Planning and Development Regulation

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Session Coverage

• Context: Growth and change in NC
• How is planning done in NC?
• How is planning and development regulation jurisdiction allocated between cities and counties?
• Zoning and subdivision regulation basics
SOME CONTEXT

Population Growth
% Increase from 2000 to 2010
- None or negative percent change
- 0 - 10
- 10 - 20
- > 20

Source: 2010 US Census Bureau
N.C. Population

<table>
<thead>
<tr>
<th>Year</th>
<th>Population</th>
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</thead>
<tbody>
<tr>
<td>1900</td>
<td>1.9 million</td>
</tr>
<tr>
<td>1950</td>
<td>4.1 million</td>
</tr>
<tr>
<td>2000</td>
<td>8.0 million</td>
</tr>
<tr>
<td>2017</td>
<td>10.25 million</td>
</tr>
</tbody>
</table>

13 Counties with Half of NC Population, 2013

Source: U.S. Census Bureau Population Estimates
Population growth is uneven across North Carolina

Projected population growth, 2010-2035

Source: U.S. Census Bureau Population Estimates

Data Source: NC OSBM
N.C. Hispanic Population

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
</tr>
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<tbody>
<tr>
<td>1990</td>
<td>1.2%</td>
</tr>
<tr>
<td>2000</td>
<td>4.7%</td>
</tr>
<tr>
<td>2016</td>
<td>9.2%</td>
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</tbody>
</table>

How many North Carolinians are not NC natives?

- 5% in 1910
- 16% in 1960
- 43% in 2015

Source: 2015 American Community Survey
WHY PLAN?

Two Critical Questions

1. What role should local government play in planning?

2. How does government decide what is the “right” direction for these issues?
Would a new big-box center on the edge of town be good for your city?

Would a new 600 lot subdivision on the edge of town be a good thing for the town?
Why Plan?

• Technical analysis of conditions
• Establish a vision for the community
• Public engagement in policy-making
• Guide efficient public investment
• Qualify for certain funding and meet legal mandates

Planning in NC

• No statewide planning mandate for local planning
• Plans required in coastal area (CAMA)
• Do mandate consideration of plans when zoning amendments are considered
Types of Plans

- Comprehensive Plan
- Specialized/Functional Plans
- Strategic Plans

COMPREHENSIVE PLAN

- Traditional Focus of Local Planning
- Integrated View of Issues
  - Land use, transportation, housing, recreation
- Long Range View -- 10 to 20 years common
Land Use and Growth

• Community Character
• Future Land Uses
• Housing and Neighborhoods

Economic Development

• Workforce and Employment
• Public Incentives and Investment
• Development Sites
Public Investment

- Transportation
- Water and Sewer
- Energy
- Schools
- Parks
- Public Safety

Natural and Heritage Resources

- Agricultural Preservation
- Conservation Lands
- Water Resources
- Parks and Recreation
- Flood Zones/ Hazard Mitigation
- Historic Preservation
Specialized Plans

- Neighborhood Plans
- Small Area Plans
- Corridor Plans
- Historic District Plans
- Watershed Plans

Functional Plans

- Transportation and thoroughfare plans
- Public utility plans – water and sewer
- Recreation and open space plans
- Emergency services
- Public facility plans
- Capital improvement plans and budgets
Typical NC Organization for Planning

JURISDICTION FOR PLANNING AND DEVELOPMENT REGULATION
General Rule

- Cities have exclusive jurisdiction inside city limits
- Counties have jurisdiction in unincorporated areas
- City and county jurisdiction do not overlap

Variations in the General Rule

- Cities and counties can mutually agree to alternative (such as city asking county to act inside city)
- Areas immediately adjacent to, but outside, city limits can be subject to city jurisdiction (ETJ)
EXTRATERRITORIAL JURISDICTION

<table>
<thead>
<tr>
<th>Population</th>
<th>Maximum Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 10,000</td>
<td>1 mile</td>
</tr>
<tr>
<td>10,000 to 25,000</td>
<td>2 miles</td>
</tr>
<tr>
<td>Over 25,000</td>
<td>3 miles</td>
</tr>
</tbody>
</table>

Powers Available to City in ETJ

- Zoning
- Subdivision regs
- Enforcement of State Building Code
- Community development projects
- Acquisition of open space
- Minimum housing code
- Soil erosion and sedimentation control ordinance
- Floodway regulation
- Historic preservation programs

But NOT general police power ordinances
ETJ PROCESS

- Newspaper and Mailed Notice of Hearing
- Public Hearing on Boundary Ordinance
- County approval if:
  - a. Beyond one mile
  - b. In first mile if county exercising:
    - Zoning
    - Subdivision
    - Building code
- File with Clerk and Register of Deeds on adoption
- Appoint ETJ members of Planning Board and Board of Adjustment

DEVELOPMENT REGULATION
Typical Ordinances

Principally Used:
– Zoning – land uses, development standards
– Subdivision – lot layout, infrastructure
– Building code – state mandated, construction standards
– Housing code – habitability
– Often merge into Unified Development Ordinance (UDO)
## Municipal Zoning

<table>
<thead>
<tr>
<th>Municipality Population</th>
<th>% with Zoning</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 999</td>
<td>71%</td>
</tr>
<tr>
<td>1,000 - 4,999</td>
<td>96%</td>
</tr>
<tr>
<td>5,000 – 9,999</td>
<td>100%</td>
</tr>
<tr>
<td>10,000 or more</td>
<td>100%</td>
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2012 SOG Survey
% of responding jurisdictions

## County Zoning

![County Zoning Map](map.png)
Zoning can be controversial

- Impact on individual private property rights
- Concern that inappropriate or unduly burdensome regulation could be adopted
- Concern about adding time and cost to development process
- Concern about government intrusion on private decisions

Why is Zoning So Widely Used?

Public’s perspective
- Limit land use incompatibility
- Protect property values
- Stability and predictability in real estate market
Why is Zoning So Widely Used?

Governmental perspective
• Efficient provision of infrastructure
• Public health and safety issues
• Environmental concerns
• Preserve character of community

BASIC STRUCTURE OF ZONING ORDINANCES
(in a nutshell)
Zoning Ordinances

Zoning ordinances have two parts:

- Text to define standards and procedures
- Map to define location of zoning districts
Typical Zoning Requirements

Raleigh Unified Dev. Ordinance, Adopted Feb. 18, 2013
Typical Zoning Requirements

• Zoning districts are critical: Different land uses allowed in each
• Dimensional standards vary by district
  – Lot size; Front, rear, and side yard setbacks; Height limits
• Other typical regulatory provisions
  – Parking
  – Landscaping
  – Signs

Query

In a predominately residential neighborhood, what other land uses should be allowed?
Use Regulation

YES -- Permitted Uses

NO -- Prohibited Uses

MAYBE -- Conditional Use,
            Special Use,
            Special Exception

Types of Zoning Decisions

<table>
<thead>
<tr>
<th>Type</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislative</td>
<td>Rezoning</td>
</tr>
<tr>
<td>Quasi-judicial</td>
<td>Variance/SUP</td>
</tr>
<tr>
<td>Administrative</td>
<td>Notice of Violation</td>
</tr>
<tr>
<td>Advisory</td>
<td>Recommendation</td>
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</tbody>
</table>
Types of Zoning Districts

Conventional districts
Overlay districts
Floating districts
Conditional use and conditional districts

Amendments

- Planning Board Review
- Public Notice and Hearing
- Consistency Statement
Amendments: Planning Board Review

- Actions must be referred to planning board
- 30 days for review
- Written recommendation to advise and comment on consistency with applicable plans
- Recommendation is not binding on governing board

Amendments: Public Notice and Hearing

- Standard
  - Newspaper, two weeks, 10-25 days prior

- Map Amend (Rezoning)
  - Mailed to affected and abutting owners
  - Posted on the site
Amendments: Consistency Statement

• describe whether action is consistent with an adopted comprehensive plan and any other officially adopted plan
• briefly explain why the board considers the action taken to be reasonable and in the public interest.
• Statement is not subject to judicial review.

QUICK OVERVIEW OF SUBDIVISION REGULATION
Subdivision Regulations

Coverage -- Divisions for sale or development, present or future

Exemptions – 10 acre lots, 2 acres into 3 or less lots, recombinations

Typical requirements – Design/layout of lots, infrastructure

Steps

Sketch Plan

Preliminary Plat

Final Plat
As condition of approval, can developer be required to build streets and utility lines and donate those to the city?

Exactions

1. Must be reasonably related to the impacts generated
2. Can be no more than amount “roughly proportional” to impacts
3. Must have statutory authority
BONUS MATERIALS
(UNLIKELY TO COVER IN CLASS)

Statutory Limitations
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

Statutory Limits on Discretion --

Manufactured housing
- Can *not* totally exclude or regulate construction standards
- Can regulate location, dimension, and appearance
- Distinguish “manufactured” from “modular”
Family Care Homes

State law: 6 or fewer persons with a disability, must treat same as single family residence

Federal law: “reasonable accommodation” required

Telecommunication Towers

Can not totally exclude

Can not regulate on health basis

Decisions must be in reasonable time and in writing
Telecommunication Towers

Can limit siting, height, fencing, co-location, stealth technology

Must approve minor additions, colocations

Statutory Limits on Discretion

Alcohol sales
  – State ABC permits overrule zoning

Agricultural uses
  – Bona fide farm uses exempt from county zoning and city zoning in ETJ
Constitutional Limitations

Adult Businesses

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

- Need strong rationale for regulation
- May regulate size, type, lighting, and other characteristics
- May not regulate content of sign (very limited exceptions)

Time, Place, and Manner Restrictions

Typical limits:
- Size – height, sq. footage
- Location – by zoning district, setbacks
- Lighting – no flashing, limits on illumination
- Ban on portable signs, banners, temporary signs