

Town of Mills River
Minutes of the Planning Board
Tuesday, August 17, 2021

The Town of Mills River Planning Board met remotely on Tuesday, August 17, 2021, at 6:30 PM via Zoom due to inclement weather. Board members present were: Jim Foster, Cheryl Janoski, Sherri Hill, Heath Wiggins, Ryan Perry, and Jeff Moore. Staff present were Town Manager Daniel Cobb, Zoning Administrator Mike Malecek and Tax Collector/Deputy Town Clerk Aurelie Taylor.

Chairperson Sherri Hill called the meeting to order and led the Pledge of Allegiance.

There was one adjustment to the Agenda – New Business Item C was deleted.

Approval of the Minutes

Jim Foster made a motion to accept the minutes of May 20, 2021. Heath Wiggins seconded the motion and the motion passed by unanimous roll call verbal assent.

Public Comment:

There was no Public Comment for non-agenda items.

Old Business: No Old Business

New Business:

A. Text Amendment TXT-21-03 Certificate of Understanding

Chairperson Sherri Hill reminded the Board of their options for this item: they can recommend to Town Council to approve the Text Amendment, recommend approval with conditions, table the item for another meeting, or recommend to deny the Text Amendment. Zoning Administrator Michael Malecek introduced the item and went through his Staff Report, the text of which appears below:

STAFF REPORT

Planning Board, Tuesday, August 17, 2021

Title: TXT-21-03, Subdivision Ordinance Text Amendment

Speaker: Michael Malecek, CZO, Zoning Administrator

Prepared by: Planning & Zoning

Background

At the June 24, 2021 Town Council meeting, Councilman Austin stated he received a complaint about the Town requiring a Certificate of Understanding on all final subdivision plats to be signed by the property owner. After discussion, Town Council passed a motion by unanimous vote directing staff to remove this requirement from the Town subdivision ordinance.

Discussion

The Certificate of Understanding requirement for all final subdivision plats was added to the Town subdivision ordinance through text amendment ordinance #00066, passed by unanimous Town Council vote on April 28, 2011.

The purpose of the Certificate of Understanding is to protect both property owners from unauthorized subdivisions of land, and protect the Town from evasion of subdivision ordinance requirements using the property owner acknowledgement.

Similar owner acknowledgments (Certificates of Ownership) are required on final subdivision plats for the Town of Fletcher, City of Brevard, and the Town of Laurel Park. It is the opinion of staff that it is not burdensome or unreasonable to require an owner acknowledgement and signature on the final plat, especially with the availability of electronic signature software.

The requested text amendment will remove §153.045(B) [lines 362-379], and line 1898 in Appendix 7 (Final Plat Requirements – Required Certificates) from the subdivision ordinance (Attachment A).

Policy Analysis

Removing the Certificate of Understanding requirement from the Town subdivision ordinance takes away one step in the approval process for surveyors and property owners, but also removes the protections this certificate provides.

Recommendation

Staff recommends denial of this text amendment due to inconsistencies with Objective 1.4, Policy 1.4.3 of the Town's recently adopted Making Mills River 2040 comprehensive plan. Planning Board's role in this request is advisory and its options are as follow:

1. Recommend approval of the request;
2. Recommend approval with modifications;
3. Table for additional consideration (up to 45 days);
4. Recommend denial of the request.

In addition to a recommendation as outlined above, the Planning Board must submit a Statement of Consistency with adopted plans for Town Council's consideration. A draft of this statement is included for the Board's review. (Attachment B)

Attachments

- A. Redlined Subdivision Ordinance Text, Removing Certificate of Understanding
- B. Draft Planning Board Statement of Consistency and Recommendation

Zoning Administrator Mike Malecek researched other Towns, ordinances regarding the requirement. Fletcher, Laurel Park and Brevard have requirements while the City of Hendersonville and Henderson County do not. The complaint about this requirement made to the Town Council was regarding the extra time, expense, and work required to mail an original mylar survey plat to an out of state owner for signature. However, many surveyors (and others) use electronic signature programs that don't require physically mailing a survey.

There was a brief discussion about the consequences of not having the requirement and what kind of impact there is on surveyors.

Ryan Perry made a motion that the Planning Board recommend to Town Council to deny the Text Amendment TXT-21-03. Cheryl Janoski seconded the motion and the motion passed unanimously by roll call.

Mike Malecek mentioned that the Planning Board also had to adopt the statement of consistency shown below:

**PLANNING BOARD STATEMENT OF CONSISTENCY
TXT-21-03**

Pursuant to NCGS §160D-604(d), when reviewing a proposed zoning text or map amendment, the planning board shall advise and comment on whether the proposed action is consistent with any comprehensive plan. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate.

The Town of Mills River Planning Board finds that the proposed text amendment is **inconsistent** with the following elements of the Town's Making Mills River 2040 Comprehensive Plan and **recommends denial** of text amendment TXT-21-03.

Making Mills River 2040 Comprehensive Plan, Element One, Land Use:

OBJECTIVE 1.4: Consistent and Updated Code of Ordinances and Zoning and Land Development Regulations.

POLICY 1.4.3: Create and implement regulations related to the subdivision of land for residential and non-residential purposes.

Sherri Hill made a motion to adopt the statement of consistency shown above. Jeff Moore seconded the motion and the motion passed unanimously by roll call.

B. TXT-21-04 Watershed Ordinance Introduction

Town Manager Daniel Cobb went through an abbreviated presentation; the entire power point will be emailed to the Board.

This has come up because Henderson County recently discovered that an agreement with the Town allowing the County to enforce their watershed rules in Mills River had lapsed and they no longer had authority. They are no longer interested in any kind of contract with the Town of Mills River for watershed ordinance enforcement. Mike Malecek is working with the Statewide Coordinator (watershed rules are required by the state and administered by local governments) to develop and implement an ordinance for Mills River. While the state would prefer adoption as soon as possible, as long as the Town is making progress they are OK.

Ryan Perry asked if it were possible to temporarily adopt the County's ordinance while we worked on our own.

Jim Foster wanted to know if Daniel thought the Board should go back to two meetings a month until the work on the watershed ordinance is complete. Daniel explained that he

and Mike were going to bring draft text to them at their October meeting, and then again at the November meeting. He didn't think that a second meeting a month would be necessary.

Additional Items

Town Council directed staff to draft an ordinance for conditional zoning and text amendment process refinements. Conditional zoning is when a single parcel is zoned with specific conditions attached. An overview will be presented in September.

Sherry requested that the next time the Board meets in person that they get a hard copy of the Making Mills River Comprehensive Plan. Daniel Cobb stated the comprehensive plan maps were recently finalized and everything is going to the printer.

As there was no further business to discuss, Ryan Perry made a motion to adjourn the meeting. Jeff Moore seconded the motion and the motion passed unanimously by roll call.

Respectfully submitted,

Aurelie Taylor
Tax Collector/Deputy Town Clerk