

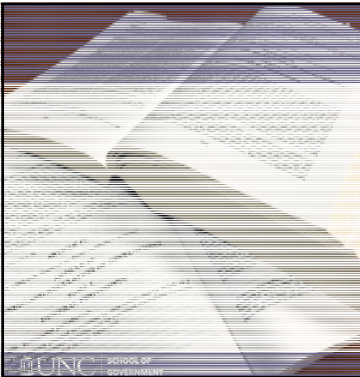


What is Chapter 160D?



An Overview of the
New Land Use Law for North Carolina



1



Consolidate



2

Organize

General Articles <ol style="list-style-type: none">General ProvisionsJurisdictionBoards, OrganizationAdministration, Enforcement, AppealsPlanningProcess to Adopt and Amend Regulations	Specific Articles <ol style="list-style-type: none">ZoningSubdivisionParticular Uses, AreasDevelopment AgreementsBuilding Code and Building ConditionHousing CodesMiscellaneous Additional AuthorityJudicial Review
---	---




3


Comprehensive Plan

Article 5 of Chapter 160D

In order to impose zoning regulations, a local government **must** have a comprehensive plan

Grace period until July 1, 2022







4

Decision Types and Hearing Types



	Legislative	Quasi-Judicial	Administrative
Example	Zoning Amendment; Conditional Zoning	Variance; Special Use Permit	Notice of Violation; Zoning Permit
Hearing	Legislative	Evidentiary	Typically none sometimes Administrative Hearing



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Uniform Terminology and Streamlined Processes

- “Special Use Permit”
 - Quasi-judicial approval with site-specific conditions
 - Replaces conditional use permit and special exception
- “Conditional Zoning”
 - Legislative approval with site-specific conditions
 - Replaces conditional use district zoning
- End of Conditional Use District Zoning
- Plan consistency statement simplified



6

General Administrative Authority

- Chapter 160D, Article 4
- General rules applicable across development regulations
 - Applications
 - Fees
 - Inspections
 - Determinations and permitting
 - Enforcement
 - Record-keeping

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CHAPTER 160D
A NEW LAND USE LAW FOR NORTH CAROLINA

7

Broadened Conflicts of Interest Standard

Conflict if . . .

- the outcome would have a direct, substantial, and readily identifiable financial impact on the decision-maker
- the decision-maker has a close familial, business, or other associational relationship with the applicant or other person subject to the decision

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Consensus Reforms



9

Related Changes




permit applicant is challenging conditions that were imposed and not connected to its winning try, a landowner or permit applicant."

SECTION 1.11. G.S. 6-21.7 reads as rewritten:

"§ 6-21.7. Attorneys' fees; cities or counties acting outside the scope of their authority.

In any action in which a city or county is a party, upon a finding by the court that the city or county acted outside the scope of its legal authority, **violated a statute or case law setting forth unambiguous limits on its authority, the court may shall** award reasonable attorneys' fees and costs to the party who successfully challenged the city's or county's action, **provided that if the court also finds that the city's or county's action was an abuse of its discretion, the court shall award attorneys' fees and costs action.** In any action in which a city or county is a party, upon finding by the court that the city or county took **action inconsistent with, or in violation of, G.S. 160A-360.1, 153A-320.1, or 143-755,** the court shall award reasonable attorneys' fees and costs to the party who successfully challenged the local government's failure to comply with any of those provisions. In all other matters, the court may award reasonable attorneys' fees and costs to the prevailing private litigant. For purposes of this section, "unambiguous" means that the limits of authority are not reasonably susceptible to multiple constructions."




SECTION 1.12. G.S. 160A-301 reads as rewritten:



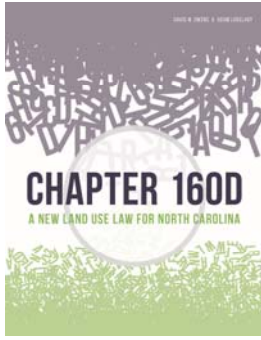
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Effective Dates

January 1, 2021	Chapter 160D
July 1, 2022	Comprehensive Plan Requirement



11



Additional Resources

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919-966-4208



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Context & Background





On the Clarification and Changes in Chapter 160D



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Origin of Proposal




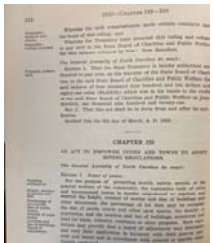
Developed as “good government” clarification, simplification, modernization by the NC Bar Association’s Zoning, Planning, and Land Use Section



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Origin of Proposal


- Affected statutes date to 1905, individually adopted and amended over the decades
- First substantial reorganization of planning and development regulation statutes since early 1970s
- Builds on recent modernization efforts
 - 2005 – APANC zoning update
 - 2009 – ZPLU judicial review
 - 2013 – ZPLU quasi-judicial procedures



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Origin of Proposal

Multi-year review and comment by local governments, development community, land use lawyers
First draft in 2013
Broad circulation for review and comment in 2014



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A NEW LAND USE LAW FOR NORTH CAROLINA

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Adoption

Introduced in 2015, passed House
Introduced in 2017, passed Senate
Introduced in 2019, as S.B. 448/H.B. 422

Enacted as Part II of S.L. 2019-111 (S.B. 355)



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CHAPTER 160D
A NEW LAND USE LAW FOR NORTH CAROLINA

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Overview

1) Consolidate city and county planning and development regulation statutes and related statutes as new Chapter 160D with uniform procedures

2) Reorganize statutes into more user-friendly framework

3) Consensus reforms to clarify and modernize provisions

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CHAPTER 160D
A NEW LAND USE LAW FOR NORTH CAROLINA

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Consolidation

1) City and county statutes previously in Chapters 160A and 153A merged into new Chapter 160D

2) Other related statutes also merged into Chapter 160D
Zoning family care homes,
Regulation of outdoor advertising,
Adult entertainment siting and regulation

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A NEW LAND USE LAW FOR NORTH CAROLINA

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Consolidation

1) Most provisions exactly the same for cities and counties

2) Intentional differences retained (such as farm exemption from county zoning)

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CHAPTER 160D
A NEW LAND USE LAW FOR NORTH CAROLINA

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Art. 1. General Provisions	Art. 8. Subdivision
Art. 2. Jurisdiction	Art. 9. Particular Uses, Areas
Art. 3. Boards, Organization	Art. 10. Development Agreements
Art. 4. Administration, Enforcement, Appeals	Art. 11. Building Code and Building Condition
Art. 5. Planning	Art. 12. Housing Codes
Art. 6. Process to Adopt and Amend Regulations	Art. 13. Miscellaneous Additional Authority
Art. 7. Zoning	Art. 14 Judicial Review

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Organization

1) Generally applicable provisions in Article 1
Definitions, moratoria, vested rights, conflicts of interest

2) Administrative provisions in Article 4
Staffing, applications, decisions, enforcement, appeals, quasi-judicial procedure

3) Ordinance adoption and amendment process in Article 6

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A NEW LAND USE LAW FOR NORTH CAROLINA

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Consensus Reforms

1) Modernize, clarify, and simplify the language used

2) Substantive amendments that all parties agreed were helpful and useful

3) No major changes in scope of local government authority

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A NEW LAND USE LAW FOR NORTH CAROLINA

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Delayed Effective Date

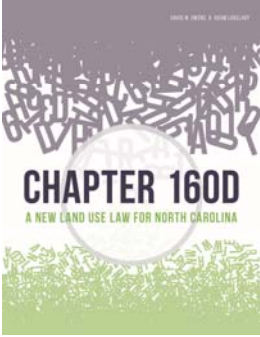
Effective 1/1/21

Amendments made in 2019 to statutes included in Ch. 160D to be integrated in 2020

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A NEW LAND USE LAW FOR NORTH CAROLINA

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Additional Resources

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Jurisdiction and Boards

Clarification and Changes in Chapter 160D



CHAPTER 160D



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Overview

Geographic Jurisdiction


- County authority in ETJ
- Split jurisdiction
- Pending jurisdiction

Boards

- ETJ appointments
- Rules of procedure
- Oath of office
- Appointments by governing board



CHAPTER 160D






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Geographic Jurisdiction


No change in basic allocation between cities and counties

- City regulation within corporate limits and in ETJ
- County regulation elsewhere





CHAPTER 160D



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Geographic Jurisdiction

County can adopt development regulation for ETJ if city fails to adopt comparable city regulation there




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A NEW LAND USE LAW FOR NORTH CAROLINA

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Split Jurisdiction

What if a parcel or development project is split between two jurisdictions?



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Split Jurisdiction

Can allow a single jurisdiction to handle all development regulation if city or county boundaries split a parcel

- Requires agreement of both jurisdictions and landowner
- Approved by resolutions of governing board
- Recorded within 14 days

160D-203

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Pending Jurisdiction Shift

May accept and process applications in anticipation of jurisdiction shift
May hold hearings in anticipation of jurisdiction shift
Make final decision after shift

160D-204

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A NEW LAND USE LAW FOR NORTH CAROLINA

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Boards

Clarifies and modernizes duties of boards
All collected in Article 3
Consistent format – Composition, duties

Article 3. Boards and Organizational Arrangements
160D-3-1. Planning boards
160D-3-2. Boards of adjustment
160D-3-3. Historic preservation commission
160D-3-4. Appearance commission
160D-3-5. Hearing appeals board
160D-3-6. Other advisory boards
160D-3-7. Extrajurisdictional representation on boards
160D-3-8. Rules of procedure
160D-3-9. Oath of office
160D-3-10. Appointments to boards

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Boards

Simplify calculation of number of ETJ members needed

Proportional based on population of ETJ area relative to population inside city limits
No required hearing on appointments by county commissioners
90 days to make appointments

160D-307

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A NEW LAND USE LAW FOR NORTH CAROLINA

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Boards

Allow rules of procedure for each board

Adopted by governing board

Board may adopt its own if governing board does not

Clerk to maintain

Post on jurisdiction's web site

160D-308

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A NEW LAND USE LAW FOR NORTH CAROLINA


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Boards

Require oath of office for all board members

Take upon assuming office

Use standard form



G.S. 11-7: "I, _____, do solemnly and sincerely swear that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me God."

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A NEW LAND USE LAW FOR NORTH CAROLINA

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Boards

Clarify appointment process

Made by governing board unless expressly delegated

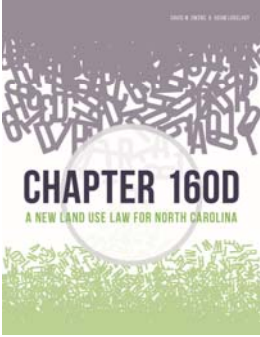
May have reasonable procedures to solicit and review potential members, make appointments

160D-310

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Substance of Development Ordinances




Clarification and Changes in Chapter 160D



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Key Points

- Authorize zoning exactions comparable to subdivision exactions
- Clarify map adoption and record-keeping
- Clarify types of zoning decisions
- Revise subdivision performance guarantees standards
- Clarify process for development agreements
- Clarify procedures and standards for special topic regulations



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Zoning Exactions

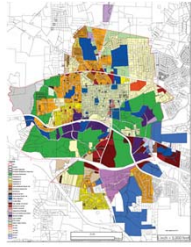
Exactions and performance guarantees generally allowed for zoning regulations to the same extent and limitations as with subdivision regulation (160D-702)





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Maps (160D-105)



- Official maps may be incorporated by reference (specific map or most recent)
- Clerk or other specified office must maintain for public inspection
 - Current and past zoning maps
 - Current maps incorporated by reference
- Paper or digital format is allowed

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Eliminate CUD/SUD

Can have conditional zoning and special use permits, but no longer as a combined process

- Cannot have district with only special uses
- Cannot do concurrent rezoning and special use permit
- Any former CUD/SUD becomes conditional zone

(160D-703; Section 2.9(b) of S.L. 2019-111)

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A NEW LAND USE LAW FOR NORTH CAROLINA

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Form-Based Code


Clear authority for form-based codes or districts (160D-703(a)(3))

1. LOT COVERAGE

2. SETBACK

3. HEIGHT

4. ACTIVATION



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A NEW LAND USE LAW FOR NORTH CAROLINA

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Other Zoning Changes

Allow administrative minor modifications of conditional zoning and special use permits (160D-403(d), -703(b), -705(c))

Allow city zoning of navigable waters within its jurisdiction (160D-702(a))

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Other Zoning Legislation
(Part I of S.L. 2019-111)


- No third-party initiated down-zoning petitions
- Petitioner needs to consent in writing to conditions in conditional zoning

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Subdivision



- Revised performance guarantee requirements (SL 2019-79)

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Development Agreements





- Legislative hearing, same notice as zoning map amendment
- May combine with conditional zoning
- Must list any exactions beyond those that could be mandated
- Enforcement by either party, including injunctions and penalties
- Ch. 160D, Art. 10



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160D Procedures for Specialized Ordinances



- Article 9 covers particular uses
- Specialized ordinances may include
 - airport zoning, floodplain zoning, water supply watershed, and mountain ridge protection ordinances
- 160D procedures apply



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Particular Land Uses

- Simplify city regulation of agricultural uses in ETJ – same as county zoning exemption
- No set age limit for manufactured homes
- Historic preservation
 - Same quasi-judicial process as others
 - Appeal of COA to BOA prior to judicial review optional rather than mandatory



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Building and Housing Codes

- Move periodic inspection limits from building code to housing code Article
- Uniform process for abandonment of intent to repair
- Apply standard 160D procedures for specialized regulations







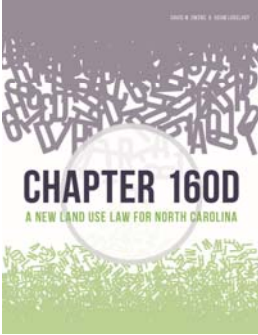
55

Key Points

- Authorize zoning exactions comparable to subdivision exactions
- Clarify map adoption and record-keeping
- Clarify types of zoning decisions
- Revise subdivision performance guarantees standards
- Clarify process for development agreements
- Clarify procedures and standards for special topic regulations



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Additional Resources

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Comprehensive Plan Requirement




Clarification and Changes in Chapter 160D



58

Key Points

- Comprehensive plan requirement for zoning
- Reasonably maintained
- Recommended elements
- Adopt as legislative action
- May coordinate with other plans



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Prior Law

No general requirement for a comprehensive plan






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New Requirement

Article 5 of Chapter 160D

In order to impose zoning regulations, a local government **must** have a comprehensive plan

Grace period until July 1, 2022




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2018 Survey Numbers



- 68% of responding cities have a plan
- 78% of responding counties have a plan

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“reasonably maintain”



1960s > 1970s > 1980s > 1990s > 2000s > 2010s > ...

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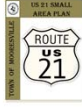

Suggested Plan Contents

- Issues and opportunities facing the local government
- Pattern of desired growth and development and civic design
- Economic development and community development
- Acceptable levels of public services and infrastructure
- Housing with a range of types and affordability
- Recreation and open spaces.
- Mitigation of natural hazards
- Protection of the environment and natural resources
- Protection of significant architectural, scenic, cultural, historical, or archaeological resources
- Analysis and evaluation of implementation measures





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Plan process and updates






- Adoption process is same as legislative zoning decision
- Still advisory
- Plan consistency



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Plan Coordination

- May be coordinated with other plans (CAMA, functional plans, regional plans)



66

Key Points

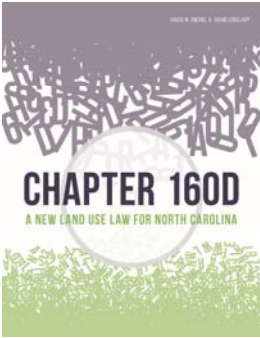
- Comprehensive plan requirement for zoning
- Reasonably maintained
- Recommended elements
- Adopt as legislative action
- May coordinate with other plans

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Decision Types and
Site-Specific Approvals

Clarification and Changes in Chapter 160D

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A NEW LAND USE LAW FOR NORTH CAROLINA

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Key Points

- Definitions for decision types and hearing types
- Procedures apply across development regulations
- End practice of “conditional use district zoning”
- Uniform terminology for “special use permit” and “conditional zoning”
- Allowance for administrative minor modification

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Legislative Decisions

a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals.

(19) 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.

(20) Legislative hearing – A hearing to solicit public comment on a proposed legislative decision.

(21) Local act – As defined in G.S. 160A-1(2).

(22) Local government – A city or county.

(23) Manufactured home or mobile home – A structure as defined in G.S. 143-145(7).

(24) Person – An individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private

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A NEW LAND USE LAW FOR NORTH CAROLINA

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Quasi-Judicial Decisions

(28) *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. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plans and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board.

(16) *Evidentiary hearing* — A hearing to gather competent material and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation adopted under this Chapter.

(17) *Governing board* — The site council or board of county commissioners. The

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CHAPTER 160D

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Administrative Decisions

"§ 160D-1.2. Definitions.
Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases defined in this section shall have the following meanings indicated when used in this Chapter.

(1) *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.

(2) *Administrative hearing* — A proceeding to gather facts needed to make an administrative decision.

(3) *Bona fide farm purposes* — Agricultural activities as set forth in G.S. 160D-9-3.

(4) *Charter* — As defined in G.S. 160A-1(2).

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	Legislative	Quasi-Judicial	Administrative
Character			
Example			
Hearing			
Decision-Maker			

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CHAPTER 160D

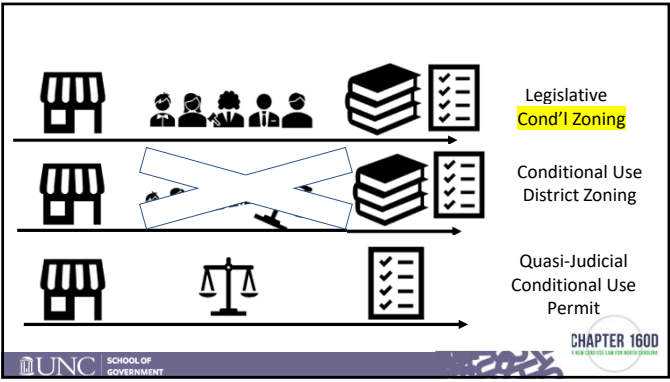
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Site-Specific Smorgasbord

Conditional use permit
Special exception
Conditional use district zoning
Special use permit
planned unit district zoning
Special use permit
Development Agreement

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Uniform Terminology and Streamlined Process

- "Special Use Permit"
 - Quasi-judicial approval with site-specific conditions
 - Replaces conditional use permit and special exception
- "Conditional Zoning"
 - Legislative approval with site-specific conditions
 - Replaces conditional use district zoning
- End of Conditional Use District Zoning
- Transition for existing approvals

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Minor Modifications

- Staff authorized to make modifications to
 - Development Approvals
 - Special Use Permits
 - Conditional Zoning
- Defined in the ordinance; parameters for amount of change
- No change in permitted uses or density
- Major modification goes through standard approval process

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A NEW LAND USE LAW FOR NORTH CAROLINA

79

Key Points

- Definitions for decision types and hearing types
- Procedures apply across development regulations
- End practice of “conditional use district zoning”
- Uniform terminology for “special use permit” and “conditional zoning”
- Allowance for administrative minor modification

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Additional Resources

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Legislative
Land Use Decisions

Clarification and Changes in Chapter 160D

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Notice and Hearing

- Must hold hearing for all development regulations with published notice
- Clarify “abutting properties” for mailed notice of hearing
 - Includes property across the street



**PUBLIC HEARING
REZONING**
For more information call
552-1429
Town of Fuquay-Varina
www.fuquay-varina.org

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Notice and Hearing

- Clarify timing for posted notices
 - Same 10-25 day as mailed notice
- Allow optional notice requirements (neighborhood meetings, etc.)



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Planning Board Review

- All zoning amendments must still be submitted to planning board for review and comment
- Clarifies that amendments to other regulations may also be submitted to planning board, but not required



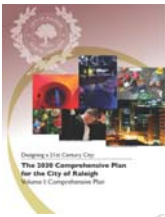
Rockingham County Planning Board
October 6, 2019
October 6, 2019 Rockingham County Planning Board Meeting





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Plan Consistency

- Simplify plan consistency statements
 - Delete requirement to use one of three forms of consistency statement
 - Briefly describe how action is or is not consistent with adopted plans
- Simplify plan amendment if inconsistent zoning amendment is adopted
 - FLUM deemed amended, not entire plan




Shaping a 21st Century City
The 2038 Comprehensive Plan
for the City of Raleigh
Volume 1: Comprehensive Plan





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Plan Consistency

- Can approve zoning amendment and plan statement with single motion
- Minutes can suffice if no formal statement approved
 - But only if the governing board was aware of and actually considered the planning board recommendation and the plan before acting on the amendment



PLANNING BOARD
A Greater Greenville
ROUTE 21



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Reasonableness

- Mandatory for zoning map amendments
- Optional for zoning text amendments
- Factors to address are set out
 - Same as for spot zoning analysis
- Can combine plan consistency and reasonableness statements

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A NEW LAND USE LAW FOR NORTH CAROLINA

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Voting

Simple majority vote on municipal first reading of development regulation amendments




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Voting

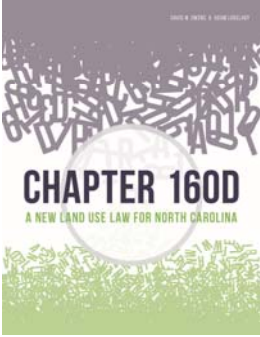
Additional conflict of interest prohibition -- Adds "close family relationship" to financial conflict



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Additional Resources

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Quasi-Judicial
Land Use Decisions

Clarification and Changes in Chapter 160D

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Uniform Terminology

All are to be called "special use permits"

Former "conditional use permit" or "special exception" become a "SUP"

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Uniform Procedures

160D-406

Same rules for all quasi-judicial decisions for all boards

Continuation of hearing allowed – no additional notice required if details announced at hearing

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Uniform Procedures

Meeting packets may be distributed prior to hearing

- Must go to parties at same time distributed to board
- Any objections to evidence included to be made at hearing



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Uniform Procedures

Administrative packet must be entered as evidence – formally present at hearing

- Application
- Plans, reports, documents, photos from applicant
- Staff reports
- Written comments received
- Any other material in the case file




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Uniform Procedures

Anyone may be allowed to present relevant evidence, but only parties may cross-examine, object, or act as a party

- Allowed at discretion of board
- Limited to relevant, non-repetitive evidence
- Consistently applied rule of procedure is advisable



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Uniform Procedures

Advisory review allowed, but may not be used as evidence for decision

- Many cities and counties send to planning board for review
- Allowed as a "preliminary forum" prior to evidentiary hearing
- Greater informality allowed
- No part of forum or recommendation may serve as the basis for the quasi-judicial decision

160D-301. Planning Boards.

(b) Duties

(6) To provide a preliminary forum for review of quasi-judicial decisions, provided that **no part of the forum or recommendation may be used as a basis for the deciding board.**

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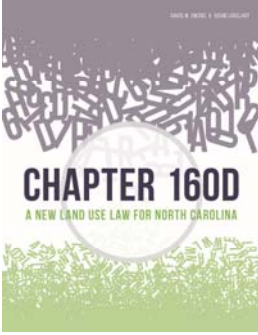
Other Changes

- May provide for administrative minor modifications
- May require SUP to be recorded
- May grant variance if needed for reasonable accommodation for persons with disabilities
- Must not impose conditions on special use permits that the local government does not otherwise have statutory authority to impose (Part I of S.L. 2019-111)

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Additional Resources

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Administrative Land Use Decisions




Clarification and Changes in Chapter 160D



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Key Points

- Clarify administrative authority
- Define types of decisions
- Confirm enforcement authority
- Confirm appeals process



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Art. 4 General Administrative Authority




Article 4. Administration, Enforcement, and Appeals.

Prior law

- Administrative authority was scattered or inferred

Article 4

- Staffing and administration of development regulations
- Development approvals (permits)
- Determinations
- Enforcement authority
- Appeals
- Quasi-judicial procedures



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Administrative Decisions

"§ 160D-1.2. Definitions.
Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases defined in this section shall have the following meanings indicated when used in this Chapter.

(1)

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.

(2)

Administrative hearing. – A proceeding to gather facts needed to make an administrative decision.

(3)

Bona fide farm purposes. – Agricultural activities as set forth in G.S. 160D-9-3.

(4)

Charter. – As defined in G.S. 160A-1(2).

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"Development Approvals"

- Zoning permit, site plan approval, quasi-judicial approvals
- Written (print or electronic)
- Applications by property owner or person with lease, option, or easement on the property
- Community notice and/or informational meetings may be required
- 12-month expiration (as general rule)




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"Determinations"

- Notices of violation, formal interpretations, determination of rights
- Ordinance may designate official to make determination
- Written determination provided to the owner and requester (if different)



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Staff Minor Modifications

- Authorized for
 - Development Approvals
 - Special Use Permits
 - Conditional Zoning
- Defined in the ordinance; parameters for amount of change
- No change in permitted uses or the density
- Major modification goes through standard approval process





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General Enforcement

160D-403, -404



- Inspections
- Stop Work Orders
- Certificates of Occupancy
- Notice of Violation
- Revocation of Development Approvals
- General Enforcement (penalties, fines, court order)
- Historic Preservation Enforcement



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Appeals of Administrative Decisions

- Quasi-judicial process
- To board of adjustment (unless stated otherwise)
- Covers all development regulations (unless altered)
- Notice effective 3 days after the notice is mailed
- Staff decision-maker must be witness (or current office holder)
- Enforcement actions, including fines, are paused during appeal



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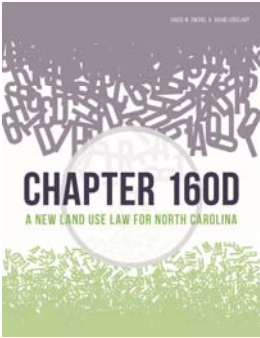
Key Points

- Clarify administrative authority
- Define types of decisions
- Confirm enforcement authority
- Confirm appeals process

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Vested Rights and Permit Choice

Clarification and Changes in Chapter 160D

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Key Points

- Provisions in Chapter 160D & Part I of S.L. 2019-111
- Permit choice is broadened
- Vested rights are collected and clarified
- Appeals and Attorneys' Fees


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Rights Despite Changing Rules

Permit Choice

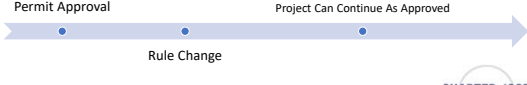


Application

Rule Change

Application Review
(applicant chooses old or new rules)

Vested Rights



Permit Approval

Rule Change

Project Can Continue As Approved

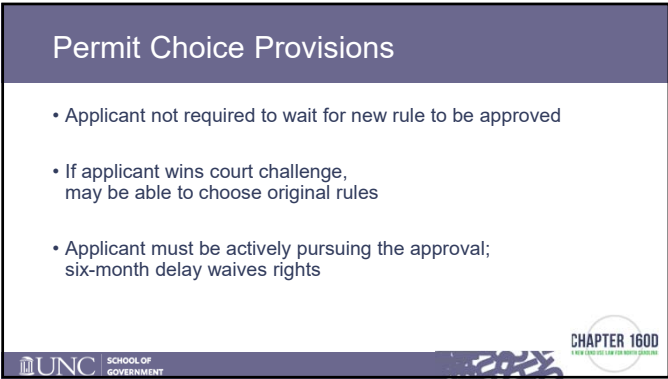
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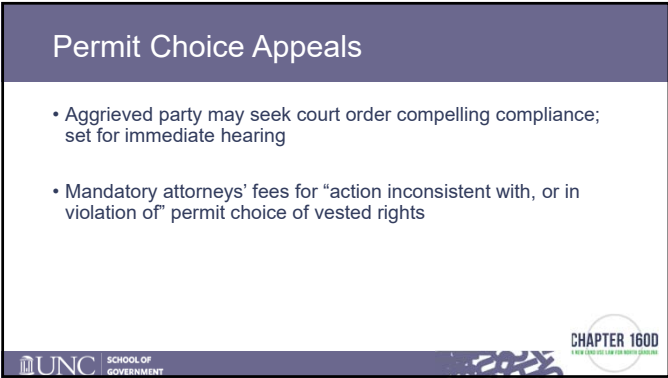
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Types and Terms of Vesting

- Building Permit (6 months)
- Development Approval (1 year)
- Site-Specific Vesting Plan (2-5 years)
- Multi-Phase Development (7 years)
- Development Agreement (per agreement)

- Common Law Vested Rights (reasonable)

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Vested Rights and Continuing Review

- Landowner must comply with requirements

- Local government may revoke the original approval for failure to comply with applicable terms, conditions, or development regulations

- Rights continue for set time after discontinuation of development (12 months in 160D; 24 months in Part I)

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Exceptions from Site Specific and Multi-Phase Vested Rights

- Written consent of the affected landowner
- Upon findings that hazards would pose a serious threat
- Upon compensation
- Upon findings of intentional misinformation or misrepresentations to obtain the approval
- Upon findings that State or federal law precludes the development as approved

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Determining Vested Rights

- Seek administrative determination from authorized official
- Or, straight to court with original civil action




- Mandatory attorneys' fees for "action inconsistent with, or in violation of" permit choice of vested rights



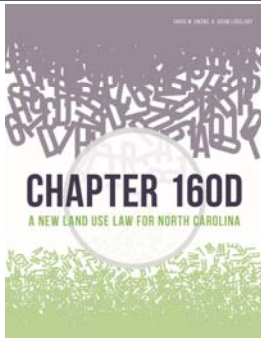
124

Key Points

- Provisions in Chapter 160D & Part I of S.L. 2019-111
- Permit choice is broadened
- Vested rights are collected and clarified
- Appeals and Attorneys' Fees



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Additional Resources

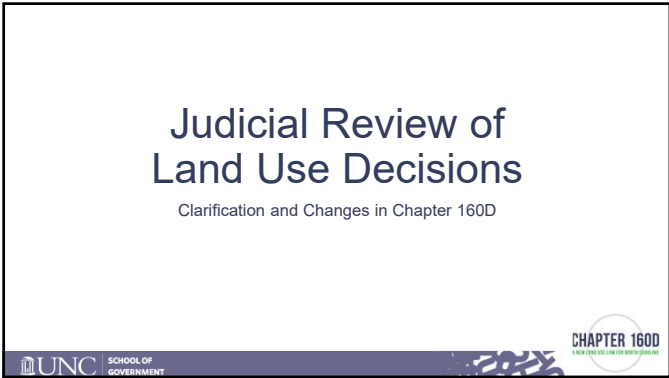
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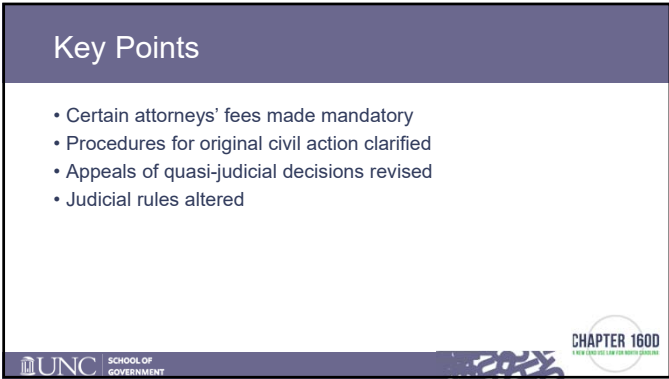
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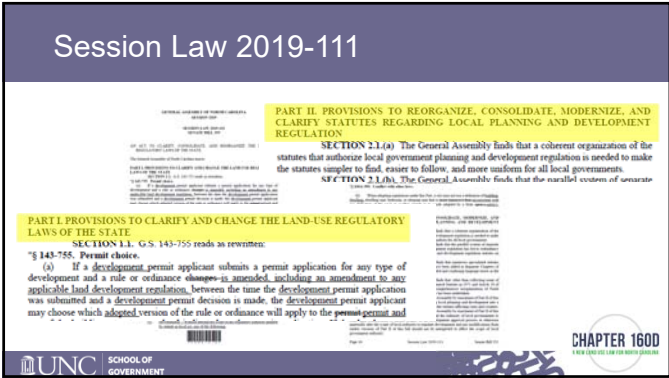
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Attorneys' Fees

petition applicant is challenging conditions that were imposed and not contested to in winning by a landowner or permit applicant."

SECTION 1.11. G.S. 6-21.7 reads as rewritten:

"§ 6-21.7. Attorneys' fees; cities or counties acting outside the scope of their authority.

In any action in which a city or county is a party, upon a finding by the court that the city or county acted outside the scope of its legal authority, violated a statute or case law setting forth unambiguous limits on its authority, the court may shall award reasonable attorneys' fees and costs to the party who successfully challenged the city's or county's action, provided that if the court also finds that the city's or county's action was an abuse of its discretion, the court shall award attorneys' fees and costs action. In any action in which a city or county is a party, upon finding by the court that the city or county took action inconsistent with, or in violation of, G.S. 160A-360.1, 153A-320.1, or 143-755, the court shall award reasonable attorneys' fees and costs to the party who successfully challenged the local government's failure to comply with any of those provisions. In all other matters, the court may award reasonable attorneys' fees and costs to the prevailing private litigant. For purposes of this section, "unambiguous" means that the limits of authority are not reasonably susceptible to multiple constructions."

SECTION 1.12. G.S. 160A-361 reads as rewritten:

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Original Civil Actions

- Local Legislative Decisions (160D-1401)
 - Ordinance amendment; rezoning
 - Declaratory judgment to challenge constitutionality, statutory authority, procedures
- Administrative Action (160D-405, -1401, Part I)
 - Notice of violation; zoning permit; ordinance interpretation
 - Commonly appealed to board of adjustment
 - Questions of constitutionality and statutory authority may be appealed directly to court
 - Statute of limitations one year after notice of decision delivered

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Original Civil Actions

- Vested Rights (160D-108, -1401, Part I)
 - Currently individual may seek staff determination and appeal to board of adjustment
 - New law clarifies right to go straight to court for vested rights
- Permit Choice (Part I)
 - “set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts.”
- Attorneys’ Fees (Part I)
 - Mandatory

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Appeals of Quasi-Judicial Decisions

- 160D-1402, Part I
- Court must allow supplementing the record for certain topics
 - Standing, conflicts of interest, constitutional violations, or actions in excess of statutory authority
- Technical opinion evidence (property values, traffic impacts, etc)
 - From non-expert is incompetent, even without objection
- *De novo* review of *prima facie* case
 - Question of whether a record contains competent, material, and substantial evidence is a conclusion of law

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Appeals of Quasi-Judicial Decisions

- Party may request a stay on approval or enforcement
 - In absence of stay on an approval, owner may proceed with development but no vesting if decision reversed
- Judicial Instructions
 - “shall remand,” limits on conditions, “shall reverse”

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Certificates of Appropriateness

- 160D-947
- Current law sends appeal from preservation commission to board of adjustment
- 160D sets default rule for appeal to go straight from preservation commission to superior court
- Local policy may still opt for board of adjustment review



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Part I Additional Judicial Rules: Joinder




- Original civil action may be joined with an appeal in the nature of cert.
- Procedures
 - Civil action governed by the Rules of Civil Procedure
 - Cert. appeal governed by statutory procedures for appeal
- Separate records
 - Record for cert. appeal may not be supplemented with discovery from civil action unless otherwise allowed
- Separate standards of review
 - De novo for original civil action; mixed for cert. appeal



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Part I Additional Judicial Rules

- Estoppel and Conditions
 - If applicant did not agree to conditions in writing, then estoppel is not a defense for the local government against a challenge to the condition
- Mootness
 - “an action is not rendered moot if the party loses the relevant property interest as a result of the local government action being appealed, and exhaustion of an appeal is required to preserve a claim for damages”
 - “[s]ubject to the limitations in the State and federal constitutions and State and federal case law,”



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Clarifying or Altering Amendments?

PART III. EFFECTIVE DATES

SECTION 3.1. Part I of this act is effective when it becomes law. Sections 1.4, 1.5, and 1.16 of this act apply to applications for down-zoning amendments and for driveway improvements submitted on or after that date and to appeals from decisions related to such applications filed on or after that date. Sections 1.1, 1.2, 1.3, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, and 1.17 of this act clarify and restate the intent of existing law and apply to ordinances adopted before, on, and after the effective date.

SECTION 3.2. Part II of this act becomes effective January 1, 2021, and applies to local government development regulation decisions made on or after that date. Part II of this act clarifies and restates the intent of existing law and applies to ordinances adopted before, on, and after the effective date.

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Key Points

- Certain attorneys' fees made mandatory
- Procedures for original civil action clarified
- Appeals of quasi-judicial decisions revised
- Judicial rules altered

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