

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** Tuesday, September 4, 2007

**SUBJECT:** Rezoning Application #R-2007-05

**ATTACHMENTS:**

1. Staff Report
2. Subject Area Photos
3. Aerial Photo Map
4. Comments from Asheville Regional Airport
5. Excerpt of Planning Board Minutes from July 19, 2007
6. Notice of Public Hearing
7. Certification of Notification of Public Hearing

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

Rezoning Application #R-2007-05, which was submitted on June 19, 2007, requests that the County rezone approximately 322.46 acres of land, located off Butler Bridge Road (SR 1345) and bounded by I-26 on the east and the French Broad River on the west, from an I-2 (General Industrial) zoning district to a C-4 (Highway Commercial) zoning district. The Subject Area is comprised of three tracts of land. The Applicants are: Tap Root Dairy, LLC (PIN: 9642-82-4583); Juanita Johnston and Mary Louise Corn, Co-Trustees of the Estate of S.E. Johnston, Jr. (PIN: 9652-03-1362); and Big J Small J Partnership (PIN: 9642-84-6722) owners (hereafter "Tract 1", "Tract 2", and "Tract 3"). The Applicant's Agent is Angela Beeker.

The Henderson County Planning Board considered rezoning application #R-2007-05 at its regularly scheduled meeting on July 19, 2007. During that meeting, the Board voted 7 to 0 to send the Board of Commissioners a favorable recommendation for rezoning application #R-2007-05 to rezone the Subject Area from existing I-2 zoning district to a C-4 zoning district.

#### **PUBLIC NOTICE:**

Before taking action on the application, the Board of Commissioners must hold a public hearing. In accordance with Section 200-76 of the Henderson County Zoning Ordinance and State Law, notices of the September 4, 2007, public hearing regarding rezoning application #R-2007-05 were published in the Hendersonville Times-News on August 22, 2007 and August 29, 2007. The Planning Department sent notices of the hearing via first class mail to the owners of properties adjacent to the Subject Area and the applicant on August 22, 2007 and posted signs advertising the hearing on the Subject Area on August 22, 2007. Attachment 7, includes a certification to this effect.

#### **BOARD ACTION REQUESTED:**

Staff's position at this time, under the guidelines of current plans, policies and studies, is it supports the current zoning of the Subject Area (I-2 (General Industrial) zoning) which is consistent with the recommendations of the Henderson County 2020 Comprehensive Plan and Henderson County Industrial Study.

**Suggested Motion:**

I move that the Board deny rezoning application #R-2007-05 to rezone the Subject Area from an I-2 (General Industrial) zoning district to a C-4 (Highway Commercial) zoning district based on the recommendations of the Henderson County 2020 Comprehensive Plan and Henderson County Industrial Study.

**Alternative Motion:**

I move to amend the Henderson County 2020 Comprehensive Plan to reflect the appropriateness of the Subject Area Parcels for commercial development through the removal of the Industrial classification and application of a Community Service Center node.

And

I further move that the Board recommend approval of rezoning application #R-2007-05 to rezone the Subject Area from an I-2 (General Industrial) zoning district to a C-4 (Highway Commercial) based on the recommendations of the Henderson County 2020 Comprehensive Plan, as amended.

**Henderson County Planning Department Staff Report**

**Rezoning Application #R-2007-05 (I-2 to C-4)**

**Tap Root Dairy, LLC; Juanita Johnston and Mary Louise Corn, Co-Trustees of the Estate of S.E. Johnston, Jr.; and Big J Small J Partnership, Applicants**  
**Angela Beeker, Agent**

**1. Rezoning Request**

1.1. **Date of Application:** June 19, 2007

1.2. **Property Owners/Applicants:** Tap Root Dairy, LLC; Juanita Johnston and Mary Louise Corn, Co-Trustees of the Estate of S.E. Johnston, Jr.; and Big J Small J Partnership

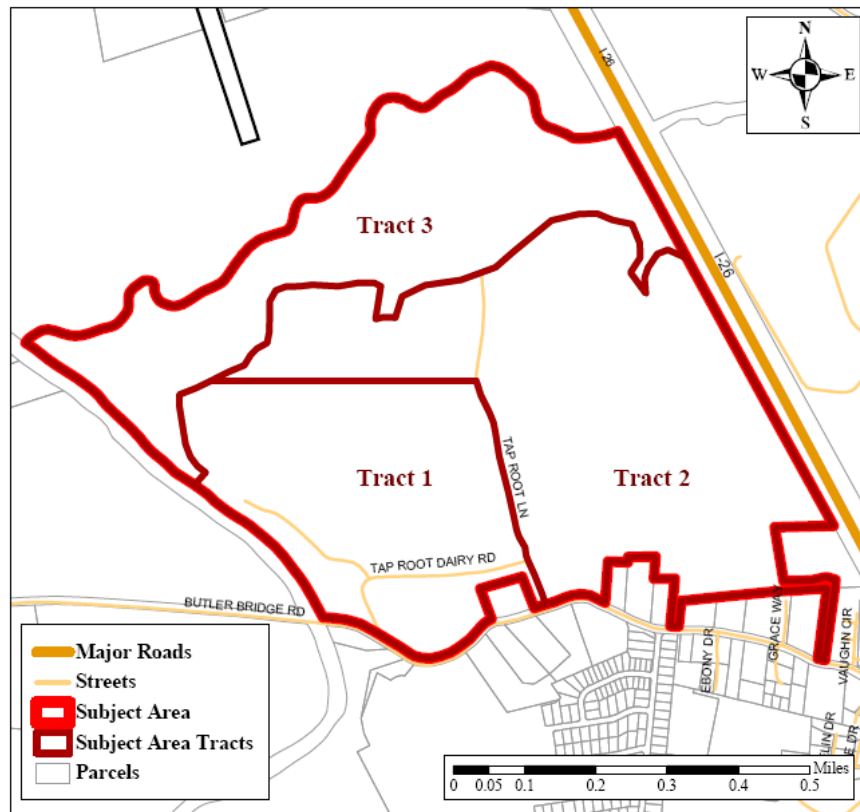
1.3. **Applicants' Agent:** Angela Beeker

1.4. **Request:** Rezone Subject Area from an I-2 (General Industrial) zoning district to a C-4 (Highway Commercial) zoning district.

**1.5. Subject Area**

1.5.1. **PIN:** 9642-82-4583 (Tract 1); 9652-03-1362 (Tract 2); and 9642-84-6722 (Tract 3) (See Map A).

**Map A: Map of Subject Area Tracts**



1.5.2. **Size:** Approximately 322.46-acres of land (composed of an 84.48 acre parcel (Tract 1); a 143.44 acre parcel (Tract 2); and a 94.18 acre parcel (Tract 3)) (See Map A).

1.5.3. **Location:** The Subject Area is:

1.5.3.1. Approximately 4,800 feet (0.90 highway miles) south of the intersection of Boyleston Road (NC 280) and Interstate 26;

1.5.3.2. Approximately 4,600 feet (0.87 highway miles) north of the intersection of US Highway 25 North and Interstate 26;

1.5.3.3. Bounded on the west by the French Broad River (approximately 3,000 feet (0.57 miles) of frontage);

1.5.3.4. Bounded on the north by Cane Creek (approximately 6,000 feet (1.14 miles) of frontage/proximity);

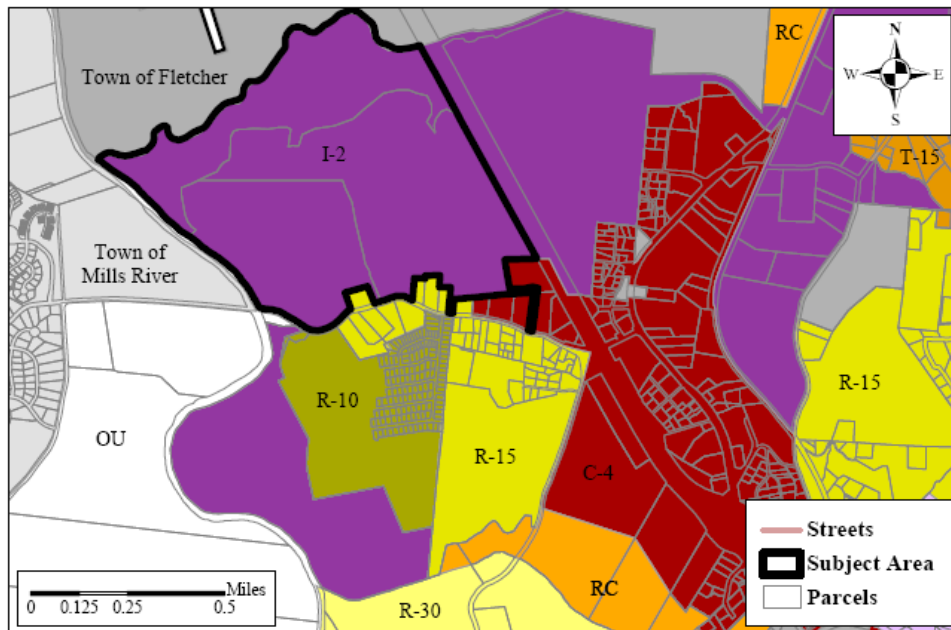
1.5.3.5. Bounded on the east by Interstate 26; and

1.5.3.6. Bounded on the south by Butler Bridge Road (SR 1345).

## 2. Current Zoning

2.1. **Application of Current Zoning:** The Subject Area is currently zoned I-2 (General Industrial), which was applied on March 3, 2003, as a result of Rezoning Application #R-2002-05 (See Map B).

**Map B: Current Zoning**



2.2. **Adjacent Zoning:** The Town of Mills River's jurisdiction is to the east and its MR-LI light industrial district is applied to those properties. The Town of Fletcher's jurisdiction is to the north and its C-2 commercial district is applied to that property. To the south are the OU (Open Use), R-10 (High-Density Residential), R-15 (Medium-Density Residential), and C-4 (Highway Commercial) zoning districts. To the east is the I-2 (General Industrial) zoning district (See Map B).

### 2.3. District Comparison:

2.3.1. **I-2 General Industrial Zoning District:** *Please note that there is no purpose statement for the I-2 General Industrial Zoning District.* I-2 is a general industrial zoning district permitting most heavy industrial uses and some commercial uses, but excluding all residential uses. Permitted uses include: agriculture, amusement parks, fairs/carnival grounds, civic and cultural buildings, cemeteries, businesses (automobile service, branch banks, offices, etc.), tire recapping/retreading, automobile sales, gasoline service stations, manufactured home display areas, airports, junkyards, storage plants and tanks, truck terminals, warehouses, certain signs and sawmills, among other uses. Conditional uses include mining and extraction operations. Special uses include motor sports facilities, adult establishments and group five (5) communication towers.

Setbacks are as follows: 75 feet from the centerline of major streets; 60 feet from the centerline of all other streets; and side and rear setbacks equivalent to the side yard requirements of the contiguous district(s). There is no maximum building height for principal structures.

Where this district abuts a lot in a residential district, there shall be provided and maintained (in a neat and growing condition) along said property line a continuous visual buffer strip (consisting of a planted strip at least ten (10) feet in width, composed of evergreen trees, spaced not more than twenty (20) feet apart and not less than one (1) row of dense shrubs, spaced not more than five (5) feet apart) (HCZO §200-24, Pg. 57).

2.3.2. **C-4 Highway Commercial Zoning District:** *“This district is designed primarily to encourage the development of recognizable, attractive groupings of facilities to serve persons traveling by automobile and local residents. Since these areas are generally located on the major highways, they are subject to the public view. They should provide an appropriate appearance and ample parking and be designed to minimize traffic congestion.”*(HCZO §200-22). C-4 is a highway commercial zoning district permitting, by right, commercial uses at various scales. Permitted uses include: retail business, offices, hospitals/clinics, libraries/schools, churches, restaurants, automobile sales/services, miniature golf courses, hotels, mini-storage facilities and communication towers, among other uses. Conditional uses include shopping centers, junkyards and recreational vehicle parks. Special uses include group 5 communication towers, motor sports facilities, and adult establishments.

Setbacks are as follows: 75 feet from the centerline of major streets; 60 feet from the centerline of all other streets; and side and rear setbacks equivalent to the side yard requirements of the contiguous district(s). A maximum height of 40 feet for applies to structures (HCZO §200-22, Pg. 50).

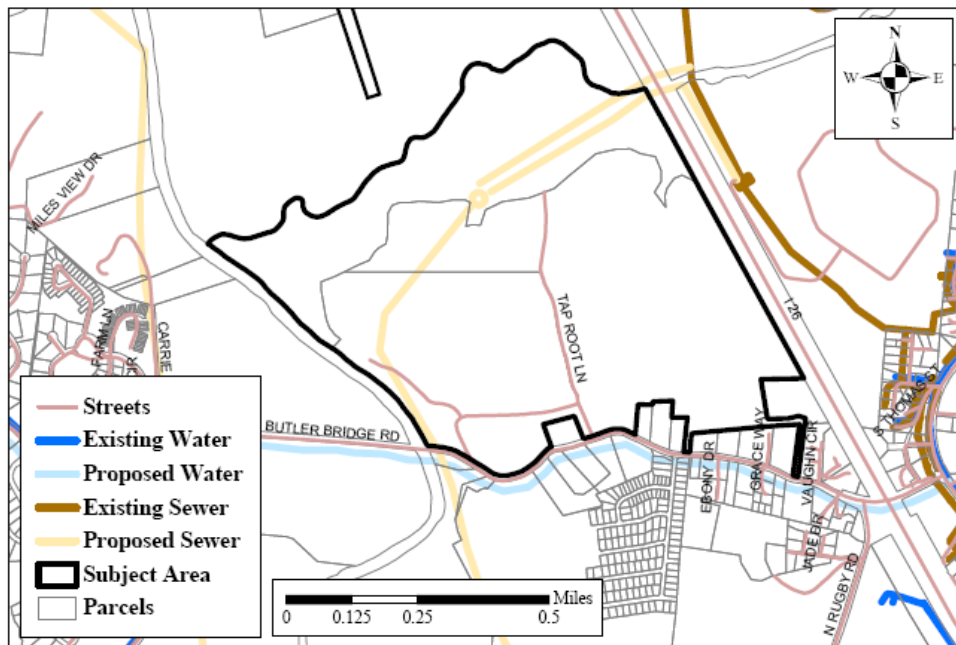
### **3. Current Uses of Subject Area and Adjacent Properties**

- 3.1. **Subject Area Uses:** The Subject Area is divided into three (3) tracts.
- 3.1.1. **Tract 1:** Tract 1 contains six (6) residential structures (one (1) stick built and five (5) manufactured homes) and a number of agricultural/industrial buildings (14+/-) associated with Tap Root Dairy. The primary use of Tract 1 is agriculture (dairy farming) with residential uses also on site.
- 3.1.2. **Tract 2:** Tract 2 contains three (3) residential structures (manufactured homes) and a number of agricultural buildings (7+/-). The primary use of Tract 2 appears to be agriculture (corn crop cultivation) with residential uses also on site.
- 3.1.3. **Tract 3:** Tract 3 does not appear to contain any structures and its primary use appears to be agriculture (corn crop cultivation).
- 3.2. **Adjacent Area Uses:** Surrounding area lands contain undeveloped, agricultural, residential, office, institutional, recreational, commercial, transportation, and industrial uses.
- 3.2.1. **To the West:** Undeveloped/agricultural lands and single-family residential uses are located across the French Broad River to the west.
- 3.2.2. **To the North:** A commercial use (Broadmoor Golf Links) and transportation use (Asheville Regional Airport) are located across Cane Creek to the north.
- 3.2.3. **To the East:** An industrial use (Rockwell Heavy Vehicle Systems Incorporated) is located across Interstate 26 to the east.
- 3.2.4. **To the South:** A number of single-family residential uses are located to the south, including those contained within River Stone Planned Unit Development (hereafter River Stone). Also to the south, along Butler Bridge Road, are a number of commercial uses (Butler Bridge Business Park, Thompson Heating and Cooling, Judy Jones Trucking, New Creation Church, Audio Synergy, Auto Tech, Hurd Windows, Morton Buildings Inc., and Carolina Trucks).

### **4. Water and Sewer**

- 4.1. **Public Water:** Public water is not currently on the Subject Area site. Public water through the Asheville Buncombe Regional Water Authority is, however, available to River Stone located adjacent to and directly south of the Subject Area. Public water, through the City of Hendersonville, also appears to be available approximately 1,500 feet east of the Subject Area, at the intersection of US Highway 25 North and Butler Bridge Road (SR 1345).
- 4.2. **Public Sewer:** Public sewer is currently located on the Subject Area site. According to the Engineering and Facility Services Department: (1) a 30 inch gravity sewer line is located north of the Subject Area, within Broadmoor Golf Links property, and (2) a 10 inch force main is located on the Subject Area property, running parallel to Interstate 26. Map C provides information regarding the Water and Sewer Master Plan which does not necessarily reflect the above-mentioned water and sewer line extensions (See Map C).

**Map C: Water and Sewer**



**5. Transportation and Access**

- 5.1. **Frontage:** The Subject Area has approximately 2,000 feet (0.38 miles) of road frontage along Butler Bridge Road (SR 1345) and approximately 3,300 feet (0.63 miles) of frontage along Interstate 26 (no access from I-26 is currently provided and a point of access along I-26 may or may not be permitted by NCDOT).
- 5.2. **Transportation:** Table 1, below, provides Annual Average Daily Traffic Counts for Interstate 26, US Highway 25 North, and Butler Bridge Road (SR 1345).

<b>Table A. Annual Average Daily Traffic Count</b>				
<b>Road</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
Butler Bridge Rd (SR 1534)	-	4,300	4,500	-
US Highway 25 North	17,000	19,000	19,000	-
Boyleston Road (NC 280)	-	-	-	-
Interstate 26	49,000	54,000	50,000	49,000

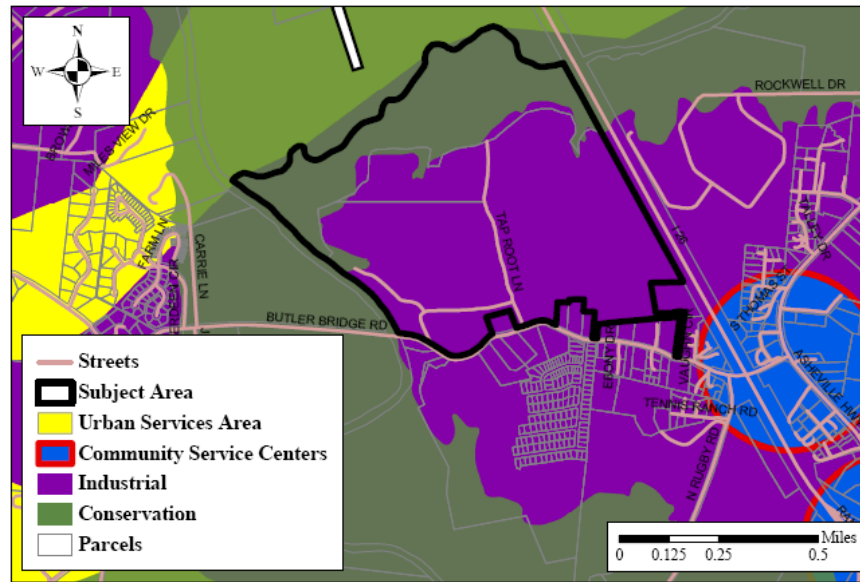
- 5.3. **River Stone Development Traffic Impact Analysis (2005):** The Subject Area is adjacent to the River Stone Planned Unit Development (PUD). NCDOT required the developers of River Stone complete a Traffic Impact Analysis (TIA) which was completed October 2005. The TIA recommended specific off-site improvements to NCDOT (to be the responsibility of NCDOT) in the vicinity. These improvements, summarized herein below, are recommended given the current and expected increase in background traffic and/or the expected traffic associated with the offsite developments within River Stone’s area of influence. The recommended improvements are at the following intersections:

- 5.3.1. **Boyleston Road (NC 280) and Butler Bridge (SR 1345):** (1) northbound left turn lane on Butler Bridge Road; (2) southbound turn lane on Butler Bridge Road; and (3) modification to traffic signal to accommodate additional turn lanes.
- 5.3.2. **Butler Bridge Road (SR 1345) and North Rugby Road (SR 1365):** (1) construct northbound left turn lane on North Rugby Road; (2) construct a westbound left turn lane on Butler Bridge Road; (3) construct an eastbound right turn lane on Butler Bridge Road; and (4) install traffic signal control upon meeting the applicable NCDOT traffic signal warrants.
- 5.3.3. **Haywood Road (NC 191) and North Rugby Road (SR 1365):** (1) construct an additional lane between NC 280 and Mountain Road; (2) construct northbound right turn lane on North Rugby Road; (3) construct a southbound right turn lane on North Rugby Road; (4) modification to traffic signal to allow for overlap phasing for the north/southbound right turns; and (5) extend existing southbound left turn lane on Rugby Road.
- 5.4. **The NCDOT 2007-2013 State Transportation Improvement Program (STIP):** The Transportation Improvement Program, within the vicinity of the Subject Area, includes the widening of Interstate 26 between US 25 to Interstate 40 to multi-lanes (Project Numbers I-4400 and I-4700). No improvements are scheduled for Butler Bridge Road (SR 1534), US Highway 25 North, or Boyleston Road (NC 280).
- 5.5. **Asheville Regional Airport:** The Subject Area is located approximately 0.80 miles south of the Asheville Regional Airport and is within its flight path. Mr. Kevin Howell, C.M., Development Manager for Asheville Regional Airport Authority, indicated that the Airport Authority supports commercial or industrial zoning in the area and would be strongly against anything in the residential category due to the close proximity of the flight path to the Asheville Regional Airport (See Attachment 4, Comments from Asheville Regional Airport).

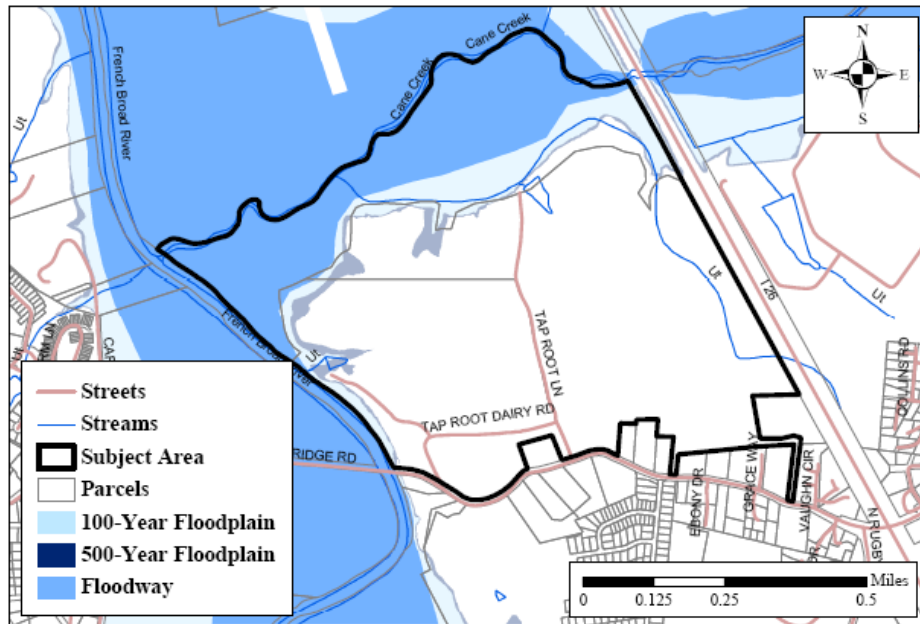
## **6. The Henderson County, North Carolina 2020 Comprehensive Plan (CCP)**

- 6.1. **Urban Services Area:** The CCP Future Land Use Map identifies the Subject Area as being located in the Urban Services Area (2020 CCP, Pg. 128, Pg. 129 & Appendix 1, Map 24) (See Map D).



**Map D: 2020 County Comprehensive Plan Future Land Use Map**

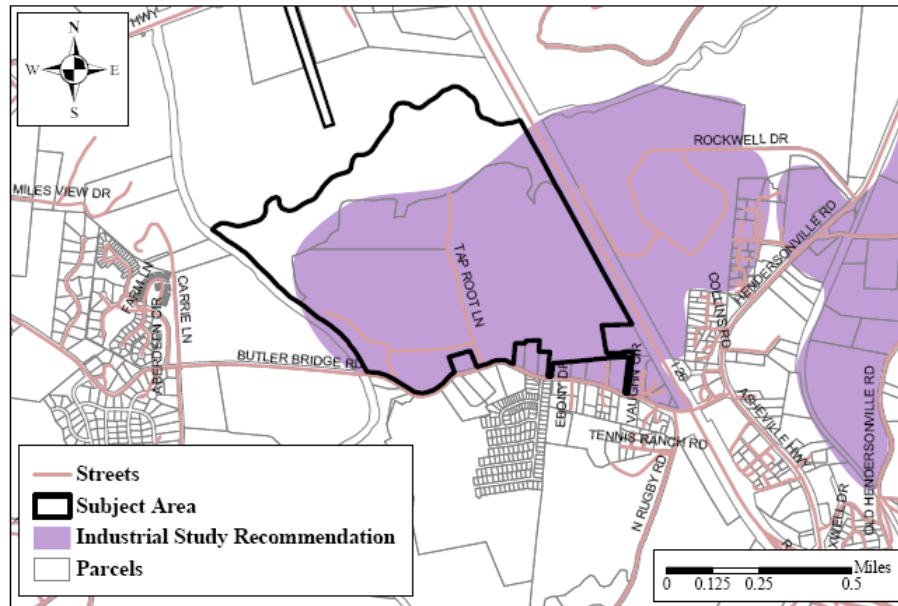
- 6.1.1. The CCP states that, “the USA will contain considerable commercial development at a mixture of scales,” and further, “all regional commercial development should be concentrated here. Commercial development will exist within predefined zoning districts whose standards and configuration are in keeping with the surrounding community” (2020 CCP, Pg. 129).
- 6.1.2. The CCP also states that, “the USA will contain virtually all existing and future industrial development and will be the focus of future economic development activities. Industrial development will exist within predefined zoning districts whose standards and configuration are in keeping with the surrounding community” (2020 CCP, Pg. 129).
- 6.1.3. The CCP states that, “the County’s economic development activities should be pursued within USA” (2020 CCP, Pg. 129).
- 6.2. **Industrial:** The CCP Future Land Use Map identifies the Subject Area as being suitable for industrial development (2020 CCP, Pg. 129, Pg. 136, Pg. 148 & Appendix 1, Map 8 and Map 24) (See Map D). (See Staff Report Page 8, Section 7 Draft Henderson County Industrial Study for additional information).
- 6.3. **Conservation Area:** The Future Land Use Map identifies the northern portion of the Subject Area being appropriate for conservation largely due to the presence of the French Broad and Cane Creek floodplains (2020 CCP, Pg. 129, Pg. 134, & Appendix 1, Map 24). (See Maps D and E). The CCP states that, “Land use planning should acknowledge the presence of sensitive natural areas such as floodplains, wetlands, areas of excessively steep topography, and other natural and cultural assets, and should strive to protect these areas from development that would damage them or diminish their integrity” (2020 CCP, Pg. 129).

**Map E: Floodplain Map**

## 7. The Draft Henderson County Industrial Study

- 7.1. The CCP states that, “It is intended that the Countywide Industrial/Commercial Zoning Study and Community Plans will further refine the location, extent, and intensity of future industrial areas” (2020 CCP, Pg. 136). The Draft Henderson County Industrial Study (Industrial Study) is a result of this CCP recommendation. The Planning Board reviewed and unanimously (a vote of 8 to 0) provided a favorable recommendation on the Draft Industrial Study at its January 17, 2006 meeting. The Board of Commissioners has not yet reviewed/approved/implemented the Industrial Study.
- 7.2. A majority of the Subject Area is recommended for industrial use. The Industrial Study states, “Industry is a vital component of Henderson County’s local economy which requires sites that meet specific criteria, including size, topography, and access to infrastructure. As Henderson County continues to experience rapid population growth, and resulting development of land, it is essential that appropriate areas be reserved solely for industrial development to preserve and expand that component of Henderson County’s economy. Today, many of these prime sites are at risk of being developed for purposes other than industry” (Draft Industrial Study, Pg. 1).
- 7.3. The Industrial Study also states that, “many of the industrial areas currently depicted on the Future Land Use Map conflict with the recommendations of the CCP by being... land prone to flooding; and/or property currently used, or zoned for, commercial, institutional, or residential purposes”. The Industrial Study map removes the industrial recommendation for the portions of the Subject Area in the floodplain. Industrial designations applied by the CCP to the surrounding area (specifically the property owned by River Stone) were also removed as a result of the rezoning of these properties (Rezoning #R-2004-05) to residential (Draft Industrial Study, Pg. 3).
- 7.4. The Industrial Study includes a “Commercial/Industrial” land classification which was not applied to the Subject Area; but does indicate that certain parcels identified for industrial development may also be suitable for regional-scale commercial development.

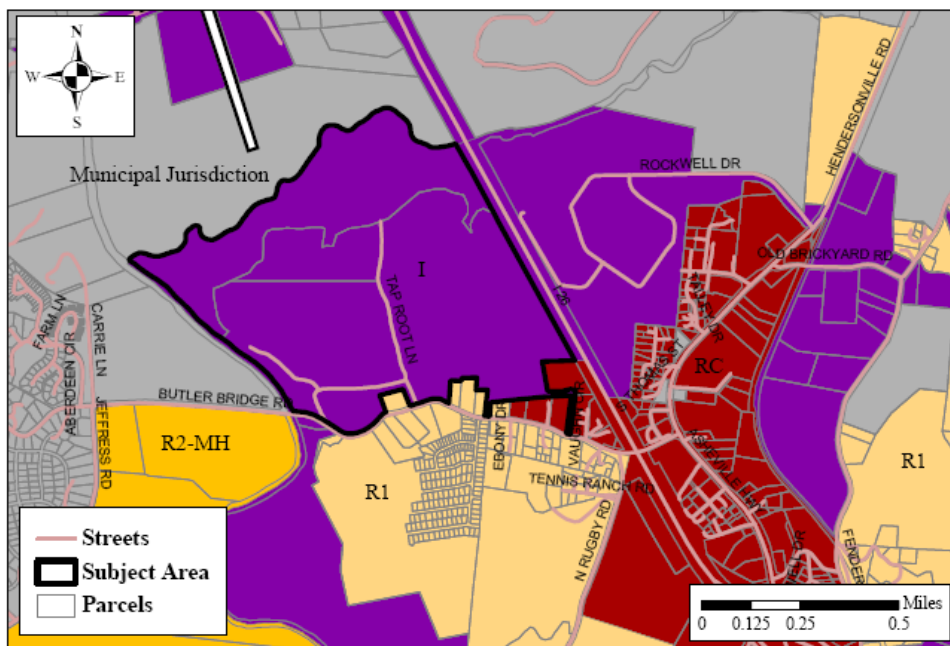
**Map F: Industrial Study Recommendations**



**8. The Draft Land Development Code**

8.1. The Draft Land Development Code Zoning Map identifies the Subject Area as transitioning to an I (Industrial) zoning district (See Map G). The Subject Area, were it to remain I-2 (General Industrial) would transition to the I (Industrial) zoning district. Were the Subject Area to be rezoned to C-4 (Highway Commercial) it would transition to the RC (Regional Commercial) zoning district.

**Map G: Draft Land Development Code Zoning Map**



## 8.2. Draft Land Development Code District Comparison:

8.2.1. **I Industrial Zoning District:** *“The purpose of the Industrial District (I) is to foster orderly growth where the principal use of land is a mixture of industrial and heavy commercial. The intent of this district is to allow for industrial and heavy commercial development consistent with the recommendations of the Comprehensive Plan. In accordance with the Comprehensive Plan, the district will allow for and provide industrial and heavy commercial development that: (1) is compatible with adjacent development and the surrounding community; (2) will minimize conflict between land uses; and (3) is sensitive to its impact on surrounding land uses and the environment (natural and man-made)”* (Draft LDC §200A-36).

8.2.2. **RC Regional Commercial Zoning District:** *“The purpose of the Regional Commercial District (RC) is to foster orderly growth where the principal use of land is commercial. The intent of this district is to allow for commercial development consistent with the recommendations of the Comprehensive Plan. In accordance with the Comprehensive Plan, the district will allow for and provide commercial development that: (1) includes a variety of retail sales and services, public and private administrations, offices and all other uses done primarily for sale or profit on the local, community, and regional level; (2) is directed largely to defined Community Service Centers as defined in the Comprehensive Plan; (3) is compatible with adjacent development and the surrounding community; and (4) will minimize congestion and sprawl. This general use district is meant to be utilized in areas designated as Urban in the Comprehensive Plan”* (Draft LDC §200A-34).

## 9. Staff Comments

Staff’s position at this time, under the guidelines of current plans, policies and studies, is it supports the current zoning of the Subject Area (I-2 (General Industrial) zoning), this based on the following:

9.1. **The 2020CCP:** The text and map of the 2020 CCP identifies the Subject area as suitable for industrial development. The CCP Future Land Use Map (See Staff Report Pg. 6, Map D) also places the Subject Area in the “Urban Services Area” classification, where industrial development and commercial development, at a mixture of scales (including regional) are encouraged. According to the CCP, both commercial and industrial development should exist within zoning districts whose standards and configuration are in keeping with the surrounding community. The surrounding community contains one industrial use (Rockwell Heavy Vehicle Systems Incorporated) to the east (across Interstate 26) and a number of commercial uses and high-density residential uses.

### 9.2. Comparison of Districts:

9.2.1. Applying C-4 zoning to the Subject Area would limit the number of industrial uses and increase the number of commercial uses permitted. Height limitations would apply under the C-4 zoning district where they do not apply under the I-2 zoning district. Setbacks would remain unchanged.

- 9.2.2. Applying C-4 zoning could have similar impacts on public services (water, sewer, roads, emergency services, and schools) as would I-2 zoning, dependent upon the scale of development and/or type of use proposed under either district.
- 9.3. **Adjacent Zoning:** The Subject Area directly abuts the an existing I-2 (General Industrial) zoning district and C-4 (Highway Commercial) zoning district. Current zoning or rezoning would make this property part of a contiguous larger zoning district.
- 9.4. **The Draft Henderson County Industrial Study:** The Draft Henderson County Industrial Study, which is intended to be an extension of the 2020 CCP, suggests industrial development is appropriate for those portions of the Subject Area lying outside of the floodplain. The Industrial Study further points out the importance of reserving appropriate areas solely for industrial development in order to preserve and expand that component of the County’s economy. The Industrial Study does suggest, through the creation of the “Commercial/Industrial” land classification, that regional-scale commercial and or industrial development may be equally suitable for certain properties. While this classification was not applied to the Subject Area, it is possible that the classification of this property may change to “Commercial/Industrial” as the Board of Commissioners has not yet reviewed/approved/implemented the Industrial Study.

## **10. Staff Recommendations**

- 10.1. When reviewing rezoning requests Staff identifies plans or policies, changes in existing conditions, undue hardship to the Applicant, or overriding community interest to justify supporting the proposed rezoning. Staff’s position at this time, under the guidelines of current plans, policies and studies, is it supports the current zoning of the Subject Area (I-2 (General Industrial) zoning) which is consistent with the recommendations of the Henderson County 2020 Comprehensive Plan and Henderson County Industrial Study.
- 10.1.1. It is generally incumbent upon the Applicant to demonstrate an overriding justification for approving a given rezoning application. Staff encourages the Applicant to present any information that would inform the County’s consideration of the proposed rezoning. Staff requests the Applicant not discuss any specific use being considered for the property. The Board of Commissioners cannot consider any specific proposed use for the property and must only consider the range of possible uses when reviewing and making recommendations on the rezoning request.

## **11. Planning Board Recommendations**

- 11.1.1. See Attachment 5, Excerpt of Planning Board Minutes from July 19, 2007
- 11.1.2. The Henderson County Planning Board considered rezoning application #R-2007-05 at its regularly scheduled meeting on July 19, 2007. During that meeting, the Board voted 7 to 0 to send the Board of Commissioners a favorable recommendation, consistent with the Henderson County 2020 Comprehensive Plan, for rezoning application #R-2007-05 to rezone the Subject Area from existing I-2 zoning district to a C-4 zoning district.

Photos of Subject Area

**Tract 1: Tap Root Dairy**



**1.** View of the existing Residential Structure A on Tract 1, looking north from the westernmost entrance drive onto Tract 1.



**2.** View of the existing Residential Structure B on Tract 1, looking west from Tap Root Lane.



**3.** View of the existing Residential Structure C on Tract 1, looking west from Tap Root Lane.



**4.** View of the existing Residential Structure D on Tract 1, looking west from Tap Root Lane.



**5.** View of the existing Residential Structures E and F on Tract 1, looking west from Tap Root Lane.



**6.** View of Tract 1 (Tap Root Dairy) looking northwest from entrance to River Stone at Butler Bridge Road.

Photos of Subject Area

Tract 1: Tap Root Dairy



7. View of existing structures for agricultural/industrial use on Tract 1, looking west from Tap Root Lane.



8. View of existing structures for agricultural/industrial use on Tract 1, looking east from the Tap Root Dairy Road.



9. View of existing structures for agricultural/industrial use on Tract 1, looking west from Tap Root Lane.



10. View of existing structures for agricultural/industrial use on Tract 1, looking east from the Tap Root Dairy Road.



11. View of existing structures for agricultural/industrial use on Tract 1, looking east from the Tap Root Dairy Road.



12. View of existing structures for agricultural/industrial use, looking east from the Tap Root Dairy Road.

Photos of Subject Area

Tract 2: SE Johnston Jr Estate



13. View of the existing Residential Structure G on Tract 2, looking west from Tap Root Dairy Lane.



14. View of the existing Residential Structure H on Tract 2, looking west from Tap Root Dairy Lane.



15. View of the existing Residential Structure I on Tract 2, looking west from Tap Root Dairy Lane.



16. View of existing structures for agricultural/industrial use on Tract 2, looking east from Tap Root Lane.



17. View of existing structures for agricultural/industrial use on Tract 2, looking east from Tap Root Lane.



18. View of existing structure for agricultural/industrial use on Tract 2, looking east from Tap Root Lane.



Photos of Subject Area

Tract 2: SE Johnston Jr Estate



**19.** View of existing trailer on Tract 2, looking northeast from Tap Root Lane.



**20.** View of Tract 2, looking northeast from Tap Root Lane toward Interstate 26.



**21.** View of Tract 2, looking west from middle of parcel toward Tap Root Lane.



**22.** View of Tract 2, looking east from middle of parcel toward Interstate 26.



**23.** View of centermost of three frontages of Tract 2 on Butler Bridge Road, looking north from Butler Bridge Road.



**24.** View of easternmost of three frontages of Tract 2 on Butler Bridge Road, looking north from Butler Bridge Road.

Photos of Subject Area

**Tract 3: Big J Small J Partnership**



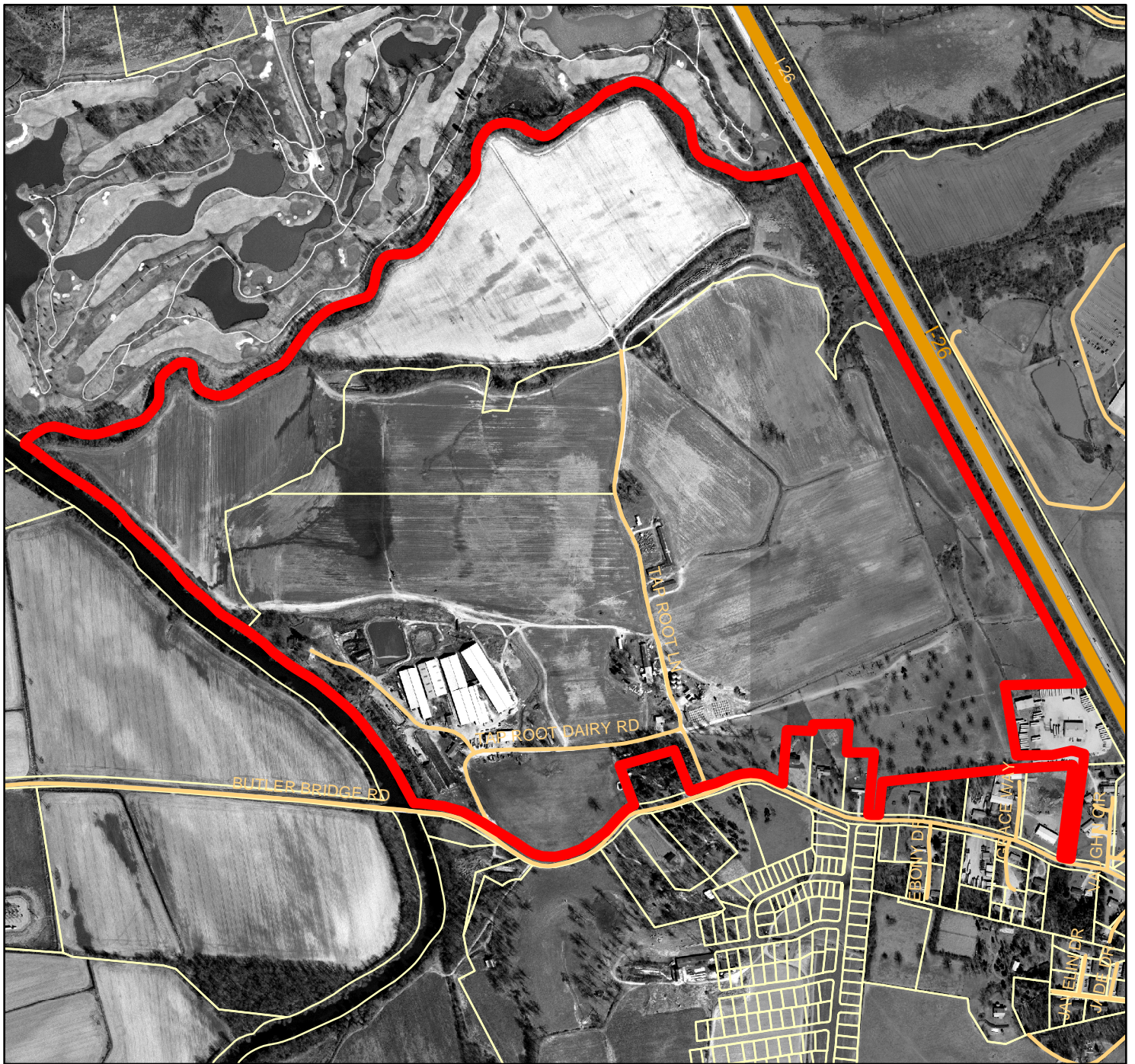
**25.** View from the French Broad River which bounds the western portion of Tracts 1 and 3 looking north from Butler Bridge Road.







**26.** View of Tract 3 looking northeast toward Interstate 26.



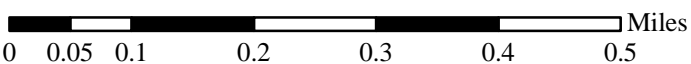
**27.** View from Tract 3 looking north at Cane Creek which generally bounds the northern portion of the Subject Area.



 Subject Area  
 Major Roads  
 Streets  
 Parcels

**Rezoning Application  
#R-2007-05**

**Tap Root Dairy, LLC; Co-Trustees of the Estate of S.E. Johnston, Jr.; and Big J Small J Partnership; Applicants  
Ms. Angela Beeker, Agent**



**Matt Cable**

**From:** Kevin Howell [khowell@flyavl.com]  
**Sent:** Friday, August 03, 2007 5:44 PM  
**To:** Matt Cable  
**Subject:** RE: Rezoning #R-2007-05  
**Follow Up Flag:** Follow up  
**Flag Status:** Yellow

Matt – sorry for the delayed response, this message was lost in the email.

What is the status of this rezoning? The airport authority supports commercial or industrial zoning in this area. We would be strongly against anything in the residential category due to the close proximity of the flight path to Asheville Regional Airport.

One item of note for concern would be the height of structures. This area would the developer to notify the FAA for anything taller than the controlling obstructions in the area. This may be an area for the planning staff to consider an overlay district? Thanks for contacting us.

Regards,

**Kevin E. Howell, C.M.**  
Development Manager  
Asheville Regional Airport Authority  
61 Terminal Drive, Suite 1  
Fletcher, NC 28732  
828-684-2226  
[khowell@flyavl.com](mailto:khowell@flyavl.com)

**EXCERPT FROM THE HENDERSON COUNTY PLANNING BOARD MINUTES  
JULY 19, 2007**

Rezoning Application (#R-2007-05) – Request to Rezone Approximately 322.46 Acres of Land Located off Butler Bridge Road – Bounded by I-26 on the East and the French Broad River on the West – From I-2 (General Industrial) Zoning District to a C-4 (Highway Commercial) Zoning District – Angela Beeker, Agent for Tap Root Dairy, LLC, Juanita Johnston and Mary Louise Corn, Co-Trustees of the Estate of S.E. Johnston, Jr. and Big J Small J Partnership, Owners.

Presentation by Matt Cable. Mr. Cable stated that rezoning Application #R-2007-05 was submitted on June 19, 2007, requests that the County rezone approximately 322.46 acres of land, located off Butler Bridge Road and bounded by I-26 on the east and the French Broad River on the west, from an I-2 (General Industrial) zoning district to a C-4 (Highway Commercial) zoning district. The Subject Area is comprised of three tracts of land. The Applicants are: Tap Root Dairy, LLC ; Juanita Johnston and Mary Louise Corn, Co-Trustees of the Estate of S.E. Johnston, Jr.; and Big J Small J Partnership. The Applicant's Agent is Angela Beeker.

Mr. Cable stated that the Subject Area is approximately 4,800 feet south of the intersection of Boyleston Road (NC 280) and Interstate 26; approximately 4,600 feet north of the intersection of US Highway 25 North and Interstate 26; bounded on the west by the French Broad River; roughly bounded on the north by Cane Creek; bounded on the east by Interstate 26; and bounded on the south by Butler Bridge Road (SR 1345).

Mr. Cable said the Town of Mills River's jurisdiction is to the east and its MR-LI light industrial district is applied to those properties. The Town of Fletcher's jurisdiction is to the north and its C-2 commercial district is applied to that property. To the south are the OU (Open Use), R-10 (High-Density Residential), R-15 (Medium-Density Residential), and C-4 (Highway Commercial) zoning districts. To the east is the I-2 (General Industrial) zoning district.

Mr. Cable gave a comparison between the I-2 zoning district and the C-4 zoning district. The Subject Area is divided into three (3) tracts. Tract 1 contains six (6) residential structures and a number of agricultural/industrial buildings (14+/-) associated with Tap Root Dairy. The primary use of Tract 1 is agriculture with residential uses also on site. Tract 2 contains three (3) residential structures and a number of agricultural buildings (7+/-). The primary use of Tract 2 appears to be agriculture with residential uses also on site. Tract 3 does not appear to contain any structures and its primary use appears to be agriculture. He said surrounding area lands contain undeveloped, agricultural, residential, office, institutional, recreational, commercial, transportation, and industrial uses. To the west there are undeveloped/agricultural lands and single-family residential uses are located across the French Broad River to the west. To the north, a commercial use and transportation use, Asheville Regional Airport are located across Cane Creek. An industrial use is located across Interstate 26 to the east. To the south, a number of single-family residential uses including those contained within River Stone Planned Unit Development. Also to the south, along Butler Bridge Road, are a number of commercial uses.

Mr. Cable stated that regarding water and sewer, public water is not currently on the Subject Area site, public water is through the Asheville Buncombe Regional Water Authority is, however, available to River Stone located adjacent to and directly south of the Subject Area. He said public water, through the City of Hendersonville, also appears to be available approximately 1,500 feet east of the Subject Area, at the intersection of US Highway 25 North and Butler Bridge Road. He said regarding public sewer, it is currently located on the Subject Area site. According to the

Engineering and Facility Services Department: (1) a 30 inch gravity sewer line is located north of the Subject Area, within Broadmoor Golf Links property, and (2) a 10 inch force main is located on the Subject Area property, running parallel to Interstate 26.

He said Staff's position at this time, under the guidelines of current plans, policies and studies, is it supports the current zoning of the Subject Area (I-2 (General Industrial) zoning) which is consistent with the recommendations of the Henderson County 2020 Comprehensive Plan and Henderson County Industrial Study as they identified the majority of the subject area suitable for industrial development, a portion that was not suitable was in the floodplain. The Industrial Study is intended to be an extension of, and further refine the recommendations made by the CCP. The Industrial Study further indicates the importance of reserving appropriate areas solely for industrial development in order to preserve and expand that component of the County's economy. Staff has identified no plans or policies, changes in existing conditions, undue hardship to the Applicant, or overriding community interest that would justify supporting the proposed rezoning. Staff's position is that it supports the recommendations of the Henderson County 2020 Comprehensive Plan and Draft Henderson County Industrial Study.

Ms. Angie Beeker spoke on behalf of all three applicants and said the reason why it is coming before the Planning Board is because it has been designated and marketed as industrial, but has not had any success in marketing the property industrial. Secondly, the property just south of this property was rezoned residential which we believe now significantly impacts its ability to be marketed as industrial. She said thirdly, this property is under contract and Mr. Stephen Pharr, who is representing the developer who is interested in this property. She introduced Mr. Pharr.

Mr. Pharr stated that with the surrounding subdivision developments he feels the C-4 requested zoning would be more compatible. He feels that there are a lot of similarities between I-2 and C-4. He said it is within the urban services area, it has all of the adequate utilities that you would have for a C-4 along with the location of highways such as I-26, which is all similar to C-4. Chairman Pearce stated that there were two industrial sites in the same area that have been changed to residential because industrial is not as desirable in this area and because of the value of the land was more for residential. Chairman Pearce said that the Board should recommend approval because he does not feel industrial makes sense for that site. Board members agreed that this rezoning is not only good for the owners but for the County because of all the recent residential development.

Tommy Laughter made a motion that the Board recommend approval of rezoning application #R-2007-05 to rezone the Subject Area from an I-2 (General Industrial) zoning district to a C-4 (Highway Commercial) zoning district based upon the similarity of permitted uses under C-4 and I-2 zoning districts; the similarity of potential impacts on public services proposed by permitted uses under either the C-4 or I-2 zoning districts; the CCP's favorable recommendations regarding the location of commercial development within the Urban Services Area in which the Subject Area is located; and the proposition of a "Commercial/Industrial" land classification by the Industrial Study and the potential that this classification may be applied to the Subject Area in question during the review, approval, and/or implementation of this Industrial Study by the Board of Commissioners. The recommendation of approval is also made with the recognition that amendments to the Henderson County 2020 Comprehensive Plan and Industrial Study may be necessary to reflect the appropriateness of commercial development for the Subject Area properties. John Antrim seconded the motion and all members voted in favor.

**NOTICE OF PUBLIC HEARING  
ON PROPOSED ZONING MAP AMENDMENT  
(Rezoning Application #R-2007-05)**

The Henderson County Board of Commissioners will hold a public hearing on an application (#R-2007-05) for a proposed amendment to the Official Zoning Map of Henderson County, North Carolina, that would rezone approximately 322.46 acres of land, located off Butler Bridge Road (SR 1345) and bounded by I-26 on the east and the French Broad River on the west, from an I-2 (General Industrial) zoning district to a C-4 (Highway Commercial) zoning district. The Subject Area is comprised of three tracts of land. The Applicants are: Tap Root Dairy, LLC (PIN: 9642-82-4583); Juanita Johnston and Mary Louise Corn, Co-Trustees of the Estate of S.E. Johnston, Jr. (PIN: 9652-03-1362); and Big J Small J Partnership (PIN: 9642-84-6722) owners. The Applicants' Agent is Angela Beeker.

The public hearing will be held on Tuesday, September 4, 2007, at 7:15 P.M., in the Board of Commissioners Meeting Room located in the Henderson County Administration Building, at 100 North King Street in Hendersonville, NC. The public is invited to attend and comment on the proposed amendment.

Written comments addressed to the Henderson County Board of Commissioners, 100 North King Street, Hendersonville, NC 28792, will be accepted prior to the hearing. Information about the proposed amendment is available for review in the Henderson County Planning Department, 213 1<sup>st</sup> Avenue East, Hendersonville, NC, between the hours of 8:00 A.M. and 4:30 P.M., Monday through Friday, or on the Henderson County Website at <http://www.henderson.lib.nc.us/county/planning/applicants/rezoning/currentapps.html>

For more information, call the Planning Department at (828) 697-4819 [TDD for the hearing impaired (828) 697-4580].

Please note that after considering public hearing comments, the Board of Commissioners may discuss other options or make changes to the proposed amendment before taking final action. The Henderson County 2020 Comprehensive Plan will be updated and amended, as necessary, to reflect the actions of the Board of Commissioners.

Elizabeth Corn  
Clerk to the Board  
Henderson County Board of Commissioners

**For publication in the Times News on Wednesday, August 22, 2007 and Wednesday, August 29, 2007.**

**Certification of Notice of Public Hearing**

In accordance with NCGS 153A-343 the Planning Department certifies notices of the September 4, 2007 hearing regarding Rezoning Application #R-2007-05 were:

1. Submitted to the Hendersonville Times-News on August 15, 2007 to be published on August 22, 2007 and August 29, 2007 by Matthew Cable;
2. Sent, via first class mail, to the owners of properties adjacent to the Subject Area on August 22, 2007 by Matthew Cable;
3. Sent, via first class mail, to the applicants and agent on August 22, 2007 by Matthew Cable; and
4. Posted on the Subject Area on August 22, 2007 by Parker Sloan.

The signatures herein below indicate that such notices were made as indicated herein above:

1. Matthew Cable
2. Parker Sloan

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON COUNTY

I, Karaleen Scanlan, a Notary Public, in and for the above County

and State, do hereby certify that MATTHEW CABLE,

PARKER SLOAN, and \_\_\_\_\_

personally appeared before me this day and acknowledged the due execution by

the PLANNING DEPT. of the foregoing instrument.

WITNESS my hand and notarial seal, this the 24 day of AUG., 2007.

My commission expires:

10/24/2010

(SEAL)

Karaleen L. Scanlan

NOTARY PUBLIC

