

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
SEPTEMBER 11, 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, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner Chuck McGrady, Commissioner Mark Williams, County Manager Steve Wyatt, Assistant County Manager Selena Coffey, County Attorney Russell Burrell, and Clerk to the Board Elizabeth W. Corn.

Also present were: Planning Director Anthony Starr, Planning Board Chair Tedd Pearce, Senior Planner Autumn Radcliff, Planners Matt Cable and Matt Card, Engineering and Facility Services Director Marcus Jones, Code Enforcement Services Director Toby Linville, Communications Officer Pam Brice, Associate County Attorney Sarah Zambon, and Deputy Clerk to the Board Terry Wilson.

CALL TO ORDER/WELCOME

Chairman Moyer called the meeting to order and welcomed all in attendance, stating that the purpose of the meeting was a workshop with respect to the Land Development Code. He also stated that there was a need to add an item for closed session at the end of the meeting to discuss a confidential matter related to the matter of Park Ridge MOB, LLC versus County of Henderson.

Commissioner McGrady made the motion to approve the agenda with the addition of closed session. All voted in favor and the motion carried.

LAND DEVELOPMENT CODE

Anthony Starr explained to the Board that he would be working out of the yellow notebook that all the Commissioners had been given in preparation for this meeting, entitled "Materials for September 11, 2007 LDC Workshop".

He explained that the yellow notebook was a compilation of what Planning Staff perceived to be the outstanding issues from the Commissioners. If there are any other issues the Board wishes to address, staff will go back to the last workbook from the last meeting or somewhere in the Code. He reviewed the issues as follows:

1. **LDC Residential Issue 4** - Proposed RD Zoning District. The Planning Board recommended a fourth zoning district, R4, that would have one dwelling unit per 5 acres density. There was a lot of discussion about where the boundary should be. At the last workshop the Board gave some direction to staff on what that should be. A map was included. Mr. Starr explained that it includes only the public lands at Green River Gamelands, DuPont State Forest, and Pisgah State Forest plus three large privately held In Holdings. The In Holdings included properties owned by Big Creek Lodge LLC and George Howard McElreath.
2. **LDC Residential Issue 11** – Addition of Estate Residential Zoning District (R-40). There were comments at the public hearing and through the public input process of the desire to keep the R-40 zoning district as it is. This option would add the language as it appears now

DATE APPROVED _____

- in our current Zoning Ordinance from the set backs and even measuring them the same way they are measured, from the centerline as opposed to the edge of the right-of-way. The uses are the same and the minimum lot size is 40,000. Everything was kept the same as it is currently in the Zoning Ordinance. It maps the same areas. If it's R-40 now, it will be proposed R-40 under this option. There was discussion regarding extension of the district to adjoining properties. It was decided that expansion of this district shall only be initiated by the Board of Commissioners or the Planning Board.
3. **LDC Residential Issue 12** – Addition of Waterfront Residential (WR) and Surface Water (SW) Districts (Lake Summit Area). There was concern from some of the residents regarding some special detailed provisions that they had dealing with the Lake Summit area, developed a number of years ago. They wanted to keep those same type of provisions in place. This does the same thing as the R-40. There are four areas that they requested they wanted to expand. He referred to the map and showed those areas. There was discussion of adding some language in the purpose of this issue such as “for maintenance or continuity of this with what we’ve had in the past” and similarly as the language suggested for R-40 with respect to additional designations if the Board of Commissioners or Planning Board initiate such.
 4. **LDC Commercial Issue 11** – Additional Local Commercial Node along US Hwy. #74. This was brought up at the last meeting, request for a third local commercial node along US 74. It is northwest of the intersection of Hwy. #64 East and Hwy. #74 at the Broad River. It involves several parcels.
 5. **LDC Commercial Issue 12** – Community Commercial Node Along US Hwy. #25, NC Hwy.#225, and US Hwy. #176. Mr. Starr explained that they had received a request from Mr. McCraw. This is at the intersection of 225 and 176. The property would only have access through Hwy. #176, a controlled access is along the 225 and 25 connector.
 6. **LDC Commercial Issue 13** – Local Commercial Node I-26 and Prince Road. This was a request from Ms. Gardiner. Her property is on the northern side of this subject area. There is an existing business on the southern part of that. It is along I-26 at Prince Road and Dana Road. The property has no access to interstate nearby.
 7. **LDC Commercial Issue 14** – Local Commercial Node along Spartan Heights. Mr. Starr stated that this is to add a community commercial node. They received a request via letter at the hearing. This area is currently zoned T-15 residential and the request is to go to community commercial.
 8. **LDC Commercial Issue 15** – Local/Community Commercial Node Expansion Along US Hwy.# 25 North. Mr. Jones requested two parcels to be zoned as community commercial. It is located on the Hwy. # 25 north corridor.
 9. **LDC Commercial Issue 16** – Definition of Flea Market. Concerns were raised during the public hearing that the definition of a flea market should be expanded. The recommendation was to change the definition of flea market in Article XIV (Definitions) to:
“A place that has regular consistent hours of operation on a regular reoccurring basis of at least four days a month specifically dedicated to where people buy, auction, rent, sell, appraise, lease or exchange goods, products or services including but not limited to real property, personal property, services, food and or entertainment whether it indoor, outdoor or a combination venue.”
 10. **LDC Industrial Issue 3** – Industrial District Expansion in Eastern Portion of County. Subject Area 2 on the map, just east of Hendersonville along I-26 and off Sugarloaf Road. Mr. Starr stated that in subject area 2 he felt there was Board consensus to keep it as is. Subject area 1 – there was a question about the table of permitted uses, whether or not we wanted industrial for that. He had received a letter from the McConnells saying that they did request industrial for their property. Commissioner Williams stated that Danny McConnell had requested that

all the McConnells (adjacent) property be included in this industrial district. The Board approved this one subject upon staff checking and adjusting the boundary to include all of their properties, if necessary.

11. **LDC Industrial Issue 6** – Industrial Node at US Hwy.# 176. Mr. Starr stated that staff had received a letter from Hedrick Industries, Inc. which operates the rock quarry off Hwy. #176. They were requesting industrial designation for their property, abutting the Green River Gamelands on three sides.
12. **LDC Industrial Issue 7** – Industrial Node at Hoopers Creek Road. Mr. Starr stated that this is another rock quarry on the opposite end of the county, almost to the Buncombe County line. This is the Hoopers Creek Quarry. They also requested an industrial designation for their site.
13. **LDC Development Issue 2** – Sign Regulations – Outdoor Advertising Signs (Billboards). Mr. Starr stated that the earlier draft recommended spacing between signs of 1,000 feet. The previous draft had 500 feet spacing. The current regulations say 1,000 feet. The Board was comfortable with that.
14. **LDC Development Issue 3** – Traffic Impact Study. Mr. Starr stated that there was no change from the last meeting. Traffic Impact Studies (TIS) are required by a variety of local governments in North Carolina. The North Carolina Department of Transportation (NCDOT) currently requires a TIS for developments that will generate more than 3,000 trips per day. This proposed provision lowers that threshold to 1,000 trips per day and allows the County to consider road impacts when giving development approvals. All recommended road improvements would have to be approved by NCDOT or applicable municipality. Requirement Thresholds. A TIS is required for any proposed development that meets any of the following requirement thresholds:
 - a) Residential subdivision proposing 100 lots/units or more.
 - b) Any residential or nonresidential development proposed to generate an average daily traffic count of 1,000+ vehicles per day or 100+ trips during peak traffic hour. This traffic count must be based on the latest version of the Institute of Transportation Engineers (ITE) Trip Generation Manual.
 - c) Any expansion or change to an existing or proposed residential or nonresidential development that would generate an additional 1,000+ vehicles per day or 100+ trips during peak traffic hour. This traffic count must be based on the latest version of the Institute of Transportation Engineers (ITE) Trip Generation Manual.
15. **LDC Development Issue 4** – Emergency Services Impact Report. Mr. Starr stated that there was a concern about what this report would entail. Staff had prepared a draft report form. The recommended solution to this concern was to add the following provision to Article IV (Adequate Public Facilities & Service Regulations):
S200A-102. Emergency Services Impact Report. An Emergency Services Impact Report may be required to evaluate the public safety of a proposed development and the effect it will have on the County's existing Fire and Emergency Medical Services (EMS). This report and requirements is in addition to those requirements and review of the internal design of the development. An Emergency Services Impact Report shall be required for subdivisions proposing 100 lots/units or more, or subdivisions proposing more than 50 units located more than 5 road miles from a fire station and shall be submitted as part of the master plan approval.

1) Proximity and Impact to Existing Services. Residential and nonresidential subdivisions shall provide documentation to identify if a proposed development or portion thereof is outside of a Fire Insurance District or is more than 5 road miles from an existing fire station. The developer shall also provide documentation identifying the response time to the nearest existing EMS station based on an average 35

miles per hour. The Emergency Services Impact Report shall state the location of the EMS substation, the response time in minutes, the route from the proposed development including road names and classifications, number of passing areas and posted speed limits, and the method of calculation.

2) Fire Suppression Water Supply. Residential and nonresidential subdivisions shall provide documentation to identify water resources for fire suppression. The developer shall also provide documentation identifying the type of water source (static or pressurized), number and spacing of hydrants, capacity, flow rate in gallons per minute, static and residual pressures.

3) Based on the findings of the Emergency Services Impact Report and the recommendation of County Staff or the approving authority, a proposed development may be required to be built at a maximum density of 1 unit per 3 acres. However, the developer may volunteer to provide emergency equipment, vehicles, land and/or facilities to the County to serve the development in order to waive the density reduction, provided the County decide the site is appropriate for a new Fire or EMS substation.

Chairman Moyer expressed that if any of this becomes a bureaucratic burden or it's not producing anything, then we ought to get rid of it. If it's making a contribution, we ought to follow up on all these to make sure all these remain worthwhile and we're not just adding paperwork for the sense of doing that.

16. **LDC Development Issue 5** – Development in Areas of Steep Slope & Floodplain. The concern expressed by the public is that areas that have steep slope or floodplain should be protected, and developers should not receive the same density credit for these areas. The County cannot impose a rule that would not allow any development of these areas as that would be a regulatory taking under the constitution and would require “just compensation.”

Staff offered recommended options. The Board's choice was:

“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 that areas with slope 35% or greater or within the 100-year floodplain. Language for such a provision was discussed and revised as follows: “The maximum residential density for areas with slope 60% or greater and shall be one half the normal allowable amount for the particular residential zoned area.. Then build in de minimis, if there is no more than 10% of it exceeding 60% it wouldn't apply at all.”

Discussion followed. Chairman Moyer proposed the 60% or greater (instead of the recommended 35%) and one half the normal allowable density, leaving density bonus in and leaving the conservation easement out, with no adjustment for floodplain. Following more discussion, Chairman Moyer called for a vote. The vote was four in favor and one against with Commissioner McGrady casting the dissenting vote.

17. **LDC Development Issue 7** – Height Restrictions for Residential Structures. Concerns were raised during the public hearing on August 30, 2007, that the height restrictions for residential structures should be raised to 40 feet. There was also some question raised about the method of measuring the height. Mr. Starr stated that the proposed code already does measure the height in the way that was suggested – the height of a building or structure is measured as the vertical distance from the finished main floor level to the highest point of the building or structure. Chimneys, cupolas and steeples are not included in measuring a building or structure height. It was discussed at length at the Planning Board level. The recommended solution was to change the maximum height restriction from 35 feet to 40 feet in the table for density and dimensional requirements for the following districts: R1, R2, R2MH, R3, R4, and LC.
18. **Revised Permitted Use Table.** This table reflects the changes the Board made at the last meeting. Mr. Starr mentioned one update, stating that the version the Board received still

indicated self-storage warehousing as a special use permit in local commercial district. That is not the case, by direction of the Board at the last meeting.

Mr. Starr stated that the Board of Commissioners has made a strong effort to try and be responsive to citizen requests with staff making numerous map changes in response to inquiries and requests that the Board received over the last few weeks. Chairman Moyer stated that he felt it appropriate to use the public hearing as a cut-off date, unless it were something that could fit into another area that the Board has already discussed.

Following discussion of the process, Chairman Moyer suggested that about December or January the Board re-examine the concepts of the Comprehensive Plan and see what fine tuning needs done. In January or February he suggested taking all the comments with respect to the Land Development Code that have been accumulated and decide what changes need made to the LDC. The Board will then know what changes were made to the Comprehensive Plan which may require other changes to the LDC.

The County Attorney informed the Board that under NCGS 153A-344, all proposed amendments to a zoning ordinance or zoning map shall be submitted to the Planning Board for review and comment. They have doubtless had this before but they have not had what the Board has just come up with as a basic final plan. This same issue has arisen in the neighboring county to the north and is a major point of litigation involving their newly adopted zoning ordinance. Staff suggests that this be resubmitted to the Planning Board for a review and then comment back to the Board of Commissioners. Anthony Starr has talked with the Planning Board about setting up a special meeting for this. Mr. Starr stated that a special called Planning Board meeting has been set for Tuesday, September 18 at 5:30 for them to make a recommendation for the Board of Commissioners on the final draft. The Board of Commissioners would have the legal ability to adopt the Land Development Code on September 19, if the Board is so inclined.

Provisional Approval

Chairman Moyer made the motion to approve the Land Development Code with the changes the Board directed tonight, give it provisional approval, direct that it be sent to the Planning Board for review with the idea that it will come back to the Board of Commissioners for action on September 19. All voted in favor and the motion carried.

CLOSED SESSION

Commissioner McGrady made the motion for the Board to go into closed session as allowed pursuant to NCGS 143-318.11 for the following reason(s):

- 1. To discuss matters which are privileged and confidential due to attorney-client privilege related to the matter "Parkridge MOB, LLC versus County of Henderson et al".*

All voted in favor and the motion carried.

ADJOURN

Commissioner Messer made the motion for the Board to go out of closed session at 8:20 p.m. All voted in favor and the motion carried.

Attest:

Elizabeth W. Corn, Clerk to the Board

William L. Moyer, Chairman