

**HENDERSON COUNTY
PLANNING BOARD MINUTES
SPECIAL CALLED MEETING
August 22, 2006**

The Henderson County Planning Board met for a special called meeting regarding the Land Development Code. Board members present were Tedd Pearce, Chairman; Mike Cooper, Vice-Chairman; John Antrim; Tommy Laughter; Renee Kumor; Mark Williams; Jonathan Parce; and Stacy Rhodes (Mr. Williams, Mr. Parce and Mr. Rhodes entered later during the meeting). Others present included Anthony Starr, Planning Director; Rodney Tucker, Project Manager; Matt Cable, Planner; Matt Card, Subdivision Administrator; Anthony Prinz, Planner; Kathleen Scanlan, Secretary; Ron Smith and Richard Smith, Consultants with Benchmark CMR, Inc.; Steve Dozier, President of the Real Estate Board; and Larry Rogers. Board member Gary Griffin was absent.

Approval of Minutes.

Mr. Antrim made a motion to approve the August 8 Special Called Meeting Minutes. Ms. Kumor seconded the motion and all voted in favor (5-0).

Family Subdivision Regulations.

Chairman Pearce began the discussion by pointing out that Family Subdivisions have been removed from the section and wanted staff to clarify for the full Board why this occurred. Mr. Starr explained that the County Attorney has determined that family subdivisions are unconstitutional as many other Attorneys across the state have done. He said this determination is made because the family subdivision option is distinguishing one group or class from another in the approval process. Further, Mr. Starr explained, minor subdivision regulations have been modified to allow for more minimal standards for minors of four or fewer lots to be more in line with family subdivisions as they are now.

Chairman Pearce added, "Weren't there some abuse issues also?" Mr. Card responded that there has been abuse of the family subdivision option in the past. Chairman Pearce pointed out that Staff may want to look at the family subdivision issue historically, to determine how often the family subdivision application procedures have been abused. He added that he simply wanted to clarify for the Board why the family subdivision section had been removed.

During the discussion Mr. Parce, Mr. Williams, and Mr. Rhodes entered the meeting. Mr. Williams said his only concern with removing the family subdivision option was the removal of the 1 acre lot size minimum for family subdivisions. Chairman Pearce pointed out that he felt this issue would best be addressed elsewhere, and that the subdivision regulations section was not the best place to deal with the density issue.

Variances from Subdivision Regulations.

Chairman Pearce wanted to point out that variances from any provision of the subdivision regulations could be requested. Mr. Starr said the regulations, as written, should cover 99.9 percent of the situations, but that variances are always an option for an applicant. The Board was interested in who would hear the variance request. Mr. Prinz pointed out that currently variances go to the Board of Commissioners. Mr. Starr noted that, in the Land Development Code, variances will need to go to the Zoning Board of Adjustment.

Subdivision Road Standards.

Mr. Rhodes questioned why the maximum grade for "stone only" roads was reduced from the current 15 percent to 12 percent grade. Mr. Card explained that he was not sure, but it

appeared to be a typographical error that occurred during the revision process. He pointed out that he felt comfortable with the 15 percent standard and the Board agreed.

Mr. Rhodes pointed out that the travelway width had changed for limited local roads to be increased to a 16 foot width. Mr. Starr indicated that this increase in travelway width was done on request by the Fire Marshal's Office, to ensure emergency vehicle access.

Mr. Williams raised concerns about private road standards. He was concerned with the following: "Private roads proposed for non-residential subdivisions shall comply with the minimum standards required by the Henderson County Fire Marshal's Office." Specifically, Mr. Williams was interested in clarifying what minimum standards for the Fire Marshal's Office would be. Mr. Starr suggested that a reference be made to the State Fire Protection Code rather than leaving it up to the Fire Marshal's Office determination by this ordinance. The Board agreed that the standards should be identified as thoroughly as possible to eliminate the need for interpretation. The Board concluded its discussion on road standards.

Subdivision Fire Protection Requirements.

Mr. Williams raised concerns about the fire protection requirements section. Mr. Rhodes was concerned with the following: "For any subdivision without a fire suppression rated water system, that either has or is adjacent to an adequate permanent surface water supply (100,000 gallon storage in a fifty (50) year drought), the applicant shall be required to install a dry fire hydrant system, the type and location of which is to be determined by the County Fire Marshal." Mr. Rhodes wanted it to be clear that if the water supply was on any adjacent property that the dry hydrant system may not be possible to require of the applicant as he or she may not have access to the water supply. Mr. Starr suggested that the following modification be added: "For any subdivision without a fire suppression rated water system, that either has or *has access to* ~~is adjacent~~ an adequate permanent surface water supply..." and the Board agreed. The Board members were comfortable with the Fire Protection Requirements given the suggested modifications.

Subdivision Notice of Farmland Preservation District.

Mr. Williams questioned the last sentence which was not complete: "When ever a major subdivision of land occurs on property located adjacent to a". Mr. Card explained that this sentence was only partially removed, and that the intent was to remove it completely. The Board agreed.

Subdivision Farmland Preservation District.

Mr. Williams wanted the Board to discuss the 100 foot setback from lands in the farmland preservation district. Ms. Kumor pointed out that the Subcommittee is suggesting a choice be made to protect the farms. Mr. Williams clarified that some farmers will want the setback requirement while others will not, and he simply wanted the Board members to be aware of the potential reaction from the farming community.

The Planning Board entered discussion about providing an agricultural preservation district disclosure in the deed in addition to the indication on the plat. Mr. Parce pointed out that a deed will refer to the plat for a description and that the plat will contain the agricultural preservation district information. Mr. Parce pointed out that he did not feel that the Board should suggest any requirements for inclusion in the deed as the Board would have no jurisdiction over effective title transfer. Further, Mr. Parce pointed out, if the note is on the plat and the Attorney does not review the note; it is the Attorney's problem. Chairman Pearce thanked Mr. Parce for his council on this issue. Mr. Starr asked the Board if it was simply a concern of disclosure. Ms. Kumor responded by asking Mr. Dozier if he was required to provide clients with a notice of any agricultural preservation district within a certain distance. Mr. Dozier did not respond as the

Board entered into further discussion. Mr. Williams agreed that notation of an agricultural district may not need to be on the deed, but that it will need to be adequately disclosed. The Planning Board continued its discussion of the disclosure concerns. Mr. Dozier did interject and said that it is not required by the State and the airport disclosure is not required by the State. He said it is something in this area that is not done because of the lawsuit that came out of Heatherwood (Subdivision), when they bought in there and the planes fly overhead. Mr. Starr said that there could be a potential for liability there for realtors by not disclosing this when they felt it should have been disclosed to them and we could work with the realtors to help with this. Chairman Pearce suggested that the Board accept Mr. Parce's council on this issue and strike all of this to which the Board agreed.

Conservation Subdivision Regulations.

Mr. Williams questioned the slope references contained within the conservation subdivision section. He pointed out that he was not an expert on this, but wanted to make sure that the percent slopes are appropriate as used here. Mr. Starr pointed out that the Primary and Secondary Conservation areas are simply what should be conserved first and not necessarily that all of this area must be conserved. Chairman Pearce pointed out that Staff looked to the CCP for guidance on the issue, and from a logical standpoint, conservation subdivision are a means of protecting at risk lands. Ms. Kumor reminded the Board that the conservation subdivision option is just an option and not a requirement.

Mr. Dozier interjected that, from his perspective, the slopes described by this section are not steep at all. Chairman Pearce suggested changing the slopes to show that moderate slopes are 20 to less than 30 percent and steep slopes are those with 30 or greater percent. Mr. Cooper argued that this is not steep either. Chairman Pearce then suggested that the language could be changed to say primary conservation includes slopes greater than 25 percent and that secondary conservation areas include slopes of 15 to less than 25 percent. He suggested that, by doing this, it removes the term "steep" from these sections. Mr. Starr asked the Board, "What is steep in the development community?" A variety of responses were provided by Board members, including Mr. Antrim who responded 100 percent slope and Chairman Pearce who said 45 percent slope. After further discussion Mr. Rhodes suggested the primary conservation should include slopes greater than 30 percent, secondary conservation should include slopes of 20 to less than 30 percent, and that no references to "steep" or "moderate" should be made regarding these slopes. The Board agreed with Mr. Rhodes' suggestion.

Mr. Williams then brought up the density bonuses afforded to those pursuing the conservation subdivision option. He felt that he would not be able to sign off on bonuses until he knew what they are doing in terms of the base density. The Board determined that they felt comfortable with a bonus system regardless of what the base density was. Ms. Kumor suggested that they close the discussion and approve it. Mr. Antrim seconded the motion and all voted in favor (8-0).

Zoning Regulations.

Ron Smith, Consultant with Benchmark CMR Services, Inc., began reviewing his draft proposed zoning regulations. Mr. Smith explained the formatting and general concept behind this portion of the Land Development Code. He also explained that he and Richard Smith (his associate) met with Planning Staff to try to determine an appropriate density and how to regulate this based on slopes, presence of floodplain, etc. The Board then entered discussion on densities within each of the proposed residential districts: R1, R2, R2MH, and R3.

Mr. Smith entered into a discussion on the R-1 proposed density and the current proposed slope regulations, which would reduce the permitted densities based on slopes provided by the Planning Board at the previous meeting. Chairman Pearce asked for clarification, and noted that in the R1 district, with 100 acres and 35 percent slopes, an applicant would only be able to use

the density at a reduction of 60 percent. Mr. Smith agreed that this was how the sections were drafted. The Board members entered into a number of side discussions. After a considerable period of time, Chairman Pearce suggested that he felt the slope regulations should not be applied in the R1, R2, or R2-MH districts. The Board members generally were of the consensus that they only wanted to consider the slope regulations being applied in the R3 district. Mr. Smith explained that he only included the slope regulations in the other districts, upon direction from the Board at the last meeting.

The Board members then entered discussion on the R3 district. Mr. Smith pointed out that the percentage reduction in density, based on slope, would bring the densities in line with those suggested by the Agricultural Advisory Board and recommended by the Planning Board. Mr. Cooper said that, while he is not attempting to slam the farming community, the farming community does not know what they are talking about in terms of slope. Mr. Williams suggested that the Agricultural Advisory Board may have been speaking in terms of degree rather than slope with the numbers they are suggesting. The Board then entered discussion on appropriate densities for all three districts and the relationship of slope to such. Mr. Smith added that there are two things that affect density. One is the market, which has a lot to do with what is going to happen to the densities as exhibited by some local subdivision that have been developed in the last few years. Tommy Laughter felt that slopes should be thrown away and go with density as far out in the Urban Services Area as possible. He suggested one unit per one acre, but Chairman Pearce suggested politically and realistically, we might want to look at density in the rural area that is somewhere between where everyone has been going, and suggested one unit per 1.5 with the availability of a cluster in a conservation subdivision.

Mr. Smith provided a copy of the densities that Staff had compiled earlier in the drafting of the LDC, at the request of the Planning Board which were based on subdivision approvals. There was a considerable period of time spent in side discussions among Board members. Ms. Kumor pointed out that the Planning Board is suggesting 1 ½ acres per dwelling unit in the R3 zoning district. Chairman Pearce agreed and also requested the removal of density reduction in all districts based on slope. The Planning Board was in agreement.

Chairman Pearce asked if the zoning district needed to regulate impervious surface. Mr. Starr indicated that if this is to be regulated it should be regulated by this document. Mr. Rhodes felt that applicants should submit a plan that shows that when a project is finished it will not dump water on a neighboring property. Mr. Starr explained that type of issue would be addressed in a Stormwater Management Ordinance which the County is likely to consider in the future given the recommendations of the CCP. Chairman Pearce suggested that Staff find out any information dealing with the City of Hendersonville on developments such as Wolfpen and Brittany Place dealing with the percentage of impervious surface, building height, and the number of units per acre.

Mr. Starr wanted to verify an appropriate standard density for the R1 zoning district and Chairman Pearce suggested that 4 dwelling units per acre would be appropriate.

In reference to all districts, Chairman Pearce suggested a hold on impervious surface but felt comfortable with the proposed setbacks as they seemed reasonable. Chairman Pearce also suggested that the building height restrictions in residential districts be reconsidered. Mr. Cooper, when exiting the meeting, made comments regarding height limitations on residential structures, but such were not clear in the recording. Generally the Board responded to these comments by suggesting that the Village of Flat Rock has a 35 foot height limitation that builders are able to adhere to currently.

Chairman Pearce suggested he would be comfortable with R2 and R2-MH district densities being at 1 dwelling unit per acre standard and 2 dwelling unit per acre maximum, as such restrictions would be in keeping with current R-40 to R-20 ranges as long as it has public water or sewer or served by an approved water and sewer system.

Mr. Smith then briefly discussed the replacement of Planned Developments and their associated standards with the MU (Mixed Use) District, which would be a Conditional Zoning District. He said a Conditional Use District and Permit would be required to approve these as they would be site and case specific. The Board did not suggest opposition to this suggestion, they did discuss about a pedestrian sidewalk in this district. .

Mr. Smith briefly asked about the formatting of the document and everyone generally felt that the document is reasonable to understand.

Adjournment. There being no further business, the meeting adjourned at 6:41 p.m. and all members were in favor.

Tedd Pearce, Chairman

Kathleen Scanlan, Secretary