**2012 North Carolina Land Use Litigation**

David W. Owens  
School of Government  
The University of North Carolina at Chapel Hill  
© 2014

Below are brief digests of reported decisions regarding planning, land use, and related issues in North Carolina. The state supreme court decisions are listed first, followed by court of appeals decisions, followed by federal cases arising in North Carolina.  The cases are in chronological order (the more recent cases at the bottom of each list).  Index terms are included in italics for each case.

**North Carolina Supreme Court**

**Wally v. City of Kannapolis**, 365 N.C. 449, 722 S.E.2d 481 (2012)

*Zoning amendment; Statement of reasonableness*

After voluntary annexation of a 76-acre parcel, the owners sought a conditional rezoning to allow office, light industrial, and retail uses of the property.  The city’s zoning commission recommended approval.  At the city council’s public hearing on the rezoning, a staff report was presented that included an analysis of plan consistency and other factors, including impacts on safety, traffic, parking, the environment, and public facilities.

The court invalidated the rezoning for failure to comply with the requirement of G.S. 160A-383 that the governing board adopt a statement on plan consistency and briefly explaining why the action taken is reasonable.  While the substance of a statement that is adopted is not subject to judicial review, whether or not it existed is reviewable.  Here the court found the city council failed to adopt any statement as required by the statute.  The fact that a staff report addressing these matters was present is irrelevant, as that only expresses the staff views on the matter while the statute requires a statement of governing board’s rationale.

**Lanvale Properties, LLC v. County of Cabarrus**, 366 N.C. 142, 731 S.E.2d 800 (2012)

*School impact fees; Adequate public facility requirement*

The plaintiff proposed a residential development on a fifty-four acre site in the city of Locust.  The county refused to issue building permits unless the plaintiff complied with adequate public facility requirements in the county zoning ordinance.  The county had initially adopted adequate public facility requirements in 1998 as part of its subdivision ordinance.  The provisions prohibited approval of residential subdivisions if there was inadequate school capacity for the projected development, but the proposed subdivision could be (and routinely was) approved upon entering a consent agreement to pay a fee of $500 per unit to be used for capital costs of providing additional school capacity.  In 2003 the minimum fee was increased to $1,008 per unit. In 2004 the county secured local legislation to allow application of the “school adequacy review” in the county subdivision ordinance within municipalities as well as the county. Later in 2004 the county increased the minimum fee to $4,034 per single-family unit and $1,331 per multifamily unit. In 2007 the county substantially modified the adequate public facility review process and moved the requirements to the county zoning ordinance (with a cross-reference in the subdivision ordinance).  The provisions provided for a detailed process for review of school capacity to support proposed development.  If available student capacity was inadequate, the provisions provided for denial of the application or imposition of conditions to mitigate impacts, including deferring or phasing final approval until school capacity became available, reducing density, or entering a consent agreement to provide needed school capacity. In 2008 the county increased the fee to provide needed capacity to $8,617 per single family unit (with lesser amounts for townhouse and multifamily housing).

The court held the county lacked statutory authority under the county’s zoning authority to impose a voluntary mitigation fee to remedy inadequate school capacity.  The court noted the purposes of zoning ordinances include facilitating the “efficient and adequate provision” of specified public facilities, including schools.  G.S. 153A-341.  However, the grant of powers in zoning specifies the regulations that can be imposed to address that need.  These include regulation of the size of buildings, lots, setbacks, density, and the use of land and buildings.  G.S. 153A-340.  The court held the county’s provisions on adequacy of school capacity did not organize the county into districts or zones and did not govern specific categories of land use activities.  Rather the court found the ordinance to be a “carefully crafted revenue generation mechanism.”  The court held it would be inappropriate to sever the mitigation fee provisions from the remainder of the adequate public facility provisions, as the entirety of the adequacy review provisions had “little or nothing” to do with zoning.  The court noted that subdivision regulations can address some aspects of provision of public facilities in the land subdivision approval process, but held the scope of the zoning authority is distinct from the scope of authority under subdivision ordinances.

The court further held there was no implied authority for the provisions, ruling that G.S. 153A-4 (directing a broad construction of county authority to include “any powers that are reasonably expedient” in carrying out delegated powers) to be inapplicable, as the provision is a rule of statutory construction only to be applied in interpretation of ambiguous statutes.  The court held here the scope of the zoning authority was not ambiguous and plainly does not include an authorization of provisions requiring developers to pay an adequate public facilities fee.

The court held the local legislation secured by the county did not confer authority to adopt these provisions.  The court noted that on other occasions the legislature had explicitly granted authority for a school impact fee and had rejected a grant of explicit authority three times for others.  These local bills argue against interpreting this law to implicitly authorize such a fee.  The court noted the circumstances surrounding adoption of this local bill indicate it was an effort to resolve city-county jurisdictional confusion rather than to grant the county new authority.  Even if the local bill is read to confer authority for an adequacy review, the court held this did not include “unfettered authority to enact this revenue-driven ordinance,” noting the county substantially expanded the scope of the provisions subsequent to adoption of the local bill, converting it from “a simple adequacy review process into a complex revenue generating system.”

The court also held that since the contested provisions were not a zoning ordinance, the statute of limitations applicable to contesting the validity of a zoning ordinance or amendment is inapplicable.

**Hest Technologies, Inc. v. State of North Carolina**, 366 N.C. 289, 749 S.E.2d 429 (2012)

*Internet sweepstakes*

The court upheld G.S. 14-306.4, which banned the operation of electronic machines that use “entertaining displays” to reveal sweepstakes winnings.  The law was adopted in response to the appearance of these machines after video poker machines were prohibited in 2006.  The court ruled the law regulates conduct, not protected speech.

**High Rock Lake Partners, LLC v. North Carolina Department of Transportation**, 366 N.C. 315, 735 S.E.2d 300 (2012)

*Driveway permits*

The plaintiff proposed a 60 lot single-family home subdivision on a 188-acre parcel that is a peninsula extended into High Rock Lake.  A state road extended down the peninsula, crossing a railroad near the top of the peninsula.  A preliminary plat for the development was submitted to Davidson County for approval, which was denied by the planning board but approved on appeal by the board of commissioners.  The plaintiff applied for a driveway permit from NCDOT to connect to the state road about one-quarter mile below the railroad crossing.  The NCDOT district engineer denied the permit, but on appeal the division engineer issued the permit conditioned upon (1) expanding the state road at the rail crossing to a width sufficient to accommodate two lanes of traffic and rail crossing gates and flashers and (2) secure required licenses and approvals from the owning and operating railroads and install required crossing improvements so as to retain the “sealed corridor” level of safety.  The railroad then concluded any crossing that did not include a grade separation was unacceptable.

The court held NCDOT had exceeded the scope of its authority.  While great weight is given to an agency’s interpretation of the statutes it administers, that interpretation is not binding.  The court found G.S. 136-18(29) addresses the design of driveway connections to a state roads, balancing the public interest in a safe highway system with an owner’s property rights of access to the highway.  While it authorizes regulation of the size, location, design, and construction of driveway improvements, it does not authorize requirements to make off-site improvements or to obtain another property owner’s approval.  Given the unambiguous nature of the scope of the grant of authority for driveway permits, further statutory construction is not required.

**North Carolina Court of Appeals**

**Cambridge Southport, LLC v. Southeast Brunswick Sanitary District**, \_\_\_ N.C. App. \_\_\_, 721 S.E.2d 736 (2012)

*Permit extension; Wastewater capacity allocation*

A developer proposed an 88-unit townhouse development that would receive utility services from the defendant.  In January 2006 the developer applied for a capacity allocation and paid impact fees totaling $264,000.  The application stated the developer would have three years to complete the project or the allocation would expire than the fees would be non-refundable.  The developer built the necessary infrastructure and built some townhomes, but then in 2008 went into default prior to project completion.  The bank foreclosed and the plaintiff acquired the property in late 2009.  When the plaintiff sought to restart the project in 2010, they were advised the prior utility allocation had expired, all prior payments had been forfeited, and the new allocation fee would be $648,000.

The court held the Permit Extension Act of 2009 (S.L. 2009-406, as amended) was applicable.  That law tolled the running of time periods for any ‘development approval” that was valid in the 2008 through 2011 period.  The court rejected the contention that the utility allocation was only a contract for service and held this to be an approval covered by the statute.  The court considered the express purpose of the law (facilitating completion of development projects stalled by the recession), the directive in the law for a liberal construction, and the provisions in the law directly addressing the impacts of permit extensions on utility capacity allocations.

**Fort v. County of Cumberland**, \_\_\_ N.C. App. \_\_\_, 721 S.E.2d 350, *review denied*, 366 N.C. 401 (2012)

*Interpretation; School*

TigerSwan submitted a site plan for a firearms training facility for military, law enforcement, and security personnel.  The project was proposed by on a 1,000 acre site in a rural portion of the county.  In addition to classrooms, the facility included multiple firing ranges.  The property was in an Agricultural zoning district that included as a permissible use “School, public, private, elementary or secondary.”  The zoning administrator approved the plan, classifying the business as a ‘private school.” Neighbors appealed that decision to the board of adjustment, noting the noise from firing ranges (the applicant estimated some 15 million rounds per year would be fired on site) and helicopters, as well as safety and environmental concerns. The board found the neighbors had standing and voted 3-2 to reverse the staff determination.  However, given the supermajority requirement of G.S. 153A-345(e), the decision was upheld.

The court first held the neighbors had standing based on their allegation that the use was not in fact permitted by the ordinance and that the noise, potential contamination, and safety concerns would affect their property and property values.  The court held that the limitation on lay testimony regarding property values set forth in G.S 160A-393(k)(3) related to competent evidence in a quasi-judicial hearing, not the requirement for standing in G.S. 160A-393(d).  The court then held the type of facility proposed was not a permitted use.  Inclusion of the terms “elementary or secondary” was intended to exclude other types of school, particularly given the express intent of the agricultural district and the inclusion of business and commercial schools as a separate use in the ordinance.  The court held the testimony of the planning director as to the original intent of the ordinance was irrelevant, as would be testimony from a member of the board adopting the ordinance.

**Town of Nags Head v. Cherry, Inc.,** \_\_\_ N.C. App. \_\_\_, 723 S.E.2d 156, *review denied*, 366 N.C. 386 (2012)

*Public trust area; Public nuisance*

As a result of storm damage, the defendant’s beach cottage was disconnected from utilities and left on the ocean beach.  The town sought to compel removal of the damaged structure as a public nuisance.  The court held that the state government is the only body that can bring an action to enforce public trust rights to freely use and enjoy the state’s beaches.  Since a principal aspect of the town’s public nuisance claim was the damaged structure was blocking public access along the beach, only the state has standing to enforce these rights.  The court also held that there were material questions of fact as to whether there was a reasonable likelihood of personal or property injury resulting from the damaged structure, so summary judgment on that matter was inappropriate.

**Orange County v. Town of Hillsborough**, \_\_\_ N.C. App. \_\_\_, 724 S.E.2d 560 (2012)

*Government uses; Permit conditions; Estoppel*

The town approved the county’s plans for an expansion of the Justice Center in the courthouse complex conditioned upon submission of an acceptable plan for remote parking in order to meet the off-street parking requirements of the zoning ordinance.  At the time of permitting the parties envisioned a remote park and ride lot.  At the completion of construction the county concluded the remote lot was not feasible and submitted an alternate parking plan, which the town rejected.  The town issued a notice of violation for occupancy of the Justice Center without a certificate of occupancy.

The court held the town authority to apply zoning to the construction and use of a building includes the authority to require compliance with the parking requirements related to that building.  However, the court found in a whole record review that the county had presented an acceptable, satisfactory alternative for meeting the parking requirement and thus the denial was arbitrary and capricious.  The court rejected that argument that the county’s acceptance of the permit condition and subsequent construction estopped the county from challenging the permit condition, holding that as counties are subdivisions of the state, application of estoppel would impair mandated governmental functions and was thus inapplicable.

**Templeton Properties, LP v. Town of Boone**, \_\_\_ N.C. App. \_\_\_, 724 S.E.2d 604 (2012)

*Quasi-judicial procedures*

The plaintiff was denied a special use permit in 2007 to construct a medical clinic in a residential zoning district.  After two hearings, the board of adjustment denied the permit and a letter to that effect was sent to the plaintiff.  In 2009 the court of appeals found the decision had not specified the findings of fact to support the denial and remanded the case for entry of “reviewable findings of fact.  On remand, the board stated it would allow arguments but would not accept new testimony.  The board however then allowed seven citizens to speak in opposition, reiterating the facts they felt supported denial of the permit.

The court held this action by the board was in effect receipt of new evidence by one side of the dispute.  The court held this violated the terms of the ordinance as well as the plaintiff’s due process rights to all of the essential elements of a fair trial. The court again remanded the case to the board to make findings of fact based solely on the evidence presented at the original board hearings.  The board could hear legal arguments but not receive additional factual testimony or evidence.

**Patterson v. City of Gastonia**, \_\_\_ N.C. App. \_\_\_, 725 S.E.2d 82 (2012)

*Housing code; Enforcement; Hearings; Statute of limitations*

The plaintiffs in this action were a husband and wife and their son.  The city initiated hosing code enforcement proceedings regarding 21 mobile homes owned by the  husband and wife.  The units were located on land leased by the parents.  The city code provided that if the homes were unfit for human habitation and repairs would cost more than 50% of the value of the structure, demolition could be ordered.  The code enforcement officer, after inspection, issued an emergency notice of violation and ordered the homes be brought into compliance with 48 hours.  This was followed by an order directing violations to be corrected within 30 days. The plaintiffs parents secured building permits to do so.  Two months later the city determined repairs had not been made, served complaints on the plaintiffs, and set a hearing on the violations. After the hearing, the city issued an order to demolish all of the units unless they were brought into compliance within 10 days.  Upon receipt of a notice of intent to repair, the officer gave them 30 days to complete the repairs.  Two months later the city found the repairs had not been made and the city council adopted resolutions ordering the homes demolished.  Five months later the city demolished six of the homes. The plaintiffs then sold one of the units and the property owner demolished the remaining units.  The plaintiffs sued, alleging violation of due process and an inverse condemnation.

The court held sovereign immunity does not apply to constitutional claims, so it was error to dismiss the due process claim on that ground.  However, this was harmless error as they were later allowed to amend their complaint to reassert that claim.  The court held that failure to serve the son with the notices, orders, and complaints sent to the parents did not violate due process.  The parents were the record owners of the units and there was no evidence presented that the son had any ownership interests evidence in a public record.  The city had no obligation to go beyond public records to ascertain ownership.

The court then held failure to give the plaintiffs notice and an opportunity to be heard before the city council prior to passing the ordinance of demolition was likewise not a due process violation.  The court found G.S. 160A-446 provided adequate remedies to address any alleged injury.  The plaintiffs signed a notice of intent to repair instead of appealing the initial order of the officer to demolish the units.  They chose not to appeal the supplemental order to the board of adjustment to seek additional repair time.  They failed to seek injunctive relief to restrain enforcement.  These statutory opportunities for administrative appeals and judicial relief provided an adequate remedy at state law to address any alleged injury and failure to exercise them bars a constitutional claim.

The court held the provision in G.S. 160A-443(5) that an owner be given a reasonable opportunity to bring a house into code conformance does not mandate an evidentiary hearing prior to an order of demolition.  Here after the officer issued an order of demolition, the plaintiffs were given a hearing before the officer on the question of whether repairs could be made at a reasonable cost and further had the opportunity to appeal that matter to the board of adjustment.

The court held sovereign immunity barred the tort claims and that an inverse condemnation claim for loss of the mobile homes was barred as they are considered personal property.

**Waste Industries USA, Inc. v. State of North Carolina**, \_\_\_ N.C. App. \_\_\_, 725 S.E.2d 875, *review denied*, 366 N.C. 241, 731 S.E.2d 686 (2012)

*Landfills; Commerce Clause; Vested rights*

This case involved the denial of a permit for a regional solid waste landfill proposed to be located in Camden County.  The challenged state legislation, adopted after a temporary moratorium on landfill permits, established a number of specific standards for landfill siting, including height, capacity, and size limits and buffers from wildlife refuges, state gamelands, and state parks (G.S. 130A-295.6).

The court upheld the state law, finding there to be no discriminatory purpose against out-of-state waste and no improper incidental effect on interstate commerce.  The court found the plaintiff had no common law vested right since reliance on a valid permit is required and no state permit had been issued.  The fact that the General Assembly changed the landfill siting standards after a permit application had been submitted, but prior to any action on that application, is not a misuse of the political process that gives rise to any right to have the application considered based on the law at the time of application.

**Fisher v. Town of Nags Head**, \_\_\_ N.C. App. \_\_\_, 725 S.E.2d 99, *appeal dismissed*, 366 N.C. 244, 731 S.E.2d 166 (2012)

*Condemnation; Beach nourishment; Public trust area*

As part of a ten-mile beach nourishment project, the town sought voluntary easements from oceanfront owners and, in the same letter, notified them that if they were not granted, the town would condemn an easement.  The letter further informed the owners that the town had determined no compensation would be paid for the easement, even if condemnation was used.  The plaintiff owners sought injunctive relief prior to condemnation.

The court held the letter provided adequate notice on an intent to condemn.  While not precisely meeting the statutory notice requirements, it did clearly indicate the proposed action and cited the statutory provisions for condemnation in bold type.  The general description of the dry sand beach where the sand was to be pumped was deemed to be adequate.  The court held that a monetary payment was not necessarily due, as the value added by the beach nourishment could be sufficient compensation, but noted that issue should be addressed in a condemnation hearing, not in this action for a preliminary injunction.

**Sanford v. Williams**, \_\_\_ N.C. App. \_\_\_, 727 S.E.2d 362, *review denied*, 366 N.C. 246, 731 S.E.2d 144 (2012)

*Enforcement; Restrictive covenant; Exhaustion of administrative remedies*

The defendant constructed a detached carport at his home in Hickory after securing required zoning and building permits.  Both permits required a five-foot side yard setback.  When the plaintiff, the adjacent owner, complained that he carport as constructed violated the zoning ordinance, the town issued a verbal stop order and asked the defendant to submit a survey.  After receiving the survey the city took no further action.  The plaintiff brought this action to enforce restrictive covenants and to compel city enforcement of the zoning setbacks.

The covenants allowed a single family residence and a “garage” on the property.  The court held a carport was within the ordinary or customary meaning of a garage and was thus permitted.  The court held the covenant’s ten-foot side yard requirement for a “home” did not apply to a detached carport.  Because the plaintiff did not appeal the issuance of the zoning permit to the board of adjustment, they failed to exhaust their administrative remedies on that issue and thus the trial court lacked subject matter jurisdiction to hear it.

**MCC Outdoor, LLC v. Town of Wake Forest**, \_\_\_ N.C. App. \_\_\_, 729 S.E.2d 694 (2012)

*Billboard; Judicial process*

Plaintiff owned a billboard that had been in place for 45 years.  The sign was situated on leased property, with an annual lease renewable for up to ten years.  The property was sold near the end of the ten year period and the new owner obtained a special use permit for a shopping center.  A condition on the permit was removal of the billboard “as soon as possible with no new lease or lease extension allowed.”  At the termination of the lease, it was not renewed and the plaintiff removed the sign at the owner’s direction.  The plaintiff sued the town for just compensation for the sign.  The critical issue was whether the town had ”removed or caused to be removed” the sign, thus triggering the compensation requirement under G.S. 136-131.1.  There was conflicting evidence on whether the permit requirement was the sole reason for non-renewal of the sign lease, so the court held the case not to be appropriate for summary judgment given a genuine issue of material fact.

**Russell v. Donaldson**, \_\_\_ N.C. App. \_\_\_, 731 S.E.2d 535 (2012)

*Restrictive covenants*

The court held that short term rentals of single family homes did not violate a covenant prohibiting use of the property for “business or commercial use.”

**American Towers, Inc. v. Town of Morrisville**, \_\_\_ N.C. App. \_\_\_, 731 S.E.2d 698 (2012), *review denied*, 743 S.E.2d 189 (2013)

*Special use permit*

The plaintiff applied for a special use permit to erect a telecommunication tower in an “industrial management” zoning district.  The permit was denied on the grounds that it was not in harmony with the surrounding neighborhood (some of which was residential, others portions were undeveloped), was inconsistent with the land use plan (which suggested the property may be rezoned to residential in the future), and a failure to show the project would not substantially injure neighboring property values.  The court held the first two grounds did not support permit denial.  Authorization of a special use permit for a particular use in a zoning district establishes a prima facie case of harmony with the surrounding neighborhood.  The proposal was consistent with the binding zoning plan by virtue of being in the IM zoning district, which controls over a goal in a non-binding land use plan.  However, the applicant failed to produce site-specific analysis demonstrating the tower would not harm neighboring property values, so the permit denial was upheld.

**MNC Holdings, LLC v. Town of Matthews**, \_\_\_ N.C. App. \_\_\_, 735 S.E.2d 364 (2012)

*Interpretation; Nonconformities*

The plaintiff operated a medical waste incinerator.  When the town annexed the facility in 1991 it rezoned the property from an industrial to a residential zoning district, making the facility a legal nonconforming use.  The plaintiff sought an approval (characterized by the court as a “variance”) to allow modifications to the structure in order to comply with federal and state air quality regulations.  The ordinance prohibited structural alterations for buildings housing nonconforming uses except those “required by law or an order . . . to ensure the safety of the structure.”  The plaintiff contended this allowed alterations to comply with environmental laws while the town contended only modifications related to building safety were allowed.  The court agreed the provision should be interpreted to allow alterations “when required by law” in general.  Since the plaintiff was compelled by state law to make these alterations, the provision should be construed liberally to allow the required changes.

**Morgan v. Nash County**, \_\_\_ N.C. App. \_\_\_, 735 S.E.2d 615 (2012), *review denied*, 366 N.C. 561, 738 S.E.2d 379 (2013)

*Standing; Plan consistency; Contract zoning*

Nash County rezoned a 147-acre tract of land from Rural Commercial and Residential to a General Industrial zoning district.  The property had been acquired by a not-for-profit economic development corporation (of which the county was a member) to facilitate the recruitment of a large poultry processing plant.  The new zoning district would accommodate such a plant, along with a variety of other industrial uses.  If a poultry processing plant were to be sited on this parcel, it would also require a hatchery and land for a spray-field for the processing plant’s treated wastewater.  The not-for-profit acquired a site two miles away that could be used as a hatchery and another site some miles away that could be used as a spray field (potential uses that could be undertaken on those sites without a rezoning). A November 2010 rezoning of the site was challenged and is addressed by an unpublished Court of Appeals decision, *Albright v. Nash County*, 731 S.E.2d 276 (2012).  This action challenged a second rezoning, adopted in April 2011.  The plaintiffs were the City of Wilson and several land owners.

The court held the city did not have standing to challenge the county rezoning of this property.  The city contended the spray field proposed to be used by a poultry processing plant was within the watershed for the town’s water supply source and would threaten the quality of its water supply.  The court noted that the site for the potential spray field had not been rezoned and that such a use could be lawfully undertaken where proposed regardless of the challenged rezoning.  Thus the city’s alleged injury would not be redressed by an invalidation of the rezoning.  Further, given that any spray field would have to comply with state and federal effluent regulations, harm to the city’s water supply was conjectural or hypothetical.  Thus there was no standing.  Since the challenged rezoning did not enable use of the spray field site, the court also held that the city would likewise not have standing as the rezoning did not “directly” affect the city.  While owning adjacent property is not necessary for standing, proximity is a factor and here the city’s property was 3.5 miles away and too remote.

The county adopted a statement of plan consistency and reasonableness concurrently with the rezoning.  The court held the statutory mandate in G.S. 153A-341 to adopt a statement “prior to” adoption of a zoning amendment allows contemporaneously adopting both the required statement and the amendment.

The court held that the rezoning did not constitute illegal contract zoning.  The fact that the county was recruiting a potential user of the site and that this particular use was known to all parties does not in and of itself constitute contract zoning.  There was no bilateral or reciprocal agreement with a potential user and no obligation to sell the land to this user.  The county was explicitly aware that a variety of other industrial uses would be authorized by the rezoning, as each board member was provided a list of all permitted uses and the list was read aloud by staff at the rezoning hearing.

**Erthal v. May**, \_\_\_ N.C. App. \_\_\_, 736 S.E.2d 514 (2012), *review denied*, 736 S.E.2d 761 (2013)

*Restrictive covenants*

The court held that boarding up to ten horses did not violate the restrictive covenants in an equine community subdivision that limited uses to single family residences and accessory buildings associated with pasturing horses.

**Federal Cases**

**Griffin Farm & Landfill, Inc. v. Town of Unionville**, 2012 WL 3257789 (W.D. N.C.)

*Vested rights; Landfill*

Plaintiff claimed to have begun operation of a construction and demolition landfill in pursuant to a county special use permit.  The area was subsequently incorporated and the town in 2004 issued the plaintiff a five-year franchise (and a state five-year permit was then also issued in 2004).  At this time the town denied a permit to allow an industrial solid waste landfill at the site. In 2008 the plaintiff stopped accepting waste rather than complying with new state regulations.  In 2009 the town denied a renewal of the franchise.  The plaintiff contested this denial, claiming a vested right to continued operation.  The court held no vested rights existed.  At the time the franchise was denied, the plaintiff had no valid state or local permits in hand.  They had substantial notice that renewal of their franchise was not certain. They similarly had no statutory vested rights.  As they had no property right to a renewal authorization for the landfill, there could be no taking.  As they had no reasonable investment-backed expectation to a franchise renewal, their takings claim must fail.

**Allison Outdoor Advertising, LP v. Town of Canton**, 2012 WL 4061510 (W.D. N.C.)

*Signs; First Amendment; Pleadings*

The plaintiff applied for nine billboards, all of which were denied by the town because they were proposed to be located in a C-2 zoning district and billboards were not allowed in that district. The plaintiff appealed to the board of adjustment, contending the more recently adopted sign ordinance should be applied rather than the zoning restrictions.  The board held one billboard should be permitted as it was actually in a different zoning district and upheld denial of the remaining eight signs proposed for the C-2 district.  The plaintiff also challenged the constitutionality of the sign and zoning ordinances.

The court held the plaintiff had standing to challenge the constitutionality of only the provision of the zoning ordinance under which the denials were made, not all aspects of the two ordinances. The court dismissed the constitutional claims, noting they were conclusory allegations and thus improperly pled.  Moreover, the allegation of a failure of the ordinance to enumerate a governmental interest to be advanced or societal purpose fails in that the zoning ordinance had a statement of purpose reflecting the state enabling law and an explicit declaration of a more specific purpose within the ordinance is not required.