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S. 419 Summary

Proposed 160D Reorganization of Planning and Development Regulation Statutes

In 2014 the Zoning, Planning, and Land Use Section of the North Carolina Bar Association initiated an effort to modernize the framework of the state's enabling statutes for planning and development regulation. This proposal was developed in an open process, with drafts of the proposals being shared and discussed at length with city and county attorneys, attorneys who represent development interests, zoning officials, planning officials, and various organizations interested in the topic (including the League of Municipalities, the County Commissioners Association, the Home Builders Association, and others). The proposal was introduced in the 2015 session of the General Assembly as H. 548. The bill was discussed by the House of Representatives but not ultimately not enacted.

In 2017 an updated and refined version of the proposal was introduced in the General Assembly as S. 419, sponsored by Sen. Michael Lee of Wilmington and Sen. Floyd McKissick of Durham. S. 419 was unanimously approved by the Senate on June 28, 2017 and is eligible for consideration by the House of Representatives in 2018.

S. 419 consolidates and reorganizes the current planning and development regulation statutes, as well as clarifying and modernizing the statutory language.

The principal changes are to:

(1) Consolidate current city and county enabling statues now in Chapters 153A and 160A into a single, unified new Chapter 160D of the General Statutes.
(2) Place these statutes into a more logical, coherent organization, facilitating ease of finding relevant provisions and clarifying how the statutes relate to one another.
(3) Provide uniform authority, definitions and procedures for cities and counties, while retaining broad substantive policy discretion for ordinances adopted by individual jurisdictions.

While not making major policy shifts in existing legislation, the bill modernizes the language of the statute to remove obsolete terminology and clarify existing provisions without making substantive changes.

In addition, a number of consensus modest reforms that have the broad support of the local government and development community are incorporated. These include the following, listed by the proposed Chapter 160D section numbers:

1-2. Provides clarity by adding definitions for many commonly used terms that are not now defined in the statutes. For example, distinguishes a "legislative hearing" from an "evidentiary hearing" rather than using a generic term of "public hearing." Provides for use of uniform and consistent terminology for the over 500 local jurisdictions with zoning and development regulations.

1-4. Explicitly provides that development approvals run with and are attached to the land, as uniformly practiced but not explicitly stated in the statutes.

1-5. Allows floodplain rate maps and watershed boundary maps that have been officially adopted by state and federal agencies, including updates, to be incorporated by reference into zoning maps, saving time and money for all concerned. Clarifies that digital maps can be used. Specifies record keeping for official version of adopted maps.

1-8. Confirms administrative process to claim a vested right, while allowing a claim of vested rights to be brought initially in court if the claimant so desires. In addition to state statutory vested rights, which are unchanged, establishes a default one year life for local permits if no other time is set in the ordinance. Eliminates the "phased development plan" as redundant to the subsequently enacted and longer lasting multi-phase development plan vested right.

1-9. Clarifies conflict of interest provision, setting limits on participation by board members and staff in decisions where a close relationship to applicant would require it. Defines a "close familial relationship" that is subject to conflict of interest limits. Clarifies that remainder of board rules on any objection to participation, not just in quasi-judicial cases.

2-2. Provides that if a city does not exercise all of its regulatory authority within an established extraterritorial planning jurisdiction, the county has the option of applying its regulations there.

2-3. Allows cities and counties, with landowner approval, to agree on single jurisdiction for regulation of parcels with split jurisdiction.

2-4. Allows hearings and permit processing, but not decisions, to proceed in anticipation of shift of regulatory jurisdiction between cities and counties. Allows assumption of jurisdiction and application of development regulations to take place simultaneously.

3-1. Modernizes potential duties of planning boards, including facilitation citizen engagement. Clarifies use of advisory comments from other boards on quasi-judicial matters.

3-2. Confirms that requirements for quasi-judicial process apply to any board making a quasi-judicial decision.

3-7. Simplifies hearing notice requirements for county commissioners' appointment of extraterritorial members of municipal boards.

3-8 to 3-10. Confirms that appointed boards can have rules of procedure, that members must take an oath of office, and the members are appointed by the city or county governing board unless otherwise specified.

Article 4. Establishes administrative provisions applicable for all development regulations using a generalized version of administrative provisions currently in the building code Parts of existing Articles. Retains any specific administrative provisions made in the Articles addressing individual types of development regulation.

4-3. Simplifies and clarifies permit administration by specifying who can make applications; requires identification of who makes final, binding administrative decisions; specifies process for permit modification and revocation; expressly allows certificates of compliance/occupancy.

4-5. Clarifies that where otherwise authorized by law, appeals of administrative decisions that challenge the validity of an ordinance may be taken directly to court without having to first appeal to the board of adjustment.

4-6. Clarifies staff requirements for production of materials to be provided to boards of adjustment and the parties prior to evidentiary hearings and clarifies process for making and resolving any objections to inclusion in these materials. Clarifies that only entities with standing have a right to participate as a party in evidentiary hearings, but the board may allow other witnesses to present competent, material evidence that is not repetitive. Clarifies how objections on evidentiary questions are resolved.

5-1. Requires jurisdictions to have a plan in order to apply zoning (phased in for the few jurisdictions without plans); specifies process for plan adoption and amendment (similar to existing process for rezonings). Notes permissive (but not mandatory) plan elements. Confirms that plans are advisory in nature with no independent regulatory effect.

5-3. Confirms that jurisdictions may coordinate their planning.

6-2. Clarifies time period for posting notices of hearings on proposed legislative amendments, using the same time period required for mailed notices. Allows combined notice and hearing on proposed changes in local government jurisdiction and amendment of applicable development regulation. Clarifies requirements regarding optional notice of proposed amendments to neighboring property owners.

6-4. Clarifies that ordinances can require advisory review by planning board of ordinances other than zoning. Simplifies plan consistency statements when multiple properties are proposed to be rezoned.

6-5. Limits required governing board statement of reasonableness requirement to zoning map amendments. Explicitly allows combined plan consistency and reasonableness statement. Simplifies statements when multiple properties are proposed for rezoning.

7-3. Adds clarity by using uniform terminology – “conditional zoning” for legislative actions and “special use permits” for quasi-judicial decisions. Simplifies processes by eliminating use of concurrent legislative rezoning and quasi-judicial CUP; allows legislative conditional zoning and quasi-judicial SUP, just not as single process. Allows

option of administrative process for minor modification of conditional districts. Clarifies that regulations can be organized based of physical form of structures built as well as on land uses allowed. Confirms that specified zoning standards can be applied jurisdiction-wide.

7-5. Clarifies that cities and counties can define minor modifications to special use permits and allow staff to decide these as administrative decision.

Article 9. Consolidates in a single Article existing provisions regulating individual land uses and areas that are currently scattered in various Chapters of the statutes.

9-47. Expedites appeals on certificates of appropriateness decisions made by historic district commission by allowing (but not requiring) ordinances to provide for direct appeal to superior court as is done with other quasi-judicial decisions.

10-5. Simplifies use of development agreements by reducing the list of mandated contents of development agreements. Clarifies process for voluntary provision of public facilities and cost-sharing if beyond permissible mandatory exactions.

10-8. Clarifies enforcement provisions in event of breach of development agreement.

12-3. Sets uniform process for addressing abandonment of intent to repair dwellings rather than having similar but varying processes for different size cities.

Article 13. Make provisions regarding community development the same for cities and counties (which is generally but not uniformly the case with existing law). Retains substantive distinctions, such as only authorizing some projects in downtown areas.

14-2. Clarifies that persons with quasi-judicial approvals that have been appealed to court may proceed with development unless a party seeks and secures a judicial stay. Clarifies that appeals of legislative and quasi-judicial decisions may be joined on appeal.