

A public hearing regarding proposed text amendments to Ashe County Code of Ordinances, Title XV: Land Usage, CHAPTER 156: RESIDENTIAL SUBDIVISIONS and CHAPTER 159: Ashe County Cemetery Ordinance, will be held on **Monday, July 20, 2023, at 9:05 a.m. in the Commissioners Meeting Room, Ashe County Courthouse, 150 Government Circle, Suite 3300, Jefferson, North Carolina.**

The text amendments to CHAPTER 156 will make it compliant with the current NC Fire Code and CHAPTER 159 will allow the county to improve its management of the cemeteries within its jurisdiction. You may call (336) 846-5957 or email planning@ashecountygov.com with questions concerning these proposed amendments. Citizens are invited to make oral or written comments.

Matthew Levi
Planning Director
June 29, 2026



Outlook

Ordinances and Plan Consistency Statement Options for the Commissioners

From Matthew Levi <matthew.levi@ashecountygov.com>

Date Mon 7/13/2026 1:39 PM

To Missy Seivers <missy.seivers@ashecountygov.com>

📎 3 attachments (495 KB)

4-30-2026_Version.pdf; FINAL Cemetery Ordinance- Removed Section 4.1_5-11-2026.pdf; Comments_Chpt156_159.docx;

Hello:

Below are the ordinances, plan consistency statement (labeled comments) and options for adopting the plan consistency statement. Please tell me if something does not make sense and I will fix it.

There are three options for adopting the plan consistency statement when adopting amendments.

1. When the motion for adopting of the amendments is made the motion may also include the plan consistency statement
2. Make a motion for adoption of the amendments and a separate motion of adoption of a plan consistency statement
3. Add to the minutes following statement: The County of Ashe Commissioners were aware of and considered the planning board's recommendations when adopting the amendments and their consistency with the Ashe County Comprehensive Plan (2022). The proposed amendments are supportive of the Plan's priority of maintaining the County of Ashe's natural resources, rural character and attributes of its people.

<< 4-30-2026_Version.pdf >> << FINAL Cemetery Ordinance- Removed Section 4.1_5-11-2026.pdf >> << Comments_Chpt156_159.docx >>

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CHAPTER 156: RESIDENTIAL SUBDIVISIONS

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GENERAL PROVISIONS

§ 156.01 TITLE.

This chapter shall be known and may be cited as the Ashe County Residential Subdivision Chapter.

(Ord. passed 3-20-96; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.02 AUTHORITY.

Pursuant to the authority granted by G.S. §160D-801, the County Commissioners of Ashe County do hereby ordain and enact into law the provisions of this chapter.

(Ord. passed 3-20-96; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.03 JURISDICTION.

On and after the date of adoption, this chapter shall govern each and every residential subdivision of land for the purposes of the development of residential subdivisions within Ashe County (referred to hereafter as the "county") and outside the jurisdiction of any incorporated municipality.

(Ord. passed 3-20-96; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.04 PURPOSE.

The purpose of this chapter is to guide the development of residential subdivisions within the county by facilitating an orderly system for their design, layout, and development.

(Ord. passed 3-20-96; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.05 WORD INTERPRETATION.

For the purposes of this chapter, the following words shall be interpreted as follows:

(A) The word COUNTY shall mean Ashe County, North Carolina.

(B) The words COUNTY COMMISSIONERS shall mean the Board of County Commissioners of Ashe County, North Carolina.

(C) The words PLANNING BOARD shall mean the planning board of Ashe County, North Carolina.

(D) The word CHAPTER shall mean the Ashe County Residential Subdivision Ordinance.

(E) The word REGULATION shall mean the Ashe County Residential Subdivision Ordinance.

(F) The word MAY is permissive.

(G) The word SHALL is mandatory.

(H) The words REGISTER OF DEEDS shall mean the Office of the Register of Deeds for Ashe County, North Carolina.

(I) The word LOT includes the words PLOT, PARCEL, TRACT, and SITE.

(Ord. passed 3-20-96; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.06 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUILDING SETBACK LINE (MINIMUM). A line parallel with the property line located no closer than ten feet from the property line and designating an area bordering the property lines in which no building or part thereof shall be placed.

EASEMENT. A strip of land designated by the property owner for a specified purpose and use by the public, a corporation, or others. Easements shall be created either by a written document recorded with the Register of Deeds or by being shown on a plat recorded with the Register of Deeds.

LOT. A portion of a residential subdivision no less than one acre in size, intended as a unit for transfer of ownership or for development or both. If a community water and sewer system is provided, a lot size may be reduced to at least ½ (one-half acre), and the water and sewer system must be utilized (requirements found in §156.45(M)).

MAJOR RESIDENTIAL SUBDIVISION. Any residential subdivision with eight lots or greater, or requiring the dedication of a public or private road.

MINOR RESIDENTIAL SUBDIVISION. Any residential subdivision with seven or fewer lots and not requiring the dedication of a public or private road or variances. One phase of a phased development cannot be considered a MINOR RESIDENTIAL SUBDIVISION unless the entire development is not more than 10 lots. As provided in § 156.36, MINOR RESIDENTIAL SUBDIVISIONS may be approved by planning staff.

PHASED DEVELOPMENT. A residential subdivision that is developed in phases and meets the requirements of § 156.31.

PLAT. A map or plan of a parcel of land which has been or is to be subdivided.

PRIVATE DRIVEWAY. A roadway serving a single lot, building, building site, or other division of land and not intended for public use.

PRIVATE ROAD, COUNTY STANDARD (or private road). A road constructed in accordance with the provisions of § 156.46.

RESIDENTIAL SUBDIVISION. A residential subdivision shall include all divisions of a tract of land into two or more lots for the purpose, whether immediate or future, of sale, or building development. Such lots shall not be smaller than one acre, the execution of a

security interest, such as a deed of trust, for a portion of a tract of land which results in two or more persons, firms or corporations having the potential to convey ownership of portions of the existing tract creates a RESIDENTIAL SUBDIVISION for purposes of this chapter. The following shall not be included within this definition nor be subject to the requirements of this chapter.

(1) The division of land solely among members of the same family, who are in any degree of lineal kinship or within three degrees of collateral kinship to the grantor by any method of transfer except where the parties contemplate development for resale. By way of example, such degrees of kinship include children, grandchildren, great-grandchildren, parents, grandparents, brothers and sisters, uncles and aunts, and nieces and nephews, as described under G.S. §104A-1. Any transfer of the resulting lots within three years after division of the land may be considered a RESIDENTIAL SUBDIVISION of land unless transfer of such lots is given approval by a majority vote of the Ashe County Planning Board, to which the applicant for Planning Board approval shall have shown that there was a change in the family situation, such as divorce, a death in the family, or another unexpected issue which created the need for such transfer. Additionally, if it is discovered this exemption was utilized to circumvent any Ashe County Land Use Ordinance, the division of land shall be considered a RESIDENTIAL SUBDIVISION and deemed a violation of this chapter.

(2) The combination or recombination of portions of previous platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the requirements of this chapter.

(3) The division of land by court order or court-approved partition.

(4) The division of land for agricultural purposes such as the production of crops, livestock, or poultry. "Agricultural land" shall be defined in this chapter as it is defined in G.S. §105-277.2.

(5) The division of land for commercial purposes meaning all purposes other than single-family residential.

(6) The division of land into parcels greater than ten acres if no street right-of-way dedication is involved.

(7) The division of a tract in single ownership whose area is two acres, where no street right-of-way dedication is involved, and where the resultant lots meet or exceed the requirements of this chapter.

RIGHT-OF-WAY. A strip of land designated by the owner or acquired by another authority by which other persons may legally pass, and on which a road and/or utilities may be constructed.

ROAD, STATE STANDARD. A dedicated and accepted public right-of-way for vehicular traffic on which is constructed a road which meets the specifications and requirements of the North Carolina Department of Transportation.

SINGLE FAMILY RESIDENTIAL. The division and/or development of land intended to support the erection or placement of a structure for the use of any one single family as a temporary or permanent residence.

TRAVEL AREA. That area of a road which is stoned or paved in accordance with § 156.46(C)(3), and which is intended for vehicular travel.

(Ord. passed 3-20-96; Am. Ord. passed 4-8-02; Am. Ord. passed 4-3-06; Am. Ord. passed - -; Am. Ord. passed 7- -07; Am. Ord. passed 3-5-12; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.07 SEPARABILITY.

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

(Ord. passed 9-2-08; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.08 VESTED RIGHTS AND EXPIRATION OF CONSTRUCTION

Pursuant, G.S. 160D-108 both a Major and Minor Residential Subdivision are awarded Vested Rights upon gaining planning staff or Planning Board approval as of January 1, 2021. However, older Residential Subdivisions may have been subject to a two-year limit of vesting if they were approved as site-specific vesting plans under, G.S. 153A-344.1. A Residential Subdivision given approval under G.S. 153A-344.1 when it was effective and if the full length of the road is platted, then the road may continue with the road standards which the Residential Subdivision was approved. However, any road extended in length (past the platted length) or newly created must comply with the current Fire Code. If a Residential Subdivision discontinues the construction of an approved road for two years and then restarts the construction, the new section of the road must comply with the current Fire Code.

PLANNING BOARD REVIEW

§ 156.15 PRELIMINARY PLAT REVIEW AND APPROVAL.

Unless otherwise noted, no real property within the jurisdiction of this chapter shall be subdivided and offered for sale or a plat therefor recorded until a preliminary and final plat have been reviewed and approved by the planning staff or the Planning Board.

(Ord. passed 3-20-96; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.16 BUILDING PERMITS.

(A) No land disturbing activities may be commenced, nor any utilities or other improvements may be constructed in a residential subdivision until the plan for development has been approved by the planning staff or Planning Board, as appropriate. Such preliminary approval shall in no way alter the requirements. That the final plat be approved by the planning staff or the Planning Board prior to the sale of land in the development or the recording of a plat.

(B) No permit for any building or structure will be issued upon any land requiring approval as a residential subdivision under the conditions set forth in this chapter unless a final plat is recorded with the Register of Deeds.

(Ord. passed 3-20-96; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.17 RECORDING OF PLATS.

No residential subdivision plat of land within the county's jurisdiction shall be filed or recorded until it has been submitted to and approved by the planning staff or the Planning Board, and such approval is entered in writing on the face of the plat by the designated representative of the Planning Board.

(Ord. passed 3-20-96; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.18 DUTY OF THE REGISTER OF DEEDS.

The Register of Deeds shall not file or record a plat of a residential subdivision of land within the territorial jurisdiction of the county that has not been approved in accordance with the provisions of this chapter.

(Ord. passed 3-20-96; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

PROCEDURES FOR REVIEW AND APPROVAL

§ 156.25 PLAT REQUIRED ON ANY RESIDENTIAL SUBDIVISION OF LAND.

Whenever any residential subdivision of land takes place for the purposes of the creation of a residential subdivision, a final plat shall be prepared, approved, and recorded as required by the provisions of G.S. §47-30 and this chapter. To secure such approval, the subdivider shall follow the procedures established in this subchapter.

(Ord. passed 3-20-96; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23) Penalty, see § 156.99

§ 156.26 MINOR RESIDENTIAL SUBDIVISION.

Procedures set forth here for handling applications for planning staff approval of minor subdivisions are intended to simplify processing of routine small subdivisions with due regard to protection of the public interest.

(Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.27 MAJOR RESIDENTIAL SUBDIVISION.

Approval of major subdivisions shall be by the Planning Board in accordance with the procedures set forth in this chapter.

(Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.28 SUBMISSION OF PRELIMINARY PLAT.

(A) Staff review. The developer/subdivider seeking to create a residential subdivision shall submit one copy of a preliminary plat meeting the requirements of this chapter to the planning staff, which shall review such plat to determine if it does or does not qualify as a minor residential subdivision and if it otherwise does or does not meet the requirements of this chapter. If the planning staff determines that the preliminary plat does qualify as a minor residential subdivision and does meet all of the requirements of this chapter, the planning staff may approve the preliminary plat. The Planning Board or their designated representative, will receive one copy of the plat at least 15 working days before the meeting of the Planning Board at which it is to be reviewed. Prior to the meeting and after planning staff review, three copies shall be submitted to the Planning Board. Either the developer or an appointed representative shall be present at the meeting when a plat is considered by the Planning Board in order to answer Board questions and facilitate a timely action by the Board.

(B) Planning Board review. If planning staff determines that the preliminary plat does not qualify as a minor residential subdivision, the developer/subdivider shall submit three copies of the preliminary plat to the Planning Board or its designated representative at least 15 working days before the meeting of the Planning Board at which it is to be reviewed. Either the developer or an appointed representative shall be present at the meeting when a plat is to be considered by the Planning Board in order to answer questions and facilitate timely action by the Planning Board.

(C) After receiving approval of the preliminary plat by the planning staff or Planning Board, the subdivider (developer) may proceed to construct the proposed roads, add utilities and other residential subdivision improvements (except buildings) in accordance with the requirements of this chapter and as shown on the approved preliminary plat. No

work on residential subdivision roads or other improvements shall be commenced before approval of the preliminary plat.

(D) Fees. The developer shall pay an inspection fee of an amount specified from time to time by the County Commissioners. Half of the fee shall be paid at the time of submission of the preliminary plat (the fee shall be paid before the plat will be placed on the Planning Board agenda); the remainder shall be paid at submission of the final plat. Contact the County Inspections Department for a schedule of fees.

(Ord. passed 3-20-96; Am. Ord. passed 4-8-02; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23) Penalty, see § 156.99

§ 156.29 SPECIFICATIONS FOR PRELIMINARY PLAT WITH SUBDIVIDING.

The preliminary plat shall be at a scale of 200 feet to 1 inch or larger and shall be on a sheet with minimum measurements of 18" x 24". If the size and shape of the property is such that an 18" x 24" sheet will not accommodate the entire tract, a larger size may be used. Under no circumstances shall a preliminary plat be at a scale of smaller than 1" = 200'. The following information shall be required to the extent applicable.

(A) A vicinity map showing the relationship of the proposed residential subdivision with the surrounding areas.

(B) The location of existing property lines, streets, buildings, watercourses, transmission lines, sewers, bridges, water lines, and public utility easements.

(C) Boundaries of the tract shown with metes and bounds and acreage.

(D) Access right-of-way from a state road. Due to ingress and egress of emergency vehicles. The access right-of-way from a state road to a private road, utilized to gain entry to a subdivision, shall meet the design standards for private roads (county standard).

(E) Names of adjoining property owners and/or residential subdivisions, with deed references.

(F) Proposed streets, street names, rights-of-way, roadway widths, approximate grades, curve radii, and proposed stormwater drainage facilities.

(G) Other proposed rights-of-way or easements showing locations, widths and purposes.

(H) Proposed lot lines with metes and bounds, lot numbers, and acreage.

(I) Proposed utility layouts (such as sewer, water, electricity, phone, cable, fiber optic and etc.) showing connections to existing systems or plans for central water system or package sewage system, or designation for individual water and sewage.

(J) Proposed parks, open spaces, or any other public areas.

(K) Name of owner of record, developer, engineer, and professional surveyor.

(L) Title, date, north point, and graphic scale.

(M) If applicable, the relationship with floodway and floodplain as delineated by the county floodway boundary and flood insurance rate maps. Base flood elevation data shall be provided for each separate lot which lies within a special flood hazard area. An elevation reference mark shall also be set within each lot which lies within a special flood hazard zone per Ch. 151 Flood Damage Prevention. Such reference marks shall be transferred from FEMA flood insurance study elevation marks, or other acceptable method.

(N) Whenever land-disturbing activity that will disturb more than one acre is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within a time period to be specified by rule of the Commission, shall be submitted with the preliminary plat.

(O) When applicable, a note to declare that individual lots have not been approved by the Appalachian Regional Health Department or other appropriate governmental authority as to suitability for the installation of wells, and/or septic/sewer systems.

(Ord. passed 3-20-96; Am. Ord. passed 4-8-02; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23; Am. Ord. passed 2-19-24) Penalty, see § 156.99

§ 156.30 (RESERVED).

§ 156.31 PHASED DEVELOPMENTS.

If a developer proposes that a residential subdivision will be constructed in phases, the following procedure shall apply.

(A) A master plan showing the entire proposed residential subdivision and the phases of the development, proposed type and location of utilities, and proposed development timetable shall be submitted to the Planning Board for approval.

(B) Each phase of development shall be preceded by submission and approval of a preliminary plat as outlined in § 156.29, unless such plat submission is waived by the Planning Board. The master plan may be submitted prior to or simultaneously with the submission of the preliminary plat for the first phase of development.

(C) As each phase is completed, a final plat must be submitted and approved for that phase as outlined in § 156.31 and § 156.32.

(Ord. passed 3-20-96; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23) Penalty, see § 156.99

§ 156.32 SUBMISSION OF FINAL PLAT.

Unless a final plat is submitted to the planning staff or Planning Board within 12 months from the date on which the preliminary plat was approved, any actions taken by the planning staff or Planning Board on the preliminary plat shall become void and of no effect, and shall require the resubmission of the preliminary plat to the planning staff or Planning Board for reconsideration. Either the developer or an appointed representative shall be present when a plat is considered by the planning staff in order to answer staff questions and facilitate timely action by the staff. One copy of the final plat shall be submitted to the planning staff at least 15 working days before the meeting of the Planning Board at which time the plat is to be reviewed. Prior to the meeting and after planning staff review, three copies of the final plat reviewed together with the plat fee shall be submitted to the Planning Board. Either the developer or an appointed representative shall be present at the meeting when a plat is considered by the Planning Board in order to answer Board questions and facilitate timely action by the Board.

(A) Final plat. The final plat shall constitute only that portion of the approved preliminary plan which the subdivider proposes to record provided that such portion conforms to all requirements of this chapter. The final plat shall be at a scale of 200 feet to 1 inch or larger and shall be on a sheet with minimum measurements of 18" x 24" and maximum measurements of 21" x 30". Under no circumstances shall a final plat be at a scale of smaller than 1" = 200'. The final plat shall show as applicable the following:

(1) A vicinity map showing the location of the residential subdivision in relation to the surrounding area.

(2) The right-of-way lines and easements of all streets and roads (with names shown), and access to a state road.

(3) Lot lines and lot numbers metes and bounds and acreage.

(4) If applicable, the relationship with floodway and flood plain as delineated by the county floodway boundary and flood insurance rate maps. Base flood elevation data shall be provided for each separate lot which lies within a special flood hazard area. An elevation reference mark shall also be set within each lot which lies within a special flood hazard area per Ch. 151 Flood Damage Prevention. Such reference marks shall be transferred from FEMA flood insurance study elevation marks, or other acceptable method. Areas inside the base flood elevation levels shall be marked "This area unsuitable for residential construction. Well and/or septic systems may be placed in this area if approved by the Appalachian Regional Health Authority or other Governmental authority for the installation of wells and/or septic/sewer systems."

(5) Sufficient data to determine readily and be reproducible on the ground, the location, bearing, and length of every street line, lot line, boundary line, and block line whether curved or straight.

(6) Accurate location and description of all monuments, markers, and block tie lines.

(7) The names and locations of adjoining residential subdivisions and streets, and the location and ownership of adjoining unsubdivided property, including water areas, with deed references.

(8) Title, date, name, and location of residential subdivision, graphic scale, and true north point.

(9) Name of owner of record, developer, engineer, and professional surveyor.

(10) When applicable, a note to declare that individual lots have not been approved by the Appalachian Regional Health Department or other appropriate governmental authority as to suitability for the installation of wells, and/or septic/sewer systems.

(B) Reservations for easements, rights-of-way and areas to be dedicated to public uses or sites for other than residential use shall be shown on the plat with notes stating their purposes.

(C) Reference shall be made on final plat to deed book and page number of recorded restrictive covenants if any.

(D) The following certifications or their equivalent, shall be shown on the final plat as applicable:

Certificate of Approval of Recording

I hereby certify that the residential subdivision plat shown hereon has been found to comply with the residential subdivision ordinance of Ashe County, North Carolina, with the exception of such variances, if any, as are noted in the Minutes of the Planning Board and are recorded on this plat and that this plat has been approved by the Ashe County Planning Staff or Planning Board on _____ for recording in the office of the Ashe County Register of Deeds.

Date Ashe County Planning Director

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 the property is within the regulatory jurisdiction of Ashe County, and that I (we) hereby adopt this plan of residential subdivision with my (our) consent, and establish all lots, and dedicate all streets, alleys, walks, parks, easements, rights-of-way, and other open spaces to public or private use as noted.

Date Owner

Owner

Certificate of Approval for Recording
Residential Subdivisions Which Do Not Come
Under the Existing Residential Subdivision
Regulations

The residential subdivision of land shown on this plat does not fall under the definition of a residential subdivision as defined in § 156.06 of the Ashe County Residential Subdivisions Ordinance for the following

reason: _____

_____. I(We) hereby certify that I am (we are) the owner(s) of the property shown and described hereon, and that the property is within the regulatory jurisdiction of Ashe County, and that I(we) hereby declare that it does not fall under the regulations of the Ashe County Residential Subdivisions Ordinance (Chapter 156) for the reason listed above.

Date

Owner

Owner

I, _____, the Staff Review Officer have reviewed this plat and the applicant has submitted information so that it is reasonable to assume the above information is correct.

Date

Staff Review Officer

(Ord. passed 3-20-96; Am. Ord. passed 4-8-02; Am. Ord. passed 7- -07; Am. Ord. passed 3-5-12; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.33 APPROVAL OF FINAL PLAT.

Upon receipt of the final plat and required plat fee as specified, the planning staff or the Planning Board shall review the plat for compliance with the provisions of this chapter. The planning staff or Planning Board, as appropriate may approve the plat in whole or in part, or may subject the plat to modifications. The planning staff shall take action within 21 days after the plat was received. The Planning Board shall take formal action within two regularly scheduled meetings after the meeting at which the plat was first received. Failure to take formal action within this time frame shall have the same effect as a recommendation that the plat be approved. Within five days after its final action, the planning staff or Planning Board shall notify the subdivider by letter of the action taken.

(Ord. passed 3-20-96; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.34 APPEALS.

(A) If either a preliminary or final plat is not approved by the planning staff or Planning Board, the subdivider may appeal their case to the Board of Adjustment within 30 days after such disapproval or failure to approve.

(B) During an appeal, the official who made the decision (or their successor if the official is no longer employed) must appear as witness to the appeal, pursuant to G.S. §160D-406. All enforcement actions, including fines, must be paused during an appeal (G.S. § 160D-405).

(Ord. passed 3-20-96; Am. Ord. passed 5-6-02; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.35 ADVISORY OPINION.

A subdivider is encouraged to submit a sketch to the planning staff prior to submission of a preliminary plat if the subdivider wishes to obtain a staff opinion as to the feasibility of the development of his property.

(Ord. passed 3-20-96; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.36 STAFF APPROVAL OF A MINOR RESIDENTIAL SUBDIVISION.

If a developer seeks to create a minor residential subdivision, the developer can seek to subdivide a parcel into no more than seven lots, the developer can seek approval from a planning staff member appointed by the Ashe County Manager as the staff residential subdivision review officer. If staff approval is denied, the developer may appeal the decision to the Board of Adjustment. If approved, the residential subdivision plat must be recorded in the Ashe County Register of Deeds. To be approved, the parcel must meet these minimum requirements:

(A) Residential subdivisions which are exempted under § 156.06.

(B) All resulting lots must meet the minimum lot size.

(C) Plat(s) of the residential subdivision that meet both the requirements of the Ashe County Register of Deeds, and the plat requirements listed in § 156.28.

(D) Plat(s) also must have a certificate which states:

Certificate of Approval of Staff

Approved Residential Subdivisions

This plat represents a residential subdivision of land that consists of one parcel being divided into no more than seven lots, and meets the requirements of § 156.36.

Date Staff Residential Subdivision Review Officer

(Ord. passed 4-3-06; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

GENERAL REQUIREMENTS AND MINIMUM STANDARDS OF DESIGN

§ 156.45 GENERAL REQUIREMENTS.

The subdivider shall observe the following general requirements and principles of land residential subdivision.

(A) Suitability of land. Land which has been determined by the county planning staff, based on engineering and/or other studies prepared by licensed professionals, to pose an ascertainable danger to life or property by reason of its unsuitability for the use proposed shall not be platted for that purpose, unless and until such time as the subdivider has taken the necessary measures to correct such conditions and to eliminate such dangers.

(1) Land subject to flooding may be considered unsuitable for residential subdivision development. The decision by the planning staff will be based on the flooding history of the area and by survey information furnished by the US Federal Emergency Management Agency as delineated on the Ashe County floodway boundary and flood insurance rate map.

(B) Lot size. The minimum allowable lot size shall be one acre. If a community water and sewer systems are provided the lot size may be reduced to at least $\frac{1}{2}$ (one-half) acre.

(C) Street names. In assigning new street names, duplication of existing street names 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 street, road, drive, place, court, etc. Before final plat approval, the developer must have met with the County E911 Coordinator and established a schedule to have appropriate street signage in place. Street names shall be subject to approval of the planning staff, and shall comply with the County E911 program.

(D) Name of residential subdivision. The name of the residential subdivision shall not duplicate nor closely approximate the name of an existing residential subdivision in Ashe County (excluding any residential subdivisions in an existing municipality within Ashe County).

(E) Natural assets. In any residential subdivision, due consideration will be given to preserving natural features such as trees, ponds, streams, rivers, lakes, and any historical sites which are of value not only to the residential subdivision, but to the county as well.

(F) Erosion control. In order to prevent soil erosion and sedimentation of streams, springs, flat water bodies, or other drainage networks, the subdivider shall retain the natural vegetative cover wherever possible. Additionally, all land cleared of the natural vegetation and not designated as a street or road shall be reseeded or replanted with an appropriate vegetative cover. Whenever land-disturbing activity that will disturb more

than one acre is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within a time period to be specified by rule of the Commissioners, shall be submitted with the preliminary plat. In all cases of street construction, or land disturbing activity of one acre or more, the subdivider shall comply with all state-required erosion control measures. A list of recommended vegetative cover and procedures can be obtained from the New River Soil and Water Conservation District.

(G) Storm water drainage. The subdivider shall provide an adequate system for the proper drainage of all surface water.

(1) No surface water shall be channeled or directed into a sanitary sewer.

(2) Where actually available and not cost prohibitive to connect, the subdivider shall connect to an existing storm drainage system.

(3) Proposed residential subdivision stormwater designs shall provide adequate means to control stormwater discharge onto adjacent property and onto all existing drainage conveyance devices. The developer shall provide evidence that residential subdivision runoff is capable of being handled by existing structures or make provisions for upgrading such existing structures.

(H) Proposed water and sewage systems. All water supply and sewage systems shall be designed, constructed and operated in accordance with all applicable laws, rules and regulations of the North Carolina Department of Environment and Natural Resources and the Appalachian District Health Department.

(1) Sufficient information as to the proposed method and system of water supply and sanitary sewage collection and disposal shall be provided with the preliminary plat.

(2) Where community water and sewer system(s) are proposed, the final plat shall be accompanied by a letter of approval and an operational permit from the proper official of the North Carolina Department of Environment, Health and Natural Resources or the Appalachian District Health Department, whichever is applicable.

(I) Designation of road status.

(1) All streets and roads shown on the preliminary and final plats shall be clearly noted as to which roads are private roads constructed to county standards and which are state roads constructed to meet North Carolina Department of Transportation requirements. It is permissible to have both types of roads within a residential subdivision.

(J) Disclosure statement. The developer shall comply with G.S. § 136-102.6(f) which provides for a disclosure statement from the developer to the purchaser setting forth the status (whether private or public) of the road on which the property is located. The disclosure statement shall also fully disclose the party or parties upon whom responsibility

for maintenance of such roads shall rest. It shall also contain a statement informing the purchaser that the North Carolina Department of Transportation will not assume any responsibility for the maintenance or upkeep of a private road. A copy of G.S. §136-102.6 may be obtained from the County Building Inspections Department.

(K) Private road and common area maintenance. Prior to the recording of the final plat, it is recommended that the developer form a property owners association pursuant G.S. § 47F-103.101 and record a declaration [defined in G.S. § 47-103(10)] having provisions for the establishment of a property owners association and to establish reasonable assessments for road maintenance and other common areas and facilities. Private county standard roads shall be maintained to the original or paved width.

(L) Access right-of-way. Where a right-of-way, less than 45 feet, provides access to property proposed for residential subdivision had been granted prior to May 1, 1996, and the developer presents proof in writing that a 45-foot right-of-way to the property cannot feasibly be obtained then the developer may be permitted to develop the property provided they secures at least a 30-foot right-of-way into the property proposed for residential subdivision. Roads providing access to residential subdivisions shall meet the same standard as the roads within the residential subdivision. In cases where less than a 45-foot right-of-way is used for access to a residential subdivision, this fact shall be contained in the disclosure statement required by § 156.45(J) and shown on the final plat as specified in § 156.32(A)(2). For purposes of this section, access road shall not include any state-maintained road.

(M) Exception to lot size requirement of one acre. Lots served by individual water and sewer shall have an area of at least 1/2 (one-half) acre. These requirements shall be increased on the recommendation of the Appalachian District Health Department based on site investigations or percolation rates, individual or shared wells and subsoil conditions. Where community water and sewer systems are proposed, the preliminary plat shall be accompanied by a letter of approval from the proper official of the designated state agency or AppHealthCare, whichever is applicable. The developer shall note the type of systems to be utilized on the preliminary and final plat and shall record with the Ashe County Register of Deeds an instrument setting forth provisions for the establishment of a property owner's association for the purpose of assessing dues for maintenance of the community systems by purchasers of property which will be served within the development. The developer shall maintain community system at least until such time that the property owner's association assumes maintenance.

(Ord. passed 3-20-96; Am. Ord. passed 4-8-02; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23) Penalty, see § 156.99

§ 156.46 REQUIREMENTS AND DESIGN STANDARDS FOR PRIVATE ROADS (COUNTY STANDARD).

(A) The design standards for residential subdivision streets shall meet either the minimum construction standards for secondary roads as required by the North Carolina

Department of Transportation or the minimum construction requirements for private (county standard) roads, as applicable. When state standards are to be met, the developer shall submit proposed road specifications for the approval of the local Department of Transportation office prior to submitting a preliminary plat. The Ashe County Fire Marshal or designee shall have the authority to approve narrower private road widths and turnarounds where strict compliance with the Residential Subdivisions Ordinance is impractical, subject to appropriate safety conditions and mitigation measures as long as the Planning Director agrees.

(B) Private roads may be allowed, shall meet the following requirements. The residential subdivision does not include any part of a proposed thoroughfare or street shown on the Ashe County Comprehensive Transportation Plan, and the developer shall reference on the final plat the recording of a roads instrument that provides the following:

(1) Guarantees full right of access via any private road in the residential subdivision to any lot served by that road.

(2) Specifies the standards to which private roads in the residential subdivision have been designed and constructed.

(C) Design standards for private roads.

(1) Right-of-way width. Right-of-way width for private county standard roads shall be not less than 45 feet.

(2) Width of road. Graded width of roadbed including ditch and shoulder areas shall have a minimum width of 26 feet.

(3) Stoned or paved area. Road travel area may be either stoned or paved, and shall have a minimum width compliant with the current North Carolina Fire Code regarding fire apparatus access road. If a Residential Subdivision final plat was given approval before the amendment regarding the minimum width requirement of being compliant with the current North Carolina Fire Code regarding fire apparatus access road becomes effective. Then existing roads may remain at the approved width; however, any roads extended or newly created shall be compliant with the current North Carolina Fire Code.

(a) Where stone is used, it shall be "crusher-run" or DOT approved "ABC" stone compacted to a minimum of four inches. In locations where soil conditions require additional stone or other acceptable means to attain a stable roadbed, the developer shall complete the necessary road stabilization prior to submitting the final plat for approval.

(b) If the developer elects to pave private roads, the developer shall meet the requirements of the North Carolina Department of Transportation pertaining to stone base and top surface.

(4) Shoulder areas and ditches. Shoulder area on cut side shall be a minimum of four feet in width and shall provide a drainage ditch of adequate size to accommodate stormwater runoff based on terrain and location. Shoulder width on fill side shall be a minimum width of three feet. In locations where cuts are required on both sides of the

road, drainage ditches and shoulders shall occupy approximately three and one-half feet on each side.

(5) Cuts and fills. Cuts and fills shall have a maximum slope of 1:1 (one-foot horizontal spread to each foot vertical rise). All cuts and fills shall be seeded when weather and season permits.

(6) Benching. Where the terrain cross grade is 20% or greater, the fill side shall be benched a minimum width of six feet at the base of the fill and fill material shall be well compacted. Neither brush nor stumps shall be placed in the roadbed or within any part of the fill.

(7) Road grades. Maximum grade for a gravel-surfaced road shall be 15%. Maximum grade for a road paved in accordance with § 156.46(C)(3)(b) shall be 18%.

(8) Culverts and drainage. Culverts shall be of adequate size to discharge stormwater from any given area depending upon terrain and location. Minimum culvert size shall be 15 inches inside diameter.

(a) Culverts may be either corrugated metal, plastic, or concrete (bell or spigot) and shall be installed on a constant grade of sufficient degree to ensure proper drainage and a minimum danger of becoming clogged with debris or mud. Concrete culverts shall not be permitted where it cannot extend sufficient distance from the fill side of the road to prevent discharge from eroding the road bank.

(b) All culverts shall have a minimum cover of 12 inches of well-compacted earth.

(9) Curve radius. All curves in private (county standard) roads shall have a radius of no less than 40 feet as measured from the centerline of the travel area.

(10) Bridges. Proposed bridges which will be part of a private road shall accommodate two lanes of traffic. Bridges shall be constructed and maintained in accordance with AASHTO HB-17. However, the width may be reduced to 20 feet. Confirmation that a proposed bridge meets these specifications must be provided by a Department of Transportation engineer or by a licensed professional engineer.

(11) Cul-de-sac. Turnaround shall be compliant with the current North Carolina Fire Code regarding a fire apparatus road. However, if the terrain prevents the construction of a round-design cul-de-sac, "tee" or "y" types of turnarounds may be constructed. The gravel width shall be compliant with the current North Carolina Fire Code regarding a fire apparatus access road in both a "tee" and a "y" turnaround. If a road dead-ends or is in excess of 150 feet in length. A turnaround shall be provided with an area for turning around a fire apparatus.

(12) Property lines on private roads. Property lines may be located along with the centerline of the proposed road and shall have a 22-1/2 feet road right-of-way measured from the centerline to each side of the road. If this method is used it shall be clearly indicated on the plats and incorporated in all deed conveyances. If the developer elects,

he/she may place property lines(s) 22-1/2 feet from the centerline of the road(s) thereby providing a 45-foot right-of-way.

(a) Property markers (iron, granite, or concrete monument) shall be placed at the intersection of the right-of-way and property line at a point measured 22-1/2 feet from the center of the road.

(b) The minimum building setback distance from the road abutting the front of the property shall comply with the North Carolina Building Code.

(c) Design standards for lot frontage. Road frontage. All lots shall have at least 45 feet of road frontage on a state-maintained or private road. Up to three lots may be accessed off a round design cul-de-sac with a minimum frontage of 40 feet.

(d) Roads and utility easements inside the floodplain.

1. Private roads may only be placed inside the hundred-year floodplain to access the tract of land being developed from a state-maintained road. The road must exit the 100-year floodplain as quickly as reasonably possible, and once outside the 100-year floodplain, may not reenter the 100-year floodplain.

2. Utility easements may only be placed inside the 100-year floodplain to access the tract of land being developed from a state-maintained road. The utility easements must exit the 100-year floodplain as quickly as reasonably possible, and once outside the 100-year floodplain, may not reenter the 100-year floodplain.

(Ord. passed 3-20-96; Am. Ord. passed 2-1-99; Am. Ord. passed 4-8-02; Am. Ord. passed 6-15-09; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23) Penalty, see § 156.99

PLANNED UNIT DEVELOPMENTS

§ 156.47 AUTHORITY.

The County Commissioners authorize the Planning Board as the most appropriate planning agency to review planned unit developments.

(Ord. passed 2-3-97; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.48 DEFINITION.

For purposes of this chapter the following definition shall apply unless the context clearly indicates or requires a different meaning.

PLANNED UNIT DEVELOPMENT (PUD). A tract of land under ownership either by a single entity, a corporation, a partnership, or other entity, intended for a single development being either a residential use (to include single family and multi-family use), commercial use, or a combination of both commercial and residential uses.

(Ord. passed 2-3-97; Am. Ord. passed 1-4-99; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.49 PURPOSE.

The purpose of §§ 156.47 through 156.50 is to accommodate differences between traditional lot-by-lot residential subdivisions and planned unit developments, which are usually turn-key operations. Sections 156.47 through 156.50 encourage PUD proposals that have imagination and creativity in the design process to include preservation of open spaces and common areas and amenities, paved roads, and, if appropriate, community water and sewer systems, and promoting the general welfare, the Planning Board and planning staff reserve the right to modify the requirements in the existing residential subdivision ordinance for projects that are identified as PUD's, since the overall aims of PUD's cannot be accomplished without negotiations.

(Ord. passed 2-3-97; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.50 MINIMUM REQUIREMENTS.

(A) The normal minimum requirements for lot size, setbacks, and frontage may be waived for lots or building sites within an approved planned unit development, provided the spirit and intent of this chapter is not altered based on the interpretations and decisions of the Planning Board.

(B) All streets providing access to a planned unit development and the streets located in the planned unit development shall meet or exceed the minimum requirement for streets as defined in the design standards for roads in § 156.46, excluding § 156.46(C)(3)(b). However, the right-of-way requirements may be waived, but the roadbed shall remain 26 feet and the road surface shall remain compliant with the current North Carolina Fire Code regarding a fire apparatus access road and the road surface shall be paved with asphalt according to NCDOT standards. The street(s) that serve as access from state-maintained roads to the PUD, provided they are owned by the developing entity, shall have curb and guttering for a minimum of 85 feet on each side of the entrance access. All streets that do not meet NCDOT standards for maintenance and are not dedicated to the state shall have a legal, recorded maintenance agreement available to every landowner that acquires property in the approved PUD. This agreement shall contain the following information: who will maintain the streets, when will the streets be maintained, how the streets will be maintained, and the associated cost to each landowner for street maintenance. This maintenance agreement may be contained in a declaration recorded pursuant to § 156.45(K). The Planning Board and the planning staff discourages the use of cul-de-sacs in

PUD's, however, if their use cannot be avoided then § 156.46(11) applies and a required turnaround shall be provided for a fire apparatus if deemed a need by the Ashe County Fire Marshal.

(C) Common open spaces are an important element in a planned unit development. Common open space is defined as a group of parcels or tracts of land designated and intended for use by all residents of the PUD. A minimum of 15% of the total project acreage shall be designated as common open space. Suggested uses may include fitness, recreation, educational, religious or cultural. The common open spaces may include swimming pools, tennis courts, equestrian trails, fitness trails and others, and may contain accessory buildings which cannot be seen from the right-of-way. A pond, lake, large stream or other body of water may be used in conjunction with parcels of land to constitute common open space. Conveyance and maintenance of common open space, recreational areas, and commonly owned facilities shall be in accordance with the North Carolina Planned Community-Act (G.S. Chapter 47F) or other appropriate mechanism acceptable to the planning staff or the Planning Board. The designated common areas shall be shown on the plats recorded with the county's Register of Deeds to restrict the use and future development of the common open spaces.

(D) A planned unit development application shall not be approved unless the developer's plans include either a community water and sewer system, that has the capacity to serve the entire planned unit development, or designs that include connecting to a municipal water and sewer system. The community water and sewer systems shall need approval from the appropriate health agencies (state and local as applicable). Whenever reasonably possible, all proposed planned unit developments shall include installation of underground utilities such as water and sewer lines, electric lines, telephone lines, fiber optic lines, cable television lines, gas lines and etc.

(E) Each development shall provide reasonable visual and acoustical privacy for all dwelling units. Fences, insulation, walkways, barriers, and landscaping shall be used, as appropriate, for the protection and aesthetic enhancement of property and the privacy of its occupants. If topographical or other existing barriers within 200 feet of the planned unit development do not provide reasonable privacy for existing uses adjacent to the development, the Planning Board may require the structures on the perimeter of the planned unit development be well screened in a manner which is approved by the Planning Board.

(F) Every planned unit development shall provide at least two off-street parking spaces per dwelling unit and commercial/office parking and loading space according to the following schedule:

(1) Parking space for commercial/office shall consist of one off-street parking space for each 200 square feet of gross floor area.

(2) Loading and unloading space for commercial/office uses shall consist of one space at least 300 square feet in size for each 5,000 square feet of gross floor area.

(Ord. passed 2-3-97; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

PERMANENT REFERENCE POINTS AND IMPROVEMENTS

§ 156.55 PERMANENT REFERENCE POINTS.

Prior to the approval of the final plat, permanent reference points shall have been placed in accordance with G.S. Ch. 89C and G.S. § 47-30, which provide regulations for land surveyors and for the mapping of residential subdivisions, respectively.

(Ord. passed 3-20-96; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23) Penalty, see § 156.99

§ 156.56 INSTALLATION OF IMPROVEMENTS.

Prior to the approval of the final plat, the subdivider shall have complied with the following requirements:

(A) Streets and storm drainage facilities. All streets and storm drainage facilities in the residential subdivision shall have been constructed in accordance with the drawings submitted.

(B) Water supply. Where public water is reasonably accessible (actually available and not cost prohibitive), the subdivider shall connect with the public supply and provide water mains and a suitable water connection to each lot. Where a public water supply is not reasonably accessible, the subdivider may provide individual water supplies or a community water system.

(C) Sewage systems. Where a public sanitary sewer system is reasonably accessible (actually available and not cost prohibitive), the subdivider shall connect with the public system and shall provide a connection for each lot. Where a public sanitary sewer is not accessible, individual sewage disposal systems or a community sewage disposal system may be provided. These systems shall be located, constructed, and operated in accordance with the requirements and standards of the North Carolina Department of Environment, and Natural Resources; the North Carolina Division of Health Services; and the Appalachian District Health Department.

(D) Installation at time of final plat. In the event that any public or community utilities are not installed at the time of final plat approval, a bond or other security guarantee may be required by the planning staff or Planning Board as specified in § 156.57.

(Ord. passed 3-20-96; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23) Penalty, see § 156.99

§ 156.57 DEFERMENT OF IMPROVEMENTS.

Where it is in the best interest of all parties concerned to defer the installation or completion of some required improvements such as roads, or sewer and water connections, the planning staff or Planning Board as appropriate may approve the final plat if the subdivider posts a bond with surety or other guarantees satisfactory to the County Commissioners in the amount equal to or greater than the estimated cost of the deferred improvements. Such guarantees shall guarantee either the performance of the specified work or payment of the specified sum to the county if said improvements have not been installed within the times specified on the final plat. The County Commissioners may require the bond or other guarantee be greater than the estimated cost of the improvements to allow for cost increases.

(Ord. passed 3-20-96; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23) Penalty, see § 156.99

VARIANCES

§ 156.65 VARIANCES.

Where, because of topographical or other conditions peculiar to the site, strict adherence to the provisions of this chapter would cause an unnecessary hardship, the Board of Adjustment may authorize a variance, if such variance can be made without destroying the intent of this chapter. Any variance thus authorized is required to be entered into the minutes of the Board of Adjustment with the reasoning set forth on which the departure was justified. Requests for variances shall be made in writing and submitted to the Planning Department staff, in the form of a letter, at or before the time of either preliminary or final plat submission. The letter shall be addressed to the Ashe County Board of Adjustment, and shall include the project name, and explain the variance being sought as well as any circumstances which make a variance necessary.

(Ord. passed 3-20-96; Am. Ord. passed 4-8-02; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.66 CONFLICTS OF INTEREST.

Administrative staff. No staff member shall make a final decision on an administrative decision required by this chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this chapter

unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government, pursuant to the authority of G.S. § 160D-109.

(Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.67 EFFECTIVE DATE.

This chapter shall become effective February 19, 2024.

(Ord. passed 12-19-22; Am. Ord. passed 8-21-23; Am. Ord. passed 2-19-24)

§ 156.98 INJUNCTIVE RELIEF AND OTHER EQUITABLE REMEDIES.

(A) The county may bring an action for injunction and order abatement for any illegal residential subdivision, transfer, conveyance or sale of land therein, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this chapter under G.S. § 160D-807. This chapter may also be enforced by other appropriate, equitable remedies issued from a court of competent jurisdiction under G.S. §160D-807.

(B) It shall be a violation if a person who is the owner or the agent of the owner of any land located within the territorial jurisdiction of the county, subdivides his land in violation of this chapter, or transfers or sells land by reference to, exhibition of, or any other use of a plat showing such residential subdivision before the plat has been properly approved under this chapter and recorded in the office of the County Register of Deeds.

(C) The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty.

(Ord. passed 3-20-96; Am. Ord. passed 3-5-12; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

§ 156.99 PENALTY.

(A) Each day of a violation of this chapter shall be a separate offense.

(B) Financial penalties. In addition to criminal penalties for a violation of this chapter, the Board of County Commissioners may impose civil penalties for each day's continuation of the offense. The amount shall be limited to \$500 per day. A penalty unpaid 30 days after the offender has been cited for violation of this chapter may be recovered in a civil action in the General Court of Justice.

(C) Other remedies. All appropriate remedies for relief authorized by G.S. §160D-404, including orders for mandatory and prohibitory injunctions and for abatements, may be used to enforce this chapter.

(Ord. passed 3-20-96; Am. Ord. passed 3-5-12; Am. Ord. passed 12-19-22; Am. Ord. passed 8-21-23)

Chapter 159: Ashe County Cemetery Ordinance

SECTION 159.1 LEGAL PROVISIONS

1.1 PURPOSE

The purpose of this ordinance is to regulate the establishment, use, maintenance, and protection of cemeteries within Ashe County. An ordinance to protect the public health, safety and general welfare by establishing regulations, to require proper record-keeping; and to preserve historic, family, and abandoned cemeteries, to provide penalties for the violation of said ordinance; and to repeal all ordinances or parts of ordinances in conflict therewith.

1.2 TITLE

This ordinance shall be known and may be cited as the "Ashe County Cemetery Ordinance."

1.3 JURISDICTION

This provision of this ordinance shall apply within the corporate boundaries of Ashe County, excluding any area that is incorporated by a municipality.

1.4 AUTHORITY

The Ashe County Board of Commissioners, pursuant to the responsibilities and privileges outlined in N.C. GEN. STAT. 65-111 and N.C. GEN. STAT. 65-113; adopts, approves, enacts, and ordains, this ordinance

1.5 DEFINITIONS

(a) **"Cemetery"** means any land use or intended to be used for the interment of human remains, including public, private, family, religious, fraternal, historic, or abandoned cemeteries.

(b) **"Interment"** means burial of the deceased by earth burial, entombment, or inurnment.

(c) **"Burial Plot"** means a space of ground in a cemetery intended for the burial of one or more human bodies.

(d) **"Grave Marker" or "Monument"** means any stone, marker, tombstone, plaque, plants, shrubbery, or memorial placed at burial site for the acknowledgment of the deceased.

(e) **"Abandoned Cemetery"** means a cemetery where no owner or responsible party can be named, or where maintenance has ceased for a period of five (5) or more years. The County may designate a cemetery as abandoned upon review and after efforts to identify any owner or responsible operator. Upon formal designation, the County may assume responsibility for maintenance, marking, and preservation of such cemetery to protect public health, safety, and respect for the deceased. Where permitted by law, the County may assess cost of maintenance or remediation against the property or pursue other lawful means to fund preservation.

(g) **“Historic Cemetery”** means a cemetery more than fifty (50) years old or determined to contain significant cultural, genealogical, or historical value.

(h) **“Public Cemeteries”** means that are open to the general public without qualifications for purchasing or owning a grave.

(i) **“Private Cemeteries”** means cemeteries that are owned by individuals or businesses and are not open to the general public.

(j) **“Veteran Cemeteries”** means specifically for those who have served in the military.

(k) **“Family Cemeteries”** means for family members. Establishing them requires a special use permit and must comply with the NC Cemetery Act.

(l) **“Green or Natural Cemeteries”** means a type of cemetery that uses environmentally friendly burial practices.

(m) **“Deeded Cemeteries”** means cemeteries “cut out” or deeded in the cemetery name with a qualifying board of trustees.

1.6 SEVERABILITY

If for any reason any one or more sections, sentences, clauses or part of this ordinance is for any reason held to be invalid, such decision shall not affect, impair, or invalidate the remaining provisions of this ordinance, but shall be confined in its operation to the specific sections, sentences, clauses, or parts of this ordinances in any one or more instances shall not affect or prejudice in any way the validity of this Ordinance in any other instance.

1.7 EFFECTIVE DATE

This Ordinance shall take effect and be in force from and after the date of its adoption.

1.8 ADOPTION

Duly adopted by the Board of County Commissioners of the County of Ashe, North Carolina, this the _____ 2026.

Ashe County Board of Commissioners
Todd McNeil, Chairman

Section 159.2: Maintenance of Cemeteries

2.1 Responsibility of Landowner

The following acts are hereby prohibited

- A. Disturbing human remains and graves;
- B. Disturbing the peace, defacing plants, and trespassing after sunset;
- C. Littering, disturbing gravesites, and damaging cemetery fences;
- D. Disturbing funerals, making loud noises;
- E. Hunting or discharging of weapons in the boundaries of a cemetery or across the boundaries; except for Military Funerals and Memorial Day;
- F. Planting crops on, over, or through the boundaries of a cemetery;
- G. Removal of any grave marker or memorial for any reason except as outlined by NCGS 65-106;
- H. Any action to destroy, mutilate, deface, injure or remove any tomb, monument, gravestone or other structure placed in the cemetery or any plank or fence or part of a fence, railing or other structure within the cemetery or from the fence surrounding the cemetery, which is placed for the protection or ornament of the cemetery or any tomb, monument, gravestone or space;
- I. Any action to destroy, cut down, break, remove or injure any vegetation that may have been planted or that may be growing in the cemetery which is intended to honor the deceased besides that of regular and orderly maintenance of the site;
- J. Any person from allowing his or her animal, including animals intended for agriculture, except service animals trained to assist the person with his or her specific disability, to enter any cemetery, and all dogs and fowl, except said service animals, found within the enclosures or grounds of any cemetery shall be impounded;
- K. Any person from using the cemetery as a playground;
- L. Unlawfully write or scribble on, mark, paint, deface, any cemetery tombstones, headstones, field markers, and monuments.

Section 159.3: Access of Cemeteries on Private Property

3.1 Access Cemetery with Property Owners Permission

Those wishing to access a private cemetery with permission from the landowner must comply with NCGS 65-101.

3.2 Access Cemetery without Property Owner Permission

If permission to enter a private cemetery is not granted to an individual that individual has a right to petition the Clerk of Superior Court for access and outlined in NCGS 65-102.

Section 159.4: Cemetery Board

4.1 Powers and Duties

- (A) Pursuant to the authority granted by GS 160D-306 the Ashe County Commissioners are authorized to create the Ashe County Cemetery Committee.
- (B) Make studies of all cemeteries located within the boundaries of Ashe County
- (C) Determine objectives to be sought in the preservation and maintenance of such cemeteries.
- (D) Prepare and recommend plan adoption for achieving these objectives.
- (E) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
- (F) Advise the Board of Commissioners concerning the use and amendment of means for carrying out plans.
- (G) Exercise any functions in the administration and enforcement of various means for carrying out plans that the Board of Commissioners may direct.
- (H) Exercise functions which may include Research, Identify, inventory, GPR, map, describe, and permanently record existing cemeteries in Ashe County that meet the federal definition of "historic" (meaning they are at least 50 years old) (36 CFR §60.4)) regardless of size, type, physical characteristics, or location. This is done to permanently preserve historical, genealogical, sociological, demographic, and cultural data for descendants, researchers, and interested North Carolinians.

4.2 Appointments

The Board of Commissioners are required to appoint the members of the Cemetery Committee. The Committee shall be made up of at least 5 members and be appointed to terms of at least 4 years.

Section 159.5: Penalties and Enforcement

Section 5.1 Citation & Penalties

- a. Any person, firm or corporation who violates any of the provisions of this ordinance shall be charged with a municipal criminal action by the County Authorities and shall be subject to a fine of up to one hundred fifty dollars (\$150.00) per day that the violation continues to exist and shall constitute a separate offense. No prosecutions here under shall not prevent civil or criminal proceedings for abatement and termination of the activity complained of.
- b. Any criminal penalty issued by Ashe County does not invalidate or supersede the requirements and punishments established by NCGS 14-148 and these requirements and subsequent penalties may be enforced concurrently.

- c. All law enforcement agencies, officers, certified police officers, and/or officials of the state, or any County code enforcement officer, are hereby authorized, empowered, and directed to enforce compliance with this article.

County of Ashe
150 Government Circle, Suite 2500
Jefferson, North Carolina 28640

July 20, 2026

The County of Ashe Commissioners have reviewed proposed amendments to Ashe County's Land Usage Ordinances. Specifically, amendments are proposed for the following chapters – RESIDENTIAL SUBDIVISIONS and ASHE COUNTY CEMETERY ORDINANCE from the Land Usage Chapters:

Chapter 156-RESIDENTIAL SUBDIVISIONS

Chapter 159- ASHE COUNTY CEMETERY ORDINANCE

The County of Ashe Commissioners deems the proposed amendments to be consistent with the Ashe County Comprehensive Plan (2022), as the proposed amendments are supportive of the Plan's priority of maintaining the County of Ashe's natural resources, rural character and attributes of its people.

_____, Chair, County of Ashe Board of Commissioners

