in those locations as well as some vacant tracts.

**Map Option 16:** Local Commercial Node at Five Points (Intersection of Sugar Loaf, Ridge, Stepp Mill, and Piney Mountain Roads). Anthony Starr stated that this is the area known as Five Points. There are some industrial type uses and some commercial uses there. This would also take in some vacant tracts around those uses. These are all currently zoned open use.

**Map Option 17:** Industrial Zone Expansion at Intersection of Howard Gap and Jackson Roads. Anthony Starr stated that Commissioner Messer had brought this to their attention. It is currently zoned residential and it is an expansion of a business located at the intersection of Howard Gap and Jackson Road.

**Map Option 18:** Industrial Zone Expansion at Intersection of Howard Gap and Sugarloaf Road and **Map Option 19:** Industrial Zone at Intersection of McMurray Road and Upward Road. Anthony Starr stated that these are two additional map options, based on a conversation he had with Andrew Tate with the Department of Economic Development late last week, after the packets had already been delivered to the Board. They have completed an industrial study that identified additional sites that would be suitable for industrial development. These two sites are currently zoned open use, one is on Sugarloaf Road on **Map Option 18** and the other is currently zoned open use, right along I-26 and is on **Map Option 19**. The last tract recommended this be residential but this industrial study recommended an industrial classification for the purple area, north and east of I-26 above Upward, past the Dish Barn.

Anthony had nothing else to share about industrial and commercial changes.

A few letters had been received and those were discussed as they relate to zoning of properties.

Chip Gould was in attendance, representing the Partnership with respect to the Industrial sites. Chairman Moyer called him forward. Mr. Gould stated that in 2003 the Commissioners asked the Partnership to do an Industrial Study and provide a map. They did that along with the two Lead Goforth Studies that were done identifying industrial sites. He stated that the two additional tracts that are added were not shown in the original work up on industrial sites. Andrew Tate feels comfortable as does the Product Development Committee that all the sites have been identified that would realistically be industrial. Some have been deleted because things have been built next to them and they are not as attractive as they were before. Chip Gould, on behalf of the Partnership, requested that the Commissioners consider removing recreational use, education and institutional use, business and professional, personal services, retail trade and wholesale trade from industrial. They currently have 112 uses in the industrial districts. "If we're gonna try to protect industrial sites, then I think we can't have them be everything. It does no good to allow everything in industrial sites because that defeats the purpose so we would ask that you consider in your process here, to look at those allowed uses and restrict that back in an effort to try to maintain some industrial land for industrial sites and not just be the catch all or open use that it currently is or will be if we just go forward and leave all these uses." Much discussion followed.

Chairman Moyer stated that we need to have an option 6-A in addition to option 6, including some community commercial in case the Board wants to change that, so the option needs to be advertised.

Planning Board Chairman Tedd Pearce commented on commercial uses in the industrial areas. Some added to it was because of the landowners who had industrial uses and wanted a little bit more flexibility and felt that if they chose to put a commercial use in an industrial area they were the ones who were more apt to be adversely affected by it but if they felt it would be appropriate in their area on their land to have a commercial use, they felt they should have a right to have some commercial ability, such as a café or a restaurant located in an industrial area, to have somewhere to eat.

Anthony Starr then reviewed the residential districts with the Board, starting with map option 8. The area between the Town of Mills River to the Pisgah National Forest and including Pisgah National Forest will be zoned R-4 where the average density would be one unit per five acres. Map option 9 includes DuPont State Forest, north of Green River Road and south of Crab Creek Road and will be zoned R-4. It includes several large tracts and some smaller tracts to the south and east of the DuPont State Forest. It is one of the more remote areas of the county. The area outside of DuPont State Forest that has been included in the R-4 zone is actually steeper than the land inside DuPont State Forest. Map option 10 is the Green River Gamelands area. It includes one large tract owned by Hungry River LLC and a couple other smaller tracts that were contained within that larger tract and adjacent to. It also includes the Green River game lands.

Chairman Moyer felt that R-4 should be restricted to the National Forest, DuPont State Forest, and the Green River Gamelands, using the boundaries of the parks and the gamelands.

Commissioner McGrady explained that he understood that enholdings that are completely surrounded by National Forest or Parks would be included. Discussion followed and the Board seemed to be in agreement of favoring the R-4 zoning district.

Anthony Starr then mentioned that **Map option 11** was a Suburban Overlay District in the Former R-40 and R-30 Residential Zoning Districts. It also refers to **Text option 1**. He stated that there was some criticism about the fact that areas zoned R-40 and R-30 now that would be zoned R-20 and they did not like the fact that there was not an actual minimum lot size but just an average density and that duplexes and triplexes were allowed in the R-2 where they were not allowed in the R-40 and R-30. Under existing zoning for R-30 and R-40 it was stated by a lot of people that they didn't allow multifamily but they do. They allow apartment type buildings in a significant number of areas. In the new draft we are going from allowing multifamily to only allowing duplexes and triplexes. There was some discussion of a Suburban Overlay District. There was also discussion of set-back requirements.

#### **Text option 2 – Special Subdivisions.**

Anthony Starr explained that there was an identified need to somehow accommodate small land owners or land owners that wanted to give a small portion of their property to family without having to adhere to the low density requirements of some districts. This provision would allow a property owner to divide off a total of five lots within a five year period and those lots would not have to meet the minimum density requirements, if they were at least half an acre in size each. The only change from the last meeting was on page 1 of that text option 2, section 3, it lays out some basic road requirements: a travelway width of 12 feet with 4 inches of gravel and that the grade would be 15% maximum grade for gravel roads, for paved roads 18% maximum grade and have a vertical clearance of at least 13.5 feet.

Discussion followed regarding family subdivisions and whether this went far enough.

#### **Text option 3 – Development in areas of steep slope & floodplain.**

The County can provide rules that set a much lower density for areas that contain steep slope or floodplain. Each residential zoning district could be amended to indicate areas with slope 35% or greater or within the 100-year floodplain. Suggested language for such could be: “The maximum residential

density for areas with slope 35.0% or greater or within the Special Flood Hazard Area shall be one dwelling unit per three acres.” The Board could go to 45% and language was recommended if that was the decision, density being one dwelling unit per five acres.

**Text option 4 – Off-site Access.**

There was concern that our current regulations are not restrictive enough regarding development of properties that have inadequate off-site access or frontage on a public or private road.

The proposed subdivision regulations in the Land Development Code shows a maximum number of lots allowed for properties that have inadequate off-site access (less than 30 foot right-of-way) or inadequate frontage (less than 30 feet of frontage). This provision allows one lot per acre. This is the same provision as in our current Subdivision Ordinance.

**Text option 5 – Commercial Uses in R-3**

Concerns were raised regarding the limited amount of commercial and business uses allowed in the R-3 residential zoning district.

One solution is to allow more commercial and business uses in the R-3 zoning district as a special use permit.

**Text option 6 – Board of Commissioner Approval for Referred Subdivisions and Impact of Larger Developments.**

There were concerns that the Board of Commissioners should review larger subdivisions and a proposed development’s impact on community services as it relates to public safety and roads. There were a couple of recommended solutions:

- #1 Provide a provision in the Subdivision Regulations (Article III) of the Land Development Code that would allow the Planning Board to refer any major subdivisions to the Board of Commissioners for review and approval.
- #2 In addition to Solution 1 above, change the name of Article IV in the Land Development Code to Adequate Public Facilities & Service Regulations and provide a provision in this article that would require proposed developments of certain thresholds to prepare a Traffic Impact Study (TIS) and to prepare an Emergency Services Impact Report. Traffic Impact Studies are required by a variety of local governments in North Carolina. The NC Department of Transportation currently requires a TIS for developments that will generate more than 3,000 trips per day. This option lowers that threshold and allows the County to consider road impacts when giving development approvals.

There was much discussion regarding where the cut-off should be for whether a subdivision goes before the Board of Commissioners or not, 250 was decided on.

Anthony Starr pointed out that there is a new provision called the **Emergency Services Impact Report**. It is required for all subdivisions with 100 lots/units or more. It is also required for subdivisions proposing more than 50 units and are located more than five road miles from the nearest fire station. There was some discussion about the public water issue and the public sewer issue.

**Text option 7 – Sign Regulations – Freestanding Signs.**

There was nothing new added.

**Text option 8 – Sign Regulations – Outdoor Advertising Signs (Billboards)**

The current regulations require that such signs (billboards) be placed at 1,000 feet from other outdoor

advertising signs and residences. The draft LDC only provides a 300—500 space requirement between signs with no spacing requirement from residences. The draft LDC language could allow new outdoor advertising signs in areas where no additional signs are currently permitted. The current draft language is found in Section 200A-164 on page 172 of the draft LDC.

The previous draft had 500 feet instead of 1,000 feet. The Board could leave the current proposed LDC language in place or increase the proposed spacing requirement to 1,000 feet from other outdoor advertising signs and residences.

**Text option 9 – Accessory and Temporary Manufactured Homes.**

The current draft LDC proposes to permit accessory dwellings which are stick-built, modular, or manufactured dependent upon the district in which the accessory dwelling is to be placed. The concern expressed by the Board of Commissioners was that manufactured homes may not be permitted as accessory dwellings based on the size restrictions contained in the supplemental requirements. Additionally the Board is concerned that manufactured homes cannot be placed on a site as a temporary use.

Recommended solution was to modify the supplemental requirements for “Accessory Residential Dwelling” (SR 3.6) to increase the permitted size of the accessory dwelling. Staff does not suggest any additional changes that would be necessary to allow the accessory manufactured home as a temporary use. It is not necessary to regulate the length of placement of the manufactured home because the accessory manufactured home would be permitted as a permanent use within the applicable district. Additionally, by removing “(2) Ownership” the manufactured home may be owned by someone other than the property owner (for example a parent or child of the property owner).

**Text option 10 – Commercial Uses in Industrial Zoning District.**

Concerns were raised regarding the commercial uses allowed in the (Industrial) zoning district.

Recommended solution – Almost all commercial uses with the exception of retail trade uses, are allowed in the Industrial District. Staff recommends that the Board add the following uses as permitted in the I district: outdoor sale display areas; non-commercial athletic fields; and Christmas tree lot sales (See revised Table of Uses, beginning on page 3).

Staff does not recommend the addition of any other commercial uses to the Industrial District. The intent of the district is to allow for industrial and heavy commercial development. Those commercial uses which are not permitted in the industrial district may not be appropriate to be developed in industrial areas for factors including: differences in hours of operation, types/amounts of traffic generated, and/or the concentration of people in a residential/accommodation (i.e. hotel, dormitory, etc.) or institutional (i.e. school, adult day care, etc.) setting.

Allowing additional commercial development in the Industrial District will not allow for the preservation of industrial lands for industrial uses.

Commissioner McGrady stated that he would like to see a Text option #11 which strikes the wetlands/floodplain and any other sorts of things from the density bonus. He didn't think that we should be providing density bonuses for portions of land that shouldn't be built on or would be extremely expensive to build on.

**Legal Issues**

Russell Burrell mentioned a couple of legal issues to the Board, referencing a document titled “County Permits; Related Parties”. He mentioned a situation where someone is granted a permit, for example they

are granted a permit to develop phase I of a subdivision. That permit is granted on certain conditions. They are also granted Master Plan approval. They violate those conditions on phase I but then they ask for phase II approval. This would say that if you violated some condition of a permit, you can't get another permit. It also ties all the permits that you have from the County together, saying that if you violate one you effectively violate them all and it also talks about the issue of related parties.

Mr. Burrell discussed the need to add a #.1.05.06 to the definitions which would add a related party is also a party that is controlled by the same entity as the disqualified party. The last page of the document – Mr. Burrell stated that two years ago this Board directed that it be reminded to consider the issue of exempting county owned real estate, property owned by Henderson County Government from the operation of the zoning code. This came up when this Board denied itself a rezoning.

This possible amendment would exempt government owned real estate from the operation of the zoning ordinance just to avoid the Board having to go to itself for a variance or to go to itself for a rezoning, as follows:

County Government Exemption:

S200A-XX: The provisions of this Chapter shall not apply to buildings owned and used by Henderson County government until such time as the structures are privately owned and operated. This provision does not include property owned by other counties, municipalities within Henderson County, or the Board of Education.

Chairman Moyer stated that development is such a key issue and he thinks the Board should step up and take that responsibility and look at the other enforcement provisions and see what they are willing to let go to the Zoning Board of Adjustment and what they need to bring to the Board of Commissioners.

**Setting of a workshop**

It was the consensus of the Board to have another workshop on the Land Development Code (LDC) and to set a public hearing about 60 days from now.

Much discussion followed. The Clerk was directed to try to get the auditorium at Blue Ridge Community College for the public hearing 45 to 60 days out (mid August to mid September) and the Board will actually set the public hearing at the July 2 Commission meeting. Staff will also have a recommendation for workshop dates at that time.

**Adjourn**

*Commissioner Williams, made the motion to adjourn the meeting at 9:45 p.m. All voted in favor and the motion carried.*

Attest:

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Elizabeth W. Corn, Clerk to the Board

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William L. Moyer, Chairman