

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY PLANNING BOARD

**MEETING DATE:** July 19, 2012

**SUBJECT:** Land Development Code Text Amendment (TX-2012-02) Amendments to Reduce Regulation

**PRESENTER:** Anthony Starr, AICP, Planning Director

**ATTACHMENTS:** 1. PowerPoint  
2. Draft Text Amendment

### **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19, 2007, the Board of Commissioners directed staff to prepare annual updates to the LDC to prevent it from becoming outdated. This annual review of the LDC will prevent the need for a large overhaul of the entire code because it became too outdated. Trends and new issues are always emerging and that requires periodic updates to the LDC text.

Based on input from staff, Planning Board and the public, the Planning Department prepared several text amendments for consideration. All of the changes associated with these amendments reduce regulation while protecting the public interest and safety. The proposed changes will lower development costs, provide greater flexibility with the design of projects, and lower the impact of development on the environment.

Planning Staff recommends approval of the proposed text amendment and asks the Planning Board to review the information provided. The amendments are consistent with the County's Comprehensive Plan.

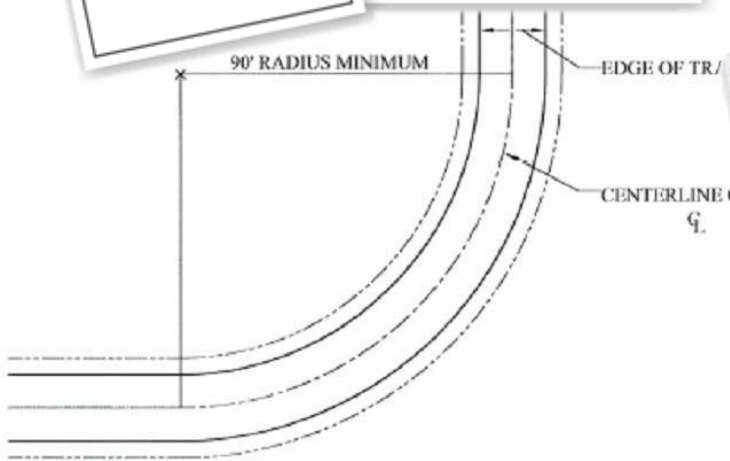
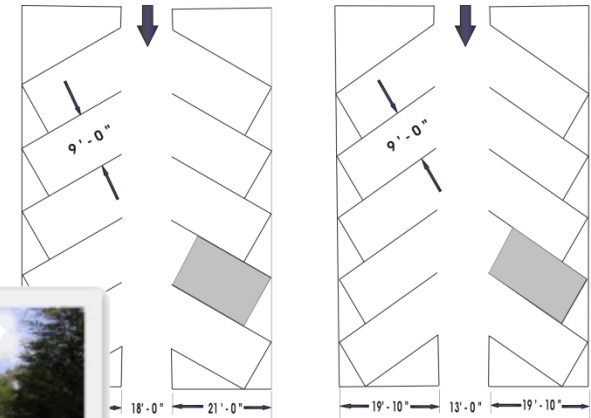
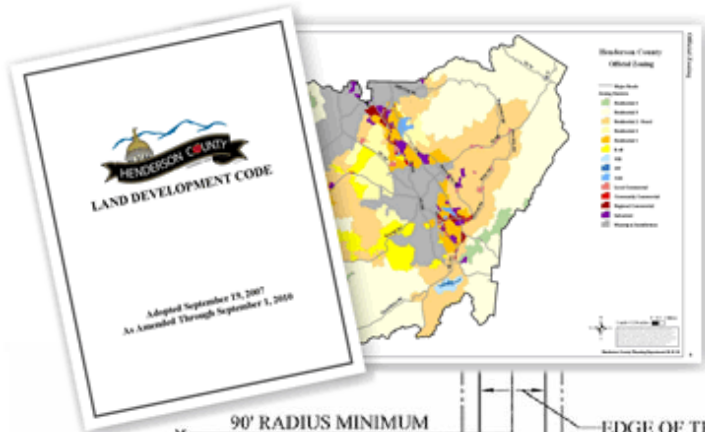
Staff requests that the Planning Board recommend approval to the Board of Commissioners.

### **Suggested Motion:**

I move that the Planning Board find that the attached text amendment to the LDC is consistent with the County Comprehensive Plan based on the goals of encouraging appropriate development practices that protect the environment, provide for the public safety, and reduce infrastructure and development costs.

I further move that the Planning Board recommend approval of the attached LDC text amendments to the Board of Commissioners.

# Land Development Code Amendments to Reduce Regulation



Henderson County Planning Board

Thursday, July 19<sup>th</sup>, 2012

Presentation by: Anthony Starr, AICP, Planning Director

*Henderson County Planning Department*

# 2012 LDC Text Amendments

- LDC originally adopted September 19, 2007
- The Board of Commissioners directed staff and the Planning Board to propose updates, at least annually, to prevent the LDC from becoming outdated
- Each year, the Planning Staff and Planning Board work together to create possible text amendments
- Based on feedback from the development community, the Planning Board and the public, staff created this initial list of potential text amendments
- The BOC also directed staff to identify possible options to reduce regulation and enhance the County's business friendly climate

# Amendment A: CCP Amendments

- LDC requires public hearing for substantive changes
- State law does not require a public hearing
- Propose to eliminate public hearing requirement & newspaper advert; instead post on County website
- Would reduce advertising costs
- Board of Commissioner (BOC) approval still required
- Public input at every Planning Board/BOC meeting
- Provides greater flexibility to promote development where a CCP change is needed
- Legal advertisements rarely read by the public
- Recommend elimination of public hearing/legal advert

# B: Multi-Family Minimum Parking

- County currently requires 2 parking spaces for each dwelling unit (single-family or multi-family)
- Propose to reduce multi-family (MF) requirement to 1.5 spaces per dwelling unit (25% decrease)
- This reflects modern parking needs as not all MF households need 2 spaces
- This standard is used by other jurisdictions
- For a 100 unit townhouse project, this would reduce the minimum parking spaces from 200 to 150
- No change for single-family homes
- Recommend reduction of the parking standard

# C: Industrial Minimum Parking

- County currently requires 1 parking space for each 500 square feet of gross floor area of industrial facilities
- Warehouses must provide 1 space for each 4,000 square feet (sqft) of gross floor area
- Propose to change the industrial minimum to 1 space per 4,000 sqft
- Proposed standard reflects changes in employment trends where productivity is higher thereby using fewer employees per sqft
- For a 100,000 sqft industrial building, this would reduce the minimum # of parking spaces from 200 to 25
- Recommend reduction of the parking standard

# D: Accessory Structure Setbacks

- County currently requires 10 foot setback from property lines in all districts
- Propose to reduce accessory structure setback to 5 feet for all districts (residential and non-residential)
- Common standard for many jurisdictions
- Provides better use of property
- Buffers and screening requirements still apply and may require greater setback
- Subdivision covenants unaffected by this change and may still require greater setbacks
- Recommend reduction in accessory structure setbacks

# E: Dumpsters

- Dumpster requirements explicitly allowed for certain land uses
- Current LDC text could be interpreted to not allow dumpsters for a variety of land uses
- This amendment specifically allows dumpsters and uses screening requirements that are already in place where dumpsters are currently listed
- This provision allows for temporary dumpsters where there is no text that allows them currently
- Screening requirements would not apply to temporary dumpsters



# F: Corrections to Decision Making Section

- This amendment does not increase regulation
- This amendment corrects several errors in the current LDC text
- It clarifies that Special Fill Permits are reviewed using a quasi-judicial public hearing since the Board of Adjustment acts as the Flood Damage Prevention Board (which approves the Special Fill Permits)
- Recommend changes for this section

# G: Soil Erosion Appeals

- This amendment does not increase regulation
- The current LDC text requires the hearing for an appeal filed to occur within 30 days
- It is not always possible to hold the appeal hearing and meet the required public notice provisions within 30 days since the ZBA meets monthly
- The proposed change would require the appeal hearing to be held within 60 days instead of 30 days
- Recommend change for soil erosion appeals

# H: Quasi-judicial hearings

- LDC currently requires a newspaper advertisement for quasi-judicial hearings
- State law does not require a newspaper advertisement
- Propose to eliminate newspaper advertisement requirement and instead post signs at the site
- Would reduce advertising costs
- Quasi-judicial hearing still held and mailed notice given
- Newspaper legal adverts rarely read by the public
- Newspaper advertisements still required for text amendments & zoning map amendments (rezonings)
- Recommend change for QJ hearings

# I: Eliminate Soil Erosion

## Permit/Sketch Plan

- County currently requires a permit & sketch plan of areas when disturbing more than 100 square feet of soil (uncovering soil)
- A formal erosion control plan isn't required unless disturbance exceeds 1 acre or if on steeper slopes
- No permit fees are collected with sketch plan/permits
- Not required by the State
- Originally implemented with local soil erosion standards and program in 2007
- We average 25-40 permits per month
- Recommend elimination of the soil erosion permit

# J: Reduce Curve Radii for Roads

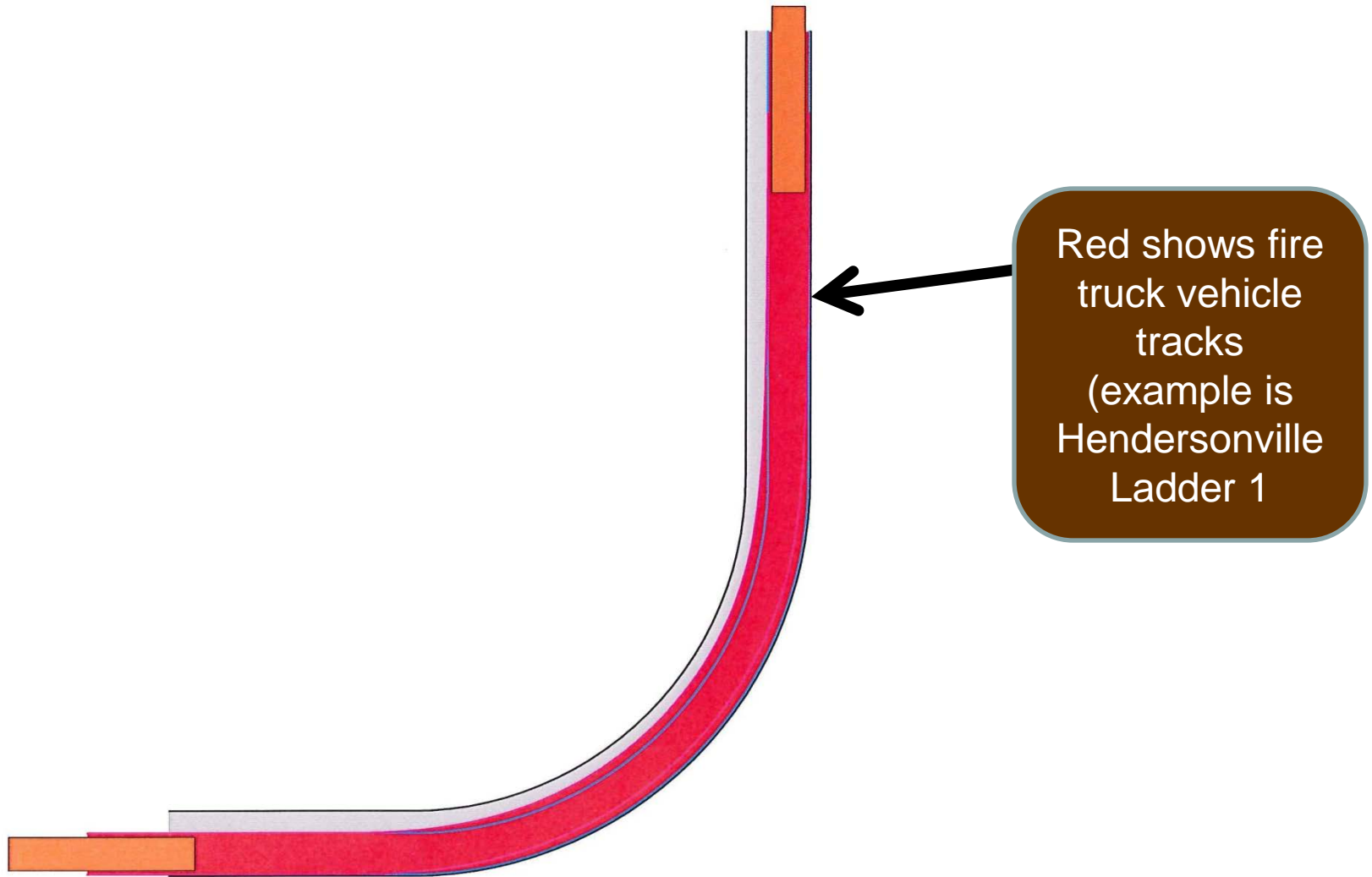
- LDC currently requires 90-110 foot curve radius for new subdivision roads
- Provision is aimed at maintaining a minimum radius for safe vehicle operation
- Current standard better suited for flat land areas
- Propose to reduce the centerline curve radii in exchange for widening road travel lanes in curves
- New provision provides adequate access for the largest emergency vehicles
- Could significantly reduce development costs
- Could reduce amount of land disturbed for new projects

# Reduce Curve Radii for Roads

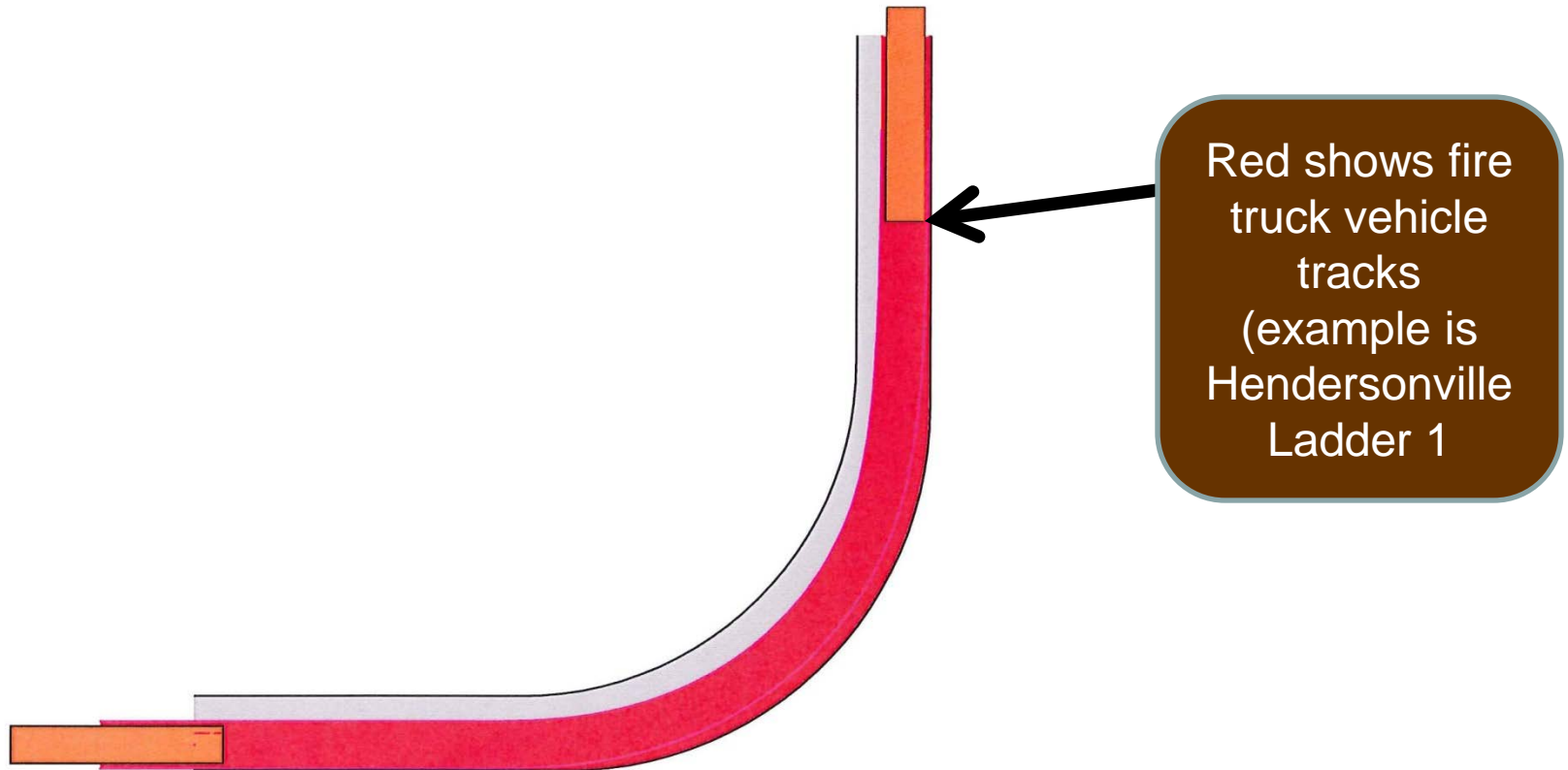
- This idea first suggested by Planning Board member and a local engineer
- Planning Staff has been coordinating with Emergency Services Department on this idea
- Here is how it works for a 16 foot wide (local) road:

Normal Road Width (feet)	Centerline Curve Radius (feet)	Increase in Road Width	New Road Width in Curve (feet)
16	90+	0	16
16	70-90	25%	20
16	60-70	35%	21.6
16	50-60	45%	23.2
16	40-50	50%	24

# Example: Curve Radius 90 feet

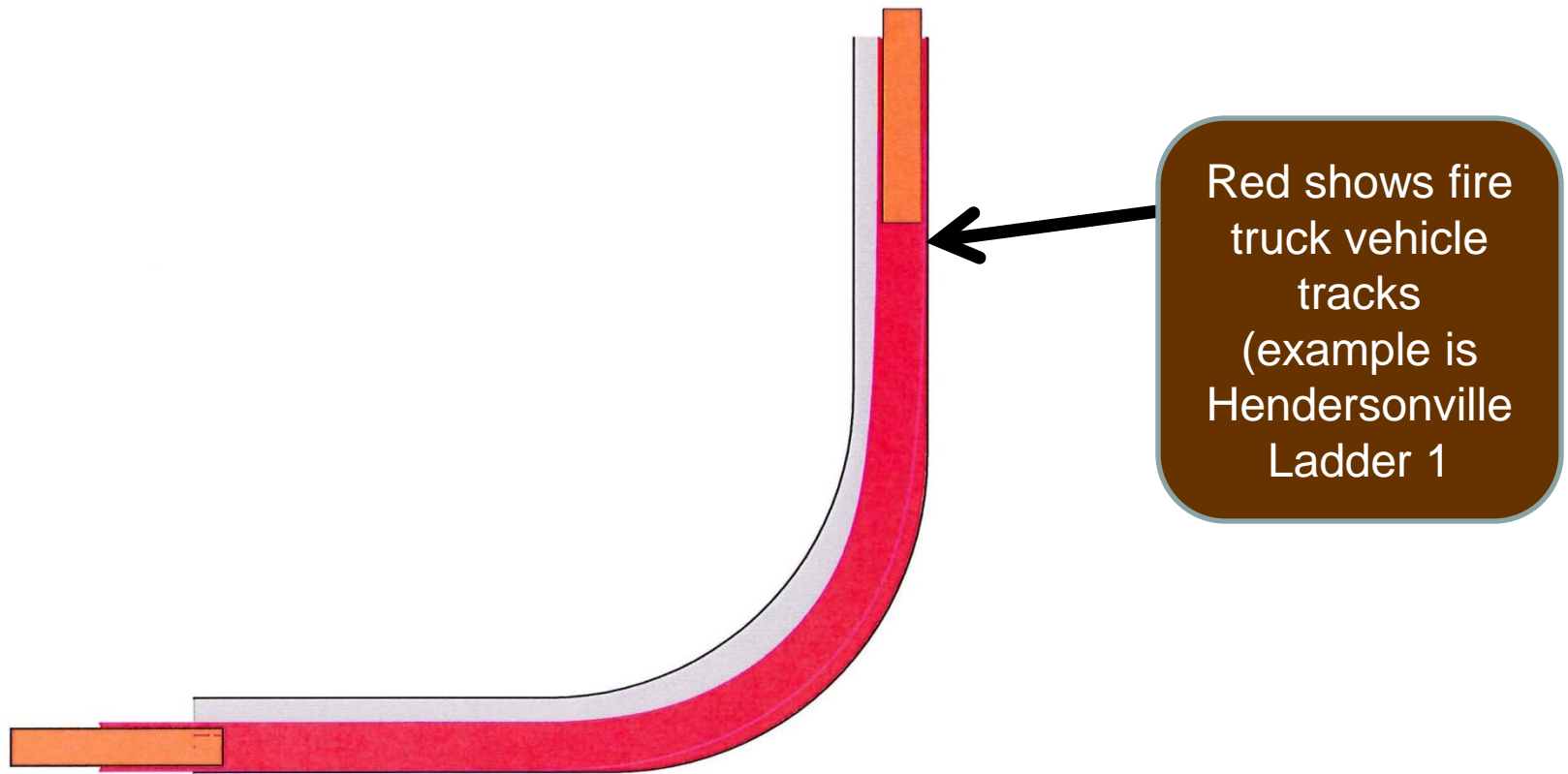


# Example: Curve Radius 70 feet

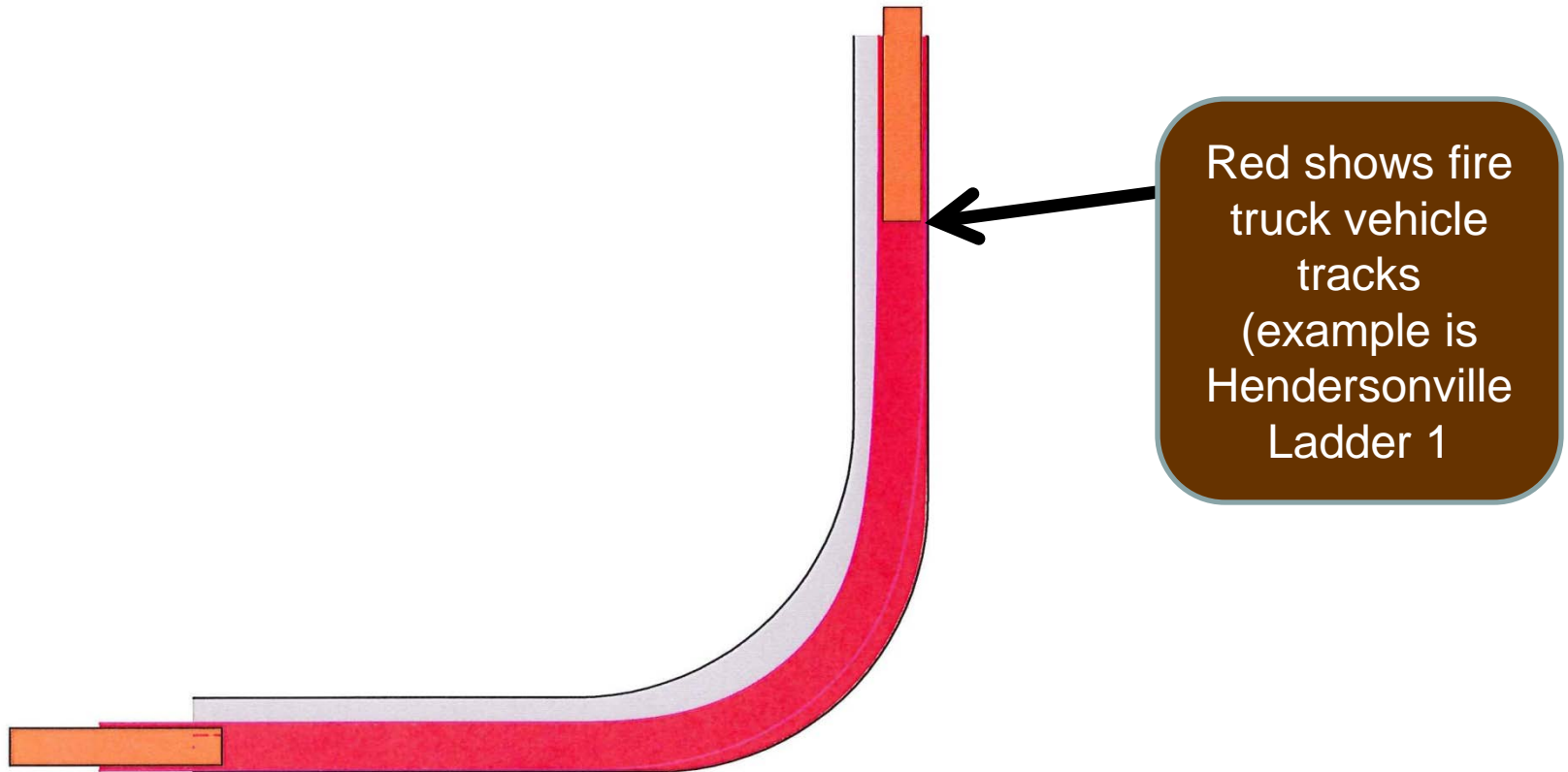




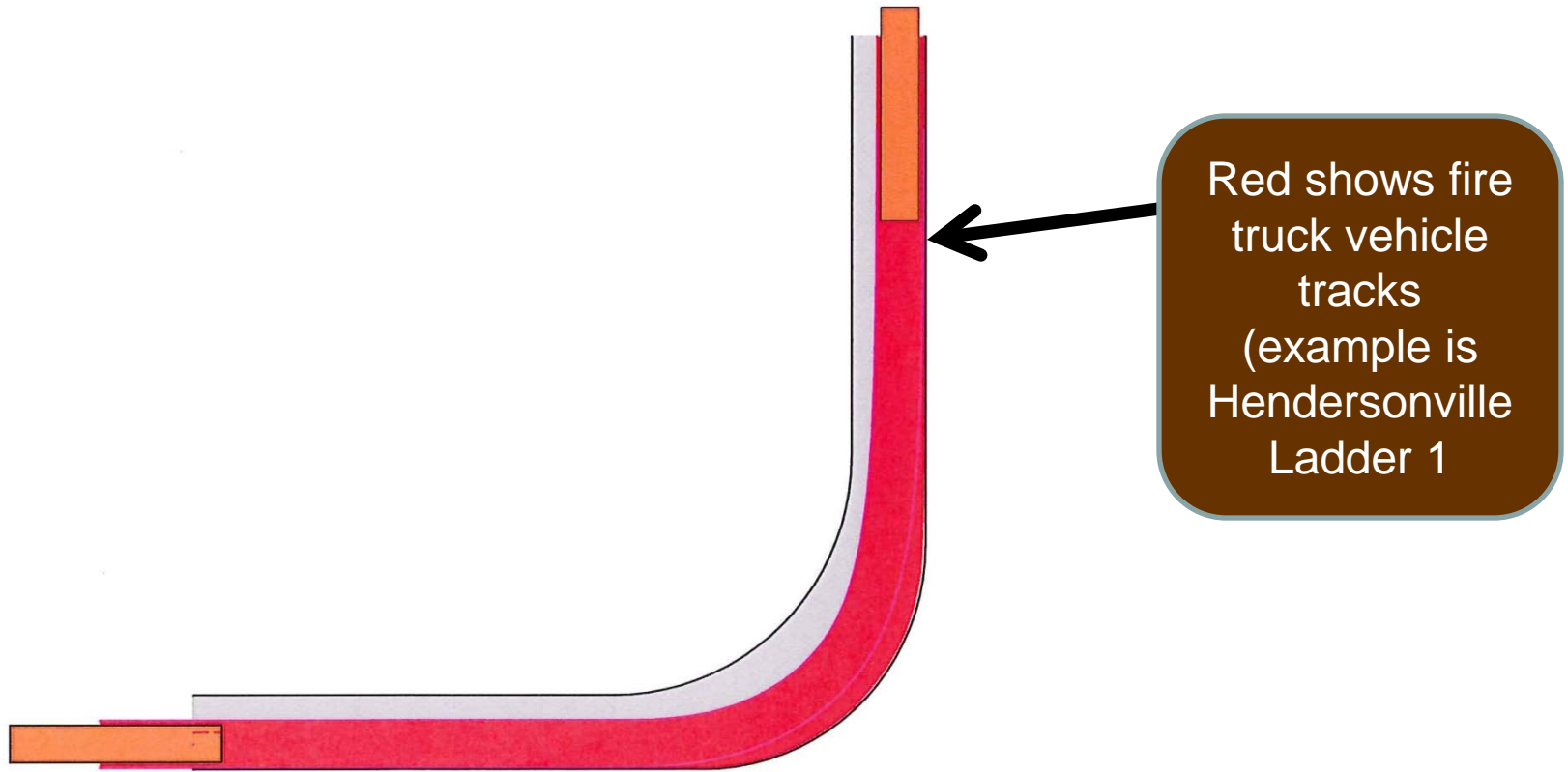
# Example: Curve Radius 60 feet



# Example: Curve Radius 50 feet



# Example: Curve Radius 40 feet



# Questions?

- Concerns?
- Comments?

# Next Steps

- Planning Board makes its recommendation
- Board of Commissioners hold the required public hearing
- Board of Commissioners approve, deny or modify the proposed text

## 2012 LDC Draft Text Amendments to Reduce Regulations

### **LDC Text Amendment A: CCP Amendments.**

**Issue:** The general statutes do not have specific requirements for adopting or amending comprehensive plans. The existing LDC standards for CCP amendments are set forth by County policy, and require the County to hold a public hearing to take action on non-administrative amendments. Existing LDC standards also require a published notification.

The proposed amendment would allow the Board of Commissioners to hold a public hearing on any CCP amendments, but not require it based on state statutes. The amendment would also require the County to file proposed amendments with the clerk to the Board of Commissioners and post on the County website at least 10 but not more than twenty-five days prior to the Commissioners taking action on the proposed amendment (this is an additional requirement from current standards). The amendment would remove the required published notice and allow the Board of Commissioners the option of mailing notices to affected property owners.

This will greatly reduce the cost of published notices and will allow the Commissioners the flexibility to amend the CCP where deemed appropriate while adding additional provisions for notifying the public and affected property owners via the website and mailed notices (when appropriate).

**Recommendation:** Amend the public notification and public hearing requirements for non-administrative amendments to the CCP.

Amend applicable sections as indicated below.

### **§200A-345. Comprehensive Plan Amendments**

#### C. Substantive Amendments

##### (3) Review Schedule.

- c. Annual Review. The County will review amendment requests as submitted in January. Planning Staff assesses suggested revisions within the context of the plan as a whole, proposes plan amendments deemed appropriate to address them, and submits the proposed amendments to the Planning Board for review and recommendation to the Commissioners. The Commissioners ~~hold a public hearing and~~ decide whether to adopt the proposed amendments.
- d. Five-Year Review. The Comprehensive Plan is subject to a review every five (5) years, with the first review scheduled after the last Community Plan is complete. Planning Staff prepares draft amendments and submits them to the Planning Board for initial review. Planning Staff distributes copies of the draft amendments widely, invites public comment, addresses received public comments and submits amendments as revised to the Planning Board for review and recommendation to the Commissioners. The Commissioners ~~hold a public hearing on the proposed amendments,~~ review and decide whether to adopt the amendments. **The Commissioners may hold a public hearing or public input session.** If the Commissioners direct that further modifications to

the proposed amendments be made, and such modifications are deemed by the Commissioners to be significant, the modified proposal shall be resubmitted to the Planning Board for further review and recommendation before the Commissioners take action.

- (4) Public Hearing. None required. ~~The Board of Commissioners may hold a public hearing on the amendment(s). Prior to amending the *Comprehensive Plan* substantively, the Commissioners shall hold a public hearing on the amendment(s) in accordance with *NCGS* §153A-323, as amended (See §200A-338 (Legislative Process Standards)).~~
- (5) Public Notification. Notice of proposed change must be filed with the clerk to the Board of Commissioners and posted on the County website at least ten (10) but not more than twenty-five (25) days prior to the Commissioners approving proposed amendments. Where deemed appropriate, notices may be mailed to affected property owners. ~~Public notification of such hearing shall comply with the provisions of *NCGS* §153A-323 and §153A-343, as amended (See §200A-338 (Legislative Process Standards)). Planning Staff shall be responsible for all necessary public notifications.~~

## **§200A-370. Legislative Process Standards**

### **A. Text Amendments ~~and Comprehensive Plan Amendments~~**

- (1) Public Hearing. Before adopting or amending any ordinance the Board of Commissioners shall hold a public hearing on the ordinance or amendment.
- (2) Newspaper Notice. In accordance with *NCGS* 153A-323, the Commissioners shall cause notice of such hearing to be published in a newspaper of general circulation in the County once a week for two (2) successive calendar weeks. The notice shall be published the first time not less than ten (10) days nor more than 25 days prior to the date fixed for the hearing. The notice shall include the time, place and date of the hearing and include a description of the property or the nature of the change or amendment to map. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

### **C. Comprehensive Plan Amendments**

- (1) Public Hearing. A public hearing is not required. The Board of Commissioners may hold a public hearing or public input session on the amendment(s).
- (2) Newspaper Notice. None required.
- (3) Mailed Notice. None required.
- (4) Public Notification. Notice of proposed change must be filed with the clerk to the Board of Commissioners and posted on the County website at least ten (10) but not more than twenty-five (25) days prior to the Commissioners approving proposed amendments. Where deemed appropriate, notices may be mailed to affected property owners.

**LDC Text Amendment B: Multi-Family Minimum Parking.**

**Issue:** The LDC currently requires 2 parking spaces for each single-family and multi-family dwelling. Most often, fewer parking spaces are required for multi-family developments. The proposed amendment will reduce the minimum parking space requirement to 1.5 spaces for each multi-family dwelling. The single-family parking space requirement of 2 spaces for each dwelling will remain unchanged. This amendment will reduce development costs and improve water quality by reducing unnecessary impervious surface by 25%.

**Recommendation:** Reduce multi-family parking space requirement to 1.5 spaces per dwelling unit.

Amend Table 6.1 as indicated below.

**§200A-194. Required Number of Spaces for Off-Street Parking**

Parking shall be provided and maintained in accordance with the rates indicated below.

<b>Table 6.1 Required Parking</b>	
<b>Use Classification</b>	<b>Number of Parking Spaces Required</b>
Residential – <b>Single-Family Dwellings</b>	Two (2) spaces per each <i>dwelling unit</i>
Residential – <b>Multi-family Dwellings</b>	<b>One and one-half (1.5) spaces per each <i>dwelling unit</i></b>
Commercial, Industrial, Office, Institutional, Civic	One (1) space per each 500 square feet of <i>gross floor area</i>
Warehouse	One (1) space per each 4,000 square feet of <i>gross floor area</i>



**LDC Text Amendment C: Industrial Minimum Parking.**

**Issue:** The LDC currently requires 1 parking space for every 500 square feet of gross floor area for industrial uses. This amendment reflects new employment trends where employee productivity is much higher resulting in fewer employees per square foot of building space. Often, far fewer parking spaces are necessary than the current standard requires. This amendment will reduce development costs and improve water quality by reducing unnecessary impervious surface.

**Recommendation:** Reduce industrial parking space requirement to match the current warehouse requirement of 1 space per 4,000 square feet of gross floor area.

Amend Table 6.1 as indicated below.

**§200A-194. Required Number of Spaces for Off-Street Parking**

Parking shall be provided and maintained in accordance with the rates indicated below.

<b>Table 6.1 Required Parking</b>	
<b>Use Classification</b>	<b>Number of Parking Spaces Required</b>
Commercial, <del>Industrial</del> , Office, Institutional, Civic	One (1) space per each 500 square feet of <i>gross floor area</i>
<del>Industrial</del> , Warehouse	One (1) space per each 4,000 square feet of <i>gross floor area</i>

**LDC Text Amendment D: Accessory Structure Setbacks.**

**Issue:** Accessory structures are currently allowed in all zoning districts provided the structures are setback a minimum of 10 feet from side and rear property lines.

The proposed amendment would reduce the side and rear setback to 5 feet for accessory structures. This setback would still meet the of N.C. State Building Code standards which require a 10 foot separation between structures without higher fire wall ratings. This amendment would not permit accessory structures in the front yard (existing LDC standard).

**Recommendation:** Reduce the side and rear setback for accessory structures to 5 feet (complies with 10-foot state building code separation) for all zoning districts excluding the R-40 and WR districts. Add accessory structures to the CC, RC, and I zoning districts.

Amend sections as indicated below.

**§200A-27. Residential District One (R1)**

**B. Density and Dimensional Requirements.**

- (5) *Accessory structures* shall be located in *side* or *rear yards* and shall be *setback* a minimum of ~~ten (10)~~ *five (5)* feet from any property line.

**§200A-28. Residential District Two (R2)**

**B. Density and Dimensional Requirements.**

- (4) *Accessory structures* shall be located in *side* or *rear yards* and shall be *setback* a minimum of ~~ten (10)~~ *five (5)* feet from any property line.

**§200A-29. Residential District Two Rural (R2R)**

**B. Density and Dimensional Requirements.**

- (4) *Accessory structures* shall be located in *side* or *rear yards* and shall be *setback* a minimum of ~~ten (10)~~ *five (5)* feet from any property line.

**§200A-30. Residential District Three (R3)**

**B. Density and Dimensional Requirements.**

- (2) *Accessory structures* shall be located in *side* or *rear yards* and shall be *setback* a minimum of ~~ten (10)~~ *five (5)* feet from any property line.

**§200A-31. Residential District Four (R4)**

**B. Density and Dimensional Requirements.**

- (2) *Accessory structures* shall be located in *side* or *rear yards* and shall be *setback* a minimum of ~~ten (10)~~ *five (5)* feet from any property line.

**§200A-32. Office Institutional District (OI)**

**B. Density and Dimensional Requirements.**

- (4) *Accessory structures* shall be located in *side* or *rear yards* and shall be *setback* a minimum of ~~ten (10)~~ *five (5)* feet from any property line.

**§200A-33. Local Commercial District (LC)**

**B. Density and Dimensional Requirements.**

- (5) *Accessory structures* shall be located in *side* or *rear yards* and shall be *setback* a minimum of ~~ten (10)~~ *five (5)* feet from any property line.

**§200A-34. Community Commercial District (CC)**

**B. Density and Dimensional Requirements.**

- (3) *Accessory structures* shall be located in *side* or *rear yards* and shall be *setback* a minimum of *five (5)* feet from any property line.

**§200A-35. Regional Commercial District (RC)**

**B. Density and Dimensional Requirements.**

- (2) *Accessory structures* shall be located in *side* or *rear yards* and shall be *setback* a minimum of *five (5)* feet from any property line.

**§200A-36. Industrial District (I)**

**B. Density and Dimensional Requirements.**

- (1) *Accessory structures* shall be located in *side* or *rear yards* and shall be *setback* a minimum of *five (5)* feet from any property line.

**§200A-37. Estate Residential District (R-40)**

**C. Permitted Uses.**

- (7) *a.* . Shall be permitted in rear yards, provided that they are located not less than ~~ten (10)~~ *five (5)* feet from any property line;

**§200A-38. Waterfront Residential District (WR)**

**C. Permitted Uses.**

- (2) *a.* . Shall be permitted in rear yards, provided that they are located not less than ~~ten (10)~~ *five (5)* feet from any property line;

**LDC Text Amendment E: Dumpster(s).**

**Issue:** The LDC does not have a provision to allow dumpsters as an accessory use. Certain non-residential uses require a solid waste collection system and allow for the use of dumpsters (with standards). This amendment adds dumpsters as an accessory use with similar standards stated in the LDC for certain non-residential uses that require solid waste collection.

**Recommendation:** Add dumpsters as an accessory use (for non-residential and multi-family residential uses) permitted in all zoning districts with standards (SR 2.3).

Insert the following text in alphabetical order in Section 2 of the Table of Permitted and Special Uses and Section 2 of the Supplemental Requirements.

USE TYPE	GENERAL USE DISTRICT											
	P=Permitted; S=Special Use Permit											
	R1	R2	R2R	R3	R4	OI	MU	LC	CC	RC	I	SR
<b>2. ACCESSORY USES</b>												
Dumpster(s)	P	P	P	P	P	P	P	P	P	P	P	2.3

**SR 2.3. Dumpster(s)**

- (1) Associated Principal Use. Dumpsters are allowed as an accessory use to a non-residential or multi-family residential use.
- (2) Operations. The use of dumpsters shall be installed and/or operated to meet all local and state statutes, ordinances and regulations (including Chapter 165 of the Henderson County Code, Solid Waste).
- (3) Screening. Screen Class One (1), Two (2) or Three (3) shall be provided consistent with the requirements of §200A-182 (Screen Classification).
- (4) Temporary Dumpsters. Temporary dumpsters may be used for all residential and non-residential uses up to 18 months. Screening is not required for temporary dumpsters.

**LDC Text Amendment F: Corrections to Decision Making, Administrative and Advisory section.**

**Issue:** Staff identified corrections that needed to be made to the Decision Making, Administrative and Advisory section of the LDC. These corrections included amending the authority of the Board of Commissioners (BOC), Planning Board, Zoning Board of Adjustment (ZBA) and Flood Damage Prevention Board to reflect existing review processes.

This amendment clarifies that the ZBA (which also acts as the Flood Damage Prevention Board) hears all quasi-judicial proceedings and does not have the authority to defer these hearings to the BOC. The amendment also removes the special intensity allocation power since this use was removed with recent stormwater amendments.

**Recommendation:** Correct the Decision Making, Administrative and Advisory section of the LDC. Also correct typos for Special Fill Permits in the Floodplain.

Amend sections as indicated below.

**§200A-303. Henderson County Board of Commissioners**

- A. Powers and Duties Pursuant to This Chapter. Without limiting any authority granted to the Henderson County Board of Commissioners by law or by regulations, The Board of Commissioners shall have the following powers and duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:

~~(9) Special Use Permits. To grant special use permits deferred by the Zoning Board of Adjustment as authorized by this Chapter.~~

~~(10) Special Fill Permits. To grant special fill permits as authorized by this Chapter.~~

~~(11) Special Intensity Allocation. To grant special intensity allocations as authorized by this Chapter.~~

**§200A-304. Henderson County Planning Board** (See Also §6-11 Of the Henderson County Code)

- A. Powers and Duties Pursuant to This Chapter. Without limiting any authority granted to the Henderson County Planning Board by law or by regulations, the Planning Board shall have the following powers and duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:

(7) Special Fill Permits. To review *special fill permit* applications and make recommendations to the ~~Board of Commissioners~~ Flood Damage Prevention Board for final action thereon.

**§200A-305. Henderson County Zoning Board of Adjustment**

- A. Powers and Duties Pursuant to This Chapter. Without limiting any authority granted to the Zoning Board of Adjustment by law or by regulations, the Zoning Board of Adjustment shall have the following powers and duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:

(7) Special Use Permits. To grant *special use* permits as authorized by this Chapter, ~~or to defer the decision to the Board of Commissioners;~~

**§200A-307. Henderson County Flood Damage Prevention Board**

- A. Powers and Duties Pursuant to This Chapter. Without limiting any authority granted to the Flood Damage Prevention Board by law or by regulations, the Flood Damage Prevention Board shall have the following powers and duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:

(4) **Special Fill Permits. To grant *special fill permits* as authorized by this Chapter.**

Make certain technical corrections to the procedures for Special Fill Permits in the Floodplain as indicated below.

**§200A-355. Special Fill Permits**

- E. Formal Review. ~~Neither the review by the Planning Board nor the hearing before the Flood Damage Prevention Board shall be quasi-judicial in nature.~~

(1) Henderson County Planning Board Review and Recommendation. **The review by the Planning Board shall not be quasi-judicial in nature.**

- a. Public notification of the Planning Board meeting shall comply with the provisions of §200A-371 (Quasi-Judicial Process Standards). The *Floodplain Administrator* shall be responsible for all necessary public notifications.
- b. The Planning Board shall hear a summary and review of the application by the *Floodplain Administrator*, evidence as presented by the *applicant*, and such other evidence as the Planning Board may find useful.
- c. The Planning Board shall, within 60 days of the date the application is first considered by the Planning Board, issue its recommendation to the Flood Damage Prevention Board as to the grant or denial of the application.

(2) Flood Damage Prevention Board Public Hearing. **The Flood Damage Prevention Board shall hold a quasi-judicial public hearing that complies with the provisions of §200A-371 (Quasi-Judicial Process Standards).**

- a. Public notification of the ~~Planning~~ **Flood Damage Prevention** Board meeting shall comply with the provisions of §200A-371 (Quasi-Judicial Process Standards). The *Floodplain Administrator* shall be responsible for all necessary public notifications.
- b. The Flood Damage Prevention Board shall consider a summary of the proposed project from the *Floodplain Administrator*, evidence in support of the project and concerning the issues upon which proof must be submitted under Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) from the *applicant*, evidence from adjacent property *owners*, and such other evidence as the Flood Damage Prevention Board finds useful.
- c. ~~At the conclusion of the public hearing, the Flood Damage Prevention Board shall issue its decision within the time limits established in Rule 47 of the Board of Commissioners' Rules of Procedure.~~ **The Flood Damage Prevention Board shall reach a decision within 45 days of the conclusion of the quasi-judicial hearing.**

**LDC Text Amendment G: Plan and Permit Appeals for Soil Erosion and Sedimentation Control.**

**Issue:** Existing LDC standards require the ZBA to hold a hearing on appeals for soil erosion and sedimentation control within 30 days after the date of the appeal or request for a hearing. The amendment would change the time limitations from 30 to 60 days to ensure that the ZBA can hear the appeal at its next regularly scheduled meeting without holding a special called meeting.

**Recommendation:** Amend the time limitation for the ZBA to conduct hearings for appeal for soil erosion and sedimentation control.

Amend this section as indicated below.

**§200A-267. Plan and Permit Appeals**

- A. Except as provided in §200A-267 (Plan and Permit Appeals) B of this subpart, the *appeal* of a disapproval or approval with modifications of an Erosion and Sedimentation Control Plan or Permit shall be governed by the following provisions:
- (2) A hearing held pursuant to this section shall be conducted by the Henderson County Zoning Board of Adjustment (ZBA) within ~~60~~30 days after the date of the *appeal* or request for a hearing.

### **LDC Text Amendment H: Quasi-judicial Proceedings.**

**Issue:** The general statutes require government boards to hold a quasi-judicial proceeding for certain types of approvals such as: special use permits, vested rights, variances and appeals. Quasi-judicial proceedings require parties to be identified to speak during the hearing. The statutes require that parties be notified, but do not require further notification. LDC notification requirements are set forth by County policy but are not required by the state statutes.

The proposed amendment removes the newspaper notice requirement since it is costly to the County and is not required by the general statutes. The proposed amendment would require the property in question to be posted with notice of the hearing (this is not currently required).

**Recommendation:** Amend the newspaper notice for quasi-judicial proceedings and require a posted notice.

Amend this section as indicated below.

#### **§200A-371. Quasi-Judicial Process Standards**

- (1) Public Hearing. Before taking any action, the appropriate Zoning Board of Adjustment (*ZBA*) shall hold a public hearing (quasi-judicial) on the application, in accordance with established procedures for quasi-judicial hearings.
- (2) Newspaper Notice. ~~None required. The *ZBA* shall cause notice of such hearing to be published in a newspaper of general circulation in the County once a week for two (2) successive calendar weeks. The notice shall be published the first time not less than ten (10) days nor more than 25 days prior to the date fixed for the hearing. The notice shall include the time, place and date of the hearing and include a description of the property or the nature of the change or amendment to map. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.~~
- (3) Mailed Notice. The *owner* of that parcel of land (related to the application) as shown on the County tax listing, and the *owners* of all parcels of land abutting that parcel of land as shown on the County tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such *owners* on the County tax abstracts. This notice must be deposited in the mail at least ten (10) but not more than 25 days prior to the date of the public hearing. The *person* or *persons* mailing such notices shall certify to the *ZBA* that fact, and such certificate shall be deemed conclusive in the absence of fraud.
- (4) Posted Notice. ~~The County shall post one or more prominent *signs* on or immediately adjacent to the subject area reasonably calculated to give public notice of the hearing. In the event that more than one (1) parcel is involved, at least one (1) *sign* shall be posted in a central location; however, the *Zoning Administrator* may post multiple *signs*. Said *sign(s)* shall be posted at least ten (10) days prior to the hearing.~~
- (5) Conflict of Interest. A member of the *ZBA* shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected *persons'* constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing



the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected *person*, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

## **LDC Text Amendment I: Eliminate Soil Erosion Permit Requirement**

**Issue:** The Board of Commissioner adopted Soil Erosion and Sedimentation Control Regulations in 2006 that became effective in 2007. The Board elected at that time, to enact a provision that requires a permit for any land disturbance greater than 100 square feet. The measure was aimed at promoting a greater awareness of the need for soil erosion control measures on smaller development sites. The state standard only requires a formal soil erosion plan when more than 1 acre of land is disturbed.

The proposed amendment proposes to eliminate the soil erosion permit. Soil erosion plans would still be required when:

- Disturbing more than 1 acre of land; or
- Disturbing more than ½ acre of land with an average slope of 16 to 25 percent; or
- Disturbing more than ¼ acre of land with an average slope of more than 25 percent.

The soil erosion permit (sometimes called a sketch plan permit) has not proven to be an effective tool for communicating soil erosion standards. No permit fees are collected and therefore this amendment has no impact on anticipated fee revenues. The Permit Center averages 25-40 sketch plan permits each month. This amendment will reduce the administrative burden for development and permitting staff. There are no expected impacts on water quality.

**Recommendation:** Eliminate the erosion control permit.

Amend this subpart as indicated below.

### **Subpart E. Soil Erosion and Sedimentation Control**

#### **§200A-253. Purpose**

This subpart is adopted for the purposes of: (1) regulating certain *land-disturbing activity* to control *accelerated erosion* and *sedimentation* in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by *sedimentation*; (2) protecting economic and ecological integrity of the County; and (3) establishing procedures through which these purposes can be fulfilled.

#### **§200A-254. Scope and Exclusions**

C. Plan ~~or Permit~~ Approval Requirement for Land-Disturbing Activity. No *person* shall undertake any *land-disturbing activity* subject to this subpart without first obtaining an Erosion and Sedimentation Control Plan ~~or Permit~~ approval from the *Soil Erosion and Sedimentation Control Administrator*.

(1) For the purpose of the subpart, an erosion control plan shall be required for:

- a. Any *land-disturbing activity* which uncovers one or more acres (43,560 square feet) of land.
- b. Any *land-disturbing activity* which uncovers one-half (1/2) acre or more (21,780 square feet) of land with an *average slope* of 16 percent (7.2 degrees) to 25 percent (11.25 degrees) in its natural state. The *average slope* shall be calculated only for the disturbed area.
- c. Any *land-disturbing activity* which uncovers one-quarter (1/4) acre or more (10,890 square feet) of land with an *average slope* over 25 percent

(11.25 degrees in its natural state). The *average slope* shall be calculated only for the disturbed area.

~~(2) For purposes of this subpart an erosion control permit is required where no Erosion Control Plan is required and the land disturbance activity disturbs more than 100 square feet. An Erosion Control Permit requires submittal of a *sketch plan* (see (a), below) and, upon issuance, that the permit is displayed in accordance with (b), below.~~

~~a.—Sketch Plan. No *person* shall initiate any *land-disturbing activity* exceeding 100 square feet without a *sketch plan* (not to scale). The *sketch plan* shall be submitted on eight and one-half (8.5) by 11 paper or larger; consist of property lines from Henderson County's GIS or a survey; include the property where land disturbance will occur and adjacent parcels; indicate existing and proposed *buildings, roads, drives, trees* (existing and those to be removed); indicate all streams, drainage ditches or other bodies of water; indicate the proposed land disturbance area (including its dimensions); and indicate measures to be installed to control *erosion*.~~

~~b.—Display of Permit Approval. A permit approval issued under this subpart shall be prominently displayed on the property until all *land-disturbing activity* is complete.~~

F. Plan ~~and Permit~~ Approval Exceptions. Notwithstanding the general requirement to obtain an Erosion and Sedimentation Control Plan ~~or Permit~~ approval prior to undertaking *land-disturbing activity*, an Erosion and Sedimentation Control Plan ~~or Permit~~ approval shall not be required for *land-disturbing activity* that does not exceed the provisions as specified in §200A-254 (Scope and Exclusions) C (Plan ~~or Permit~~ Approval Requirement for Land-Disturbing Activity). No Erosion and Sedimentation Control Plan ~~or Permit~~ approval is required if a building permit has been obtained prior to the effective date of this subpart (October 1, 2007) and Erosion and Sedimentation Control Plan approval was not required under State rules. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

#### **§200A-255. Mandatory Standards for Land Disturbing Activity**

E. Prior Plan Approval. No *person* shall initiate any *land-disturbing activity* on a *tract* unless, 30 or more days prior to initiating the activity, an Erosion and Sedimentation Control Plan for the activity is filed with and approved by the *Soil Erosion and Sedimentation Control Administrator*. An Erosion and Sedimentation Control Plan may be filed less than 30 days prior to initiation of a *land-disturbing activity* if the plan is submitted under an approved express permit program, and the *land-disturbing activity* may be initiated and conducted in accordance with the plan once the plan has been approved. The County shall forward to the Director of the Division of Water Quality a copy of each Erosion and Sedimentation Control Plan for a *land-disturbing activity* that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the *tract*. ~~Submittal of a *sketch plan* is required one (1) day prior to initiating any *land-disturbing activity*.~~

## §200A-266. Fees

- A. Henderson County may establish a fee schedule for the review and approval of Erosion and Sedimentation Control Plans ~~or Permits~~.
- B. In establishing the fee schedule, the County shall consider the administrative and personnel costs incurred for reviewing the Erosion and Sedimentation Control Plans ~~or Permits~~ and for related compliance activities.

## §200A-267. Plan ~~and Permit~~ Appeals

- A. Except as provided in §200A-267 (Plan ~~and Permit~~ Appeals) B of this subpart, the *appeal* of a disapproval or approval with modifications of an Erosion and Sedimentation Control Plan ~~or Permit~~ shall be governed by the following provisions:
  - (1) The disapproval or modification of any proposed Erosion and Sedimentation Control Plan ~~or Permit~~ by the *Soil Erosion and Sedimentation Control Administrator* shall entitle the *person* submitting the Erosion and Sedimentation Control Plan ~~or Permit~~ to a public hearing if such *person* submits written demand for a hearing within 15 days after receipt of written notice of disapproval or modifications.
  - (4) If the *ZBA* upholds the disapproval or modification of a proposed Erosion and Sedimentation Control Plan ~~or Permit~~ following the hearing, the *person* submitting the Erosion and Sedimentation Control Plan ~~or Permit~~ shall then be entitled to *appeal* the County's decision to the Competent Court of Jurisdiction.
- B. In the event that an Erosion and Sedimentation Control Plan ~~or Permit~~ is disapproved pursuant to §200A-256 (Erosion and Sedimentation Control Plans) J of this subpart, the *applicant* may *appeal* the *Board of Adjustment's* disapproval of the Erosion and Sedimentation Control Plan directly to the North Carolina Sediment Control Commission.

## §200A-269. Penalties

### A. Civil Penalties

- (1) Civil Penalty for a Violation. Any *person* who violates any of the provisions of this subpart, or rule or order adopted or issued pursuant to this subpart, or who initiates or continues a *land-disturbing activity* for which an Erosion and Sedimentation Control Plan ~~or Permit~~ is required except in accordance with the terms, conditions, and provisions of an approved Erosion and Sedimentation Control Plan or Permit, is subject to a civil penalty. The maximum civil penalty amount that the *Soil Erosion and Sedimentation Control Administrator* may assess per *violation* is 5,000 dollars. A civil penalty may be assessed from the date of the *violation*. Each day of a continuing *violation* shall constitute a separate *violation*.

## §200A-313. Henderson County Soil Erosion and Sedimentation Control Administrator

A. Powers and Duties Pursuant to This Chapter. The *Soil Erosion and Sedimentation Control Administrator* shall have the following duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:

~~(5) Erosion and Sedimentation Control Permits. To grant erosion and sedimentation control permits as authorized by this Chapter.~~

**LDC Text Amendment J: Reduce Turn Radii Standards for Subdivision Roads**

**Issue:** The current subdivision regulations set forth minimum road standards for private streets in subdivisions. The regulations aim to provide adequate and safe access for the public and emergency vehicles. The current turn radii standards could be reduced if pavement width is increased in the curve. This would provide the necessary pavement width for large emergency vehicles while also reducing development costs and the amount of disturbed land. This provision could significantly reduce the amount of cut and fill slopes associated with road construction.

**Recommendation:** Reduce the turn radii standards as indicated below.

Amend this section and table as follows.

**§200A-104. Residential Private Road Standards by Road Classification**

Table 3.3. Subdivision Private Road Standards						
Requirements		Private Road Classification				
		Subdivision Collector	Subdivision Local	Limited Local	Private Driveway Easement	Alley
Number of Residential Lots Served		50+	6 to 49	1-5	1-5	1-49
Right-of-Way Width (ft.)	Roads (feet)	50	45	30	-	20
	Cul-de-sac (radius)	-	50	50	-	-
Easement Width (ft.)		-	-	-	30	-
Sight Distance on Vertical Curves (ft.)		150	110	110	-	-
Center Line Curve Radius (ft.) – See section F. below		<del>110</del> 90	90	90	-	-
Maximum Grade %	Stone Only	12	15	15	-	-
	Paved Surface	16	18	18	-	-
Minimum Travelway Width (ft.) (two-way road)		18	16	16	-	12
Minimum Travelway Width (ft.) (one-way road)		12	12	12	-	12
Shoulder Width (each side, two-way road) (ft.)		6	4	2	-	-
Shoulder Width (each side, one-way road) (ft.)		2	2	2	-	-
Stone Base (ABC) Compacted (in.)		8	6	6	-	-
Asphalt		(1½ of S-9.5B or BST)				
Cut and Fill Slope		2:1	1.5:1	1.5:1	-	-
Ditch Slope		4:1	3:1	3:1	-	-
Vertical Clearance (ft.)		13.5	13.5	13.5	13.5	13.5

F. Center Line Curve Radius. The pavement width and stone base indicated in Table 3.3 shall be increased within the curve where the road centerline is less than a 90-foot radius. If the radius is 70 to 90 feet, increase pavement and stone base width by 25 percent. If the radius is 60 to 70 feet, increase the pavement and stone base width by 35 percent. If the radius is 50 to 60 feet, increase the pavement and stone base width by 45 percent. If the radius is 40 to 50 feet, increase the pavement and stone base width by 50 percent. No turn radius shall be less than 40 feet.