

## Chapter 16

### PLANNING AND DEVELOPMENT\*

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\* **Cross References:** Flood damage prevention, §§ 4-60 et seq.

**State Law References:** Zoning power, G.S. 153A-340; subdivision regulation power, G.S. 153A-330; mountain ridge protection, G.S. 113A-205 et seq.

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**Art. I. In General, §§ 16-1--16-19**

**Art. II. Planning Board, §§ 16-20--16-39**

**Art. III. Subdivision Regulations, §§ 16-40--16-59**

**Art. IV. Historic Preservation Commission, §§ 16-60--16-100**

**Art. V. Sign Regulations, §§ 16-101--16-150**

**Art. VI. Road Naming, §§ 16-151--16-170**

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**Div. 1. Generally, §§ 16-201--16-230**

**Div. 2. Agricultural Advisory Board, §§ 16-231--16-250**

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**Art. IX. Telecommunications Towers, §§ 16-301--16-319**

### ARTICLE I.

#### IN GENERAL

#### **Secs. 16-1--16-5. Reserved.**

**Editors Note:** Sections 16-1--16-5 have been deleted as being superseded by an amendment adopted November 28, 1994. Formerly, such sections pertained to the board of adjustment and appeal and the land development board and derived from an ordinance adopted July 23, 1974; §§ 1--6 of an ordinance adopted Dec. 21, 1976; and an ordinance adopted Jan. 16, 1978. For current provisions regarding the board of adjustment and appeal, see § 16-29.

#### **Secs. 16-6--16-19. Reserved.**

### ARTICLE II.

#### PLANNING BOARD\*

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\* **Editors Note:** An amendment adopted November 28, 1994, was treated as superseding Art. II, §§ 16-20--16-30, in its entirety. Formerly, such sections contained similar provisions and derived from §§ 1--10 of an ordinance adopted Dec. 14, 1981, and from an ordinance adopted July 10, 1989.

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**Sec. 16-20. Established.**

The county planning board is hereby established under the authority granted in G.S. 153A-321 and 153A-322. (Amend. of 11-28-94)

**Sec. 16-21. Membership.**

The board shall consist of seven (7) members appointed by the board of commissioners. Two (2) members shall be appointed for a term of one (1) year; and two (2) members shall be appointed for a term of two (2) years; and three (3) members shall be appointed for a term of three (3) years. Their successors shall be appointed for three-year terms. (Amend. of 11-28-94)

**Sec. 16-22. Organization; rules; meetings; records; unexcused absences.**

(a) The chairman shall be appointed by the county commissioners for a term of one (1) year. The vice-chairman shall be elected by the planning board members and serve until his/her term expires.

(b) The board may adopt rules for transaction of its business and shall keep a record of its members' attendance and of its resolutions, discussions, findings, and recommendations, which record shall be a public record. The board shall hold at least one (1) meeting monthly; all of its meetings shall be open to the public. There shall be a quorum of four (4) members for the purpose of taking any official action.

(c) If an appointee has unexcused absences which constitute more than twenty-five (25) percent of the scheduled board meetings in any year in which he/she is required to attend, pursuant to his/her appointment, he/she is obligated to resign. Excused absences are defined as absences in which notification was made prior to the meeting to either the planner, chairman or committee secretary. (Amend. of 11-28-94)

**Sec. 16-23. Powers and duties--Generally.**

(a) The board may gather maps and aerial photographs, statistics on past trends and present conditions with respect to population, property values, the economic base, land use, and such other information as is important or likely to be important in determining the amount, direction, and kind of development to be expected in the area and its various parts.

(b) It shall be the duty of the board, in general, to:

- (1) Prepare and from time to time, amend and revise a comprehensive and coordinated plan for the physical development of the area;
  - (2) Recommend principles and policies for guiding development of the area;
  - (3) Prepare and recommend to the board of commissioners ordinances promoting orderly development along the lines indicated in the comprehensive plan;
  - (4) Determine whether specific proposed developments conform to the principles and requirements of the comprehensive plan for the growth and improvement of the area;
  - (5) Keep the board of commissioners and the general public informed and advised as to these matters;
  - (6) To perform any other duties which may be lawfully assigned by the Board of Commissioners.
- (c) All county officials shall, upon request, furnish to the board such available records and information as it

may require in its work. The board, or its agents, may, in the performance of its official duties, enter upon lands and make examinations or surveys and maintain necessary monuments thereon.

(Amend. of 11-28-94)

**Sec. 16-24. Same--As to subdivision regulations.**

The board shall review, from time to time, the need for regulations for the control of land subdivision in the area and submit to the board of commissioners its recommendations, if any, for adoption or revision of such regulations.

(Amend. of 11-28-94)

**Sec. 16-25. Same--As to other ordinances and regulations.**

The board shall review the general statutes pertaining to planning legislation and, from time to time, recommend to the board of commissioners the adoption of appropriate ordinances, regulations, and codes, and the appointing of desirable commissions.

(Amend. of 11-28-94)

**Sec. 16-26. Same--Public hearings and interest.**

(a) The board may conduct such public hearings as may be required to gather information necessary for the drafting, establishment, and maintenance of the comprehensive plan or any other ordinance.

(b) The board shall have power to promote public interest in, and an understanding of, its recommendations, and to that end, it may publish and distribute copies of its recommendations and may employ such other means of publicity and education as it may determine.

(c) The board may, upon resolution of any governing board of municipalities within the county, extend its general study and interest and make reports and recommendations that are appropriate to facilities within the jurisdiction of such municipalities.

(d) The board may, in its discretion, meet with and confer with any other planning board.

(Amend. of 11-28-94)

**Sec. 16-27. Same--Annual report of activities.**

(a) The board shall, in May of each year, submit in writing to the board of commissioners a written report of its activities. Interim reports will be made on request by the board of commissioners or as deemed necessary by the planning board.

(b) The expenditures of the board, exclusive of gifts or grants, shall be within the amounts appropriated for the purpose by the board of commissioners, and no indebtedness for which the county shall be liable shall be contracted or incurred by the board unless an appropriation is made by the board of commissioners for such purpose, as authorized by law, and then only to the extent of such appropriation.

(Amend. of 11-28-94)

**Sec. 16-28. Comprehensive plan, future revisions.**

(a) The comprehensive plan, with accompanying maps, plats, charts, and descriptive matter, shall identify the planning board's recommendations to the board of commissioners for the future development and growth of the county. These recommendations shall include goals and objectives for the conservation of the county's distinctive rural character and mountain heritage; conservation of the county's valuable land, water and air resources; plans for having the best possible roads for the county, along with the promotion of alternative transportation; provision for and/or coordination of reliable and safe drinking water, wastewater treatment, and solid waste collection and disposal; support of affordable, safe, and adequate housing for all residents; planning and provision of appropriate public facilities and

services for residents and businesses; and promotion of the best use of land while protecting citizen's property rights.

(b) The planning board shall review the comprehensive plan annually and shall submit to the board of commissioners its recommendations, if any, for adoption or revision.  
(Amend. of 11-28-94)

### **Sec. 16-29. Board of adjustment and appeal.**

(a) *Establishment.* The county planning board is hereby designated as the county board of adjustment and appeal.

(b) *Appeals.* Appeals from any decision of the board of adjustment and appeal shall be directed to the chairman of the board of commissioners. Notice of appeal must be made to the chairman thirty (30) days after a decision has been rendered by the board of adjustment and appeal. After notification has been received, the board of commissioners shall hear the appeal within thirty (30) days.

(Amend. of 11-28-94)

**Cross References:** See editor's note, § 16-1 et seq.

**State Law References:** Authority to so designate, G.S. 153A-345.

### **Secs. 16-30--16-39. Reserved.**

## **ARTICLE III.**

### **SUBDIVISION REGULATIONS\***

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\* **Editors Note:** Articles I--IX of an ordinance of February 25, 1991, amended an ordinance of Jan. 26, 1987, Arts. I--VIII, to read as herein set out. Prior to amendment, such ordinance of Jan. 26, 1987, was codified as §§ 16-40--16-56, constituting Art. III and pertaining to the same subject matter.

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### **Sec. 16-40. Short title.**

This article shall be known and cited as the "Subdivision Control Ordinance of Transylvania County, North Carolina," and may be referred to as the "Subdivision Regulations."

(Ord. of 2-25-91, Art. I)

### **Sec. 16-41. Authority and enactment clause.**

Pursuant to the authority and provision conferred by the General Statutes of the State of North Carolina (Chapter 153A, Article 18), the Board of County Commissioners of the County of Transylvania hereby ordain and enact into law these articles and sections.

(Ord. of 2-25-91, Art. II)

### **Sec. 16-42. Jurisdiction.**

This article shall apply to every subdivision or development in the county which is located outside the planning jurisdiction of a municipality, as established pursuant to G.S. Section 160A-360. The power to review plans shall be treated as if it were a power authorized by Article 19 of Chapter 160A of the General Statutes. Municipalities within the county may elect to allow this article to be effective within their corporate limits or their extraterritorial jurisdictions.

(Ord. of 2-25-91, Art. III)

### **Sec. 16-43. Purpose.**

The purpose of this article shall be:

- (1) To guide and regulate the subdivision and development of land in such a manner as to meet the following requirements for orderly and harmonious growth: Land to be subdivided shall be of such character that it can be used safely without danger to health or peril from fire, flood, erosion, air and/or water pollution, or other menace. Proper provisions shall be made for drainage, water supply, sewerage, high quality water legislation, sedimentation control, and other appropriate utilities. The proposed roads shall provide a safe, convenient and functional system for vehicular circulation and shall be of such width, grade, and location as to accommodate prospective traffic. Roads shall be so arranged as to afford adequate access for emergency vehicles and services. Land shall be subdivided and developed with due regard to topography so that the natural beauty of the land and vegetation shall be protected.
- (2) To provide the county commissioners, planning board, planning department, and other local government agencies and officials with information regarding land development taking place in the county. This information will assist county officials in projecting the need for various public programs and facilities, in estimating population growth, and in projecting revenues and expenditures.

(Ord. of 2-25-91, Art. IV)

### **Sec. 16-44. Definition of terms.**

(a) *Subdivision defined:* A subdivision means all divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future), and includes all divisions of land involving the dedication of a new road or a change in existing roads; and includes any unified residential development; however, the following are not included within this definition and are not subject to any regulations enacted pursuant to this part:

- (1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;
- (2) The division of land into parcels greater than ten (10) acres if no road right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for widening or opening roads;
- (4) The division of a tract in single ownership, the entire area of which is no greater than two (2) acres into not more than three (3) lots, if no road right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations;
- (5) The division of land for the purpose of conveying a single lot or parcel to each tenant in common, all of whom jointly inherited the land by intestacy or by will;
- (6) The division of land into no more than two (2) parcels for the purpose of conveying at least one (1) of the resulting lots to a grantee(s) who would have been an heir(s) of the grantor if the grantor had died intestate immediately prior to the conveyance;
- (7) The division of land pursuant to an order of a court of the General Court of Justice;
- (8) The division of land for cemetery lots or burial plots; and
- (9) The division of land for the purpose of changing the boundary line(s) between adjoining property owners and no new road right-of-way dedication is involved.

(b) *Other definitions:* For the purpose of this article, certain words or terms used herein are defined as follows:

*All-weather surface road:* A roadbed that supports routine vehicular traffic and has a minimum thickness of six (6) inches of compacted crushed rock or stone, including dust that does not exceed eighteen (18) percent grade.

*Develop:* To convert land to a new purpose so as to use its resources, or to use the land for residential, commercial, or industrial purposes.

*Developer:* Any person, firm, corporation, or duly authorized agent who develops land as defined herein.

*Dwelling unit:* A single unit providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

*Easement:* A grant by the property owner for the use by the public, a corporation, or person(s) of a strip of land for specified reasons.

*Final plat:* A complete and exact plan of a development or subdivision prepared for final official review which, if approved, will be submitted to the county register of deeds for recording.

*Floodway:* The channel of a river or other watercourse and the adjacent land areas which must be reserved in order to discharge the base flood (100-year flood) without cumulatively increasing the water surface elevation.

*Land-disturbing activity:* Any land-disturbing activity as defined in G.S. Section 113A-52(6) that is undertaken on a tract comprising more than one (1) acre, if more than one (1) contiguous acre is uncovered; however, those land-disturbing activities for which the state sedimentation control commission is authorized to exercise exclusive regulatory jurisdiction pursuant to G.S. Section 113A-56(a) are not included within this definition and are not subject to any regulations enacted pursuant to this act.

*Lot:* A portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership or for development, or both. The word "lot" includes "plot," "parcel" or "tract."

*Lot of record:* A lot which has not been recombined or merged that is a part of a subdivision, a plat of which has been recorded in the office of the register of deeds of the county prior to adoption of this article, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this article unless the lot has been recombined or merged thereafter.

*Major subdivision:* A proposed subdivision where eleven (11) or more lots will result after the subdivision is complete.

*Minor subdivision:* A proposed subdivision of land where four (4) to ten (10) lots will result after the subdivision is complete. One (1) phase of planned development cannot be considered a minor subdivision unless the entire development does not exceed ten (10) lots.

*Plat:* Includes the terms "map," "plan," or "replat"; a map or plan of a parcel of land which is to be or which has been developed or subdivided.

*Preliminary plat:* A proposed development or subdivision plan prepared for review and consideration prior to preparation of a final plat.

*Private driveway:* A shared right-of-way or easement for access to no more than three (3) lots in a special subdivision and no more than two (2) lots in either a minor or a major subdivision.

*Road:* A dedicated public or private right-of-way for routine vehicular traffic.

*Cul-de-sac:* Local roads with one (1) end open for vehicular access and the other end terminating in a

vehicular turnaround. The length of the cul-de-sac road shall be measured along the center line from its intersection with the centerline of the road from which it runs to the center of the cul-de-sac turnaround.

*Site plan:* A development layout showing the location of all improvements and land-disturbing activities proposed as part of the development.

*Special subdivision:* A proposed subdivision where three (3) or fewer lots on a new or existing private driveway will result after the subdivision is complete.

*Subdivider:* Any person, firm, or corporation who subdivides or develops any land deemed to be a subdivision.

*Unified residential development:* A development consisting of more than three (3) dwelling units.

Notwithstanding any provision of G.S. 153A-331, no county subdivision ordinance development standard shall apply to a unified residential development, except insofar as such a standard pertains to a direct access road(s) that will serve such development(s). By definition, the direct access road(s) ends at the point the parking lot begins. This, in no way, supersedes present or future fire code regulations.

(Ord. of 2-25-91, Art. V; Ord. of 3-9-92; Amd. of 7-11-94)

## **Sec. 16-45. Approval of subdivision plats.**

(a) *Approval required:* Plats shall be prepared and approved pursuant to the provisions of this article whenever land is subdivided or otherwise developed. A final plat must be prepared, approved, and recorded pursuant to this article whenever a subdivision of land occurs or whenever the development of land takes place.

No land-disturbing or construction activity carried out in conjunction with the development shall be commenced until the preliminary plat or plan is approved by the planning board of the county or the county planning department. A building permit for work done in conjunction with a development or a lot in a subdivision shall not be issued until the final plat or plan is approved by the planning board of the county or the county planning department. The register of deeds shall not file or record a plat of a subdivision or development subject to this article that has not been approved in accordance with these provisions, and the clerk of superior court shall not order or direct the recording of a plat if the recording would be in conflict with this article.

(b) *Procedure for review of special subdivisions:*

- (1) The subdivider shall submit to the county planning department the final plat and a copy for approval. Upon receipt, the planning department will affix a stamp indicating that the driveway is "approved as a special subdivision, the access is considered a private driveway." The subdivider shall dedicate a forty-five (45) foot right-of-way with each road or private driveway.
- (2) The planning department shall approve, approve conditionally or disapprove the final plat within two (2) working days after the plat is submitted for review.
- (3) The final plat shall contain the required information in subsections 16-45(e)(1) through (5) of this article.
- (4) Failure of the planning department to act on the final plat within the specified response time shall be deemed as a basis for appealing to the county planning board.

(c) *Procedure for review of minor and major subdivisions:*

- (1) *Preliminary plat submission and review:* The procedure for obtaining preliminary plat approval is as follows:
  - a. The subdivider shall submit to the county planning department two (2) copies of a preliminary plat containing the requested information required in section 16-45(e).

- b. The planning department may request reports from the county health department, the county inspections department, the county soil and water conservation district, and other county or state officials or agencies as deemed necessary.
- c. The planning department shall review the preliminary plat for general compliance with the requirements of this article and any other applicable county or state regulations; and shall discuss with the developer or his agent any changes deemed advisable in the proposed development, or any additional information necessary for approval of the minor or major subdivision.
- d. The planning department shall approve, approve conditionally, or disapprove the preliminary plat and shall notify the developer, in writing, of its decision regarding approval within ten (10) working days after the preliminary plat is submitted for review.

(2) *Final plat submission and review:* Upon approval of the preliminary plat by the planning department, the developer may proceed with the preparation of the final plat and the installation of or arrangement for required improvements such as roads and utilities in accordance with the approved preliminary plat and the requirements of section 16-46 of this article. Prior to approval of the final plat, the subdivider shall have installed the improvements specified in this article or guaranteed their installation as provided herein.

- a. The developer shall submit five (5) copies of the final plat to the planning department. One (1) copy of the final plat shall be on reproducible permanent material, which will be returned to the developer with the stamp of approval affixed to the plat, and four (4) copies shall be prints. A final copy will be presented to the county sheriff's department, the office of emergency medical services, and the U.S. Post Office.
- b. The planning department shall approve, conditionally approve subject to modifications, or disapprove the final plat and shall notify the developer, in writing, of its decision regarding final approval within ten (10) working days after the plat is submitted for review.
- c. The final plat shall be prepared by a registered land surveyor currently licensed in the state by the state board of registration for professional engineers and land surveyors. The final plat shall conform to the provisions for plats, subdivisions, and mapping requirements set forth in G.S. 47-30 as amended, and as set forth in the Standards of Practice for Land Surveying in North Carolina, and in section 16-45(e) of this article.

(3) Failure of the planning department to act, in writing, on the preliminary or final plat within the specified response time shall be deemed as a basis for appealing to the county planning board.

(4) At the planning director's discretion, or at the developer's request, a preliminary or final plat may be submitted to the county planning board for its review and consideration.

(d) *Certificates for minor and major subdivisions:*

The following signed certificates shall be shown on the original tracing and all copies of the final plat:

(1) **Certificate of Ownership and Dedication**

I (we) hereby certify that I am (we are) the owner(s) of the property shown and described hereon, and that I (we) hereby adopt this plan of subdivision with my (our) free consent, and dedicate all roads and other sites and easements to public or private use as noted in the Disclosure of Private Roadways, where applicable.

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DATE OWNERS(S)

(2) Certification of Private Roads (if applicable)

The roads in this subdivision are private. The property owners are responsible for maintaining and repairing the roads as well as paying the costs thereof. Municipal and other government services may be restricted or not be furnished to the property of owners using private roads for access.

(3) Certificate of Survey and Accuracy

State of North Carolina, \_\_\_\_\_ County, I, \_\_\_\_\_, certify that this plat was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (deed description recorded in Book (file) \_\_\_\_\_, Page \_\_\_\_\_ (slide) \_\_\_\_\_, etc.) (other); that the precision of the survey before adjusting was one (1) part in \_\_\_\_\_ as calculated by latitudes and departures, and that this map was prepared in accordance with G.S. 47-30, as amended. Witness my original signature, registration number, and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Registered Land Surveyor

Official Seal

Registration Number

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that (name of registered surveyor) personally acknowledged the due execution of the foregoing instrument. Witness my hand and official seal this \_\_\_\_\_ day of 19 \_\_\_\_\_.

Notary Public

Official Seal

My commission expires \_\_\_\_\_

(4) Certification of Road Grades and Suitability.

State of North Carolina, \_\_\_\_\_ County, I \_\_\_\_\_, certify that the newly constructed or proposed road grades and slopes were (calculated by me) (calculated under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) and do not exceed eighteen percent (18%).

Witness my original signature, registration number, and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Registered Land Surveyor

Official Seal

or

Professional Engineer

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Registration Number

(5) Certificate of Approvals

I, \_\_\_\_\_, Director of the Transylvania County Planning Department, certify that this final plat complies with the Subdivision Control Ordinance of Transylvania County.

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Date

- (6) Such approval shall be void unless the final plat is offered for filing and recording in the office of the register of deeds of the county within thirty (30) working days from the date of approval.
- (7) If the planning board fails to act on the preliminary or final plat, in writing, within ten (10) working days, the subdivider may seek approval of the preliminary or final plat at the next regularly scheduled meeting of the planning board.

(e) *Specifications for preliminary and final plats:* The preliminary and final plats shall depict or contain the following information. An "\*" indicates that the information is required for preliminary plat approval only. Where "proposed/actual" is noted, the proposed information shall be shown on the preliminary plat and the actual information shall be shown on the final plat. Preliminary and final plats shall be clearly and legibly drawn at a scale of not less than two hundred (200) feet to one (1) inch and shall be drawn on a sheet size of mylar acceptable to the register of deeds of the county.

(1) *Title block:*

- a. Name and address of owner of record.
- b. Name of subdivision.
- c. Location (township, county, state).
- d. Date(s) of survey(s).
- e. Graphic scale and written scale.
- f. Name, address, registration number, and seal of registered land surveyor.
- g. Tax parcel identification number.

(2) *Roads:*

- a. Existing and platted roads on abutting properties and in the proposed subdivision.
- b. Right-of-way, location and dimensions (proposed/actual).
- c. Road name(s).

(3) *Utilities:*

- a. Utility and other easements of record on and abutting to the subdivision.
- b. Transmission lines.
- c. Approximate location of natural gas lines.
- d. Sanitary sewers, location and size if community systems are proposed (proposed/actual).
- e. Water lines, location and size, if community systems are proposed (proposed/actual).
- f. Storm sewers, culverts, detention ponds, and other drainage facilities, if any (proposed/actual).

- (4) *Site calculations:*
  - a. Acreage in total tract to be subdivided.
  - b. Total number of lots.
  - c. Linear feet in roads.
  - d. Area of each lot in acres.
  
- (5) *Other details:*
  - a. Sketch vicinity map showing the relationship between the proposed subdivision and surrounding area.
  - b. Exact boundaries of the tract, shown with bearings and distances as required by G.S. 47 30, as amended (proposed/actual).
  - c. North arrow.
  - d. The location and name of all water courses, as identified on U.S.G.S. 7.5 minute series (topographic) maps.
  - e. Any natural features affecting the site.
  - f. The location of the flood hazard, floodway, and flood-fringe boundaries, if applicable.
  - g. Note all lots or building sites with an elevation of two thousand five hundred forty (2,540) feet above sea level or greater.
  - h. The location of any cemetery.
  - i. Existing buildings or structures, railroads, and bridges on the land to be subdivided.
  - j. Approximate lot lines and distances, and lot numbers(\*).
  - k. Lot lines with bearings and distances and lot numbers.
  - l. Names of adjacent property owners.
  - m. The existing uses of the land within the proposed subdivision.
  - n. Proposed parks or open spaces.
  - o. Location of control corners.
  - p. The accurate location and description of all monuments, reference markers and property and lot corners.
  
- (6) A written statement from the state department of environment, health and natural resources permitting plans for the community sanitary sewer system, if applicable (\*).
  
- (7) A written statement from the state department of environment, health and natural resources approving and permitting plans for a community water system, if applicable (\*).
  
- (8) A copy of the erosion control plan and a written statement from the state department of environment, health and natural resources stating that an erosion control plan has been submitted and approved for the project, if applicable (\*).
  
- (9) A subdivision roads disclosure statement prepared in accordance with G.S. 136-102.6(f), if applicable (\*).
  
- (10) A written statement from the district engineer of the division of highways of the state department of transportation certifying approval of any proposed road and highway plans, if applicable.
  
- (11) Any other information considered by the subdivider, the planning board, and/or planning director to be pertinent to the review of the plat (\*).
  
- (12) All certifications required in section 16-45(d).

(f) *Phased development:* If a developer proposes that a subdivision will be constructed in phases, the following procedure shall apply:

- (1) A master plan showing the entire proposed subdivision and the phases of development, proposed density, proposed type and location of utilities, and proposed development timetable shall be submitted to the planning board for approval.
- (2) Each phase of development shall be preceded by submission and approval of a preliminary plat. The master plan may be submitted prior to or simultaneously with submission of the preliminary plat for the first phase of development.
- (3) As each phase is completed, a final plat must be submitted and approved for that phase.
- (4) Approval of the master plan need not be renewed unless significant design changes or density increases are proposed.

(g) *Resubdivision procedures:* For any replatting or resubdivision of land, the same procedures, rules, and regulations shall apply as prescribed in section 16-45(c)(1).

(Ord. of 2-25-91, Art. VI; Amd. of 7-11-94; Amd. of 6-9-97; Amd. of 7-26-99)

### **Sec. 16-46. Development standards.**

(a) *General requirements:*

- (1) *Conformity to existing maps or plans:* The plat of a subdivision shall conform to any official map or plan adopted by the board of county commissioners, existing on February 25, 1991.
- (2) *Continuation of adjoining road systems:* The proposed road or road layout shall be coordinated with the existing road system of the surrounding area. Where possible, proposed roads shall be the extension of existing roads.
- (3) *Road names:* Proposed roads which are obviously in alignment with existing roads should be given the same name. In assigning new names, duplication shall be avoided and in no case shall the proposed name be phonetically similar to existing names irrespective of the use of a suffix, such as road, drive, place, court, etc. All proposed road names and signs shall be approved by the county planning department in accordance with G.S. 153A-240 and the county road naming ordinance.
- (4) *Private roads:* Private roads may be platted in any subdivision and shall conform to the standards set forth in this article. Private roads shall be set out in protective covenants, deeds, or on plats or any combination of those methods, and shall clearly state that the state and/or county will not be obligated to take over or maintain the road.
- (5) *Lots:* Lot size shall be regulated only to the extent required by the county health department.
- (6) *Flood damage:* All subdivision proposals shall be consistent with the need to minimize flood damage as provided for in the county flood damage control ordinance.
  - a. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed so as to minimize damage to utilities from flooding.
  - b. Fill shall not be used to raise land in the floodway as defined by the Federal Emergency Agency's Flood Insurance Rate Map(s) for Transylvania County, effective March 2, 1998, as amended.

(b) *Road and design standards:* The subdivision roads minimum construction standards are as set forth in this article and as shown in Schedule I below. Note: Private roads constructed to the minimum standards of this article will not meet state department of transportation minimum subdivision road requirements. As a result, the state

department of transportation may not accept these roads without additional improvement(s).

- (1) *Road standards:* Subdivision roads may be designated public or private.
  - a. Public subdivision roads shall be built to minimum construction standards of the state department of transportation as required by G.S. 136-102.6.
  - b. All minor and major subdivision roads shall have approved road name signs installed by the developer and maintained by the developer or the homeowners association. All minor and major subdivision roads intersecting a state-maintained road shall have a stop sign that conforms with the state department of transportation specifications installed by the developer and maintained by the developer or homeowners association. After the state department of transportation accepts the subdivision road(s), the developer or homeowners association shall not be responsible for the maintenance of road name and stop signs.
  - c. Private minor and major subdivision roads shall be built to minimum construction standards set forth in Schedule I below.

Schedule I  
*Design Criteria*

Road Type	Standards
Minimum road right-of-way width shoulder section	45 feet
Minimum roadbed width shoulder section	18 feet
Maximum grade (NC DOT Classification--Hill Terrain)	18 percent
Maximum cut and fill slopes	1.5 to 1 ratio
Minimum shoulder width shoulder section	2 feet
Minimum cul-de-sac radius right-of-way shoulder section	50 feet
Minimum cul-de-sac radius turning radius shoulder section	35 feet

Source: NC Department of Transportation, Subdivision Roads:  
Minimum Construction Standards, July 1, 1985

- d. No road in an area subject to flooding shall be approved if it is more than two (2) feet below the elevation of a 100-year flood. The planning board may require, where necessary, profiles and elevations of roads for areas subject to flooding. Fill may be used for roads, provided such fill does not unduly increase flood heights. Drainage openings for roads in areas subject to flooding shall be provided and shall be so designed as to not restrict the flow of water and unduly increase flood heights.
  - e. Every road shall be designed to accommodate a ten-year stormwater runoff by natural or artificial means.
- (2) *Road design:* Private subdivision roads shall meet the following minimum road design standards:
    - a. All minor or major subdivision roads shall have a minimum right-of-way of forty-five (45) feet. Note: The state department of transportation requires a fifty-foot minimum right-of-way for a

dead-end road more than two thousand five hundred (2,500) feet in length or a loop road more than one (1) mile in length.

- b. Previously platted road right-of-way width. Where a right-of-way less than forty-five (45) feet was recorded or platted prior to the adoption of this article and a forty-five foot right-of-way is not now obtainable for the purpose of accessing the subdivision of land for either a minor or major subdivision, the following minimum standards shall be met by the developer:
  1. The developer or his assignee shall submit a copy of the recorded plat or deed describing and identifying the right-of-way.
  2. The access road shall be a minimum twelve-foot all-weather surface road.
  3. A disclosure statement shall be placed on the final plat stating "This subdivision is accessed by a road which does not have a forty-five foot minimum right-of-way. Transylvania County Emergency vehicles and public utility access to homes within the subdivision may be limited. The North Carolina Department of Transportation is unlikely to accept and maintain roads within the subdivision as public road(s)."
  
- c. Cul-de-sacs. The required turnaround on a dead-end road in a subdivision shall have an unobstructed roadway radius of not less than thirty-five (35) feet. If the road length does not exceed fifteen hundred (1,500) feet and if construction difficulties will not permit a turnaround, the use of a modified "Y" or "T" with one (1) extension extending at least twenty-five (25) feet and the other extending a minimum of fifty (50) feet and a maximum of one hundred (100) feet which will allow a vehicle with a wheel base of at least twenty-five (25) feet to complete a turning movement with a maximum of one (1) backing movement, shall be permitted.
  
- d. Road grades. Maximum road grades shall be eighteen (18) percent. In extreme cases, where the terrain prohibits a lesser grade to attain access to a nearby area, a maximum grade of twenty (20) percent is permissible. No variance shall be granted for any road grade exceeding twenty (20) percent. For any road containing grade(s) exceeding eighteen (18) percent, the following minimum standards shall be met by the developer:
  1. The developer shall submit a report by a professional engineer, with civil engineering qualifications, currently licensed in the state by the state board of registration for professional engineers and land surveyors, stating that there are no reasonable alternative routes to access the adjacent area which do not exceed eighteen-percent grade.
  2. Any road exceeding eighteen-percent grade shall meet state department of transportation minimum construction and paving (bituminous) specifications for the length exceeding eighteen-percent grade plus an additional three hundred (300) feet on each side of the length exceeding eighteen-percent grade. A professional engineer, with civil engineering qualifications, currently licensed in the state by the state board of registration for professional engineers and land surveyors shall identify on the plat(s) the road(s) which have grades exceeding eighteen (18) percent, the point(s) where the eighteen-percent grade begins and terminates, and the additional three-hundred-foot segments to be paved on each side.
  3. A disclosure statement shall be placed on the final plat stating "This subdivision contains roads which exceed eighteen-percent grade(s). Transylvania County Emergency vehicles and public utility access to homes within the subdivision may be limited. The North Carolina Department of Transportation is unlikely to accept and maintain roads within the subdivision as public road(s)."

- (3) *Connections with state road system:* If a new subdivision road (to be dedicated as public or private) will connect to a state system road, a permit authorizing construction on state right-of-way may be required from the division of highways before beginning construction. If required, applications shall be made to the district engineer of the state department of transportation having jurisdiction in this area.
- (4) *Intersections:* When a new subdivision road connects to a state-maintained road, the design standards of the state department of transportation for intersections shall be required.

**Schedule I**  
*Design Criteria*

Road Type	Standards
Minimum road right-of-way width shoulder section	45 feet
Minimum roadbed width shoulder section	18 feet
Maximum grade (NC DOT Classification--Hill Terrain)	18 percent
Maximum cut and fill slopes	1.5 to 1 ratio
Minimum shoulder width shoulder section	2 feet
Minimum cul-de-sac radius right-of-way shoulder section	50 feet
Minimum cul-de-sac radius turning radius shoulder section	35 feet

(Ord. of 2-25-91, Art. VII; Amd. of 7-11-94; Amd. of 7-26-99)

**Sec. 16-47. Installation of improvements.**

- (a) *Permanent reference points:* Prior to the approval of the final plat, permanent reference points shall have been placed in accordance with G.S. 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended.
  - (1) *Monuments:* With each block of a subdivision at least two (2) monuments designated as control corners shall be installed. The surveyor shall install additional monuments as required. All monuments shall be constructed of concrete and shall be four (4) inches in diameter or square at top and six (6) inches at bottom and not less than three (3) feet in length. Each monument shall have imbedded in its top, or attached by suitable means, a non-corroding metal plate which is marked plainly with the point, the surveyor’s registration number, the month and year it was installed and the word “monument” or “control corner.” A monument shall be set at least thirty (30) inches in the ground with at least six (6) inches exposed above the ground unless this requirement is impractical.
  - (2) *Property markers:* A steel or wrought iron pipe or the equivalent, not less than three-fourths (3/4) inch in diameter and at least thirty (30) inches in length, shall be set at all corners where practical or where the ground will allow, except those located by monuments or natural corners.
- (b) *Improvements:* Approval of the final plat shall be subject to the subdivider’s having guaranteed, to the satisfaction of the county, the installation of said improvements. The county reserves the right to inspect, reject, stop, or otherwise cease the construction of all service facilities or improvements in the event the same are not being constructed in accordance with the plans, specification standards, policies, or other requirements of the county.
  - (1) *Grading:* All roads shall be graded to their full roadbed width of eighteen (18) feet and for an additional two (2) feet on each side of the roadbed. Finished grade, cross section, and profiles shall be approved by

a registered land surveyor or professional engineer, with civil engineering qualifications, currently licensed in the state by the state board of registration for professional engineers and land surveyors.

- a. Preparation. Before grading is started, the required roadbed width area shall be first cleared of all stumps, roots, brush, and other objectionable materials.
- b. Cuts. All tree stumps, boulders, and other obstructions within the proposed roadbed width shall be removed to a depth of one (1) foot below the subgrade.
- c. Fill. All suitable material from roadbed cuts may be used in the construction of fills, approaches, or at other places as needed. The fill shall be installed and compacted.

- (2) *Installation of utilities:* All public or private water and sewerage systems shall be installed and shall meet the requirements of the county health department or other governmental authorities having jurisdiction thereof.
- (3) *Roadbed base:* After preparation of the subgrade, the roadbed shall be surfaced with material of no lower classification than crushed rock, stone, or gravel. The size of the crushed rock or stone shall be from one and one-half (1 1/2) inches down, including dust. Spreading of the stone shall be done uniformly over the area to be covered by means of appropriate spreading devices and shall not be dumped in piles. The stone shall be rolled until thoroughly compacted. The compacted thickness of the stone roadbed shall be no less than six (6) inches.

(c) *Storm water drainage:* The subdivider shall provide disposal of surface water by natural or artificial means subject to the following standards of the state department of transportation, as reflected in Handbook for the Design of Highway Surface Drainage Structures, (1973), subject to review by the planning board:

- (1) No surface water shall be channeled or directed into a sanitary sewer.
- (2) Where feasible, the subdivider shall connect to an existing storm drainage system.
- (3) Where an existing storm drainage system cannot feasibly be provided for the subdivision, a surface drainage system shall be provided to protect the development from water damage.
- (4) Anyone constructing a dam or impoundment within the subdivision must comply with the NC Dam Safety Law of 1967 and the NC Administrative Code title 15, Subchapter 2K.
- (5) In all areas of special flood hazards, all subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

(d) *Guarantee of improvements:* Where the required roadbed and utility improvements have not been completed prior to the submission of the final plat for approval, the approval of said plat shall be subject to the subdivider guaranteeing the installation of the improvements within a period of time specified by the planning director after consulting with the developer or his engineer(s). Either of the methods described below may be used to guarantee improvements:

- (1) Filing a performance or surety bond or an irrevocable standby letter of credit in the amount of one hundred (100) percent of the cost to complete the work as determined by a professional engineer with civil engineering qualifications currently licensed in the state or a state-licensed grading contractor, at the developer's expense. Portions of the deposit may be released as work progresses.
- (2) Depositing or placing in escrow a certified check or cash in an amount equal to one hundred twenty-five (125) percent of the amount in section 16-47(d)(1). Portions of the deposit may be released as work progresses as specified by the planning director after consulting with the developer or his engineer.



(Ord. of 2-25-91, Art. VIII; Ord. of 3-9-92; Amd. of 7-26-99)

**Sec. 16-48. Legal provisions.**

(a) *General procedure for plat approval:* After February 25, 1991, no plat of a subdivision of land within the county's jurisdiction shall be filed or recorded until it has been submitted to and approved by the county planning board and/or the planning director, and until this approval is entered in writing on the face of the plat by the chairman of the planning board or the planning director. The register of deeds shall not file or record a plat of a subdivision of land located within the planning jurisdiction of the county that has not been approved in accordance with these provisions, nor shall the clerk of court order or direct the recording of a plat if the recording would be in conflict with this article. Approval of a minor or major preliminary subdivision plat by either the planning department or the planning board shall be effective for a period not to exceed one (1) year and thereafter expire and be considered null and void. A six-month extension may be granted by the planning department or planning board when reasonable cause is shown.

(b) *Administrator:* The county planning department through and by the county planning director is hereby designated a planning agency pursuant to G.S. 153A-321 and is appointed to serve as the subdivision administrator.

(c) *Administration fee:* A fee for reviewing and approving subdivisions and major subdivisions shall be established by the county commissioners and posted in the planning department.

(d) *Variances:* Where, because of severe topographical or other conditions peculiar to the site, strict adherence to the provisions of this article would cause an unnecessary hardship, the planning board may authorize a variance, if such variance can be made without destroying the intent of this article. Any variance thus authorized is required to be entered in writing in the minutes of the meeting of the planning board and the reasoning on which the departure was justified set forth.

(e) *Penalties for violation:* After February 25, 1991, any person who, being the owner or agent of the owner of any land located within the planning jurisdiction of the county, thereafter subdivides his land in violation of this article or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of land before the plat has been properly approved under the terms of this article and recorded in the office of the county register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transactions from this penalty. The county, through its attorney or other official designated by the board of county commissioners, may enjoin illegal subdivision, transfer, or sale of land by action for injunction. Further, violators of this article shall be subject, upon conviction, to fine and/or imprisonment as provided by G.S. 14-4. Each day that said plat or property is not in compliance with this article shall constitute a separate and distinct offense.

(f) *Amendments:* The board of county commissioners may from time to time amend the terms of this article, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the planning board for review and recommendation. The planning board shall have thirty (30) working days from the time the proposed amendment is submitted to it within which to submit its recommendation to the county commissioners. If the planning board fails to submit a report within the specified time, it shall be deemed to have recommended approval of the amendment. No amendment shall be adopted by the board of county commissioners until they have held a public hearing on the amendment. Notice of the hearing shall be published in a newspaper of general circulation in the county at least once a week for two (2) successive calendar weeks prior to the hearing.

(Ord. of 2-25-91, Art. VIII)

**Secs. 16-49--16-59. Reserved.**

**ARTICLE IV.**

**HISTORIC PRESERVATION COMMISSION\***

\* **Editors Note:** An ordinance adopted November 14, 1994, was intended by the city to amend Art. IV, §§ 16-60--16-75, in its entirety; however, such ordinance did not provide for specific section designation and was, therefore, included as §§ 16-60--16-84 at the editor's discretion. Prior to such amendment, §§ 16-60--16-75 pertained to the historic properties commission and derived from §§ 1--13 of an ordinance adopted Jan. 12, 1987, and from an ordinance adopted March 27, 1989.

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### **Sec. 16-60. Creation.**

There is hereby established, by authority of North Carolina General Statutes 160A-400.1 through 160A-400.14, and through interlocal agreement among Transylvania County, the City of Brevard and the Town of Rosman, the Transylvania County Joint Historic Preservation Commission, hereafter referred to as the historic preservation commission or commission.

(Ord. of 11-14-94)

### **Sec. 16-61. Appointment of members; terms; qualifications.**

(a) The commission shall consist of nine (9) members appointed by the county board of commissioners, including six (6) from the county, two (2) from the City of Brevard and one (1) from the Town of Rosman. All members shall reside within the planning and zoning jurisdiction, established pursuant to North Carolina General Statute 160A-360, of the county or of a municipality whose governing body adopts this article.

(b) A majority of the members of the commission shall have demonstrated special interest, experience, or education in history, architecture, archaeology or related fields. In addition, all commission members shall have a demonstrated interest, competence, or knowledge in historic preservation.

(c) In making appointments to the commission, the county board of commissioners or the municipal governing body shall make a good faith effort to appoint professional members from the disciplines of architecture, history, architectural history, planning, archaeology, or other related fields, to the extent such professionals are available in the community.

(d) Commission members shall serve staggered terms of three (3) years. Initially, one-third ( 1/3) shall serve a term of three (3) years, one-third ( 1/3) shall serve a term of two (2) years, and one-third ( 1/3) shall serve a term of one (1) year. Thereafter, all appointments shall be for a term of three (3) years.

(e) A member may be reappointed for a second consecutive three-year term, but after two (2) consecutive three-year terms, a member shall be ineligible for reappointment until one (1) calendar year has elapsed from the date of the termination of his or her second three-year term. Upon expiration of the appointment of the member serving as chairman, that member shall be reappointed to serve one (1) additional year as a nonvoting member and advisor to the commission.

(Ord. of 11-14-94)

### **Sec. 16-62. Compensation of members.**

Commission members shall serve without compensation, except that they may be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the commission.

(Ord. of 11-14-94)

### **Sec. 16-63. Officers; advisory boards and committees.**

(a) The commission shall select from among its members a chairman, vice-chairman and a secretary who shall be elected annually by the commission members.

(b) The commission may appoint advisory bodies and committees as appropriate.

(Ord. of 11-14-94)

**Sec. 16-64. Meetings--Time, place.**

The commission shall establish a meeting time and shall meet at least once a month and more often as it shall determine and require, unless there is not sufficient business to warrant a meeting. All meetings shall be held in accordance with the North Carolina Open Meetings Law, North Carolina General Statutes, Chapter 143, Article 3C. Reasonable notice of the time and place thereof shall be given to the public.

(Ord. of 11-14-94)

**Sec. 16-65. Same--Minutes.**

The commission shall keep permanent minutes of all its meetings, which shall be a public record. The minutes shall record attendance of commission members, its resolutions, proceedings, findings, recommendations, and actions.

(Ord. of 11-14-94)

**Sec. 16-66. Same--Attendance.**

(a) Any member of the commission who misses more than three (3) consecutive regular meetings or more than one-half ( 1/2) the regular meetings in a calendar year shall lose his or her status as a member of the commission and shall be replaced or reappointed by the board of county commissioners or municipal governing body, as appropriate. The appropriate governing body shall act within sixty (60) days to fill vacancies on the commission. The sixty-day period commences with the date of an expired term, letter of resignation, or the time the commission chairman recognizes that there is a vacancy, as defined by the commission's rules of procedure. Appointments to any vacancy shall be for the remainder of the term of the vacant position for which the appointment is made.

(b) Absence due to sickness, death in the family, or other emergencies of like nature shall be recognized as approved absences and shall not affect the member's status on the commission, except, that in the event of a long illness or any other such cause for prolonged absence, the member shall be replaced.

(Ord. of 11-14-94)

**Sec. 16-67. Appropriations.**

The board of county commissioners, the City of Brevard, and the Town of Rosman are authorized to make appropriations to the commission in any amount necessary for the expenses of the operation of the commission, and may make additional amounts available as necessary for acquisition, restoration, preservation, operation, and management of historic buildings, structures, sites, areas or objects designated as historic landmarks or of land on which such buildings or structures are located, or to which they may be moved.

(Ord. of 11-14-94)

**Sec. 16-68. Receipt of gifts.**

The board of county commissioners, the City of Brevard, and the Town of Rosman shall have the right to accept gifts and donations in the name of the commission for historic preservation purposes.

(Ord. of 11-14-94)

**Sec. 16-69. Powers.**

The commission shall be authorized within the planning and zoning jurisdiction of the county and of the municipalities adopting this article to:

- (1) Undertake an inventory of properties of historical, prehistorical, architectural and/or cultural significance.
- (2) Recommend to the county board of commissioners or the municipal governing bodies within their

respective jurisdictions to be designated by ordinance as "historic districts" and individual structures, buildings, sites, areas or objects to be designated by ordinance as "landmarks."

- (3) Recommend to the county board of commissioners or the municipal governing bodies within their respective jurisdictions that designation of any area as a historic district, or part thereof, or designation of any building, structure, site, area or object as a landmark, be revoked or removed for cause.
- (4) Review and act upon proposals for alterations, demolition or new construction within historic districts, or for the alteration or demolition of designated landmarks.
- (5) Conduct an educational program with respect to historic districts and landmarks within its jurisdiction.
- (6) Cooperate with the state, federal and local government in pursuance of the purposes of this article; offer or request assistance, aid, guidance or advice concerning matters under its purview or of mutual interest. The county board of commissioners or the municipal governing bodies, or the commission when authorized by the county board of commissioners and the municipal governing bodies, may contract with the state or the United States, or any agency of either, or with any other organization, provided the terms are not inconsistent with state or federal law.
- (7) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof, however, no member, employee or agent of the commission may enter any private building or structure without express consent of the owner or occupant thereof.
- (8) Prepare and recommend the official adoption of a preservation plan for the county or a municipality, or a preservation element as part of a county or municipal comprehensive plan.
- (9) Acquire, by any lawful means, the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property.
- (10) Restore, preserve and operate historic properties.
- (11) Negotiate at any time with the owner of a building, structure, site, area or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate.

(Ord. of 11-14-94)

#### **Sec. 16-70. Rules of procedure and design principles and guidelines required.**

Prior to any action to enforce a historic district ordinance and prior to adoption of or amendment to an ordinance designating a historic landmark, the commission shall adopt bylaws establishing rules of procedure governing its meetings and the conduct of official business. The commission shall also prepare and adopt principles and guidelines for new construction, alterations, restorations, additions, moving, and demolition of properties designated as landmarks or within historic districts.

(Ord. of 11-14-94)

#### **Sec. 16-71. Annual report.**

An annual report shall be prepared and submitted to the state historic preservation office and to the county board of commissioners. That report shall include a comprehensive review of the commission's activities, actions and problems.

(Ord. of 11-14-94)

**Sec. 16-72. Designation of historic districts and landmarks.**

The designation of a historic district or landmark shall be effective through the adoption of an ordinance by the board of county commissioners for a district or landmark located within the county's planning jurisdiction and by the municipal governing body for a district or landmark located within the municipality's zoning jurisdiction.

(1) *Historic districts.*

- a. Historic districts established pursuant to this article shall consist of areas which are deemed to be of special significance in terms of the county's or municipality's history, prehistory, architecture and/or culture. Such district must also possess integrity of design, setting, materials, feeling and association.
- b. The board of county commissioners or the municipal governing body may, as part of a zoning or other ordinance, designate and, from time to time, amend one (1) or more historic districts within its zoning jurisdiction. Such ordinance may treat historic districts either as a separate use district classification or as districts which overlay other (base) zoning districts. Where historic districts are designated as separate use districts, the zoning ordinance may include, as uses by right or as conditional uses, those uses found by the preservation commission to have existed during the period sought to be restored or preserved, or to be compatible with the restoration or preservation of the district. Where historic districts are treated as overlay districts, all uses permitted in the underlying (base) zoning district, whether by right or as a special use, shall be permitted in the historic district.
- c. No district shall be designated or amended until the following procedure has been carried out:
  1. An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and a description of the boundaries of such district has been prepared.
  2. The department of cultural resources, acting through the state historic preservation officer or his or her designee, shall have made an analysis of, and recommendations concerning, such report and description of proposed boundaries. Failure of the department to submit its written analysis and recommendations to the board of county commissioners or the municipal governing body within thirty (30) calendar days after a written request for such analysis has been received by the department of cultural resources shall relieve the board of county commissioners or municipal governing body of any responsibility for awaiting such analysis, and the board of county commissioners or municipal governing body may, at any time thereafter, take any necessary action to adopt or amend the zoning or other ordinance.
  3. The board of county commissioners or municipal governing body may also, in its discretion, refer the report and the proposed boundaries to any other interested body for its recommendations prior to taking action to amend the zoning or other ordinance.
  4. With respect to any changes in the boundaries of such district subsequent to its initial establishment, or the creation of additional districts, the investigative studies and reports required by subsection c.1. of this section shall be prepared by the preservation commission and shall be referred to the planning board of the county or the municipality in whose jurisdiction the district is located for its review and comment according to the procedures set forth in the zoning ordinance. Changes in the boundaries of an initial district or proposal for additional districts shall be submitted to the department of cultural resources in accordance with the provisions of subsection c.2. of this section.

5. Upon receipt of these reports and recommendations, the board of county commissioners or the municipal governing body may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning or other ordinance provisions.

(2) *Historic landmarks.*

- a. No property shall be recommended for designation as an historic landmark unless it is deemed and found by the preservation commission to be of special significance in terms of its historical, prehistorical, architectural, or cultural importance. It must also possess integrity of design, setting, workmanship, materials, feeling and/or association.
- b. Upon complying with the required landmark designation procedures set forth herein, the board of county commissioners or the municipal governing body may adopt and, from time to time, amend or repeal an ordinance designating one (1) or more historic landmarks.
- c. The ordinance shall describe each property designated in the ordinance, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural or prehistorical value, including the land area of the property so designated, and any other information the board of county commissioners or the municipal governing body deems necessary. For each building, structure, site, area or object so designated as a landmark, the ordinance shall require that the waiting period set forth in this article be observed prior to its demolition. A suitable sign for each property designated as a landmark may be placed on the property with the owner's consent; otherwise the sign may be placed on a nearby public right-of-way.
- d. As a guide for the identification and evaluation of landmarks, the commission shall, at the earliest possible time and consistent with the resources available to it, undertake an inventory of properties of historical, architectural, prehistorical and cultural significance within the county and the participating municipalities. Such inventories and any additions or revisions thereof shall be submitted as expeditiously as possible to the division of archives and history.
- e. No property shall be designated as a landmark until the following steps have been taken:
  1. The commission shall make, or cause to be made, an investigation and report on the historic, architectural, prehistorical, educational, or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. Such report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.
  2. The department of cultural resources, acting through the state historic preservation officer, or his or her designee, shall, either upon request of the department or at the initiative of the commission, be given an opportunity to review and comment upon the substance and effect of the designation of any landmark. All comments will be provided in writing. If the department does not submit its comments to the commission within thirty (30) days following receipt by the department of the report, the commission and the board of county commissioners or the municipal governing body shall be relieved of any responsibility to consider such comments.
  3. The commission and the board of county commissioners or the municipal governing body shall hold a joint public hearing (or separate public hearings) on the proposed ordinance. Reasonable notice of the time and place thereof shall be given.
  4. Following the public hearing(s), the board of county commissioners or the municipal

governing body may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.

5. Upon adoption of the ordinance, the owners and occupants of each landmark shall be given written notification of such designation insofar as reasonable diligence permits. One (1) copy of the ordinance and all amendments thereto shall be filed by the commission in the office of the register of deeds of the county. Each landmark shall be indexed according to the name of the owner of the property in the grantor and grantee indexes in the register of deeds office and the commission shall pay a reasonable fee for filing and indexing. For landmarks located in municipalities, a second copy of the ordinance and all amendments thereto shall be kept on file in the office of the municipal clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and all amendments thereto shall be given to the building inspector. The fact that a building, structure, site, area or object has been designated a landmark shall be clearly indicated on all tax maps maintained by the county for such period as the designation remains in effect.
6. Upon the adoption of the landmark ordinance or any amendments thereto, it is the duty of the commission to give notice thereof to the tax supervisor of the county. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes.

(Ord. of 11-14-94)

**Sec. 16-73. Certificate of appropriateness--Required.**

(a) From and after the designation of a landmark or a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor any above-ground utility structure, nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished on such landmark or within the historic district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the preservation commission. Such a certificate is required to be issued by the preservation commission prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this article. A certificate of appropriateness shall be required whether or not a building or other permit is required.

(b) For purposes of this article, "exterior features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, other appurtenant features, historic signs, color, and significant landscape, archaeological and natural features of the area. In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, material, size and location of all such signs.

(c) The commission shall have no jurisdiction over interior arrangement, except as follows. The jurisdiction of the commission over interior spaces shall be limited to specific interior features of architectural, artistic, or historical significance in publicly owned landmarks; and of privately owned landmarks for which consent for interior review has been given by the owners. Such consent of an owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the register of deeds office and indexed according to the name of the owner of the property in the grantor and grantee indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the commission's jurisdiction over the interior.

(Ord. of 11-14-94)

**Sec. 16-74. Same--Standard for appropriate change.**

There shall be a single standard for appropriate change in the districts or to the landmarks, expressed as follows:

The preservation commission shall take no action under this article except to prevent the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant features, outdoor advertising signs or other significant features which would be incongruous with the special character of the historic district or landmark. (Ord. of 11-14-94)

**Sec. 16-75. Same--Design guidelines.**

No certificate of appropriateness shall be granted unless the commission finds that the application complies with the principles and guidelines adopted by the commission for review of exterior changes. The following design features shall be considered in reviewing applications for certificates of appropriateness:

- (1) Size of the building.
- (2) Height of the building.
- (3) Proportion of width to height of the total building facade.
- (4) Scale, determined by the size of the units of construction and architectural details in relation to the human scale and also by the relationship of the building mass to adjoining open space and nearby buildings and structures; maintenance of pedestrian scale.
- (5) General form and proportion of buildings and structures, and the relationship of additions to the main structure.
- (6) Lot coverage, defined as the percentage of the lot area covered by primary structures.
- (7) Setback, defined as the distance from the lot lines to the building.
- (8) Orientation of the building to the street.
- (9) Spacing of buildings, defined as the distance between adjacent buildings.
- (10) Architectural style.
- (11) General design.
- (12) Expression of architectural detailing.
- (13) General arrangement of the exterior of a building or other structure.
- (14) Roof shapes, forms and materials.
- (15) Kind and texture of building material and surfaces.
- (16) Type, style, size, proportion, shape, positioning, location, and pattern of all windows and doors, light fixtures, signs, and other appurtenant features.
- (17) Style, material, size, and location of outdoor advertising signs.
- (18) Use of regional or local architectural traditions.
- (19) Color.
- (20) Significant landscape features.



- (21) Walls and fences: physical ingredients, such as brick, stone or wood walls, wrought iron fences, evergreen landscape masses, or combinations of these.
- (22) Ground cover or paving.
- (23) Significant natural features.
- (24) Significant archaeological features.

(Ord. of 11-14-94)

**Sec. 16-76. Same--Administrative approval of minor works.**

(a) Prior to adoption by the preservation commission of detailed standards and guidelines, upon receipt of a completed application, the commission administrator may review and approve applications for a certificate of appropriateness for minor works as defined below.

(b) Minor works are defined as those exterior changes which do not involve substantial alterations, additions or removals that could impair the integrity of the property and/or district as a whole. Such minor work items shall be limited to those listed in the commission's rules of procedure.

(c) No application for a certificate of appropriateness for a minor work may be denied without the formal action of the commission.

(d) All minor works applications approved by the commission administrator shall be forwarded to the commission in time for its next scheduled meeting.

(Ord. of 11-14-94)

**Sec. 16-77. Same--Applicability to state and other government entities.**

The state (including its agencies, political subdivisions and instrumentalities), the county, the towns and cities, and all public utilities shall be required to obtain a certificate of appropriateness for construction, alteration, moving, or demolition within the historic district or on designated landmarks.

(Ord. of 11-14-94)

**Sec. 16-78. Same--Standards for review of applications of the state.**

The Secretary of the Interior's "Standards for Treatment of Historic Properties" shall be the sole principles and guidelines used in reviewing applications of the state for certificates of appropriateness.

(Ord. of 11-14-94; Amd. of 12-9-96)

**Sec. 16-79. Same--Certain changes not prohibited.**

Nothing in this article shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district or on a landmark which does not involve a change in design, materials, or outward appearance thereof; the ordinary maintenance or repair of streets, sidewalks, pavement markings, street signs, or traffic signs; [or] the construction, reconstruction, alteration, restoration or demolition of any such feature which the building inspector shall certify is required by the public safety because of an unsafe or dangerous condition. Nothing herein shall be construed to prevent the maintenance or, in the event of an emergency, the immediate restoration, of any existing above-ground utility structure without approval by the commission.

(Ord. of 11-14-94)

**Sec. 16-80. Same--Application.**

(a) Applications for a certificate of appropriateness shall be obtained from and, when completed, filed with the administrator for the preservation commission. The application shall be filed at least twenty-one (21) days prior to the next regularly scheduled meeting of the commission. Each application shall be accompanied by sketches, drawings, photographs, specifications, descriptions and other information of sufficient detail to clearly show the proposed exterior alterations, additions, changes or new construction. The names and mailing addresses of property owners filing and/or subject to the application and the addresses of property within one hundred (100) feet on all sides of the property which is the subject of the application must also be filed. No application which does not include the aforementioned information will be accepted.

(b) It shall be the policy of the commission, in regard to applications involving new construction or extensive alterations and/or additions to existing structures, that a subcommittee of the commission shall be available to meet with persons involved in planned or pending applications in order to advise them informally at an early stage in the development process concerning the commission's guidelines, the nature of the area where the proposed project will take place, and other relevant factors. The members of the subcommittee, collectively and individually, shall refrain from any indication of approval or disapproval. Advice or opinions given by any member of the subcommittee at such an informal meeting shall not be considered official or binding upon the commission.

(Ord. of 11-14-94)

### **Sec. 16-81. Same--Action on application.**

(a) Prior to the issuance or denial of a certificate of appropriateness, the applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard. The commission shall notify, by mail, not less than one (1) week prior to the meeting at which the matter is to be heard, the owners of property within one hundred (100) feet on all sides of the subject property. The commission may hold a public hearing on any application when deemed necessary.

(b) Applications for certificates of appropriateness shall be acted upon within ninety (90) days after filing; otherwise, the application shall be deemed to be approved and a certificate shall be issued. An extension of time may be granted by mutual consent of the commission and the applicant.

(c) As part of the review procedures, the commission may view the premises and seek the advice of the department of cultural resources or other such expert advice as it may deem necessary under the circumstances.

(d) The action on an application shall be approval, approval with conditions or denial. The decision of the commission must be supported by specific findings of fact indicating the extent to which the application is or is not congruous with the special character of the historic district or landmark.

(Ord. of 11-14-94)

### **Sec. 16-82. Same--Appeals.**

(a) In any action granting or denying a certificate of appropriateness, an appeal by an aggrieved party may be taken to the board of adjustment.

(b) Written notice of the intent to appeal must be sent to the commission, postmarked within thirty (30) days following the decision. Appeals shall be in the nature of certiorari. Appeals of decisions of the board of adjustment shall be heard by the superior court of the county.

(c) The state shall have a right of appeal to the state historical commission, which shall render its decision within thirty (30) days from the date that a notice of appeal by the state is received by the historical commission. The decision of the historical commission shall be final and binding upon both the state and the commission.

(Ord. of 11-14-94)

### **Sec. 16-83. Same--Enforcement of compliance; remedies.**

(a) Compliance with the terms of the certificate of appropriateness shall be enforced by the zoning administrator or the commission. Failure to comply with the certificate shall be a violation of the zoning ordinance and is punishable according to established procedures and penalties for such violations.

(b) In case any building, structure, site, area or object designated as a landmark or within a historic district is about to be demolished, whether as a result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with this article, the board of county commissioners, the municipal governing body, the commission, or other party aggrieved by such action may institute any appropriate action or proceeding to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such a building or structure.

(Ord. of 11-14-94)

#### **Sec. 16-84. Same--Delay in demolition of landmarks and buildings within historic districts.**

(a) An application for a certificate of appropriateness authorizing the demolition, removal, or destruction of a designated landmark or a building, structure or site within a historic district may not be denied, except as provided in subsection (c) below; however, the effective date of such a certificate may be delayed for up to three hundred sixty-five (365) days from the date of approval. The period of delay shall be reduced by the commission if it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of the delay. During the delay period, the commission shall negotiate with the owner in an effort to find a means of preserving the building, structure or site. If the commission finds that a building, structure or site has no special significance or value toward maintaining the character of a district, it shall waive all or part of such period of delay and authorize earlier demolition or removal.

(b) If the commission has voted to recommend the designation of a landmark or the designation of an area as a historic district, and final designation has not been made by the board of county commissioners or the municipal governing body, the demolition or destruction of any building, structure or site in the proposed district or on the property of the designated landmark may be delayed by the commission for up to one hundred eighty (180) days or until the county board of commissioners or the municipal governing body takes final action on the designation, whichever occurs first.

(c) The county board of commissioners or the municipal governing body may enact an ordinance to prevent the demolition by neglect of any designated landmark or any structure or building within the established historic district. Such ordinance shall provide appropriate safeguards to protect property owners from undue hardship.

(d) An application for a certificate of appropriateness authorizing the demolition of a building, structure or site determined by the state historic preservation officer as having statewide significance, as defined in the criteria of the National Register of Historic Places, may be denied except where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

(Ord. of 11-14-94)

#### **Secs. 16-85--16-100. Reserved.**

### **ARTICLE V.**

#### **SIGN REGULATIONS\***

**(NOTE: SIGN REGULATIONS HAVE BEEN AMENDED, AMENDMENT OF WHICH IS NOT A PART OF THESE CODIFIED ORDINANCES AS OF THIS DATE – PLEASE REFER TO SIGN ORDINANCE THAT IS PUBLISHED SEPARATELY ON THE COUNTY WEB SITE)**

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\* **Editors Note:** An ordinance adopted Sept. 23, 1991, pertaining to sign regulations, did not specifically amend the Code; hence, codification of Arts. I--X as Art. V, §§ 16-101--16-110, was at the discretion of the editor.

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**Sec. 16-101. Short title.**

This article shall be known and cited as the Sign Control Ordinance of Transylvania County, North Carolina. (Ord. of 9-23-91, Art. I)

**Sec. 16-102. Authority.**

Pursuant to the authority and provision conferred in Chapter 153A-121(a) of the North Carolina General Statutes, the county board of commissioners hereby ordain and enact into law these sections. (Ord. of 9-23-91, Art. II)

**Sec. 16-103. Purpose.**

The purpose of this article shall be to:

- (1) Guide and regulate the construction and placement of signs in the county in order to preserve the scenic and aesthetic features of the county and the quality of life for residents and visitors. The board of commissioners is aware of, and sensitive to, the need for local businesses to adequately identify their products and services and is committed to safeguarding the interests of local businesses while providing reasonable regulations.
- (2) Insure the safety of the local and visiting motorist on the roads in the county by reducing the distracting influence of uncontrolled signs throughout the county.

(Ord. of 9-23-91, Art. III)

**Sec. 16-104. Jurisdiction.**

This article shall apply to all areas of the county located outside the planning jurisdiction of any incorporated city or town. No sign as herein defined may be constructed, maintained, posted, placed, replaced, hung, painted or repainted in any area of the county outside of the corporate limits of any incorporated city or town except in accordance with this article. Municipalities within the county may elect to allow this article to be effective within their corporate limits. This article shall not apply within any municipality's extraterritorial jurisdiction.

(Ord. of 9-23-91, Art. IV)

**Sec. 16-105. Definitions.**

For the purpose of this article, certain words or terms used herein are defined as follows:

*Copy:* The characters, letters or illustrations displayed on a sign face.

*Directional sign:* All off-premise signs providing directions to a business, office or other activity. If a sign contains any additional message or exceeds the maximum area, it shall be construed as an off-premise advertising sign.

*Directly-illuminated sign:* A sign designed to give forth artificial light directly (or through transparent or translucent material) from a light source within or attached to such sign.

*Dwelling unit:* A house, apartment or a group of homes occupied or intended for occupancy as separate living quarters for one (1) or more humans.

*Exempt sign:* Any sign which is specifically listed as exempt from this article. Exempt signs are not regulated by the terms of this article and shall not require a permit.

*Freestanding sign:* The general term for any sign which is supported from the ground and not attached to a building.

*Indirectly illuminated sign:* A sign designed to have illumination from a detached light source, shielded so that no direct rays from the light source are visible elsewhere than on the lot where said illumination occurs.

*Nonconforming sign:* Existing signs that are constructed and in place prior to the adoption of this article and which do not conform to the provisions of this article, as amended, are declared nonconforming signs. An illegal sign is not a nonconforming sign.

*Off-premise sign:* Any sign advertising a product, service, business or activity sold, located or conducted elsewhere than on the premises where the sign is located.

*On-premise sign:* A sign that draws attention to or communicates information about a business, service, commodity, that exists or is conducted, sold, offered, maintained or provided at a location on the premises where the sign is located.

*Portable sign:* Any freestanding sign that is not permanently affixed to the ground. A sign is permanently affixed to the ground if its supporting elements are set in a concrete base in the ground or the sign is otherwise securely fastened to the ground and is intended to remain in one (1) location for an indefinite period. Without limiting the generality of the foregoing, portable signs shall include any sign mounted on a trailer or on wheels as well as "V" shaped or sandwich signs that can with little difficulty be moved from place to place.

*Setback:* The shortest horizontal distance from the property line or right-of-way to the nearest point (leading edge) of the sign or its supporting member.

*Shopping center:* A development having five (5) or more establishments located on the same parcel or on abutting parcels and planned as an integrated development.

*Sight distance triangle:* The land adjoining a road intersection that is kept clear of obstructions between three (3) and seven (7) feet above ground as measured along the road flow lines above ground to ensure visibility and the safety of motorists and pedestrians. The protected sight distance area is the triangle with legs that are the intersecting flow lines of two (2) roads at an intersection. Where local roads meet, the legs shall extend at least thirty-five (35) feet each way from the intersection of the edge of the traveled way.

*Sign:* Any display of letters, words, numbers, figures, devices, emblems, pictures, logos, or any other means whereby the same are made visible for the purpose of making anything known, whether such display be made on, or attached to, or as a part of a structure, surface, or any other object whether natural or manmade.

*Sign area (sign face):* The area of a sign shall be considered to be that of the smallest rectilinear figure which encompasses all lettering, wording, design or symbols, together with any background difference on which the sign is located, if such background is designed as an integral part of and related to the sign. All cutouts or extensions shall be included in the area of a sign. Supports and bracing which are not intended as part of the sign shall be excluded.

*Sign height:* Sign height shall be measured from the ground directly below the center of the sign or from the road grade of the closest point in the road the sign is located along, whichever is higher, to the sign or sign structure's highest point.

*Temporary sign:* A sign that is displayed only for a specified period of time. If a sign display area is permanent but the copy displayed is subject to change, that sign shall not be regarded as temporary.  
(Ord. of 9-23-91, Art. V)

## **Sec. 16-106. Sign regulations.**

(a) *Permit required.* Signs constructed, placed or maintained, except as otherwise prohibited, exempted or not permitted by this section, require a sign permit. Signs permitted by this article shall be constructed in accordance

with the NC State Building Codes, as amended.

- (b) *Signs exempted:* The following signs are exempt from this article:
  - (1) Government signs including, but not limited to, traffic warning or regulatory signs including building identification, directional, information and welcome signs.
  - (2) Trade names and graphics which are located on newspaper, soft drink, gasoline pumps and similar vending devices.
  - (3) Flags or insignia of any governmental or nonprofit organization when not displayed as an advertising device.
  - (4) Warning signs posted by utility or construction companies.
  - (5) Commemorative tablets, markers or monuments constructed by or with the permission of the county board of commissioners.
  - (6) Signs on operational motor vehicles indicating the name of a business, when the vehicle is not intended to be used solely for a display of signs.
  - (7) Signs required by law, statute or ordinance.
  - (8) Directional signs to commercial business or direction for sale of real estate or personal property, such as temporary realtor's signs and yard sale signs.
    - a. Directional signs shall not exceed thirty-two (32) square feet in area per sign face and shall not exceed eight (8) feet in height or length per sign face and shall have a maximum height of twelve (12) feet.
    - b. Not more than three (3) off-premise directional signs shall contain directions to the same activity or business location on the same road.
  - (9) Temporary signs, decorations or displays which are associated with any national, local or religious holiday or celebration for a maximum time period of thirty (30) calendar days before and ten (10) calendar days after.
- (c) *Signs prohibited.* The following signs are prohibited:
  - (1) Signs obstructing the view of motorists entering or exiting roads or highways, or interfering with the driver's view of approaching, merging or intersecting traffic.
  - (2) Signs creating unsafe distractions to motorists by incorporating flashing or blinking lights or signs with moving parts or parts which simulate movement, not including signs having only time and temperature messages. Signs with beams or rays of light which are directed on any residential dwelling or at any portion of a roadway and are of such intensity as to impair a driver's vision thereby interfering with the operation of a motor vehicle. No illuminated sign shall interfere with or obscure an official traffic sign, device or signal.
  - (3) Any nongovernmental sign resembling a public safety warning or traffic sign.
  - (4) Signs, whether temporary or permanent, within any road or highway right-of-way, with the exception of governmental signs.

- (5) Signs constructed or maintained upon trees and utility poles or painted or drawn upon natural rock formations or other natural features.
  - (6) Off-premise signs designed to be visible from a road, or a portion thereof, designated as a scenic corridor by the county board of commissioners.
  - (7) Signs containing words or graphics that are obscene, as defined in Chapter 15 of the North Carolina General Statutes.
- (d) *Off-premise signs.*
- (1) Off-premise signs shall not exceed one hundred fifty (150) square feet per sign face, shall not exceed twenty (20) feet in horizontal length per sign face and shall have a total height no greater than twenty-five (25) feet.
  - (2) Off-premise signs shall be no closer than the edge of the right-of-way or no closer than twenty (20) feet from the edge of the traveled way, whichever is greater. All signs and sign structures shall be located at least twenty-five (25) feet from abutting property lines and outside of all sight visibility triangles.
  - (3) Off-premise signs shall be at least two thousand (2,000) linear feet as measured along any roadway center line from any other off-premise sign; at least five hundred (500) linear feet from any intersection of the center line of all roads, at-grade railroad crossings or bridges; and at least five hundred (500) linear feet from the nearest point of any dwelling unit, church or building used for worship located within six hundred sixty (660) linear feet of the right-of-way. A property owner may have an off-premise sign placed on his property closer than five hundred (500) feet from his personal residence, provided that he submit a written and notarized statement identifying him as the property owner and that the proposed sign will meet all other requirements of this article.
  - (4) Off-premise signs shall not be attached to or painted onto any building or structure.
  - (5) Off-premise signs shall have only one (1) sign face per side for no more than a total of two (2) sign faces per sign structure.
  - (6) No off-premise sign shall be located on the same parcel as an on-premise sign or within fifty (50) feet of an on-premise sign.
- (e) *On-premise signs.*
- (1) On-premise freestanding signs shall not exceed one hundred and fifty (150) square feet per sign face and shall have a total height no greater than twenty-five (25) feet.
  - (2) On-premise attached signs shall not exceed a cumulative area of one hundred fifty (150) square feet per sign face and shall have a total height no greater than twenty-five (25) feet.
  - (3) On-premise freestanding signs shall have only one (1) sign face per side for no more than a total of two (2) sign faces per sign structure.
  - (4) On-premise signs shall be no closer than the edge of the right-of-way or no closer than twenty (20) feet from the edge of the traveled way, whichever is greater. All signs and sign structures shall be located at least twenty-five (25) feet from abutting property lines and outside of all sight visibility triangles.
  - (5) Single parcels with one (1) establishment may have one (1) freestanding sign and one (1) sign attached to the building per public road frontage.

- (6) Multiple establishments on a single parcel or shopping centers may construct one (1) freestanding group or identification sign per public road frontage. In addition, each establishment may construct one (1) attached sign to the building per public road frontage of each establishment.
  - (f) *Temporary portable signs.*
    - (1) On-premise temporary portable signs shall be allowed for a maximum of fourteen (14) consecutive calendar days and may be displayed at six-month period intervals.
    - (2) Only one (1) temporary portable sign shall be allowed per establishment. In no instance shall any two (2) portable signs be closer than seventy-five (75) feet apart.
    - (3) Temporary portable signs shall be located no closer than the edge of the right-of-way or no closer than twenty (20) feet from the edge of the traveled way and outside of all sight visibility triangles.
    - (4) Temporary portable signs shall not exceed an area of thirty-two (32) square feet nor a height of five (5) feet.
    - (5) Temporary portable signs shall not be illuminated or employ flashing lights or have intermittent or moving parts.
    - (6) Temporary portable off-premise signs are prohibited.
- (Ord. of 9-23-91, Art. VI)

**Sec. 16-107. Sign maintenance; abandoned signs; tree cutting.**

(a) *Maintenance.* All signs and their structures shall be maintained by the sign owner and/or the owner of record of the real property upon which the sign is located in good repair and safe condition and shall conform to the standards in this section. Maintenance carried out in accordance with this section shall not require a sign permit, provided the sign is not enlarged, moved or altered in any manner which would create or increase a nonconforming condition. Any sign violating these requirements shall be repaired or removed as required.

- (1) No sign shall be allowed to have more than twenty (20) percent of its total surface area covered with disfigured, cracked, ripped or peeling paint or poster paper, or any combination of these conditions for more than thirty (30) consecutive days.
- (2) No sign shall be allowed to stand with bent or broken sign facing, broken supports, loose appendages or struts which causes the sign to stand more than fifteen (15) degrees from the perpendicular for more than thirty (30) consecutive days.
- (3) No sign or sign structure shall be allowed to have weeds, vines or other vegetation obscuring more than twenty (20) percent of the sign from the road or highway from which it is intended to be viewed for more than thirty (30) consecutive days.
- (4) No illuminated sign shall be allowed to stand with only partial illumination for more than thirty (30) consecutive days.
- (5) No sign or sign structure shall be allowed if a business no longer exists and the issued permit is not transferred within one (1) year.

(b) *Unlawful cutting of trees or shrubs.* No person may, for the purpose of increasing or enhancing the visibility of any sign, damage, trim or remove any trees, shrubs or other vegetation located within any public road or highway right-of-way, except where a legal permit has been obtained from the state department of transportation.



(c) *Modification of support structures.* A sign's structure may be modified by removing wooden poles and replacing them with a single metal support pole. If a nonconforming sign's support structure is modified, the entire sign structure and sign face shall be made to conform to all requirements of this article except for the established minimum spacing distance. Before such modification can take place, the sign owner must obtain a permit for the proposed modification.

(Ord. of 9-23-91, Art. VII; Amd. of 9-26-94)

### **Sec. 16-108. Permits, fees and nonconforming signs.**

(a) *Permits.* All signs, except as otherwise provided in section 16-106 of this article shall require a sign permit prior to being constructed, placed or repaired. Sign permits shall be issued by the sign enforcement officer. If a sign permit is denied, the decision may be appealed to the county planning board within thirty (30) days of the decision.

(b) *Permit application.* No permit shall be issued until an application for each separate sign or sign structure is completed, submitted and approved by the sign enforcement officer. The initial permit shall be valid until revoked by the sign enforcement officer.

(c) *Permit and permit emblem.* A permit along with a permit emblem shall be issued upon proper application and approval. New sign structure construction shall not commence until a permit and emblem are issued. The sign structure must be completely constructed and erected with the permit emblem affixed within one hundred eighty (180) days from the date of the permit issuance. During the one hundred eighty-day period, newly permitted sign structures shall be considered in existence for the purpose of spacing signs. The permit emblem shall be placed on sign structures in such a position as to be visible from the nearest adjacent road.

(d) *Permit fees.* Initial fees are required to be paid for the permitting of all new sign structures. Existing sign structures are exempt from the initial permit fee. A fee schedule shall be determined by the county board of commissioners and posted in the county building inspections office.

(e) *Registering existing signs.* Sign structures constructed and in place prior to the adoption of this article by the county commissioners which are not exempted and equal or exceed thirty-two (32) square feet shall be required to obtain a permit. The permit shall be obtained within a period of one hundred eighty (180) days beginning with the effective date of this article. Existing signs that require a permit that have not been registered within the one hundred eighty (180) days shall be in violation of this article. If the existence of a sign prior to the adoption of this article is questioned, the issue will be determined by the sign enforcement officer with the advice of the planning director and the sign owner using a county roadway video tape made on September 20, 1991. Signs found to be in violation shall be removed at the owner's expense.

(f) *Permit transfers.* Valid sign permits may be transferred to new sign owner(s), provided that the sign enforcement officer is given notice of the transfer of ownership within thirty (30) days of the actual transfer.

(g) *Permit revocations.* Sign permits for new and permitted nonconforming signs may be revoked for any one of the following reasons:

- (1) Misrepresenting material facts by the applicant on the permit application form.
- (2) Failing to construct the sign structure and affix the permanent emblem within one hundred eighty (180) days from the permit issue date.
- (3) Altering, enlarging or relocating a permitted sign structure, except in conformance with the requirements of this article.
- (4) Allowing a sign to remain blank for a period of twelve (12) consecutive months or reaching a state of dilapidation or disrepair as determined by the sign enforcement officer.

(h) *Nonconforming signs.* Legal nonconforming signs may continue to exist, provided that no nonconforming sign shall be:

- (1) Changed or replaced with another nonconforming sign, except that copy may be changed on an existing sign.
- (2) Expanded or modified in any way which increases the sign's nonconformity.
- (3) Re-established once the original permit expires and the sign structure has been removed. Nonconforming signs may be re-established after damage or destruction, provided that, with the exception of spacing, all requirements of this article are met.

(i) *Notice given for refusing to issue permit.* The sign enforcement officer shall refuse to issue a permit for a proposed sign structure that will not conform to this article and shall notify the owner of the proposed sign structure by first class mail as to why the proposed sign does not comply.

(j) *Reconstruction of damaged signs or sign structures.* Any conforming or nonconforming sign or sign structure which has been damaged or destroyed may be repaired and used as before, by the sign owners and/or the owners of record of the real property where the sign is located, provided all repairs are initiated within thirty (30) working days and completed within sixty (60) working days of such damage. However, if the sign should be declared unsafe by the sign enforcement officer, the owner of the sign or the owner of record of the real property whereon the sign is located, shall immediately correct all unsafe conditions to the sign enforcement officer's satisfaction.

As a courtesy to the sign owner, if the sign enforcement officer discovers that a sign is damaged or is in an unsafe condition, the sign enforcement officer will promptly notify either the sign owner or the owner of record of the real property whereon the sign is located. The affirmative duty and liability shall, however, remain with the owner of each sign to keep each sign in a safe and undamaged condition in accordance with the terms of this article.

(Ord. of 9-23-91, Art. VIII; Memo of 11-25-91; Amd. of 9-26-94)

#### **Sec. 16-109. Administration; enforcement; appeals; penalties.**

(a) *Administration.* The board of commissioners shall appoint an enforcement officer. The enforcement officer or his appointee shall administer and enforce all provisions of this article. The sign enforcement officer shall also have the following authority:

- (1) To issue a violation notice. A violation notice shall be delivered by certified mail, return receipt requested, or by such other method as allowed by law, to the owner of the sign in violation of the article. Whenever the owner of the sign cannot be located and notified, such notice shall be delivered to the owner of record of the real property whereon the sign is located. The time period provided herein shall commence upon receipt of such violation notice. The violation notice shall identify the sign and shall describe the nature of the violation, refer to the section of the article violated, specify in detail what action must be taken to correct the violation, and specify a reasonable time limit of up to fifteen (15) calendar days within which the violation must be corrected.
- (2) To issue a compliance order for any sign or sign structure not corrected within the time allotted under the violation notice or for a prohibited sign or any temporary portable sign not permitted as established by this article. A compliance order shall be delivered to the sign owner and to the owner of record of the real property whereon the sign is located in the same manner as set out for a violation notice and shall not be effective until received. The compliance order recipient shall be allowed thirty (30) calendar days to remove the subject sign at the owner's expense. Owners of temporary portable signs shall have five (5) working days to remove the subject sign at the owner's expense. The compliance order shall identify the sign and refer to the section of the ordinance violated. Any reoccurring temporary portable sign violation(s) occurring within a six-month time period shall be deemed, for purposes of assessing a penalty, a continued violation.

- (3) To issue an unsafe sign notice. Should any sign or sign structure become imminently unstable or in danger of falling or otherwise unsafe, an unsafe sign notice shall be delivered to the sign owner or to the owner of record of the real property whereon the sign is located in the same manner as set out for a violation notice, except that the recipient of the notice shall immediately, in the case of imminent danger, secure or remove the sign in a manner to be approved by the sign enforcement officer in conformance with the provisions of this article. If the condition prompting the notice is not corrected within twenty-four (24) hours after receipt of the notice, the sign enforcement officer shall have the authority to remove the sign at the recipient's expense.

(b) *Appeals.* Violation notices and compliance orders issued by the sign enforcement officer may be appealed to the county planning board within thirty (30) working days of receipt of notice. Pending appeal, the time limits set out in the notice or order shall be suspended. If the planning board finds that the action of the sign enforcement officer has been taken for good cause and in accordance with this article, it shall so declare and the time period for compliance shall run from the issuance of that board's finding. If the planning board sustains the appeal of the petitioner, no further action will be taken by the sign enforcement officer.

(c) *Violations and penalties.* After due notice and order as provided above for any violation of the terms of this article, the sign enforcement officer or the county attorney may issue a citation imposing a penalty of not more than one hundred dollars (\$100.00) on the owner of the sign in questions or on the owner of record of the real property whereon the sign is located whenever the owner of the sign cannot be located and notified of such citation. In the case of continuing violation, each twenty-four-hour period in which the violation exists shall constitute a separate violation. In addition to the above described penalty, the county may enforce this article by any one (1) or more of the remedies authorized by Chapter 153A-123 of the General Statutes, with the exception of 153A-123(b).

(Ord. of 9-23-91, Art. IX; Amd. of 9-8-97)

#### **Sec. 16-110. Legal status provisions.**

(a) *Conflict with other laws.* Whenever the regulations of this article conflict with the requirements of another statute, the more restrictive standard shall govern.

(b) *Variances.* Where strict adherence to the provisions of this article would cause an unnecessary hardship, the Planning Board may authorize a variance, if such variance can be made without destroying the intent of this article. Any variance thus authorized is required to be entered in writing in the minutes of the meeting of the planning board and the reasoning on which the departure was justified set forth.

(c) *Noncommercial messages.* Any sign, display, or device allowed under this article may contain, in lieu of any other copy, any otherwise lawful noncommercial message that does not direct attention to a business operated for profit, or to a commodity or service for sale, and that complies with size, lighting and spacing, or other requirements of this article.

(d) *Separability.* Should any section or provision of this article be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the article as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

(e) *Effective date.* This article shall take effect and be enforced on and after the date of its adoption by the board of commissioners of the county, this 23rd day of September, 1991.

(Ord. of 9-23-91, Art. X)

#### **Sec. 16-111. Scenic corridors.**

For the purposes of establishing areas which are particularly beautiful and which offer the most outstanding views of the natural grandeur of our mountains, as seen by the public while traveling on the roads and highways in the county, the following areas are designated as a scenic corridor in which no off-premise outdoor advertising signs may

be erected:

*Little Mountain:* That portion of N.C. Highway 280 beginning at the intersection of Hudlin Gap Road (SR 1510) and N.C. Highway 280 and spanning from the beginning to the top of Little Mountain.

*N.C. 215:* Those portions of N.C. 215 located in Transylvania County beginning at the intersection of the Blue Ridge Parkway and N.C. 215 and spanning from the beginning to U.S. 64.

*N.C. 281 (Whitewater Falls):* That portion of N.C. 281 beginning at the intersection of U.S. 64 and N.C. 281 and spanning from the beginning to the North Carolina/South Carolina state line.

*Staton Road:* That portion of Staton Road (SR 1593) beginning at the intersection of Cascade Lake Road (SR 1536) and Staton Road (SR 1593) and spanning from the beginning to Crab Creek Road (SR 1528).

*Toxaway Falls:* That portion of U.S. 64 beginning at the intersection of U.S. 64 west and N.C. 281 and spanning from the beginning to the west side of the Toxaway Falls Bridge.

*U.S. 64:* That portion of U.S. 64 beginning at the intersection of U.S. 64 and Israel Road (SR 1329) and spanning one (1) mile west from the beginning to the top of New Cut.

*U.S. 276:* That portion of U.S. 276 beginning at the intersection of U.S. 64, U.S. 276 and N.C. 280 and spanning from the beginning to the entrance to the Blue Ridge Parkway.  
(Ord. of 9-23-91, Art. II)

**Editors Note:** An ordinance adopted Sept. 23, 1991, pertaining to scenic corridor designation, did not specifically amend the Code; hence, codification of Art. II as § 16-111 was at the discretion of the editor.

**Secs. 16-112--16-150. Reserved.**

## ARTICLE VI.

### ROAD NAMING\*

**(NOTE: THIS ORDINANCE HAS BEEN REPEALED AND REPLACED WITH ADDRESSING AND ROAD NAMING ORDINANCE DATED APRIL 26, 2004. PLEASE REFER TO ROAD NAMING ORDINANCE THAT IS PUBLISHED SEPARATELY ON THE COUNTY WEB SITE.)**

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\* **Editors Note:** An ordinance adopted May 11, 1992, did not specifically amend the Code; hence, codification of Art. I--VII as §§ 16-151-16-157, was at the discretion of the editor.

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**Sec. 16-151. Title.**

This article shall be known and may be cited as the Road Naming Ordinance of Transylvania County, North Carolina.  
(Ord. of 5-11-92, Art. I; Ord. of 11-9-92, Art. I)

**Sec. 16-152. Authority.**

Pursuant to the authority and provisions conferred by the North Carolina General Statutes (Chapters 153A-121, 239 and 240), the county board of commissioners hereby ordains and enacts into law these sections.  
(Ord. of 5-11-92, Art. II; Ord. of 11-9-92, Art. II)

**Sec. 16-153. Purpose.**

This article is to provide a uniform road naming system along both public and private roads and roadways in

order to facilitate provision of adequate public safety and emergency response services. This article is further designed to eliminate duplicate or phonetically similar road names, to provide for the uniform marking of roadways and to establish the procedures by which a roadway may be named or by which an existing name may be changed. (Ord. of 5-11-92, Art. III; Ord. of 11-9-92, Art. III)

#### **Sec. 16-154. Jurisdiction.**

This article shall apply to all roads within the county which are located outside any incorporated municipality. Municipalities within the county may elect to allow this article to be effective within their corporate limits. (Ord. of 5-11-92, Art. IV; Ord. of 11-9-92, Art. IV)

#### **Sec. 16-155. Definitions.**

For the purpose of this article, certain terms or words used herein shall be defined as follows:

*Driveway:* A private way, beginning at the property line of a lot abutting a public road, private road, easement or private right-of-way and leading to a building, use or structure on that lot. A driveway may not serve more than three (3) lots.

*Manufactured home park:* Land leased or rented, being used or proposed to be used by manufactured homes occupied for dwellings or sleeping purposes.

*Manufactured home park road:* Any road, roadway or driveway which serves two (2) or more manufactured homes for residential purposes and which has not been dedicated to the public use.

*Private road:* A road not maintained by the state department of transportation which is not intended to become a public road, but which shall be used for access to a particular site, group development or business.

*Public road:* A public right-of-way set aside for public travel and either which has been accepted for maintenance by the state or which has been dedicated to the state for public travel by the recording of a plat of a subdivision with the county register of deeds office.

*Road name:* The official name of any roadway, designated by the board of commissioners or, in the case of public roads, by the state department of transportation.

*Road sign:* A blade and necessary hardware used to convey a road name and, where applicable, the state road number.

*Roadway:* Any road, street, drive, lane, cartway, tramway, easement, right-of-way, access area, thoroughfare, highway, boulevard or any other corridor used or having the potential use as a means of conveyance by a motor vehicle.

*State road number:* A number assigned by the state department of transportation; also known as the SR number for secondary state maintained roads.

*Subdivision:* All divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all divisions of land involving the dedication of a new road or a change in existing roads.

*Suffix:* The following shall be used after a roadway name: Avenue, boulevard, circle, court, crossing, drive, estate, extension, gardens, heights, highway, lake, landing, lane, park, place, plaza, point, ridge, road, roadway, square, street, terrace, trace, trail, village or way. (Ord. of 5-11-92, Art. V; Ord. of 11-9-92, Art. V)

#### **Sec. 16-156. Road names.**

(a) [List.] The county planning department shall develop and maintain a list of all road names in the county, as well as develop and maintain an official county map exhibiting the approved names and location of all roads in the county, and shall serve as a clearing house for all information regarding the names and location of roadways in the county.

- (1) Amendments to such list shall be made only by the county board of commissioners unless additions to such lists are made following the approval of new subdivisions, manufactured home parks, new state-maintained roads, or through other land development regulations.
- (2) All public roadways in unincorporated Transylvania County shall be identified by a sign which meets department of transportation standards. This sign shall show the official name and state road number. These road signs shall be placed at all intersections and shall identify intersecting roads as required by the state department of transportation.

(b) *Road naming procedures.*

(1) Under the authority and provisions of the General Statutes of North Carolina 153A-240, the county may, by ordinance, name or rename any public or private road within the county and not within a city, and may assign or reassign road numbers for use on such a road. In naming or renaming a public road, a county may not:

- a. Change the name, if any, given to the road by the state board of transportation, unless the board of transportation agrees;
- b. Change the identification number assigned to the road by the board of transportation, but may give the road a name in addition to its number; or
- c. Give the road a name that is deceptively similar to the name of any other public road in the vicinity.

(2) The county shall not name or rename a road or assign road numbers on a road until it has held a public hearing on the matter. At least ten (10) days before the day of the hearing, the board of commissioners shall cause notice of the time, place and subject matter of the hearing to be prominently posted at the county courthouse, in at least two (2) public places in the township or townships where the road is located, and shall publish a notice of such hearing in at least one (1) newspaper of general circulation published in the county.

(3) After naming or renaming a public road, or assigning or reassigning road numbers on a public road, a county shall cause notice of its action to be given to the local postmaster with jurisdiction over the road, to the state department of transportation, to any city within five (5) miles of the road, and to the following agencies: Transylvania County Sheriff's Department, Emergency Medical Services, Volunteer Fire Departments, 911 Director, Transylvania County Tax Assessor's Office, schools and utility companies.

(4) The county planning department is authorized to determine the need for road names and name changes and to recommend such additions, deletions or changes to the county commissioners for both private and public roads outside the corporate limits of any municipality within the county.

(5) A road name may be assigned to any public or private road which provides access to three (3) or more residences, businesses, industries or combinations thereof, regardless of the length of such road.

(c) *Road name duplications.* The county planning department may not assign a road name that is deceptively similar to the name of any other public or private road in the county. Road names should, to the extent possible, not be

phonetically similar to the name of any road within the county, irrespective of a different suffix.

(d) *Mobile home parks, condominiums, apartments, public housing developments and travel trailer parks.* Where records are incomplete, the owners of existing mobile home parks, condominiums, apartments, public housing developments and travel trailer parks shall, upon request by the planning department, submit a legible map of their development which indicates the location, name and width of each roadway. Each lot or building within the development must also be identified.

(e) *Prohibited road names.* The county planning department may disapprove newly proposed road names which fall under the following categories:

- (1) Road names which have numbers as part of the name.
- (2) Road names which are difficult to pronounce.
- (3) Road names which are over fifteen (15) characters in total length, including spaces, but not including suffixes.
- (4) Road names which are duplicated in neighborhoods across county lines which are in the same U.S. Postal District, Volunteer Fire Department District, or telephone exchange.
- (5) Road names using surnames unless the name is well-known and there is general acceptance of the name.
- (6) Road names that are similar to the name of an existing subdivision unless the road lies within that same subdivision.
- (7) Road names containing directions (e.g., north, south, east, west).

(f) *Subdivisions with proposed new roads.* For all subdivisions which are developed in conformance with the county subdivision ordinance and in which new roads are proposed, an alphabetical list of the proposed road names shall be submitted. The planning department will review the proposed road names for duplication and for overall compliance with the road naming and numbering policy. The approved road names shall be included in the final plat submitted for recordation.

(Ord. of 5-11-92, Art. VI; Ord. of 11-9-92, Art. VI)

#### **Sec. 16-157. Actions unlawful without written consent.**

It shall be unlawful for any person(s) without the written consent of the county planning department to:

- (1) Name or designate the name of any public road.
- (2) Erect any road sign on any public road, private subdivision road or private manufactured home park road in the unincorporated areas of the county.
- (3) Erect any road sign on any roadway, public or private, in the unincorporated areas of the county, which does not meet the current state department of transportation sign specifications.
- (4) Remove, deface, damage, or obscure a road sign in the jurisdiction of this article.

(Ord. of 5-11-92, Art. VII; Ord. of 11-9-92, Art. VII)

#### **Sec. 16-158. Appeal.**

Action taken by the planning department or under guidelines set forth in this article may be appealed to the county board of commissioners. The appeals process for persons desiring to change a road name is as follows:

- (1) Submit a written petition to the county manager. The petition shall state the current road name and the road name that the petitioners desire. Such petition must be signed by seventy-five (75) percent of the adult residents living on the road and property owners.
- (2) Submit cash, money order or cashier's check payable to Transylvania County in an amount equal to the then cost of the sign(s), as estimated by the county planning department. These costs include, but are not limited to, the sign(s) replacement, labor and transportation, legal advertisements as required by General Statute 153A-240, and notifying all affected property owners of a road name change.
- (3) After receiving the petition and payment of estimated costs, the county manager shall submit the petition to the board of county commissioners. The board of county commissioners shall then hold a public hearing.
- (4) After holding the public hearing, if the board of county commissioners, in its judgment, determines not to change the road name as requested by the petitioners, then all estimated costs not expended for advertising and notification of property owners shall be refunded to the petitioners.
- (5) After the public hearing, if the board of county commissioners, in its judgment, decides to rename the road as requested by the petitioners, the name shall be changed and notice given as provided by General Statute 153A-240.
- (6) No re-petitions shall be submitted or accepted for a road name change until five (5) years from the date of the filing of the last submitted petition for such road's name change.

(Ord. of 5-11-92, Art. VII; Ord. of 11-9-92, Art. VIII, § 9)

**Sec. 16-159. Penalty.**

Any person violating the provisions of this article shall be guilty of a misdemeanor and shall be subject to a fine of not more than one hundred dollars (\$100.00) or imprisonment of not more than thirty (30) days, as provided by North Carolina General Statute 14-4. Any violation of this article may be subject to civil remedies, as set forth in North Carolina General Statute 153A-123.

(Ord. of 5-11-92, Art. VII; Ord. of 11-9-92, Art. VIII, § 10)

**Secs. 16-160--16-170. Reserved.**

**ARTICLE VII.**

**WATERSHED PROTECTION\***

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\* **Editors Note:** An ordinance adopted December 13, 1993, did not specifically amend the Code; hence, codification of Arts. I--VII as §§ 16-171--16-184 was at the discretion of the editor.

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**Sec. 16-171. Authority and enactment.**

The Legislature of the State of North Carolina, in Chapter 153A, Article 6, Section 121, General Ordinance Authority, and in Chapter 143, Article 21, Watershed Protection Rules, delegates the responsibility or directs local governments to adopt regulations designed to promote public health, safety, and general welfare. Transylvania County does hereby ordain and enact into law the following articles as the Transylvania County Watershed Protection Ordinance.

(Ord. of 12-13-93, Art. I)

**Sec. 16-172. Jurisdiction.**



This article shall apply within the areas designated as a public water supply watershed by the state environmental management commission and shall be defined and established on the map entitled "Transylvania County Watershed Protection Map." The watershed map is hereby made a part of this article and shall be permanently kept on file in the county clerk's office and planning department. This article shall not apply to areas owned by the federal government. (Ord. of 12-13-93, Art. II)

### **Sec. 16-173. Definitions.**

[The following terms, when used in this article, shall have the meanings ascribed to them herein, except where context clearly indicates a different meaning:]

*Agricultural use:* The use of waters for stock watering, irrigation, and other farm purposes.

*Animal unit:* A unit of measurement developed by the U.S. Environmental Protection Agency that is used to compare different types of animal operations.

*Balance of watershed:* This area is defined as the entire drainage basin upstream of and draining to a WS-II or WS-III watershed critical area where the risk of water supply pollution is greater than in surrounding areas.

*Best management practices (BMP):* A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

*Buffer:* An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and filters pollutants. The buffer is measured horizontally from the normal pool elevation of impounded structures and from the bank of each side of a stream.

*Building:* Any structure having a roof supported by columns or walls, and intended for shelter, housing or enclosure of persons, animals or property. The connection of two (2) buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall not be deemed to make them one (1) building.

*Built-upon area:* Built-upon area shall include that portion of a development project that is covered by impervious or partially impervious cover, including buildings, pavement, gravel areas (e.g. roads, parking lots, paths), recreation facilities (e.g. tennis courts). *Note:* Wooden slatted decks and the water area of a swimming pool are considered pervious.

*Cluster development:* Buildings grouped together to conserve land resources and provide for innovation in the design of the project. This term includes nonresidential unified development, single-family residential and multifamily developments. For the purpose of this article, planned unit development and mixed use development are considered as cluster development.

*Critical area:* The area extending one-half ( 1/2) mile upstream from the water supply intake located directly in the stream or river (run-of-the-river), or the watershed ridge line, whichever comes first. Major landmarks such as highways or property lines may be used to delineate the outer boundary of these landmarks are immediately adjacent to the one-half-mile outer boundary.

*Development:* Any land-disturbing activity that adds to or changes the amount of impervious or partially impervious cover on a land area or which decreases the infiltration of precipitation into the soil.

*Discharging landfill:* A facility with liners, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated onsite and discharged to a receiving stream or pumped and hauled to a permitted wastewater treatment facility.

*Dwelling unit:* A house, apartment or a group of homes occupied or intended for occupancy as separate living quarters for one (1) or more humans.

*Existing development:* Those projects that are built or those projects that at a minimum have, by January 1, 1994, met one (1) of the following criteria:

- (1) Expended substantial resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the proposed project; or
- (2) Obtained a valid building permit.

*Existing lot (lot of record):* A lot that is part of a platted subdivision or a lot described by metes and bounds that was recorded in the register of deeds office prior to the adoption of this article.

*Hazardous material:* Any substance identified in Superfund Amendment and Reauthorization Act (SARA), Section 302, Extremely Hazardous Substances; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); or Section 311 of the Clean Water Act (CWA).

*Industrial development:* Any nonresidential development that requires a National Pollutant Discharge Elimination System (NPDES) permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

*Landfill:* A facility designed to dispose of solid waste on land in a sanitary manner in accordance with Chapter 130A, Article 9 of the North Carolina General Statutes.

*Lot:* A portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership or for development, or both. The word "lot" includes "plot", "parcel" or "tract".

*Major variance:* A variance from the minimum statewide water supply watershed protection rules that results in either:

- (1) Any violation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater system; or
- (2) The relaxation, by a factor greater than ten (10) percent, of any management requirement under the low density option.

*Minor variance:* A variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to ten (10) percent, of any management requirement under the low density option; or, by a factor of up to five (5) percent, of any management requirement under the high density option.

*Nonresidential development:* All development other than residential development, agriculture, silviculture and trout farming.

*Plat:* Includes the terms "map", "plan", or "replat"; a map or plan of a parcel of land which is to be, or which has been, developed or subdivided.

*Residential development:* Buildings for residence, such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc., and their associated outbuildings, such as garages, storage buildings, gazebos, etc.

*Road:* A dedicated public or private right-of-way for routine vehicular traffic.

*Single-family residential:* Any development where no building contains more than one (1) dwelling unit; every

dwelling unit is on a separate lot; and where no lot contains more than one (1) dwelling unit.

*Structure:* Anything constructed or erected, including, but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

*Subdivider:* Any person, firm or corporation who subdivides or develops any land deemed to be a subdivision.

*Subdivision:* A subdivision means all divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future), and includes all divisions of land involving the dedication of a new road or a change in existing roads, and includes any unified residential or nonresidential development; however, the following are not included within this definition and are not subject to any regulations enacted pursuant to this section:

- (1) The combination or recombination of portions of previously subdivided and recorded lots, if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;
- (2) The division of land into parcels greater than ten (10) acres where no road right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for widening or opening roads;
- (4) The division of a tract in single ownership, the entire area of which is no greater than two (2) acres, into not more than three (3) lots if no road right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations;
- (5) The division of land for the purpose of conveying a single lot or parcel to each tenant in common, all of whom jointly inherited the land by intestacy or by will;
- (6) The division of land into no more than two (2) parcels for the purpose of conveying at least one (1) of the resulting lots to a grantee(s) who would have been an heir(s) of the grantor if the grantor had died intestate immediately prior to the conveyance;
- (7) The division of land pursuant to an order of a court of the general court of justice;
- (8) The division of land for cemetery lots or burial plots; and
- (9) The division of land for the purpose of changing the boundary line(s) between adjoining property owners and no new road right-of-way dedication is involved.

*Toxic substance:* Any substance or combination of substances (including disease-causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.

*Variance:* Permission to develop or use property granted by the watershed review board relaxing or waiving a water supply watershed management requirement adopted by the environmental management commission and incorporated into this article.

*Watershed:* The entire land area contributing surface drainage to a specific point (e.g., the water supply intake).

*Watershed administrator:* The person responsible for administering and enforcing this article.  
(Ord. of 12-13-93, Art. III; Amd. of 11-24-97)

### **Sec. 16-174. Watershed Administrator--Appointment; duties.**

The county shall appoint a watershed administrator to administer and enforce this article. The watershed administrator, or his duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him by this article.

- (1) The watershed administrator shall issue watershed protection permits and watershed protection occupancy permits. All permits shall be kept on file and shall be available for public inspection during regular office hours.
- (2) The watershed administrator shall serve as staff to the watershed review board.
- (3) The watershed administrator shall keep a record of all amendments and variances to the local water supply watershed protection ordinance. Copies of all amendments and variances shall be submitted each calendar year to the division of water quality on or before January 1 of the following calendar year and shall provide a description of each project receiving a variance and the reasons for granting the variance.
- (4) The watershed administrator shall keep records of the county's utilization of the provision that a maximum of ten (10) percent of the noncritical area of WS-II-BW watersheds may be developed to a maximum of seventy (70) percent built-upon surface area. Records shall include the total acres of noncritical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and individual records for each project with the following information: Location, acres, site plan, use, stormwater management plan, as applicable, and inventory of hazardous materials, as applicable.

(Ord. of 12-13-93, Art. VII, § 17; Amd. of 11-24-97)

### **Sec. 16-175. Same--Appeals.**

(a) Any order, requirement, decision or determination made by the watershed administrator may be appealed in writing to the watershed review board within thirty (30) working days from the date the order, interpretation, decision or determination is made. All appeals must be made in writing stating the reasons for appeal. Following appeal submission, the watershed administrator shall transmit to the board all papers constituting the record upon which the action appealed from was taken.

(b) The board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within twenty (20) working days. At the hearing, any party may appear in person, by agent, or by attorney.

(c) If an appeal is filed, the county will take no action unless the watershed administrator certifies to the watershed review board after the notice of appeal is filed with him, that by reason of facts, no corrective action would cause imminent danger to water quality and public health. In such case, corrective action shall not be stayed other than by a restraining order, which may be granted by the watershed review board or by a court of record.

(Ord. of 12-13-93, Art. VII, § 18)

### **Sec. 16-176. Changes and amendments.**

(a) The board of commissioners may, from time to time, amend the terms of this article, but no amendment shall become effective unless it shall have been proposed by, or shall have been submitted to, the watershed review board for review and recommendation. The watershed review board shall have twenty (20) working days from the time the proposed amendment is submitted to it within which to submit its recommendation to the county commissioners. If the watershed review board fails to submit a report, it shall be deemed to have recommended approval of the amendment(s).

(b) Under no circumstances shall the county board of commissioners adopt such amendments, supplements or changes that would cause this article to violate the watershed protection rules as adopted by the state environmental management commission. All amendments must be filed with the state division of environmental management, state division of environmental health, and the state division of community assistance.

(c) No amendment shall be adopted by the board of commissioners until a public hearing is held on the proposed amendments. Public hearing notice shall be given once a week for two (2) successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten (10), nor more than twenty-five (25) days before the date scheduled for the hearing.

(Ord. of 12-13-93, Art. VII, § 19)

### **Sec. 16-177. Watershed Review Board--Establishment.**

The county planning board is designated as the watershed review board.

(Ord. of 12-13-93, Art. VII, § 20)

### **Sec. 16-178. Same--Powers and duties.**

(a) Administrative review. The watershed review board shall hear and decide appeals from any decision or determination made by the watershed administrator.

(b) Variances. The watershed review board shall have the power to authorize, in specific cases, minor variances where, owing to special conditions, a literal enforcement of this article will result in practical difficulties or unnecessary hardship.

(c) Applications for a variance shall be made on the proper form obtainable from the watershed administrator and shall include the following information:

(1) A site plan, drawn to a scale of at least one (1) inch to forty (40) feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

(2) A written detailed description of the proposed variance, together with any other pertinent information that the application feels would be helpful to the watershed review board in considering the application.

(3) When a variance is being considered, the watershed administrator shall notify in writing the entity using the water supply for consumption.

(d) Before the watershed review board may grant a variance, it shall make the following findings which shall be recorded in the permanent record and shall include the factual reasons on which they are based:

(1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the article. In order to determine that there are practical difficulties or unnecessary hardships, the board must find that the five (5) following conditions exist:

a. If the applicant, complying with the article, can secure no reasonable return from, nor make reasonable use of, property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the board in granting a variance. Moreover, the board shall consider whether the variance is the minimum possible deviation from the terms of the article that will make possible the reasonable use of the applicant's property.

- b. The hardship results from the application of the article to the property rather than from other factors, such as deed restrictions or other hardship.
- c. The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.
- d. The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.

(2) The variance is in harmony with the general purpose and intent of the article and preserves its spirit.

(3) In the granting of the variance, the public safety and welfare are assured and substantial justice is done. The board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

(e) In granting the variance, the board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this article. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.

(f) The watershed review board shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in condition or circumstances bearing on the appeal or application.

(g) A variance issued in accordance with this section shall be considered a watershed protection permit and shall expire if a building permit or watershed occupancy permit for such use is not obtained by the applicant within six (6) months from the date of the decision.

(h) If the application calls for the granting of a major variance, and if the watershed review board decides in favor of granting the variance, the board shall prepare a preliminary hearing record. The preliminary hearing record shall include:

- (1) The variance application.
- (2) The hearing notices.
- (3) The evidence presented.
- (4) Motions, offers of proof, objections to evidence, and rulings on them.
- (5) Proposed findings and exceptions.
- (6) The proposed decision, including all conditions proposed to be added to the permit.

(i) If the application calls for the granting of a major variance, and if the watershed review board decides in favor of granting the variance, the preliminary hearing record shall be sent to the environmental management commission for its review and final decision.

(Ord. of 12-13-93, Art. VII, § 21; Amd. of 11-24-97)

### **Sec. 16-179. Subdivision.**

(a) [*Approval.*] Following the adoption of this article, no subdivision of land within the county shall be

approved according to the county subdivision control ordinance until it is prepared and approved in accordance with the provisions of this article.

(b) *Application and review procedures.*

- (1) All proposed subdivisions shall be reviewed by submitting a plat with a vicinity map to the watershed administrator to determine whether or not the property is located within the designated public water supply watershed. Subdivisions not within the designated watershed area are not subject to the remainder of this article.
- (2) A person subdividing land within the watershed shall file an application with the watershed administrator. The application shall include a completed application form, two (2) copies of the plat and any supporting documentation deemed necessary by the watershed administrator.
- (3) The watershed administrator shall review the completed application and either approve, approve conditionally, or disapprove each application. The watershed administrator shall take final action within ten (10) working days from the application date.
- (4) The watershed administrator may provide public agencies an opportunity to review and make recommendations. Failure of the agencies to submit their comments and recommendations shall not delay final action. Such public agencies may include, but are not limited to, the following:
  - a. The health department director, with regard to proposed water or sewer systems normally approved by the health department.
  - b. The state division of water quality, with regard to proposed water or sewer systems and engineered stormwater controls.
- (5) If the watershed administrator approves the application, such approval shall be indicated on both the plat and copies by the following certificate:

Certificate of Approval

I certify that the plat shown hereon complies with the Transylvania County Watershed Protection Ordinance.

\_\_\_\_\_   
Date

\_\_\_\_\_   
Watershed Administrator

NOTICE: This property is located within a Public Water Supply Watershed. Development restrictions apply.

- (6) If the watershed administrator disapproves or approves conditionally the application, the reason(s) for such action shall be stated in writing. The subdivider may make changes and submit a revised plan, which shall constitute a separate request for review.
- (c) *Standards; required improvements.*
- (1) [*Lot space.*] All lots shall provide adequate building space in accordance with the development standards contained in section 16-180. Lots which are smaller than the minimum required for residential lots may be developed using the built-upon area criteria in section 16-180 (b) and (c).
  - (2) [*Calculation of area.*] For the purpose of calculating built-upon area, the total project area shall include the tract's total acreage on which the project is to be developed. The built-upon area of existing

development is not required to be included in the density calculation.

- (3) *Stormwater drainage.* The application shall be accompanied by a proposed stormwater drainage control plan. The subdivider shall provide a drainage system that diverts stormwater runoff away from all perennial streams to minimize water quality impacts.
- (4) *Erosion and sedimentation control.* The application shall be accompanied by a copy of the erosion control plan and a written statement from the state department of environment, health, and natural resources stating that an erosion control plan has been submitted and approved for the project, if applicable.
- (5) *Roads constructed in critical areas and watershed buffer areas.* Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed to minimize their impact on water quality.
- (6) *Spill containment plan.* The application shall be accompanied by a spill containment plan for the storing of hazardous materials or toxic substances, if applicable.

(Ord. of 12-13-93, Art. IV)

**Sec. 16-180. Development.**

(a) *Establishment of watershed areas.* The county has one (1) WS-II watershed divided into two (2) areas, as defined by the state environmental management commission:

- (1) WS-II-CA (Critical Area).
- (2) WS-II-BW (Balance of Watershed).

(b) *Critical Area (WS-II-CA).*

(1) *Allowed uses.*

- a. Agriculture activities subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Agricultural activities conducted after January 1, 1993, shall maintain a minimum ten-foot vegetative buffer, or equivalent control as determined by the soil and water conservation commission, along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Animal operations greater than one hundred (100) animal units shall employ best management practices by July 1, 1994, as recommended by the soil and water conservation commission.
- b. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).
- c. Residential development.
- d. Nonresidential development, excluding the use, storage, or manufacturing of toxic substances and hazardous materials; landfills; and sites for land application of sludge/residuals or petroleum-contaminated soils.

(2) *Density and built-upon limits.*

- a. Single-family residential development shall not exceed one (1) dwelling unit per two (2) acres on a project-by-project basis. No residential lot shall be less than two (2) acres, except within an



approved cluster development.

- b. All other residential and nonresidential development shall not exceed six (6) percent built-upon area on a project-by-project basis.

(c) *Balance of Watershed (WS-II-BA).*

(1) *Allowed uses.*

- a. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
- b. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).
- c. Trout farming.
- d. Residential development.
- e. Nonresidential development, excluding landfills and the storage of toxic substances and hazardous materials, unless a spill containment plan is implemented.

(2) *Density and built-upon limits.*

- a. Single-family residential development shall not exceed one (1) dwelling unit per acre on a project-by-project basis. No residential lot shall be less than one (1) acre, except within an approved cluster development.
- b. All other residential and nonresidential development shall not exceed twelve (12) percent built-upon area on a project-by-project basis on any one (1) parcel, except that up to ten (10) percent of each of the original tracts located in the balance of the watershed, at the time the article was adopted, may be developed with new development or expansions to existing development to a maximum of seventy (70) percent built-upon area on a project-by-project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(d) *Cluster development.* Cluster development is allowed in all watershed areas under the following conditions:

- (1) Minimum lot sizes are not applicable to single-family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single-family detached developments in subsections (b) and (c). The project's built-upon area shall not exceed that allowed for the critical area or balance of watershed, whichever applies.
- (2) All built-upon area(s) shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.
- (3) The remainder of the tract shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to an incorporated homeowner's association for management; to a local government for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with all property deeds. A copy of the deed shall be presented to the watershed administrator.

(e) *Buffer areas required.*

- (1) A minimum thirty-foot undisturbed, horizontal vegetative buffer for development activities is required along all perennial waters indicated on the most recent U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Artificial stream bank stabilization is permitted.
  - (2) No new development is allowed in the buffer, except for projects such as road crossings and greenways where no practical alternative exists, and as approved by the watershed review board. These activities should minimize built-upon surface area. Disturbed buffer areas shall be planted and stabilized within ninety (90) days.
- (f) *Rules governing interpretation of watershed area boundaries.* Where uncertainty exists as to the boundaries of the watershed areas, as shown on the watershed map, the following shall apply:
- (1) Where area boundaries are indicated as approximately following either road or highway lines or centerlines thereof, such lines shall be construed to be such boundaries.
  - (2) Where area boundaries are indicated as approximately following property lines, such lines shall be construed to be such boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the county as evidence that one (1) or more properties along these boundaries do not lie within the watershed area.
  - (3) Where uncertainty exists, the watershed administrator shall interpret the watershed map as to boundary location(s). This decision may be appealed to the watershed review board.
- (g) *Regulation applications.*
- (1) No building or land shall hereafter be used, and no development shall take place, except in conformity with the regulations herein specified for the watershed area in which it is located.
  - (2) No area required for the purpose of complying with the provisions of this article shall be included in the area required for another building.
  - (3) Every residential building hereafter erected, moved or structurally altered shall be located on a lot which conforms to the regulations herein specified, except as permitted in subsection (j).
  - (4) If a use is not specifically indicated as being allowed in a watershed area, such use is prohibited.
- (h) *Existing development.* Existing development, as defined in this article, may be continued and maintained subject to the following provisions. Expansions to existing structures shall meet the requirements of this article; however, an existing structure's built-upon area is not required to be included in the density calculations.
- (1) *Uses of land.* This category consists of existing land uses at the time the article is adopted and where such use of the land is not permitted to be established hereafter in the designated watershed area. Such uses may be continued, except as follows:
    - a. When such use of land is changed to an allowed use, it shall not thereafter revert to any prohibited use.
    - b. Such use of land shall be changed only to an allowed use.
    - c. When such use ceases for a period of at least one (1) year, it shall not be reestablished.
  - (2) *Reconstruction of buildings or built-upon areas.* Any existing building or built-upon area, not in conformance with the restrictions of this article, that is damaged or removed may be repaired may be

repaired and/or reconstructed, provided:

- a. Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.
- b. The total amount of impermeable surface area devoted to built-upon area is not increased.

(i) *Watershed protection permit.*

- (1) Except where a single-family residence is constructed on a lot deeded prior to the effective date of this article, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any building permit be issued, nor shall any change in the use of any building or land be made until the watershed administrator provides the county building inspections department with an approved watershed protection permit. No watershed protection permit shall be issued that is not in conformance with this article.
- (2) Watershed protection permit applications shall be filed with the watershed administrator. The application shall include a completed application form and supporting documentation deemed necessary by the watershed administrator.
- (3) A watershed protection permit shall expire if a building permit or watershed occupancy permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

(j) *Watershed protection occupancy permit.*

- (1) The watershed administrator shall issue a watershed protection occupancy permit certifying that all requirements of this article are met prior to the inspections department issuing a final certificate of occupancy for a new, altered, or moved building. A watershed protection occupancy permit shall be applied for coincident with the application for a watershed protection permit and shall be issued or denied within ten (10) working days after the erection or structural alteration of the building is completed.
- (2) When only a change in use of land or existing building occurs, the watershed administrator shall issue a watershed protection occupancy permit certifying that all requirements of this article have been met coincident with the watershed protection permit.
- (3) If the watershed protection occupancy permit is denied, the watershed administrator shall notify the applicant, in writing, stating the reasons for denial.

(Ord. of 12-13-93, Art. V; Amd. of 11-24-97)

**Sec. 16-181. Public health.**

(a) *General.* No activity, situation, structure or land use that poses a threat to water quality and public health, safety and welfare shall be allowed within the watershed. Such conditions may arise from inadequate onsite sewage systems utilizing ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the absence or improper implementation of a spill containment plan for toxic substances and hazardous materials; improper stormwater runoff management; or any other situation found to pose a threat to water quality.

(b) *Abatement.*

- (1) The watershed administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.

- (2) The watershed administrator shall report all findings to the watershed review board.
- (3) Where the watershed review board finds a threat to water quality and the public health, safety and welfare, the board shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

(Ord. of 12-13-93, Art. VI)

### **Sec. 16-182. Appeals.**

Appeals from the watershed review board or the state environmental management commission must be filed with the superior court within thirty (30) working days from the date of the final decision. The decisions by the superior court shall be in the manner of certiorari.

(Ord. of 12-13-93, Art. VII, § 22)

### **Sec. 16-183. Penalty.**

Any person violating this article shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with General Statute 14-4. The maximum fine for each offense shall not exceed five hundred dollars (\$500.00). Each day that the violation continues shall constitute a separate offense.

(Ord. of 12-13-93, Art. VII, § 23)

### **Sec. 16-184. Remedies.**

(a) If any subdivision, development and/or land use is found to be in violation of this article, the county board of commissioners may, in addition to all other remedies available in law or in equity, impose a civil penalty in the amount of one hundred dollars (\$100.00), [and/or] institute an action or proceedings to:

- (1) Restrain, correct, or abate the violation;
- (2) Prevent occupancy of the building, structure, or land; or
- (3) Prevent any illegal act, conduct, business, or use in or about the premises.

In addition, the state environmental management commission may assess civil penalties, in accordance with General Statute 143-215.6(a). Each day that the violation continues shall constitute a separate offense.

(b) If the watershed administrator finds that any provision of this article is violated, he shall notify in writing the person responsible for such violation, indicate the violation, and order the necessary corrective action. He shall order discontinuance of the illegal land use, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this article to ensure compliance with, or to prevent violation of, its provisions. If a ruling of the watershed administrator is questioned, the aggrieved party or parties may appeal such ruling to the watershed review board.

(Ord. of 12-13-93, Art. VII, § 24)

### **Secs. 16-185--16-200. Reserved.**

## **ARTICLE VIII.**

### **VOLUNTARY FARMLAND DISTRICT\***

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\* **Editors Note:** An ordinance adopted March 11, 1996, did not specifically amend the Code; hence, codification of Arts. I--X of said ordinance as §§ 16-201--16-214, 16-231--16-234, 16-251, and 16-252 was at the discretion of the editor.

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## **DIVISION 1.**

### **GENERALLY**

#### **Sec. 16-201. Title.**

This article shall be known as the Transylvania County Voluntary Farmland District Ordinance.  
(Ord. of 3-11-96, Art. I)

#### **Sec. 16-202. Authority.**

The divisions and sections of this article are adopted pursuant to the authority conferred by North Carolina General Statutes 106-735 through 106-743.  
(Ord. of 3-11-96, Art. II)

#### **Sec. 16-203. Purpose.**

The purpose of this article shall be to facilitate communications with nonfarm Transylvanians; to protect the rural nature and character of the county; to encourage and protect the economic viability of the agricultural community; to increase the protection of the agricultural community from adverse complaints; and to increase the identity and pride in the agricultural community and its way of life.  
(Ord. of 3-11-96, Art. III)

#### **Sec. 16-204. Jurisdiction.**

This article shall apply to all unincorporated areas of the county.  
(Ord. of 3-11-96, Art. IV)

#### **Sec. 16-205. Farmland requirements.**

Farmland shall meet the following requirements:

- (1) The farm property shall be participating in the farm present-use-value taxation program established by General Statutes 105-277.2 through 105-277.7 for at least five (5) years.
- (2) The farm property is certified by the Natural Resources Conservation Service of the United States Department of Agriculture, in consultation with the cooperative extension office and the consolidated farm service agency, as being a farm on which at least two-thirds ( 2/3) of the land is composed of soils that are best suited for providing food, seed, fiber, forage, and horticultural crops, including Christmas trees and ornamentals, if applicable.
- (3) If highly erodible land exists, the farm property shall be managed in accordance with the Natural Resources Conservation Service Technical Guide of Best Management Practices addressing highly erodible land, if applicable.
- (4) The farm property is the subject of a conservation agreement, as defined in General Statutes 121-35, between the county and the owner for a period of at least five (5) years. The creation of not more than three (3) lots that meet applicable county watershed and subdivision regulations, or the regulations of any municipality which apply to the farm property (e.g., flood damage control ordinance), are permitted, if applicable.

(Ord. of 3-11-95, Art. V, § 500)

#### **Sec. 16-206. Certification.**

The owner of the farm seeking to qualify his property for participation in the farmland district shall submit written evidence that the property conforms with the requirements of section 16-205 of this article. This written information shall be submitted to the county agricultural advisory board.  
(Ord. of 3-11-96, Art. V, § 501)

**Sec. 16-207. Creation.**

The farmland district, when initially established, shall contain a minimum of twenty-five (25) contiguous acres of qualified farmland, or two (2) or more qualified farms which contain a minimum of twenty-five (25) acres and are located within a mile of each other.  
(Ord. of 3-11-96, Art. VI, § 600)

**Sec. 16-208. Application to participate in program--Submittal to board.**

A landowner may participate in the program by making application to the agricultural advisory board. The application shall be on forms provided by the advisory board and submitted by the first day of each month.  
(Ord. of 3-11-96, Art. VI, § 601)

**Sec. 16-209. Same--Approval/disapproval.**

The agricultural advisory board shall meet within thirty (30) days to approve, approve with condition, or disapprove the application. If the application is disapproved, the agricultural advisory board shall indicate the specific reason for such action. The chairman shall notify the applicant by first class mail of such approval or disapproval.  
(Ord. of 3-11-96, Art. VI, § 602)

**Sec. 16-210. Same--Appeal upon disapproval.**

If an application is disapproved by the agricultural advisory board, the petitioner shall have thirty (30) days to appeal in writing the decision to the county board of commissioners. The decision of the board of commissioners is final.  
(Ord. of 3-11-96, Art. VI, § 603)

**Sec. 16-211. Revocation of conservation agreements.**

By written notice to the agricultural advisory board, a landowner may remove all or a portion of the property at any time or the board may revoke the same agreement based on noncompliance by the landowner. Such revocation shall result in loss of qualifying farm status and, consequently, loss of eligibility to participate in a voluntary farmland district. If a portion of a district is removed for any reason after being established by this program, the remaining qualified farms may remain in the program, provided they meet all other requirements except the minimum area requirements of section 16-207. The same landowner shall not be allowed to reenter farmland previously removed from a district.  
(Ord. of 3-11-96, Art. VII)

**Sec. 16-212. Notification procedure.**

(a) *[Purpose.]* The agricultural advisory board shall provide notification to property owners, residents, and other interested persons in and adjacent to any designated agricultural district. The notification is to inform all current and potential residents and property owners in and adjacent to an agricultural district, that farming and agricultural activities may take place in this district at any time. These activities may include, but are not limited to, the following: Pesticide spraying, manure spreading, machinery and truck operations, livestock operations, sawing, and similar activities.

(b) *Notification types.*

- (1) Signs identifying approved agricultural districts may be placed adjacent to road rights-of-way.
- (2) Maps prepared by the agricultural advisory board identifying approved districts shall be provided to the register of deeds office, the natural resources conservation service office, the cooperative extension office, the consolidated farm service agency, the inspections department, tax assessor's office, and the county planning department.
- (3) The following notice shall be made available to everyone recording a deed or plat with the register of deeds, and shall be posted in the health, planning, and inspections departments:

**"NOTICE TO REAL ESTATE PURCHASERS IN TRANSYLVANIA COUNTY FARMLAND DISTRICTS**

Transylvania County has established farmland districts to identify agricultural lands and activities. These farmland districts have been developed and mapped to inform all purchasers of real property that agricultural activities, including, but not limited to, pesticide spraying, manure spreading, machinery and truck operations, livestock operations, sawing, and similar activities may take place in these districts at any time. Maps and information on the location and establishment of these districts can be obtained from the Cooperative Extension Office, Register of Deeds Office, County Planning Department, Natural Resources Conservation Service, and the Consolidated Farm Service Agency Office."

(Ord. of 3-11-96, Art. X, § 1000)

**Sec. 16-213. Waiver of water and sewer assessments.**

Landowners in a farmland district shall not be assessed for or required to connect to a water and/or sewer system when those improvements are made to the property. If the landowner voluntarily connects to the water and/or sewer system, the assessment will be payable in accordance with the terms set out in the assessment resolution.

(Ord. of 3-11-96, Art. X, § 1001)

**Sec. 16-214. Districts not permitted in designated growth areas.**

Farmland districts will not be permitted in designated growth areas, as identified by the board of commissioners. Districts located growth areas designated after the effective date of this program may remain, but shall not be expanded within the growth areas without the approval of the board of commissioners. Districts located in designated growth areas designated after the effective date of this program may expand to include adjoining property purchased by a landowner presently participating in the county voluntary farmland district ordinance. The approval of the board of commissioners will be on a case-by-case basis.

(Ord. of 3-11-96, Art. X, § 1002)

**Secs. 16-215--16-230. Reserved.**

**DIVISION 2.**

**AGRICULTURAL ADVISORY BOARD**

**Sec. 16-231. Established.**

In accordance with North Carolina General Statute 106-739, the board of commissioners establishes an agricultural advisory board to implement this article.

(Ord. of 3-11-96, Art. VIII, § 800)

**Sec. 16-232. Membership.**

The agricultural advisory board shall consist of seven (7) members appointed by the county board of commissioners. Two (2) members shall be appointed for a one-year term; two (2) members shall be appointed for a two-year term; and three (3) members shall be appointed for a three-year term. Their successors shall be appointed for three-year terms. Five (5) of the seven (7) members shall be actively engaged in farming, the others shall be from the nonfarm community.

(Ord. of 3-11-96, Art. VIII, § 801)

**Sec. 16-233. Officers; records; meetings; unexcused absences.**

(a) The chairman shall be appointed by the county commissioners for a term of one (1) year. The vice-chairman shall be elected by the agricultural advisory board.

(b) The agricultural advisory board may adopt rules for transaction of its business and shall keep for public record its members' attendance and its resolutions, discussions, findings and recommendations. The agricultural advisory board meetings shall be open to the public. There shall be a quorum of four (4) members for the purpose of taking official action.

(c) If an appointee has unexcused absences which constitute more than twenty-five (25) percent of the scheduled board meetings in any year in which he/she is required to attend, he/she is obligated to resign. Excused absences are defined as absences in which notification was made prior to the meeting to either the agricultural advisory board chairman or the committee secretary.

(Ord. of 3-11-96, Art. VIII, § 802)

**Sec. 16-234. Duties.**

The agricultural advisory board shall:

- (1) Review and approve or disapprove applications for qualified farmland and voluntary farmland districts.
- (2) Hold public hearings pursuant to division 3 of this program [article].
- (3) Advise the board of commissioners and the planning board on projects, programs, or issues affecting the agricultural economy or activities within the county and that will affect agricultural districts.
- (4) Perform other related tasks or duties assigned by the board of commissioners.

(Ord. of 3-11-96, Art. VIII, § 803)

**Secs. 16-235--16-250. Reserved.**

**DIVISION 3.**

**PUBLIC HEARINGS ON CONDEMNATION OF FARMLAND**

**Sec. 16-251. Required prior to taking action.**

Pursuant to North Carolina General Statute 106-740, no state or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland within a voluntary farmland district until such agency or unit has requested the agricultural advisory board to hold a public hearing on the proposed condemnation.

(Ord. of 3-11-96, Art. IX, § 900)

**Sec. 16-252. Procedures.**



(a) *Establishing date.* Upon receipt of a request for a public hearing, the agricultural advisory board shall have thirty (30) days to set a date for a public hearing on the proposed condemnation.

(b) *Notice.* The agricultural advisory board shall publish a notice of the public hearing in a newspaper having general circulation in the county at least ten (10) days prior to the hearing. The notice shall contain the date, time, and place of the hearing and shall provide the name of the agency requesting the hearing and the purpose of the condemnation.

(c) *Considerations.* The agricultural advisory board shall conduct the public hearing and receive information and comments from the agency requesting the condemnation action and the general public. The board shall consider the following:

- (1) Has the need for the project requiring the condemnation been satisfactorily established by the agency requesting the action?
- (2) Has a financial impact analysis been conducted by the agency seeking the action?
- (3) Have alternatives been considered to the proposed action that are less disruptive to the agricultural activities and farmland located within the voluntary farmland district?

The board shall consult with the county cooperative extension agent, U.S.D.A. Natural Resources Conservation Service, county soil and water district, the consolidated farm service agency, and may consult with any other individuals, agencies or organizations, public or private, necessary to adequately review the proposed condemnation.

(d) *Findings and notification.* Within ten (10) days after the public hearing, the board shall make a report containing its findings and recommendations regarding the proposed condemnation. The report shall be conveyed to the decision-making body of the agency proposing the condemnation.

(Ord. of 3-11-96, Art. IX, § 901)

**Secs. 16-253--16-300. Reserved.**

## **ARTICLE IX.**

### **TELECOMMUNICATIONS TOWERS\***

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\* **Editors Note:** An ordinance adopted October 28, 1996, did not specifically amend the Code; hence, codification of §§ 1--19 of said ordinance as §§ 16-301--16-319 was at the discretion of the editor. Subsequently, §§ 1--19 of an ordinance adopted June 12, 2000, though not specifically amendatory of the Code, set out provisions which amended Art. IX, §§ 16-301--16-319, in its entirety.

**Cross References:** Buildings; construction and related activities, Ch. 4.

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#### **Sec. 16-301. Title.**

This article shall be known as "the Telecommunications Tower Ordinance" of Transylvania County, North Carolina.

(Ord. of 10-28-96, § 1; Ord. of 10-9-00, § 1)

#### **Sec. 16-302. Purpose.**

The board of commissioners finds that the construction of telecommunications towers may cause unusual problems and hazards to the residents and visitors of Transylvania County. The purpose of this article is to regulate the construction of telecommunications towers to avoid potential damage to adjacent properties from tower failure and falling ice, to maximize the use of existing and new towers in order to reduce the number of towers needed, to minimize potential hazards to low flying law-enforcement and medical helicopters, to restrict towers that adversely

detract from the natural beauty of the mountains by discouraging visual eyesores as stated in the county's comprehensive plan and to minimize the negative economic impact on tourism and scientific research.  
(Ord. of 10-28-96, § 2; Ord. of 10-9-00, § 2)

### **Sec. 16-303. Authority and enactment.**

This article is adopted under the authority and provision of the General Statutes of the State of North Carolina Article 6, Chapter 153A-121.  
(Ord. of 10-28-96, § 3; Ord. of 10-9-00, § 3)

### **Sec. 16-304. Jurisdiction.**

This article shall apply to all areas of Transylvania County located outside the planning jurisdiction of any incorporated city or town. Municipalities within Transylvania County may elect to allow this article to be effective within their corporate limits and planning jurisdiction.  
(Ord. of 10-28-96, § 4; Ord. of 10-9-00, § 4)

### **Sec. 16-305. Definitions.**

[The following terms, when uses in this article, shall have the meanings ascribed to them in this section, except where context clearly indicates a different meaning:]

*Antenna.* A conductor by which electromagnetic waves are transmitted or received.

*Co-location.* Use of a common wireless communication facility or common site by more than one (1) wireless communication provider or by one (1) wireless provider for more than one (1) type of communication technology (i.e. antenna) and/or placement of a wireless communication facility on a structure owned or operated by others.

*Construction.* Any new construction, reconstruction, alteration or expansion requiring a building permit in accordance to [with the] North Carolina Building Code, or modifications to an existing tower that increases its height.

*Existing vegetative canopy.* The existing vegetative plants, trees and shrubs located within the proposed telecommunications tower's fall area that will provide natural camouflage and concealment of the tower and its support structures after construction.

*Fall area.* A circle whose center is the base of a telecommunications tower and whose radius is equal to the tower's height.

*Person.* Any individual, partnership, firm, association, joint venture, public or private institution, utility, cooperative, interstate body, the State of North Carolina, and its agencies and political subdivision, or other legal entity.

*Protected mountain ridge.* All mountain ridges whose elevation is at least five hundred (500) or more feet above the elevation of an adjacent valley floor and including Dunn's Rock.

*Radio astronomy facility.* A facility that detects electromagnetic energy from space for scientific and education research.

*Resident.* Any person residing, doing business or maintaining an office within Transylvania County.

*Search area.* The geographical area within which the applicant or designated wireless provider has a bona fide need to place antennas or equipment to provide its service.

*Structure.* Anything constructed or erected, including but not limited to buildings, that requires location on the land or attachment to something having permanent location on the land.

*Telecommunications tower (hereinafter known as "tower").* Any tower or structure erected for the purpose of supporting one (1) or more antennas designed to transmit or receive signals (e.g., telephonic, radio, television or microwave) and antennas or other devices affixed thereto. Lightning rods are exempt provided the tower does not meet FAA lighting requirements.

*Tower height.* The vertical distance measured from ground to the upper most point of the telecommunications tower.

(Ord. of 10-28-96, § 5; Ord. of 10-9-00, § 5)

#### **Sec. 16-306. Permits required.**

No tower over fifty (50) feet shall be constructed, reconstructed or expanded until a Transylvania County tower permit is obtained as provided in this article. No tower permit shall be issued that is not in compliance with this article. No building permit shall be issued for any tower subject to this article that has not received a tower permit.

(Ord. of 10-28-96, § 6; Ord. of 10-9-00, § 6)

#### **Sec. 16-307. Enforcement officer.**

The board of commissioners shall appoint an enforcement officer. The enforcement officer or his appointee shall administer and enforce all provisions of this article.

(Ord. of 10-28-96, § 7; Ord. of 10-9-00, § 7)

#### **Sec. 16-308. Permit application.**

Telecommunications tower permit applications are available from the planning department.

(Ord. of 10-28-96, § 8; Ord. of 10-9-00, § 8)

#### **Sec. 16-309. Application fee.**

A fee for reviewing tower permit applications shall be established by the board of commissioners and posted in the planning department.

(Ord. of 10-28-96, § 9; Ord. of 10-9-00, § 9)

#### **Sec. 16-310. Application submission and review process.**

(a) A completed tower permit application and five (5) copies of all supporting documentation as given in section 16-311 shall be submitted to the enforcement officer for review at least fifteen (15) working days prior to a regularly scheduled planning board meeting.

(b) The enforcement officer shall review the completed tower permit application for compliance with sections 16-311 and 16-313. Any application not containing all information required in section 16-311 shall be rejected and returned to the applicant together with the reasons for rejection. If the enforcement officer deems it necessary, he may retain, at the permit applicant's expense, one (1) or more professional engineers to assist him in reviewing any technical requirements.

(c) The enforcement officer shall be responsible for submitting a notice to the local paper(s) and to all known property owners abutting the property where the proposed tower is to be located. The notice shall state that the planning board will review and consider the tower permit application at their next meeting and that the application is available for public review in the planning department.

(d) The enforcement officer shall recommend to the planning board either approval, approval with conditions or disapproval. In making his recommendation, the enforcement officer may include any appropriate conditions he deems should be placed on issuing the permit as identified in section 16-313.

(e) The planning board shall consider the tower permit application and public comments regarding the application's technical compliance with the article after receiving the enforcement officer's recommendation.

(f) The planning board shall take formal action to approve, approve with conditions or disapprove the tower permit application within thirty (30) working days. If the action is to disapprove the tower permit application, the reasons for such action shall be stated in the minutes and specific reference shall be made to the requirements not met. If the planning board fails to act within the specified time period, the application shall be considered approved or disapproved as recommended by the enforcement officer.

(g) The owner or his agent shall record the site development plan in the register of deeds' office before obtaining a building permit for the subject tower.  
(Ord. of 10-28-96, § 10; Ord. of 10-9-00, § 10)

### **Sec. 16-311. Application requirements.**

All of the following information shall be submitted with the application and shall be part of the tower permit application.

- (1) A site development plan prepared by a North Carolina registered land surveyor containing the following:
  - a. The tower applicant's name and property owner's name and their addresses, scale, north arrow, vicinity map, tax parcel identification number, and the tower's latitude and longitude coordinates.
  - b. The name, address, signature and seal of the surveyor preparing the site development plan.
  - c. The surveyed boundary lines of the parcel(s) that will contain the proposed tower and its fall area.
  - d. The name, addresses and tax parcel identification numbers of all owners of property abutting the subject property.
  - e. All identifiable structures located on the parcel, all private and public roads, highways, and underground and overhead utilities.
  - f. All existing towers on the property or any towers whose fall area encroaches onto the property.
  - g. The proposed tower's location, the proposed fall area and the location of all support structures and guy line anchors.
  - h. The ground elevation of the proposed tower's base, all proposed support structures, property corners, and a permanent site bench mark. All elevations shall be determined using the National Geodetic Vertical Datum of 1929.
- (2) A preliminary tower design plan prepared by a North Carolina registered professional engineer containing the following:
  - a. The tower permit applicant's name and address, scale, north arrow, vicinity map and tax parcel identification number.
  - b. The name, address, signature and seal of the engineer preparing the preliminary tower design plan.
  - c. A plan showing the base of the tower and the foundations for all guy line anchors and support structures, all proposed buildings and any other proposed improvements including access roads

and utility connections within and to the proposed site.

- d. A tower elevation showing proposed lighting, if any, and all proposed antennas or antenna arrays.
- e. The proposed tower design loads.

- (3) A map at a scale of not less than 1:24,000 showing the general search area(s) for the proposed tower's antenna(s).
- (4) Written statements from the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC) showing that the proposed tower complies with all permit regulations administered by that agency or evidence that the proposed tower is exempt from those regulations.
- (5) A report that identifies all other possible alternatives considered within the search area for the proposed tower's antenna(s), the reasons for their rejection and the reasons why the proposed tower is necessary and why existing towers and structures (e.g., Duke Power transmission towers) cannot accommodate the proposed antenna(s).
- (6) A listing of all variance(s) to the article requested by the applicant, the reason(s) for seeking the variance(s) and any measures that are proposed to mitigate possible adverse affects of the proposed variance(s), or a statement that no variance is requested.

(Ord. of 10-28-96, § 11; Ord. of 10-9-00, § 11)

#### **Sec. 16-312. Issuance of permit.**

(a) Following the planning board's approval of any tower permit application not requesting a variance, the enforcement officer shall issue a tower permit. All tower permit conditions shall appear on the face of the site development plan. The permit owner shall acknowledge and agree to permit conditions approved by the planning board. If a building permit is not obtained within twelve (12) months after the tower permit is issued, the tower permit shall expire.

(b) Any tower not in use shall be removed within one hundred and eighty (180) days after the tower owner and the current property owner have received written notice by the enforcement officer or the county attorney. The written notice, mailed return receipt requested, shall be delivered to both the tower owner of record and the current property owner.

(c) Upon the enforcement officer's request, the applicant shall be required to provide a certificate of insurance demonstrating it has a minimum of one million dollars (\$1,000,000.00) in general liability insurance covering any liability arising out of its construction or operation of the wireless telecommunication facility.

(Ord. of 10-28-96, § 12; Ord. of 10-9-00, § 12)

#### **Sec. 16-313. Tower approval standards.**

(a) Any proposed tower shall provide a needed service or benefit to the residents of Transylvania County that cannot otherwise be met.

(b) Towers shall be sited to contain all ice-fall or debris from tower failure on-site. The minimum distance from the tower's base to the property line shall be equal to the tower's height.

(c) Tower lighting shall not exceed the minimum standards of the Federal Aviation Administration (FAA).

(d) The base of the tower shall be surrounded by a fence or wall at least eight (8) feet in height unless the tower is constructed entirely on a building over eight (8) feet in height. A vegetative screen shall also surround the tower's base and associated structures.

- (e) The tower shall be engineered and constructed to accommodate a minimum of three (3) providers.
- (f) Tower permit approval is conditional subject to the owner(s) agreeing to allow future co-location of other antenna(s).
- (g) No tower shall exceed two hundred (200) feet in height and shall not exceed the existing natural vegetative canopy's height by more than one hundred (100) feet on a protected mountain ridge.
- (h) Towers shall be light gray in color except when otherwise required by applicable federal or state regulations.
- (i) Property located within the tower's fall area shall not be subdivided as long as the tower is standing.
- (j) No two (2) telecommunications towers shall be constructed within two thousand six hundred and forty (2,640) feet of each other unless documentation is provided showing that co-location on towers within two thousand six hundred and forty (2,640) feet is not technically feasible.
- (k) Prior to the issuance of a telecommunications tower permit the applicant shall be required to provide a certificate of insurance demonstrating it has a minimum of one million dollars (\$1,000,000.00) in general liability insurance covering any liability arising out of its construction or operation of the wireless telecommunication facility.
- (l) Any proposed tower and/or antennas located at or above three thousand (3,000) feet shall be sited to minimize potential interference to radio astronomy facilities. The tower owner agrees to require that all tower users or tenants identify how potential interference will be minimized (e.g., distance and terrain blockage, antenna directivity or frequency choice not to exceed frequency (GHz) x frequency x 10E-17 w/m/m power density).  
(Ord. of 10-28-96, § 13; Ord. of 10-9-00, § 13)

#### **Sec. 16-314. Variances.**

- (a) Following the final decision by the planning board to deny a permit, a tower permit applicant may request that the board of commissioners grant a variance from the tower approval standards listed in section 16-313.
- (b) Before determining whether to or not to grant a variance, the board of commissioners shall hold a public hearing. The board of commissioners shall grant a variance if and only if it concludes that:
  - (1) Adherence to the article's development standards will cause extraordinary economic hardship to the applicant;
  - (2) If the variance is granted, the proposed use of the site will not substantially diminish the public health or safety or be detrimental to the general welfare of the county; and
  - (3) If the variance is granted, the proposed use of the site will not substantially detract from the natural beauty of the mountains and the county's future economic growth and development.
- (c) Should the board of commissioners grant the requested variance, the enforcement officer shall issue a tower permit. The permit applicant shall acknowledge and agree to permit conditions approved by the board of commissioners. If a building permit is not obtained within twelve (12) months after the tower permit issued, the tower permit shall expire.  
(Ord. of 10-28-96, § 14; Ord. of 10-9-00, § 14)

#### **Sec. 16-315. Criminal sanctions.**

Any person violating this article shall be guilty of a misdemeanor. Each day's violation of any provision of this

article shall constitute a separate and distinct offense. A violation begins from the date of first written notification by the enforcement officer or the county attorney. Further violations shall be subject, upon conviction, to fine and/or imprisonment as provided by G.S. 14-4.

(Ord. of 10-28-96, § 15; Ord. of 10-9-00, § 15)

#### **Sec. 16-316. Remedies.**

If a tower is constructed, reconstructed, altered or expanded in violation of this article, the enforcement officer or county attorney, in addition to other remedies, may institute any appropriate action or proceedings pursuant to G.S. 153A-123 to prevent the unlawful construction, reconstruction, alteration or expansion, and to restrain, correct or abate the violation. The enforcement officer or county attorney may bring such action as to enjoin any such violations by action for injunction.

(Ord. of 10-28-96, § 16; Ord. of 10-9-00, § 16)

#### **Sec. 16-317. Appeals.**

Appeals of the decision of the enforcement officer, planning board or the board of commissioners may be made to superior court within thirty (30) working days of their action.

(Ord. of 10-28-96, § 17; Ord. of 10-9-00, § 17)

#### **Sec. 16-318. Severability.**

Should any section or provision of this article be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the article as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

(Ord. of 10-28-96, § 18; Ord. of 10-9-00, § 18)

#### **Sec. 16-319. Conflict with other laws.**

Whenever the regulations of this article conflict with the requirements of another state or federal statute or county ordinance, the more restrictive standard shall govern.

(Ord. of 10-28-96, § 19; Ord. of 10-9-00, § 19)