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Overview

Since 2005, North Carolina law has required local governments to consider their adopted comprehensive or land use plans prior to amending zoning ordinances, and to issue statements confirming that consideration (as well as confirming that certain actions were reasonable and in the public interest). Chapter 160D clarifies and simplifies the process that local governments must use to perform this consistency review.

Deliberate consideration of plans can help produce more thoughtful decisions about proposed ordinance amendments. By using plans to help guide decisions regarding proposed development standards and projects, this procedure also supports plan implementation and assures that plans are put to the use for which they were intended.

The following sections (1) provide more detail on the legal requirements for plan consistency review (and in some cases, reasonableness statements); (2) offer some policy considerations; (3) present sample ordinance language, and (4) share examples of plan consistency statements and reasonableness statements used by communities in North Carolina.

Basic Procedures

This section explains how the updated requirements for plan consistency and statements of reasonableness work.

A) Plan consistency statements for zoning text or map amendments: North Carolina statutes require that planning boards provide written comments to governing boards on the consistency of proposed rezonings or text changes with the comprehensive plan and any other applicable plans adopted by the jurisdiction. In turn, governing boards must approve written statements documenting their consideration of the plans when making rezoning and zoning text amendment decisions, although they do not have to take actions that are consistent with the plan.

G.S. [160D-605](#) streamlines the plan consistency review process that must be followed by the governing board in the following ways:

- **Using a single motion:** Chapter 160D clarifies that the consistency statement does not have to be adopted as a separate motion prior to acting on the proposed zoning amendment. See G.S. 160D-605(a) and (c). This does not eliminate the option of approving the consistency statement by separate motion, as many boards did prior to implementing Chapter 160D. As a result, the board may choose whether to continue ruling on the proposed zoning amendment and the consistency statement with two separate motions, or to combine them into a single motion.

- **When there is no explicit governing board statement:** What happens if a board considers its land use plan, but fails to approve a consistency statement along with a zoning amendment? Before Chapter 160D, this omission could invalidate the entire amendment adoption. See G.S. 153A-341(b) and 160A-383(b). Now, if the minutes of the board meeting in which action was taken on the zoning amendment show that the governing board *actually considered* the plan, then the action is still valid. See G.S. 160D-605(a). While clear governing board approval of a written plan consistency statement is preferable and the legally safest course of action, actual board discussion about plan consistency that is fully reflected in the minutes will suffice. It is important to note that the minutes must reflect actual discussion and review of the substance of the plan – simply approving a staff report or ticking a checklist will not save the board’s action.
- **Only need brief statement:** Chapter 160D simplifies the required statement by eliminating the 2017 requirement that it take one of three specified forms. G.S. 160D-605(a) requires only a “brief statement describing whether [the board’s] action is consistent or inconsistent” with approved plans. Formal findings and elaborate analysis are not required. At the same time, North Carolina courts have held that a simple conclusion or checklist is still inadequate: *some* analysis and explanation is required. For instance, the North Carolina Supreme Court, in *Wally v. City of Kannapolis*, 365 N.C. 449, 722 S.E.2d 481 (2012), held that the statutes require some explanation and description related to the specific matter at issue; a staff report analyzing plan consistency and a general statement regarding the board’s conformance to procedural guidelines are not enough. In *Atkinson v. City of Charlotte*, 760 S.E.2d 395 (N.C. Ct. App. 2014), the North Carolina Court of Appeals rejected a boilerplate conclusion that the proposed rezoning was consistent with the plan. The *Atkinson* court explained that the statement must *describe* whether the amendment is consistent, not just conclude that it is consistent.

G.S. [160D-605](#) also clarifies how to handle inconsistencies between plans and approved zoning actions:

- **Plan map amendment if rezoning is inconsistent:** Chapter 160D clarifies (in G.S. 160D-605(a)) that if a zoning amendment is made that is inconsistent with the jurisdiction’s duly adopted future land use map, then that future land use map is deemed to be amended. Note that this amendment is limited to the future land use map (and not other parts of a comprehensive plan), and it is only to conform the future land use map to the zoning amendment. As under previous law, no separate application for a plan amendment may be required in this situation.
- **Documenting map inconsistencies:** G.S. 160D-501(c) requires that if the future land use map is deemed amended by adoption of an inconsistent zoning action, then that amendment must be noted in the plan itself, helping to ensure that the plan itself is updated for those consulting it after the zoning amendment is made.
- **Concurrent plan amendments and zoning amendments:** G.S. 160D-605(a) also specifically allows concurrent consideration of requests for plan amendments and zoning amendments. This reflects the practice in some jurisdictions to require anyone proposing a zoning amendment that is

inconsistent with the plan to also submit a plan amendment so both can be considered at the same time.

- **CAMA review:** For a plan that also serves as a land use plan mandated by the Coastal Area Management Act (CAMA), G.S. 160D-501 also clarifies that the plan amendment is not effective for CAMA purposes until it goes through the CAMA plan review and approval process.

B) Statements of reasonableness for zoning map amendments: Since 2005, North Carolina statutes also have required the governing board to adopt a statement of reasonableness for each conditional rezoning or other small-scale rezoning. This requirement was designed to assist cities and counties in assessing the case law requirement (from *Chrismon v. Guilford Cty.*, 322 N.C. 611, 370 S.E.2d 579 (1988)) that spot zoning must be “reasonable.” G.S. 160D-605(b) simplifies and clarifies this requirement in several ways:

- **Map amendment requirement:** The reasonableness statement is only required for zoning map amendments. A local government can still prepare a reasonableness analysis for text amendments, but it is not required. Previously, G.S. 153A-341(b) and 160A-383(a) required such statements for all zoning amendments.
- **Factors of analysis:** The statute lists the factors that should be considered in a reasonableness analysis. The factors are suggested and not mandated, as not all factors will be relevant to all rezoning decisions. The factors, listed below as they appear in G.S. 160D-605(b), have generally been adapted from *Chrismon v. Guilford County*, 322 N.C. 611, 627, 370 S.E.2d 579, 589 (1988), which is the leading North Carolina case on spot zoning:
 - i. the size, physical conditions, and other attributes of the area proposed to be rezoned;
 - ii. the benefits and detriments to the landowners, the neighbors, and the surrounding community;
 - iii. the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment;
 - iv. why the action taken is in the public interest; and
 - v. any changed conditions warranting the amendment
- **Using a single motion:** G.S. 160D-605(c) provides that the statement of reasonableness can be approved in the same motion as the plan consistency statement. As a result, a map amendment, plan consistency statement, future land use amendment (if required), and statement of reasonableness for the same proposed development all can be approved in a single motion.

Key Considerations

When drafting language to establish the procedures for plan consistency reviews, it is important to make sure the resulting language 1) complies with applicable law, including the provisions of Chapter 160D, and 2) meets the policy interests of the governing board. Here are a few important considerations in drafting consistency and reasonableness review procedures:

- **When to adopt a consistency statement:** Governing boards have a choice of whether to adopt the plan consistency statement when acting upon the zoning amendment, or as a separate motion. Adopting the statement together with the proposed amendment can save time for boards and staff. On the other hand, opinions may vary on whether the process is clearer with a single motion or with separate motions.
- **Whether to consider concurrently a comprehensive plan amendment and a zoning amendment:** Adopting such proposals at the same time can save time for boards and staff, and can eliminate confusion that could occur if the plan amendment and zoning amendment are not both approved. Again, opinions may vary on whether or not the process is clearer with separate motions.
- **Option of using combined motion:** Communities may consider and approve a statement of reasonableness and a plan consistency statement as a single, combined statement. Again, acting on both statements as one can save time for boards and staff, but opinions may vary on whether the process is clearer with a single motion or with separate motions. If a local government takes the approach of combining the consistency and reasonableness statements, it may be beneficial to label the statement as both a consistency statement and statement of reasonableness to provide clarity that both statements were considered and adopted.
- **Reasonableness statements for map amendments versus text amendments:** Governing boards have the option of adopting a statement of reasonableness for zoning text amendments. Local governments must adopt a statement of reasonableness for zoning map amendments. Some boards may want to provide documentation of the rationale behind a particular decision. At the same time, it can be difficult to frame a statement of reasonableness for a text amendment because many of the five factors required to be considered are oriented to specific sites and may not be readily discernible for the area associated with a text amendment. The text amendment might also apply throughout the jurisdiction, in which case considerations that come from the spot zoning context may not be relevant.
- **Large-scale rezonings:** If a zoning map amendment qualifies as a “large-scale rezoning” under G.S. 160D-602(b), the governing board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken. This approach is simpler and can save board and staff time. At the same time, it may not fully reflect variations in consistency across the area in question, with some properties potentially consistent with the proposed new zoning designation, and others potentially inconsistent. A single consistency statement for the whole area that does not reflect this variation can sometimes generate negative feedback from stakeholders who may feel that their particular situation is not being reflected in the analysis. One way to address this concern is to discuss places

of consistency and inconsistency, along with an overall evaluation of consistency for the area as a whole.

- **Greater changes may require greater justification:** Where a change to the zoning map or text is more significant, there is some added importance to crafting logical and specific statements of consistency and reasonableness. If a large or significant change is made to the future land use map, for example, there is a higher likelihood that someone in the community might question why the decision was made. In the more controversial of cases, having complete statements that focus on the specific proposal in front of the board could help limit potential litigation or threats of litigation.

There are also a few points to keep in mind to assure compliance with Chapter 160D standards:

- **No additional fee for plan amendment:** Because no additional request or application can be required for a plan amendment that is inconsistent with the comprehensive plan, local governments must not require a separate application or fee for a plan amendment that is necessitated by a rezoning consistency action.
- **How to update the future land use map:** A rezoning inconsistent with a plan does not amend the text of the plan, but it does amend the future land use map. Local government staff must remember to update the future land use map when the governing board approves a zoning map amendment that is not consistent with the map. G.S. 160D-605.

Statutory Authorization

The statutory language regarding plan consistency statements in Chapter 160D, Section 160D-604 and 160D-605 is provided below for quick reference.

160D-604. Planning board review and comment.

...

(d) *Plan consistency.* When conducting a review of proposed zoning text or map amendments pursuant to this section, the planning board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board. If a zoning map amendment qualifies as a “large-scale rezoning” under G.S. 160D-602(b), the planning board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.

(e) *Separate board required.* Notwithstanding the authority to assign duties of the planning board to the governing board as provided by this Chapter, the review and comment required by this section shall not be assigned to the governing board and must be performed by a separate board.

160D-605. Governing board statement.

(a) *Plan consistency.* When adopting or rejecting any zoning text or map amendment, the governing board shall also approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the governing board that at the time of action on the amendment the governing board was aware of and considered the planning board's recommendations and any relevant portions of an adopted comprehensive plan. If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-6-2(b), the governing board statement describing plan consistency may address the overall rezoning and describe how the analysis and polices in the relevant adopted plans were considered in the action taken.

(b) *Additional Reasonableness Statement for Rezoning.* When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the governing board. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the governing board statement on reasonableness may address the overall rezoning.

(c) *Single statement permissible.* The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

Sample Ordinance Language

The following is an example of how one might draft ordinance language establishing a local plan consistency framework that complies with the provisions of Chapter 160D. Please note the options for including various procedures.

Plan Consistency and Reasonableness

- A) When conducting a review of proposed zoning text or map amendments pursuant to this section, the [planning board] [INSERT LOCAL VERSION OF BOARD NAME HERE AND IN ALL APPLICABLE REFERENCES SUBSEQUENTLY] shall advise the [governing board] [INSERT LOCAL VERSION OF BOARD NAME HERE AND IN ALL APPLICABLE REFERENCES SUBSEQUENTLY] and comment on whether the proposed action is consistent with any officially adopted and applicable comprehensive plan provisions, as well as with any other officially adopted and applicable plan.
- B) The [planning board] shall provide a written recommendation to the [governing board] that addresses plan consistency and other matters as deemed appropriate by the [planning board], but a comment by the [planning board] that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the [governing board]. For zoning map amendments, the planning board recommendation shall also address the reasonableness of the amendment in accordance with the requirement for the [governing board].
- C) If a zoning map amendment qualifies as a “large-scale rezoning” under G.S. 160D-602(b), the [planning board] statement describing plan consistency may address the overall rezoning and describe how the analysis and polices in the relevant adopted plans were considered in the recommendation made.
- [NOTE: The consistency review language for planning boards could potentially be included in the section describing the duties and responsibilities of the planning board, or in the section describing the rezoning process. Wherever a local government chooses to place the language, it may be useful to include a cross reference in the other section.]**
- D) When adopting or rejecting any zoning text or map amendment, the [governing board] shall also approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. In addition, when adopting or rejecting any petition for a zoning map amendment, the [governing board] shall adopt a statement analyzing the reasonableness of the proposed rezoning. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned; (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community; (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment.
- E) If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land use map in the approved plan, and no additional application or fee for a plan amendment shall be required.
- F) A plan amendment and a zoning amendment may be considered concurrently.

G) If a zoning map amendment qualifies as a “large-scale rezoning” under G.S. 160D-602(b), the [governing board] statement describing plan consistency may address the overall rezoning and describe how the analysis and polices in the relevant adopted plans were considered in the action taken.

[NOTE: *Governing boards have a choice of how to structure several procedures. These include:*

- 1) Whether to adopt the plan consistency statement in the same motion as the action on a proposed zoning amendment, or in a separate motion;*
- 2) Whether to amend the future land use map of the comprehensive plan, as necessary, in the same motion as the zoning amendment.*
- 3) Whether to adopt a statement of reasonableness and a plan consistency statement in the same motion (for decisions on proposed rezonings); and*
- 4) Whether to adopt a statement of reasonableness for zoning text amendments, or just for zoning map amendments.*

These are options that are available and useful to note, but may not need to be included in the local zoning ordinance.]

Sample Consistency and Reasonableness Statement

[**IMPORTANT NOTE:** The examples below should NOT be copied and pasted. Instead, the governing board should approve a statement that addresses the facts relevant to a particular case. The statements do not need to address all of the comprehensive plan policies or all of the reasonableness factors, but should address as many as possible. This will help to demonstrate that the board has considered the proposed amendment’s consistency with applicable plans and has considered the reasonableness of their decision.]

The proposed zoning amendment [is / is not] consistent with [the current comprehensive plan] because:

1. [identify policies in the plan with which the proposal is or is not consistent];
2. [identify what policy goals this development advances or hinders]; and
3. [identify how the amendment matches up (or does not match up) to the current future land use map].

The proposed zoning amendment is reasonable and in the public interest because it supports the [plan] policies above and because:

1. [describe consistency in size, physical conditions, and other attributes of the area proposed to be rezoned];
2. [list benefits and detriments to the landowners, the neighbors, and/or the surrounding community];
3. [describe how the development that would be permissible under the proposed amendment relates to the current development permissible on the tract and to the character of adjoining areas];
4. this amendment [improves consistency with the long range plan, improves the tax base, preserves environmental and/or cultural resources, facilitates a desired kind of development, provides needed housing/commercial area, etc.] and is therefore in the public interest; and
5. [include any changed conditions warranting the amendment]

Below is an example statement based on the sample template above

[This language is for illustrative purposes only and should not be viewed as a legal requirement or expression of a legal requirement]

The proposed zoning amendment is consistent with the Sampletown 2050 Comprehensive Plan because:

1. It is consistent with Policy X.4 Mixed-Use Development, Y.1 Downtown Character, and Y.2 Town Gateway Corridors;
2. The anticipated development furthers the redevelopment of the north end of downtown, and the highway gateway; and
3. The proposed CX (mixed commercial) zoning district is consistent with the “Historic Downtown Activity Center” designation for the property on the Town’s Future Land Use Map.

The proposed zoning amendment is reasonable and in the public interest because it supports the Sampletown 2050 Comprehensive Plan policies above, as well as for the following reasons:

1. Consistency with Surrounding Area: The proposed development will be similar in character to surrounding structures and will allow buildings of a similar size and use to those in the surrounding area.
2. Benefits and Detriments to the Community: The proposed amendment would provide opportunities for local businesses and employers, as well as remote workers, and increase the tax base.
3. Relationship of Proposed Development to Currently-Allowed Development: This property is currently zoned Commercial-Retail, which more tightly restricts the kinds of uses that can occur at the property; rezoning the property as proposed, to the CX district, is consistent with the “Historic Downtown Activity Center” future land use map and furthers the policies and goals described above.
4. Other Public Interests Supported: The proposed amendment improves consistency with the long range plan, by encouraging downtown development; improves the tax base, by allowing for a mix of uses that will maximize used space; and brings needed business to downtown.
5. Changed conditions: Since the property was last rezoned, many Sampletons have begun downsizing and moving closer to the amenities they use. The proposed amendment adapts current zoning to address this change.

Example Consistency Statements

This section includes sample consistency statements from the following communities: Burke County, Town of Carthage, and Charlotte-Mecklenburg. Please note that all of these statements were developed prior to the 2019 passage of Chapter 160D; however, they all should meet the standards for consistency and reasonableness statements.

Burke County: Rezone Parcel to Commercial Zoning

The proposed zoning map amendment can be considered consistent with the Burke County 2016–2030 Land Use Plan and the Burke County Zoning Ordinance and is reasonable and in the public interest because:

- The rezoning would be appropriate for this area because the 2016–2030 Burke County Strategic Land Use Plan depicts the area located at the corner of NC 18/US 64 and Harland Rd. as an Economic Development Node and encourages additional commercial development at this location if adequate access and utilities are present.
- All development of the parcel would be subject to the site plan requirements of Article XIII of the Zoning Ordinance. This would include screening, traffic access, setbacks, height limitations, building inspections, water, waste water, and other development criteria.

The Board therefore approves rezoning application ZMA 2017-04.

Town of Carthage: Text Amendment Regarding Cottage Industry [consistency statement only]

[Please Note: this statement only addresses plan consistency; under GS 160D-605, the text amendment should also include a brief explanation of why the amendment is reasonable and in the public interest]

The Board of Commissioners conclude that the above described amendment is consistent with the Town of Carthage 1999 Land Use Plan based on the following:

Goal 1. Protection of the aesthetic quality of the town. Locating cottage industry businesses or studios in the CBD, TBD and B-2 is not anticipated to detract from the town appearance. Proper policing is necessary to ensure that impacts do not occur on the street that detract from the town's ambiance.

Goal 2. Promoting central business district in-fill development. Providing for cottage industry in existing downtown buildings adds a business and professional service type use that could occupy vacant downtown space that can be difficult to fill. It will also provide a service that may be of interest to other occupants of downtown.

Goal 4. Preserving existing residential neighborhoods. Locating cottage industry in the CBD, B-2, TBD and I districts with a separation requirement from residential zoning districts will preserve the quality of existing residential neighborhoods.

Goal 5. Promoting location of business and industry to serve the community in appropriate locations. Allowing for cottage industry in the CBD, TBD, B-2 and I districts preserves the town's ability to regulate any future proliferation of storefront churches and other uses that detract from the commercial nature of the downtown business district. Regulating noise, hours of operation and outdoor storage will help keep the use compatible with adjoining commercial uses. Incorporating separation requirements will ensure that this type of operation does not proliferate downtown.

Goal 7. Improving the quality of life for Town residents. Allowing more cultural and artistic uses in the downtown business districts would encourage other artisans to move into the area. Many residents would have a resource for artistic outlet as well as exposure to more specialized skilled trades. The Town's downtown area is largely driven by daytime activities and government employees. Allowing cottage industry business promotes a more active environment for the residents and would encourage more travelers to stop in Carthage.

Charlotte-Mecklenburg: Rezone 42-Acre Parcel from Residential to Light Industrial

This petition is found to be consistent with the Dixie Berryhill Strategic Plan based on the information from the staff analysis and the public hearing, and because:

- The plan recommends office/retail/light industrial development.

Therefore, we find this petition to be reasonable and in the public interest, based on the information from the staff analysis and the public hearing, and because:

- The proposed development is consistent with the adopted land use for this site and the surrounding area; and

- The site is adjacent to the River District development, a large mixed use development that includes office, retail and residential, which was approved in 2016; and
- West Boulevard, located just north of this site, is planned to be extended to Dixie River Road, as part of the River District development; and
- The petition reserves right-of-way for the future Western Parkway referred to as “Catawba Crossing” in petition 2016-056 for the River District; and
- The property is located south of Charlotte-Douglas International Airport and within the “Combined 1996 Noise Exposure/Noise Compatibility Program Noise Contours” and is not conducive to residential development.