

# 14

## Land Use, Community Planning, Code Enforcement, and Transportation

---

Because budgetary matters and redistricting intrigues attracted most of the legislative attention, 2002 was a relatively inactive year for legislation affecting land use, planning, code enforcement, and transportation. Concerns over smart growth took a back seat to other issues, and as of this writing legislators have not yet made all of their appointments to the Joint Legislative Growth Strategies Oversight Committee (which was established in 2001). Only a few local bills and technical refinements concerning local government zoning and land subdivision control were enacted. Likewise, most of the transportation legislation involved minor improvements to statutes adopted in prior years, including statutes affecting the identification of Highway Trust Fund projects, the organization of rural transportation planning organizations (RTPOs), and the paving and maintenance of secondary roads. One major legislative undertaking, the revamping of North Carolina's program to use business incentives to attract new jobs to the state, is discussed in Chapter 4, "Community Development and Housing."

## **Planning, Zoning, and Land Use Regulation**

### **Definition of *Family Care Home***

G.S. 168-22 requires that local zoning ordinances treat family care homes as residential uses to be permitted in all residential zoning districts. G.S. 168-21 provides the definition for *family care homes* for zoning purposes, and when the statute was initially adopted in 1981, this definition included all facilities providing care, room, and board for six or fewer handicapped individuals. Many zoning ordinances used the same terminology when provisions were added to treat these homes as single-family residences. In the 1995 legislative update of the social services statutes, many statutory instances of “domiciliary care” or “family care” homes were changed to “adult care” homes. This update, which was associated with social service regulations and licensing, inadvertently included the zoning protection statute, amending G.S. 168-21 to add the term *adult* to the definition of *family care home* included within that statute. As a result, some local governments amended their zoning ordinances to provide single-family residential status only to those family care homes serving adult handicapped persons. S.L. 2002-159 (S 1217) restores the language of G.S. 168-21 to its original version by removing the term “adult care” from the definition of *family care home* when such homes are to be treated as single family homes for purposes of land use regulations. The statute’s protections once again clearly apply to homes serving handicapped children as well as handicapped adults.

### **Disaster Relief Funds**

In 2001 the General Assembly enacted S.L. 2001-214 to substantially revise the state’s emergency management laws. That act created G.S. 166A-6A(b)(2) to provide that local governments are eligible for state public assistance funds for disaster relief only if they have an approved hazard mitigation plan. This requirement applied to disasters proclaimed after August 1, 2002. S.L. 2002-24 (H 1584) provides additional time for local government adoption of these hazard mitigation plans by making the requirement applicable to disasters proclaimed after November 1, 2003.

### **Historic Properties Study**

Over the years the state has acquired a number of older houses and vacant lots adjacent to the state government mall in Raleigh. Many of the homes have been converted to offices and several of the vacant lots are used for parking. In recent years proponents of downtown revitalization and historic preservation have suggested the state return these homes and lots to residential and compatible commercial use rather than allow them to continue to be used for institutional purposes. S.L. 2002-186 (S 347) directs the North Carolina Capital Planning Commission to study the state-owned properties in the Blount Street Historic District to determine their present and recommended future use, potential means and timetables for disposal, and the costs of relocating state operations currently occupying these properties. The commission is to report to the Joint Legislative Commission on Government Operations by January 15, 2003.

### **Subdivision Control**

There was no statewide legislation passed this year concerning subdivision regulation. The General Assembly, however, continued its practice of enacting local bills to modify the definition of subdivisions, determining which subdivisions will be subject to local regulation. S.L. 2002-141 (H 1640) amends the definition of *subdivision* in G.S. 153A-335 for Chowan County and makes the new definition applicable to all subdivisions created on or after June 16, 1992. In Chowan County, only divisions of land into three or more lots (rather than into two or more lots) are

subject to local regulation. The act also exempts from the definition the gift of a single lot by a parent to a child, provided that each lot has dedicated access and that no more than three lots are conveyed under this exemption.

## **Building and Housing Code Enforcement**

Legislation adopted in 2000 and amended in 2001 broadens the building condemnation statutes to allow vacant or abandoned nonresidential buildings in certain community development target areas to be condemned if the buildings are unsafe or have a blighting influence. This legislation (codified at G.S. 160A-426 to -432) also allows a city to take summary action (that is, action without a court order) to demolish or remove such a building if the owner fails to comply with an inspector's order to demolish or remove it. S.L. 2002-118 (S 1312) allows the municipalities of Durham, Fayetteville, Hope Mills, and Spring Lake to use this authority with respect to residential buildings as well. The act also amends existing local legislation to allow Whiteville to adopt expedited procedures for requiring deteriorating, abandoned dwellings that have a blighting influence upon the neighborhood to be removed and demolished.

S.L. 2002-144 (H 1105) revises various statutes that affect the North Carolina Department of Insurance and the moneys paid into the Insurance Regulatory Fund. Moneys in the fund do not revert to the General Fund if unspent, but fund moneys may be spent only by General Assembly appropriation and in accordance with the line item budget. The new statute provides that credits to the fund will serve as reimbursement of General Fund appropriations for, among various things, staff support for the North Carolina Building Code Council and the North Carolina Code Officials Qualification Board and the expenses incurred by the Department of Insurance in purchasing and selling copies of the State Building Code. The statute also provides that proceeds from sales of the North Carolina State Building Code must be credited to this fund.

## **Appearance**

The Highway Beautification Act of 1965 instituted a federal incentive for states to adopt programs to control outdoor advertising located near interstate and federally assisted primary highways. If a state fails to develop and implement a program for controlling outdoor advertising in these areas, federal grants for highway projects to those states are reduced by 10 percent. In response to this incentive, North Carolina adopted the Outdoor Advertising Control Act in 1967. One of the federal requirements, incorporated into state law as G.S. 136-131.1, is that local governments compensate property owners for the removal of nonconforming billboards. The session laws originally enacting this provision, however, specified that the compensation requirement would expire at a set time, which the General Assembly has periodically extended. S.L. 2002-11 (H 1487) has eliminated the need for future extensions, however, as it amends G.S. 136-131.1 to make it effective until the federal requirement is amended or repealed.

S.L. 2002-80 (H 1600) is a local act amending the law regarding regulation of abandoned and junked automobiles. G.S. 160A-303.2 requires that a junked car must appear to be worth less than \$100 to be subject to local regulation under this statute. The new law raises this to \$500 for the City of Albemarle.

## **Jurisdiction**

The 2002 session continued the practice of enacting local acts to modify the potential extraterritorial jurisdiction of individual cities (fifteen local acts making such changes have been adopted in the previous five years). S.L. 2002-19 (S 1288) allows Bethel to extend its

extraterritorial jurisdiction up to two miles beyond its corporate limits, provided Pitt County approves any extension beyond one mile.

## **Transportation**

### **Funding of Urban Loops**

In 1989 the North Carolina Highway Trust Fund was established and a list of projects (including urban loops and projects on the North Carolina Intrastate System) it would finance was set forth in the General Statutes (see G.S. 136-179 and G.S. 136-180). Section 26.10(a) of the appropriations act, S.L. 2002-126 (S 1115), makes some slight changes in the description and location of these projects. It removes the description of the Durham Northern Loop, a multi-lane roadway proposed to link I-85 west of Durham with U.S. 70 east of Durham. Instead it provides that the corridor for this loop shall be as identified in the local long-range transportation plan adopted by the Durham-Chapel Hill-Carrboro metropolitan planning organization and the North Carolina Board of Transportation. In addition, the act adjusts the description of the Wilmington Bypass to include the Blue Clay Road interchange. Finally, in order to reflect the completion of Interstate 40 on the south side of Winston-Salem and the upgrading of U.S. 64 near Knightdale, the act authorizes the Board of Transportation, by resolution, to designate a new interstate or freeway as the revised termini of an urban loop. The board may make such a designation if the North Carolina Department of Transportation (NCDOT) has constructed the interstate or freeway facility since 1989 and has changed the termini for the loop to the new facility. In addition, the Board of Transportation must find that the designated change will enhance the purposes of the urban loop—particularly the reduction of congestion and the creation of high-speed, safe, travel-through service for the region.

### **Rural Transportation Planning Organizations**

Legislation adopted in 1999 authorized NCDOT to establish rural transportation planning organizations (RTPOs). These organizations must include representatives from contiguous areas in three to fifteen counties, with the population of the entire area represented being at least 50,000. S.L. 2002-170 (H 1516) makes the eligibility requirements more flexible by allowing noncontiguous counties adjacent to the same metropolitan planning organization (MPO) to form an RTPO. The same act also directs the Board of Transportation to designate North Carolina Highway 136 in Iredell and Cabarrus counties as North Carolina Highway 3, which is to be known as the Dale Earnhardt Highway. To make this change possible, North Carolina Highway 3 in Currituck County was redesignated North Carolina Highway 136.

### **Condemnation of Land for Secondary Road Paving and Maintenance**

The 2001 General Assembly adopted legislation to address the difficulties in qualifying rural roads for public use. One initiative amended G.S. 136-44.7 to compel NCDOT to condemn certain rights-of-way in preparation for certain secondary road-paving or maintenance projects. The statute requires condemnation if (1) one or more property owners have not dedicated the necessary right-of-way; (2) at least 75 percent of the owners of property adjacent to the project and the owners of 75 percent of the road frontage adjacent to the project have dedicated the necessary right-of-way and have provided the funds required by NCDOT rule to cover the costs of condemning the remaining property; and (3) NCDOT has tried unsuccessfully, over a period of at least six months, to persuade property owners unwilling to relinquish the right-of-way to do so voluntarily. S.L. 2002-86 (H 1492) changes the second requirement to provide that the owners of only the majority of the road frontage adjacent to the project need now dedicate necessary right-of-way to trigger the mandatory condemnation requirement.

### **Turnpike Authority/Toll Roads**

S.L. 2002-133 (H 644) reflects the growing state interest in generating revenue from transportation facilities. It establishes a new quasi-independent North Carolina Turnpike Authority, to be located for administrative purposes in NCDOT. The authority's powers are carefully circumscribed. It may construct and operate three turnpike projects. One must be located in a county with a population of 650,000 or more (that is, Mecklenburg County). Another project must be located in one or more counties, each of which has a population of less than 650,000. After a project is selected and before the letting of a contract, the project must be included in applicable locally adopted comprehensive transportation plans and within the current State Transportation Improvement Plan. In each case in which a toll facility is built, NCDOT is required to maintain a non-toll primary highway as an alternative route.

The Turnpike Authority may not convert a segment of the state highway system for which tolls are not charged to a toll facility. But it may issue revenue bonds in the same manner as does a municipality. Once the revenue bonds for a facility are paid off, the tolls must be removed. NCDOT may "participate" in the costs of the preconstruction activities, construction, maintenance, or operation of a turnpike project.

In a related matter, Part XIII of S.L. 2002-180 (S 98), the legislative studies act, authorizes (but does not compel) the Joint Legislative Transportation Oversight Committee to study the feasibility of establishing tolls on I-95 from South Carolina to the Virginia line. If the committee undertakes the study, it is to report its findings to the 2003 General Assembly. Part XVII of the same act, however, compels NCDOT to study the feasibility of charging a toll on I-95 and of using the toll proceeds for the expansion and maintenance of I-95. As part of the study, the department must, among other things, evaluate the need for this expansion and maintenance and estimate the schedule of tolls and fees necessary to support these activities. The study also directs NCDOT to evaluate the impact federal law might have on the charging of tolls for travel on this interstate highway.

### **Other Studies**

S.L. 2002-180, the legislative studies act, establishes a special Legislative Study Commission on the Horace Williams Airport in Chapel Hill. The commission is to study the utility of maintaining the operation of the airport, "taking into consideration issues of safety, access, and expense of operation." Section 26.12 of the appropriations act, S.L. 2002-126, directs NCDOT to study and determine the feasibility of establishing ferry service from Currituck County to the northern Outer Banks. The department was required to report its findings to the General Assembly by June 1, 2003.

### **Rail Transportation Liability**

S.L. 2002-78 (S 759) recognizes the potential liability risk of operating the large public rail transportation systems that are being planned for the Research Triangle and Charlotte regions. The act applies to the Regional Public Transportation Authority that has been established in the Triangle region in Wake, Orange, and Durham counties. It also applies to passenger rail service offered as a public transportation enterprise through a transit governance interlocal agreement by a county with a city having a population of more than 500,000 (for practical purposes, Mecklenburg County and the City of Charlotte). The law requires the public entity or entities to purchase liability insurance with policy limits of not less than \$200 million per single accident or incident (including a self-insured retention of not more than \$5 million). However, the legislation also limits the maximum liability from all claims arising from a single accident or incident involving property damage, personal injury, bodily injury, and death to \$200 million.

## The Practice of Design Professionals

In North Carolina within the last decade, contentiousness and competitiveness have developed between professional engineers and professional landscape architects. This state of affairs has sometimes been apparent, for example, during the preparation of land development and public facility plans that must be approved by local governments. In some cases engineers and landscape architects have alleged that, in the process of restricting or designating who may prepare which type of plans, local governments have inappropriately favored one profession over the other. Section 2.1C of the appropriations act, S.L. 2002-126, may eventually affect this issue because it authorizes the Legislative Research Commission to study the relationship between the two professions. If undertaken, the study must examine, among other things, the qualifications and education of landscape architects, the definition of landscape architecture, the areas of overlap between (the scope of common practice affecting) the two professions, and the governance and procedures of the two licensing boards—the State Board of Examiners for Engineers and Surveyors and the Board of Landscape Architects.

## Environment

Legislation addressing environment and natural resource issues is discussed in Chapter 9, “Environment and Natural Resources.” Several of these acts also have an impact on land use and planning issues and are briefly mentioned here.

S.L. 2002-68 (H 1544) amends standards for issuing variances under the Coastal Area Management Act. It removes the requirement for a finding of “practical difficulties” (but retains that of “unnecessary hardship”), and it replaces the requirement that the hardship leading to the variance petition be unanticipated with a requirement that it not be self-created. S.L. 2002-116 (H 1540) prevents the Coastal Resource Commission from removing the swimming pool exemption from its oceanfront setback rules but adds amendments to G.S. 153A-140 and 160A-193 to allow counties and cities to require removal of swimming pools found to be a public nuisance because they are dangerous or prejudicial to public health or safety.

S.L. 2002-167 (H 1215) amends G.S. 143-55(1) to require local government water supply plans to include a water conservation and reuse element. S.L. 2002-184 (S 1161) amends the statutes regarding use-value taxation for lands devoted to agriculture, horticulture, and silviculture. It removes the requirement for a management plan for woodlands of less than twenty acres that are part of a farm unit and for any woodlands that serve as a buffer to wind erosion, that protect water quality, or that serve as buffers for livestock or poultry operations. This act also allows continued use valuation for properties subject to conservation easements without regard to the otherwise applicable production and income standards.

The appropriations act, S.L. 2002-126, includes several provisions affecting land use and planning. Section 11.6 specifies that when Farmland Preservation Trust Fund moneys are used for the purchase of agricultural conservation easements, the easements must be perpetual and may not be reconveyed. Section 12.5 authorizes use of moneys from the Scrap Tire Disposal Fund to support a position that would assist local government scrap tire management programs. Section 18.8 extends the deadline for floodplain mapping of the Cape Fear River basin to December 30, 2003, and directs that the Catawba and Yadkin River basins be undertaken in Phase 2 of the mapping. Section 29.2 directs the Coastal Resources Commission to allow use of riprap to construct groins in estuarine and public trust waters on the same basis that wooden groins are allowed and specifies that clean, environmentally acceptable material dredged from inlets be placed on the beach or near-shore area when doing so is compatible with other uses of the beach.

## Miscellaneous

The General Assembly adopted several bills affecting planning, development, and land use which are discussed in other chapters. Some of these bills relate to economic development. S.L. 2002-172 (H 1734) modifies various economic incentives in the Bill Lee Act and establishes a new Job Development and Investment Grant Program. S.L. 2002-146 (H 1665) revises the tax incentives in the Bill Lee Act for interstate air couriers and amends the wage standard in the act as it affects part-time jobs. S.L. 2002-87 (S 1416) revises the tax credits available for the construction or rehabilitation of low-income housing. These three acts are discussed in Chapter 4, “Community Development and Housing.”

*Richard D. Ducker*

*David W. Owens*

