

**HENDERSON COUNTY PLANNING BOARD**  
**February 17, 2011**

The Henderson County Planning Board met on February 17, 2011 for a meeting at 5:30 p.m. in the King Street Meeting Room located at 100 North King Street, Hendersonville, NC. Planning Board members present were Jonathan Parce, Chair; Tommy Laughter, Vice-Chair; Steve Dozier; Mike Cooper; Rick Livingston; Wayne Garren; and Marilyn Gordon. Others present included Anthony Starr, Planning Director; Autumn Radcliff, Senior Planner; Parker Sloan Planner; Sarah Zambon, Deputy County Attorney; and Kathleen Scanlan, Secretary. Planning Board member Stacy Rhodes and Suprina Stepp were absent.

Chairman Parce called the meeting to order of the Henderson County Planning Board. He asked for the approval of January 20, 2011 meeting minutes. Marilyn Gordon made a motion to approve the minutes as presented and Rick Livingston seconded the motion. All members present voted in favor.

Adjustments. There were no adjustments needed.

**OLD BUSINESS**

Request for Rezoning – Application # R-2010-03 for the County to Rezone Approximately 2.42 Acres of Land Located off of Howard Gap Road from Residential One (R1) to an Industrial Conditional (I-CD) zoning district – Bill Corn, Owner – Parker Sloan, Planner. Mr. Sloan stated that Billy Corn, owner, submitted rezoning application #R-2010-03 for the County to rezone approximately 2.42 acres of land, located off of Howard Gap Road (US 176), from Residential One (R1) to an Industrial Conditional (I-CD) zoning district. He noted that Conditional zoning districts are different from traditional zoning districts because they require a site plan for the proposed use(s) of the property and certain conditions or restrictions are placed on the property based on the proposed or allowable use(s). He said the subject area currently contains an automotive towing and storage facility and a single family residence, a rezoning is required for this business to be permissible. Mr. Sloan said the property adjoins an adjacent Industrial zoning district to the west, which contains a mining operation and Residential R1 zoning surrounds the property to the east, south and north. He said applying the Industrial Conditional zoning district to the subject area will only allow the existing automotive towing business to continue, none of the other permitted uses normally permitted in the Industrial zoning district will be allowed. He said, furthermore; if the existing automotive towing business were to cease operations and move somewhere else, the subject area would immediately revert back to the original R1 zoning.

Mr. Sloan said Staff supports the rezoning of the property to a Conditional Industrial zoning district based on the recommendations of the CCP and the adjacent Industrial zoning and suggests the conditions listed as follows be imposed on the subject area:

1. The existing fenced area on the property shall be used for the temporary storage of vehicles associated with the property owner's automotive towing business. Other commercial or automotive related uses shall not be allowed.
2. Site Plan. Major Site Plan required in accordance with §200A-299.
3. Lighting. *Adequate lighting* shall be placed in areas used for vehicular/pedestrian access including, but not limited to: stairs, sidewalks, crosswalks, intersections, or changes in grade. *Lighting mitigation* required.
4. Dust Reduction. Unpaved *roads, travelways* and/or parking areas shall be treated to prevent dust from adverse affects to adjacent properties.
5. Outdoor Storage. Storage of more than four (4) *vehicles* on site for a period greater than 24 hours constitutes an *outdoor storage*.
6. The remaining portion of the Subject Area that contains an existing residential home shall remain zoned for residential uses.
7. Security. The operations of an automotive towing *use* shall be totally enclosed by: (1) a security fence at least eight (8) feet in height; (2) a wall at least eight (8) feet in height;

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- or (3) a fireproof *building*. Entrances and exits should be secured and locked during non-operating hours.
8. Fencing. The existing fence does not meet the minimum screening requirements. Screen Class Three (3). A fence or wall constructed with a minimum height of six (6) feet, that is at least 75 percent *opaque*, where all spaces are evenly distributed, and with the finished side of the fence facing the adjacent property or *road*. Fences longer than 20 linear feet shall be landscaped with: a row of *shrubs* spaced a maximum of ten (10) feet apart, or a row of *evergreen trees* planted no more than 15 feet apart.
  9. All required parking spaces must meet the design requirements of the Land Development Code. The proposed parking spaces shall comply with the landscape design standards and off-street parking provisions as outlined in the Land Development Code.
  10. Any signs used on site must meet current standards of Article VII of the LDC.
  11. If the applicant has plans for future expansion of the existing business, all potential modification or expansions should be noted on the site plan.

Chairman Parce opened public input for discussion:

Judy King. Ms. King owns land next to the applicant is concerned with the noise, water run-off, the cars impounded and the results from any oils and residue leaking from the vehicles. She also voiced her concerns with property values, would they go up or would they go down and how does this business affect their lives.

Chris Sweeney. Mr. Sweeney owns the property which adjoins the applicant's property. He said he had no problem with Mr. Corn's business. His only concern is whether the area surrounding his property would be zoned industrial. Chairman Parce said at this time, the rezoning is just for Mr. Corn's property.

Mr. Corn said concerning the run-off from the vehicles, they rotate off the lot within four to five days. The most any vehicle has stayed on the lot was ten days. If the vehicles leak while there, it would be minimal. He said his well is on the property and has had no problems with water contamination. On a map provided, he showed the flow of water run-off and Mr. Sweeney showed the portion of water run-off between his property and Mr. Corn's. Mr. Corn also explained that the vehicles that he stores on his property are from accidents from the State and City police. They stay on his property until the insurance company finds that it is fixable or if it is a total loss, the salvage company picks the vehicle up and removes it. He said the turnaround is within four or five days.

Ms. King expressed concerns with the business, the signage, and explained the run-off, which has occurred from other businesses in the area (such as the quarry) and feels that his business could produce more impact. Mr. Corn said that some years ago, his father had a test done regarding the run-off from the quarry and the creek that runs nearby it. The report came back from EPA that there was no contamination caused from any diesel fuels, heavy machinery or trucks, or the quarry that is nearby. Mr. Corn mentioned that a sign will be erected as soon as he knows the outcome of this rezoning.

Mr. Dozier asked what permitting process you went through to get a permit for your business in an R-1 zoning district, since it started last July. Mr. Corn said it was his fault not to be informed that his property had changed in zoning and required a permit for his operation. He said he only went by what his father had told him, which the previous zoning was Open Use and didn't require a permit. Mr. Starr indicated that there is a zoning violation, which was taken out last fall, and is pending the outcome of his rezoning request. Mr. Dozier asked how long you have been operating your business

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out of that facility. Mr. Corn said he has been in business since March 1, 2010. Mr. Dozier wanted to know how many vehicles have been on the property at one time. Mr. Corn said it was six and currently has four vehicles. Mr. Starr added that since this is a conditional zoning case, it is unlike a regular rezoning case where conditions can be placed on the property. He said you could recommend a limitation on the total number of vehicles that can be on the site at any given time, if the applicant is agreeable to that and this could be placed as a condition of the approval or any other type of conditions that are specific to this site. Mr. Corn added that if the vehicles are not picked up by someone or towed out by the insurance company, he said he goes through the process with the State of taking possession of the vehicles before he can dispose of them and the process takes about one month to complete. He said this situation has not happened to him as of yet because typically anyone who doesn't have insurance would sign over the vehicle to me to take possession of it and then I would dispose of it within the four to five days. Mr. Dozier wanted to know whether we were doing a spot zoning by making this industrial with everything around it is R-1 Residential except the back portion. Mr. Sloan said it would not be spot zoning as it borders the Vulcan mine to the west, which is Industrial and the 2020 CCP recommends industrial zoning for this area.

Marilyn Gordon said she had drove out to visit the site and noticed that the business was hidden from the roadway but with signs there shouldn't be any problem finding the driveway. She added that when you look at the Comprehensive Plan, and some of the surrounding sites, Industrial zoning is suitable for this area. She said it is unfortunate that he has already started the business, but with not having zoning previously on the property she can realize how this could happen. She doesn't see any problem with the Conditional Zoning, as it will require screening and fencing which will hide the parking area further. Mr. Garren agrees. Rick Livingston said as a neighbor, would you do everything you possibly can to minimize the lights and the noise. Mr. Corn agreed that he would. Mr. Dozier said he is concerned that we are zoning this property for the immediate timeframe, and in doing this, we are affecting property values.

Mike Cooper made a motion that the Board recommends approval of rezoning application #R-2010-03 to rezone the portion of the subject area to an Industrial Conditional (I-CD) zoning district based on the recommendations of the Henderson County 2020 Comprehensive Plan with the conditions listed in the Staff report as modified by the Planning Board. Rick Livingston seconded the motion. Board members Marilyn Gordon, Rick Livingston, Wayne Garren, Mike Cooper and Jonathan Parce voted in favor. Tommy Laughter and Steve Dozier voted against. The motion carried five to two in favor.

Edneyville Plan Implementation – Manufactured Home Park (MHP) Standards Continued Discussion - Autumn Radcliff. Mr. Radcliff discussed the revised implementation schedule for the Edneyville Community Plan based on the Planning Board's decision to discuss the manufactured home park topic first and from that decision, the schedule was adjusted. She said at the January meeting, the Planning Board began to discuss the first topic, requiring improvements to existing manufactured home parks within the Edneyville Planning area as recommended in the Edneyville Community Plan. She said before anything can be done to proceed with that, it would require a text amendment and both the Planning Board and the Technical Review Committee would have to provide a recommendation to the Board of Commissioners on how best to accomplish this recommendation. She said the Board of Commissioners would then need to hold a public hearing before any action could be taken. At January's meeting, Staff provided the Board with an overview of the manufactured home park standards. Prior to April 1999, the County had no standards regulating manufactured home parks. The Board of Commissioners adopted a Manufactured Home Park Ordinance on April 5, 1999 which became effective on April 7, 1999. With the adoption of the first manufactured home park ordinance, pre-existing manufactured home parks were required to register with the Planning Department by January 1, 2000. This Ordinance was later incorporated into the Land Development Code (LDC) in 2007 with additional requirements that would apply only to new parks. The Edneyville

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Community Plan recommended requiring improvements to those existing manufactured home parks in the Edneyville area through an amortization schedule. She said the Committee specifically recommended improvements addressing buffering that were consistent with the LDC; additional landscaping and paving internal roads.

Ms. Radcliff said that the Planning Board at last month's meeting requested that Staff find information on the number of manufactured home parks that were pre-existing versus the number of parks that were permitted in the original Manufactured Home Park Ordinance. She said based on our calculations and reviewing some of the zoning information, there are approximately 272 pre-existing manufactured home parks county-wide. She said at this time, she is working to find out how many pre-existing parks are in the Edneyville area. Twenty-three manufactured home parks were permitted under the Manufactured Home Park Ordinance and they would have standards that would apply to them. She added that there has been only one park permitted since the Land Development Code adoption and it was never constructed.

Amortization.

Ms. Zambon discussed how amortization works and how it would apply to existing mobile homes, as requested by the Planning Board. She said most of the law is based on case law and not on statutes. Some of the important factors are setting a grace period and how long a grace period lasts. Ms. Zambon said setting a grace period where nonconformity is permitted is done so that the owner can try to recoup the investment in conformity. She said the prime example would be roads. At the end of the grace period, if the project does not comply, it can be removed even if it still is in good working condition. She said in 2005 the Institute of Government survey, reported 28% of municipalities and 32% of counties using amortization. She said the main legal challenges of amortization are due process; whether it is a reasonable and substantially related to valid government interest. The other issue would be taking, that whether or not by putting in these ordinances are we letting people get a reasonable use for their property. The key is length of grace period. She said the test that the court is going to look at is:

1. Whether there is a legitimate reason for this – proving that there are ties to public safety, health and welfare.
2. Whether the owner is left with a practical use of the property that has reasonable value.

The length of the grace period is used to evaluate means and whether owner is left with a practical use to property. Ms. Zambon also mentioned that the reasonableness of the grace period balances between public interest served (neighborhood, threat to public safety and health); the economic impact on owner (recoup of substantial amount of cost and looking at a use versus structure, improvements, age, depreciation and relocation) and balancing between the two. If the public interest exceeds the economic impact there is a shorter grace period; but if the public interest is less than the economic impact, it would be a longer grace period. She also gave examples of amortization throughout North Carolina, but these were for signs, which are the most prevalent examples of amortization. She said that there were no examples of case law for mobile home parks.

Ms. Zambon briefly discussed the legal constraints on mobile home parks. She said North Carolina land use law allows you to regulate uses of zoning, where the parks can be, certain aesthetics, appearance and construction of the mobile homes themselves and the construction of the park, roads, screening and buffers. She said the main constraint would have to be based on land use factors and not ownership as they can not be excluded for the purposes of migrant housing, for example. She also researched the question the Planning Board asked as to whether you can only restrict parks or make certain requirements for parks in the Edneyville Community Plan. After looking at this further, she feels that conditional zoning districts could be done, but you could not enforce restricting parks or certain requirements for just a particular portion of the County. Mr. Starr stated that we already

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exclude manufactured homes and manufactured home parks from certain parts of the County by our zoning districts. He said you can't exclude manufactured homes entirely from the jurisdiction according to state statute. Ms. Gordon said that amortization issue is much different than what you can do with a zoning overlay district. Mr. Starr stated that you could do an amortization targeted at manufactured home parks and it would be acceptable, as long as you are not choosing one park over another. You could segregate amortization according to the number of homes in the parks.

Ms. Radcliff said that the Planning Board had asked Staff to randomly select 10 – 12 counties in North Carolina and compare manufactured home park regulations. She said they surveyed 13 counties in North Carolina to compare the standards of minimum road surface requirements, buffering and amortization requirements. Out of the 13 counties, seven require paved roads, all but 3 of the 13 counties require a landscape buffer at least 6-feet or more in width and 3 out of the 13 counties adopted an amortization schedule. She said the three counties requiring amortization were Catawba, Rowan and Stanley counties. She said Catawba's amortization became effective in 2007 and ends in 2012 and the requirements pertain to perimeter and road frontage landscaping and paving of all roads. Ms. Radcliff said that the Planning Board needs to give direction on what improvements should be required for existing manufactured home parks such as the road surfacing, buffering and additional landscaping. These three requirements were pointed out by the Edneyville Community Plan and whether there are should be other standards in addition to these, such as the solid waste collection standards and if they should apply. Ms. Radcliff said that she felt that the Planning Board had indicated that the new standards should apply to manufactured home parks county-wide and not just in the Edneyville area. If that is the case, should there be a threshold based on the number of park spaces. She said that whatever standards are determined by the Planning Board, Staff will need time to draft the language, discuss it with the legal department and determine the amortization schedule to address those improvements. She said that staff anticipates bringing back draft language at the May Planning Board meeting for the Board to continue its discussion. She mentioned that next month, the Planning Board will start the next topic on the schedule, commercial and industrial zoning map recommendations.

Ms. Gordon mentioned that the most important decision that needs to be made is whether we should address amortization on manufactured home parks county-wide. She further stated that very few parks have these standards, so we would be addressing the older parks. She has concerns with this because if we make the decision to go back to older parks and require improvements that will necessitate amortization, what will be the impact to those parks and especially to their renters. Mr. Dozier added in the older parks there are retired folks with limited income. He said lower income and others who are struggling with today's economy would have a hard time to afford the additional cost the park owner might impose as a result. Mr. Starr said if you have amortization, you could not come up entirely to all of the standards of the current manufactured home parks. He said you would need to pick out some of the key requirements, such as paving the existing roads to the same width as they are at present. Mike Cooper also felt that we would be hitting the cost of these standards with people who struggle the most. Ms. Radcliff suggested that part of the amortization schedule is deciding the appropriate amount of time for improvements so that the costs can be absorbed over a period of time. Tommy Laughter wanted to know out of the total number of pre-existing parks (272), how many have less than ten lots each. He thought the Board might want to consider the larger parks since that could better address the overall issue of public health and safety. Mr. Starr said he feels that most of the parks in the Edneyville area would fall in the category of 10 lots or less.

Ms. Barnwell said as we discussed this topic, we wanted to keep in mind the rural character of the community, so she feels some of the items of importance discussed were buffering or screening, and underpinning.

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In summary, Board members shared ideas for some important issues dealing with amortization for existing parks. The Board wanted Staff to look at requirements, such as; underpinning; gravel roads/road surfaces maintenance; buffering around the entire perimeter and buffering at the street entrance/additional landscaping; and dumpsters or individual trash collection/solid waste collection; and number of parking spaces for each unit as well as looking at the thresholds to apply these standards.

Staff Reports.

Mr. Starr said that construction of our new location for our offices on Spartanburg Highway will be completed by the end of July and we should move to those offices in the summer.

Adjournment. There being no further business, the meeting was adjourned at 7:05 p.m.

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Jonathan Parce, Chairman  
Henderson County Planning Board

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Kathleen Scanlan, Secretary