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2016 North Carolina Legislation Related to Planning and Development Regulation

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In 2016 the North Carolina General Assembly considered a wide variety of bills that would have had substantial impacts on North Carolina planning and development regulation statutes. Ultimately, however, only a modest number of measures were enacted, most in the nature of refining existing laws.

Zoning

As introduced in 2015, H.B. 483 included amendments to a variety of development regulation statutes. The bill, proposed by the development industry, addressed vested rights, appeals to superior court rather than the board of adjustment for allegations of constitutional violations or actions taken without statutory authority, longer statutes of limitation for bringing claims, accepting a permit while retaining the right to challenge it in court, applicability of attorney fees if a local government is found to have exceeded its authority, and required bonds when the government seeks a preliminary injunction. In the 2016 session, this bill was amended to add provisions regarding performance guarantees with subdivision approvals, curb cut regulations, and limiting special use permit conditions related to taxes, impact fees, building design, street improvements, driveway-related improvements, and "other unauthorized limitations on the development or use of land" not voluntarily offered by the developer.

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Ultimately only a small portion of H.B. 483 was enacted as S.L. 2016-111 (effective July 22, 2016). The law amends G.S. 160A-385 and 153A-344 to establish a new statutory vested right for multi-phased developments. A seven-year vested right is established for all phases of the development at the time a site plan is approved for the initial phase of the development. Under common law vesting, substantial expenditures would have to be made for development in a particular phase of the project for that phase to get a vested right. For purposes of this new statutory vesting, a *multi-phase development* is defined as one that contains 100 or more acres, is submitted for site plan approval for construction in multiple phases, and is subject to a master development plan "with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval." This new vested right applies to projects approved on or after July 22, 2016, and to previously approved site plans that were valid and unexpired as of that date.

Building and Housing Code Enforcement

Exemptions

The regulatory relief bill for the agricultural community, S.L. 2016-113 (S.B. 770), amends G.S. 143-138, 153A-357, and 160A-417 regarding building permit exclusions applicable to single family homes and farm buildings. The following work, if done in accordance with the building code and costing less than $15,000, now does not require a building permit:

1. Replacement of windows, doors, exterior siding, and the decking, stair treads, railings, or pickets for porches
2. Replacement of plumbing that does not change size or capacity
3. Replacement of like-kind electrical devices and lighting fixtures
4. Replacement of water heaters, provided the energy use rate is not increased and there is no change in fuel, energy source, location, routing, or sizing of venting and piping

Periodic Inspections

S.L. 2016-122 (S.B. 326), effective January 1, 2017, makes several amendments to the statutes on periodic inspections of buildings for unsafe, unsanitary, or otherwise hazardous conditions. The law amends G.S. 153A-364 and 160A-424 in several ways.

First, if a safety hazard is found in one unit of a multifamily building, inspections may be made to determine if the same hazard exists in additional units without a specific complaint or actual knowledge of the hazard in those additional units.

Second, the new law limits periodic inspections in target areas. These targeted areas may not exceed one square mile or 5 percent of the jurisdiction's area, whichever is greater. The areas must be a part of a neighborhood revitalization effort and consist of properties meeting the definition of a "blighted" area or parcel under the urban redevelopment law.

Third, it limits residential rental registration programs and fees. Residential rental permitting or registration can be applied only to properties with four or more verified violations in a rolling 12-month period, with two or more violations in a rolling 30-day period, or that are in the top 10 percent of properties with crime or disorder problems. Fees are limited to no more than $500 in the year of violations. The ordinance may not make violation a criminal offense. No inspection can be required prior to receiving any utility service provided by the city. If the

violation is tenant-related, it is deemed corrected if a summary ejectment action to evict the tenant is brought within 30 days of written notice of the violation. Law enforcement officials are directed to assist the landlord in addressing criminal activity in those units in the top 10 percent of properties with crime or disorder problems, and the property cannot be included in the top 10 percent if that cooperation is not forthcoming.

Transportation

In 1987 the General Assembly adopted the Roadway Corridor Official Map Act (later renamed the Transportation Corridor Official Map Act). The law, codified at G.S. 136-44.50 to 136-44.54, allows transportation corridors to be identified and then limits approval of building permits or new subdivisions within the corridor for up to three years. G.S. 136-44.51. The law also allows variances to be granted if no reasonable return can be made from the land and allows landowners to petition for initiation of acquisition if the limits on development impose an undue hardship.

Landowners affected by a 1997 official map designation for a proposed 34-mile long loop road around northern Winston-Salem sued the state, alleging the act made their property unmarketable and was an unconstitutional taking of their property. In 2015 the state court of appeals ruled the law gives the N.C. Department of Transportation (NCDOT) the right to establish what is essentially an easement restricting the use of property as a precursor to acquisition and is thus an exercise of eminent domain requiring just compensation. In June 2016 the state supreme court agreed that filing a corridor protection map under the official map act is an exercise of the power of eminent domain rather than of the police power, thus necessitating compensation. Kirby v. N.C. Dept. of Transp., 368 N.C. 847 (2016).

In 2016 the General Assembly responded by suspending the official map act program. S.L. 2016-90 (H.B. 959) amends G.S. 136-44.50 to place a one-year moratorium (until July 1, 2017) on the adoption of any new corridor official maps and to rescind all previously adopted maps. This law also amends the interest that must be paid between the condemnation and entry of judgment on these cases from 8 percent to the prime lending rate. It also directs NCDOT to study the development of a new process that equitably balances the governmental interest in protecting transportation corridors from development and the property rights of landowners. A final report of the study, with findings and recommendations, is to be presented to the legislature by July 1, 2017.

Housing, Community Development, and Economic Development

A municipal service district (MSD) is a defined area within a municipality where an additional property tax is levied to provide additional services or infrastructure within the district. Municipal service districts are authorized at G.S. Chapter 160A, Article 23 (county service districts are authorized separately at G.S. Chapter 153A, Article 16). Cities can use municipal service districts for functions such as downtown revitalization, drainage and sewage projects, and parking facilities.

The General Assembly approved significant changes to the municipal service district authority in 2015 and followed these up with additional changes in 2016 in S.L. 2016-8 (H.B. 1023). Changes include a requirement that district changes be adopted by ordinance, a formal process for property owners to request creation of or exclusion from an MSD, and a reporting requirement for private entities contracted to do work in an MSD.

Under the amended statutes, a city now must adopt an ordinance to establish, change, or abolish an MSD. To establish or amend an MSD, the governing board must receive a majority vote at two consecutive meetings. An MSD may be abolished by ordinance under the board's normal rules of procedure. Current MSDs remain in existence (no need to adopt an ordinance to reestablish an existing MSD).

Property owners have increased input for MSD creation and modification. They now may petition for the creation of an MSD. City councils must establish procedures to consider petitions and must consider such petitions at least once a year. The city may, but is not required, to establish the MSD if a majority of the owners in the district request it. Even with a petition, the city must still follow the standard procedures outlined in G.S. 160A-537.

A property owner may request that property be excluded from proposed districts. The owner must make a written request at or within five days after the public hearing on creating the district stating the reasons why the property does not need the services or facilities of the district. In order to exclude the property, the city council must make a finding that the property demonstrably does not need the additional services or facilities.

A property owner also may request that property be removed from an existing MSD. The owner must make a written request stating the reasons why the property does not need the services or facilities of the district. The city must hold a public hearing with proper notice. The city council may remove the property by ordinance if it finds that the property demonstrably does not need the additional services or facilities.

Finally, the new legislation imposes a reporting requirement on contractors providing services or undertaking projects in an MSD. Cities commonly contract with private entities to provide the services or build the facilities for an MSD. Such contracts must specify the purposes for which public funds will be used and require accounting of the moneys paid under the contract. Now, contractors also must report information about any subcontractors.

Environment

Sedimentation Exemption

The regulatory relief bill for the agricultural community, S.L. 2016-113 (S.B. 770), amends G.S. 113A-52.01 to expand the definition of exempt activities under the Sedimentation Pollution Control Act. Production of mulch would also be exempt (along with production of crops, livestock, and poultry, and horticulture and other agricultural activities). To qualify for this exemption, the mulch must be composed primarily of plant remains or mixtures of plant remains.

Nutrient Management

Section 14.13 of the budget bill, S.L. 2016-94 (H.B. 1030), includes amendments regarding the ever-contentious issue of nutrient management strategies for Falls Lake and Jordan Lake.

It terminated the experiment of using solar-powered water mixing devices on Jordan Lake. The Department of Environmental Quality (DEQ) is directed to study alternative technologies for in situ approaches to nutrient management and is authorized to spend $1.3 million to implement trials of alternative technologies.

It suspends stormwater rules for Jordan Lake until October 15, 2019, and for Falls Lake until October 15, 2022. It provides that impervious surfaces added within the Jordan Lake watershed between July 26, 2013, and December 31, 2020, shall not be counted as "built-upon areas" for purposes of calculating a city or county's nutrient loading targets under stormwater rules and that cities and counties are not to enforce any ordinance, condition, or contractual obligation imposed under stormwater rules for nutrient loading targets for the Jordan Lake watershed. Stormwater treatment practices approved by the Chesapeake Bay Commission are to be allowed for purposes of Jordan Lake and Falls Lake pollution loading compliance. DEQ was to study nutrient impact fees and other water quality impact mitigation programs and submit a study report by December 1, 2016.

Finally, Section 14.13 allocates $500,000 per year for the next six years for UNC-Chapel Hill to supervise an analysis of nutrient management strategies and existing water quality data for these lakes and to examine the costs and benefits of basinwide nutrient management strategies in other states. A final report on Jordan Lake is due by December 31, 2018, and on Falls Lake by December 31, 2021.

Coal Ash

For decades electric utilities in North Carolina and around the country used coal ash ponds adjacent to coal-fired power plants to dispose of waste coal ash. A Tennessee Valley Authority coal ash pond in Tennessee failed in 2008, leading to a massive discharge, which prompted enhanced environmental scrutiny of these aging facilities. The 2014 failure of a Duke Energy pond along the Dan River brought the issue of how best to deal with the 14 coal ash ponds in this state to the forefront.

In 2014 the General Assembly adopted the Coal Ash Management Act to create a regulatory scheme to manage coal ash impoundments and closure plans. Among other provisions, this law created the Coal Ash Management Commission. In early 2016 the state supreme court ruled the provisions for legislative branch appointments to the commission (as well as appointments to the Oil and Gas Commission and Mining Commission) constituted an unconstitutional violation of the separation of powers. State v. Berger, 368 N.C. 633 (2016). The legislature's first attempt to resolve this issue was the adoption of S.B. 71 in 2016. This bill reformulated the commissions to give the governor a majority of the appointments. The governor objected that separation of powers issues remained, so he vetoed the bill. The veto was not overridden.

The second attempt to resolve the matter was more successful. S.L. 2016-95 (H.B. 630) eliminates the Coal Ash Management Commission and assigns the program for closure of coal ash impoundments to DEQ. The new law requires provision of permanent drinking water to well owners within a half mile of the impoundments by October 2018. It also amended the process for assigning risk classifications to the existing impoundments.

Miscellaneous Provisions

Section 11.8 of the budget bill appropriated $1 million to UNC-Chapel Hill to establish a "collaboratory" to facilitate the dissemination of the university's policy and research expertise for practical use by state and local governments. The initiative is directed to research natural resource management and new technologies for habitat, environmental, and water quality improvement, disseminate best practices, and make recommendations to the General Assembly.

Jurisdiction

No significant changes were made in general statutes regarding annexation or extraterritorial planning and development regulation jurisdiction in 2016. However, the General Assembly did continue to make changes in jurisdiction for individual cities.

Bills annexed specified territory to the following municipalities: Bakersville (S.L. 2016-63, S.B. 852); Norwood (S.L. 2016-42, H.B. 1017); and Rolesville (S.L. 2016-67, S.B. 739).

Bills removed specified territory from the following municipalities: Asheboro (S.L. 2016-62, S.B. 774); Clyde (S.L. 2016-63, S.B. 852); Glen Alpine (S.L. 2016-49, H.B. 1132); Marvin (S.L. 2016-62, S.B. 774); Maxton (S.L. 2016-48, H.B. 1022); and Norwood (S.L. 2016-42, H.B. 1017).

The limit on the land area that may be included in satellite annexations was raised for Siler City (S.L. 2016-48, H.B. 1022). S.L. 2016-16 (H.B. 1131) requires Andrews to secure county approval before exercising extraterritorial planning and development regulation jurisdiction even within one mile of its corporate limits.

S.L. 2016-45 (H.B. 1143) suspends the city charter for the Town of Spencer Mountain for the period July 1, 2016, to June 30, 2019.

Legislation Not Enacted

Reorganization and Modernization of the Development Regulation Statutes

Legislation to consolidate the city and county statutes on development regulation into a new Chapter 160D of the General Statutes, reorganize those statutes, and make several consensus modernizations was introduced as H.B. 548 in 2015. The House passed a version of the bill calling for a study committee prior to the 2016 short session, but the Senate did not act on it in 2015. The bill was eligible for action in 2016, but after further revision of the bill to add amendments to the affected statutes made in 2015 and remove controversial modernization provisions, the Senate determined there was not sufficient time to consider the bill in 2016.

Regulatory Reform

In recent years the legislature has enacted an omnibus regulatory reform bill that aggregates various amendments affecting state and local government programs into a single bill. The same type of bill was anticipated for 2016, but last minute disagreements led to adjournment without action on such a bill. Two of those regulatory reform bills were near passage, but neither secured final legislative approval.

Senate Bill 303 included a number of provisions affecting local development regulations. It would have provided that zoning amendments are deemed to also amend any plan, expanded exempted subdivisions, set a three-year statute of limitations to cite zoning violations, expanded required notices to military installations of pending regulatory changes, revised review of tall buildings near military installations, and amended wind energy permitting by the state. Both houses passed the bill, but a conference committee failed to reconcile differences in the two versions adopted.

House Bill 593 primarily addressed environmental laws. It would have amended provisions regarding on-site stormwater controls, limited stream mitigation requirements, relaxed Coastal Area Management Act standards for temporary erosion control and terminal groins, and revised various landfill and solid waste requirements. As with S.B. 303, both houses passed the bill, but a conference committee failed to reconcile differences.

Senate Bill 778 proposed amendments to the county subdivision statutes to provide for, among other things, residual performance guarantees. This change was intended to address the time from street completion until there is sufficient density for the N.C. Department of Transportation (NCDOT) to accept the street for maintenance. The bill proposed specific standards for NCDOT acceptance of subdivision streets and highlighted county assessments to fund necessary street improvements. The bill also called for development of a county public street information database.

Constitutional Amendment

House Bill 3, which would have placed a constitutional amendment to limit use of eminent domain to projects for public uses on the November ballot, passed both houses but was not enacted. A late proposal to also include a constitutional limit on the state income tax proved controversial and led to putting the bill on hold.