



County Planning and Zoning

Adam Lovelady
County Attorneys' Fundamentals Workshop
February 1, 2018




www.sog.unc.edu



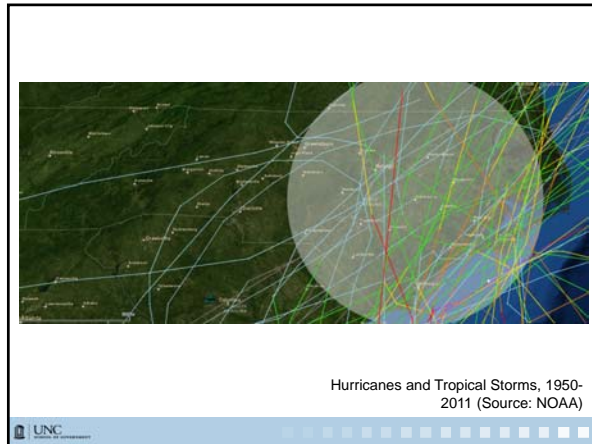
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ODDS
Drive Results

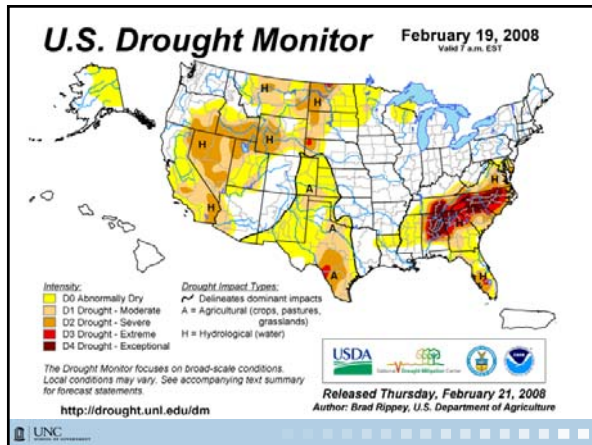


- NC Trends and Planning
- Types of Decisions
- Land Subdivision
- Zoning and Limits





Hurricanes and Tropical Storms, 1950-2011 (Source: NOAA)



U.S. Drought Monitor February 19, 2008
Valid 7 a.m. EST

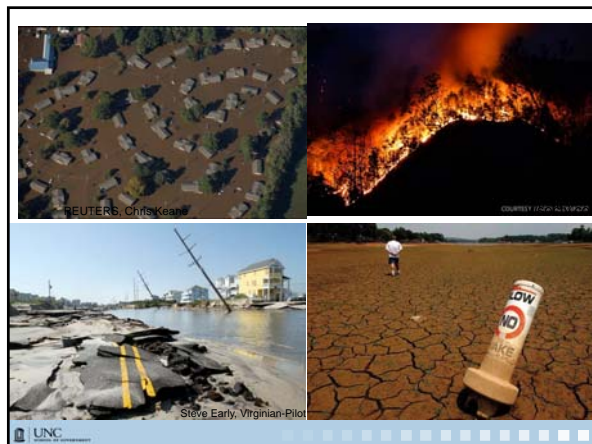
Intensity:
D0 Abnormally Dry
D1 Drought - Moderate
D2 Drought - Severe
D3 Drought - Extreme
D4 Drought - Exceptional

Drought Impact Types:
A = Agricultural (crops, pastures, grasslands)
H = Hydrological (water)

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. See accompanying text summary for forecast statements.

<http://drought.unl.edu/dm>

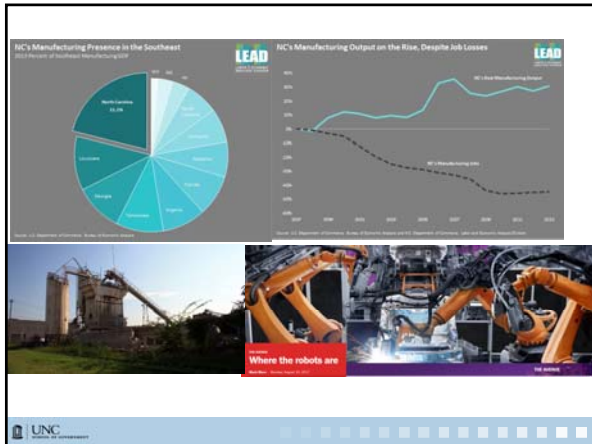
Released Thursday, February 21, 2008
Author: Brad Rippey, U.S. Department of Agriculture

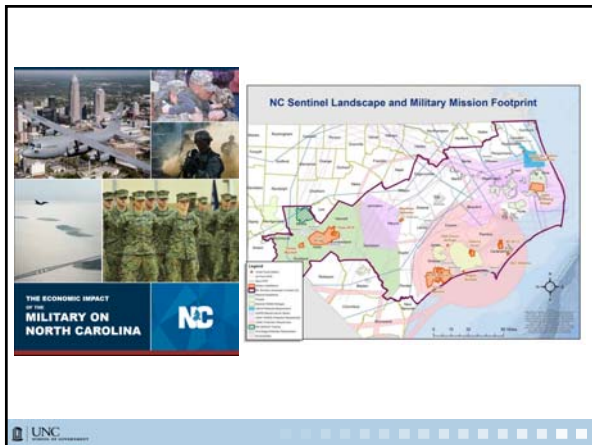


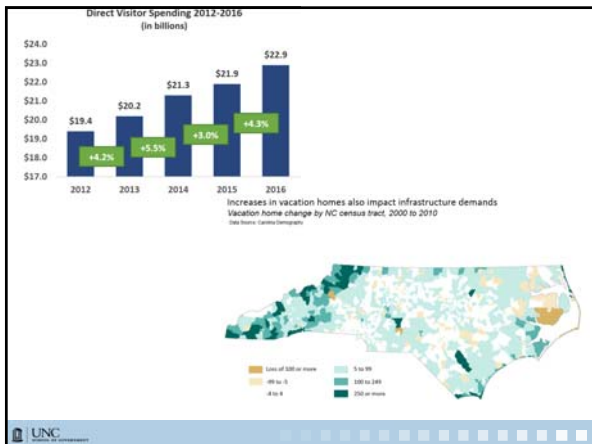
REUTERS/Chris Keane

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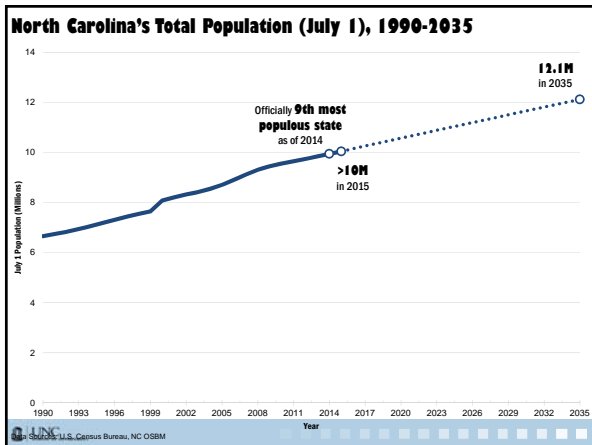
Steve Early, Virginia Pilot

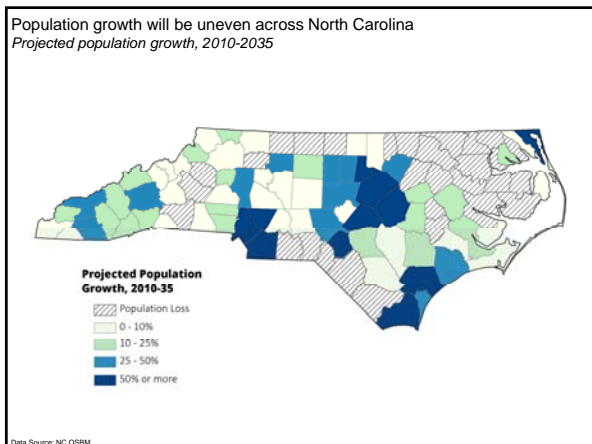


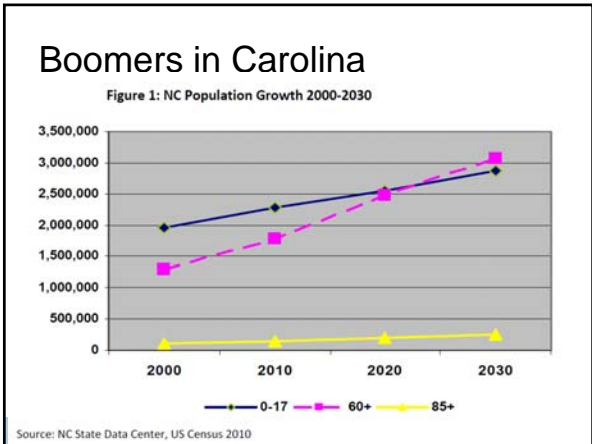


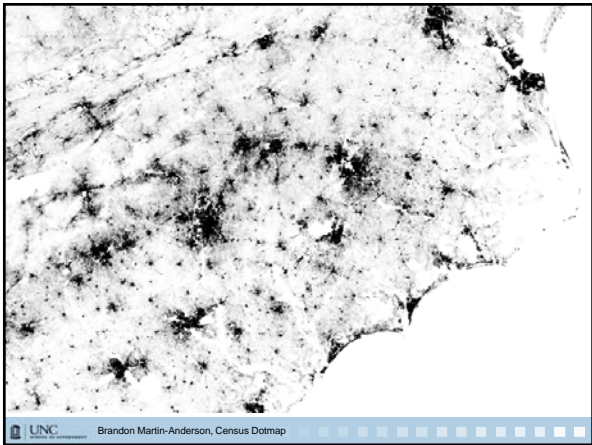












What housing options do we have?
What housing options do we need?

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How do people and goods get around?



How is our economy? How will we improve?



Are we ready for natural disasters?



Where should new growth go?



Do we need new public services and infrastructure? Who will pay?



Chapel Hill-Carrboro City Schools



What is our community character?



Planning: Process & Product



The Legacy 2010 Update

Adopted and Recommended by City-County Planning Board August 6, 2012

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Public Engagement



- Community meetings
- Surveys
- Appointed boards
- Education
- Social media
- Design workshops/charrettes
- Stakeholder outreach
- Public hearings

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THE LEGACY 2010 Update

US 21 SMALL AREA PLAN

TOWN OF BOONVILLE

ROUTE US 21

A Greater Greenville Strategic Plan Goals and Objectives 2016-2018

January 2017 Update

Greenville

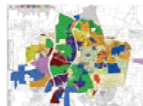
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Planning Requirements

- Generally Voluntary
- Requirements
 - Coastal Area Management Act
 - Hazard Mitigation Planning (Fed. Insur. and state disaster relief)
 - Local Water Supply Planning
 - Transportation Planning



Implementing a Plan



Development Decisions



Government Actions and Organization



Public Infrastructure and Investment



Planning Board: Organization

- Before zoning ordinance
- One or more boards
- Minimum 3 members
- Proportional representation for ETJ (in municipalities)
- Flexible composition and terms

<https://canons.sog.unc.edu/planning-board-basics/>



Planning Board Authority

- Develop plans and recommend policies/ordinances
- Advise governing board on zoning amendments
- May handle duties of
 - Conditional Use (or Special Use) Permits
 - Preliminary and Final Subdivision Plats
 - Designating Redevelopment Areas
 - Board of Adjustment
 - Historic Preservation Commission



Planning Staff

- Serve boards and commissions
- Develop maps, GIS, and other information
- Draft and review development ordinances and proposed amendments
- Grant approvals/permits and enforce regulations
- Develop land-use plan and other plans
- Educate and respond to the public
- Develop special-purpose programs
- Apply for grants



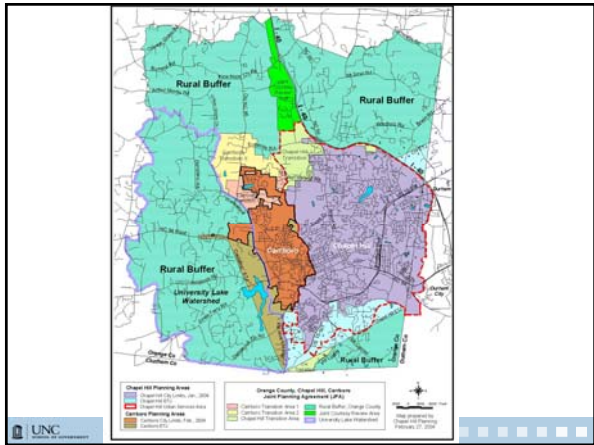
Local Development Regulation

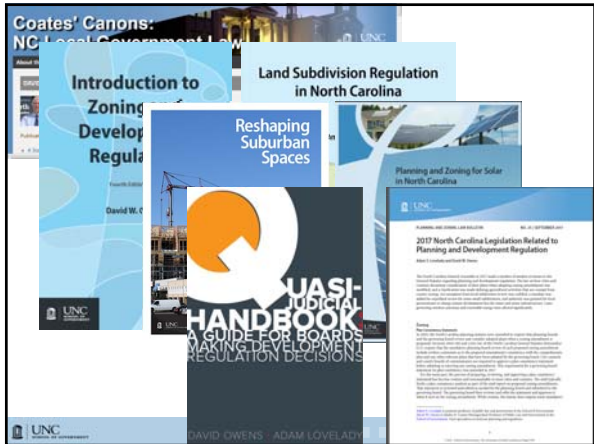
- Zoning
- Subdivision
- Others Commonly Used:
 - Historic Preservation
 - Community Appearance
 - Soil and Erosion Control
 - Flood hazard
 - Mobile home parks
 - Signs
 - Landscaping
 - Adult Business
 - Telecommunication tower
 - Solar ordinances
 - High Impact Industry Ordinances



Local Land Development is Unique

- Statute authorizes framework
- Local governments adopt ordinances unique to that locality







<p>Courses</p> <ul style="list-style-type: none"> - Foundations (Sept) - Zoning Practice (Oct) - Subdivision Practice (Nov) - Zoning Officer Certification (Spring 2018) 	<p>Regional Board Training April & May 2018</p> <ul style="list-style-type: none"> - Mountains/ Asheville - Charlotte - Triad/ Kernersville - Triangle/ Wake County - East/ Greenville - Sandhills
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On-Demand Training



- \$325 for entire library
- access for local government

- 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

- NC Trends and Planning
- Types of Decisions
- Land Subdivision
- Zoning and Limits



	Legislative	Quasi-Judicial	Administrative
Example	Rezoning Ordinance Amendment	Variance Special Use Permit Preservation Certificate	Zoning permit Notice of violation Final plat approval
Hearing/ Public Engagement	Referred to planning board; Public notice Public hearing	Evidentiary hearing (sworn witnesses; limits on opinion testimony; impartial decision- makers)	No hearing
Standard/ Basis of Decision	Broad discretion to make decision based on best interest of the community	Subjective standards in the ordinance requiring some judgment; decision based on evidence in the record	Objective standards in the ordinance; little or no discretion
Findings	Consistency statement	Findings of fact	Documentation of decision

Quasi-Judicial Decision-making

- “Speculative and general lay opinions and bare or vague assertions do not constitute competent evidence before the Commissioners to overcome the applicant’s *prima facie* entitlement to the CUP.”
 - *Innovative Solar 55, LLC v. Robeson County* COA16-1101 (June 6, 2017)
 - *Ecoplexus Inc. v. County of Currituck* COA17-656 (December 19, 2017)
 - *Little River, LLC v. Lee County* COA17-461 (December 19, 2017)

Innovative Solar 55, LLC v. Robeson County

Applicant Testimony <ul style="list-style-type: none"> • 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 <ul style="list-style-type: none"> • 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
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Butterworth v. City of Asheville

Ordinance provision allowed for city to waive requirements when “strict compliance with the provisions of [the] chapter **would cause unusual and unnecessary hardship** on the subdivision of the property by [the] property owner or developer.”

Administrative Modification


- Allowed with specific, neutral, and objective criteria for such modifications
- Examples
 - a deviation up to ten percent or 24 inches from the approved setback
 - a reduction of no more than 25 percent in the number of parking spaces required

Blog: <https://canons.sog.unc.edu/administrative-modifications-subdivision-zoning-ordinances/>

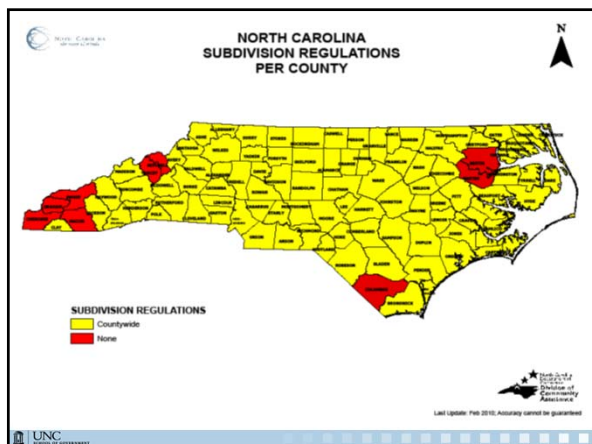
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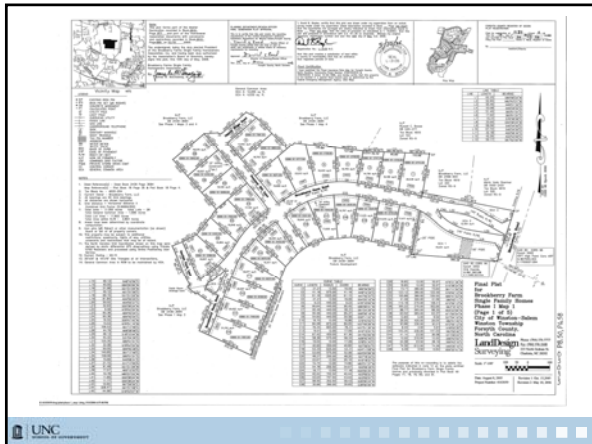


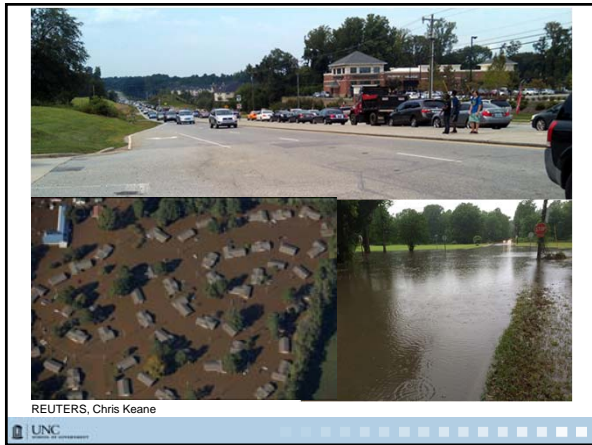
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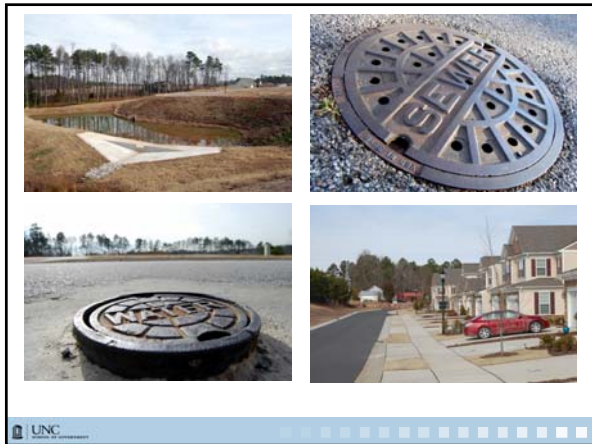


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Defining "Subdivision"

- Divisions of land into 2 or more lots, building sites, or other divisions
- For the purpose of sale or building development
- Now or in the future

Not a "Subdivision" (Statutory Exceptions)

- Recombination (boundary adjustment)
- Public right-of-way purchase
- 10-acre exception (no right-of-way)
- Two-acre-into-three-lots
- Divided for a will

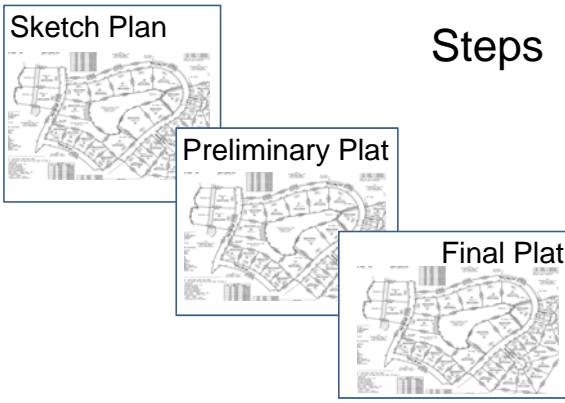


New Mandatory Minor Subdivisions SL 2017-10 (S131)


- Qualifying Subdivisions
 - 5+ acres
 - Creating up to 3 lots
 - Meets dimensional standards
 - Permanent access shown on the plat
 - Comply with zoning requirements
- Blog: <https://canons.sog.unc.edu/subdivision-legislation-old-exemption-new-expedited-review/>



Steps

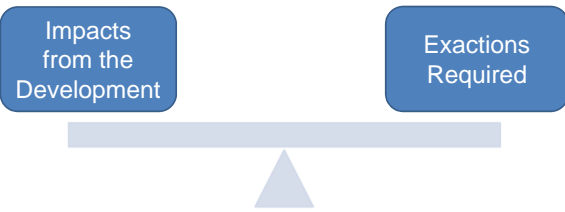


The diagram illustrates the three stages of subdivision planning. It features three overlapping map-like diagrams. The top-left diagram is labeled 'Sketch Plan'. The middle diagram is labeled 'Preliminary Plat'. The bottom-right diagram is labeled 'Final Plat'. The word 'Steps' is written in large text to the right of the diagrams.




Exactions: Constitutional Limits

“essential nexus” and “rough proportionality”



The diagram shows a balance scale. On the left pan, there is a blue rounded rectangle containing the text 'Impacts from the Development'. On the right pan, there is a blue rounded rectangle containing the text 'Exactions Required'. The scale is shown in a balanced state.

Blog: <https://canons.sog.unc.edu/the-koontz-decision-and-implications-for-development-exactions/>



Exactions (§ 153A-331)

- Construction of community service facilities
- Coordination of streets and utilities with existing and planned streets and utilities
- dedication or reservation of recreation areas
- Dedication of rights-of-way or easements for street and utility purpose
- Funds to the county whereby the county may acquire recreational land or areas
- Funds in lieu of street construction
- Reservation of school sites

- System Development Fees (newly authorized water and sewer impact fees; 162A-200)
<https://canons.sog.unc.edu/system-development-fees-new-impact-fees/>



Performance Guarantee (§ 153A-331; 160A-372)

- “To assure compliance with these and other ordinance requirements, the ordinance may provide for *performance guarantees* to assure successful completion of required improvements at the time the plat is recorded”



Performance Guarantee

- Developer chooses
 - Surety bond
 - Letter of credit
 - Other guarantee of equivalent security

- Limits
 - Max 125% of estimated cost
 - Guarantee for completion; not for maintenance



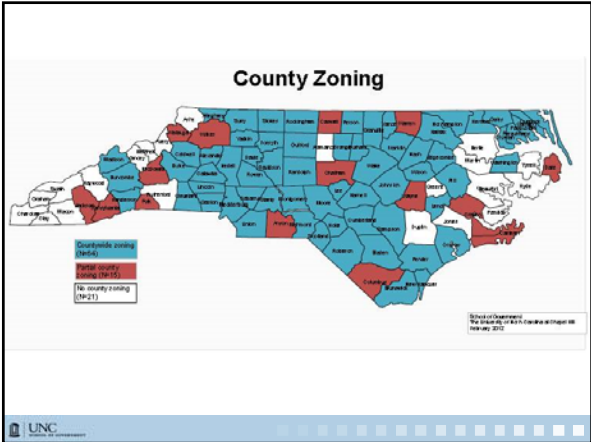
Performance Guarantee

- Terms
 - Parties. Limited to developer, local government, and financial institution
 - Access. When can developer use it?
 - Amount. How much is required? How is it calculated?
 - Timing. How long is guarantee? What's process for extension or renewal?
 - Default. What are the triggers and process for local government to call the bond?
 - Release. What are the triggers and process for releasing the bond?
- Administration
 - Who reviews and accepts?
 - Who files and monitors for expiration?
 - Who calls and manages construction?

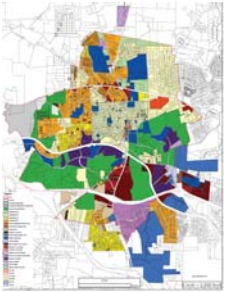
Blog: <https://canons.sog.unc.edu/subdivision-performance-guarantees-legislative-changes/>








Map



Ordinance Text



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Statutory Authority


- Zoning ordinance may regulate:
 - Building height, stories and size
 - the percentage of lots that may be occupied,
 - the size of yards and open space, courts and other open spaces
 - the density of population
 - the location and use of buildings

G.S. § 160A-381 and 153A-340

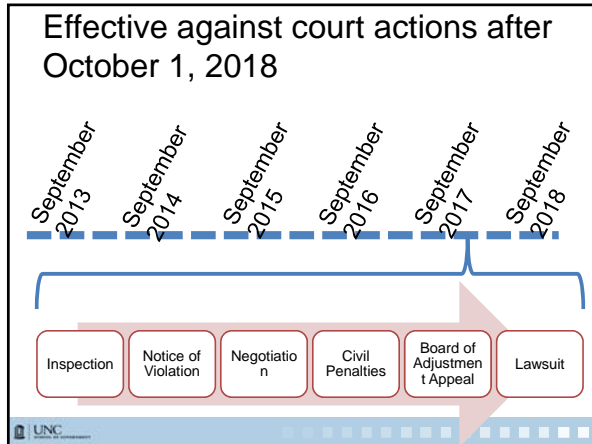
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Zoning...Use

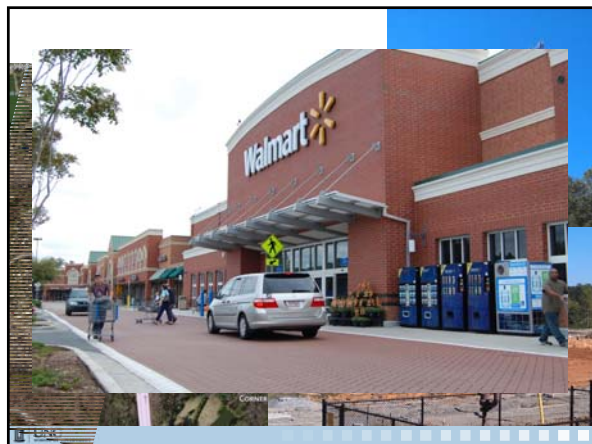
- YES - Permitted Uses
- NO - Prohibited Uses
- MAYBE - Conditional Use, Special Use, Special Exception



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- ### Moving forward with zoning enforcement
- Refine the land use ordinance
 - Proactive investigation and enforcement
 - Staff and board training
 - Public records review
 - Violation tracking (watch the clock)
 - Proactive lawsuits
- UNC



What is Spot Zoning?

- Zoning a property differently than other similarly situated properties
- Burden is on government to demonstrate reasonableness
- Legal only if reasonable
 - Site characteristics, relation to plans, balance of benefits/detriments



Taking of Property

- Regulation can be a “taking” if it “goes too far”
- Compensation automatically required in two situations
 - Physical invasion of property
 - Property rendered totally valueless
- Other situations decided case-by-case
 - Economic impact on owner
 - Character of governmental action
 - Focus on reasonable investment backed expectation
 - Reduction in value not a taking



Vested Rights and Permit Choice

- Right to complete project under “old” rules
- Established by
 - Substantial expenditures in reliance
 - Valid building permit
 - Approved site-specific development plan



Agricultural Uses

- In counties, exemption for bona-fide farms and agricultural, horticultural, and silvicultural activities
- ~~But large-scale hog operations can be subject to land-use regulation~~



Cell Towers



- Cannot totally exclude
- Cannot regulate on health basis
- Decisions must be in reasonable time and in writing
- Can impose limits on siting
- Can impose standards: height, fencing, co-location, stealth technology, etc.



Manufactured Housing

- Cannot totally exclude from entire jurisdiction
- Cannot regulate value, age
- Can regulate location, dimension, and appearance



Adult Businesses



- May not totally prohibit
- May regulate secondary impacts
 - Separation requirements,
 - Limits on advertising, noise, operations
 - Licensing requirements



Regulating Design

- May not regulate certain design aspects
- May regulate height, mass, building location, etc.
- Scope of Limitation
 - Applies to buildings subject to One- and Two-Family Res. Bldg Code
 - Does not apply to commercial or multi-family
 - Exceptions for historic districts and conditional zoning



Regulating Signs



- Need strong rationale for regulation
- May regulate size, type, lighting, and other characteristics
- Must be very careful when regulating content of sign (no distinctions among noncommercial messages)





