



Land Use and Zoning Appeals

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Local Government Law Essentials for Judges
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Roadmap

- Land Use Basics
 - Zoning ordinances
 - Subdivision ordinances
 - Other development regulations
- Judicial Review
 - Decision types overview
 - Judicial review of legislative decisions
 - Judicial review of administrative decisions
 - Judicial review of quasi-judicial decisions



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LAND USE BASICS

Land Use Basics



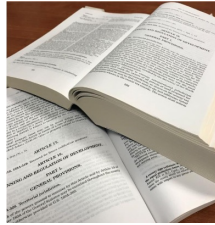
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N.C. General Statutes Chapter 160D



- Core authority to regulate land use and development
- Consolidated from parts of Chapters 153A and 160A

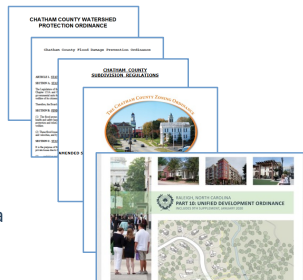


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Development Regulations

- Core regulations
 - Land Use Zoning
 - Land Subdivision
- Other land use regulations
 - Manufactured Home Ordinance
 - Flood Damage Prevention Ordinance
 - Sign Ordinance
 - Historic Preservation
 - Minimum Housing Code
- Regulations may be combined into a "unified development ordinance"



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LAND USE BASICS

Zoning

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Zoning Ordinance = Text + Map (see G.S. ch. 160D art. 7)



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Zoning Districts (160D-703)



- **Conventional** districts, in which a variety of uses are allowed as permitted uses or uses by right and that may also include uses permitted only with a special use permit.
- **Conditional** districts, in which site plans or individualized development conditions are imposed.
- **Overlay** districts, in which different requirements are imposed on certain properties within one or more underlying conventional or conditional districts.

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Types of Land Uses



- **Principal** Use, which is the main use to which property is put, such as a house, commercial strip, or monastery
- **Accessory** Use, which is a secondary use that is ancillary to the primary use, such as a shed or secondary dwelling
- **Temporary** Use, which is a use that is only for a limited time, such as a stand for selling pumpkins or Christmas trees

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Subdivision

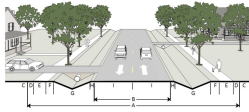


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Subdivision Ordinance

Standards include

- Lot design
- Streets & Connectivity
- Other infrastructure
 - Stormwater
 - Water & Sewer/ Well & Septic
- Environmental protection
- Open space and recreation

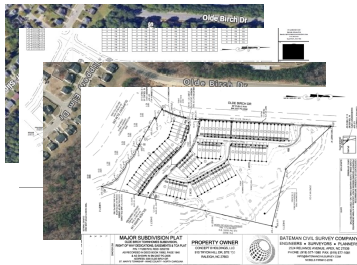


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Subdivision Procedure



- Preliminary Plat often required
 - (shows plan of development)
- Final Plat always required
 - (does the subdividing)

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Types of Land Use Decisions



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Three types of land use decisions



- Legislative
- Administrative
- Quasi-judicial

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TYPES OF LAND USE DECISIONS

Legislative Decisions



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Defining "Legislative Decision"

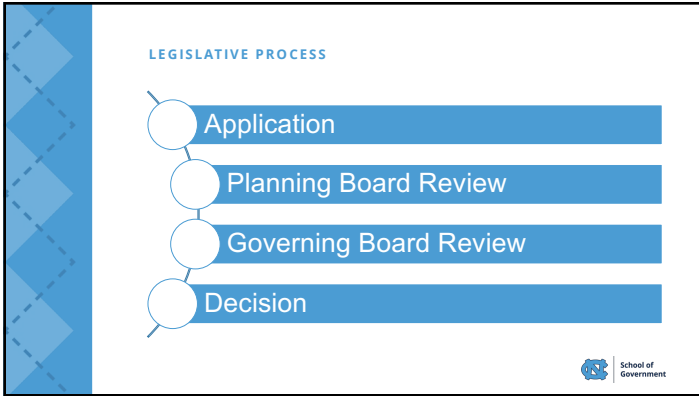


"The **adoption, amendment, or repeal of a regulation** under this Chapter or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Article 10 of this Chapter."

G.S. 160D-102(19)

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Governing Board Statements (G.S. 160D-605)

- Plan Consistency (text or map)
 - "When *adopting or rejecting* any zoning text or map amendment, the governing board shall approve a brief statement **describing** whether its action is consistent or inconsistent with an adopted comprehensive or land-use plan."
- Reasonableness (map only)
 - "When *adopting or rejecting* any petition for a zoning map amendment, a statement **analyzing** the reasonableness of the proposed rezoning shall be approved by the governing board."

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TYPES OF LAND USE DECISIONS

Administrative Decisions

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Defining "Administrative Decision"



"Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the **application of objective standards** set forth in this Chapter or local government development regulations. These are sometimes referred to as ministerial decisions or administrative determinations."

G.S. 160D-102(1)

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TYPES OF LAND USE DECISIONS

Quasi-judicial Decisions



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Defining "Quasi-judicial Decision"



- "A decision involving the **finding of facts** regarding a **specific application** of a development regulation and that requires the **exercise of discretion** when applying the standards of the regulation."

G.S. 160D-102(28)

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Due Process in Quasi-Judicial Procedure



- “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.**”
 - Opportunity to offer and review evidence, cross witnesses
 - Have facts only based on sworn statements and on “competent, material and substantial evidence in view of the entire record as submitted”
- *Humble Oil & Ref. Co. v. Bd. of Aldermen of Town of Chapel Hill*, 284 N.C. 458 (1974)

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“Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.”

N.C. GEN. STAT. § 160D-406(J)

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The Burden of Proof

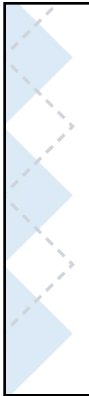


- Applicant must provide competent, material, and substantial evidence to support a finding in their favor
- If they do, burden shifts to opponents
- If evidence on both sides, the board weighs the evidence and decides



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Judicial Review Processes

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Judicial Review of Different Decision Types

- Legislative—declaratory judgment
- Administrative—G.S. 160D-1403.1
- Quasi-judicial—appeal in the nature of certiorari

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JUDICIAL REVIEW

Legislative Decisions

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Appeals of Legislative Land Use Decisions



- Form: Original declaratory judgment action
- Statute of limitations
 - Other than rezoning: Three years from first having standing. G.S. 1-52(21) and 160D-1405, as modified by S.L. 2026-41 s 39.5(c).
 - Rezoning: 60 days from adoption. G.S. 1-54.1 and 160D-1405.

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Standing (Legislative Decisions)



- Statute: Any person ... whose rights, status or other legal relations are **affected by** a ... municipal ordinance..." G.S. 1-254.
- Case law gloss: "a person who has a specific personal and legal interest in the subject matter ... and who is **directly and adversely affected** thereby" *Taylor v. Raleigh*, 290 N.C. 608 (1976).
- Higher bar for constitutional challenges: "injury or immediate danger of injury to a **constitutionally protected [property] interest**" *Coventry Woods v. Charlotte*, 202 N.C. App. 247 (2010).

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Standard of Review (Legislative Decisions)



- Burden on challenger
- Ordinance is presumed valid
 - Defer unless clearly unreasonable, arbitrary and capricious, or an abuse of discretion
- Whole record review for allegations that a decision is arbitrary and capricious.

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Disposition (Legislative Decisions)



- If invalidated, void *ab initio*.
 - *Keiger v. Winston-Salem Bd. of Adjustment*, 281 N.C. 715 (1972).
- Attorneys fees (G.S. 6-21.7)
 - Required if city or county “violated a statute or case law setting forth unambiguous [not reasonably susceptible to multiple constructions] limits on its authority.”
 - May award to prevailing private litigant.

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JUDICIAL REVIEW

Direct Appeals of Administrative Decisions



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Direct Appeals of Administrative Land Use Decisions



- Note: most admin decisions are appealed to board of adjustment
- Form: “original civil action seeking declaratory relief, injunctive relief, damages, or any other remedies provided by law or equity.” G.S. 160D-1403.1.
- Statute of limitations: 3 years from accrual
 - When party first has standing
 - For tax fee, or monetary contribution related to development regulation or approval, accrues on payment

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Direct Appeals of Administrative Land Use Decisions



- Suit must challenge enforceability, validity, or effect of local land development regulation on basis that
 - (1) The regulation is unconstitutional
 - (2) The regulation exceeds statutory authority
 - (3) The regulation constitutes a taking of property.
 - (4) An administrative or quasi-judicial decision implementing a regulation is unconstitutional, exceeds statutory authority, or makes some other error of law or abuse of discretion.
- G.S. 160D-1403.1(a).

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Standing (1403.1)



- A person with a legal interest in property that is the subject of a final and binding administrative or quasi-judicial decision
- An applicant for a development permit or approval
- A development applicant "aggrieved by a final and binding decision of an administrative official"
- An association or organization "whose membership is comprised of an individual" with standing and "whose purposes are germane to the matter in controversy"

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Standard of Review (1403.1 suits)



- If based on regulation being unconstitutional, outside statutory authority, or a taking, review is *de novo*
- If based on quasi-judicial decision implementing a regulation, follow usual QJ review standard in G.S. 160D-1402(j)

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Dispositions (1403.1 suits)



- Declaratory judgment, injunction, damages, or other remedies requested in complaint
- Must award attorneys fees to successful challenger if local government "is found to be liable" in 1403.1 action.

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JUDICIAL REVIEW

Quasi-judicial Decisions



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Appeals of Quasi-judicial Land Use Decisions



- Form: *writ of certiorari* to superior court.
 - Petition requirements in G.S. 160D-1402(b)
 - Also have option of G.S. 160D-1403.1 if applicant
- Statute of Limitations (G.S. 160D-1405(d))
 - Petition for review must be filed with clerk of court within later of
 - 30 days of decision becoming effective (upon filing with clerk to the board or other official specified in the development regulation)
 - After a written copy of notice is given (add 3 days if notice delivered by first-class mail)

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Standing (Quasi-judicial Decisions)



- G.S. 160D-1402(c)
 - 1) Applicants and those with ownership interest or option or contract to buy the subject property
 - 2) Other persons "who will suffer special damages as the result of the decision being appealed"
 - 3) Owners' or renters' association, or associations organized to protect neighborhood or local area, if at least one member qualifies individually and not created in response to the development
 - 4) Local government whose board made decision

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Evidence in Review of Quasi-judicial Decisions



- Court proceeds in an appellate capacity, so is bound by facts and record below
- Except for issues related to
 - Standing
 - Conflicts of interest
 - Violation of constitutional provisions or in excess of authority
- Board does not have to follow rules of evidence

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Standard of Review – Quasi-judicial Decisions



- **De novo** if challenge based on constitutional violation, exceeding authority, inconsistency with procedures, or other errors of law (including errors in interpretation and whether record contains competent, material, and substantial evidence)
- **Whole record test** if allegation is that decision was unsupported by evidence or was arbitrary and capricious

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Disposition (Quasi-judicial Decisions)



- Affirm, reverse, or remand
- Remand for prejudicial procedural error, additional findings of fact
- Remand to correct if approval or denial was not supported by evidence or in error of law
 - May strike unlawful conditions and order issuance of corrected permit
- Reverse enforcement decision if not supported by evidence

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