

Lanvale Properties, LLC v. Cabarrus County and Its Implications

County Attorneys Winter Conference
David Owens
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Population Growth in N.C.

N.C. Population

1950 – 2.4 million

2013 – 9.85 million

Last Decade

N.C. – 18% growth

U.S. – 9.7% growth



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Growth Rates for Selected Counties 2001 - 2011

- Union – 62.8 %
- Wake – 43.5%
- Cabarrus – 35.8%
- Mecklenburg – 32.2 %
- Currituck – 29.5%
- Durham – 19.8 %

Financing Capacity Improvements: Who is going to pay for new schools?



Cost of a New School (Land, Construction, Equipment)

Type	Cost
Elementary School	\$25 Million
Middle School	\$46 Million
High School	\$79 Million

Wake County Estimates
2006

School Bonds – Wake County

Year	Amount
2000	\$500 Million
2003	\$450 Million
2006	\$970 Million
2013	\$810 Million

Existing Regulations to Address Capacity

Explicit purpose of zoning

“facilitate adequate provision of transportation, water, sewer, schools, parks, and other public requirements”

Consideration of Adequacy in Regulatory Decision-making

2005 SOG Survey of N.C. Local Governments:

- 29% of cities
- 22% of counties

School Impact Fee Litigation

Durham Land Owners (2006)

Union Land Owners (2009)

Amward Homes (2010)

All hold no statutory authority for school impact fee

Lanvale Properties, LLC v. Cabarrus County, 366 N.C. 142 (2012)

Challenge to county Adequate Public Facility Ordinance

Ordinance focused on regulating new residential subdivision and financing school capital costs

Cabarrus County APFO

Originally adopted in subdivision ordinance

Moved to zoning ordinance in 2007

If inadequate school capacity: deny, reduce density, delay, phase, or consent to advancing capacity

Fee increased several times, going from \$500 in 1998 to \$8,617 in 2008 for SF home

2004 local bill allowed “school adequacy review”

Scope of Delegated Authority

Dillon’s Rule – Strict Construction

Powers include those:

- 1) Expressly granted
- 2) *Necessarily or fairly implied*
- 3) Essential to declared purpose and objectives

Scope of Delegated Authority

160A-4/153A-4 – Broad Construction

Grants of power include any that are
“*reasonably expedient* to the exercise of the
power”

Lanvale Properties

No Explicit Authority

- Permissible purpose under zoning, BUT
- PURPOSE ≠ POWER
- Zoning powers do not include a school financing mechanism
- Adequacy review has nothing to do with zoning

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No Implied Authority

- Broad construction rule only applicable if ambiguity present
- Lack of school financing in zoning is not ambiguous
- Apply plain meaning of zoning powers
- Need *specific* authority for impact fee

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No Local Act Authority

- Explicit authority in other local acts plus refusal to adopt other requests for explicit authority evidence of intent not to authorize
- “Adequacy review” not same as new revenue tool

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Implications

- Exaction authority must be express, clear, unambiguous
- Exactions must be authorized for the specific type of regulatory review involved
- Broad construction standard not applied absent ambiguity in authority

King v. Town of Chapel Hill, 367 N.C. 400 (2014)

- Ordinance regulated nonconsensual towing from commercial lots, limited cell phone use while driving
- Regulated: Size of signs for notice of towing, vehicle release, storage, payment, fees

King

- General police power is by its very nature ambiguous, so broad construction applies
- Regulation must have “rational, real, or substantial” relation to protecting public health, safety, welfare
- Upheld notice and payment method, voided limit on fees
- Cell phone on public roads preempted

Patmore v. Town of Chapel Hill, 757 S.E.2d 302 (N.C. App. 2014)

- Parking limits in neighborhood conservation zoning district – 4 cars per lot
- Enforce vs. owner, not renters

Patmore

Not a violation of substantive due process to enforce vs. owners

Owners have some control over use of property

More effective given transient student tenants

Patmore

Parking standards in zoning not limited by statute authorizing regulation of parking in public vehicular areas

- Over-parking tied to over-occupancy zoning issue
- Over-occupancy restriction fundamentally different from regulation of parking in PVA

Patmore

Parking limit “reasonably necessary” to
accomplish purpose of limits overcrowding

Lanvale not applicable --

APFO ordinance invalidated there was not a bona
fide zoning regulation