

SUPERIOR COURT JUDGES' SUMMER CONFERENCE

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Types of Decisions

<u>Type</u>	<u>Example</u>
Legislative	Rezoning
Quasi-judicial	Variance/Special Use Permit
Administrative	Notice of Violation
Advisory	Recommendation on rezoning

Legislative Decisions

- Rules apply to text and map amendments
- Statutes require:
 - Planning board review
 - Notice of hearing (published/mailed/posted)
 - Public hearing
 - Statement on plan consistency and rationale

Quasi-judicial Decisions

- Coverage --
 - Fact-finding AND
 - Discretionary standards
- Applies to special and conditional use permits, variances, appeals, and interpretations

Quasi-judicial Decisions

- Substantial, competent, and material evidence in the record is *required* for each key factual determination
- Essential fair trial elements must be observed

Types of Decisions

- Categorization is a question of law
- Characterization in ordinance is guide, but not determinative
- Identity of board is not determinative

Form of Action

- Legislative decision/constitutionality —
Declaratory Judgment
- Quasi-judicial decision —
Certiorari

Standard of Review

Legislative decisions:

- Deferential, presumption of validity if any rational basis to support it
- May overturn if arbitrary and capricious, unreasonable, abusive of discretion
- Whole record review, no new evidence

Standard of Review

Quasi-judicial/ministerial decisions:

- Errors of law – de novo review
- Proper procedures followed; due process rights secured
- Not supported by evidence; arbitrary and capricious – whole record review

Standard of Review

Quasi-judicial/ministerial decisions:

- If multiple types of errors alleged, apply appropriate standard of review to each
- Clearly specify what standard is being applied to each alleged error

Standard of Review

De novo review:

- Court may consider the matter anew
- May defer to interpretation where it has been carefully considered and consistently applied by the local government
{some divergence in opinions here}

Standard of Review

Whole record review:

- Review based on entire record below
- Factual findings of board are binding if supported by substantial, competent, material evidence
- Strict rules of evidence not applied, but hearsay and opinion evidence of limited weight

Standard of Review

Procedural requirements:

- Constitutional, due process
- Statutory
- Local ordinance

Standing

- Legislative—Special damages required; specific personal and legal interest
- Quasi-judicial—A person aggrieved or local decision-maker

Spot Zoning

- Applies whenever relatively small parcel zoned differently from surrounding area

Spot Zoning

- Legal only if “reasonable”
- No presumption of validity
- Burden is on local government to establish reasonableness

What is “Reasonable”?

- Site characteristics – size of tract, topography, utilities, roads, rail, uses, etc.
- Relation to plan – comprehensive plan, small area plans, functional plans
- Degree of change allowed – upsetting expectations
- Balance of benefits and detriments – owner, neighbors, community

Contract and Conditional Zoning

Types of Zoning Districts

- Conventional (General use districts)
 - Includes both uses by right and uses by conditional-use or special-use permit
- Conditional-use or special-use districts
 - All uses allowed by conditional-use or special-use permit
- Conditional districts
 - One-of-a-kind district that incorporates site plan and restrictions into text of rezoning amendment

Conventional Zoning

- Conditions may not be imposed on a conventional rezoning unless applicable to all property in district – individual conditions are unenforceable
- Rezoning must be based on suitability of land for all potential uses, otherwise rezoning is invalid

Conditional Use District Rezoning

- Developed in N.C. in 1980s to avoid illegal contract zoning
- Combines rezoning with conditional use permit
- Approved by court in 1988 (Chrismon) and now explicitly in statutes

Conditional Use District Rezoning

- Must be requested by owner
- Involves **two** decisions
 - Rezoning to a district with only CUP/SUP, no permitted uses
 - Conditional/special use permit
- May conduct one hearing and make decisions concurrently

Conditional Zoning

- Some local governments averse to combining quasi-judicial process with rezonings, want exclusively legislative process
- Want flexibility for ex parte communication, maximum discretion

Conditional Zoning

- Unlike CUD, no CUP involved
- Create new, unique zoning district, with individualized standards/site plan made a part of the ordinance standards
- Use approved by courts and allowed by statute

Conditional Zoning

- Statute limits conditions to those:
 - Needed for ordinance/plan compliance
 - Addressing impacts reasonably expected to be generated by project
- Statute requires written reasonableness analysis for all small-scale rezonings

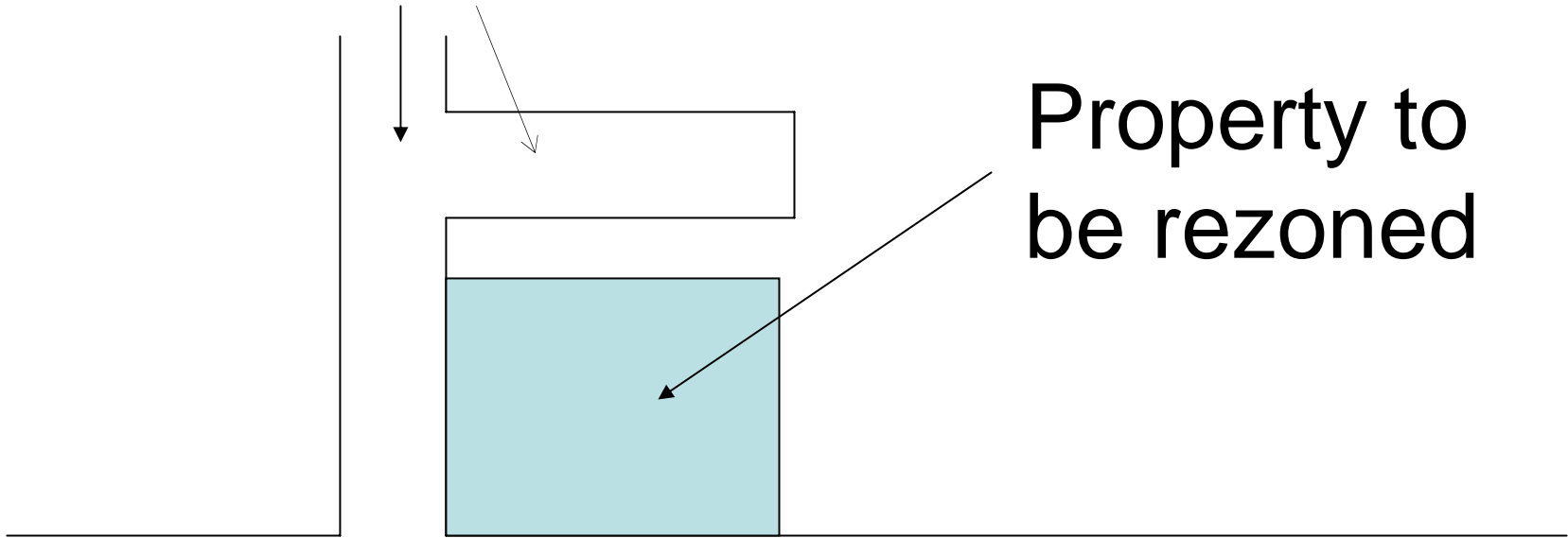
Protest Petition

- 3/4 vote required if valid protest
- Vacancies/recusals not considered in computation of supermajority
- Owners of 20% of area being rezoned or 5% of a 100 foot perimeter buffer
- Filed two working days prior to day of hearing
- Signed by owners
- City may require form

Protest Petition

- If ROW is 100 feet or less, do not consider in buffer computation
- If ROW is over 100 feet, include it in buffer delineation

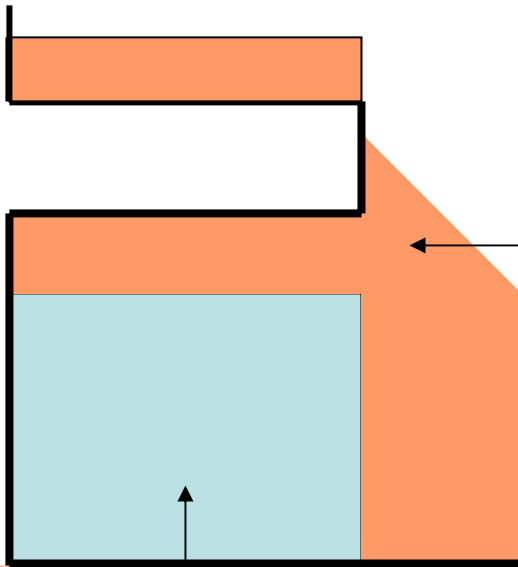
60' ROW



Property to
be rezoned

110' ROW

60' ROW



Protest
area # 2
(5%)

110' ROW

Protest
area # 1
(20%)

Protest Petition

- Measure 100-foot buffer from property line of affected property if less than entire parcel rezoned

