

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** March 17, 2014

**SUBJECT:** Public Hearing for Land Development Code (LDC) and Minimum Housing Code Text Amendments (TX-2013-02)

**PRESENTER:** Autumn Radcliff, Senior Planner

**ATTACHMENTS:**

1. Minimum Housing Code Draft Text Amendments
2. LDC Draft Text Amendments
3. Certification of Notice of Public Hearing
4. Resolution of Consistency with County Comprehensive Plan
4. PowerPoint

### **SUMMARY OF REQUEST:**

With the adoption of the Land Development Code (LDC) on September 19, 2007, the Board of Commissioners directed staff to prepare annual updates to the LDC to prevent it from becoming outdated. This annual review is intended to prevent the need for a large overhaul of the entire code in the future. Trends and new issues are regularly emerging that require periodic updates to LDC text.

The proposed text amendments are based on the recommendations from the Henderson County Regulations Review Advisory Committee (RRAC), new federal and state laws pertaining to communication towers and strengthening the improvement guarantee requirements as requested by the County Attorney.

The Henderson County Planning Board has been discussing the draft text amendments for several meetings. The Planning Board made a motion at its January 16, 2014 meeting to send forward a favorable on the recommendations draft LDC and Minimum Housing Code Text Amendments as modified.

### **PUBLIC NOTICE:**

The required public notice of this hearing was published in the Hendersonville Tribune on March 6<sup>th</sup>, 2014 and March 13<sup>th</sup>, 2014 (See Attachment 3, Certification of Notice of Public Hearing).

### **BOARD ACTION REQUESTED:**

State law and the LDC require the Board of Commissioners to hold a public hearing prior to acting on a text amendment and adopt a written statement of consistency with the County Comprehensive Plan.

#### **Suggested Motion:**

*I move that the Board adopt the attached resolution regarding the consistency with the CCP,  
and*

*I move that the Board adopt the proposed LDC and Minimum Housing Code text amendments.*

**2013 Minimum Housing Code Draft Text Amendments**  
(Includes Recommendations from the Regulation Review Advisory Committee (RRAC))

**Recommended changes are highlighted in red.**

**Minimum Housing Code Text Amendment A: Exempt Agricultural Workforce Housing Requirements.**

**Issue:** The RRAC stated that the minimum housing code regulations restricts agriculture workforce housing options. The RRAC recommended the minimum housing code be reviewed to reduce and/or exempt agricultural workforce housing requirements specifically for seasonal housing accommodations.

**Recommendation:** Exempt agricultural workforce housing that is currently complying with federal housing standards or used for seasonal workforce housing.

Amend applicable section below.

**§48-1 General**

F. Exemptions. This code shall exempt agricultural workforce housing that is regulated under federal law and seasonal agricultural workforce housing that is not occupied on a year-round basis. The County shall forward any complaints received on agricultural workforce housing to the appropriate federal agency and shall investigate any complaints that a seasonal agricultural workforce housing unit is occupied as a permanent, year-round residency.

**2013 LDC Draft Text Amendments**  
**(Includes Annual LDC Amendments and**  
**Recommendations from the Regulation Review Advisory Committee (RRAC))**

**Recommended changes are highlighted in red.**

**LDC Text Amendment A: Reduce the Agricultural Signage Restrictions.**

**Issue:** The RRAC recommended that the regulations for agriculture signage be reduced, particularly those relating to direct sale of local agriculture products. As related to agriculture signage, the current LDC standards permit outdoor advertising signs, directional signs and agricultural produce signs in all zoning districts. Agriculture produce signs are exempt signs. All exempt signs may have one or two faces and may be illuminated per specific standards. Sign size and height regulations are based on sign type.

**Recommendation:** Remove the word produce (as shown below) so all types of agricultural signs is exempt and increase the maximum area to thirty-two (32) square feet per face.

Amend applicable section below.

**§42-218. Exempt Sign Standards**

A. Agricultural ~~Produce~~ Signs.

- (1) Maximum Area. ~~Twenty (20)~~ **Thirty-two (32)** square feet per face.
- (2) Maximum Height. Ten (10) feet.

**LDC Text Amendment B: Reduce Front Setbacks in Commercial Zoning Districts.**

**Issue:** The RRAC stated the right-of-way setbacks were burdensome to commercial development and recommended reducing the front setbacks. The current LDC standards determine the front or right-of-way setback based on the County and NCDOT road classification. The road classification is determined by the general characteristics of mobility, accessibility and access.

**Recommendation:** Reduce the current front or right-of-way setback for each road classification in existing commercial districts.

Amend Tables 2.3, 2.8 and 2.9 in applicable sections below.

**§42-33. Local Commercial District**

<b>Table 2.7. LC Density and Dimensional Requirements</b>			
(1) Residential Density (units/acre)	(2) Standard	4	
	(3) Maximum	16	
Maximum Impervious Surface (%)		80	
(4) Maximum Floor Area (sq ft)		30,000 or 10,000	
(5) Yard Setbacks (feet)	Front or ROW	Local	<del>25</del> 10
		Collector	<del>25</del> 10
		Thoroughfare	<del>35</del> 20
		Boulevard	<del>45</del> 30
		Expressway	<del>55</del> 40
		Freeway	<del>60</del> 45
	Side	10	
	Rear	10	
Maximum Height (feet)		40	

**§42-34. Community Commercial District**

<b>Table 2.8. CC Density and Dimensional Requirements</b>			
(1) Residential Density (units/acre)		16	
Maximum Impervious Surface (%)		80	
(2) Maximum Floor Area (sq ft)		80,000 or 30,000	
Yard Setbacks (feet)	Front or ROW	Local	<del>20</del> 10
		Collector	<del>25</del> 10
		Thoroughfare	<del>35</del> 20
		Boulevard	<del>45</del> 30
		Expressway	<del>55</del> 40
		Freeway	<del>60</del> 45
	Side	10	
	Rear	10	
Maximum Height (feet)		50	

§42-35.

**Regional Commercial District**

<b>Table 2.9. RC Density and Dimensional Requirements</b>			
<i>(1) Residential Density (units/acre)</i>		16	
<i>Maximum Impervious Surface (%)</i>		80	
<i>Maximum Floor Area (sq ft)</i>		Unlimited	
<i>Yard Setbacks (feet)</i>	<i>Front or ROW</i>	<i>Local</i>	<del>15</del> 10
		<i>Collector</i>	<del>30</del> 10
		<i>Thoroughfare</i>	<del>40</del> 20
		<i>Boulevard</i>	<del>50</del> 30
		<i>Expressway</i>	<del>50</del> 40
		<i>Freeway</i>	<del>60</del> 45
		<i>Side</i>	10
		<i>Rear</i>	10
<i>Maximum Height (feet)</i>		50	

**LDC Text Amendment C: Expand Permitted Business Uses in Certain Zoning Districts.**

**Issue:** The RRAC recommended permitted uses be reviewed and expanded where possible in the zoning districts.

**Recommendation:** Expand the existing uses allowed in certain zoning districts. At the request of the Planning Board, a subcommittee was established to review the Table of Permitted and Special Uses (PUT). Below is an excerpt of the PUT with the amendments recommended by the Planning Board.

Amend Table of Permitted and Special Uses as indicated below and add portable sawmill as a new temporary use, including a new SR for this use. The specific SR number will be determined if the amendments are adopted.

**§42-62. Table of Permitted and Special Uses**

USE TYPE	GENERAL USE DISTRICT											
	P=Permitted; S=Special Use Permit											
	R1	R2	R2R	R3	R4	OI	MU	LC	CC	RC	I	SR
<b>4. RECREATIONAL USES</b>												
<i>Camp</i>	SP	P	P	P	P	P	P	P	P	P		4.3
<i>Campground</i>	S	S	S	S	S							4.4
Miniature Golf Course or Driving Tees/Ranges (operated for commercial purposes)	S	S	S	S	S	S		P	P	P		4.11
<i>Recreational Vehicle Park</i>	S	S	S	S	S			P	SP			4.18
<i>Riding Stables</i>	P	P	P	P	P		P	P	P			4.19
<i>Shooting Ranges, Indoor</i>			S	S	S			S	S	S	S	4.21
<b>5. EDUCATIONAL AND INSTITUTIONAL USES</b>												
<i>Ambulance Services</i>	P	P	P	P	P	P	P	P	P	P	SP	5.2
<i>Place of Assembly, Small</i>	S	S	S	S	S	P	P	P	P	P	S	5.17
<b>6. BUSINESS, PROFESSIONAL, AND PERSONAL SERVICES</b>												
<b>Tire Recapping</b>				S	S					P	S	6-12
<b>7. RETAIL TRADE</b>												
<i>Landscaping Materials Sales and Storage</i>			S	S	S		P	S	P	P	S	7.8
<i>Motor Vehicle Sales or Leasing</i>								S	S	P		7.10
<i>Open Air Market</i>	S	S	S	S	S		P	S	S	P		7.11
<i>Produce Stand</i>	P	SP	P	P	P	P	P	P	P	P		7.13
<b>9. TRANSPORTATION, WAREHOUSING AND UTILITIES</b>												
<i>Self-Storage Warehousing</i>			S	S	S	S	P	S	P	P		9.7
<b>11. TEMPORARY USES</b>												
<i>Circuses, Carnivals, Fairs, Religious Services (or similar types of events)</i>			S	PS	PS			P	P	P	P	11.2
<b>Portable Sawmill</b>			P	P	P							<b>11.#</b>
<b>12. TEMPORARY STRUCTURES</b>												
<i>Portable Storage Container</i>	P	P	P	P	P	P	P	P	P	P	P	12.1

**SR 11.#. Portable Sawmill**

- (1) **Duration.** A portable sawmill may be permitted as a temporary use not to exceed ninety (90) days. The Zoning Administrator may allow for ninety (90) day extension upon request by the applicant.

**LDC Text Amendment D: Simplify Recreational Facility Uses.**

**Issue:** The LDC contains several uses listed in the Table of Permitted and Special Uses (PUT) for various recreational uses that could be combined into one or two specific use types.

**Recommendation:** Combine several existing recreational uses into one new use type to cover general recreational facilities. The new use “recreational facilities” will have a new definition and supplemental requirements (SR). The definitions and SR’s for the other listed recreational uses will be removed. The “common area recreation and service facilities” and “governmental recreational facilities” uses will remain unchanged in the PUT.

Amend Table of Permitted and Special Uses as indicated below.

**§42-63. Table of Permitted and Special Uses**

USE TYPE	GENERAL USE DISTRICT											
	P=Permitted; S=Special Use Permit											
	R1	R2	R2R	R3	R4	OI	MU	LC	CC	RC	I	SR
<b>4. RECREATIONAL USES</b>												
<b><i>Recreational Facilities (Indoor/Outdoor)</i></b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>P</b>	<b>P</b>	<b>S</b>	<b>4.#</b>
<i>Athletic Field, Non-commercial</i>	P	P	P	P	P	P	P					4.2
<i>Indoor Recreational Facilities (Bowling Alley, Skating Rink, Bingo Games, Indoor Miniature Race Tracks)</i>							P	P	P	P		4.9
<i>Outdoor Recreational Facilities</i>	S	S	S	S	S				S	S	S	4.15
<i>Physical Fitness Center</i>	S	S	S	S	S	S	P	P	P	P	S	4.17
<i>School (Sports Instructional)</i>						P	P	P	P	P		4.20
<i>Sporting and Recreational Facilities</i>	S	S	S	S	S	S	S	S	P	P	S	4.23
<i>Swim and Tennis Club</i>	P	P	P	P	P	P	P	P	P			4.24

Add a new definition and supplemental requirements (SR) for “recreational facilities” as follows. The specific SR number will be determined if the amendments are adopted.

**Recreational Facilities (Indoor/Outdoor).** A recreational facility that is outdoors and/or indoors and which may include: public or private operations, playing fields (soccer, baseball, etc.), courts (basketball, tennis, etc.), swimming pools, batting cages, shuffleboard areas, bowling alley, skating rink, bingo games, miniature race tracks (remote control only) and/or other such uses that fit the intent of this Chapter as determined by the Zoning Administrator. A recreational facility shall, for purpose of this Chapter, not include go-cart tracks (a recreational motor sports facility), golf courses, miniature golf courses, driving tees or driving ranges.

**SR 4.#. Recreational Facilities**

- (1) Site Plan. Major *Site Plan* required in accordance with §42-331 (Major Site Plan Review).
- (2) Lighting. *Adequate lighting* shall be placed in areas used for vehicular/pedestrian access including, but not limited to: stairs, sidewalks, crosswalks, intersections, or changes in grade. *Lighting mitigation* required.
- (3) Perimeter Setback. One hundred (100) feet (equipment, machinery and/or mechanical devices shall not be placed within 200 feet of a *residential zoning district*. All *structures* shall be 100 feet from a *residential zoning district* property).

- (4) Structure. For activities which present potential safety hazards (batting cages, baseball fields, driving tees, etc.) fencing, netting or other control measures shall be required.
- (5) Solid Waste Collection. The facility shall provide a suitable method of solid waste disposal and collection consisting of either private collection from individual *uses* or the *use* of dumpsters (installed and/or operated to meet all local and state statutes, ordinances and regulations (including Chapter 165 of the Henderson County Code, Solid Waste) and thereafter certified by the Department of Public Health). Where dumpsters are used, Screen Class One (1), Two (2) or Three (3) shall be provided consistent with the requirements of §42-182 (Screen Classification)).
- (6) Public Address/Loud Speakers. Public address and loud speaker systems shall not be operated before 8:00 a.m. or after 12:00 midnight.
- (7) Hours of Operation. For outdoor *uses*, 6:00 a.m. to 12:00 midnight.



**LDC Text Amendment E: Communication Facilities Amendments.**

**Issue:** In 2012, federal legislation was passed concerning the placement of wireless telecommunication support facilities. In 2013, state legislation (S.L. 2013-185) amended several general statutes to conform state law to the federal legislation. The legislation requires state and local governments approve minor modifications under certain thresholds. The burden of proof is on the local government to demonstrate that a modification does not comply with these thresholds.

**Recommendation:** Amend the LDC standards for communication facilities to comply with federal and state regulations as indicated below.

**§42-63. Supplemental Requirements to the Table of Permitted and Special Uses**

**SR 9.3. Communication Facilities**

(1) General Standards.

- c. **Minor Modifications.** Minor modifications are permitted and include any of the following:
  - 1. Increasing the existing vertical height of the structure by less than ten (10) percent or less than the height of one additional antenna array to the tower with separation from the nearest existing antenna not to exceed twenty (20) feet.
  - 2. Increasing the tower by twenty (20) feet or less in width or no more than the width of the support structure at the level of the new appurtenance (except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable).
  - 3. Increasing the existing equipment compound by 2,500 square feet or less.

**§42-348. Category One (1) or Two (2) Communication Facility Permits**

- B. **Permit Issuance.** The *Communication Facilities Administrator* shall issue permits. No permit shall be issued until a communication facility *site plan* has been reviewed and approved by the *Communication Facilities Administrator*. **The permitting process for communication permits complies with NCGS 153A-349.51A, including all federal and state requirements, and should be interpreted as such.**

**§42-349. Category Three (3) Communication Facility Permits**

- B. **Permit Issuance.** The Zoning Board of Adjustment (*ZBA*) shall grant the permit and the *Communication Facilities Administrator* shall issue permits. No permit shall be issued until a communication facility *site plan* has been reviewed and approved by the *Communication Facilities Administrator*. No *Communication Facility Permit Three (3)* shall be issued without the approval of the *ZBA* in accordance with the requirements and procedures set forth in this subsection. **The permitting process for communication permits complies with NCGS 153A-349.51A, including all federal and state requirements, and should be interpreted as such.**

## **LDC Text Amendment F: Improvement Guarantee Amendments**

**Issue:** Current LDC improvement guarantees regulations do not provide the County with an adequate mechanism for covering costs associated with completing required improvements (includes associated costs with administration, construction and project management) if the applicant is unable to complete the project.

**Recommendation:** As per the County Attorney's request, the following amendments are proposed for the improvement guarantees section. At the request of the Planning Board, staff forwarded the proposed text amendment to several engineers with knowledge and experience in developing cost estimates for improvement guarantees. The responses received were incorporated below at the recommendation of the Planning Board. County Staff recommendations not supported by the Planning Board are highlighted in gray below for the Boards consideration.

### **Subpart E. Subdivision Improvement Guarantees**

#### **§42-115. General**

Where the required 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 *applicant* guaranteeing the installation of the improvements within **thirty (30) months** ~~two (2) years~~ **provided the following:** ~~Plans, specifications, quantities, unit costs and estimated total costs shall be provided by the applicant to the Subdivision Administrator together with a schedule indicating time of initiation and completion of the work, as a whole or in stages and any required fee. Cost estimates must be prepared by a professional engineer, professional land surveyor or landscape architect at the applicant's expense. The applicant shall guarantee the installation of such improvements by either of the methods described below:~~

- ~~A. Filing a performance or surety *bond* or an irrevocable standby letter of credit in the amount of 125 percent of the cost to complete the work as determined by cost estimates. Portions of the guarantee may be released as work progresses.~~
- ~~B. Depositing or placing in escrow a certified check or cash in an amount equal to 125 percent of the cost to complete the work as determined by cost estimates amount. Portions of the guarantee may be released as work progresses.~~
- A. A minimum of 25 percent of the required on-site improvements (based on total project cost that the applicant is guaranteeing) is in place. The required improvements shall include rough grading for all proposed roads that are part of said *improvement guarantee*.**
- B. All required Federal, State and Local permits for the development must be issued with copies provided to the Subdivision Administrator (includes any required U.S. Army Corps of Engineers permits, NCDENR permits, water supply and distribution system permits, wastewater collection and treatment system permits, approvals for the extension of electrical power service and other necessary utilities, and all applicable Federal and State permits).**
- C. All associated design plans and construction specifications for the required improvements (i.e. roads, bridges, water and sewer infrastructure, stormwater infrastructure, pedestrian infrastructure, etc.) including the design engineer's release of such approved plans are submitted to the *Subdivision Administrator*.**

#### §42-116. Cost Estimate Standards

Plans, specifications, quantities, unit costs and estimated total costs shall be provided by the *applicant* to the *Subdivision Administrator*. Cost estimates shall:

- A. Be prepared by a professional **engineer licensed in N.C., or certified by a professional land surveyor or landscape architect who is routinely engaged in cost estimates and licensed in N.C.,** at the *applicant's* expense. **Water and sewer system infrastructure improvements shall be prepared by a professional engineer licensed in N.C. at the *applicant's* expense.**
- B. Provide a schedule for initiation and completion of work.
- C. Include separate estimates for roads, bridges, water and sewer infrastructure, stormwater infrastructure, pedestrian infrastructure, utilities (including electrical power, natural gas and communication lines), etc. consistent with the approved design plans construction specifications.
- D. Include separate estimates for any off-site infrastructure improvements such as roadways, stormwater system, water system, sanitary sewer system, etc are required to be included in the improvement guarantee.
- E. Include all Federal and/or State mitigation fees due but not paid at the time of the execution of the improvement guarantee. Proof of payment for remediation fees shall be provided to the Subdivision Administrator.
- F. Include all professional engineering and land surveying fees associated with the bidding and award, construction contract administration and engineering certifications associated with the development of the infrastructure for the proposed development.

#### §42-117. Improvement Guarantee Instrument

- A. Amount of Guarantee. The improvement guarantee shall be in the amount of 125 percent of the cost to complete the work as determined by cost estimates.

**Staff Recommendation Not Supported by Planning Board.** For subdivisions of thirty-four (34) or fewer lots, the improvement guarantee shall be in the amount of 125 percent of the cost to complete the work as determined by cost estimates. For subdivisions of thirty-five (35) or more lots, the improvement guarantee shall be in the amount of 150 percent of the cost to complete the work as determined by cost estimates.

- B. Guarantee. The applicant shall guarantee the installation of such improvements in an amount equal to the improvement guarantee cost to complete the work as determined by cost estimates amount by either of the methods described below.
  - (1) Filing a performance or surety *bond* or an irrevocable standby letter of credit.
  - (2) Depositing a certified check or cash.
- C. Release of Funds. Portions of the improvement guarantee may be released as work progresses, provided the following:
  - (1) The applicant submits a new cost estimate as described in §42-117A (Amount of Guarantee) detailing the work that has been complete and the work that is remaining. The amount remaining under the improvement guarantee shall meet or exceed the cost of the remaining improvements.
  - (2) Funds shall not be released if the property is in violation of any laws until the violations are remedied to the satisfaction of the charging party.

- (3) A total of not more than four (4) requests for release of funds shall be allowed. The first request for release is eligible when twenty-five (25) percent of the work is completed. The second and third request for release is eligible when fifty (50) percent and seventy-five (75) percent of the work is completed. The fourth and final release is eligible upon completion of all required improvements listed in the improvement guarantee. The release of funds must include a professional Engineer's statement certifying that the work has been satisfactorily completed.

#### **§42-118. Amount and Terms of Guarantee; Time Limits**

~~All guarantees shall be accompanied by a written agreement (performance agreement) specifying the terms and the amount of the guarantee. Following receipt of an *improvement guarantees* application, the *Subdivision Administrator* shall review all application materials taking into consideration the amount and terms of the guarantees for improvements, including time of initiation and completion of the work. The *Planning Director* shall have the authority to approve all improvement guarantee applications. The *Planning Director* may also, upon proof of difficulty, grant an extension of completion dates set forth in its approval for a maximum of one (1) additional year, but the time between initiation and the completion of the required improvements shall not exceed two (2) years. If the improvements are not completed within the two (2) years the *applicant* shall be in breach with the requirements of this section and the *improvement guarantee* and any and all monies and accrued interest shall be forfeited by the *applicant*. If the *Planning Director* has found that the *applicant* has made a good faith effort in completing the required improvements within the two (2) years, the County may allow the *applicant* to execute a second *improvement guarantee*. Said agreement must be in the form of cash on deposit equal to 125 percent of the cost of the remaining improvements. The County shall assess an administrative fee equal to ten (10) percent of the new *improvement guarantee* monies. The amount of the guarantee shall be sufficient to provide adequate funds to the County to ensure, in the case of default, the installation of all required improvements uncompleted at the time of default. All guarantees for improvements shall comply with applicable statutory requirements and shall be satisfactory to the County Attorney or Staff Attorney as to form, sufficiency and manner of execution. Guarantees employing lending institutions shall require that those banking corporations be licensed to do business in North Carolina.~~

- A. **Approval.** All guarantees shall be accompanied by a written agreement (performance agreement) specifying the terms and the amount of the guarantee. The *Planning Director* shall have the authority to approve all improvement guarantee applications **taking into consideration the amount and terms of the guarantees for improvements (including time of initiation and completion of the work).**
- B. **Temporary Access and Construction Easement.** The applicant shall provide temporary access and permanent construction easements for all infrastructure improvements.
- C. **Amount and Terms.** The amount of the guarantee shall be sufficient to provide adequate funds to the County to ensure, in the case of default, the installation of all required improvements uncompleted at the time of default. All *improvement guarantees* shall comply with applicable statutory requirements and shall be satisfactory to the County Attorney or Staff Attorney as to form, sufficiency and manner of execution. Guarantees employing lending institutions shall require that those banking corporations be licensed to do business in North Carolina **and be from a national association or FDIC registered group.**

The following terms shall be stated in the performance agreement:

- (1) The applicant shall be provided 15 days to identify a new security provider or prove alternate security where the security provider is in default, bankruptcy, or

otherwise determined to be insolvent by the County after which time the County may redeem the improvement guarantee.

- (2) The applicant shall provide the County with specific benchmarks for completion of work and, as a term of the agreement, should the applicant fail to meet the self-imposed benchmarks the County may redeem the improvement guarantee.
- (3) If in violation of any other provision of this Chapter 42, Henderson County Land Development Code, where the applicant has been notified of the violation, and the applicant has been provided the period for remediation authorized by the approving agency, and where applicant is in continued violation, the County may consider this to be a breach of the agreement and call the improvement guarantee to prevent further violation of Chapter 42, Land Development Code.

D. Time Limits. The *improvement guarantee* is valid for a period of **eighteen (18) months** ~~one (1) year~~ from the date of execution.

**Staff Recommendation Not Supported by Planning Board.** Leave the current one (1) year validation period and not increase to eighteen (18) months for simplicity and since one year should be sufficient time.

E. Extensions. The *Planning Director*, upon proof of difficulty, may grant an extension for a maximum of one (1) additional year. Improvements not completed within **thirty (30) months** ~~two (2) years~~ shall be in breach with the requirements of this section and the *improvement guarantee* and any and all monies and accrued interest shall be forfeited by the *applicant*.

F. Second Improvement Guarantee. If the *Planning Director* has found that the *applicant* has made a good faith effort in completing the required improvements within the **thirty (30) months** ~~two (2) years~~, the County may allow the *applicant* to execute a second *improvement guarantee*. Said agreement must be in the form of cash on deposit equal to the cost **as described in §42-117A (Amount of Guarantee)** of the remaining improvements. The County shall assess an administrative fee equal to ten (10) percent of the new *improvement guarantee* monies.

#### **§42-119. Violations and Penalties**

If an *applicant* of a *subdivision* is in *violation* of any County regulations (including Soil Sedimentation and Erosion Control Permits) the County will not release the *improvement guarantee* prior to the expiration date unless the violations are corrected.

The County may charge for the cost for construction and project administration for any *improvement guarantee* that is executed.

§42-120. Reserved

§42-121. Reserved

§42-122. Reserved

§42-123. Reserved

**Certification of Notice of Public Hearing**

In accordance with NCGS 153A-323 and 153A-343 the Planning Department certifies notices of the March 17th, 2014 hearing regarding the proposed Land Development Code and Minimum Housing Code Text Amendments (TX-2013-02), were:

- 1. Submitted to the Hendersonville Tribune on March 4, 2014 to be published on March 6, 2014 and March 13, 2014 by Autumn Radcliff;

The signatures herein below indicate that such notices were made as indicated herein above:

- 1. Autumn Radcliff

STATE OF North Carolina

COUNTY OF Henderson

I, Toby Linville, a Notary Public, in and for the above County and State, do hereby certify that Autumn Radcliff

personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

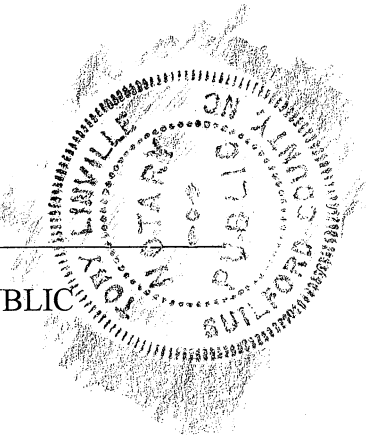
WITNESS my hand and notarial seal, this the 6 day of March, 2014.

My commission expires:

5/25/16

(SEAL)  
Toby Linville

NOTARY PUBLIC





**RESOLUTION OF CONSISTENCY WITH THE COUNTY COMPREHENSIVE PLAN**

**WHEREAS**, pursuant to N.C. General Statute §153, Article 18, the Henderson County Board of Commissioners exercises regulations relating to development within the County’s jurisdiction; and

**WHEREAS**, the Henderson County Board of Commissioners (Board) adopted the Land Development Code (LDC) on September 19, 2007 and has amended the LDC to address new and changing issues;

**WHEREAS**, the Board desires to update and revise the regulations of the LDC; and

**WHEREAS**, the Planning Department and Planning Board provided recommendations regarding the proposed text amendments with case TX-2013-02; and

**WHEREAS**, pursuant to N.C. General Statute §153-323, the Planning Department provided the prescribed public notice and the Board held the required public hearing on March 17, 2014; and

**WHEREAS**, N.C. General Statute §153-341 requires the Board to adopt a statement of consistency with the County Comprehensive Plan (CCP); and

**NOW THEREFORE, BE IT RESOLVED** by the Henderson County Board of Commissioners as follows:

1. That the Board reviewed the proposed text amendment (TX-2013-02 – Annual Land Development Code Amendments) and finds that it reasonable, in the public interest and it is consistent with the principles and goals of County Comprehensive Plan and the Growth Management Strategy located therein; and
2. That the Board determines that the proposed text amendment provides for the sound administration of the LDC while balancing property rights and promoting reasonable growth within the County; and
3. That this Resolution shall be retained in the Office of the Clerk to the Board of Commissioners.

**THIS** the 17<sup>th</sup> day of March, 2014.

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

**BY:** \_\_\_\_\_  
**CHARLIE MESSER, Chairman**

**ATTEST:**

\_\_\_\_\_  
**Terry Wilson, Clerk to the Board**

**[COUNTY SEAL]**

# Land Development Code & Minimum Housing Code Text Amendments

Board of Commissioners Meeting  
March 17, 2014  
Presentation By: Autumn Radcliff, Senior Planner  
&  
John Mitchell, Business and Community Development Director

*Henderson County Planning Department*

## Regulations Review Advisory Committee

- Formed by the BOC on March 20, 2013
- Purpose was to advise how County regulations could be modified to make the County more business friendly
- Committee consisted of 13 members and 1 liaison from the Planning Board
- Met bi-weekly over a 4 month period
- Received input from a number of organizations and business and community groups
- Provided a final report to the BOC on July 11, 2013

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## Purpose of Amendments

- Since adoption, LDC is reviewed annually and amended as needed
- RRAC provided a list of recommendations where existing County codes should be reviewed for possible amendments
- Address new legislation on communication facilities

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## Proposed Text Amendments

Proposed text amendments are based on:

- Annual review of the Land Development Code
- Recommendations of the RRAC
- New federal and state laws pertaining to communication towers

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## Minimum Housing Code Text Amendment A: Exempt Short-term Agricultural Workforce Housing

**Issue:** In most cases, agricultural housing is already complying with federal housing standards or is seasonally occupied.

**Recommendation:** Exempt agricultural workforce housing currently complying with federal housing standards or if used for seasonal workforce housing.

- County will accept and forward complaints to the appropriate federal agency
- County will investigate any complaint on seasonal housing units
  - Year-round agricultural housing must still comply with the minimum housing code

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## Land Development Code Text Amendment A: Reduce Agricultural Signage Restrictions

**Issue:** Agricultural signage relating to the direct sales of local products other than a produce stand are permitted as outdoor advertising and thus not permitted in residential districts. The majority of the County's agricultural land is located in residentially zoned areas.

**Recommendation:** Permit agricultural signage in all districts, similar to produce stands and increase the square feet per sign face to 32 (current standard is 20 sq ft per face).

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## Land Development Code Text Amendment B: Reduce Front Setbacks in Commercial Zoning Districts

**Issue:** Current LDC front setback requirements are restrictive in commercially zoned districts. Reducing front setbacks allow for better design options.

**Recommendation:** Reduce front setbacks in the Local Commercial (LC), Community Commercial (CC) and Regional Commercial (RC) zoning districts to the following:

<b>Front or ROW</b>	<i>Local</i>	10
	<i>Collector</i>	10
	<i>Thoroughfare</i>	20
	<i>Boulevard</i>	30
	<i>Expressway</i>	40
	<i>Freeway</i>	45

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## Land Development Code Text Amendment C: Expand Permitted Business Uses in Certain Zoning Districts

**Issue:** Permitted business uses should be reviewed and expanded where possible.

**Recommendation:** Amend the Table of Permitted and Special Uses, remove tire recapping as specific use (currently allowed as a manufacturing and production operations or automobile and equipment service), and add portable sawmills as a new temporary use, including a new SR for this use.

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USE TYPE	GENERAL USE DISTRICT												SR
	R1	R2	R2R	R3	R4	OI	MU	LC	CC	RC	I		
<b>4. RECREATIONAL USES</b>													
<i>Camp</i>	SP	P	P	P	P	P	P	P	P	P	P		4.3
<i>Campground</i>	S	S	S	S	S								4.4
Miniature Golf Course or Driving Tees/Ranges (operated for commercial purposes)	S	S	S	S	S	S		P	P	P			4.11
<i>Recreational Vehicle Park</i>	S	S	S	S	S			P	SP				4.18
<i>Riding Stables</i>	P	P	P	P	P		P	P	P				4.19
<i>Shooting Ranges, Indoor</i>			S	S	S			S	S	S	S		4.21
<b>5. EDUCATIONAL AND INSTITUTIONAL USES</b>													
<i>Ambulance Services</i>	P	P	P	P	P	P	P	P	P	P	SP		5.2
<i>Place of Assembly, Small</i>	S	S	S	S	S	P	P	P	P	P	S		5.17
<b>6. BUSINESS, PROFESSIONAL, AND PERSONAL SERVICES</b>													
<i>Tire Recapping</i>				S	S					P	S		6.12
<b>7. RETAIL TRADE</b>													
<i>Landscaping Materials Sales and Storage</i>			S	S	S		P	S	P	P	S		7.8
<i>Motor Vehicle Sales or Leasing</i>								S	S	P			7.10
<i>Open Air Market</i>	S	S	S	S	S		P	S	S	P			7.11
<i>Produce Stand</i>	P	SP	P	P	P	P	P	P	P	P			7.13
<b>9. TRANSPORTATION, WAREHOUSING AND UTILITIES</b>													
<i>Self-Storage Warehousing</i>			S	S	S	S	P	S	P	P			9.7
<b>11. TEMPORARY USES</b>													
Circuses, Carnivals, Fairs, Religious Services (or similar types of events)			S	PS	PS			P	P	P	P		11.2
<i>Portable Sawmill</i>			P	P	P								11.#
<b>12. TEMPORARY STRUCTURES</b>													
<i>Portable Storage Container</i>	P	P	P	P	P	P	P	P	P	P	P		12.1

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## Land Development Code Text Amendment D: Simplify Recreational Facility Uses

**Issue:** The LDC has multiple recreational use types that is confusing to applicants.

**Recommendation:** Create one recreational facilities use to address indoor and outdoor recreation not currently permitted as a common area recreation and service facility or governmental recreational facility. Recreational facilities would not include motor sports facilities.

- Recreational facilities would be permitted by right in CC and RC districts and as a special use permit in all other zoning districts.
- Add new SR for recreational facilities

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## Land Development Code Text Amendment E: Communication Facilities Amendments

**Issue:** Federal and state legislation now require local governments approve minor modifications to wireless telecommunication support facilities under certain thresholds.

**Recommendation:** Amend the standards for communication facilities to comply with federal and state regulations.

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## Land Development Code Text Amendment E: Communication Facilities Amendments

**Minor Modifications are permitted and include:**

- Increasing the existing vertical height by less than 10% or less than the height of one additional antenna array. (Separation from the nearest existing antenna not to exceed 20 feet.)
- Increasing the tower by 20 feet in width or less, or no more than the width of the support structures at the level of the new appurtenance. (Except where necessary to shelter the antenna from inclement weather or connect to the tower via cable.)
- Increasing the existing equipment compound by 2,500 sq ft or less.

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## Land Development Code Text Amendment F: Improvement Guarantee Amendments

**Issue:** Current LDC regulations for improvement guarantees (IG) do not provide the County with an adequate mechanism for covering costs associated with completing projects in default.

**Recommendation:** As per the County Attorney's request, amend and reformat the improvement guarantee section of the LDC.

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## Land Development Code Text Amendment F: Improvement Guarantee Amendments

**If amended, the IG section would now require the following:**

1. A minimum of 25% of the required on-site improvements be in place before an IG is granted.
2. All required federal, state and local permits be issued and copies submitted.
3. All associated design plans and construction specifications, including the engineer's release of said plans, copies be submitted.
4. Cost estimates for water and sewer infrastructure must be prepared by a professional engineer licensed in NC.

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## **Land Development Code Text Amendment F: Improvement Guarantee Amendments**

5. Cost estimates must include separate costs for:
  - Roads, bridges, water and sewer, stormwater, pedestrian infrastructure, utilities, etc.
  - Any off-site infrastructure improvements.
  - Federal and/or state mitigation fees.
  - Professional engineering and land surveying fees needed to complete a default IG.
6. Funds may be released provided:
  - A new cost estimate is submitted for the remaining work.
  - If the property/project is not in violation of any laws (including soil erosion and sedimentation control permits).
  - No more than 4 requests for release of funds shall be allowed. (Release requests are eligible when 25%, 50% and 75 % of the work is completed.)

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## **Land Development Code Text Amendment F: Improvement Guarantee Amendments**

7. Temporary access and permanent construction easements for infrastructure improvements shall be provided.
8. The following terms shall be stated in the performance agreement:
  - Applicants have 15 days to identify a new security provider and redeem an IG if the current security provider is in default, bankruptcy or otherwise determined to be insolvent.
  - Specific benchmarks for completion of work are required, and the County may redeem the IG if the applicant fails to meet the self-imposed benchmarks.
  - If the applicant is in violation of the LDC, the County may redeem the IG if the applicant has been notified of the violation and the period of remediation has passed.
9. The County may charge for construction & project admin. costs if an IG is executed.

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## Land Development Code Text Amendment F: Improvement Guarantee Amendments

### **County Staff recommended changes not supported by Planning Board:**

1. Increase the amount of the IG to 150% for subdivisions of 35 or more lots. Current amount of IG is 125%. (Recommendation supported by the County Attorney Staff.) The 125% guarantee may be acceptable if the proposed amendments are approved.
2. IG's are currently valid for a period of 1 year. Based on recommendations from local engineering firms, the Planning Board supported increasing the valid period to 18 months or 1½ years. Staff recommends leaving the current standards in place to simplify the process and because an IG is good for 1 year with a possibility of two 1 year extensions, providing adequate time to complete improvements.

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## Land Development Code and Minimum Housing Code Text Amendments

- January 16, 2014, Henderson County Planning Board voted to send forward a favorable recommendation of the proposed text amendments
- Public hearing is required to adopt the proposed amendments
- Public hearing advertised in the Hendersonville Tribune on March 6<sup>th</sup> and March 13<sup>th</sup>

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**Public Hearing Comments  
and  
Board Discussion**

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