



Legal and Legislative Update

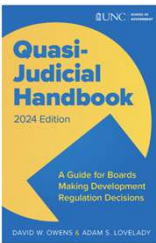
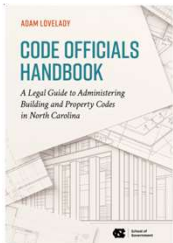
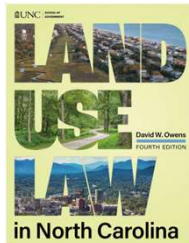
Jim Joyce and Adam Lovelady
2026 NCAZO Summer Conference



1

Publications



SCHOOL OF GOVERNMENT

2

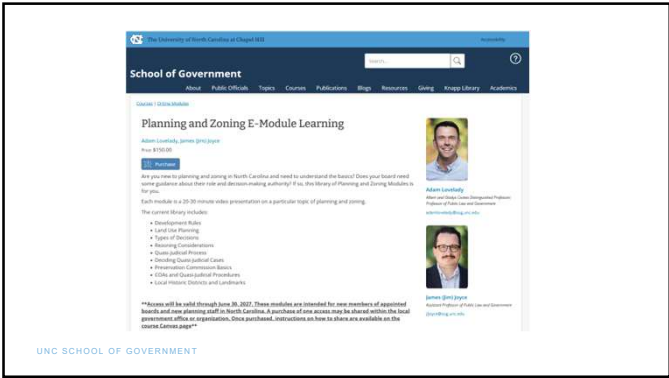
Online Resources





UNC SCHOOL OF GOVERNMENT

3



4



5



6

Parking Lot Reform, NONCOASTAL (2026-39, H 162)

160D-702 amended to say local govs shall not

"Require an off-street parking lot to meet a minimum number of parking spaces per development or structure, regardless of occupancy or use."



7

Parking Lot Reform, COASTAL (2026-39, H 162)

- Exception:
 - limitation does not apply to local governments subject to CAMA
- Exception to the exception:
 - CAMA local govs cannot impose off-street parking minimums on certain historic properties



8

Parking Lot Reform Questions (2026-39, H 162)

- Can we enforce our current ordinance? Probably not.
- Can we set a maximum? Sure.
- What about *per square foot* or *dwelling unit*? Doubtful.
- What about driveways? Hmmm.
- What about the parking lot in front of Walmart? Development opportunity.
- Does this mean no parking? No, it's just a private matter.



9

Reminders about recent limits in G.S. 160D-702

Local govs shall not

- (1) Set a minimum square footage of any structures subject to regulation under the North Carolina Residential Code.
- (2) Require an off-street parking space to be larger than 9 feet wide by 20 feet long unless the parking space is designated for handicap, parallel, or diagonal parking.
- ...
- (3) Require additional fire apparatus access roads into developments of one- or two-family dwellings that are not in compliance with the required number of fire apparatus access roads into developments of one- or two-family dwellings set forth in the Fire Code of the North Carolina Residential Code for One- and Two-Family Dwellings.
- (4) Establish or require pavement design standards for public roads or private roads that are more stringent than the minimum pavement design standards adopted by the Department of Transportation.



10

Reminders about recent limits in G.S. 160D-804

- (k) Curb and Gutter Design Standards. – Notwithstanding G.S. 160A-307 and G.S. 160D-916, the regulation shall not limit, or prohibit the use of, curb and gutter design standards adopted by the North Carolina Department of Transportation for subdivision roads adjacent to, and serving, dwellings subject to the North Carolina Residential Code. (2019-111, s.



11

Home-Based Businesses (2026-51, H 372)

- Major change to municipal authority for regulating home occupations and other residential accessory uses
- Municipalities
 - May not prohibit no-impact home-based businesses
 - May not "require a person to apply, register, or obtain any permit, license, variance, or other type of approval to operate" the business.
 - May establish limited regulations, but those must be narrowly tailored to accomplish specific public purposes.



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Home-Based Businesses (2026-51, H 372)

- *Home-based business* is defined to be "[a]ny business owned and operated by the owner or occupant of the residential dwelling that manufactures, provides, or sells goods or services."



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Home-Based Businesses (2026-51, H 372)

No-impact home-based business is further defined as one that meets all of the following conditions:

- The total number of on-site employees and clients do not exceed the city's occupancy limit for the residential property.
- The business activities are characterized by all of the following:
 - Are limited to the sale of lawful goods and services.
 - Do not generate on-street parking or a substantial increase in traffic through the residential area.
 - Occur inside or in the yard of the residential dwelling.
 - Are not visible from the street.
 - Do not store merchandise, equipment, products, supplies, or materials outside of the premises.



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Signs

- Relocating Condemned Billboards and Vegetation Maintenance
(Budget Bill, 2026-41, S 257, Sec. 43.20)
- Carve-Out for On-Premises Sign Compensation
(Reg Reform, S 445, Sec. 2)

ORDINANCE EXEMPTION FOR CERTAIN NONCONFORMING ON-PREMISES SIGNS

SECTION 2. G.S. 160D-912.1 is amended by adding a new subsection to read:

"(e) This section shall not apply to an ordinance regulating on-premises advertising signs that was lawfully adopted by a local government, and (i) included an amortization period of 10 or more years, during which a nonconforming sign was allowed to remain in place before it was required to be removed or brought into compliance with the current sign ordinance and (ii) the date of compliance under the amortization period expired on or prior to July 1, 2024."



15

Building Code Changes (2026-41, S 257, Sec. 13.3-13.5)

CREATE THE BUILDING CODES AND INTERPRETATIONS BUREAU

SECTION 13.3(a) Chapter 95 of the General Statutes is amended by adding a new Article to read:

"Article 24.

"Building Codes and Interpretations Bureau.

"§ 95-280. Establish Building Codes and Interpretations Bureau.

(a) The Building Codes and Interpretations Bureau is created within the Department of Labor, and the Bureau shall exercise its powers and duties as prescribed by this Article. The Department of Labor shall provide administrative, clerical, and any other support services to the Bureau for the purpose of carrying out its powers and duties under this Article and the laws of this State. The Department of Labor may enter into one or more memoranda of understanding with the Department of Insurance, the Office of the State Fire Marshal, or both, regarding additional support services or assistance to be provided to the Bureau. A memorandum of understanding entered into under this subsection shall specify the scope and duration of any services or assistance to be provided, the procedures for requesting and providing those services or assistance, and any cost allocation or reimbursement responsibilities of the parties. A



16

Reg Reform, Session Law ? (S 445)



17

Accessory Dwelling Units (Reg Reform, S 445, Sec. 44)

- "[a] local government shall allow the development of at least one accessory dwelling unit which conforms to the North Carolina Residential Code, including applicable provisions from fire prevention codes, for each single-family detached dwelling in areas zoned for residential use that allow for development of single-family detached dwellings."
- applies only to cities with a population of 50,000 or greater and outside of the CAMA counties



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Accessory Dwelling Units (Reg Reform, S 445, Sec. 44)

Shall not:

- Prohibit long-term rentals by separate households.
- Require placement in a conditional zoning district.
- Establish parking requirements where an existing structure is converted for use as an accessory dwelling unit.
- Prohibit the connection of the accessory dwelling unit to existing utilities systems serving the primary (presuming there is capacity)
- Charge any fees in excess of fees charged for single-family
- Set a maximum accessory dwelling unit size of less than 800 square feet or greater than 1,000 square feet.



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Accessory Dwelling Units (Reg Reform, S 445, Sec. 44)

Local government may:

- Impose a setback minimum for accessory dwelling units of 10 feet or the setback minimum imposed generally upon lots in the same zoning classification, whichever is less.
- Require that accessory dwelling units be located to the side or rear of the primary single-family detached dwelling.
- Require that accessory dwelling units be smaller than the primary single-family detached dwelling.



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Residential in Commercial Zones (Reg Reform, S 445, Sec. 43)

- Limited to Charlotte, Raleigh, and Cary
- Residential must be allowed by-right for redevelopment properties "in all areas zoned for nonagricultural commercial, business, or light industrial use"
- Maximum building height shall not be less than 60 feet
- Not applicable on brownfield sites



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Fee Transparency (Reg Reform, S 445, Sec. 49)

- New requirements for
 - Publishing fee schedule
 - Reporting fee schedule to Local Gov't Comm'n
 - Providing fee estimates and fee statements for developers



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Fee Transparency: "Fee Schedule" Defined (Reg Reform, S 445, Sec. 49)

"(16b) Fee schedule. – A statement of all current fees that may be collected by a local government for the administration and enforcement of provisions set forth in this Chapter and Article 8 of Chapter 162A of the General Statutes [i.e., system development fees] and impact fees, facility fees, and other fees authorized by local act, applicable to each project category and purpose, including the data and methodologies used to calculate the fee rates."



23

Fee Transparency: Publication and LGC Report (Reg Reform, S 445, Sec. 49)

"§ 160D-402.1. Development fee transparency.

(a) Fee Schedule Publication. – Each local government shall prominently display on the local government's official website the local government's current fee schedules. The local government shall update the website to reflect any changes to fees, rates, or methodologies used to develop fees and rates within 30 days of the adoption of any ordinance amending the fees, rates, or methodologies. Each local government shall submit an annual report of its fee schedule, fee collections, and compliance with this section to the Local Government Commission.

(b) Local Government Commission Report. – The Local Government Commission shall publish and prominently display on the Commission's website a statewide report of local governments' current fee schedules.



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Fee Transparency: Estimate (Reg Reform, S 445, Sec. 49)

(c) Required Disclosure. – Each local government shall provide to the applicant prior to a development approval the current fee schedule and a fee estimate. The local government shall deliver information required under this subsection to the applicant within 10 business days after submission of a completed application. If the project materially changes after the local government has delivered the fee estimate, the local government shall provide a revised estimate within 10 business days of receiving the updated project information. The local government shall not require payment of any fees specified in subsection (a) of this section before the local government provides the estimate.



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Fee Transparency: Final Statement (Reg Reform, S 445, Sec. 49)

(d) Final Fee Statement. – Each local government shall provide to the applicant, in writing, a final, binding fee statement of exact fees due when a development approval is issued on the application. The final fee amount may not exceed the most recent estimate provided under subsection (c) of this section, unless the local government adopts a new fee schedule by ordinance.



26

Bona Fide Farms (SL 2026-11, S 401)

- *Composting* (as defined) added to definition of “agriculture”
- 160D-903 reorganized; following added to list of “bona fide farm purposes” and exempt from building code:
 - “A building or structure that is used solely for the production of agricultural products and commodities derived from animal waste, including fertilizers and biogas.”
- Nuisance Immunity (Reg Reform, S 445, Sec. 25)



27

Budget Bill Changes to Zoning (2026-41, S 257, Sec. 39.5)

1. Tweaks to G.S. 160D-1403.1 allowing certain appeals to bypass board of adjustment
 - (comes with new definitions)
2. Statute of limitations for actions challenging the validity of new ordinances other than zoning map extended from one year to three years.
3. New rules for interpretive determinations
4. Rezoning added to permit choice



28

Budget Bill Changes to Zoning (2026-41, S 257, Sec. 39.5)

- Pre-SL G.S. 160D-1403.1, an applicant could skip the BOA if:
 - ... they (a) owned property that was the subject matter of a final administrative decision, (b) was an applicant before a board whose decision is being challenged, or (c) was an applicant "aggrieved by" a final administrative decision
 - ... and challenged the ordinance because it was unconstitutional, exceeded authority, or was a taking.



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Budget Bill Changes to Zoning (2026-41, S 257, Sec. 39.5)

- Changes:
 - NEW standing for *organizations* whose membership is comprised of someone with standing "and whose purposes are germane to the matter in controversy."
 - NOW claims can be based on a *decision implementing* a regulation being unconstitutional, exceeding authority, being made upon unlawful procedure or in error of law, or being an abuse of discretion.
 - CHANGED time to begin action from one year to three years



30

Budget Bill Changes to Zoning (2026-41, S 257, Sec. 39.5)

- New definitions (clarifying?):
- "Decision implementing a local land development regulation"
 - Grant or denial of a development approval (as defined in 160D-102), including conditions
 - Grant or denial of a development permit (as defined in 143-755), including conditions
 - Rezoning and other "decision[s] made in response to an application or a request"
 - Interpretive determinations (more on those shortly)
 - Enforcement actions



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Budget Bill Changes to Zoning (2026-41, S 257, Sec. 39.5)

- New definitions (clarifying?):
- "local land development regulation" = either...
 - A "development regulation" per G.S. 160D-102(14): defined to include most development regulations adopted pursuant to Chapter 160D "or a local act or charter that regulates land use or development."
 - or a "land development regulation" per G.S. 143-755: "any state statute, rule, or regulation, or local ordinance affecting the development or use of real property," including most of the same things.



32

Budget Bill Changes to Zoning (2026-41, S 257, Sec. 39.5)

- New rules for "Interpretive Determinations"

SECTION 39.5(e) G.S. 160D-403 is amended by adding a new subsection to read:

"(b1) Interpretive Determinations. — Upon written request by a person listed under G.S. 160D-1403.1(b), a local government, acting through an administrative official or staff designated pursuant to subsection (b) of this section, shall issue a written determination regarding the applicability or interpretation of a development regulation enacted under the authority of this Chapter to a given state of facts. Upon issuance, the determination shall be binding on the local government and the person requesting the determination, unless the determination is altered or set aside by a decision-making board or a court of competent jurisdiction. The notice and posting requirements of subsection (b) of this section shall apply to any determination requested under this subsection."



33

Budget Bill Changes to Zoning (2026-41, S 257, Sec. 39.5)

Formalizes and standardizes ordinance interpretation process

- Written request **from** owner, applicant, or organization (per G.S. 160D-1403.1(b))
- Interpretation to be **made by** local government staff or administrative official charged with making determinations under G.S. 160D-403(b).
- Must **issue** a final written decision "regarding the applicability or interpretation of a development regulation enacted under the authority of this Chapter to a given state of facts."
- **Binding** unless altered or set aside by decision-making board or court.
- **Notice** per subsection G.S. 160D-403(b):
 - Written notice personally delivered, emailed, or first-class mailed to property owner and requester
 - Owner, applicant, or determination requester can post a sign for constructive notice



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Budget Bill Changes to Zoning (2026-41, S 257, Sec. 39.5)

- **Permit choice** now applies to **rezoning** applications
- New G.S. 143-755(a1): "an applicant submits a rezoning application, an application for conditional rezoning,
- and the land development regulations are amended between the time the rezoning application is submitted and a decision on the rezoning application is made,
- the rezoning applicant may choose which adopted version of the land development regulations will apply to the property requested to be rezoned. ...



35

Budget Bill Changes to Zoning (2026-41, S 257, Sec. 39.5)

- **Permit choice** now applies to **rezoning** applications
- New G.S. 143-755(a1) (con't):
- "... If the rezoning applicant chooses the version of the land development regulations applicable at the time of the rezoning application, the rezoning applicant shall not be required to await the outcome of the amendment to the land development regulations prior to having the rezoning application determined."
- ??



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Zoning & Building Code Infrastructure & Finance Environment Jurisdiction Bills to Watch

37



“Development Incentive Districts” (2026-12, S 695)

- Alternative to existing builder’s tax exclusion (G.S. 105-277.02):
- Developer designates an area that qualifies for NC Project Development Financing Act (GS Ch. 159 Art. 6), and local government approves.
- Limitations: total incentive districts in jurisdiction may not be more than 5% of total area, municipality must notify county, exclusion ends after 10 years or when property is sold.

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“Development Incentive Districts” (2026-12, S 695)

Builder’s Exclusion	Dev. Incentive District
• 100% of improvements	• 90% of total value
• Anywhere	• Designated districts only
• 3 years for residential, 5 years or until BP for commercial	• 10 years

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Zoning & Building Code Infrastructure & Finance Environment Jurisdiction Bills to Watch



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Stormwater Control (2026-39, H 162, Sec. 2)

- Some reorganization of built-upon area definitions and exclusions to reform and refer to other recent legislation
- Clarification that existing built-upon area is excluded from calculations for additional stormwater controls even if the existing area is demolished, relocated, replaced, or remains in place.



41

Stormwater and Wastewater Changes (2026-32, H 376)

- Some reorganization of built-upon area definitions and exclusions to reform and refer to other recent legislation
- Clarification that existing built-upon area is excluded from calculations for additional stormwater controls even if the existing area is demolished, relocated, replaced, or remains in place.



42

Stormwater and Wastewater Changes (2026-32, H 376)

- Local governments can offer “**nonmandatory incentives** that waive building, zoning, connection, or other regulations or fees, provide additional tax and financial benefits,” or other incentives “for development or redevelopment that implement **additional stormwater control measures** beyond” what the statute and rules require.



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Other Stormwater and Wastewater Changes in 2026-32

- Amend sale process for public water systems (Sec. 1-4)
- EMC to study whether current commercial wastewater design flow rates in 15A NCAC 02T .0114(c) and (d) accurately measure actual flow rates. Due 1/1/27. (Sec. 5)
- Water supply, wastewater, and well system permitting and inspection
 - Changes to programs for on-site wastewater certification contractors and inspectors (Sec. 6),
 - on-site wastewater permitting and inspection (Sec. 7),
 - private drinking water wells (Sec. 8)
- Allow permitting for innovative wastewater systems in lieu of septic tanks (Sec. 9 and 10)



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**Zoning & Building Code
Infrastructure & Finance
Environment
Jurisdiction
Bills to Watch**



45

Budget Bill: Annexation (2026-41, S 257, Sec. 39.4)

- For city-initiated annexation, may not include planned communities that:
- Have a minimum of 1,000 contiguous acres.
- Have "the essential characteristics of a municipality, such as (i) a detailed plan of development, including residential and mixed use properties, (ii) medical facilities, (iii) grocery stores, (iv) family recreational facilities, (v) schools, and (vi) a method of sharing expenses to support and maintain the area." AND
- Have "access to services on substantially the same basis as services provided within a municipality," including police, fire trash collection, street maintenance, water, and sewer



46

Various sets of Various Local Provisions (VII, VIII, IX, ...)



SCHOOL OF GOVERNMENT

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Various sets of Various Local Provisions (VII, VIII, IX, ...)

- Deannexations from 10 municipalities (2026-2 S214, 2026-22 S811)
- Removal of property from ETJ or ETJ powers from two municipalities (2026-2 S214 and 2026-22, S811);
- Satellite cap removed for 11 municipalities (2026-2 S214, 2026-17 S 809, 2026-22 S811, 2026-57 H147)
- Camp Lejeune added to City of Jacksonville and ETJ removed (2026-56 H116)
- Some ROW added to Franklinton (2026-25, S876)



48

Various sets of Various Local Provisions (VII, VIII, IX, ...)

S.L. 2026-25 (S876) the most hodge of podges

- Rowan County to have 90 days instead of 60 to adopt development regulations to cover relinquished areas of Kannapolis; those updates not subject to down-zoning limitations.
- Special exception to allow City of Claremont to adopt 125 foot height limitation (with exceptions), (2026-25) (should be repealed by H268)
- Down-zoning exemption for Harnett County airport zoning regulations.
- Clayton to make major services available to new satellite areas on same terms as within the rest of the Town.
- No Historic Preservation Commission in Southport, but keep current historic overlay.
- Leland may annex Town-owned property and property (except a certain area) for which a petition was received on or before July 1.



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More local provisions



- Brunswick BOC must make final decisions on zoning amendments, prelim plats of 25+ lots, special use permits and must do so by a recorded vote in open session with who voted what in the official record. (2026-30)
- Eden can accept payment for not annexing Duke Energy Dan River power plan (2026-26)
- Mills River roller coaster: the UDO we exempted from down-zoning is void (S.L. 2026-26)
- Other tax, election, and other local authority changes in S.L.s 2, 17, 22, 26, 30, and 36 (at least)



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Zoning & Building Code Infrastructure & Finance Environment Jurisdiction Bills to Watch



51

Regulatory Reform (S445, ratified 8/6)

- S445, Sec. 9, limit glazing and transparency requirements
- S445, Sec. 27 & 28, underground storage tanks
- S445, Sec. 29, combined wastewater capacity, onsite wastewater compliance review
- S445, Sec. 41, 42, vested rights



52

Regulatory Reform (S445, ratified 8/6)

- Sec. 9, limit glazing and transparency requirements
 - Requirements for glazing or transparency / translucency may not exceed 35% of the ground-floor façade area of a commercial or mixed-use building, including conditions.
 - Standards may not exceed 20% for “non-storefront” uses.
 - Exceptions for code compliance, state and federal law, flood prevention, historic districts, and public safety requirements
 - Effective October 1, 2026—inconsistent regulations void to extent of inconsistency; previously issued valid applications and approvals not affected



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Glazing - Regulatory Reform Sec. 9

Definitions

- **Glazing requirement** – “Any zoning regulation, development regulation, design standard, or permitting requirement for windows, doors, storefront glass, glass block, transparent or translucent panels, faux windows, or similar facade treatments intended to satisfy a transparency or facade-opening requirement.”
- **Ground-floor façade area** – “The exterior wall area of a building measured from grade to 10 feet above grade, excluding loading docks, service bays, mechanical areas, emergency exits, vehicular doors, and other functional areas that are not reasonably treated as storefront façade.”
- **Non-storefront uses** – “(1) Religious assembly or sanctuary space, (2) Medical or dental examination, treatment, or healthcare services, (3) Educational instruction or counseling, (4) Civic or nonprofit services, (5) Funeral services, (6) Lodge or meeting hall use, (7) Storage or back-of-house operations, (8) Other institutional, assembly, or service uses not primarily operated as walk-in retail, restaurant, bar, entertainment, or commercial storefront uses.”



54

Regulatory Reform (S445, ratified 8/6)

- Sec. 27, underground storage tanks part 1
- For noncommercial USTs, Commission must determine risk level and notify owner of that level within five years of receiving the information required to determine risk. After that, low-risk noncommercial tanks shall not be required to cleanup or file a NORP unless Commission later finds risk level is unacceptable.
- For discharges from noncommercial tanks at least five years prior to bill becoming law, Commission has one year from effective date to notify. For newer discharges, Commission has five years from effective date.



55

Regulatory Reform (S445, ratified 8/6)

- Sec. 28, underground storage tanks part 2
- Commercial UST cleanup fees and late fees reduced and no longer adjusted for inflation. Effective Oct 1, 2026 and applies to fees due on or after that date.



56

Regulatory Reform (S445, ratified 8/6)

- Sec. 29: combined wastewater capacity
- New G.S. 143-215D:
 - For combined wastewater treatment facilities (discharge through DEQ and DHHS permits), each agency must recognize capacity credited by the other.
 - DEQ and DHHS must authorize combined permitted capacity equal to sum of both approvals minus the capacity related to systems related by both systems.



57

Regulatory Reform (S445, ratified 8/6)

- Sec. 29: combined wastewater capacity (con't)
- New sub (p1) and (p2) to G.S. 130A-336.1:
 - Recognizing of combined permitted capacity per new 143-215.1D
 - When a new subsurface wastewater dispersal system is proposed that will receive effluent with designed daily flow of at least 25,000 GPD, Department must do a compliance review within 120 days of the submittal
- Memorandum of agreement between DEQ and DHHS covering implementation must be executed by 10/31/2026.



58

Regulatory Reform (S445, ratified 8/6)

- Sec. 41: **Site-Specific Vesting Plans** (G.S. 160D-108.1)
- Duration extended from 2-5 years to 5-8 years.
 - Other provisions updated to match, such as provision that underlying approvals less than five years (was two) do not affect the vesting period.
- Vested right clarified to cover development regulations, not just zoning actions
- Vested right now precludes application of overlay zoning



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Regulatory Reform (S445, ratified 8/6)

- Sec. 42: **Vested Rights During Emergencies**
- G.S. 160D-108 currently provides that vesting expires if use is intentionally and voluntarily discontinued for 24 months.
- Discontinuance period will now be tolled for the duration of any emergency declaration covering the property that is issued under G.S. 166A-19.20 or -19.22.



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MORE Budget bills

- H268 – Budget “Technical corrections” II (pres to Gov 8/7):
 - Sec. 1.6 repeals S.L. 2026-22 Sec.4 (Kernersville deannexation) and instead prohibits town from exercising ETJ over specified parcel.
 - Sec. 3.20 adjusts a PFAS study to now include 1,4 dioxane and whatever else DEQ wants, and funds another study with DEQ.
 - Conf report adopted 2d 8/4



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DE-annexation (HB 199)

- System for property owners and local governments to de-annex property!
- Municipality could do so on its own initiative, with voter option to petition for it to go to referendum
- Municipality may do so on petition from owners of all property in the proposed deannexation area
- Passed House, passed first reading in Senate



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Caselaw Update

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Standing (again) QJ judgment calls Removing board members



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Standing – Legal Capacity to Sue in Superior Court

- Quasi-judicial and administrative - G.S. 160D-1402 or 160D-1403.1
 - Applicant, owner, governing board, or someone who will suffer "special damages" distinct from others in the community
- Legislative – Declaratory Judgment Act
 - *Committee to Elect Dan Forest v. Employees PAC*, 376 N.C. 558 (2021) ?
 - Plaintiff must be someone "whose rights, status or other legal relations are affected by" the decision (G.S. 1-254)
 - *Taylor v. Raleigh*, 290 N.C. 608 (1976) ?
 - Plaintiff must have "a specific personal and legal interest in the subject matter affected by the zoning ordinance and ... is directly and adversely affected thereby."



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2025 in standing caselaw

- *Gardner v. Richmond County*, COA21-600-2 (19 Feb 2025)
 - Challenge to rezoning for biochar facility
 - Town whose water supply was affected was denied standing
 - COA: use *Dan Forest* – "affected by"
- *Camp Carefree v. Rockingham County* COA24-666 (16 July 2025)
 - Challenge to text amendment and rezoning that greatly broadened allowed uses (from rural-agricultural to allowing dry cleaning, fertilizer manufacturing, landfills, and electronic gaming)
 - Defendant: need to show special damages
 - COA: see *Gardner*



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2026 in standing caselaw

- *Dunckel v. City of Winston-Salem*, COA25-671 (4/1/2026)
- *Daedalus, LLC v. Mecklenburg County*, COA25-730 (6/3/26)



67

Dunckel v. City of Winston-Salem, COA25-671 (1 April 2026)

- 2017: P purchases 3.33 acres zoned residential
- 2021: P starts animal sanctuary on the property (60-70 farm and small animals, hosted events and activities)
- 2023: City investigates complaint, P informally agrees to stop sanctuary use without issuing NOV
- P sues, arguing shutting down sanctuary violated fruits of their labor, law of the land, and equal protection provisions
- Trial court rules for City



68

Dunckel v. City of Winston-Salem, COA25-671 (1 April 2026)

- Court of Appeals
 - Plaintiffs allege "specific personal and legal interest ... affected by the zoning ordinance" standing under *Taylor*, cited in *Gardner* and *Camp Carefree*.
 - BUT ...
 - "We believe, however, this line of cases does not resolve the present standing issue."



69

Dunckel v. City of Winston-Salem, COA25-671 (1 April 2026)

- ... In *Byron v. Synco Properties*, 258 N.C. App. 372 (2018), court identified "THREE standing tests relevant to zoning challenges"
 - **To challenge rezoning:** claimant "has a specific personal and legal interest in the subject matter affected by the zoning ordinance and who is directly and adversely affected thereby"
 - **To challenge zoning statute:** "statute directly and adversely" affected claimant
 - **To challenge statute or ordinance constitutionality (as here):** claimant "sustained an injury or is in immediate danger of sustaining an injury as a result of enforcement of the challenged ordinance."



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Dunckel v. City of Winston-Salem, COA25-671 (1 April 2026)

- Also: no "final and binding decision" (see G.S. 160D-1403.1) required
 - Ps have standing because City *intended to enforce* UDO which put Ps "in immediate danger of sustaining injury"
 - G.S. 160D-1401 and -1404 make clear that other options are available, including DJA.
- Non-standing issues
 - Re Fruits of Their Labor and Law of the Land - (1) proper government purpose and (2) reasonable means
 - Equal Protection: No suspect class or fundamental right (except right to earn a living), so apply rational basis. It is reasonable to treat sanctuary differently from personal pets, home day cares, and schools and churches.



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Dunckel v. City of Winston-Salem, COA25-671 (1 April 2026)

- Takeaways
 - There may be more to legislative standing than we thought
 - P does not always have to wait for enforcement if it is imminent
 - Novel constitutional arguments (fruits of their labor, equal protection) might not fly



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***Daedalus, LLC v. Mecklenburg County* (COA25-730, 3 June 2026)**

- Plaintiffs applied for duplexes, developed townhomes. County went to revoke COs and Ps said you can't
- County counter: liable to county and to property owners for damages for deliberately submitting misleading materials. Won fix and triple damages from trial court



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***Daedalus, LLC v. Mecklenburg County* (COA25-730, 3 June 2026)**

- Court of Appeals: County can sue to enforce but does not have standing to sue on behalf of owners. That's separate.
- Takeaway: Owners need to file their own lawsuits



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**Standing (again)
QJ judgment calls
Removing board members**



75

Hall v. Henderson County, COA24-919

- County issues special use permit for Assisted Living Residence
- Neighbors challenge –
 - Should have been categorized “Mental Health Facility” so notice and permit were in error
 - Board made wrong decisions about expert testimony
- Trial court sides with neighbors; Court of Appeals reverses



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Hall v. Henderson County, COA24-919

Key Points

- **Standing:** increased traffic on a common access road, noise and flooding concerns, and privacy concerns resulting from installation of outdoor security cameras sufficient for “special damages”
- **Deference to BOA interpretation:** Court will not substitute judgment for that of the board if it is reasonable; only if “manifest error of law”
- **Notice:** “should correctly inform the public and the Board”... of applicant’s intended use. *Freewood Assocs. v. Davie County ZBOA* (1976). It did here.
- **Evidence that use fits definition:** Don’t need evidence that proposed use fits a certain definition; applicant can do whatever the SUP allows.
- **Decisions on experts:** “As the Board is not bound by the Rules of Evidence, it is unclear what error of law it could have committed...”



77

**Standing (again)
QJ judgment calls
Removing board members**



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Deal v. City of Monroe (4th Circuit)

- Deal serves on BOA until City Council, without any notice, votes to remove him before his 3-year term expires.
- Deal sues, claiming he was denied due process.
- Constitutional rule: cannot remove someone from a position without due process if holding the position involves a property right
- Court: no property right in BOA position. Per code, board members "serve at the pleasure of City Council and may be removed at any time with or without cause..."



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Interpretation Suing the Staff Class Action Fee Cases



80

Barefoot v. Durham County

6.2.4. Conservation Subdivision

A. Purpose

The conservation subdivision shall be established for the following purposes:

1. To provide flexibility of design in order to promote environmentally sensitive and efficient uses of the land;
2. To preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat;
3. To preserve important historic and archaeological sites;
4. To permit clustering of houses and structures on less environmentally sensitive soils which will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary



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Barefoot v. Durham County

- County: this list is general purpose language, as indicated by the title of the section
- Neighbors: the twelve provisions are mandatory standards that a conservation subdivision must meet



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Barefoot v. Durham County

- Court ruled that they are standards, not merely purpose language
 - Plain language
 - UDO interpretive guidance required that "[t]he word 'shall' is mandatory."
 - Distinguished *Guilford Financial Services*
 - title of the section, "Purpose," cannot override the plain meaning
 - the approval standard specifically states "in accordance with the standards set forth in Sec. 6.2.4A, Purpose"
- Judge Collins dissent: the specific governs over the general and the majority's interpretation leads to non-sensical results.



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Interpretation Suing the Staff Class Action Fee Cases



84

Hill v. Town of Kill Devil Hills (COA23-969)

- Art gallery organized pop-up markets
- Town ordinance limited for-profit special events in summer months
- Owner challenged the ordinance as unconstitutional



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85

Hill v. Town of Kill Devil Hills (COA23-969)

- Trial court dismissed on procedural grounds (admin remedies, mootness, statute bars claim)
- COA reversed and remanded for case on the merits
 - Admin remedies can't be blanket dismissal (consider each Corum claim)
 - Issue remains even if bus was sold (not moot)
 - Courts have duty to address constitutional claims against ordinances



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Holsey-Hyman v. Edens (COA 25-709)

- Developer reported to planning director that city council member demanded campaign contribution for vote on development permit
- City attorney memos and city council discussions followed
- Plaintiff/member sued alleging slander, libel, civil conspiracy and more
- Defendants claimed legislative immunity
- Interlocutory appeal: Court found Ds had not established immunity for 12(b)(6) (and it would be limited if they had)



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Interpretation Suing the Staff Class Action Fee Cases



88

Development Fees and Class Certification: Empire

- Town charged recreation fees for residential subdivisions
- Developers challenged (statutory authority, constitutionality)
- Trial court certified class of all persons who paid recreation fees beginning Nov 2017
- Appealed directly to Supreme Court
- Empire Contractors, Inc. v. Town of Apex, 923 S.E.2d 516 (N.C. 2025)



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Development Fees and Class Certification: Empire

- Predominance requirement:
 - "class certification is appropriate only when there are common issues of law or fact that predominate over issues affecting only individual class members"
- In this case, individualized considerations defeat predominance requirement
 - Determining fair market value of land to be dedicated "would create a 'series of mini-trials' that would dwarf the adjudication of the common issues"
 - On constitutionality, "this proportionality analysis is a fact-intensive one in which the parties are entitled to conduct discovery and present evidence"



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Development Fees and Class Certification: *Armistead*

- *Armistead v. Cnty. of Carteret*, No. 66A25, 2026 WL 796142 (N.C. Mar. 20, 2026)
- County charged fee for waste disposal sites
- State law allows certain waste fees, but has limits based on public services provided and privately contracted services.
- Property owners challenged the fees
- Trial court certified three classes based on fees paid and private services contracted for (and denied one class)
- County challenged the class certifications



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Development Fees and Class Certification: *Armistead*

- Ascertainability of the Class
 - business records of the limited number of private waste collection companies operating in the county provided an efficient and objective way to identify each class member (trial court did not certify one class that would be hard to ascertain)
- Predominance
 - County argued determining "same services" from private contractors would mean individualized issues would predominate, but court was satisfied that with just five companies (and limited regional landfill options) common issues would predominate
- Superiority
 - Discretionary decision for trial court; no abuse of discretion



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Development Fees and Class Certification: *Wardson*

- *Wardson Constr., Inc. v. City of Raleigh* (NCSC 115A25, 2026)
- City charged Capital Facilities Fees as a condition of development
- Builders challenged the fee
- Trial court certified class
- City challenged class, arguing that some builders passed the cost on to home purchasers



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Development Fees and Class Certification: *Wardson*

- 160D-106 requires that illegal fees must be repaid with interest "to the person who made the payment or as directed by a court if the person making the payment is no longer in existence."
- Court found the plain language clear so there is no need to trace who bore the economic burden downstream



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Development Fees and Class Certification: *Wardson*

- Charging the cost to purchasers did not change
 - the legal claim (statutory right to refund for individual who paid)
 - the predominant issue
 - the numerosity of the class
- Court distinguished *Anderson Creek* (individualized constitutional issues) from the present case (uniform statutory rights for refund and interest)
- No intraclass conflict sufficient to defeat certification
- No abuse of discretion by trial court in certifying



95

Wardson v. City of Raleigh, COA26-416 (15 July 2026) (unpublished)

- City's capital facility fees (CFFs) were ultra vires
 - Charged for future service (not authorized at the time)
 - Not authorized by city charter
- In line with *Carthage*, *Daedalus* (Charlotte), *Kidd* (Greenville)



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