

Legal and Legislative Update

APA-NC Annual Conference

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September 2017

Q&A:

PollEv.com/adamlovelady

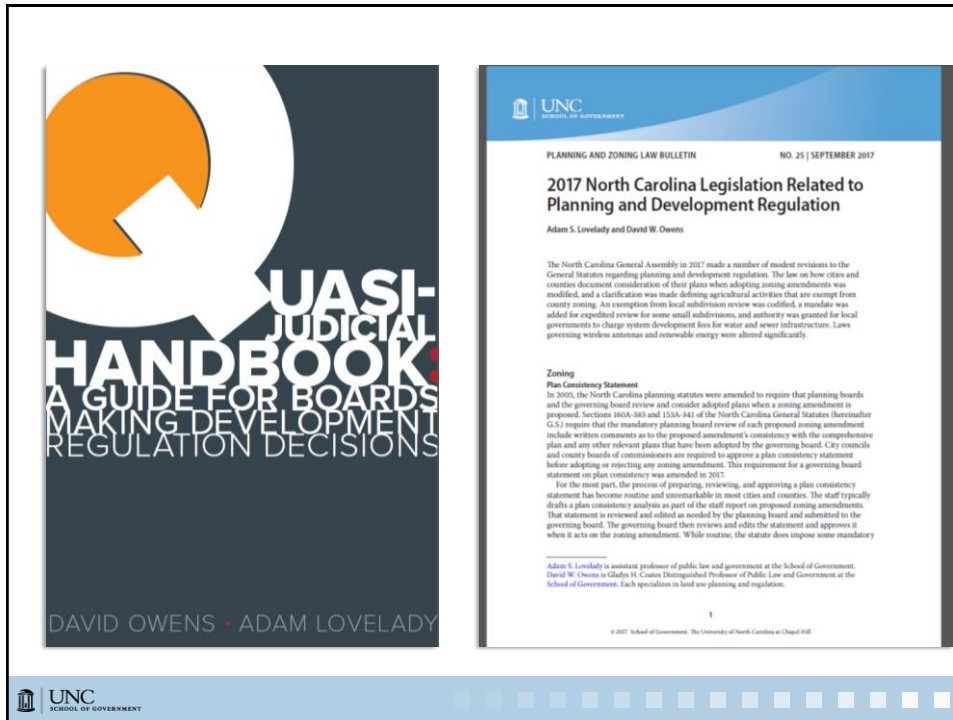
Slides and resources:
tinyurl.com/SOGplanning



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Planning and Zoning Courses

- Foundations (Sept)
- Zoning Practice (Oct)
- Subdivision Practice (Nov)
- Zoning Officer Certification (Spring 2018)
- Board Training (Spring 2018)

Other Training Options

- Local Elected Leaders Academy
- Public Executive Leadership Academy
- Municipal and County Administration

On-Demand Training



- \$325 for entire library
- access for local government
- free access for NCLM Insurance Clients

- Introduction
- Amending the Ordinance
- Ordinance Interpretations

- Evidentiary Hearings
- Quasi-Judicial Decisions
- Variance Standards
- Special & Conditional Use Permits

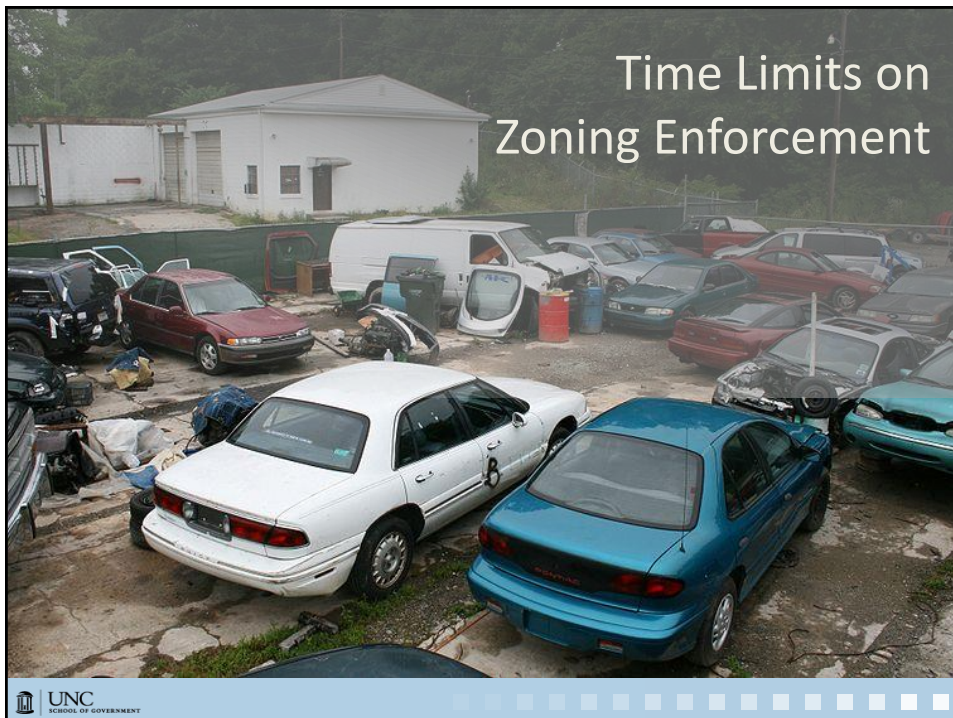
- Conflicts of Interest
- Historic Preservation
- Vested Rights
- Exactions
- Spot Zoning
- Group Homes
- Adult Businesses

- I. Zoning Enforcement
- II. Subdivisions
- III. Solar Farms
- IV. Financing Development



Zoning and the Bathroom Bill Repeal

- House Bill 142—the HB2 repeal—includes a provision that prevents local governments from adopting or amending ordinances “regulating public accommodations” until December 2020.
- Blog: <https://canons.sog.unc.edu/hb2-repeal-limit-zoning-authority/>

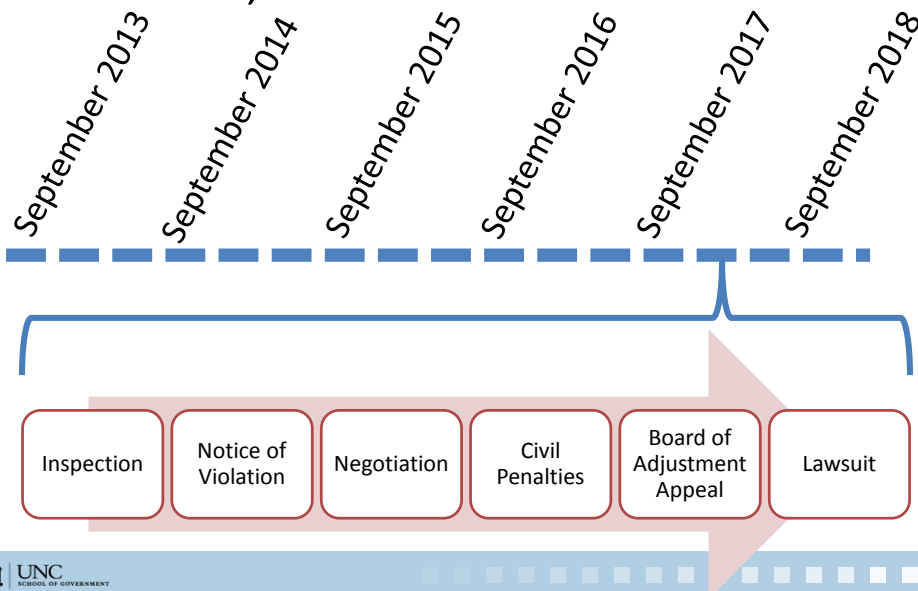


Time Limits for Zoning Enforcement

- 5 years to sue if
 - “The facts constituting the violation are known to the governing body, an agent, or an employee of the unit of local government.”
 - “The violation can be determined from the public record of the unit of local government.”
- 7 years to sue if
 - “The violation is apparent from a public right-of-way.”
 - “The violation is in plain view from a place to which the public is invited.”

<https://canons.sog.unc.edu/tick-tock-the-clock-is-now-running-for-zoning-enforcement/>

Effective against court actions after October 1, 2018



Moving forward

- Refine the land use ordinance
- Proactive investigation and enforcement
- Staff and board training
- Public records review
- Violation tracking (watch the clock)
- Proactive lawsuits

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Definition of Subdivision SL 2017-10 (S131)

- New (old) exemption:
 - “The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.”
- New Expedited Review
- Blog: <https://canons.sog.unc.edu/subdivision-legislation-old-exemption-new-expedited-review/>

Expedited Review: Qualifying Subdivision

1. property must be greater than five acres
2. must not be exempt as a Ten-Acre Exemption
3. must have been at least ten years since the property was subdivided with this expedited review
4. subdivision must result in no more than three lots
5. resulting lots must meet applicable lot dimension requirements
6. resulting lots must have a permanent means of ingress and egress designated on the recorded plat
7. use of the resulting lots must comply with applicable zoning requirements

Expedited Review Process

- Final plat only
- Still reviewed: officer must determine if the plat meets the standards to be a qualifying subdivision
- Dimensional standards (unlikely that other subdivision standards may be imposed)
- Fees?

Performance Guarantees

SL 2017-40 (H158)

G.S. 160A-372 amended so that only the following may claim rights under a subdivision performance guarantee:

- a. The local government to whom such performance guarantee is provided.
- b. The developer at whose request or for whose benefit such performance guarantee is given.
- c. The person or entity issuing or providing such performance guarantee at the request of or for the benefit of the developer.

Plat Requirements

SL 2017-27 (H454)

- Eliminate use of control corners in favor of grid control
- Clarify surveyors certifications
- Clarify prominence of and info for title of plat (firm, dates of revisions)
- Tweak qualities and dimensions of plats
 - Border requirements
 - Allow black line on white paper instead of transparent and archival



Murr v. Wisconsin (US Sup Ct)

- Is it a taking?
 - Property owner owned two adjoining nonconforming lots
 - State and local regulations required merger (the owner couldn't sell a substandard lot)
- Court established a new rule considering multiple factors (state law, characteristics of the property, value of the land)
- In this case, it was not a taking.

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Innovative Solar 55, LLC v. Robeson County

if the applicant makes a prima facie case that he or she meets the standards, then the burden shifts to any opponents to present competent, material, and substantial evidence

Innovative Solar 55, LLC v. Robeson County

Applicant Testimony

- solar farm expert on safety of operations
- engineer on erosion and sediment control, and a landscape architect to testify about landscaping plans.
- appraiser on property values.

Opponent Testimony

- neighbor talking about solar farms as unattractive, and questioning safety of solar farms over the long term
- neighbor noting that solar farms “were not beautiful at all.”
- neighbor with petition signed by 116 community members opposing the solar farm

Competitive Energy Solutions for NC H589

- Standard contract for small power producers
- Competitive procurement
- Direct procurement by large customers
- Allow community solar energy facilities
- Allow leasing solar equipment and calls for rebates (may impact rooftop solar)

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System Development Fees (S.L. 2017-138)

May be charged for new development by water/sewer providers

Standards for analysis and calculation upfront; limits on expenditure

Timing for collection

- Subdivisions: plat recordation or when water service committed
- Other development: at time of application for connection of unit

<https://canons.sog.unc.edu/system-development-fees-new-impact-fees/>

Critical Infrastructure Special Assessments (160A, Art. 10A; 153A, Art. 9A)

SL 2017-40 (H158) amends statute

- To require process for adopting preliminary assessment resolution
- To allow developer to fund up-front costs

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1. Plan Consistency Statements



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Requirement for plan consistency analysis added to statutes in 2005

Plan consistency not required, but analysis is

Substance of statement not subject to judicial review

S.L. 2017-10 (S. 131)

Revise requirements for plan consistency statements when zoning is amended

Governing board approves one of three statements:

1. Amendment approved, consistent with plan
2. Amendment rejected, inconsistent with plan
3. Amendment approved, inconsistent with plan

Effective October 1, 2017

S.L. 2017-10 (S. 131)

If amendment approved and is inconsistent with plan:

1. Plan deemed amended
2. May not require any additional application for plan amendment
3. Must also approve explanation of the change in conditions to meet development needs of community that justified the amendment

TIP: Staff should also amend the plan itself

2. Farms and Zoning



2. Farms and Zoning

Bona fide farm activity has always been exempt from county zoning

Also exempt from city land use regulation if conducted in ETJ

S.L. 2017-108 (S. 615)

2017 Farm Bill

USDA Farm number no longer evidence property is a farm

Residence on farm exempt if occupied by owner, lessee, or operator of the farm

Therapeutic equine facilities also exempt

S.L. 2017-108 (S. 615)

Agritourism



S.L. 2017-108 (S. 615)

Agritourism

Farm must be held by person with

1. Qualifying farmer sales tax exemption
2. Enrolled in present use value property tax program

Must remain in qualifying status for three years after agritourism starts

S.L. 2017-108 (S. 615)

Agritourism

Can include building or structure for weddings, receptions, meetings, meals taking place there “because of its farm or rural setting”



S.L. 2017-108 (S. 615)

Incidental farm uses

Activities such as:

- Marketing and selling products

- Storage and use of materials

- Packing, treating, processing, sorting

Included in exemption when conducted on “A Farm” (was “THE FARM”)

S.L. 2017-108 (S. 615)

County zoning and municipal zoning in ETJ no longer applicable to large scale hog farms



3. Wireless Telecommunication



S.L. 2017-159 (H. 310)

- Facilitate next generation wireless
- Effective July 21, 2017
- Focus on “small wireless facilities”
 - 6 cubic feet
 - 28 cubic feet for ground support
 - On poles not more than 50’
- Only administrative review if in city ROW or on property that is not single-family residential

S.L. 2017-159 (H. 310)

- Application deemed complete unless deficiencies identified in writing within 30 days and deemed approved if no action in 45 days
- May submit combined application for up to 25 facilities
- Limits on application fees and consulting fees

S.L. 2017-159 (H. 310)

- Can only deny if:
 - Violates building code
 - Violates objective design standards, nondiscriminatory stealth requirements, reasonable spacing or screening and landscaping requirements for ground structures, public safety standards
 - Historic preservation requirements

S.L. 2017-159 (H. 310)

- If denied, must provide documentation of reasons
- Application can modify and resubmit application without charge within 30 days and city has 30 days to review modifications

S.L. 2017-159 (H. 310)

- Exemptions from permitting:
 - Micro facilities (24x15x13)
 - Interior structures
 - In athletic stadium or facility (unless city owned)
- Includes standards requiring permission to use city ROW and access to poles

4. Code Enforcement

- S.L. 2017-130 (H. 252)
- Requires each department to establish program for informal internal review of inspection decisions
- Must list supervisor, contact info, and notice of review process on each permit
- Must do annual report of reviews conducted

5. Unsafe Buildings

S.L. 2017-109 (H. 530)

Counties granted same authority previously given to cities to demolish and remove vacant and abandoned buildings in community development areas

Pending for 2018

- H. 507 -- Various zoning changes
- H. 688 – Political signs in ROW
- S. 419 – 160D proposal



Also Forthcoming

- New SOG survey of city and county practices with development regulations
- Will ask about plan consistency statements, conditional zoning, subdivision
- Out to all cities and counties later this fall
- Reports out next spring/summer

Questions

<https://www.sog.unc.edu/resources/microsites/planning-and-development-regulation>

<https://canons.sog.unc.edu/>



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