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2020 North Carolina Legislation Related to Planning and Development Regulation

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The 2020 session of the North Carolina General Assembly convened on April 28, 2020, and initially addressed several bills directly related to the emergency situations caused by the COVID-19 pandemic. Later in May legislators moved to the regular business of a "short session"—taking up budget adjustments, bills that had passed the chamber of introduction in 2019, and reports from study commissions. The legislature largely completed its work for the session at the end of June, but returned in July to consider several gubernatorial vetoes, appointments to various boards, and technical corrections. In July the General Assembly adjourned until September, at which time they are to consider additional appropriation measures related to COVID-19. Additional legislative action affecting planning and development regulation is unlikely, but if it occurs it will be described in a supplement to this bulletin.

A relatively small number of bills affecting planning and development regulation were enacted in 2020. These included an update to Chapter 160D and amendments to the law regarding system development fees collected by utilities.

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COVID-19 Response

Beginning in the spring of 2020, COVID-19 and related shutdowns prevented some in-person meetings, slowed approval processes, delayed development projects, and caused broader economic impacts. Thus, the legislation adopted by the General Assembly addressing the impacts of COVID-19 included provisions for remote public meetings and permit extension.

Remote Public Hearings

S.L. 2020-3 (S.B. 704), Section 4.31(a), provides authority and procedures for remote meetings by simultaneous communication during declarations of emergency by the governor or General Assembly. This authority, outlined at G.S. 166A-19.24, is limited to the area and duration of the declared emergency. These new rules and procedures apply to a *remote meeting*, defined as an official meeting "with between one and all of the members of the public body participating by simultaneous communication." If all members of the board are together in person for a meeting, it is not a remote meeting subject to these limits and procedures. The rules apply to remote public meetings generally; as discussed below, additional limitations are placed on quasi-judicial evidentiary hearings that may occur during a remote public meeting.

Frayda Bluestein's blog post, "New Rules for Meetings of Public Bodies during State-Level Declared Emergencies," provides a thorough analysis of the provisions, summarized here. For a remote public meeting during a declared emergency, the local government must provide proper notice, including information about how the public can access the meeting. The method of remote meeting must allow members to hear, and be heard by, other members of the board and the public. *Simultaneous communication* is defined broadly to include conference telephone, conference video, and other electronic means. The remote meeting must be simultaneously streamed live online or otherwise made available to the public. Minutes must reflect that the meeting was remote, how board members accessed the meeting, and when board members joined or left the meeting. All chats by instant message, text message, or other written communication by board members regarding the transaction of public business are deemed public records.

If board members are not visible, they must identify themselves for roll call, deliberations and motions, and voting. All documents must be provided to the board members. All discussions, deliberations, and actions must be clear to the listening public; board members must not refer to a matter merely by letter, number, or other designation. All votes are by roll call.

With regard to quorum, board members count as present only during the period when they maintain communication; if the connection is dropped, the member is no longer present for quorum. Similarly, votes by board members are counted as if the member were physically present only while the simultaneous communication is maintained.

Remote Quasi-Judicial Hearings

Under Section 4.31 of S.L. 2020-3, new G.S. 166A-19.24 authorizes local governments to hold quasi-judicial evidentiary hearings by remote meeting during a declared emergency, subject to notable limitations. With those limitations and the legal and practical challenges of ensuring due process, quasi-judicial evidentiary hearings remain difficult, but not impossible, to manage remotely.

The provision for remote quasi-judicial evidentiary hearings is permissive: "A public body may conduct a quasi-judicial proceeding as a remote meeting" when certain conditions are met. Remote evidentiary hearings are not required. But some circumstances—such as if a property owner is dependent upon the issuance of a particular approval or if a shot clock is expiring for an application—may make a remote evidentiary hearing necessary.

Under the new law, a local board may conduct a quasi-judicial evidentiary hearing remotely only if three conditions are met: (1) the right to a hearing and decision occurs during the emergency, (2) all individuals with standing consent to the remote hearing, and (3) all due process rights are preserved.

The right of an individual to a hearing and decision occur during the emergency. The phrasing and meaning here are ambiguous. That said, this provision may be reasonably interpreted as allowing a quasi-judicial evidentiary hearing to continue remotely if, under normal circumstances, that hearing would have occurred during the time of the declared emergency. The intent of the new law is to provide continuity of government and relief from the crisis. The title of the law is An Act to Provide Aid to North Carolinians in Response to the Coronavirus Disease 2019 (COVID-19) Crisis, and Part VI, which includes these rules on quasi-judicial hearings, is titled Continuity of State Government/Regulatory Relief. Thus, this particular provision can be reasonably interpreted as allowing more, not fewer, hearings to be remote. Additional conditions (discussed below) will, in any case, prevent many hearings from going remote.

An alternate interpretation of the provision is that remote evidentiary hearings are permitted only for those matters where a decision shot clock will expire during the declared emergency (the "right . . . to a hearing and decision occur during the emergency"). A preservation commission, for example, must decide a request for a certificate of appropriateness within 180 days. There is a statutory obligation to hear the case within a specified time. In contrast, variances typically get a hearing and decision in a reasonable time—there is no right to a variance hearing and decision by a date certain. A narrow interpretation of the new law would say that certificates of appropriateness and other approvals with shot clocks may be handled remotely, but not other quasi-judicial decisions. This narrow interpretation, though, carves out a broad range of quasi-judicial development decisions and seems to contradict the legislative intent.

All persons subject to the quasi-judicial proceeding who have standing to participate in the quasi-judicial hearing have been given notice of the hearing and consent to the remote meeting. The persons with standing here will be the same as those identified by G.S. 160A-393 for standing to appeal a quasi-judicial decision to superior court: the applicant, an individual with an ownership interest in the subject property (or an option for such), the local government (when a decision by the local government is being appealed), an individual who will suffer special damages, or an association that includes a member who will suffer special damages. In order to hold a remote evidentiary hearing under the new statute, the local government will need consent from each of those parties with standing. To be clear, this provision is specific to parties with legal standing; it does not give a member of the general public a veto over a remote evidentiary hearing.

Determining standing of the applicant, the landowner, and the local government may be easy, but determining standing for neighbors who suffer special damages is more challenging, as highlighted in recent case law and as outlined in this blog post on standing and quasi-judicial hearings. And, in contrast to a court case where the parties are known ahead of time, for many zoning matters individuals with standing may not assert rights until the hearing—or even after the hearing.

This already-tricky area of quasi-judicial practice is further complicated by the new law on remote evidentiary hearings. The new statute for remote meetings requires consent from

all persons with standing, even if they are indifferent to the case. The local government must therefore identify who has standing prior to the hearing. Standing, however, is a question of law for the board, not an administrative decision for staff.

One option is to seek consent from each nearby property owner who receives notice (essentially presuming they have standing). This option would be overly generous to the neighbors' case for standing, but it would cast a broad net to ensure consent from anyone who does have standing. The request for consent could even invite the individual to allege standing (as is sometimes requested on applications of appeals of staff decisions or appeals of certificates of appropriateness). If a neighbor withholds consent, then the board could either wait and hold the evidentiary hearing in person at a later time or attempt the remote hearing, starting with the threshold question of standing of the individual withholding consent. The latter option, however, would be a practically awkward and legally tricky remote hearing addressing the standing of an individual who is objecting to the remote hearing.

Alternatively, a local government could seek consent only from a very few neighboring owners with a clear showing of special damages (along the lines of the *Cherry* case discussed in the blog on standing referenced above). Then, a challenge from another individual would be resolved on appeal to superior court. A problem with this approach is that a narrow determination of standing is made by staff (not the board) and prior to the hearing itself.

Regardless of the approach, it will be prudent to send notice of the decision to the same individuals that received notice of the evidentiary hearing—apprising those interested individuals of the outcome and starting the clock for appeal to superior court.

All due process rights of the affected parties are protected. Finally, as is always the case in quasi-judicial evidentiary hearings, the due process rights of the parties must be honored in a remote evidentiary hearing. However, doing so will present legal and practical challenges. These challenges are not insurmountable, but they are substantial. How is evidence submitted and reviewed? How are witnesses cross-examined? What if a party does not have the technology or connectivity to participate fully? All of these questions must be addressed if and when a local government proceeds with a quasi-judicial evidentiary hearing.

Some of those legal concerns and practical considerations are outlined in a recent blog post entitled *Remote Participation in Quasi-Judicial Evidentiary Hearings*. Among other things, local governments should use videoconferencing (and test it out ahead of time), establish clear ground rules for all involved, and avoid handling hotly contested cases remotely, if possible.

Permit Extension

S.L. 2020-3, Section 4.40, grants permit extension for certain local government approvals related to development and outlines the term of extension, the types of approvals extended, obligations of the approval holder, and exclusions from extension.

Term. For qualifying development approvals, the term of approval and any vested right is extended for five months. So, for example, typically a building permit issued on February 1, 2020, would expire six months later, on August 1, 2020. Under the new permit extension law, since the building permit was valid between March 10 and April 28, the approval is extended five months to January 1, 2021.

Section 4.40(g) states that the approval extension law expires September 28, 2020. What effect this has on an approval that, under the extension law, is extended beyond September 28 is unclear. Arguably the expiration of the law would end any extension, but that read of the law will shorten the extension of many approvals.

Qualifying development approvals. To qualify for extension, the development approval must have been valid at some point between March 10, 2020, and April 28, 2020. *Development approval* is defined broadly in the legislation to include all of the following: erosion and sedimentation control plans; building permits; sketch plans, preliminary plats, or final plats; site-specific development plans or phased development plans; development permits; development agreements; and certificates of appropriateness.

Obligations of approval holder. Even with the permit extension, the developer must still comply with all applicable laws, regulations, and policies in effect at the time of the development approval. The developer must maintain all performance guarantees for the duration of the extension or until affirmatively released from that obligation by the governing body. The developer must complete any infrastructure necessary to obtain a certificate of occupancy or other final development approval.

Termination and appeal. If an approval holder fails to comply with the terms of extension, then the government entity may terminate the extension. The government entity shall notify the approval holder of termination by written notice (including the reason for termination) to the last known address of the original approval holder. Such termination may be appealed to the board of adjustment.

Exclusions. The permit extension law does not:

- extend a permit from the federal government nor a permit for which the duration is set by federal law;
- shorten any development approvals;
- prevent extensions of development approvals;
- affect Department of Environmental Quality administrative consent orders issued between May 4 and September 28, 2020;
- prevent agencies from revoking or modifying a development approval;
- modify requirements necessary to retain federal delegation;
- modify obligations or rights under contract, including bond obligations or rights; or
- authorize charging water or wastewater tap fees that have previously been paid in full.

COVID-19 and Chapter 160D

S.L. 2020-3 addressed implementation of Chapter 160D in two ways. Section 4.33 of the law extended the Chapter 160D effective date to August 1, 2021, and Section 4.34 allows flood maps to be incorporated by reference into zoning maps.

The delay in the effective date of Chapter 160D from January 1, 2021, to August 1, 2021, was included in the event the General Assembly did not have time during the 2020 session to integrate legislation enacted in 2019 into Chapter 160D. Without action to integrate that legislation in 2020, all of the 2019 amendments to legislation incorporated into Chapter 160D would have been repealed on January 1, 2021, and replaced with the unamended comparable provisions in Chapter 160D. Since the General Assembly did have time to adopt legislation incorporating the 2019 amendments into Chapter 160D, this delay proved unnecessary, so it was repealed by S.L. 2020-25 (discussed below).

Section 4.34 makes immediately effective an adapted version of G.S. 160D-105(b), which allows adoption of state and federal maps by incorporation. This amendment will assist local governments with adoption of updated flood insurance rate maps by eliminating the need

for zoning map amendments, thus avoiding the cost of notice of these amendments and the requisite public hearings and meetings during the pandemic. As discussed below, Chapter 160D does not become effective in individual cities and counties until each jurisdiction updates its ordinances to conform to Chapter 160D or July 1, 2021, whichever occurs first. Therefore, this uncodified provision remains in effect and may be used by those cities and counties where Chapter 160D is not yet effective. This provision expires August 1, 2021 (after G.S. 160D-105 is effective statewide).

Chapter 160D Update

The General Assembly enacted S.L. 2020-25 (S.B. 720), making Chapter 160D effective June 19, 2020. This law also allows cities and counties greater flexibility in the timing for adoption of amendments to conform local development regulations to the new statute. Local governments can enact their amendments now, but they are not required to do so until July 1, 2021. This law also makes technical and clarifying amendments to Chapter 160D.

After six years of deliberation, as of June 19, 2020, Chapter 160D sets the legislative framework for local planning and development regulations. It better organizes these statutes and provides greater clarity and predictability. It unifies the authority, definitions, and procedures for all cities and counties to follow.

Original Chapter 160D Effective Date

Chapter 160D consolidates, reorganizes, and modernizes the state's planning and development regulation statutes and repeals the existing statutes that were collected and merged into this new chapter of the General Statutes. For details on Chapter 160D and a collection of resources about the law and its implementation, see the School of Government's Chapter 160D website.

As Chapter 160D was progressing through the legislature in 2019, the Senate Judiciary Committee was considering several other bills affecting local development regulations. The Committee merged the Chapter 160D bill (S.B. 422) with a set of statutory amendments proposed by the N.C. Home Builders Association (S.B. 355). This merger was based on the rationale that neither bill should be enacted without the other. The General Assembly adopted the combined bill. The governor signed the legislation, S.L. 2019-111, on July 11, 2019.

Part I of S.B. 355 amended statutes in Chapters 153A and 160A that were repealed and incorporated into Chapter 160D by Part II of S.B. 355. There was thus a need to merge Part I into Part II prior to the repeal of the city and county zoning statutes amended by Part I. The same was true for other legislation being enacted in 2019 that amended provisions of statutes being consolidated into the new Chapter 160D. To address this need for legislative action in 2020 to accomplish this merger, the effective date of Chapter 160D was made January 1, 2021. A second reason for a delayed effective date was to give cities and counties time to amend their development regulations to conform to the new law. Section 2.10 of S.L. 2019-111 directed the General Statutes Commission (GSC) to study and recommend legislation to the 2020 session of the General Assembly to integrate the 2019 legislation into Chapter 160D.

GSC Report

The General Statutes Commission staff began work on its required report and legislative recommendation in early 2020. The GSC met monthly through the spring to discuss draft legislation to integrate Part I of S.L. 2019-111 and other relevant 2019 legislation into Chapter 160D. Key parties engaged in the 2019 legislative debate, including the N.C. Homebuilders Association and the N.C. Bar Association's Zoning, Planning, and Land Use Section, actively worked with the GSC and its staff throughout the spring. At its May 1, 2020, meeting, the GSC approved its report and draft legislation. The GSC report is posted here.

A bill to implement the GSC recommendations was introduced as S.B. 720. The bill was unanimously approved by the Senate and the House. It was signed by Governor Cooper on June 19, 2020, which is the bill's effective date and therefore the new effective date for Chapter 160D.

New Effective Date

As described below, S.L. 2020-25 integrates Part I of S.L. 2019-111 and three other 2019 bills that amended affected legislation into Chapter 160D. As Chapter 160D includes a number of clarifying and simplifying improvements to the existing statutes as well as the needed integration of other legislation, the General Assembly concluded it was appropriate to make the amended Chapter 160D effective immediately rather than January 1, 2021. The new effective date of Chapter 160D is June 19, 2020.

The General Assembly recognized, however, that local governments need additional time to update their regulations to be Chapter 160D compliant. While some local governments have largely completed this work, others have been delayed by measures taken in response to the COVID-19 pandemic. Staff have been working from home, planning board meetings to review proposed changes have been delayed or canceled, and securing public engagement and holding public hearings have been difficult. The General Assembly concluded local governments should be given additional time to conform their regulations to Chapter 160D. Cities and counties able to act can do so immediately, but they have until July 1, 2021, if necessary.

Since local ordinances will be amended at various times to conform with Chapter 160D, a question arises about the validity of local ordinances not in compliance with the now effective new chapter. Section 51(b) of S.L. 2020-25 provides that valid local government development regulations now in effect remain in effect, but local governments must amend them to conform on or before July 1, 2021. It further provides that Chapter 160D applies to local government development regulation decisions made on or after the earlier of: (1) the effective date of the amendments to local development regulations made to conform to the provisions of Chapter 160D or (2) July 1, 2021. Until a local government makes its conforming ordinance amendments, the prior statutory provisions of Chapter 160A and 153A (as amended by Part I of the 2019 legislation) still apply. As a result, the provisions of Chapter 160D will be phased in around the state over the next year as each local government adopts its ordinance updates, with a deadline of July 1, 2021. Chapter 160D will fully apply to all local governments on July 1, 2021, even if no conforming amendments have been adopted.

Integration of 2019 Legislation into Chapter 160D

Part I of S.L. 2019-111. The most substantial amendments to Chapter 160D integrate amendments needed to incorporate Part I of S.L. 2019-111. The substantive provisions of Part I are reviewed in the School of Government's bulletin on 2019 planning and development regulation.

Some of the integration was accomplished by simply inserting the language added by Part I into the appropriate location in Chapter 160D. For example, the provision limiting down-zonings initiated by someone other than the landowner or the local government is added as G.S. 160D-601(d). The requirement for actual notice to the landowner for third-party rezoning proposals in G.S. 160D-602(d) is deleted. The limits on conditions in conditional zoning are added to G.S. 160D-703(b), and similar limits on special use permit conditions are added to G.S. 160D-705(c).

The provisions in Part I regarding judicial review of development regulation decisions were incorporated into Article 14 of Chapter 160D. The provision on supplementing the record on appeal was added in G.S. 160D-1402(i), the provision on loss of a property interest not rendering certain claims moot was added as G.S. 160D-1402(j1), and the provision on stays added as G.S. 160D-1402(n). A new section G.S. 160D-1403.1 was added to incorporate the provisions on civil actions and joinder and a new section G.S. 160D-1403.2 was added to incorporate the provision on estoppel not applying if the owner is challenging conditions not consented to in writing by the landowner or permit applicant.

The more challenging task was reconciling the Part I provisions regarding vested rights with G.S. 160D-108. This section of Chapter 160D collected the various statutory provisions regarding vested rights and placed them in a new organizational structure without changing the underlying policies of the existing law. The vested rights amendments made by Part I of S.L. 2019-111, however, were based on the structure of the then-existing law. It proved impossible to incorporate those 2019 amendments into the new structure of Chapter 160D-108 without making some modest policy adjustments. There was no consensus among the affected parties as to how to accomplish that. Nor was there consensus on whether the existing provisions relative to site-specific development plans (such as the list of exceptions) should be applied to all statutory vested rights. Given the legislative directive to add the 2019 legislation to Chapter 160D substantially intact, the General Statutes Commission proposed amending G.S. 160D-108 to return to the prior statutory structure of G.S. 160A-385 and 153A-344. However, since the 2019 amendments did not alter the structural framework for site-specific development plans, the provisions of G.S. 160D-108 relative to those vested rights were left intact and renumbered as G.S. 160D-108.1. The 2019 amendments to the permit choice statute were then left in G.S. 143-755, with a simple cross-reference in G.S. 160D-108(b), rather than being reiterated in Chapter 160D.

Other 2019 legislation. The prohibitions created by S.L. 2019-174 regarding setting minimum house sizes in zoning regulations was added as G.S. 160D-702(c), and the same provision relative to subdivision regulations was added as G.S. 160D-804(i). The revised provisions made by S.L. 2019-79 regarding performance guarantees to assure completion of improvements required by subdivision regulations were incorporated as a new section G.S. 160D-804.1. The provision limiting requirements for burial of existing power lines was incorporated as G.S. 160D-804(h). The reference to the official map act in G.S. 160D-916(b) was repealed, as that law was repealed by S.L. 2019-35. The revised provisions on certification of building components made by S.L. 2019-174 were incorporated into G.S. 160D-1106, and a clarified version of the provision regarding making initial reviews of building permit applications within 15 days was added to G.S. 160D-1110. The provision on temporary occupancy permits made by S.L. 2019-174 was added to G.S. 160D-1116(b), and the provision requiring a security bond for these permits was deleted.

Clarifying Amendments

In addition to integrating previously adopted legislation into Chapter 160D, S.L. 2020-25 makes additional technical, stylistic, and clarifying amendments.

Plan required to retain zoning authority. One early issue that had arisen was exactly what type of plan must be adopted and maintained by a local government to retain authority to apply zoning regulations after July 1, 2022. As originally adopted, G.S. 160D-501(a) required adoption of a "comprehensive plan." Some smaller-population jurisdictions asked whether a land use plan would be sufficient. Section 11 of S.L. 2020-25 clarifies that either a traditional comprehensive plan or a simpler land use plan will suffice.

Section 3 of S.L. 2020-25 also amends G.S. 160D-102 to simplify the definition of a *comprehensive plan*. The original definition included other types of plans (such as small area plans, neighborhood plans, and transportation plans), which are now deleted from the definition. These other plans are still allowed, but the confusing inclusion of them within the definition of a comprehensive plan is removed. The permissible contents of a comprehensive plan set out in G.S. 160D-501(b) are not changed.

Reinsertion of omitted provisions. Four provisions in the existing statutes were inadvertently repealed with the adoption of Chapter 160D in 2019. S.L. 2020-25 reinserts them into the statutes.

G.S. 160A-439.1, which allows appointment of a receiver to rehabilitate, demolish, or sell a dilapidated house, was added to the statutes in 2018 after Chapter 160D had been drafted. The bill enacting Chapter 160D inadvertently failed to incorporate that statute. Section 38(a) of S.L. 2020-25 adds this provision as G.S. 160D-1130. The 2018 statute applied only to cities. The General Statutes Commission recommended extending this authority to counties as well in the interest of uniformity, reasoning that its use is optional rather than mandatory and those counties that wanted to use the tool could do so while those that do not would not be required to do so. However, the N.C. Association of County Commissioners advised the sponsors of S.B. 720 that it preferred the statute not be extended to counties, so the bill was amended prior to enactment to return to giving this power to cities only.

G.S. 153A-331(d) gives counties the authority to collect funds for road development in subdivisions located in municipal extraterritorial areas and then pass those funds to the city. That provision was inadvertently omitted from Chapter 160D. Section 20(a) of S.L. 2020-25 adds it as G.S. 160D-804(c)(3).

G.S. 160D-1405(c1) was added to reinsert the provision of G.S. 160A-364.1(d) and 153A-348(d), statutes that were also adopted after Chapter 160D had been drafted but not included in the 2019 enactment. These statutes set a ten-year statute of limitation for enforcement of requirements to terminate a nonconforming use.

Chapter 160D relocated the provisions regarding family care homes from Chapter 168 of the General Statutes to G.S. 160D-907. The existing statutory provisions in Chapter 168 were to be repealed upon the effective date of Chapter 160D. The repeal provision, however, inadvertently also repealed G.S. 168-23, which limits the application of private restrictive covenants to family care homes. Section 49 of S.L. 2020-25 eliminates the repeal of G.S. 168-23, leaving that statute in place.

Specification of types of hearings. One goal of Chapter 160D was to provide greater clarity as to the type of public hearing required prior to making development regulation decisions.

Rather than simply require a "hearing" or a "public hearing," Chapter 160D specifies whether the hearing is a *legislative*, *evidentiary*, or *administrative hearing* and defines those terms. While this clarification was made for most references to hearings, not all references to hearings were corrected in this manner. S.L. 2020-25 addresses this by specifying the type of hearing required in those few instances where the clarification was omitted in 2019. Most of these instances are administrative hearings related to building and housing code implementation (examples are in G.S. 160D-947, 160D-1005, 160D-1129, and 160D-1312).

Geographic jurisdiction for cities and counties. G.S. 160D-201 was updated to clarify partial geographic jurisdiction in cities and counties. Section 7 of S.L. 2020-25 adds G.S. 160D-201(c) to codify current case law that a city zoning and subdivision regulation must be applied to the city's entire planning and development regulation jurisdiction (all of its corporate limits and any extraterritorial jurisdiction). It confirms that a county may apply its zoning and subdivision regulations to all or a part of the unincorporated area of the county (but it does not carry forward the provision from G.S. 153A-342(d) that each zoned area be at least 640 acres with 10 separate property owners).

Duration of local approvals. G.S. 160D-108 was clarified to provide that while a local development approval expires in one year if no other time is set by statute, a local government has the option of providing for a longer life for some or all of its local approvals (such as providing that a special use permit expires if work is not commenced within two years).

Others. Other modest clarifications were made. G.S. 160D-108(g) was clarified to note the authority for continuing review to ensure compliance with the terms of project approval applies to all vested rights, not just site-specific development plans. G.S. 160D-1110 was clarified to clearly limit the provision requiring that initial permit application reviews be done in 15 days to building permit reviews, not all development approvals. G.S. 160D-1129 was amended to allow orders to repair, close, or demolish nonresidential buildings to be issued within areas defined in a duly adopted comprehensive plan. The title to G.S. 160D-1201(a), regarding unfit dwellings, was amended to clarify that the statute applies to occupied and unoccupied residential buildings.

Technical and Stylistic Amendments

S.L. 2020-25 also makes numerous technical and stylistic amendments to Chapter 160D. None of these changed the meaning of the amended provisions.

Greater uniformity of terminology was secured by using the term "city" throughout the Chapter rather than the term "municipality." Statutory cross-references were corrected, mostly where the cross-reference was based on an earlier edition of Chapter 160D and had not been updated as the bill evolved over three legislative sessions. The new effective date was updated wherever it appears in Chapter 160D. Unduly legalistic language was removed, passive voice and awkward provisions were edited, and additional gender-neutral language was employed.

Utility Provisions

S.L. 2020-61 (H.B. 873) makes specific changes to the rules for charging system development fees and the rules for permitting sewer connections for accessory dwelling units.

System Development Fees

System development fees are authorized impact fees for water and sewer infrastructure first authorized in 2017. System development fees are subject to detailed procedural and calculation requirements, as outlined in Article 8 of Chapter 162A of the General Statutes. G.S. 162A-213 sets forth the timing for fee collection. Previously, collection was at the time the local government committed water or sewer service or at the time of plat recordation. Now, rather than plat recordation, the fee may be collected at the time of application for a building permit or at the time of committing water or sewer service. If the local government requiring the fee is different from the local government issuing the building permit, then the permit-issuing government must require proof of payment of the system development fee. The statute prevents double-billing by stating that if a development has already paid fees at the time of plat recordation, the local government cannot charge again at the time of application for the building permit.

S.L. 2020-61 adds language to G.S. 162A-211 providing that, in certain circumstances, system development fees may be used toward previously completed capital improvements and toward capital rehabilitation projects. This option is available only under the combined cost method of calculation.

Sewer Lines for Accessory Dwelling Units

S.L. 2020-61 creates a new rule for permitting sewer lines shared by a principal and accessory dwelling unit on a lot. If the principal sewer line is permitted pursuant to certain regulatory standards, then the shared sewer connection is deemed permitted without additional application or fee. The legislation instructs the Environmental Management Commission to adopt rules consistent with this new statute.

2020 Farm Bill

The 2020 Farm Bill, S.L. 2020-18 (S.B. 315), makes several modest changes related to zoning of bona fide farm activities by county zoning regulations and municipal zoning regulation in extraterritorial areas. It adds hunting, fishing, and equestrian activities to the list of bona fide farm exemptions in G.S. 153A-340(b). This amendment became effective June 12, 2020. The 2019 version of this bill included a provision also including sport shooting ranges as exempt agritourism. That provision was deleted from the bill before passage.

As the Farm Bill made these amendments to only G.S. 153A-340, the subsequently enacted Regulatory Reform Bill, S.L. 2020-74 (H.B. 308), incorporates them into G.S. 160D-903(a).

The Farm Bill also modifies the statutory provision on signs advertising bona fide farms. It amends G.S. 136-129(2a) to provide that a sign advertising a bona fide farm can measure up to 3 feet by 3 feet and can be located on any property owned or leased by the owner or lessee of the farm.

Finally, the Farm Bill also includes a provision regarding permitting of on-premise or off-premise catering. It creates G.S. 153A-145.8 and 160A-203.2 to provide that local governments may not require a permit for the provision of catering services within the county or city when the services are offered by a catering business located on a bona fide farm. This provision was apparently intended to address privilege license and similar business permits rather than development approvals under development regulations.

Local Bills

Zoning Referendum

S.L. 2020-22 (H.B. 1156) allows Caswell County to conduct a nonbinding referendum to advise the county board of commissioners as to citizen views on the adoption of countywide zoning in the county's unincorporated areas. While the vote is advisory only, legislation to authorize it was necessary because otherwise the county had no authority to expend funds and use the election mechanism to conduct the vote. The referendum must be conducted prior to December 1, 2020.

Jurisdiction

The General Assembly made no changes in state law regarding city and county jurisdiction, other than the clarification to G.S. 160D-201 noted above. The legislature did continue its recent practice of enacting local legislation to amend the boundaries of specific cities.

S.L. 2020-36 (S.B. 201) deletes specified areas from the corporate limits of Bolton and Jacksonville. It adds specified area to the corporate limits of Dunn.