

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

Meeting Date: January 5, 2009

Subject: Land Development Code Fall 2008 Text Amendments (TX-2008-05)

Attachments: 1. Power Point Overview

SUMMARY OF REQUEST:

When the Henderson County Land Development Code (LDC) was adopted it was anticipated that the LDC and 2020 County Comprehensive Plan (CCP) would be reviewed each year and amended as needed. Since its adoption on September 19, 2007, the LDC has undergone two significant updates. The CCP was also amended as a result of the adoption of the Land Development Code.

Attached for the Board's review and recommendation is a PowerPoint overview for the proposed fall 2008 text amendments to the LDC (TX-2008-05). The proposed amendments address a range of issues including emergency vehicle access, some community character and design standards, staff or Board concerns and/or suggestions, and clarifications to portions of the code and text. Some of the amendments are technical changes and are noted as such.

The Technical Review Committee (TRC) reviewed the proposed fall 2008 text amendments to the LDC (TX-2008-05) at its meeting on November 4, 2008 and voted unanimously (6-0) to send a favorable recommendation on the attached proposed text amendments.

The Planning Board reviewed the proposed fall 2008 amendment to the LDC at its meeting on November 20, 2008 and on December 18, 2008 and voted unanimously (5-0) to send a favorable recommendation on the attached proposed text amendments with the exception of text amendments L and N. The Planning Board tabled text amendments L and N at its December meeting and will continue discussion at the January Planning Board meeting on those two amendments and explore alternative options before making a recommendation to the Board of Commissioners.

BOARD ACTION REQUESTED:

Staff is requesting direction from the Board on how to proceed with the proposed fall 2008 LDC text amendments (TX-2008-05). Staff suggests the Board consider discussing the proposed amendments at its next regular scheduled meeting or a special called meeting, or if the Board is inclined, schedule a public hearing on the proposed text amendments (TX-2008-05). The following motions have been provided.

Suggested Motion:

I move that the Board continue discussion of the proposed text amendments to the Land Development Code at its meeting on _____.

Or

I move that the Board schedule a public hearing on the Fall 2008 LDC Text Amendment (TX-2008-05) for Monday, February 2, 2009 at 7:00 P.M. or hold a special called meeting to be held after February 2, 2009.

Land Development Code Fall 2008 Text Amendments (TX-2008-05)

Board of Commissioners Meeting – January 5, 2009

LDC Text Amendments

- LDC Adopted September, 19, 2007
- Since adoption, the LDC has had 2 significant updates
- When the LDC was adopted, an annual review of the LDC was anticipated
- This avoids the LDC becoming so outdated that a total re-write is needed
- Being pro-active with emerging issues and can help avoid them becoming “problems”

LDC Text Amendments

- The proposed LDC update addresses a wide range of issues including emergency vehicle access, community character and design standards, and other concerns issues raised by County Staff or Boards
- TRC has reviewed the amendments and voted 6-0 to recommend approval
- Planning Board voted (5-0) to recommend approval for all amendment but “L” and “N.” Planning Board will discuss those two amendments at their January meeting and may propose alternatives.

LDC Text Amendment A (Technical amendment)

- Issue: NCDOT and Proposed Public Roads
- Subdivision may propose to have public roads
- NCDOT Signature on the Final Plat means:
 - = Road design meets State Highway Maintenance System standards
 - ≠ Acceptance of maintenance responsibility
- A road is not public until NCDOT accepts maintenance responsibility (the signature on the final plat does equal acceptance, but does meet our ordinance standards)

LDC Text Amendment A (Technical amendment)

- Recommendation: Clarify NCDOT's approval on public roads in subdivisions.

- **Add Proposed Language Clarification**
(§200A-81(C)(1) Major Subdivisions)
 - Designation as public shall be presumed an offer of dedication to the public; "however, this does not guarantee that NCDOT will accept proposed public roads or agree to assume the maintenance responsibility of the proposed public road"

LDC Text Amendment B (Technical amendment)

- Issue: Confusion between Special Subdivision and Minor Subdivision Standards

- **Current Standards**
 - Special = Type of Minor Subdivision
 - Special Subdivision Road Standards = Road Standards for Minor Subdivision (1-5 lots)
 - Development Plan Required for Minor Subdivisions (5-10 lots)

LDC Text Amendment B (Technical amendment)

- Recommendation: Reorganize §200A-78(F-H) Minor Subdivisions.

- **Proposed Amendment**
 - Move the special subdivision standards to section 200A-78, Minor Subdivisions (No change to current requirements for special subs.)
 - Change Development Plan Required for Minor Subdivisions to (6-10 lots) instead of (5-10 lots) so that minor subs. with 5 or fewer lots have the same road standards as special subs.

LDC Text Amendment C (Technical amendment)

- Issue: Clarify Right-of-Way Requirements

- **Current Standards (Ordinance Interpretation)**
 - Roads must be within a right-of-way
 - New roads requires right-of-way of a width based on the number of lots served
 - 1-4 lots = 30 foot right-of-way
 - 5-49 lots = 45 foot right-of-way
 - 50+ lots = 50 foot right-of-way
 - Roads must be constructed or an improvement guarantee secured before a final plat can be recorded

LDC Text Amendment C (Technical amendment)

- Recommendation: Add language to §200A-78 (F)(1), I and U to clarify and codify Subdivision Administrator interpretation

- Proposed Language Clarification for all subdivisions
 - All roads must be located in a ROW
 - A final plat may only be recorded upon the completion of the required road improvements or by securing of an improvement guarantee.

LDC Text Amendment D

- Issue: The Conservation Subdivision Option should be a streamlined process as opposed to the process for approving conventional subdivision designs.

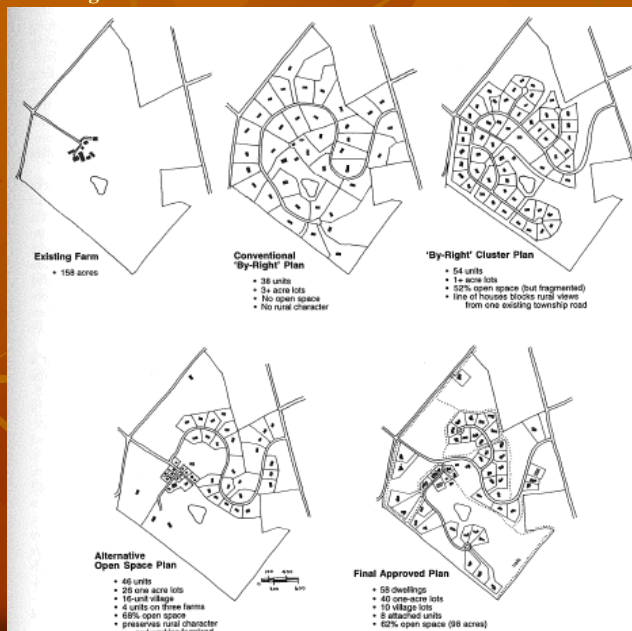
- Current Standards
 - Conservation Subdivisions are optional
 - Traditional Subdivisions are standard
- The review process for both is based on the number of proposed units.

LDC Text Amendment D

- Conservation Subdivision Standards:
 - 25% of the project area retained for open space
 - Primary & Secondary Conservations Areas
 - 50% of open space shall be in a contiguous tract
 - Open space designation is permanent
 - Limited uses are allowed in open space area
 - Identify ownership & management of open space
 - Open space density bonuses (10-20%)
 - Agricultural preservation density bonuses (5%)
 - Allows private driveway easements in place of public or private roads for two or fewer lots

LDC Text Amendment D

Existing Farm Conventional Plan Cluster Plan



Open Space Plan I

Open Space Plan II

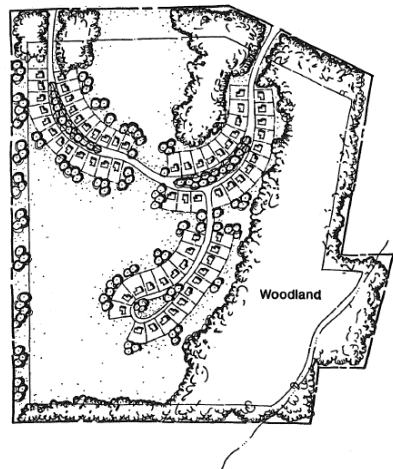
Picture from Rural
By Design, By
Randall Arendt

LDC Text Amendment D

Save Farmland



Save Woodland



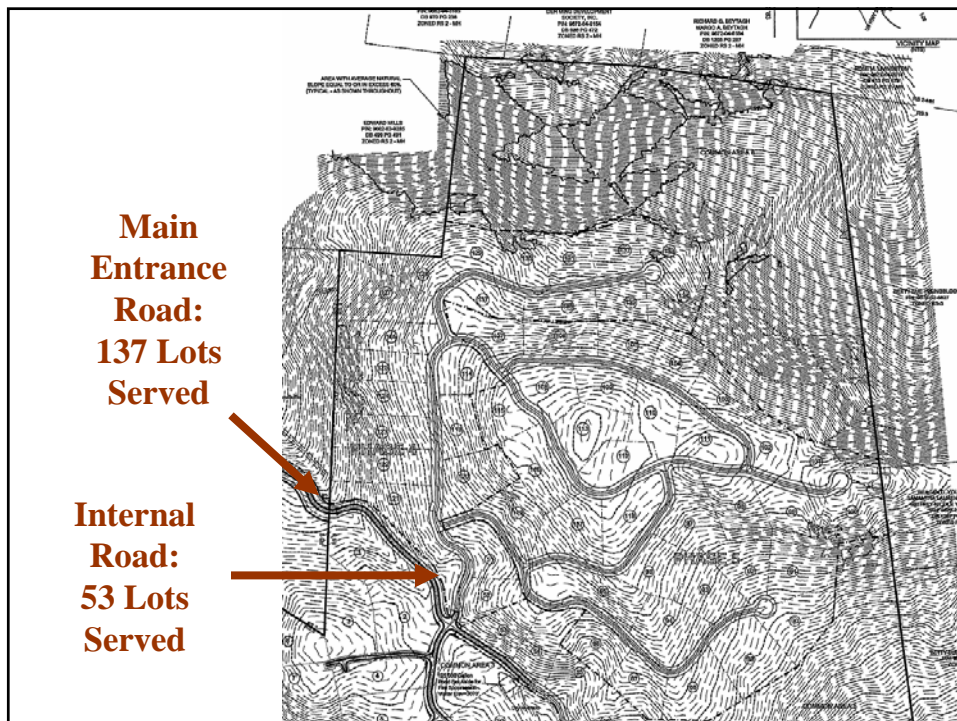
Picture from Rural By Design, By Randall Arendt

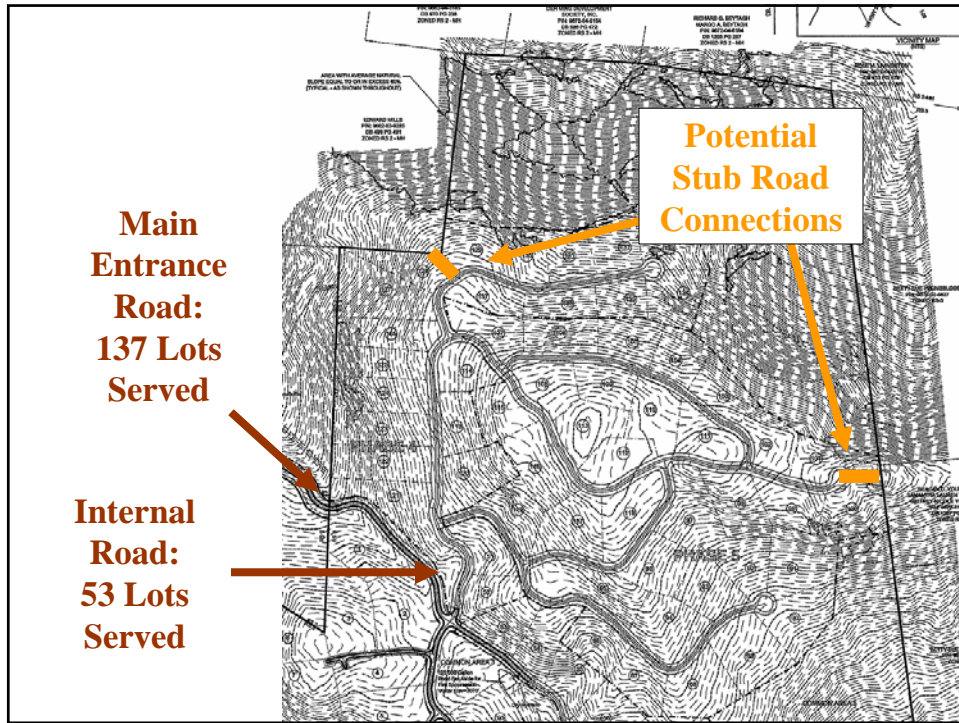
LDC Text Amendment D

- Recommendation: Make conservation subdivisions the preferred development design by restructuring the review process.
- **Proposed New Standards**
(§200A-307(D) Review for Major Subdivisions & Conservation Subdivisions of 35-299 Lots)
 - Major Subdivisions (35+ lots) adhere to one of the following:
 - (1) Meet Conservation Subdivision Standards
 - (2) Develop conventionally through
 - Conditional zoning district approval, or
 - Development agreement (Add definition for development agreements)

LDC Text Amendment E

- Issue: Public safety concerns and emergency vehicle access issues where only one access point is available
- Current Standards
 - Dead-end roads (including those with cul-de-sacs or turnarounds) have no maximum length regulations or requirements that limit the number of lots served





LDC Text Amendment E

- Recommendation: Add road connectivity requirements to improve Emergency Services response time and reduce traffic impacts on major roads by connecting neighborhoods.
- New Standards for Subdivisions of 35+ Lots (§200A-81(C))
 - Two (2) entrance roads required*
 - No more than 35 lots accessed by a dead-end road, cul-de-sac or turnaround or series of dead-end roads, culs-de sac or turnarounds (except where stub road is proposed as a future connection)*

* Exceptions apply based on topography or unique circumstances

LDC Text Amendment F

- Issue: There is no expiration of Master Plans where a Development Plan has been approved and no new or recent development plan has been submitted

- Current Standard
 - Master Plan remains valid for two years provided a development plan has been approved and completed
 - There are no time limitations between development plan approvals
 - Under current standards, decades could pass between phases

LDC Text Amendment F

- Recommendation: Require the applicant to reapply under the current applicable requirements for the remainder of the project where a development plan has been completed and no new development plan has been submitted within 4 years.

(Amend §200A-309(F) Master Plans)

LDC Text Amendment G

- Issue: Preservation of rural character and viewshed as land is converted to residential uses.
- Current Standards:
 - Subdivision not required to set back development or buffer along key corridors & in rural settings
 - Setbacks apply to placement of home, not the lots or overall development

LDC Text Amendment G

PHOTOS OF BLACKSMITH RUN ON US 64E



LDC Text Amendment G

- Recommendation: Require increased setbacks & landscape screening for new major subdivisions to diminish the presence & impact in rural communities & along key corridors.

- Proposed New Standards
(Add Section T to §200A-81 Major Subdivisions)
 - Setback 50 feet from external roads*
 - Buffering (B2) required along external roads*

*Excludes local roads & would not apply to internal subdivision roads

LDC Text Amendment H

- Issue: Pedestrian facility requirements do not capture dense developments in the R1 district or subdivisions with 100 or more lots that may occur in the R3 & R4 districts.

- Current Standards
 - Pedestrian facilities required for major subdivisions with:
 - 100 or more lots and
 - A density equal to or greater than 2 units per acre

LDC Text Amendment H

- Recommendation: Remove the word “and” so that pedestrian facilities are required for large subdivisions (100+ lots) and dense subdivisions (2+ units per acre)

- Proposed Standards (§200A-81(Q))
 - Pedestrian facilities required for major subdivisions with:
 - 100 or more lots or (*instead of and*)
 - A density equal to or greater than 2 units per acre

LDC Text Amendment I (Technical amendment)

- Issue: Due to department changes, the TRC membership does not reflect the current County organizational structure

- Recommendation: Amend §200A-276(C) to reflect the current organizational structure and department names.

LDC Text Amendment J (Technical amendment)

- Issue: Flag lots are discouraged but certain circumstances warrant the use of flag lots.
- Current Standards
 - Flag lots may only be approved under unusual circumstances

LDC Text Amendment J (Technical amendment)

- Recommendation: Clarify “unusual circumstances” where a flag lot may be approved
- Amend §200A-81(M) to define “unusual circumstances”
 - Unusual Circumstances = Severe topographic conditions, the presence of unique natural areas, preservation of working agricultural lands, or other limiting site conditions

LDC Text Amendment K

- Issue: Update terminology for water and sewer systems to ensure clarity of requirements for water and sewer connection and consistency with State standards and terminology

LDC Text Amendment K

- Recommendation: Definition of sewage disposal systems & water supply systems should distinguish between different types of systems allowed.
- Proposed New Standards
(Amends multiple sections of the ordinance)
 - New Sewage Disposal System and Water Supply System definitions by type (municipal, public or community, and septic tank or private well)
 - Clarify system connectivity requirements to achieve maximum densities
 - Clarify SRs (MH & RV Parks) and Major Subdivision connectivity requirements to match new definitions

Water Supply & Sewer System Requirements & Impacts within the RAA (Rural Agricultural Area)

- **The Rural Agricultural Area (RAA)**
 - Will continue to experience development pressure
 - Far from water supply and sewer disposal systems
 - Not recommended to be serviced by public water supply and public sewer disposal systems
- LDC text amendment L and M address the RAA issues & concerns

LDC Text Amendment L (RAA Concern) **Planning Board Recommendation Pending**

- Issue: Subdivisions are approved and road/other infrastructure is at a certain stage of completion when a developer determines adequate onsite potable water is unavailable

LDC Text Amendment L (RAA Concern)

Planning Board Recommendation Pending

- **Recommendation:** Ensure adequate potable water is available before a subdivision is built in the RAA.
 - Proposed New Standard for Major Subdivisions within the RAA (§200A-81(B)(1))
 - New major subs located in RAA must do one of the following:
 - Provide a community well system
 - Provide proof of sufficient water supply to support at least 60% of lots with individual wells*
- *No other land disturbing/construction activity can begin until appropriate documentation is provided regarding the well(s)

LDC Text Amendment M (RAA Concern)

- **Issue:** Developers of subdivisions within the RAA may be required to connect to municipal water and sewer systems in contradiction with CCP recommendations.
- Current Standards for Major Subdivisions
 - Connect to municipal water within 100 feet multiplied by the number of lots (5,000 foot maximum)
 - Connect to municipal sewer within 50 feet multiplied by the number of lots (2,500 foot maximum)
 - No exception for those areas located in the RAA

LDC Text Amendment M (RAA Concern)

- Recommendation: Exclude subdivisions located in the RAA from meeting these standards.

- Proposed New Standards for Major Subdivisions (§200A-81(B)(3))
 - Provide an exception to the municipal water and sewer connection requirements for subdivisions located entirely or completely within the RAA

LDC Text Amendment N

Planning Board Recommendation Pending

- Issue: Developers of subdivisions within the RAA utilize small accessory wastewater treatment plants in contradiction to CCP recommendations

- Current Standards
 - Small accessory wastewater treatment plants are permitted by right in all districts including R3 and R4 (primary districts applied within the RAA)

LDC Text Amendment N
Planning Board Recommendation Pending

- **Recommendation:** Add a provision that small accessory wastewater treatment plants would not be allowed in the R3 & R4 districts.

- **Proposed New Standards**
(Amend §200A-62 Table of Permitted and Special Uses)
 - Small accessory wastewater treatment plants permitted by right in all districts except R3 and R4 (due to their application within the RAA)

LDC Text Amendment O

- **Issue:** Dense single-family developments are not allowed by right in R1 even if appropriate infrastructure is present which:
 - Steers growth to appropriate areas
 - Provides for more affordable housing
 - Reduces total infrastructure costs

- **Current Standards in the R1 Zoning District**
 - Standard density of 4 units per acre (single-family or multifamily)
 - Maximum density of 16 units per acre (multifamily only)

LDC Text Amendment O

- Recommendation: Allow an intermediate density of 8 units per acre for single-family development if infrastructure is available & will serve the development.

- Proposed New Standards in R1 Zoning District (§ 200A-27)
 - Intermediate density of 8 units per acre where municipal water and municipal/public/community sewer disposal systems are available

LDC Text Amendment P (Technical amendment)

- Issue: Clarify the difference between R2MH and R2 given recent changes to permitted uses in these districts

- Current Standards
 - Multi-section manufactured homes are permitted in both R2MH and now R2
 - Additional rural commercial uses and light industrial uses are permitted in R2MH that are not permitted in R2

LDC Text Amendment P (Technical amendment)

- Recommendation: Change the title of the R2MH district to R2R to clarify the differences between the R2 and R2MH in reference to the allowed uses, particularly rural commercial uses.

- Proposed New Title
 - R2MH → R2R (Residential District Two Rural)
 - The district purpose statement would be modified to reflect rural commercial and light industrial development as permitted uses within the district

LDC Text Amendment Q (Technical amendment)

- Issue: Inconsistent manufactured home park sign requirements between Article II (Zoning) and Article VII (Sign Regulations)

- Current Standards
 - Article II requires community identification signs at all park entrances
 - Article VII allows for no more than two community identification signs

LDC Text Amendment Q (Technical amendment)

- Recommendation: Modify the manufacture home park sign regulations to reference the sign regulations.

- Proposed New Language
(SR 1.13 (22))
 - Clarify that no more than two entrances to the manufactured home park may be marked with required community identification signage

LDC Text Amendment R

- Issue: Clarify that variances should not be used as means to subdivide land that does not meet the density standards of the applicable zoning district

LDC Text Amendment R

- Recommendation: Add a provision to prevent a variance being granted to subdivide a lot(s) if there is insufficient land/acreage to meet the density of the current zoning district.
- Proposed New Standards for Variance Written Findings (§200A-335(G)(1))
 - “The Variance shall not allow for an increase in density for the purposes of subdividing the land that would otherwise not be permitted by the applicable zoning district or subdivision regulations.”

LDC Text Amendment S

- Issue: Currently no standards are provided for solar panels as accessory uses for residences or businesses.

LDC Text Amendment S

- Recommendation: Specifically list solar panels as an accessory use that would be permitted in all zoning districts with supplemental requirements.

- Proposed New Standards
(§200A-62, Add SR 2.11 (Solar Panels))
 - Allow Solar Panels as an accessory use in all districts.
 - Panels may be placed on the roof or on the lot which a structure is located
 - Commercial/Industrial-panels shall be designed to produce no more than 150% of the on-site use's energy consumption, except where located on the roof of the structure
 - Panels should be placed to avoid undue glare

LDC Text Amendment T

- Issue: Currently no standards are provided for wind turbines (wind mills) as accessory uses for residences, commercial or industrial uses

LDC Text Amendment T

- Recommendation: Specifically list wind turbines (wind mills) as an accessory use that would be permitted in all zoning districts with supplemental requirements.
- Proposed New Standards
(§200A-62, Add SR 2.12 (Wind Turbines))
 - Allow Wind turbines as an accessory use in all districts
 - Height Limitation – no more than 40 above obstructions within a 200' radius (maximum height of 100')
 - Setback – 10' from surrounding property lines. Wind turbines that are more than 40' in height shall be setback a distance equivalent to 110% the height of the turbine at its highest point.
 - Wind turbines must be a color that is consistent with existing development or natural conditions
 - Wind turbines shall comply with FAA and FCC regulations

LDC Text Amendment U

- Issue: LDC residential and commercial districts allow for limited mixing of uses. The Mixed Use Zoning District (MU) is intended to allow for a more complex mixture of uses within one large development; however, current district language prevents this.

LDC Text Amendment U

- Recommendation: Amend the MU district to reflect its intended purposes for allowing mixtures of uses beyond residential and commercial uses (Article II, Subpart C).

- **Proposed New Standards:**
 - Remove the following requirements to allow for MU developments:
 - Land use ratio requirements
 - Dimensional requirements
 - Road class requirements
 - Nonresidential use requirements
 - Food store limitations
 - Open space composition requirements

LDC Text Amendment V (Technical amendment)

- Issue: Conservation subdivisions allowed in all residential zoning districts except for the WR (Waterfront Residential) district.

LDC Text Amendment V

- Recommendation: If conservations subdivisions are encouraged, then the WR should be clarified to add for this provision as well.

- Proposed New Standards (§200A-38(B))
 - Allow conservation subdivisions in the WR district
 - Minimum lot sizes shall not apply when using the Conservation Subdivision option & an average density of 1 unit per 30,000 square feet shall be applied.

Board Direction to Staff:

- Continue Board discussion at a future meeting?
- Schedule a Public Hearing?