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Zoning Law

David Owens
School of Government
UNC-CH

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I. Context

Cities in North Carolina have undertaken land use planning since colonial times. Most of the state's towns were laid out in a carefully planned fashion. The plans generally set a street network and provided for creation of lots to be sold. Many plans also included other features such as public squares and delineated places for churches, markets, courthouses, cemeteries, schools, town commons, and residences.

Rudimentary building regulations also date from the state's colonial period. Much of the early regulation focused on fire safety in an era of wooden buildings and limited firefighting capacity. Edenton was authorized in 1740 to forbid the use of wooden chimneys in town. By the mid-1800s, many cities were authorized by charter to prohibit wooden buildings in certain parts of town. In 1905, all incorporated towns in the state were required to establish fire limits, and by 1917, cities were granted the authority to regulate the erection of fences and billboards, the storage of combustible and explosive materials, the removal of dangerous buildings, and the installation of plumbing and electrical facilities. In the early 1900s ordinances regarding objectionable uses were adopted by many cities, limiting for example the location of hog pens, saw mills, livery stables, hospitals, gas stations, pool halls, dance halls, and lumber yards.

By the early 1900s a substantial body of private law regarding land use had emerged as well, the result of numerous lawsuits over land uses that neighbors considered nuisances—suits involving the location of mill ponds, distilleries, stables, cotton gins, grist mills, sawmills, cemeteries, guano factories, freight yards, hospitals, and gasoline filling stations.

Zoning emerged in the 1920s as a more comprehensive, forward-looking, and rational approach to addressing the public interest in the development of urban and urbanizing areas. It was designed to replace reliance on single-purpose ordinances and private litigation for land use management.

The use of local zoning ordinances to regulate land uses rapidly spread across the United States in the 1920s. The U.S. Department of Commerce actively promoted the concept, publishing and distributing a standard zoning enabling law that was adopted by most states. In 1926 the U.S. Supreme Court upheld the basic constitutionality of the zoning concept in Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926).

Zoning authority was granted to all North Carolina cities in 1923 with the adoption of the state's zoning enabling statute. By 1950 virtually every city in the state with a population over 10,000 had adopted zoning. While several of the state's more urbanized counties undertook zoning shortly after World War II under authority granted by local bills, the General Assembly did not grant general enabling authority for county zoning until 1959. As the state began rapid population growth in the post war period, zoning spread to counties and smaller municipalities. Now almost all of most of the state's cities with populations over 1,000 have adopted zoning ordinances, as have most of the more populous counties. A 2006 SOG survey of local ordinances indicates at least 533 of the state's municipalities and 78 counties have zoning.

This large number of ordinances results in thousands of decisions by local governments every year. Most are *ministerial* decisions applying the ordinance that are only occasionally appealed to local hearing boards. Others are *quasi-judicial* decisions that involve fact-finding and application of standards requiring judgment and discretion that are made by local governing boards, boards of adjustment, or planning boards. These include applications for special and

conditional use permits and variances, as well as appeals of staff decisions on ministerial matters (primarily notices of violation and ordinance interpretations). These cases are typically more complicated and are more likely to be appealed to superior court. Finally, there are policy choices made by governing boards. These *legislative* decisions involve adoption, amendment, or repeal of the zoning ordinance. The most contentious of these are often amendments to the zoning map, changing the classification of a particular property from one zoning district to another.

The chart below indicates the relative volume of these local decisions and the rates at which judicial review is sought. While the data is from different years, it gives a general indication of the level of zoning activity that is underway in North Carolina.

Table 1. Frequency of Judicial Review Sought

Type of Decision (Year Surveyed)	*Total Number Sought*	*Percent Appealed to Court*
Variance Petitions (2002)	1,806	2.5%
Special and Conditional Use Permit Applications (2004)	2,207	1.6%
Zoning Map Amendments (rezonings) (2006)	3,029	0.9%
Zoning Text Amendments (2006)	1,520	n/a

II. Site-Specific Conditions with Legislative Decisions

There is often interest in tailoring the regulatory requirements to a particular site or development proposal. The most common way to address these issues is through the use of the special or conditional use permit. Development agreements are a newly authorized tool to allow binding, detailed mutual agreements between developers and local governments for the long-term buildout of complex projects. But there are situations where there is an interest in fashioning individualized development standards early in the approval process, at the rezoning stage rather than at a permitting stage of the development review process.

The law increasingly allows rezoning decisions to incorporate good faith negotiations that accommodate the landowners' and neighbors' interests while also furthering broader public interests. While the general rule that rezoning decisions must be made to further the public interest rather than to advance only private interests stands, the flexibility of local governments to tailor zoning regulations to individual sites and development projects has significantly expanded in the past twenty years.

A. Distinguishing Types of Zoning Districts

At the outset it is important to distinguish several types of rezonings. Contemporary zoning ordinances often contain several types of use districts. These include conventional districts, overlay districts, floating districts, and conditional districts. Distinguishing the first and

last of these is vital for analysis of the legality and enforceability of conditions imposed on rezonings.

The most common type of zoning district in a contemporary zoning ordinance is the *conventional district*. These districts are sometimes referred to as "general use districts," "base districts," or "underlying districts." They are basic zoning districts with a variety of permitted land uses in each district. Conventional zoning districts may also include some uses allowed only by special or conditional use permits. The typical North Carolina zoning ordinance contains ten or so conventional zoning districts, but more populous jurisdictions often have twenty or more of these districts.

Conditional districts and *conditional use districts* are special forms of floating districts that include detailed site-specific development rules. Unlike conventional districts, which are common in zoning ordinances around the country, the law on whether and how conditional districts can be used varies considerably among the states. In North Carolina both are allowed, but only upon petition of the landowner.

Conditional use district zones (referred to in some ordinances as special use district zones) are involved when a landowner requests that property be placed in a new zoning district that has no permitted uses, only special or conditional uses. This concept was first applied in North Carolina in the early 1970s as an alternative to illegal contract zoning. No new use of land may be undertaken within the district unless a special or conditional use permit is first secured. Often there is one conditional use district to correspond with each conventional zoning district, with all of the permitted uses in a particular zoning district being converted to special or conditional uses in the parallel special/conditional use district.

Developed in the 1990s, purely legislative conditional zoning is an alternative to the conditional use district. This alternative eliminates the conditional use permit and incorporates all of the site-specific standards directly into the zoning district regulations (and then applies that zoning district only to the single parcel that is the subject of the rezoning petition). In many jurisdictions the individual site-specific conditions are not listed in the ordinance that is adopted, but are included in mandated site plans that are incorporated by reference with each conditional rezoning.

Conditional districts are now widely used in North Carolina. A 2006 School of Government survey indicated that the majority of rezoning petitions—57%—considered by responding jurisdictions in the previous year were for rezonings to conventional zoning districts. However, over a third of all rezoning petitions were reported to include site specific conditions. 37% of all rezoning petitions were for conditional use districts or conditional districts.

B. Illegal Means of Adding Conditions

Several means of incorporating site-specific considerations in an individual rezoning decision remain illegal. Classic contract zoning – a bilateral agreement with reciprocal obligations -- is illegal. But such rarely arises. The more typical problem is involves attempting to use traditional conventional zoning districts while imposing site-specific conditions.

Individual, particularized conditions on rezonings to a general use district are unenforceable in North Carolina. G.S. 160A-382 and 153A-342 provide that "all regulations shall be uniform for each class or kind of building throughout each [zoning] district." In Decker

v. Coleman, 6 N.C. App. 102, 169 S.E.2d 487 (1969), the court held that this uniformity requirement precludes imposition of conditions on conventional rezonings.

The inclusion of an invalid condition in a conventional rezoning does not serve to invalidate the rezoning. Barring other legal defects, the rezoning stands; its conditions do not. In Decker the city council included a specific severability clause and the court applied it to sever the condition, invalidate it, and leave the remainder of the ordinance amendment in place. The same result was reached in Kerik v. Davidson County, 145 N.C. App. 222, 551 S.E.2d 186 (2001), where the court invalidated a buffer requirement imposed on a rezoning but held the rezoning itself valid.

Also, a rezoning to a conventional zoning district that is based on a single project rather than on all permissible uses in the new zoning district is invalid. Two cases from the early 1970s established this principle of North Carolina zoning law. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971); Blades v. City of Raleigh, 280 N.C. 531, 187 S.E.2d 35 (1972). Both invalidated rezonings that allowed multifamily development in single-family residential neighborhoods. In both the court concluded that the rezoning was based on the specific plans of the applicant, had not considered all possible uses to which the property could be devoted under the new zoning, and was thus invalid.

These early cases termed this practice *contract zoning*. Subsequent cases drop this characterization but have retained the result—the practice remains illegal in North Carolina. The court in Hall v. City of Durham, 323 N.C. 293, 372 S.E.2d 564 (1988), ruled that although a site plan may be submitted as part of a rezoning petition, its submission does not remove the requirement that all potential uses in a new general zoning district be fully considered. The fact that specific plans are presented to the governing board does not in and of itself invalidate a rezoning, so long as the record is clear that all permissible uses are considered. Musi v. Town of Shallotte, ___ N.C. App. ___, 684 S.E.2d 892 (2009); Childress v. Yadkin County, 186 N.C. App. 30, 650 S.E.2d 55, 64 (2007); Kerik v. Davidson County, 145 N.C. App. 222, 551 S.E.2d 186 (2001).

C. Legal Means of Adding Conditions

In the typical North Carolina zoning ordinance that allows *conditional use district zoning*, the ordinance text is amended to create a set of conditional use districts. Often there is one conditional use district to correspond with each conventional or general zoning district, with all of the permitted uses in a particular zoning district being converted to special or conditional uses in the parallel special/conditional use district. These conditional use districts are "floating zones"; that is, they are not applied to any property until a petition to apply them is made by the landowner.

Concurrently with consideration of a petition to rezone property into a conditional use district—a legislative rezoning decision—the governing board considers an individual application for a special or conditional use permit for a particular project within the new district. The special or conditional use permit—a quasi-judicial decision—could be addressed at a later time and could be issued by the board of adjustment or the planning board rather than the governing board. However, the typical practice is to consider the rezoning and the permit at the same time, with both decisions made by the governing board.

The legal advantage of such a system is that the legislative rezoning decision is not technically based on a single project, as any number of conditional use permits could be considered within the district, and the problems raised in Allred and Blades are thereby avoided. The conditional use permit allows specific, enforceable conditions to be imposed on the project that is approved. But since the individual conditions are imposed on the permit, not the rezoning, the problems raised in Decker are avoided.

The court in Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988), concluded that conditional use district zoning was not illegal contract zoning because the promise was unilateral: the owner offered to develop the property according to a subsequently issued conditional use permit without receiving a reciprocal promise from the local government; at the same time, the governing board retained its independent judgment because it did not make such a promise.

Conditional use district zoning requires two separate decisions, with the rezoning decision meeting all of the statutory requirements for legislative decisions and the permit decision meeting all of the constitutional requirements for quasi-judicial decisions. Village Creek Property Owners' Ass'n,, Inc. v. Town of Edenton, 135 N.C. App. 482, 520 S.E.2d 793 (1999). The initial legislative decision about rezoning is based on a consideration of the policy question of whether some limited alternative use is appropriate for the site, and the subsequent quasi-judicial decision about a conditional use permit is based on whether the particular application meets the standards set in the first decision. If the petition for the rezoning is denied, the board does not decide the permit application, as the rezoning is necessary to create the eligibility for the special or conditional use permit. Coucoulas/Knight Props. v. Town of Hillsborough, ___ N.C. App. ___, 683 S.E.2d 228 (2009), *aff'd per curiam*, 364 N.C. 127, 691 S.E.2d 411 (2010) (rezoning to special use district prerequisite to special use permit consideration).

While the conditional use district approach is an elegant legal solution to the contract zoning problem, many local governments struggled with the complexity of concurrently deciding a legislative rezoning and a quasi-judicial conditional use permit under this scheme. An alternative is to dispense with the conditional use permit and treat the matter as a single legislative decision. Several of the state's more populous jurisdictions adopted this approach in the 1990s, though they still used the conditional use district terminology in the ordinances. Some 75% of the Charlotte rezonings in 1997–1999 were made in this manner. Judicial validation of the Charlotte approach in two cases added the option of using true conditional zoning, without a concomitant conditional use permit, for North Carolina local governments. Summers v. City of Charlotte, 149 N.C. App. 509, 562 S.E.2d 18, *review denied*, 355 N.C. 758, 566 S.E.2d 482 (2002) (holding conditional zoning constitutional); Massey v. City of Charlotte, 145 N.C. App. 345, 550 S.E.2d 838, *review denied*, 354 N.C. 219, 554 S.E.2d 342 (2001) (upholding the statutory authority to use conditional zoning). In 2005 the General Assembly amended the zoning statutes to explicitly authorize city and county use of conditional zoning. G.S. 160A-382(a) and 153A-342(a). As with special and conditional use districts, the statute provides that land may be placed in a conditional district only upon petition of all of the owners of the land to be included.

The standard practice in North Carolina cities and counties using conditional zoning is to amend the ordinance text to create a set of conditional zoning districts to correspond with each conventional zoning district. However, rather than requiring that all uses secure a conditional use permit, as is done with conditional use district zoning, individualized conditions and site plan

provisions are incorporated (usually by reference) into the zoning district requirements.

In most instances, the provisions in the conditional district are more stringent than those in the corresponding conventional districts. The conditional district may, for example, have a much narrower list of permitted uses and may increase the buffering requirements to provide additional protection to neighboring uses. In the absence of a local ordinance provision to the contrary, it is however permissible to tailor standards that are less restrictive than those in the corresponding conventional district. Rakestraw v. Town of Knightdale, 188 N.C. App. 129, 136, 654 S.E.2d 825, 830, *review denied*, 362 N.C. 237, 659 S.E.2d 739 (2008).

The 2005 statutory amendments also addressed the origin and nature of conditions that may be imposed. G.S. 160A-382(c) and 153A-342(c) provide that specific conditions may be suggested by the owner or the government, but only those conditions mutually acceptable to both the owner and the government may be incorporated into the ordinance or individual permit involved. If a proposed condition is unacceptable to the owner, the petition can be withdrawn and the proposed rezoning cannot go forward. Likewise, if a condition is unacceptable to the governing board (or the owner refuses to agree to a desired condition), the petition can be denied and there is no rezoning. These statutes also provide that any conditions or site specific standards imposed are limited to those that address the conformance of the development and use of the site to city or county ordinances and officially adopted plans and those that address the impacts reasonably expected to be generated from the development or use of the site. These provisions regarding conditions apply to both conditional zoning and to special and conditional use district zoning.

While the North Carolina courts have consistently held site specific conditional zoning cases to be legislative, it is important to note that virtually all of these rezonings constitute spot zoning. As such, the presumption of validity usually accorded legislative zoning decisions is removed and the burden is on the local government to establish a reasonable basis (considering the factors set forth in Chrismon) for the rezoning.

III. Evidence for Quasi-Judicial Decisions

When a quasi-judicial zoning decision is made, due process requirements mandate that the decision-making process adequately protect the rights of affected persons. This applies to special and conditional use permits, variances, and appeals of staff determinations.

In Humble Oil & Refining Co. v. Board of Aldermen, Justice Sharp set forth specific due process requirements mandated by the state constitution for a quasi-judicial land use regulatory decision:

> Notwithstanding the latitude allowed municipal boards, . . . a zoning board of adjustment, or a board of aldermen conducting a quasi-judicial hearing, can dispense with no essential element of a fair trial: (1) The party whose rights are being determined must be given the opportunity to offer evidence, cross-examine adverse witnesses, inspect documents, and offer evidence in explanation and rebuttal; (2) absent stipulations or waiver such a board may not base findings as to the existence or nonexistence of crucial facts upon unsworn statements; and (3) crucial findings of fact which are "unsupported by competent, material and substantial evidence in view of the entire record as submitted" cannot stand.

284 N.C. 458, 470, 202 S.E.2d 129, 137 (1974). Justice Sharp went on to note that procedural safeguards, in addition to well-defined substantive standards to be followed, were essential for fair administration of quasi-judicial decisions:

> Safeguards against arbitrary action by zoning boards in granting or denying special use permits are not only to be found in specific guidelines for their action. Equally important is the requirement that in each instance the board (1) follow the procedures specified in the ordinance; (2) conduct its hearings in accordance with fair-trial standards; (3) base its findings of fact only upon competent, material and substantial evidence; and (4) in allowing or denying the application, it state the basic facts on which it relied with sufficient specificity to inform the parties, as well as the court, what induced its decision.

Id. at 471, 202 S.E.2d at 138.

A. Substantial Evidence Required

There must be substantial, competent, and material evidence in the record to support the board's findings and decision on quasi-judicial zoning decisions. Godfrey v. Zoning Board of Adjustment, 317 N.C. 51, 60, 334 S.E.2d 272, 278 (1986); Woodhouse v. Board of Commissioners, 299 N.C. 211, 220, 261 S.E.2d 882, 888 (1980); Jarrell v. Board of Adjustment, 258 N.C. 476, 128 S.E.2d 879 (1963). Substantial evidence is "that which a reasonable mind would regard as sufficiently supporting a specific result." C G & T Corp. v. Board of Adjustment, 105 N.C. App. 32, 40, 411 S.E.2d 655, 660 (1992).

G.S. 160A-393(k)(3), added to the statutes in 2009, imposes some limits on what can be deemed "competent evidence" in quasi-judicial zoning proceedings. In determining whether there was sufficient competent evidence, the decision-making board is allowed to consider evidence that would not be admissible under the rules of evidence in a court proceeding, but only if there was no objection to its presentation or if the evidence is "sufficiently trustworthy" and was admitted under circumstances wherein reliance on it was reasonable. Several specific instances of opinion testimony by non-expert witnesses are explicitly deemed by this statute not to be competent evidence. These include testimony about how the proposed use would affect the value of neighboring properties, whether vehicular traffic would pose a danger to public safety, and any other matter upon which only expert testimony would generally be admissible under the rules of evidence.

If irrelevant or incompetent evidence is received but not used as the basis for the quasi-judicial decision, receipt in and of itself is not a due process violation. Dobo v. Zoning Board of Adjustment, 149 N.C. App. 701, 709–10, 562 S.E.2d 108, 113–14 (2002), *reversed on other grounds*, 356 N.C. 656, 576 S.E.2d 324 (2003); Howard v. City of Kinston, 148 N.C. App. 238, 244–45, 558 S.E.2d 221, 226 (2002). The question is whether there is substantial, competent, and material evidence properly in the record to support the decision that is made.

Most ordinances require applications and petitions for quasi-judicial decisions to be made on forms provided by the jurisdiction. The applications are designed to solicit submission of written information necessary for board action. These applications, along with staff reports and analysis, become part of the record before the board.

In Town of Gastonia v. Parrish, 271 N.C. 527, 157 S.E.2d 154 (1967), it was held that the

best evidence rule applies to quasi-judicial hearings. In this instance the original zoning classification map for the extraterritorial area had been lost, but a copy (along with oral testimony that it was an accurate copy) was ruled admissible.

If new evidence is discovered after a quasi-judicial hearing, a party should generally petition the board that made the decision to reopen the case to take the new evidence. G.S. 1A-1, Rule 59(4) governs such a motion. this motion needs to be initially made and decided by the board making the decision, as otherwise the trial court would have no record on the issue on appeal. Bailey & Associates, Inc. v. Wilmington Board of Adjustment, ___ N.C. App. ___, ___, 689 S.E.2d 576, 588 (2010).

G.S. 160A-393(j) does allow the trial court to take new evidence in very limited circumstances, such as when the record is not adequate to allow an appropriate determination of standing, or when there are alleged conflicts of interest, constitutional violations, or lack of statutory authority.

B. Cross-Examination and Rebuttal Evidence

Parties to a quasi-judicial hearing have a right to cross-examine witnesses. Humble Oil & Refining Co. v. Board of Aldermen, 284 N.C. 458, 470, 202 S.E.2d 129, 137 (1974). If opponents to a variance or a special use permit present a witness, the applicant can also ask questions of that witness to probe the strengths and weaknesses of his or her testimony. As with the right to have sworn testimony, the rights of cross-examination and presentation of rebuttal evidence are deemed waived if not raised at the hearing. Guilford Financial Services, LLC v. City of Brevard, 356 N.C. 655, 576 S.E.2d 325 (2003), *per curiam, adopting dissent in* 150 N.C. App. 1, 563 S.E.2d 27 (2002) (where both parties are represented by counsel in quasi-judicial plat review decision, failure to request cross-examination or the opportunity to present rebuttal evidence is a waiver of those rights).

Since quasi-judicial proceedings lack the formal structure and rules of judicial proceedings, exercise of the right of cross-examination can pose practical difficulties. Unlike a judicial proceeding, parties in quasi-judicial hearings are often not clearly identified. While the person initiating the action (the applicant for a special or conditional use permit, the petitioner for a variance, or the appellant of a staff determination) is clearly a party, the status of others is blurred. The staff of the local government is a party for appeals of staff determinations, but a staff member may well be only a witness in variance or permit cases. A neighbor may appear as a witness to oppose a project but usually has not formally intervened as a party since in most instances there is no formal method of intervention possible. There may be a large number of persons who want to offer testimony, some of whom have standing to be parties and some who do not. Frequently many if not all of these persons are not represented by counsel. Further, the physical layout of the hearing usually differs from a courtroom. Rather than counsel tables and a witness stand, it is common for all of those offering testimony and asking questions to share a single podium in front of the board, much as is done with legislative public hearings.

Some boards that make quasi-judicial decisions have adopted rules of procedure to provide a degree of order to this process. For example, the rules may state the order of presentations and questions. But since the vast majority of these cases are conducted informally by laypersons, often with few individuals attending and with little attendant controversy, it is not uncommon for there to be no set rules for determining who can offer

testimony or conduct cross-examination. Time limits on presentations, requiring groups of persons with common interests to designate a spokesperson, and admonitions to avoid repetitive, irrelevant, or incompetent testimony (as long as such are reasonably and fairly applied) are all acceptable means of providing the necessary structure to these proceedings. Howard v. City of Kinston, 148 N.C. App. 238, 558 S.E.2d 221 (2002).

However, since parties to a quasi-judicial proceeding have due process rights to present evidence and cross-examine witnesses, a rigidly applied time limit on individual witnesses or a set time limit for the entire hearing (both of which are acceptable for a legislative zoning decision) would be inappropriate if applied in a way that precluded a party from fairly presenting or challenging legally sufficient evidence. The court in Humble Oil included the right to offer rebuttal evidence as an essential element of a fair hearing, so provision to allow parties who request such an opportunity must be accommodated.

Rights of cross-examination apply only to the presentation of evidence. Deliberation by the board, including discussion of potential conditions to be imposed, is not covered. Ward v. Inscoe, 166 N.C. App. 586, 603 S.E.2d 393 (2004); In re Raynor, 94 N.C. App. 173, 379 S.E.2d 884, *review denied*, 325 N.C. 546, 385 S.E.2d 495 (1989). Board deliberation about conditions and a decision on a matter that has been heard, however, must be carefully distinguished from consideration of a substantially revised application. If a site plan or other significant aspects of a project are substantially revised after the close of an evidentiary hearing, the board must reopen the hearing to receive testimony and cross-examination regarding the revised application. Cook v. Union County Zoning Board of Adjustment, 185 N.C. App. 582, 649 S.E.2d 458 (2007).

C. Hearsay Evidence

While hearsay evidence can be presented, a board may well accord it considerably less weight. Critical factual findings must not be based solely on hearsay evidence. Jarrell v. Board of Adjustment, 258 N.C. 476, 481, 128 S.E.2d 879, 883 (1963) (noting affidavits and letters submitted regarding prior use of a nonconformity, as well as unsworn testimony, were incompetent and thus could not form the basis of the board's critical findings).

The court in several cases has upheld the admission and consideration of letters from persons not testifying at the hearing. In particular letters from government officials that provide unbiased information that is within the specialized professional knowledge of that official or that is based on records or information kept by the official's agency in the normal course of business are generally admitted. For example, a letter from a state agency may be considered even though the author of the letter is not present but the recipient of the letter is present and testifies under oath and subject to cross-examination. Whiteco Outdoor Adver. v. Johnston County Board of Adjustment, 132 N.C. App. 465, 513 S.E.2d 70 (1999). The court has also allowed consideration of technical reports on noise impacts where a civil engineer presented test results from another consultant. Harding v. Board of Adjustment, 170 N.C. App. 392, 612 S.E.2d 431 (2005). Similarly, staff reports and letters from government officials submitted as part of the application review can be considered. Tate Terrace Realty Investors, Inc. v. Currituck County, 127 N.C. App. 212, 488 S.E.2d 845 (1997), *review denied*, 347 N.C. 409, 496 S.E.2d 394 (1997).

If reports are to be considered, particularly where the author of the report is not presenting testimony in person, the report itself (rather than just a reference to it) must be formally entered into the hearing record. Williams v. North Carolina Department of Environment

& Natural Resources, 144 N.C. App. 479, 548 S.E.2d 793 (2001) (reports that were not submitted for the record but that were referenced in stipulations are not considered).

D. Opinion Testimony

A common issue in quasi-judicial hearings is the weight to be given generalized objections and opinions from neighbors, non-experts, and even expert witnesses. This is particularly problematic where general standards are involved (such as compatibility with the surrounding neighborhood or adverse impacts on neighboring property value) and the testimony is not supported by site specific facts.

G.S. 160A-393(k)(3) specifically limits use of opinion testimony by non-expert witnesses on how the proposed use would affect the value of neighboring properties, whether vehicular traffic would pose a danger to public safety, and any other matter upon which only expert testimony would generally be admissible under the rules of evidence.

For the most part the appearance of expert witnesses is still relatively uncommon in quasi-judicial hearings in North Carolina, but the practice seems to be on the rise. A 2005 School of Government survey indicated that with special and conditional use permit hearings, 55% of the jurisdictions report that expert witnesses either never or only rarely appear. However, 16% of the jurisdictions report experts appear frequently or more often. This is a marked increase in the frequency of expert testimony compared to the 2003 survey of zoning variance experience, where only 8% of the jurisdictions reported that experts appeared frequently or more often.

When opinion testimony is offered, a proper foundation must be established. In Mann Media, Inc. v. Randolph County Planning Board, 356 N.C. 1, 565 S.E.2d 9 (2002), the court in dicta noted that a rigorous standard is necessary to establish a foundation for opinion testimony. The applicant's witness on property value impacts was a professional appraiser; the objecting neighbors presented testimony from a contractor and a real estate agent. The court noted that all three witnesses offered only speculative opinions about values without supporting facts or examples and ruled that this cannot be the foundation of a finding of adverse impacts. A similar result obtained in Humane Society of Moore County, Inc. v. Town of Southern Pines, 161 N.C. App. 625, 589 S.E.2d 162 (2003), where the court held that testimony by an appraiser as to the property value impacts of a proposed animal shelter was based on speculative opinions rather than facts and could not be the basis of a finding on value impacts. By contrast, in Leftwich v. Gaines, 134 N.C. App. 502, 521 S.E.2d 717 (1999), *review denied*, 351 N.C. 357, 541 S.E.2d 714 (2000), a case seeking damages due to the improper actions of a zoning official, the court allowed testimony from a plaintiff with experience in real estate matters to be used as a foundation for setting property values, with apparently less formal foundation. Other cases addressing this point include Responsible Citizens v. City of Asheville, 308 N.C. 255, 302 S.E.2d 204 (1983) (property owners should be allowed to testify as to value in action alleging floodplain regulations constituted a taking); Huff v. Thornton, 287 N.C. 1, 213 S.E.2d 198 (1975); Zagaroli v. Pollock, 94 N.C. App. 46, 379 S.E.2d 653, *review denied*, 325 N.C. 437, 384 S.E.2d 548 (1989) (allowing real estate developer testimony relative to property value).

Key factual findings cannot be based upon the unsupported allegations and opinions of non-expert witnesses, even if the witnesses are neighboring property owners. Two cases illustrate this point. In Sun Suites Holdings, LLC v. Town of Garner, 139 N.C. App. 269, 276–79, 533 S.E.2d 525, 530–31, *review denied*, 353 N.C. 280, 546 S.E.2d 397 (2000), the court held that a

general expression of a fear of potential traffic problems is inadequate evidence and simply establishing an increase in traffic does not necessarily establish that undue or unsafe congestion would result. The court also held that a recitation of crime statistics with reference to a similar land use elsewhere in the town, without any foundation as to how those relate to the subject project, was inadequate to support a denial. Speculative comments by a neighbor and a realtor about impacts on property values (made without supporting factual data, appraisals, or market studies) were likewise held to be insubstantial evidence on the property value issue. In Clark v. City of Asheboro, 136 N.C. App. 114, 524 S.E.2d 46 (1999), neighbors in opposition to a special use permit for a proposed mobile home park testified that the park would be an eyesore and would bring crime and increased traffic to the area. The court characterized this testimony as generalized fears that park residents would be low-income residents who would constitute a danger to the neighborhood, concerns unsupported by competent evidence and thus invalid as grounds for permit denial.

By contrast, in SBA, Inc. v. City of Asheville, 141 N.C. App. 19, 539 S.E.2d 18 (2000), the court upheld a board's conclusion that a cell tower would be inharmonious with a neighborhood when the decision was based not only upon testimony of twelve neighbors that it would be an eyesore but also upon a computer-generated photograph superimposing the proposed tower on a photograph of the existing neighborhood.

E. Ex Parte Evidence

Board members hearing quasi-judicial matters are members of the community in which these land use cases arise. They may well have personal knowledge about the site or a personal acquaintance with the parties. It is not uncommon for a board member to have had casual conversations about the case prior to the hearing with staff, the applicant, or the neighbors. While the strict rules about ex parte communications that apply to the judiciary would prevent many of these informal contacts, the courts have applied a rule of reason to ex parte communication in quasi-judicial proceedings.

The role of counsel in this respect is a subject of considerable debate among the land use law bar. Rule 3.5 of the Revised Rules of Professional Conduct of the North Carolina State Bar limits attorney contact with members of an adjudicative tribunal. Written communication with the board is limited to proposed orders, emergency or scheduling matters, communication made with the consent of the opposing party or attorney, and communication permitted by rule of the particular board involved. 98 Formal Ethics Op. 13 (July 23, 1999). In these limited instances copies of the written communication are to be simultaneously shared with opposing counsel. Also see Rule 4.2(b) of the Revised Rules of Professional Conduct of the North Carolina State Bar, which in limited circumstances allows counsel to make oral presentations to elected officials (who may be serving as the decision-making board in a quasi-judicial zoning matter) in open session. Some attorneys who represent applicants for quasi-judicial permits worry that their clients are at a competitive disadvantage if unrepresented neighborhood citizens contact and lobby board members outside the hearing while they are prohibited from doing so. The response in many jurisdictions has been to educate board members as to their responsibility to avoid ex parte communications and, when a contentious hearing is involved, to poll each member at the hearing regarding any outside contacts.

If a board member has prior or specialized knowledge about a case, that knowledge should be disclosed to the rest of the board and the parties during the hearing. In Humble Oil & Refining Co. v. Board of Aldermen, 284 N.C. 458, 468, 202 S.E.2d 129, 136 (1974), the court noted that the special knowledge of board members could be considered if properly presented:

> If there be facts within the special knowledge of the members of a board of Aldermen or acquired by their personal inspection of the premises, they are properly considered. However, they must be revealed at the public hearing and made a part of the record so that the applicant will have an opportunity to meet them by evidence or argument and the reviewing court may judge their competency and materiality.

As with personal knowledge of the facts, the courts in other states have long held that site visits by board members are permissible. Heffernan v. Zoning Board of Review, 144 A. 674 (R.I. 1929). Board members should during the course of the hearing note any pertinent facts they discerned from the visit so as to allow all parties to know the basis of the decision and have the opportunity to present rebuttal information. Buckminister v. Zoning Board of Review, 30 A.2d 104 (R.I. 1943).

While prior knowledge or modest communications prior to a hearing do not disqualify a board member from participating in a case, undisclosed ex parte communications can evidence impermissible bias or rise to a level of unfairness that will lead to judicial invalidation of the decision. Crump v. Board of Education, 326 N.C. 603, 392 S.E.2d 579 (1990). In addition to constitutional due process considerations, the zoning statutes also mandate non-participation in such instances. G.S. 160A-388(e1) and 153A-345(e1) provide that members of boards exercising quasi-judicial functions must not participate in or vote on any quasi-judicial matter if they have a fixed opinion prior to hearing the matter that is not susceptible to change or have undisclosed ex parte communications.

Evidence submitted after the hearing may not be considered. Ballas v. Town of Weaverville, 121 N.C. App. 346, 465 S.E.2d 324 (1996). The offer to amend an application after a hearing in order to address concerns raised at the hearing, and the discussion of permit conditions with the applicant, does not, however, constitute the introduction of new evidence. In re Application of Raynor II, 94 N.C. App. 173, 379 S.E.2d 884, *review denied*, 325 N.C. 546, 385 S.E.2d 495 (1989). Also, if evidence received after the hearing is not actually considered in making a decision, receipt in and of itself is not a due process violation. Howard v. City of Kinston, 148 N.C. App. 238, 244–45, 558 S.E.2d 221, 226 (2002).

It is important to note that the limitations on ex parte communication apply to contacts with the decision makers, but not to the local government staff. It is common and not legally inappropriate for applicants, neighbors, interested citizens, and the representatives of such persons to have contact with staff to the board outside of the hearing context.

F. Application to Particular Standards

1. Endangering the Public Health or Safety

Three North Carolina cases involving special use permits for telecommunication towers illustrate the quantity and quality of evidence needed to address public health and safety standards.

The first dealt with the potential hazard of ice falling from tower supports. In Mann Media, Inc. v. Randolph County Planning Board, 356 N.C. 1, 565 S.E.2d 9 (2002), an application for a special use permit to construct a 1,500-foot telecommunications tower was denied on several grounds, including that the applicant had not met the burden of showing "that the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved." The court held that the evidence presented by tower opponents (ice in a cooler and anecdotal hearsay) was not competent to establish a public safety hazard. However, the ordinance placed the burden of establishing that the use would not pose a safety hazard on the applicant. Here the applicant testified that while he believed ice on the wires would not pose a safety problem, he could not state with certainty that falling ice in a storm would not pose a risk to the permanent structures located in close proximity to the towers. The court upheld the denial, concluding the board's finding that the applicant failed to establish that a lack of hazards was "neither whimsical, nor patently in bad faith, and it is not indicative of a lack of any course of reasoning or exercise of judgment." Id. at 17, 565 S.E.2d at 20.

Two other special use cases involving telecommunication towers dealt with the potential hazards presented to aircraft and illustrate the importance of quantitative evidence as well as personal observations. In Cumulus Broadcasting, LLC v. Hoke County, 180 N.C. App. 424, 638 S.E.2d 12 (2006), the county denied a conditional use permit for a proposed 499-foot radio tower. Several pilots and the owner a nearby private airstrip testified that based on their personal knowledge and observations the tower posed a hazard to air navigation. However, none of the witnesses rebutted the applicant's quantitative data and other evidence in support of the application. The trial court and court of appeals held that there was insufficient evidence to rebut the applicant's prima facie entitlement to the permit. A contrasting result obtained in Davidson County Broadcasting, Inc. v. Rowan County, 186 N.C. App. 81, 649 S.E.2d 904 (2007), *review denied*, 362 N.C. 470, 666 S.E.2d 186 (2008). The plaintiffs applied for a conditional use permit to construct a 1,350-foot radio broadcast tower. The key issue was whether the proposed tower violated the ordinance standard prohibiting creation of "hazardous safety conditions" with respect to users of a private airport located within five miles of the proposed tower. At the hearing the applicant presented a letter from the Federal Aviation Administration making a "Determination of No Hazard" resulting from the tower. The evidence presented in opposition included testimony from a representative of the state Department of Transportation, numerous pilots who used the nearby private airport, and aviation experts, all of whom testified that the tower would pose a safety hazard given its proximity to the private airport. Both the trial court and court of appeals held that this was sufficient evidence to support a finding that the tower would pose a safety hazard.

The courts have on several occasions invalidated special use permit denials based on a generalized fear that the proposed project would increase crime rates and thus be a hazard to public safety. Weaverville Partners, LLC v. Town of Weaverville Zoning Board of Adjustment, 188 N.C. App. 55, 66, 654 S.E.2d 784, 792 (2008); Cox v. Hancock, 160 N.C. App. 473, 586 S.E.2d 500 (2003), Sun Suites Holdings, LLC v. Town of Garner, 139 N.C. App. 269, 533 S.E.2d 525, *review denied*, 353 N.C. 280, 546 S.E.2d 397 (2000); Clark v. City of Asheboro, 136 N.C. App. 114, 524 S.E.2d 46 (1999).

The courts have also addressed evidence on public safety impacts in a variety of other contexts:

- Evidence on landscaping buffers, removal of undergrowth, consideration of traffic counts provided by the state Department of Transportation, modification of existing streets, installation of a traffic light, improvements to storm drainage, and relocation of a fire hydrant adequately supported a finding that the proposed bank would not hinder public safety. Ward v. Inscoe, 166 N.C. App. 586, 603 S.E.2d 393 (2004).
- Neighboring residents testimony about concerns of learning disabilities and cancer caused by the emissions and the psychological effects on children in the neighborhood and a doctor's testimony about potential health impacts of mercury and dioxin emissions sufficient evidence to find a crematory did not meet requirement that the use not be detrimental to or endanger the public health, safety, morals, or general welfare. Butler v. City Council of Clinton, 160 N.C. App. 68, 72, 584 S.E.2d 103, 106 (2003).
- Testimony from neighbors on the negative visual impacts of the fence and allowing the dog so close to passersby is sufficient evidence to support a finding that a taller front-yard fence to allow keeping dogs in a front yard was inconsistent with the public health, safety, and welfare. Wolbarst v. Board of Adjustment of City of Durham, 116 N.C. App. 638, 448 S.E.2d 858 (1994), *review denied*, 338 N.C. 671, 453 S.E.2d 186 (1995)
- Lack of specificity in the application as to hours of operation, number of machines, and methods of supervision for a game room in a donut shop justified finding that board was unable to conclude that the use would not endanger the public health or safety. Signorelli v. Town of Highlands, 93 N.C. App. 704, 379 S.E.2d 55 (1989).

2. Harmony or Compatibility with the Surrounding Area

North Carolina cities and counties report that the evidence most frequently presented to address harmony and compatibility concerns is testimony from neighbors. When queried as to the source of evidence presented on neighborhood compatibility, jurisdictions reported that such evidence was most typically presented by neighbors (74%), followed in order of frequency by the testimony from the owner or developer (68%), reference to consistency with adopted plans (64%), and testimony from professional planners (41%). It is not uncommon for boards to hear testimony that the proposal is simply a bad project that does not fit where it is proposed. It is not surprising that the legal question of what evidence is necessary to support denials based on such objections is frequently litigated.

Inclusion of a particular use as a special or conditional use in a particular zoning district establishes a presumption that the specified land use is compatible with the surrounding area, but that special review is needed to assure that an individual application is in fact compatible. Woodhouse v. Board of Commissioners, 299 N.C. 211, 216, 261 S.E.2d 882, 886 (1980); Harts Book Stores v. City of Raleigh, 53 N.C. App. 753, 281 S.E.2d 761 (1981). There is thus a rebuttable presumption of harmony with the surrounding area. The burden is on the challengers to rebut the presumption of harmony rather than simply objecting to the location of the use in their vicinity per se.

Four North Carolina cases illustrate the evidence required to establish that a proposed

special use is *not* in harmony with the surrounding area:

- Evidence presented by neighbors who objected to an inert debris landfill that the area was previously agricultural in nature, was the site of a long-standing crossroads community, was now primarily single-family residential in nature, and that the thirty to forty trucks per day that would use the landfill would bring disruptive traffic, noise, and dust into the residential area. Hopkins v. Nash County, 149 N.C. App. 446, 560 S.E.2d 592 (2002).
- Uncontroverted evidence that a proposed telecommunications tower would be four times taller than existing buildings in the neighborhood, along with twelve witnesses testifying that the tower would be an eyesore (along with the applicant's own evidence, a computer-generated photograph superimposing the tower, corroborating the proposed tower's visibility and predominance over existing buildings, showing a sharp contrast to its surroundings). SBA, Inc. v. City of Asheville, 141 N.C. App. 19, 539 S.E.2d 18 (2000).
- Evidences that all uses within two miles of a proposed quarry are residential. Vulcan Materials Co. v. Guilford County Board of Commissioners, 115 N.C. App. 319, 444 S.E.2d 639, *review denied*, 337 N.C. 807, 449 S.E.2d 758 (1994).
- Testimony on problems of noise, traffic congestion, crime, vandalism, and effects on property values relative to a proposed apartment building in a neighborhood of single-family homes. Petersilie v. Boone Board of Adjustment, 94 N.C. App. 764, 381 S.E.2d 349 (1989).

By contrast, the courts have on a number of occasions found there to be insufficient evidence in the record to support a conclusion that a proposed special use is not in harmony with its surrounding area. In these cases the courts concluded that the evidence presented was insufficient to rebut a prima facie showing of harmony:

- Evidence supporting the application that proposed buildings for a Law Enforcement Center were sufficiently similar to historical uses in this portion of downtown, that the bulk, height, style, and appearance of the proposed buildings was similar to the neighboring governmental and business buildings in the central city district, and that these governmental uses had always been adjacent to residential areas (and the court noted that the permit contained conditions for a fifty-foot vegetated buffer for the portion of the site contiguous to residential areas). McDonald v. City of Concord, 188 N.C. App. 278, 655 S.E.2d 455 (2008).
- Opposition to the permit was both very general and likely applicable to virtually any development of the site. Habitat for Humanity of Moore County, Inc. v. Board of Commissioners, 187 N.C. App. 764, 653 S.E.2d 886 (2007).
- Testimony of landscape architects as to noise and odor impacts of a proposed animal shelter was speculative, especially considering that an airport, ministorage warehouses, and another animal hospital were already located in the area. Humane Society of Moore County, Inc. v. Town of Southern Pines, 161 N.C. App. 625, 589 S.E.2d 162 (2003).
- Evidence regarding the mix of existing uses in the area, along with conditions

imposed relative to street parking, lighting, tree removal, and vegetative buffers, sufficiently supported a finding that a bank with four drive-through windows would not substantially injure adjoining properties. Ward v. Inscoe, 166 N.C. App. 586, 603 S.E.2d 393 (2004).

- Fact that neighbors could see a billboard from their property was insufficient to support a finding that the signs would be incompatible with the neighborhood, given the presence of other businesses, signs, and an active rail line in the immediate area. MCC Outdoor, LLC v. Town of Franklinton, 169 N.C. App. 809, 610 S.E.2d 794 (2005).

3. Injure Value of Adjoining Property

North Carolina cities and counties report that the question of a proposed special use permit project's impact on adjoining property values is the single most difficult standard for their boards to apply.

A significant portion of this difficulty is that evidence on property value impacts is frequently offered by lay witnesses. When asked how evidence is typically presented on property value impacts, North Carolina cities and counties report that testimony from neighbors and the landowner/developer are by far the most common sources of this evidence. This in large part explains the amendment to the zoning statutes in 2009, G.S. 160A-393(k)(3), that limits the use of opinion evidence from non-expert witnesses on the issue of property value impacts.

As noted earlier in the discussion of opinion testimony, where expert testimony is offered to establish property value impacts, it is important that the witness be properly qualified as an expert and that an adequate foundation be established for expert opinions that are offered. Mann Media, Inc. v. Randolph County Planning Board, 356 N.C. 1, 565 S.E.2d 9 (2002). Conclusory statements and speculative comments by neighbors cannot properly be the basis of findings relative to property value impacts. Sun Suites Holdings, LLC v. Town of Garner, 139 N.C. App. 269, 533 S.E.2d 525, *review denied*, 353 N.C. 280, 546 S.E.2d 397 (2000).

When credible quantitative evidence on property value impacts is presented, that evidence cannot be rebutted by generalized contradictory testimony. In Weaverville Partners, LLC v. Town of Weaverville Zoning Board of Adjustment, 188 N.C. App. 55, 654 S.E.2d 784 (2008), the plaintiff challenged the denial of a special use permit for an apartment complex. The plaintiff's properly qualified real estate appraiser testified that he had conducted a market analysis of similarly situated neighborhoods in the town, reviewed sales history around the site over the previous ten years, conducted interviews with nearby purchasers, and reviewed the architectural plans. The opposing testimony addressed two factors: (1) countywide data regarding the effect of apartments in depressing rates of property value appreciation and (2) whether nearby sales were less than the asking price. The court held neither established a violation of the ordinance standard of projects not causing a substantial depreciation of value. Likewise, testimony regarding the incongruity of the project design with neighboring properties was based solely on personal observations and had no quantitative link to a substantial depreciation in property values.

The fact that evidence of property value impacts is available and not presented can seriously undermine the case of the party with the burden of establishing (or contesting) that fact. In SBA, Inc. v. City of Asheville, 141 N.C. App. 19, 539 S.E.2d 18 (2000), the plaintiffs

appealed the city council's denial of a conditional use permit for a telecommunications tower. The court was concerned with the plaintiffs' failure to address the property value impacts of an existing telecommunication tower a short distance from the proposed site that potentially affected the same neighborhoods. The court thus held that the plaintiff s did not meet their burden of demonstrating the absence of harm to neighboring property values.

4. Traffic Impacts

As with the property value standard, boards must often deal with cases where there is both technical evidence on traffic impacts presented by experts and evidence offered by lay neighbors concerned about traffic that would be generated by proposed new development. As with evidence on property value, the statutes were amended in 2009 to expressly limit the use of opinion evidence from non-expert witnesses on the issue of public safety impacts of traffic. G.S. 160A-393(k)(3).

Where properly qualified expert testimony on traffic impacts is presented, that cannot be rebutted by speculative and generalized concerns offered by lay witnesses. Blue Ridge Co. v. Town of Pineville, 188 N.C. App. 466, 655 S.E.2d 843, 848–49, *review denied*, 362 N.C. 679, 669 S.E.2d 742 (2008); Weaverville Partners, LLC v. Town of Weaverville Zoning Board of Adjustment, 188 N.C. App. 55, 654 S.E.2d 784 (2008). The court in Triple E Associates v. Town of Matthews, 105 N.C. App. 354, 413 S.E.2d 305, *review denied*, 332 N.C. 150, 419 S.E.2d 578 (1992), held that the board may not rely on speculative traffic projections to make a finding regarding traffic congestion. The court reached a similar conclusion in a case involving preliminary plat approval, holding that speculative comments about the impact of traffic on children playing in the street was an inadequate basis for plat denial. Guilford Financial Services, LLC v. City of Brevard, 356 N.C. 655, 576 S.E.2d 325 (2003), *per curiam, adopting dissent in* 150 N.C. App. 1, 563 S.E.2d 27 (2002).

Several cases illustrate the evidence needed to support a finding that a proposed special or conditional use permit would create adverse traffic impacts:

- Testimony from city planning staff that specified trip generation projections and from a neighbor who testified as to the number of children in the area and past experience in this particular area with the safety of walkers and cyclists. Howard v. City of Kinston, 148 N.C. App. 238, 558 S.E.2d 221 (2002).
- Traffic studies and reports submitted by the petitioner and the town staff (and noting that possible future road improvements are not required to be considered). Ghidorzi Construction, Inc. v. Town of Chapel Hill, 80 N.C. App. 438, 342 S.E.2d 545, *review denied*, 317 N.C. 703, 347 S.E.2d 41 (1986).
- Evidence on increased traffic counts and their effects on traffic safety at a nearby intersection and for nearby schools and fire stations. In re Goforth Properties, Inc., 76 N.C. App. 231, 332 S.E.2d 503, *review denied*, 315 N.C. 183, 337 S.E.2d 857 (1985).

Selected SOG References on North Carolina Zoning Law

Books

Ammons, David N., Ryan A. Davidson, & Ryan M. Ewalt, DEVELOPMENT REVIEW IN LOCAL GOVERNMENT: BENCHMARKING BEST PRACTICES (2009)

116 pages. A review of national best practices for development review.

Brough, Michael B. and Green, Philip P., Jr., THE ZONING BOARD OF ADJUSTMENT IN NORTH CAROLINA (2d ed. 1984)

128 pages. A classic basic text on the board of adjustment. It covers functions of the board, how it conducts meetings and makes decisions, and the types of findings required for various decisions. It includes suggested forms and rules of procedure.

Owens, David W., INTRODUCTION TO ZONING (3rd ed. 2007)

198 pages. An overview of zoning for citizen board members and the public. It includes discussion of zoning jurisdiction, rezoning, spot and contract zoning, special and conditional use permits, variances, vested rights, nonconformities, enforcement, and constitutional limitations on zoning.

Owens, David W., LAND USE LAW IN NORTH CAROLINA (Spring 2006)

404 pages. A detailed review of the legal aspects of zoning. It covers jurisdiction, rezonings, spot and contract zoning, vested rights, nonconformities, constitutional and statutory limits on zoning, quasi-judicial procedures, variances, special and conditional use permits, interpretation, enforcement, and judicial review. It includes digests of all N.C. appellate reported decisions on zoning. [*Second edition forthcoming, Spring 2011*]

Reports

Owens, David W., DEVELOPMENT MORATORIA: THE LAW AND PRACTICE IN NORTH CAROLINA (Special Series No. 26, December 2009)

28 pages. A review of the statutes and case law on the use of development moratoria. It also includes reports a survey of on how North Carolina cities and counties have used this tool.

Owens, David W., THE USE OF DEVELOPMENT AGREEMENTS TO MANAGE LARGE-SCALE DEVELOPMENT: THE LAW AND PRACTICE IN NORTH CAROLINA (Special Series No. 25, October 2009)

28 pages. A detailed review of the legal authority for law on development agreements. It also includes reports a survey of on how North Carolina cities and counties used this management tool in the initial few years it was available in the state.

Owens, David W., ZONING AMENDMENTS IN NORTH CAROLINA (Special Series No. 24, February 2008)

24 pages. A detailed review of the legal issues related to zoning text and map amendments. It also includes reports a survey of on how North Carolina cities and counties administer the zoning amendment process.

Owens, David W. and Andrew Stevenson, AN OVERVIEW OF ZONING DISTRICTS, DESIGN STANDARDS, AND TRADITIONAL NEIGHBORHOOD DESIGN IN NORTH CAROLINA ZONING ORDINANCES (Special Series No. 23, October 2007)

28 pages. A report on a survey of the types of zoning districts included in North Carolina zoning ordinances, design standards in these ordinances and the regulation of traditional neighborhood design (or New Urbanism) options.

Owens, David W., SPECIAL USE PERMITS IN NORTH CAROLINA ZONING (Special Series No. 22, April 2007)

28 pages. A detailed review of the legal authority for use of special and conditional use permits. It also includes reports a survey of on how North Carolina cities and counties administer these permits.

Owens, David W. and Nathan Branscome, AN INVENTORY OF LOCAL GOVERNMENT LAND USE ORDINANCES IN NORTH CAROLINA (Special Series No. 21, April 2006)

31 pages. This is a report of a survey on which land use and related ordinances have been adopted by North Carolina cities and counties. It includes a brief description of the types of ordinance and a summary of the adoption rate. It also includes tables showing the status of ordinance adoption in each responding jurisdiction.

Owens, David W., THE NORTH CAROLINA EXPERIENCE WITH MUNICIPAL EXTRATERRITORIAL PLANNING JURISDICTION (Special Series No. 20, Jan. 2006)

17 pages. A detailed review of the legal authority for extraterritorial planning and regulatory jurisdiction. It also includes reports on how many North Carolina cities exercise this authority, the types of regulations applied in this area, the relationship of ETJ to annexation, and county policies on granting approval for municipal ETJ.

Owens, David W., and Adam Bruggemann, A SURVEY OF EXPERIENCE WITH ZONING VARIANCES (Special Series No. 18, Feb. 2004)

35 pages. A detailed review of the legal authority for variances, judicial limitations on its use, and a report on how the tool has been used in North Carolina.