

**MINUTES OF THE  
Henderson County Technical Review Committee**

The Henderson County Technical Review Committee met for their regular meeting on September 7, 2010. The meeting took place in the King Street Board Room at 100 N. King Street, Hendersonville, NC. Members present were Anthony Starr, Chair; Toby Linville, Seth Swift, Rocky Hyder, Marcus Jones, Natalie Berry and Gary Lance. Others present were Autumn Radcliff, Senior Planner; Matt Cable, Planner, Sarah Zambon, Associate County Attorney and Kathleen Scanlan, Secretary.

Mr. Starr stated that there will be an adjustment to the agenda, with regard to the Rezoning Request 2010-01. All Committee members voted in favor of the addition to the agenda.

Mr. Starr called the meeting to order and asked for the approval of the July 6, 2010 minutes. Rocky Hyder made a motion to approve the set of minutes and all members voted in favor.

Etowah-Horse Shoe Community Plan Zoning Map Amendments – Autumn Radcliff, Senior.

Mr. Starr stated that the Board of Commissioners by resolution took action on the Etowah-Horse Shoe Communities Plan on September 16, 2009. The Board of Commissioners directed various staff and boards to begin implementation of the plan with some modifications from the original draft. The Planning Board began its discussion and review of the Plan in January 2010 and presently we are presenting for you the proposed zoning map amendments for the study area. These proposed amendments are based on the recommendations of the Etowah-Horse Shoe Communities Plan, the County Comprehensive Plan and discussion by the Planning Board.

Ms. Radcliff presented a PowerPoint presentation of each of the zoning map amendments. She stated that it affects approximately 3,000 property owners and 7,400 acres of land. She said that the signs have already been posted alerting the property owners of the proposed zoning changes and discussion at the September 16, 2009 Planning Board meeting. She also indicated that the Planning Board and the Technical Review Committee both must provide a recommendation to the Board of Commissioners on these proposed map amendments., The Board of Commissioners will hold a public hearing before taking action on the proposed map amendments. She said notices will be mailed out to the property owners and signs will be reposted indicating the date of the Board of Commissioners public hearing.

She reviewed the following amendments for recommendation to the Board of Commissioners as follows:

**Residential Zoning Amendments:**

1. Residential 1 (R1) – The proposed map amendments will extend the existing R1 zoning district to include the Etowah Country Golf course and adjacent parcels from the golf course to the existing R1 zoning district. This was because of the high density development along the corridor of the golf course.
2. Residential 2 (R2) – The area to the north of US Highway 64 West and east of the Etowah community is proposed to be rezoned to a R2 district. This will rezone much of the area from an existing R2R and R40 zoning district and will adjust the zoning district boundary lines to match parcel lines. This would encompass 2,289 parcels with includes approximately 6,580 acres of land.
3. Residential 3 (R3) – An existing R40 zoning district to the southern boundary of the Etowah-Horse Shoe Communities Plan, near the proposed Seven Falls subdivision and Folly Road, is proposed to be rezoned to an R3 zoning district. The area abutting this area within the planning area is currently zoned R3.

**Commercial Zoning Amendment:**

**Local Commercial (LC):**

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1. Morgan Road area – The area along both sides of Morgan Road extending south to US Highway 64 West is proposed to be rezoned to a LC zoning district. This district allows for limited commercial and residential uses, including single-family.
2. Along US Highway 64 West – The area along US Highway 64 West from an existing CC (Community Commercial) zoning district extending southeast along the southern portion of US Highway 64 West to All Star Lane (near South Rugby Road) is proposed to be rezoned to a LC zoning district. The area is currently zoned R-40 and R2.

**Community Commercial (CC):**

1. Etowah School Road & Old US Highway 64 – Several Parcels along Etowah School Road that are adjacent to and existing CC zoning district, and extending southwest along Old US Highway 64 are proposed to be rezoned from an R1 zoning district to a CC zoning district. This map amendment would expand an existing CC zoning district.
2. US Highway 64 West nears the County Boundary – The area to the north of US Highway 64 West from Old US Highway 64 to the Henderson/Transylvania county line is proposed to be rezoned to a CC zoning district. This would provide an additional commercial node near the county boundary as recommended by the County Comprehensive Plan.

She showed the present zoning and the new proposed zoning. Ms. Radcliff added that the proposed zoning map amendments are consistent with the Etowah-Horse Shoe Communities Plan and the County Comprehensive Plan.

Mr. Hyder noted that there are some commercial uses on the right-hand side of Highway 64 W near the county line and asked if the Committee consider commercial on that side of Highway 64? Ms. Radcliff said they had, but due to the existing land uses felt that commercial development was better suited for the south side of Highway 64 W in this vicinity.

Anthony Starr made a motion the Technical Review Committee recommend the Board of Commissioners approve the proposed map amendments, as presented and discussed, for the Etowah and Horse Shoe area based on the recommendations of the Etowah-Horse Shoe Communities Plan and consistent with the County Comprehensive Plan. All members voted in favor.

Land Development Code 2010 Annual Text Amendments (TX 2010-02) – Autumn Radcliff, Senior Planner. Ms. Radcliff said the Henderson County Land Development Code (LDC) was adopted with the anticipation that it would be reviewed each year and amended as needed. The 2010 LDC amendments (TX-2010-02) cover various topics but primarily involve reorganizing the subdivision regulations and addressing Planning Boards' concerns, corrections and clarifications to existing text, in particular with special subdivisions. The Subdivision Ordinance was initially inserted into the LDC at the time of its adoption with minimal changes. Staff has reorganized and formatted the subdivision regulations to be user friendly and to address Planning Board concerns. Ms. Radcliff added that the only substantive modifications to the existing subdivision regulations and standards are highlighted in red, and the text that is not highlighted in red reflects the existing unchanged standards. She reviewed a description of all proposed changes to the existing subdivision regulations and standards as follows:

- (1) Subdivision Amendment 1: Existing Cemeteries in a Subdivision. The Henderson County Cemetery Advisory Committee requested new subdivisions require existing cemeteries be deeded as a separate lot with road access. Cemetery lots are non-standard and will not count toward overall density calculation.

The proposed amendment requires existing cemeteries be deeded as a separate lot with a minimum 20 foot wide private or public easement. Major subdivisions shall provide access with a minimum 20 foot wide right-of-way (ROW) and a 12 foot wide travelway.

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- (2) Subdivision Amendment 2: Land Disturbing Activity. The Planning Board was concerned that no provisions were provided to address illegal land disturbing activity in conjunction with a subdivision.  
A provision would be added that unapproved land disturbing activity in conjunction with a subdivision is a violation of the LDC and may be subject to County penalties as described in Article XII of the LDC.
- (3) Subdivision Amendment 3: Expansion of a Subdivision. The Planning Board was concerned that due to the 3 year expansion hold, minor subdivisions that expanded before this time limitation would have to reapply as a major subdivision regardless of the number of lots created. The Planning Board was also concerned that the after the allotted time, an expansion could occur without any improvements to the existing private roads; allowing applicants to serve lots on roads that would not meet the minimum subdivision road standards. The Planning Board recommended removing these time limitations so applicants would be aware and required to upgrade existing private roads (within the subdivision) to meet County regulations.  
The proposed regulations would allow previously approved subdivisions to be expanded without reapplying as a major subdivision provided that certain criteria have been met (removes time limitations that would exempt previously approved subdivisions).
- (4) Subdivision Amendment 4: Road Certification. The County has inspected roads which appeared to not meet subdivision regulations. The burden of proof is always the responsibility of the applicant. The proposed regulations add a provision that the Subdivision Administrator may require engineering certification that the new road meets the LDC requirements and further may request a core sample in certain circumstances were no engineering certification exists.
- (5) Subdivision Amendment 5: Road Standards. The Planning Board and staff expressed concerns that the existing road standards (based on the number of lots served) did not correspond with the number of lots served by subdivision types. For example, a special subdivision (5 or fewer lots) would have to meet the standards for limited local roads if serving only 4 or fewer lots, and the standards for local roads if proposing 5 lots. In addition, the Board stated concerns that special subdivision had no other alternatives to constructing a new road. To address these concerns, staff recommends correcting the number of lots served by limited local and local roads, and adding a provision for using private driveway easements and alleys.
- a. Alleys. The use of alleys allows flexibility in subdivision design but would require some minimum standards. Staff recommends adding a provision that alleys may be used to access lots within a subdivision provided that those lots have frontage on a private or public road that is accessible. The alleys would be required to have a minimum 20 foot wide right-of-way and 12 foot wide travelway that could be paved or graveled.
  - b. Private Driveway Easements. The existing conservation subdivision standards allow for the use of private driveway easements serving up to 2 lots. This amendment would increase the number of lots served by a private driveway easement to 3 lots and would allow all subdivisions (including special subdivisions) to propose private driveway easements (existing standards for private driveway easements would apply).
  - c. Private Subdivision Limited Local Roads.

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- i. Number of lots served. To address the issue with the number of lots served verses the type of subdivision, the private subdivision limited local roads will be amended to serve up to 5 lots instead of 4 lots (will match the special subdivision standards).
    - ii. Right-of-Way restrictions. The Planning Board had discussed adding a provision that would require the dedication of a 45 foot right-of-way (in lieu of a 30 foot right-of-way) to accommodate required road improvements for future subdivision expansion in situations where the maximum density could achieve more than 5 lots. This provision would allow for a special subdivision to be expanded in the future without having to acquire additional right-of-way.
  - d. Private Subdivision Local Roads. To address the issue with the number of lots served verses the type of subdivision, the private subdivision local roads will be amended to serve up to 6 lots instead of 5 lots (will match the special subdivision standards and the amendments to the limited local roads).
- (6) Subdivision Amendment 6: Special Subdivision Standards.
- a. Use of existing roads. The Planning Board discussed allowing credit for existing roads that had a travelway width of less than 12 feet. This could eliminate unnecessary grading to widen a road by only 1 or 2 feet, especially if topographical limitations existed, and lessen the burden for small subdivisions of land for homes that may already be served by an existing road. This amendment would allow, upon inspection and approval by the Planning Director, an existing road of no less than 9 feet to be used to access a special subdivision. Some improvements such as 4-inches of gravel may be required and dedication of right-of-way per the subdivision road standards would apply. Existing roads would need to adequate shoulder and vertical clearance to be accessed by emergency vehicles.
  - b. Certificate of Understanding. The Planning Board requested that the requirement for the Certificate of Understanding be made as part of the subdivision application. Currently the certificate of understanding is required on the final plat for special subdivisions. This amendment would require the certificate of understanding for all subdivisions types (as part of the application) and eliminate it from the final plat requirements.
- (7) Subdivision Amendment 7: Conditional Letter of Approval. The conditional letter of approval is issued by the Subdivision Administrator for a minor subdivision and allows the applicant to begin construction. This amendment would add a provision that the conditional letter of approval is valid for a period of 3-years from the issuance date unless the subdivision approval is expanded.

Amendments to the Improvement Guarantee Standards:

The proposed subdivision amendments made substantial modifications to the improvement guarantee section and existing standards (this section is a subpart of the subdivision regulations). These changes will provide the County a better mechanism for covering costs associated with completing required improvements (includes associated costs with administration, construction and project management) if the applicant is unable to complete the project. Below is a description of the substantive modifications to the improvement guarantee standards.

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- (1) Application Requirements. The proposed changes require that before an applicant can apply for an improvement guarantee the following apply:
  - a. A minimum of 50 percent of the required improvements (based on total project cost that the applicant is guaranteeing) is in place (includes rough grading of proposed roads subject to the improvement guarantee).
  - b. All local, state and federal permits for the development must be approved and copy of said approval provided to the Subdivision Administrator (includes Army Core permits, stream and wetland mitigation fees/permits, water and sewer permits, etc.).
  - c. All associated design plans and construction specifications for the required improvements (i.e. roads, bridges, water and sewer infrastructure, stormwater infrastructure, pedestrian infrastructure, etc.) are submitted to the Subdivision Administrator.
  
- (2) Cost Estimate Standards. Add a provision requiring the applicant to include the following:
  - a. Separate estimates for roads, bridges, water and sewer infrastructure, stormwater infrastructure, pedestrian infrastructure, etc. consistent with submitted design plans construction specifications.
  - b. All associated fees for remediation work required for the proposed improvements (unless proof of payment for remediation fees is provided to the Subdivision Administrator).
  
- (3) Improvement Guarantee Instrument. Amend the existing standards requiring the applicant to guarantee in the amount of 150 percent, instead of 125 percent, of the cost to complete the work as determined by cost estimate amounts. This provision would also apply to extensions. The additional 50 percent covers inflation and additional costs (costs associated with violations, sedimentation and erosion control, administrative and project management) that may be required to complete the project.  
Existing standards allow for portions of the guarantee to be released as work progresses. This provision would also require the applicant to provide a new cost estimate detailing the work that has been completed and that is remaining when requesting a release.
  
- (4) Terms of the Improvement Guarantee. Add a provision requiring the following terms be expressly stated in the performance agreement and that the lending institution be a national association or FDIC registered group. The following terms shall be stated in the performance agreement:
  - a. The applicant shall be provided 15 days to identify a new security provider or prove alternate security where the security provider is in default, bankruptcy, or otherwise determined to be insolvent by the County after which time the County may call the improvement guarantee.
  - b. The applicant shall provide the County with specific benchmarks for completion of work and, as a term of the agreement, should the applicant fail to meet the self-imposed benchmarks the County may call the improvement guarantee.
  - c. If in violation of any other provision of this Chapter 200A, Henderson County Land Development Code, where the applicant has been notified of the violation, and the applicant has been provided the period for remediation authorized by the approving agency, and where applicant is in continued violation, the County may consider this to be a breach of the agreement and call the improvement guarantee to prevent further violation of Chapter 200A, Land Development Code.

Violations and Penalties. Add a provision that if an applicant of a subdivision is in violation of any County regulations (including Soil Sedimentation and Erosion Control

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Permits) the County will not release the improvement guarantee prior to the expiration date unless the violations are corrected.

She added that this provision would also add language allowing the County the ability to charge costs associated with construction and project administration for any executed improvement guarantee. The County may currently do this but the proposed change will state this as part of our regulation.

Ms. Radcliff reviewed the non-subdivision related text amendments as follows:

**LDC Text Amendment 1: CCP Amendments.**

**Issue:** The general statutes do not have specific requirements for adopting or amending comprehensive plans. The existing LDC standards for CCP amendments are set forth by County policy and require the County to hold a public hearing to take action on non-administrative amendments. Existing LDC standards also require a published notification. The proposed amendment would allow the Board of Commissioners to hold a public hearing on any CCP amendments, but not require it based on state statutes. The amendment would also require the County to file proposed amendments with the clerk to the Board of Commissioners and post on the County website at least 10 but not more than twenty-five days prior to the Commissioners taking action on the proposed amendment (this is an additional requirement from current standards). The amendment would remove the required published notice and allow the Board of Commissioners the option of mailing notices to affected property owners. This will greatly reduce the cost of published notices and will allow the Commissioners the flexibility to amend the CCP where deemed appropriate while adding additional provisions for notifying the public and affected property owners via the website and mailed notices (when appropriate).

**Recommendation:** Amend the public notification and public hearing requirements for non-administrative amendments to the CCP.

**Comprehensive Plan Amendments**

- (4) Public Notification. Notice of proposed change must be filed with the clerk to the Board of Commissioners and posted on the County website at least ten (10) but not more than twenty-five (25) days prior to the Commissioners approving proposed amendments. Where appropriate notices deemed may be mailed to affected property owners.
- (5) Public Hearing. None required. The Board of Commissioners may hold a public hearing on the amendment(s).

**LDC Text Amendment 2: Family Cemetery.**

**Issue:** The Cemetery Advisory Committee had requested adding family cemeteries to the permitted use table and had recommended specific standards and setback requirements for this type of use.

**Recommendation:** Add family cemeteries as a permitted use in all residential zoning districts with standards (SR 5.3). The standards deal with plot setbacks and where they can be located. It also requires a major site plan, minimum security of a 4 foot fence, recordation on a plat of record; certification, licensure and permitting with all applicable local, state and federal environmental and public health laws; and the owner of any property which contains all or part of a family cemetery is responsible for maintaining the family cemetery in compliance with local, state and federal regulations.

**LDC Text Amendment 3: Accessory Structure Setbacks.**

The proposed amendment would reduce the side and rear setback to 5 feet for accessory structures. This setback would still meet the of N.C. State Building Code standards which require a 10 foot separation between structures. This amendment would not permit accessory structures in the front yard (existing LDC standard) and would not allow for a reduction in setbacks for the R-

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40 and WR zoning districts (these zoning districts have specific standards for accessory structures/uses).

**Recommendation:** Reduce the side and rear setback for accessory structures to 5 feet (complies with 10-foot state building code separation) for all zoning districts excluding the R-40 and WR districts.

**LDC Text Amendment 4: Dumpster(s).**

**Issue:** The LDC does not have a provision to allow dumpsters as an accessory use. Certain non-residential uses require a solid waste collection system and allow for the use of dumpsters (with standards). This amendment adds dumpsters as an accessory use with similar standards stated in the LDC for certain non-residential uses that require solid waste collection.

**Recommendation:** Add dumpsters as an accessory use (for non-residential and multi-family residential uses) permitted in all zoning districts with standards (SR 2.3). The standards deal with operations, screening and location.

**LDC Text Amendment 5: Corrections to Decision Making, Administrative and Advisory section.**

**Issue:** Staff identified corrections that needed to be made to the Decision Making, Administrative and Advisory section of the LDC. These corrections included amending the authority of the Board of Commissioners (BOC), Planning Board, Zoning Board of Adjustment (ZBA) and Flood Damage Prevention Board to reflect existing review processes.

This amendment clarifies that the ZBA (which also acts as the Flood Damage Prevention Board) hears all quasi-judicial proceedings and does not have the authority to defer these hearings to the BOC. The amendment also removes the special intensity allocation power since this use was removed with recent stormwater amendments.

**Recommendation:** Correct the Decision Making, Administrative and Advisory section of the LDC.

**LDC Text Amendment 6: Plan and Permit Appeals for Soil Erosion and Sedimentation Control.**

**Issue:** Existing LDC standards require the ZBA to hold a hearing on appeals for soil erosion and sedimentation control within 30 days after the date of the appeal or request for a hearing. The amendment would change the time limitations from 30 to 60 days to ensure that the ZBA can hear the appeal at its next regularly scheduled meeting without holding a special called meeting.

**Recommendation:** Amend the time limitation for the ZBA to conduct hearings for appeal for soil erosion and sedimentation control.

**Plan and Permit Appeals**

(2) A hearing held pursuant to this section shall be conducted by the Henderson County Zoning Board of Adjustment (*ZBA*) within 30 days (not 60 days) after the date of the appeal or request for a hearing.

**LDC Text Amendment 7: Quasi-judicial Proceedings.**

**Issue:** The general statutes require government boards to hold a quasi-judicial proceeding for certain types of approvals such as: special use permits, vested rights, variances and appeals. Quasi-judicial proceedings require parties to be identified to speak during the hearing. The statutes require that parties be notified, but do not require further notification. LDC notification requirements are set forth by County policy but are not required by the state statutes.

The proposed amendment removes the newspaper notice requirement since it is costly to the County and is not required by the general statutes. The proposed amendment would require the property in question to be posted with notice of the hearing (this is not currently required).

**Recommendation:** Amend the newspaper notice for quasi-judicial proceedings and require a posted notice.

**Quasi-Judicial Process Standards**

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- (1) Public Hearing. Before taking any action, the appropriate Zoning Board of Adjustment (*ZBA*) shall hold a public hearing (quasi-judicial) on the application, in accordance with established procedures for quasi-judicial hearings.
- (2) Newspaper Notice. None required.
- (3) Mailed Notice. The *owner* of that parcel of land (related to the application) as shown on the County tax listing, and the *owners* of all parcels of land abutting that parcel of land as shown on the County tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such *owners* on the County tax abstracts. This notice must be deposited in the mail at least ten (10) but not more than 25 days prior to the date of the public hearing. The *person* or *persons* mailing such notices shall certify to the *ZBA* that fact, and such certificate shall be deemed conclusive in the absence of fraud.
- (4) Posted Notice. The County shall post one or more prominent *signs* on or immediately adjacent to the subject area reasonably calculated to give public notice of the hearing. In the event that more than one (1) parcel is involved, at least one (1) *sign* shall be posted in a central location; however, the *Zoning Administrator* may post multiple *signs*. Said *sign(s)* shall be posted at least ten (10) days prior to the hearing.

**LDC Text Amendment 8: Small Outdoor Advertising Signs.**

**Issue:** Outdoor advertising signs, no larger than 10 square feet, are currently permitted with standards as an exempt sign. Exempt signs do not require a zoning permit and thus the County has no record of these signs. Code Enforcement had requested that these small outdoor advertising signs be required to obtain a zoning permit and written authorization from the property owner so that the County can have a record for tracking these signs and ensure existing standards are being met.

This amendment would remove the outdoor advertising signs from the exempt provision to a permitted use section. The provisions for these small advertising signs would remain the same as found under the exempt section.

**Recommendation:** Add small outdoor advertising signs as a permitted use in the sign section.

**Small Outdoor Advertising Signs.**

Small outdoor advertising *signs* are permitted in all non-residential zoning districts with a zoning permit. All small outdoor advertising *signs* may have one (1) or two (2) faces (unless otherwise indicated). No *sign* shall be internally illuminated in excess of six (6) foot-candles (measured at ground level at any point within the property, and installed in such a manner that the source of light (the bulb) is shielded and not visible from adjacent roadways).

- (1) Maximum Area. Ten (10) square feet per face.
- (2) Maximum Height. Five (5) feet.
- (3) Permitted Districts. Permitted in all districts except *residential zoning districts* provided:
  - a. The applicant gets written authorization from the property owner for placement of the sign on the County prescribed form, and;
  - b. The sign complies with the standards set forth in §200A165 (Prohibited Signs) and §200A-167 (Sign Placement).



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Anthony Starr made a motion that the Technical Review Committee recommends the Board of Commissioners approve the proposed Land Development Code 2010 Annual Text Amendments (TX 2010-02) as discussed. All members voted in favor.

Rezoning Application # R-2010-01 – Request to Rezone Approximately .024 Acres of Land – Intersection of Spartanburg Highway and Upward Road – From City of Hendersonville’s Relinquished Jurisdiction to a Community Commercial (CC) zoning District – Philip and Maria Furino, Owners. Matt Cable, Planner. Mr. Cable stated that this is a staff initiated rezoning for the County to rezone approximately .024 acres of land located near the intersection of Spartanburg Highway and Upward Road. The request is the City of Hendersonville’s relinquished jurisdiction to a Community Commercial zoning district. The subject area is owned by Philip and Maria Furino. He said the reason for the rezoning was due to a mapping error by the City of Hendersonville. Mr. Cable explained that the proposed County’s Community Commercial zoning request would be apart of a contiguous zoning district and would be consistent with the recommendations of the County’s 2020 Comprehensive Plan. He said that on August 23, 2010, the City of Hendersonville removed the subject area from their jurisdiction and currently it is not zoned.

Anthony Starr made a motion that the Committee recommends approval of rezoning application R-2010-01 to rezone the un-zoned portion of the subject area to a Community Commercial (CC) zoning district, based on the recommendations of the Henderson County 2020 Comprehensive Plan. All Committee members voted in favor.

Mr. Starr adjourned the meeting at 3:07 p.m.

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Anthony W. Starr, Chairman

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Kathleen Scanlan, Secretary