

# Plan-Consistency Statements

David W. Owens

Zoning was first authorized for North Carolina cities in 1923. The controlling statute required that zoning be “in accordance with a comprehensive plan.”<sup>1</sup> The same requirement was applied to counties when they were given authority to enact zoning in 1959.<sup>2</sup>

What does this deceptively simple legislative mandate mean? How closely must development regulations track the policy guidance provided in a plan? Is the plan binding, a guideline, or just background information that can be freely ignored? What do the statutes have to say about documenting consideration of plans when zoning regulations are amended?

Adopting a zoning regulation and amending the zoning text or map is a legislative policy choice entrusted to local elected officials. The statutes and courts generally leave these decisions to the good judgment and discretion of the elected officials. Since these decisions can have a significant impact on property owners and communities, the laws impose some procedural restrictions to minimize potential abuse of this discretion. For example, it is illegal to adopt, amend, or repeal a development regulation without first holding a duly advertised public hearing and referring the matter to the planning board for advice.

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1. Chapter 160A, Section 383 of the North Carolina General Statutes (hereinafter G.S.).

2. G.S. 153A-341. This requirement was included in the Standard State Zoning Enabling Act and, in one form or another, in almost all state legislation authorizing zoning. For seminal articles making the case for greater plan-regulation coordination, see Charles Haar, *In Accordance with a Comprehensive Plan*, 68 HARV. L. REV. 1154 (1955), Charles Haar, *The Master Plan: An Impermanent Constitution*, 20 LAW & CONTEMP. PROBS. 353 (1955), and Daniel R. Mandelker, *The Role of the Local Comprehensive Plan in Land Use Regulation*, 74 MICH. L. REV. 899 (1976). See also JOSEPH F. DiMENTO, THE CONSISTENCY DOCTRINE AND THE LIMITS OF PLANNING (1980); Nathan Blackburn, Comment, *Planning Ahead: Consistency with a Comprehensive Land Use Plan Yields Consistent Results for Municipalities*, 60 OKLA. L. REV. 73 (2007); Gerald A. Fischer, *The Comprehensive Plan Is an Indispensable Compass for Navigating Mixed-Use Zoning Decisions Through the Precepts of Due Process, Takings, and Equal Protection Clauses*, 40 URB. LAW. 831 (2008); Laurence Kressel & Edward J. Sullivan, *Twenty Years After—Renewed Significance of the Comprehensive Plan Requirement*, 9 URB. L. ANN. 33 (1975); Stuart Meck, *The Legislative Requirement That Zoning and Land Use Controls Be Consistent with an Independently Adopted Local Comprehensive Plan: A Model Statute*, 3 WASH. U. J.L. & POL’Y 295 (2000); Charles L. Siemon, *The Paradox of “In Accordance with a Comprehensive Plan” and Post Hoc Rationalizations: The Need for Efficient and Effective Judicial Review of Land Use Regulations*, 16 STETSON L. REV. 604 (1987); Edward J. Sullivan, *The Evolving Role of the Comprehensive Plan*, 32 URB. LAW. 813 (2000).

Linking legislative decisions on development regulations to adopted comprehensive plans has been mandated in some states to impose an additional limit on the discretion of elected officials in amending zoning regulations.<sup>3</sup> North Carolina law has not taken that approach. North Carolina courts have not interpreted the “in accordance with a comprehensive plan” requirement to mean that zoning must be compatible with a separate, formally adopted comprehensive plan. Rather, the courts have required that zoning be based on a reasoned consideration of the entire jurisdiction and the full range of land use issues facing that jurisdiction. Unless *spot zoning* is involved (see the text at note 16, *infra*), the North Carolina courts have not looked closely at an adopted plan as guidance for legislative zoning decisions.

North Carolina statutes do, however, impose a requirement that local governments consider adopted plans when zoning regulations are amended. State law requires cities and counties to prepare and approve a plan-consistency analysis for each proposed zoning amendment as part of the adoption process. Examples of plan-consistency statements prepared by North Carolina local governments are provided in Appendix A.

This bulletin examines North Carolina statutory requirements, case law, and local government experience regarding the relationship between plans and development regulations. It focuses on plan-consistency statements prepared and considered during the zoning-amendment process. The discussion of city and county experiences is based on the results of a School of Government survey distributed to all North Carolina cities and counties that have adopted zoning. The survey was conducted in late 2017 and early 2018. Surveys were sent to city and county zoning administrators or planners (and if a jurisdiction had neither, to the manager, administrator, or clerk). Responses were received from 355 jurisdictions, which together represent about 83 percent of the state’s total population.<sup>4</sup>

## Judicial Interpretation of the “In Accordance” Mandate

Other than the vague requirement that zoning be in accordance with a comprehensive plan, North Carolina statutes have not, for the most part, mandated preparation of comprehensive plans, defined their elements, or set a mandatory procedure for their adoption. The statutes authorizing creation of planning boards, G.S. 153A-321 and 160A-361, simply note that planning

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3. A number of states have defined their comprehensive plans legislatively, mandated their preparation, provided for regional and state coordination of plans, and mandated that land use regulations be consistent with plans. California first required plan consistency in 1955. Oregon required consistency with state goals in 1973. Florida, Georgia, Washington, and other states addressed the issue in the 1980s. *See, e.g.*, CAL. GOV’T CODE § 65860 (West 2012); OR. REV. STAT. ANN. § 197.175(2) (West 2011); FLA. STAT. ANN. §§ 163.3161 to 163.3215 (West 2010); GA. CODE ANN. §§ 36-70-1 to 36-70-5 (2010); WASH. REV. CODE ANN. ch. 36.70A (West 2011); HAW. REV. STAT. § 226-1 (2016). For cases addressing plan consistency, see *City of Del Mar v. City of San Diego*, 183 Cal. Rptr. 898, 907 (Cal. Dist. Ct. App. 1982); *Durant v. D.C. Zoning Comm’n*, 139 A.2d 880 (D.C. 2016); *U.S. Sugar Corp. v. 1000 Friends of Fla.*, 134 So. 3d 1052 (Fla. Dist. Ct. App. 2013); *Gatri v. Blane*, 962 P.2d 367 (Haw. 1998). In states with mandated plan consistency, a zoning amendment that is inconsistent with the plan is invalid. *See, e.g.*, *Mikell v. Cty. of Charleston*, 687 S.E.2d 326 (S.C. 2009).

4. Details on the survey methodology are in Appendix B, and a list of responding jurisdictions is in Appendix C.

boards may conduct studies, determine objectives, prepare and adopt plans, recommend policies, advise governing boards, and exercise such administrative and enforcement functions as may be delegated to them. The courts have not interpreted “in accordance with a comprehensive plan” to mandate preparation of or consistency with a formal land use or comprehensive plan. Rather, the cases have interpreted the requirement to mean that comprehensive zoning regulation throughout a city’s planning jurisdiction is required.<sup>5</sup>

One of North Carolina’s earliest zoning cases confirmed the importance of a comprehensive approach to regulation rather than adherence to a plan as the foundation for zoning. The state supreme court in 1938 invalidated a purported zoning ordinance in *Shuford v. Town of Waynesville*.<sup>6</sup> One of several grounds for invalidation of this hastily adopted ordinance was that because it zoned only one block of the town, it was not based on a comprehensive plan and could not be a valid exercise of zoning power.<sup>7</sup>

In *Allgood v. Town of Tarboro*,<sup>8</sup> the court in 1972 considered a rezoning that was inconsistent with a land use plan adopted some eight years earlier. The court noted that conditions had changed substantially after the plan had been adopted and that changes in the area were documented in a detailed, professional planning report. The court held that this report “furnished the Town Council with reasonable grounds and a plausible basis for adopting the amendment,”<sup>9</sup> even if the formal comprehensive plan itself had not been amended before the rezoning.

In *A-S-P Associates v. City of Raleigh*,<sup>10</sup> a case upholding historic-district regulations, the court in 1979 continued to refrain from making a judicial definition of *comprehensive plan*. The court did note the City had a comprehensive zoning ordinance covering the entire City and had conducted comprehensive studies of housing, transportation, public facilities, parks and recreation, and a wide range of other needs. This comprehensive regulation and, importantly, the careful study and analysis underlying the historic-district designation and guidelines, were key factors in upholding the regulation. The court also noted that the City’s plans need not be internally consistent: “That some inconsistencies exist among the various planning efforts engaged in by the City is not indicative of the possible absence of a comprehensive plan . . . . A rational process of planning for a large city’s varied needs inherently involves conflicts, changes, and inconsistent proposals as to how they should be met.”<sup>11</sup>

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5. Kenneth G. Silliman, *A Practical Interpretation of North Carolina’s Comprehensive Plan Requirement*, 7 CAMPBELL L. REV. 1 (1984); Mark S. Thomas, Comment, *Urban Planning and Land Use Regulation: The Need for Consistency*, 14 WAKE FOREST L. REV. 81 (1978).

6. 214 N.C. 135, 198 S.E.2d 585 (1938). The ordinance established a one-block-long “business section” in downtown Waynesville and excluded location of new gasoline stations in that district. The ordinance noted that other zoning districts for the balance of the town would be established at a future date. The court held that the ordinance was not valid as a general-police-power regulation either.

7. The court in 1971 reached the same conclusion about the necessity for applying zoning throughout a city in order for it to be “comprehensive.” *Allred v. City of Raleigh*, 277 N.C. 530, 544, 178 S.E.2d 432, 439–40 (1971).

8. 281 N.C. 430, 189 S.E.2d 255 (1972).

9. *Id.* at 445, 189 S.E.2d at 264.

10. 298 N.C. 207, 258 S.E.2d 444 (1979).

11. *Id.* at 229, 258 S.E.2d at 458. Similarly, in *Graham v. City of Raleigh*, 55 N.C. App. 107, 284 S.E.2d 742 (1981), *discretionary review denied*, 305 N.C. 299, 290 S.E.2d 702 (1982), the court of appeals noted:

[T]he City recognized that the function of the comprehensive plan does not

In *Piney Mountain Neighborhood Ass'n v. Town of Chapel Hill*,<sup>12</sup> the court of appeals in 1983 explicitly held that a jurisdiction's plan is advisory only and does not control zoning decisions:

We agree with the superior court's finding that "the Comprehensive Land Use Plan does not set forth mandatory zoning requirements, but consists of general goals, standards and guidelines for the implementation of policy." The Plan is, by its express terms, merely advisory. . . . A comprehensive plan "is a policy statement to be implemented by zoning regulations, and it is the latter that have the force of law." It "is generally deemed to be advisory, rather than controlling, and it may be changed at any time."<sup>13</sup>

While not a controlling factor, consideration of plans can provide important legal support for zoning decisions in two contexts. In a general sense, the plan can support a zoning decision in terms of meeting the constitutional admonition to avoid arbitrary and capricious decision-making.<sup>14</sup> For example, consideration of a thoughtfully prepared plan helps to establish that a particular zoning decision is more than an ad hoc response to an individual property owner's petition for a rezoning. Beyond this general consideration, if a city or county engages in spot zoning—zoning a parcel owned by a single entity differently from the surrounding territory—the courts remove the presumption of validity of the legislative action and require the local government to document that the spot zoning is reasonable and in the public interest.<sup>15</sup> Consistency with an adopted plan is an important factor in determining that the action taken was in fact reasonable.

There are also some circumstances where the land use regulation itself elevates the plan beyond its usual advisory role. The most common of these is an ordinance requirement that a special and conditional use permit be approved only upon a showing that the proposed activity will be consistent with the adopted plan. If evidence is presented that the proposal would be incompatible with the plan, the permit must be denied. A few local governments in North Carolina also include a more general provision in their ordinances that all zoning-map amendments be consistent with their adopted plans. In these jurisdictions, it is therefore

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contemplate or require a plan which rigidly provides for or attempts to answer in minute detail every possible question regarding land utilization or restrictions or attempts to fix a zoning map in a rigid and immutable mold, but rather the plan sets out general guidelines for the guidance of zoning policy. The questioned amendment serves not merely the functions of amending the zoning ordinance, it also enunciates a change in the comprehensive plan itself, thus bringing about the necessary conformity or harmony between the amendment and the comprehensive plan.

*Graham*, 55 N.C. App. at 113–14, 284 S.E.2d at 746 (citations omitted).

The concept that a zoning amendment effectively amends the plan was incorporated into the statutes some thirty-five years later. See S.L. 2017-10, discussed below.

12. 63 N.C. App. 244, 304 S.E.2d 251 (1983).

13. *Id.* at 250–51, 304 S.E.2d at 255 (citations omitted).

14. See, e.g., *Summers v. City of Charlotte*, 149 N.C. App. 509, 519–20, 562 S.E.2d 18, 25–26, *review denied*, 355 N.C. 758, 566 S.E.2d 482 (2002).

15. *Chrismon v. Guildford Cty.*, 322 N.C. 611, 628, 370 S.E.2d 579, 589 (1988); *Graham*, 55 N.C. App. 107, 284 S.E.2d 742.

common for a proposed rezoning that is inconsistent with the plan to be processed concurrently with a proposed plan amendment.<sup>16</sup>

Finally, there is an exception to the statutory rule that plans are optional and not binding on zoning. The Coastal Area Management Act (CAMA) requires the state's twenty coastal counties to prepare comprehensive land use plans that are consistent with formal guidelines adopted by the Coastal Resources Commission.<sup>17</sup> Each municipality within the CAMA area may prepare its own plan or elect to be covered by the county plan. Once an adopted plan is approved by the Coastal Resources Commission, all CAMA permits must be consistent with the plans, and local-development regulations within the areas subject to CAMA regulations must be consistent with these plans.<sup>18</sup>

## Plan Adoption

Most local governments have concluded that planning is a useful tool that provides technically competent analyses of the issues being considered in development regulations. Plans provide a context to consider the long-term impact of individual land use decisions. Planning provides for public participation, coordination of programs and decisions, and the opportunity to set forth the basic policy choices that underlie a rational program of land use regulation.<sup>19</sup> Although not mandated to do so, most populous North Carolina cities and counties have adopted plans.

A number of different types of plans are prepared and adopted by local governments.

The *comprehensive plan* is traditionally used by local governments as their principal planning tool. This plan takes a long-range time perspective—typically ten to twenty years—and looks at the interrelationships between land uses, infrastructure, and key community needs. It is common for these plans to focus on physical development. Typical comprehensive plan contents include background information (such as community history, population, development, and economic trends) and surveys of natural features, public infrastructure, existing land uses, and citizens' attitudes, goals, and visions for the community's future. Typical sections of a comprehensive plan include land use, housing, transportation, community facilities, recreation and open space, economic development, community design, community revitalization, and natural hazards. Some of these plans focus on future land use and are referred to simply as

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16. *Nelson v. City of Burlington*, 80 N.C. App. 285, 341 S.E.2d 739 (1986). But see *Godfrey v. Union County Board of Commissioners*, 61 N.C. App. 100, 300 S.E.2d 273 (1983), where the court held:

There is no dispute that at the time the Rape tract was rezoned, Union County had in effect a comprehensive land use and development plan. While such plans may be appropriately modified after their adoption, such changes must be made consistently with the overall purposes contemplated by the adoption of the plan, and not to accommodate the needs or plans of a single property owner.

*Godfrey*, 61 N.C. App. at 104, 300 S.E.2d at 275.

17. G.S. 113A-108, -109.

18. G.S. 113A-111.

19. See *Purser v. Mecklenburg County*, 127 N.C. App. 63, 488 S.E.2d 277 (1997), for an illustration of these points. The court upheld the rezoning of a parcel from residential to business to allow for a neighborhood convenience store, pointing out that careful consideration of development policies in plans and how they apply to a site and the surrounding developing area are important factors in establishing the requisite reasonableness of spot zoning.

“land use plans.” Many local governments prepare neighborhood or area plans, which give detailed attention to smaller geographic areas. They are often prepared with intensive public participation between major updates of the larger comprehensive plan. A number of local governments also have specialized plans, such as design guidelines that may address mitigation of the impacts of natural hazards, architectural standards in commercial areas, or historic districts. These are sometimes incorporated into a comprehensive plan as well.

Most local governments also prepare *functional plans*. These are detailed looks at how government functions, such as transportation, water and sewer services, or parks and recreation, will be carried out in the future.

Some local governments also prepare *strategic plans*. These plans focus on a few key issues, have a shorter time frame (such as two to five years), identify specific implementation responsibility and time line, and have a regular follow-up on the results. These plans often have strong participation from community groups and leaders.

A 1998 survey reported that approximately 83 percent of the state’s counties, 70 percent of the cities with populations over ten thousand, and 50 percent of the cities with populations under ten thousand had adopted a plan.<sup>20</sup> A 2008 School of Government survey of local governments showed similar results. Of the cities with populations over ten thousand, 75 percent reported having adopted a comprehensive plan, as did 63 percent of the counties with populations over twenty-five thousand in their unincorporated areas. These jurisdictions also reported that a variety of other types of plans had been adopted. A majority had adopted a hazard-mitigation plan (61 percent) or a land use plan (60 percent). Other plans with high rates of adoption included a parks-and-recreation plan (45 percent), a capital-improvement plan (44 percent), and a transportation plan (40 percent). Other types of plans that had been adopted by at least 10 percent but less than 25 percent of the responding jurisdictions in 2008 included small-area or neighborhood plans, corridor plans, CAMA plans, open-space plans, and farmland-preservation plans.

The School of Government’s 2018 survey results show that an increasing number of cities and counties, particularly the more-populous cities and counties, have adopted a comprehensive plan. While 70 percent of all responding jurisdictions report having adopted a comprehensive plan, over 90 percent of the cities with populations over ten thousand have adopted a plan (compared with 70 percent in 1998 and 75 percent in 2008). Plan-adoption rates decrease for cities with smaller populations: 79 percent for cities with populations between one thousand and ten thousand, and only 26 percent for cities with populations under one thousand. Of the responding counties, 78 percent report having adopted a comprehensive plan. These responses are set out in Table 1.

Adopted plans, however, are not always updated regularly. Our 2018 survey respondents report that about half of the adopted plans have been updated within the past five years, about a quarter were last updated within the past six to ten years, and a quarter were last updated more than ten years ago. These percentages are about the same for cities and counties and across all population sizes, and they are essentially the same as the plan-update frequencies reported in 2008. These responses are set out in Table 2.

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20. Ctr. for Urban and Reg’l Studies, Univ. of N.C. at Chapel Hill, LAND DEVELOPMENT PLAN GUIDELINES FOR NORTH CAROLINA LOCAL GOVERNMENTS: INCORPORATING WATER QUALITY OBJECTIVES IN A COMPREHENSIVE PLANNING FRAMEWORK 1 (1999).

**Table 1. Comprehensive Plan Adoption**

Jurisdiction Population	Total Respondents	% Adopting Comprehensive Plan
Municipalities < 1K	74	26%
Municipalities 1–10 K	119	79%
Municipalities 11–24 K	38	92%
Municipalities > 25K	31	94%
<b>Municipal Total</b>	<b>262</b>	<b>68%</b>
Counties < 25K	20	80%
Counties > 25K	58	78%
<b>County Total</b>	<b>78</b>	<b>78%</b>
<b>Total Responding Jurisdictions</b>	<b>340</b>	<b>70%</b>

**Table 2. Plan-Update Frequency**

Jurisdiction Population	Total Respondents	% Updating Plan		
		Five Years or Less	Six to Ten Years Ago	More than Ten Years Ago
Municipalities < 1K	19	53%	32%	16%
Municipalities 1K–10K	92	49%	26%	25%
Municipalities 11K–24K	34	41%	50%	9%
Municipalities > 25K	30	40%	30%	27%
<b>Municipal Total</b>	<b>175</b>	<b>46%</b>	<b>32%</b>	<b>21%</b>
Counties < 25K	16	44%	25%	31%
Counties > 25K	45	51%	27%	22%
<b>County Total</b>	<b>61</b>	<b>49%</b>	<b>26%</b>	<b>25%</b>
<b>Total Responding Jurisdictions</b>	<b>236</b>	<b>47%</b>	<b>31%</b>	<b>22%</b>

Note: Percentage totals may deviate from 100 due to rounding.

## Plan-Consistency-Statement Requirement

The North Carolina zoning statutes were amended in 2005 to strengthen the role of adopted plans.<sup>21</sup> G.S. 153A-344 and 160A-387 require a recommendation from a jurisdiction's planning board prior to initial adoption of zoning, and they mandate referral of proposed zoning amendments to the planning board for review and comment.<sup>22</sup> G.S. 153A-341 and 160A-383 require that the planning board's review of any proposed zoning amendments include written comments on the consistency of the proposed amendment with the comprehensive plan and any other relevant plans (such as a small-area plan, a corridor plan, or a transportation plan) that have been adopted by the jurisdiction's governing board. The governing board may proceed with consideration of zoning amendments if the planning board makes no comments within thirty days of referral, and the planning board's recommendations are not binding on the governing board. A statement from the planning board that the proposed amendment is inconsistent with a plan does not preclude the governing board from adopting the amendment.

In addition to the planning board's review, the governing board itself is required to approve a statement on plan consistency when making a legislative zoning decision. G.S. 153-341 and 160A-383 provide that the governing board must approve a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers its action to be reasonable and in the public interest before the board adopts or rejects any zoning amendment.<sup>23</sup> Plan consistency is a factor that must explicitly be considered by the governing board, but it does not control the outcome of the zoning decision.<sup>24</sup>

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21. S.L. 2005-426, § 7; S.L. 2005-418, § 7. The requirements became effective January 1, 2006.

22. Prior to 2006 this was mandated for counties but not for cities, though virtually all city zoning ordinances in practice provided for such review.

23. This is similar to the requirement set by courts in several states that the governing board must consider, but is not bound by, the comprehensive plan when adopting a zoning amendment. *See, e.g.*, *Bd. of Cty. Comm'rs v. City of Olathe*, 952 P.2d 1302 (Kan. 1998); *Rando v. Town of N. Attleborough*, 692 N.E.2d 544 (Mass. App. Ct. 1998).

24. *Coucoulas/Knight Props. v. Town of Hillsborough*, 198 N.C. App. 455, 683 S.E.2d 228 (2009), *aff'd per curiam*, 364 N.C. 127, 691 S.E.2d 441 (2010). In this case the court noted that a finding that a zoning amendment would be consistent with the plan does not in and of itself equate to a finding that the existing zoning is inconsistent with the plan. *See also Sapp v. Yadkin Cty.*, 209 N.C. App. 430, 704 S.E.2d 909 (2011) (sufficient for mandated written statement on plan consistency to be filed with the governing board prior to governing-board consideration of matter, regardless of whether a copy of the statement is attached to planning-board minutes). One difficulty regarding consideration of plans in site-specific regulatory decisions is that the plan is sometimes so general or contradictory as to provide little if any guidance. *See, for example, Mickelsen v. Warren County*, No. 5:06-CV-00360, 2007 WL 4245848 (E.D.N.C. Nov. 29, 2007), where the court noted that adoption of a proposed rezoning from residential to neighborhood business was consistent with the comprehensive plan's goal of encouraging commercial development, while denial would be consistent with the goal of maintaining the integrity of existing land use patterns. The court concluded that the balancing of such competing interests is the role of the legislative governing board, not a reviewing court.

The governing board statement may be adopted concurrently with action to adopt the zoning amendment.<sup>25</sup> In *Morgan v. Nash County*,<sup>26</sup> the court noted that the board's statement of rationale has to address the action that has been taken, so it cannot be approved prior to knowing what action is taken on the amendment. To require the statements to be adopted separately and prior to action on the proposed zoning amendment would be "an illogical interpretation of the statute."<sup>27</sup>

The statement approved by the governing board on plan consistency is not subject to judicial review. While the substance of a plan-consistency statement is not reviewed, whether it was formally approved by the governing board is subject to review. In *Wally v. City of Kannapolis*,<sup>28</sup> the court held that having a staff analysis on plan consistency available for the board's review is not the same as governing-board approval of a statement. The governing board must take action to adopt or approve the plan-consistency statement.<sup>29</sup>

The plan-consistency statement must consist of more than a simple conclusion that the zoning action is or is not consistent with the plan. In *Atkinson v. City of Charlotte*,<sup>30</sup> the court found that a conclusory statement noting that "this petition is found to be consistent with adopted policies" failed to meet the statutory requirement that the governing board's statement describe how the action is consistent with adopted plans and explain why it is reasonable and in the public interest.

That said, a relatively brief description of how the action relates to adopted plans is sufficient. In *McDowell v. Randolph County*,<sup>31</sup> which involved an amendment to a site plan that

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25. The statutory language mandating governing-board statements originally provided that the statement must be "adopted prior to" governing-board action on the proposed zoning amendment. While most jurisdictions allowed for a single motion to approve the statement and the zoning amendment, a few cities interpreted this to require two separate motions, with the statement being adopted prior to consideration of the amendment. The General Assembly addressed this concern in the 2006 Technical Corrections Act. Section 28 of S.L. 2006-259 amended G.S. 160A-383 to provide that the statement be "approved when" acting on the proposed zoning amendment. A similar clarification was not made in the county statutes. In 2017 the municipal statute was again amended to revert to the original "adopted prior to" language. S.L. 2017-10, § 2.4(c).

26. 224 N.C. App. 60, 735 S.E.2d 615 (2012), *review denied*, 366 N.C. 561, 738 S.E.2d 379 (2013).

27. *Id.*, at 69, 735 S.E.2d at 621.

28. 365 N.C. 449, 722 S.E.2d 481 (2012). After voluntary annexation of a seventy-six-acre parcel, the owners had sought a conditional rezoning to allow office, light industrial, and retail uses of the property. The city's zoning commission recommended approval. At the city council's public hearing on the rezoning, a staff report was presented that included an analysis of plan consistency and other factors, including impacts on safety, traffic, parking, the environment, and public facilities. The governing board itself, however, did not explicitly adopt or approve the statement.

29. Despite this admonition, sample plan-consistency statements submitted as part of our 2018 survey indicate that it is still relatively common for the approved statement to conclude simply that the zoning amendment is or is not consistent with adopted plans.

30. 235 N.C. App. 1, 760 S.E.2d 395 (2014). In this case the City was considering a text amendment proposed by Queens College that exempted parking decks constructed as accessories to an institutional land use from the floor-area-ratio requirements in single-family and multifamily zoning districts. The planning staff made a written statement that the amendment was consistent with the City's adopted policies. The Planning Commission's Zoning Committee unanimously recommended adoption, and their recommendation included a statement on plan consistency. The city council subsequently unanimously approved the statement of consistency and the proposed amendment.

31. \_\_\_ N.C. App. \_\_\_, 808 S.E.2d 513 (2017).

was incorporated into the conditional zoning for a lumberyard, the court held that a plan-consistency statement adequately met statutory requirements when the statement cited three specific plan policies to support the zoning text amendment.

In 2017 the General Assembly amended G.S. 153A-341 and 160A-383 to provide additional direction on the form of the statement.<sup>32</sup> The statutes now direct that a governing board adopt a plan-consistency statement that takes one of three forms:

1. approving a zoning ordinance amendment and describing how it is consistent with the plan,
2. rejecting the amendment and describing how it is inconsistent with the plan, or
3. approving the amendment and declaring that the plan also is amended.

In the third situation, the statement must also include “an explanation of the change in conditions the governing board took into account in amending the zoning ordinance to meet the development needs of the community.”<sup>33</sup> In all three options, the statement is to include an explanation of why the action taken is reasonable and in the public interest. The law also provides that if a city or county governing board adopts a zoning amendment that is determined to be inconsistent with an adopted plan, the zoning amendment is deemed to also amend the plan. No additional request or application for a plan amendment can be required.<sup>34</sup>

The statutes do not address the situation of the board denying an amendment that is consistent with the plan. This situation, while not common, is legally permissible.<sup>35</sup> Given the directive that the plan-consistency statement follow one of the three options noted above, in this situation it is prudent (though not required) for the governing board to amend or qualify its plan first and then note the inconsistency when rejecting the zoning amendment. This is relatively simple to accomplish if the inconsistency is based on a difference with a future land use map in the plan, but considerably more complicated if the inconsistency is based on various policy statements in the plan.

## Preparing and Approving Plan-Consistency Statements

The process of preparing, reviewing, and approving a plan-consistency statement has, for the most part, become routine and unremarkable in most cities and counties. The staff typically draft a plan-consistency analysis as part of the staff report on proposed zoning amendments. That statement is reviewed by the planning board and submitted to the governing board. The governing board then reviews and approves it when it acts on the proposed zoning amendment.

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32. S.L. 2017-10. This law also amended G.S. 160A-400.32 to provide that when a rezoning is done in conjunction with a development agreement, the provisions described above are applicable.

33. G.S. 153A-341(b)(3)b. (counties); 160A-383(b)(3)b. (municipalities).

34. The statute does not mandate that the effect of the zoning action be noted within the plan itself, only that approval is “deemed an amendment” to the plan. To avoid confusion and assure that the plan accurately reflects actions taken by the governing board, it is prudent for local governments to note these amendments in the plan itself in these circumstances.

35. *Coucoulas/Knight Props. v. Town of Hillsborough*, 199 N.C. App. 455, 683 S.E.2d 228 (2009), *aff'd per curiam*, 364 N.C. 127, 691 S.E.2d 441 (2010).

### Preparation of Draft Statement

Our 2018 survey confirms that a jurisdiction's planning and zoning staff typically analyze how a proposed zoning amendment relates to adopted plans and draft a plan-consistency statement for review and approval by the planning board and governing board. In 77 percent of responding jurisdictions, planning or zoning staff prepare the initial draft of the statement. While this is the case for 76 percent of all cities and 89 percent of counties, an exception occurs with cities and counties with low populations. In cities with populations under one thousand, only half of the consistency statements are drafted by planning and zoning staff. This is not surprising because few of these very small towns have a dedicated staff planner or zoning official. Similarly, 17 percent of the counties with populations under twenty-five thousand in their zoning jurisdiction report that the county attorney prepares the initial draft statement. These responses are summarized in Table 3.

**Table 3. Preparation of Draft Statement**

	Total Respondents	Who Prepares?						Other
		Petitioner	Planning or Zoning Staff	Local Gov't Attorney	Consultant for Local Gov't	Planning Board Member	Governing Board Member	
Municipalities < 1K	58	9%	50%	10%	2%	9%	3%	17%
Municipalities 1K–10K	117	5%	81%	5%	3%	3%	0%	3%
Municipalities 11K–24K	37	3%	95%	0%	0%	3%	0%	0%
Municipalities > 25K	29	3%	86%	3%	0%	3%	0%	3%
<b>Municipal Total</b>	<b>241</b>	<b>5%</b>	<b>76%</b>	<b>5%</b>	<b>2%</b>	<b>4%</b>	<b>1%</b>	<b>6%</b>
Counties < 25K	6	0%	83%	17%	0%	0%	0%	0%
Counties > 25K	22	0%	91%	5%	0%	5%	0%	0%
<b>County Total</b>	<b>28</b>	<b>0%</b>	<b>89%</b>	<b>7%</b>	<b>0%</b>	<b>4%</b>	<b>0%</b>	<b>0%</b>
<b>Total Responding Jurisdictions</b>	<b>269</b>	<b>5%</b>	<b>77%</b>	<b>6%</b>	<b>2%</b>	<b>4%</b>	<b>1%</b>	<b>5%</b>

Note: Percentage totals may deviate from 100 due to rounding.

### Board Revision

Nearly 90 percent of respondents indicate that planning boards rarely revise the plan-consistency statements prepared by the staff. Eighty-eight percent of cities and 85 percent of counties report that the draft statement is either never or only rarely revised by the planning

board. One interesting variation in responses is that 21 percent of cities with populations over twenty-five thousand report that the planning board makes revisions occasionally.

Governing boards are even more unlikely to amend the statements. Eighty-nine percent of cities and 93 percent of counties report that the governing board never or only rarely revises the statement presented by the planning board. These responses are set out in Tables 4 and 5.

**Table 4. Planning-Board Revision of Draft Statement**

Jurisdiction Population	Total Respondents	Revised How Often?					
		Never	Rarely	Occasionally	Frequently	Almost Always	Always
Municipalities < 1K	53	45%	40%	13%	0%	0%	2%
Municipalities 1K–10K	116	38%	53%	5%	3%	0%	1%
Municipalities 11K–24K	38	34%	55%	8%	3%	0%	0%
Municipalities > 25K	29	28%	48%	21%	3%	0%	0%
<b>Municipal Total</b>	<b>236</b>	<b>38%</b>	<b>50%</b>	<b>9%</b>	<b>2%</b>	<b>0%</b>	<b>1%</b>
Counties < 25K	6	50%	50%	0%	0%	0%	0%
Counties > 25K	22	36%	45%	14%	5%	0%	0%
<b>County Total</b>	<b>28</b>	<b>39%</b>	<b>46%</b>	<b>11%</b>	<b>4%</b>	<b>0%</b>	<b>0%</b>
<b>Total Responding Jurisdictions</b>	<b>264</b>	<b>38%</b>	<b>50%</b>	<b>9%</b>	<b>2%</b>	<b>0%</b>	<b>1%</b>

Note: Percentage totals may deviate from 100 due to rounding.

**Table 5. Governing-Board Revision of Statement**

Jurisdiction Population	Total Respondents	Revised How Often?					
		Never	Rarely	Occasionally	Frequently	Almost Always	Always
Municipalities < 1K	52	44%	48%	6%	0%	0%	2%
Municipalities 1K–10K	116	38%	53%	5%	3%	0%	1%
Municipalities 11K–24K	37	35%	54%	11%	0%	0%	0%
Municipalities > 25K	30	20%	53%	27%	0%	0%	0%
<b>Municipal Total</b>	<b>235</b>	<b>37%</b>	<b>52%</b>	<b>6%</b>	<b>1%</b>	<b>0%</b>	<b>1%</b>
Counties < 25K	6	33%	67%	0%	0%	0%	0%
Counties > 25K	22	45%	45%	9%	0%	0%	0%
<b>County Total</b>	<b>28</b>	<b>43%</b>	<b>50%</b>	<b>7%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>
<b>Total Responding Jurisdictions</b>	<b>263</b>	<b>37%</b>	<b>52%</b>	<b>6%</b>	<b>1%</b>	<b>0%</b>	<b>1%</b>

Note: Percentage totals may deviate from 100 due to rounding.

## Impact of Plans on Zoning Amendments

The main purpose of requiring a plan-consistency analysis is to improve a governing board's awareness of the plan and its policies. The idea has been that if a city or county has taken the time to do the analysis and involve the community in the preparation and adoption of a comprehensive plan, that plan should be consulted and considered by elected officials as development regulations are amended.

The requirement has been moderately successful in increasing plan awareness among elected officials. Nearly a third of responding jurisdictions report that their governing boards are more familiar with the plans as a result of the requirement. The governing board's familiarity with the plan as a result of the plan consistency statement is reported to be higher in municipalities with larger populations, where a great deal of the state's population growth is occurring. Forty-three percent of cities with populations over twenty-five thousand report that their boards have been more familiar with their plans as a result of the statements. These results are shown in Table 6.

**Table 6. Effect of Statements on Governing-Board Familiarity with Plan**

Jurisdiction Population	Total Respondents	Level of Familiarity in Light of Requirement			
		More Familiar	Less Familiar	No Noticeable Impact	Don't Know
Municipalities < 1K	31	19%	3%	77%	0%
Municipalities 1K–10K	93	28%	0%	72%	0%
Municipalities 11K–24K	33	39%	3%	58%	0%
Municipalities > 25K	30	43%	0%	53%	3%
<b>Municipal Total</b>	<b>187</b>	<b>31%</b>	<b>1%</b>	<b>67%</b>	<b>1%</b>
Counties < 25K	5	20%	0%	80%	0%
Counties > 25K	20	25%	0%	70%	5%
<b>County Total</b>	<b>25</b>	<b>24%</b>	<b>0%</b>	<b>72%</b>	<b>4%</b>
<b>Total Responding Jurisdictions</b>	<b>212</b>	<b>30%</b>	<b>1%</b>	<b>68%</b>	<b>1%</b>

*Note:* Percentage totals may deviate from 100 due to rounding.

We also asked survey respondents about the effect the plan-consistency statement appears to have on whether the action taken is in fact more or less consistent with the plan. Respondents report that the statements appear to have a positive impact on zoning consistency. Overall, one-third of the responding jurisdictions report that the effect of approving a plan-consistency statement leads to zoning actions that are more consistent with the plan. This effect is most prominent in higher-population municipalities (42 percent of those with populations over twenty-five thousand) and counties (45 percent of those with populations over twenty-five thousand). The effect was least reported in small-population cities (13 percent of cities with populations under one thousand). The smaller number in low-population municipalities is likely related to the fact that a far smaller number of these jurisdictions has a plan. These responses are shown in Table 7.

**Table 7. Effect of Statement on Zoning Decisions**

Jurisdiction Population	Total Respondents	Level of Familiarity in Light of Requirement			
		More Consistent	Less Consistent	No Noticeable Impact	Don't Know
Municipalities < 1K	31	13%	0%	87%	0%
Municipalities 1K–10K	95	37%	2%	61%	0%
Municipalities 11K–24K	36	31%	0%	69%	0%
Municipalities > 25K	31	42%	3%	55%	0%
<b>Municipal Total</b>	<b>193</b>	<b>33%</b>	<b>2%</b>	<b>66%</b>	<b>0%</b>
Counties < 25K	3	0%	0%	100%	0%
Counties > 25K	20	45%	0%	55%	0%
<b>County Total</b>	<b>23</b>	<b>39%</b>	<b>0%</b>	<b>61%</b>	<b>0%</b>
<b>Total Responding Jurisdictions</b>	<b>216</b>	<b>33%</b>	<b>1%</b>	<b>65%</b>	<b>0%</b>

*Note:* Percentage totals may deviate from 100 due to rounding.

Apart from the process of creating and reviewing plan-consistency statements, an underlying question is how often a zoning decision is in fact consistent with the plan. Since the plan is only advisory, there is no legal requirement that it be followed. Nonetheless, it appears that most rezoning decisions are in fact consistent with adopted plans. In a 2008 School of Government survey, local government planners were asked how often the rezonings in their jurisdiction were consistent with applicable adopted plans. Sixty-seven percent replied that this was always or almost always the case.<sup>36</sup> A decade later, local governments report similar results. In our 2018 survey, 69 percent of the responding cities and counties report that decisions on rezonings are always or almost always consistent with their plans. Only 22 percent of cities with populations under one thousand reported that rezonings are never, rarely, or only occasionally inconsistent with a plan. This again is likely related to the fact that many cities with very small populations do not have plans. These results are shown in Table 8.

<sup>36</sup> DAVID W. OWENS, ZONING AMENDMENTS IN NORTH CAROLINA 16 (UNC School of Government, 2008).

**Table 8. Zoning Decision Consistency with Plan**

Jurisdiction Population	Total Respondents	How Often Consistent?					
		Never	Rarely	Occasionally	Frequently	Almost Always	Always
Municipalities < 1K	53	9%	4%	9%	19%	28%	30%
Municipalities 1K–10K	116	1%	1%	6%	16%	55%	21%
Municipalities 11K–24K	38	3%	3%	8%	18%	63%	5%
Municipalities > 25K	31	0%	0%	3%	35%	55%	6%
<b>Municipal Total</b>	<b>238</b>	<b>3%</b>	<b>2%</b>	<b>7%</b>	<b>20%</b>	<b>50%</b>	<b>18%</b>
Counties < 25K	6	0%	0%	0%	17%	33%	50%
Counties > 25K	22	0%	0%	5%	32%	36%	27%
<b>County Total</b>	<b>28</b>	<b>0%</b>	<b>0%</b>	<b>4%</b>	<b>29%</b>	<b>36%</b>	<b>32%</b>
<b>Total Responding Jurisdictions</b>	<b>266</b>	<b>3%</b>	<b>2%</b>	<b>6%</b>	<b>21%</b>	<b>49%</b>	<b>20%</b>

Note: Percentage totals may deviate from 100 due to rounding.

## Conclusion

While North Carolina’s statutes authorizing local-development regulation do not mandate preparation of plans, most cities and counties have found planning to be a useful tool. Those jurisdictions that have adopted plans generally make a good-faith effort to consider the plans as they amend development regulations.

The implementation of the 2005 legislative mandate to prepare and consider a written analysis of plan consistency when amendments are proposed to development regulations has proven relatively straightforward and not particularly onerous. A few court cases in the first several years after enactment clarified what was required in order to comply with the mandate. Most local governments have staff prepare a brief analysis of plan consistency, which often consists of a short paragraph noting relevant policies applicable to the pending decision. The local unit’s planning board and governing board review the draft statements but rarely amend them. For the most part, the decisions made on zoning amendments are consistent with the guidance provided by the plans.

The one area where the mandate seems to have little impact is in jurisdictions with very low populations, particularly cities with populations under one thousand. Many of these small jurisdictions do not have plans or planners. In those instances, the plan-consistency statement and analysis are simply not relevant or applicable.

## Appendix A: Examples of Plan-Consistency Statements

The School of Government's 2018 survey asked respondents to submit examples of statements they had recently adopted for typical zoning amendments. Below are links to examples from a variety of jurisdictions and a variety of types of zoning actions.

### Albemarle: Rezone from Light Industrial to Multifamily Residential

*Inconsistency Statement.* The Albemarle Planning Board finds the action to amend the City's Zoning Map around 112 Charter Street tax record #22905 and 29876 from zone LID/Light Industrial District to R8-A/Multi-Family Residential District to be inconsistent with the adopted 2028 Land Use Plan. The 2028 Land Use Plan calls for Industrial uses on the parcels of interest. The City's R-8A zone does not allow for any industrial uses. Current LID zoning will assist the parcels of interest reach their intended goal of onsite industrial uses.

*Planning Board Recommendation.* Even though Planning Board found the map amendment request to be inconsistent with the City's Land Use Plan per §160A-383, in a 3 to 2 vote, Planning Board recommended that City Council amend the City's zoning map from LID to R-8A regarding the parcels of interest.

### Andrews: Initial Zoning of Annexed Property to Single-Family Residential with TND Overlay

Whereas, on May 16, 2017 the Planning Board recommended adoption of an ordinance to designate the entire property "Single Family Residential — 3 (SFR-3) with a Traditional Neighborhood Development Overlay (TNDO)" for the development of a community of cottages arranged in a traditional mountain cottage fashion upon finding that the proposed designations are consistent and reasonable as stated below;

Whereas, the designations of SFR-3 and TNDO are consistent with the Andrews Town Plan 2035 — Comprehensive Land Use & Master Plan adopted February 14, 2017 in that the portion of the tract previously situated within the Town Limits is presently shown as "Single Family Neighborhood" on page 91 of Town Plan 2035, and currently designated "SFR-1" on the Official Zoning Map adopted April 11, 2017;

Whereas, the project is reasonable in that it will 1) contribute to the overall wellbeing of Andrews' business and citizen wellbeing by increasing the number of new housing units in close proximity to the Town's core business and neighborhood areas, 2) contribute to the reduction of cost overall for services to current rate payers on the utility system by increasing customers in close proximity to existing customers served, and 3) avoid the obligation of debt by the rate payer or taxpayer generated revenues in order to serve the project by extending infrastructure and rolling services in close proximity to existing areas served as stipulated on page 100 of Town Plan 2035;

### Apex: Conditional Rezoning

The Apex Town Council finds that the approval of the rezoning is consistent with the 2030 Land Use Plan and other adopted plans in that: The 2030 Land Use Map designates this area as Mixed Office Employment, Commercial Services and Medium Density Residential. This designation on the 2030 Land Use Map includes the zoning district MORR-CZ and the Apex Town Council

has further considered that the proposed rezoning to MORR-CZ will maintain the character and appearance of the area and provide flexibility to accommodate the growth in population, economy, and infrastructure consistent with that contemplated by the 2030 Land Use Map.

The Apex Town Council finds that the approval of the rezoning is reasonable and in the public interest in that it would expand the non-residential uses within an area that calls for mixed use development and would be consistent with nearby non-residential structures. The uses proposed could be established within the existing historic structure without substantial modification. The rezoning will encourage compatible development of the property and increase the tax base.

### **Blowing Rock: Conditional Rezoning**

This Ordinance is found to be consistent with the Town of Blowing Rock 2014 Comprehensive Plan Update, in particular with the following policies contained therein:

- H-1: Future land uses at the current hospital site will be compatible with surrounding development and the character of the Town.
- H-2: The architectural design of new development on the site will reinforce the western NC vernacular and respect the character of the town and surrounding neighborhoods.
- LC-3.1: Amend the Land Use Code to increase the density allowed in the most intensive residential zoning district to allow at least 8 multi-family dwelling units per acre by right.
- LC-5.1: Utilize zoning and use transitions between higher intensity uses and lower intensity uses . . .
- LC-6.4: Encourage the use of the Conditional Zoning process to address situations where rezoning to an existing base zoning district would not be compatible with surrounding development in the absence of conditions tailored to the particular nature of the proposed use or development.

### **Burke County: Rezone Parcel to Commercial Zoning**

The proposed zoning map amendment can be considered consistent with the Burke County 2016–2030 Land Use Plan and the Burke County Zoning Ordinance and is reasonable and in the public interest because:

- The rezoning would be appropriate for this area because the 2016–2030 Burke County Strategic Land Use Plan depicts the area located at the corner of NC 18/US 64 and Harland Rd. as an Economic Development Node and encourages additional commercial development at this location if adequate access and utilities are present.
- All development of the parcel would be subject to the site plan requirements of Article XIII of the Zoning Ordinance. This would include screening, traffic access, setbacks, height limitations, building inspections, water, waste water, and other development criteria.

The Board therefore approves rezoning application ZMA 2017-04.

### **Carthage: Text Amendment Regarding Cottage Industry**

The Board of Commissioners conclude that the above described amendment is consistent with the Town of Carthage 1999 Land Use Plan based on the following:

*Goal 1.* Protection of the aesthetic quality of the town. Locating cottage industry businesses or studios in the CBD, TBD and B-2 is not anticipated to detract from the town appearance. Proper policing is necessary to ensure that impacts do not occur on the street that detract from the town's ambiance.

*Goal 2.* Promoting central business district in-fill development. Providing for cottage industry in existing downtown buildings adds a business and professional service type use that could occupy vacant downtown space that can be difficult to fill. It will also provide a service that may be of interest to other occupants of downtown.

*Goal 4.* Preserving existing residential neighborhoods. Locating cottage industry in the CBD, B-2, TBD and I districts with a separation requirement from residential zoning districts will preserve the quality of existing residential neighborhoods.

*Goal 5.* Promoting location of business and industry to serve the community in appropriate locations. Allowing for cottage industry in the CBD, TBD, B-2 and I districts preserves the town's ability to regulate any future proliferation of storefront churches and other uses that detract from the commercial nature of the downtown business district. Regulating noise, hours of operation and outdoor storage will help keep the use compatible with adjoining commercial uses. Incorporating separation requirements will ensure that this type of operation does not proliferate downtown.

*Goal 7.* Improving the quality of life for Town residents. Allowing more cultural and artistic uses in the downtown business districts would encourage other artisans to move into the area. Many residents would have a resource for artistic outlet as well as exposure to more specialized skilled trades. The Town's downtown area is largely driven by daytime activities and government employees. Allowing cottage industry business promotes a more active environment for the residents and would encourage more travelers to stop in Carthage.

### **Chapel Hill: Conditional Rezoning**

Whereas, the Council of the Town of Chapel Hill has considered the application for Conditional Zoning Atlas Amendment on behalf of Carolina Flex Park, LLC to rezone and finds that the amendment if enacted, is reasonable and in the public's interest and is warranted to achieve the purposes of the Comprehensive Plan, as explained by, but not limited to, the following goals of the Comprehensive Plan:

- A creative place to live, work, and play because of Chapel Hill's arts and culture (Goal PFE.2)
- Foster success of local businesses (Goal CPE.2)
- A well-conceived and planned, carefully thought-out, integrated, and balanced transportation system that recognizes the importance of automobiles, but encourages and

facilitates the growth and use of other means of transportation such as bicycle, pedestrian, and public transportation options (Goal GA.1)

- A connected community that links neighborhoods, businesses, and schools through the provision of greenways, sidewalks, bike facilities, and public transportation (Goal GA.2).

### **Charlotte-Mecklenburg: Rezone 42-Acre Parcel from Residential to Light Industrial**

This petition is found to be consistent with the *Dixie Berryhill Strategic Plan* based on the information from the staff analysis and the public hearing, and because:

- The plan recommends office/retail/light industrial development.

Therefore, we find this petition to be reasonable and in the public interest, based on the information from the staff analysis and the public hearing, and because:

- The proposed development is consistent with the adopted land use for this site and the surrounding area; and
- The site is adjacent to the River District development, a large mixed use development that includes office, retail and residential, which was approved in 2016; and
- West Boulevard, located just north of this site, is planned to be extended to Dixie River Road, as part of the River District development; and
- The petition reserves right-of-way for the future Western Parkway referred to as “Catawba Crossing” in petition 2016-056 for the River District; and
- The property is located south of Charlotte-Douglas International Airport and within the “Combined 1996 Noise Exposure/Noise Compatibility Program Noise Contours” and is not conducive to residential development.

### **Clayton: Rezoning**

The above referenced zoning amendment *is consistent* with:

The Town of Clayton’s Comprehensive Plan, specifically:

- LU1.1—Encourage development that is consistent with the Future Land Use Map
- LU1.3—Encourage nonresidential land uses to support Neighborhood and Community Centers.

### **Currituck County: Conditional Rezone**

The conditional zoning request is consistent with the 2006 Land Use Plan because:

- County water and sewer are available to the site and this use will help grow these systems. (Policy ES1)
- It is at a density appropriate for the location. (Policy HN1)
- Adequate public facilities are available to service the project. (PP2)
- It is located in the fastest growing area of the county that continues to evolve as a Full Service community. (Moyock Policy Emphasis)

The conditional rezoning request is consistent with the Moyock Small Area Plan because:

- There will be a sidewalk connection to the assisted living facility, park, and subdivision to the east. (TR2)
- Infrastructure and service needs of the community are met. (IS2)
- Stormwater is properly managed. (IS4)
- It is compatible with a rural atmosphere, transitional areas, and a small town, main street feel. (CC1)

The request is reasonable and in the public interest because:

- It creates a new residential use type, multi-family, at an appropriate density for the area.
- It provides a moderate cost housing opportunity for county residents within a well-designed neighborhood.

### **Davidson County: Rezone 51-Acre Parcel from Residential to Highway Commercial**

Whereas: The request as presented is reasonable and consistent with the Davidson County Comprehensive Land Development Plan;

Whereas: The subject property is considered to be a part of the US Hwy 64 East “Corridor of Economic Opportunity” situated between the 1-85 and the NC Hwy 109 interchange where numerous commercial businesses have already located;

Whereas: US Hwy 64 is identified to be widened as a multi-lane divided facility between Asheboro and Lexington as depicted on the 2018 through 2027 Metropolitan Transportation Improvement Program as project# R-2220;

Whereas: Economic Development Policy Statements 1.1, 1.4, 1.8 and 1.16 of the adopted Land Development Plan give support to the rezoning request.

Now therefore be it resolved, the Davidson County Board of Commissioners does hereby approve the stated rezoning request as presented.

### **Hickory: Rezoning**

On October 25, 2017 the Hickory Regional Planning Commission conducted a Public Hearing for the purpose of considering Rezoning Petition 17-05. Upon considering the matter, the Hickory Regional Planning Commission found:

The Hickory by Choice 2030 Comprehensive Plan classifies the area as High Density Residential. The High Density Residential future land use classification is characterized as an area with small building lots, short building setbacks, and pedestrian friendly roads near mixed use and commercial areas. The classification includes small lot single-family residential, all forms of multi-family residential, open space, and institutional uses. These areas may also contain office uses along thoroughfares and adjacent to commercial areas to act as a transition between commercial and residential land uses. Provided, such office uses are located immediately adjacent to existing office uses and districts (HBC 2030, Page 3.8). Hickory by Choice 2030 goes on to list the 01 district as being an implementing zone for this specific future land use classification (HBC 2030, Page 3.13).

Within the Goals and Policies section of Chapter 3 of the comprehensive plan a number of goals and policies are provided that address development. A brief explanation of the goals, and how the development proposal fits in with the goals is provided below.

- Goal 1 discusses the expectation new development will be complementary to its surroundings. The subject properties are located along a major thoroughfare (2nd Avenue SE). The NCDOT's Annual Average Daily Traffic counts from 2015 were 7,100. The area in question is on the southern margin on Downtown and near the intersection of 2nd Avenue NE and NC 127. The area along this portion of 2nd Avenue SE is largely zone for office and commercial purposes, with most properties being vacant.
- Goal 2 indicates neighborhoods should be designed to provide pedestrian access to daily services. The subject properties are located in an area with high pedestrian activity. Sidewalks are currently in place along 2nd Avenue SE to serve to continued development of the properties.
- Goal 3 references the need to provide balance between development and open spaces. The subject properties are mostly vacant. The future development of the properties will allow for the preservation of desired open space. The property owners have indicated their desire to provide for open spaces to allow for areas where their clients can enjoy outdoor opportunities.
- Goal 4 discusses the locations of industrial uses. Being the requested rezoning is to an office district, this goal would not pertain to the development proposal.
- Goal 5 is very similar to Goal 2, but goes further in outlining the need to promote mixed use areas that provide convenient access to amenities and employment areas. The subject properties are owned by a social service non-profit that provides community services to a specific clientele. The area is immediately adjacent to Downtown, which serves as the true mixed use center for the larger area.
- Goal 6 relates to citizen participation in planning. With the proposal going through the rezoning process, which requires notices and hearing; the public will be afforded the opportunity to provide input regarding the proposal.

Based upon these findings, the Hickory Regional Planning Commission has found Rezoning Petition 17-05 to be consistent with the findings and recommendations of the Hickory by Choice 2030 Comprehensive Plan, and recommends Hickory City Council approval of the petition. This recommendation was affirmed by a 9-0 vote of the Hickory Regional Planning Commission.

#### **Lincoln County: Rezone from R-T to R-SF**

This proposed amendment is consistent with the Lincoln County Comprehensive Land Use Plan and other adopted plans in that:

This property is part of an area designated by the Land Use Plan as Suburban Residential, suitable for residential development, primarily single-family in nature. The rezoning would allow a density of slightly less than two dwelling units per acre.

This proposed amendment is reasonable and in the public interest in that:

This property is adjoined on all sides by properties zoned residential. It is adjacent to properties zoned R-SF. A reduction in the minimum lot size is reasonable in areas where public water and sewer are available. R-SF zoning is more restrictive than RT zoning in terms of permitted uses.

### **Morrisville: Zoning Newly Annexed Land to Low Density Residential**

The requested Zoning Map Amendment will rezone the subject property to the Low Density Residential (LDR) district and is consistent with the Comprehensive Plan because:

- A. The Town of Morrisville Land Use Plan, as recently amended, recommends Low Density Residential (LDR) district zoning of the property and Low Density Residential (LDR) district zoning is proposed; and
- B. The requested zoning map amendment will promote growth and development that contributes to and builds upon the Town's overall image as a well-planned, attractive, livable, and unique community in the Triangle Region, as recommended by Policy 1A in the 2009 Land Use Plan; and
- C. The requested zoning map amendment is consistent with Policy 1E of the 2009 Land Use Plan as it will promote detached residential land uses outside activity centers and in context with surrounding uses.

As a result, this zoning map amendment is consistent with the Town of Morrisville's adopted plans. In addition, the requested zoning map amendment is compatible with existing and proposed uses surrounding the subject property and will result in a logical and orderly development pattern and is therefore, reasonable and in the public interest.

### **Mt. Airy: Rezoning from Residential to Business**

The request to rezone the property at 920 Reeves Drive from R-6 (General Residential) to B-2 (General Business) is consistent with the City of Mount Airy Comprehensive Plan's medium intensity future land use category. The category allows for a variety of residential and non-residential uses including low to medium intensity office and service uses."

### **Roanoke Rapids: Rezone from B-4 to B-3**

The Roanoke Rapids City Council met on Tuesday, February 21, 2017 at 5:15 p.m. and determined that the above mentioned request is consistent with the Roanoke Rapids Comprehensive Plan, adopted by City Council June 17, 2014, and with the Roanoke Rapids Land Use Ordinance. Comprehensive Development Plan Policies:

- I.1 Support infill development. Infill development is development or redevelopment of land that has been bypassed, remained vacant, undervalued and/or is underused as a result of the continuing urban development process. Generally, the areas and/or sites are not particularly of prime quality; however, they are usually served by or are readily accessible to the infrastructure (services and facilities). Use of such lands for new housing and/or other urban development is considered a more desirable alternative than to continue to extend the outer development pattern. The use of infill development, among others, promotes the best use of resources and also will tend to have a positive impact upon the tax and other fiscal policies.

- I.17 Provide effective buffering and/or landscaping where commercial development adjoins existing or planned residential uses.
- I.18 Utilize the mixed use areas as a tool to aid in regulating/reducing strip commercialization, stimulate compact development, encourage infill development, reduce trip generation, provide flexible development options, and utilize existing infrastructure.
- I.20 Encourage developers to utilize thoroughfares and natural topographic features to define the boundaries of a neighborhood and concentrate higher intensity uses at the outer boundaries of the neighborhood.
- I.32 Protect, enhance, and encourage a high quality of life, image, and cultural amenities as an effective approach to economic development.
- I.33 Economic development efforts should encourage the revitalization and reuse of currently unused or underutilized structures, sites, and infrastructure in appropriately located areas.

### **Wake Forest: Rezoning**

The rezoning request is reasonable and consistent with the Community Plan and UDO in that:

1. The subject property is located in the General Urban Zone which is designed to allow relatively large lot, single-family subdivisions to continue to play a role in meeting a major segment of the market demand for housing in Wake Forest.
2. The General Residential Districts are established to maintain previously developed suburban residential subdivisions for their existing or approved low-to-medium density single-family dwellings and related recreational, religious and educational facilities. Intended to act as a transitional zoning district between rural development in the county and the urban development of the town, these regulations are further intended to discourage any use which would be detrimental to the predominately residential nature of the areas included within the district.
3. The proposed project is consistent with the Policies for Future Neighborhoods in that the proposed development is designed to be compact in nature, is connected to the adjacent neighborhoods, and gives equal priority to the pedestrian and the automobile.
4. The proposed project is consistent with the Policies for Streets in that the streets are no wider than necessary to serve their intended purpose.
5. The proposed project is consistent with the Policies for Sidewalks in that sidewalks are provided as required in the Unified Development Ordinance.
6. The proposed project is consistent with the Policies for a Healthy, Sustainable Environment in that buffers are provided as required and the proposed development is designed to mitigate the impact of additional impervious surface.
7. The proposed development is consistent with the Policies for Street Trees in that trees will be planted in new public right-of-ways as required by the Unified Development Ordinance.
8. The proposed project is consistent with the Policies for Community Character in that natural features will be preserved as part of the development.

### **Waynesville: Text Amendment Regarding Manufactured Homes Within Manufactured Home Parks**

In the Waynesville: Our Heritage, Our Future, 2020 Land Development Plan, the stated Land Use Goal is:

“Promote the orderly growth, development and enhanced land values of the Town of Waynesville by preserving and improving Waynesville’s existing neighborhoods, creating more attractive commercial centers, maintaining a strong downtown area, taking steps to reduce urban sprawl and protecting the natural beauty of the community.” (2020 LDP, p 4-2)

One objective under this goal includes: “Address important community appearance issues in the land development regulations for Waynesville,” and specify the development of “standards for manufactured homes and manufactured home parks.” (2020 LDP, p. 4-5)

Based on the input of manufactured home park owners, the text changes will facilitate the replacement of mobile homes with newer models and alleviate internal non-conformities to the ordinance. This will improve park appearance, safety and the availability of affordable rental units. Updates to the design guidelines for manufactured homes within manufactured home parks and clarification of how these guidelines are enforced, is therefore consistent therefore with the 2020 Plan.

### **Whiteville: Rezone Single Parcel from Residential to Highway Business**

The Planning and Zoning Board voted to approve the following Statement of Consistency and Reasonableness to City Council by a vote of six (6) to one (1):

According to the Land Use Plan, the Commercial future land use category is provided to accommodate highway-oriented uses along the US 701 Bypass and US 74 Business. Development of future uses within this category should provide ample landscaping and street trees to present an inviting environment to travelers passing through the City. The Future Land Use map classifies the property for Commercial zoning. The site has suitable access to water and sewer services which are highly desirable for commercial development. A policy of the land use plan is to strongly encourage a flexible mixture of land uses with the City’s planning jurisdiction, particularly within the corporate limits. Rezoning the property to B-3 would blend in with the surrounding area with the appropriate commercial land use. Based on these factors, the proposed zoning district is deemed consistent with the adopted land use plan, and the proposed rezoning is consistent with the surrounding area.

### **Winston-Salem: Rezoning from Highway Business to General Business–Special Use**

The proposed zoning map amendment from HB (Highway Business) to GB-L (General Business–special use limited) is generally consistent with the recommendations of the Legacy Comprehensive Plan to encourage the reuse of vacant and underutilized commercial and industrial sites and the recommendation of the South Central Winston-Salem Area Plan Update

(2014) for commercial use; therefore, approval of the request is reasonable and in the public interest because:

1. The site has been commercially zoned and developed for many years;
2. The site is located along a growth corridor and is adjacent to other commercially zoned and developed properties;
3. The request is consistent with the purpose statement of the GB district; and
4. The site is located within GMA2, and the GB district permits a 30% reduction in required parking.

## Appendix B: Survey Methodology

An online survey was distributed by the School of Government in November 2017 to each North Carolina municipality and county—653 jurisdictions. For this survey, we contacted each jurisdiction in the state, not just those known to have adopted development regulations. From December 2017 to April 2018, follow-up calls and emails were used to encourage jurisdictions that had not yet responded to participate in the survey. Paper surveys were provided to those jurisdictions who preferred to respond in that manner. The surveys were distributed to each jurisdiction’s zoning administrator or planner. If the jurisdiction did not have a zoning administrator or planner, the survey went to the manager, administrator, or clerk.

Responses to the survey provided a good representation of counties and municipalities of every size. Overall, 355 jurisdictions responded to the survey, a response rate of 54 percent. Appendix C lists all responding jurisdictions

Survey responses were particularly strong for larger-population jurisdictions, with small municipalities (less than one thousand residents) having the lowest response rate. Cities with populations over twenty-five thousand had an 89 percent response rate, compared to a rate of only 33 percent for cities with populations under one thousand. We believe the low response rate from these low-population municipalities is in large part explained by the fact that many of these jurisdictions have not adopted development regulations, making this survey largely irrelevant for them. Data for municipalities and counties with combined planning departments (for example, Durham County and the City of Durham) were recorded as municipal responses for simplicity, though they cover some unincorporated areas.

**Table B1. Responses from Jurisdictions**

	<b>Number of Jurisdictions</b>	<b>Number Responding</b>	<b>Percentage Responding</b>
<i>Municipalities by Population</i>	553	274	50%
1–999	219	77	35%
1,000–9,999	248	124	50%
10,000–24,999	48	41	85%
> 25,000	38	32	84%
<i>Counties by Population</i>	100	81	81%
1,000–24,999	32	22	69%
> 25,000	68	59	87%
<i>All Jurisdictions</i>	<b>653</b>	<b>355</b>	<b>54%</b>

In addition to these responses, another twenty-nine municipalities and four counties began the survey but did not input any information other than the names of their jurisdictions and the names of the individuals filling out the surveys. We disregarded these responses, as they did not provide any useful data. However, it is worth noting that some of those jurisdictions may have ceased taking the survey because they realized the questions did not apply to their situations. (This is particularly the case for low-population jurisdictions that have not adopted development regulations).

The total population of responding jurisdictions is 8,426,956 people, or 83 percent of the state's population. (For counties, this only counts the population in unincorporated areas so as not to double count those within municipal jurisdictions.) The population of responding jurisdictions is shown below.

**Table B2. Population of Responding Jurisdictions**

	<b>Total Population</b>	<b>Population of Responding Jurisdictions</b>	<b>Percentage of Population Responding</b>
<i>Municipalities</i>	5,687,850	4,423,445	78%
<i>Counties</i> (Nonmunicipal)	4,468,092	4,003,511	90%
<b>All Jurisdictions</b>	<b>10,155,942</b>	<b>8,426,956</b>	<b>83%</b>

## Appendix C: Responding Jurisdictions

<b>Counties</b>		<b>Municipalities</b>	
Alamance	Jackson	Aberdeen	Cherryville
Alexander	Johnston	Andrews	China Grove
Anson	Lincoln	Angier	Clayton
Ashe	Macon	Apex	Clemmons
Avery	McDowell	Archdale	Cleveland
Beaufort	Mecklenburg	Archer Lodge	Clinton
Bertie	Montgomery	Asheboro	Coats
Bladen	Moore	Asheville	Colerain
Brunswick	Nash	Atlantic Beach	Concord
Buncombe	New Hanover	Aurora	Conover
Burke	Onslow	Autryville	Conway
Cabarrus	Orange	Ayden	Cornelius
Camden	Pasquotank	Bakersville	Cramerton
Carteret	Pender	Bald Head Island	Creedmoor
Caswell	Perquimans	Banner Elk	Crossnore
Catawba	Person	Bath	Dallas
Chatham	Pitt	Bayboro	Davidson
Cherokee	Polk	Beaufort	Dillsboro
Chowan	Richmond	Belmont	Dortches
Cleveland	Robeson	Belwood	Drexel
Columbus	Rockingham	Bermuda Run	Duck
Craven	Rowan	Bessemer City	Durham
Cumberland	Rutherford	Bethel	East Bend
Currituck	Scotland	Black Mountain	East Spencer
Dare	Stanly	Bladenboro	Eastover
Davidson	Stokes	Blowing Rock	Elizabeth City
Davie	Surry	Bogue	Elkin
Duplin	Transylvania	Boiling Spring Lakes	Ellenboro
Durham	Tyrrell	Bolivia	Emerald Isle
Forsyth	Union	Boone	Enfield
Franklin	Vance	Brevard	Erwin
Gaston	Wake	Bridgeton	Fairmont
Gates	Warren	Bunn	Fairview
Graham	Washington	Burlington	Faith
Granville	Watauga	Calabash	Falcon
Greene	Wayne	Candor	Fayetteville
Guilford	Wilkes	Carolina Beach	Fletcher
Halifax	Yadkin	Carolina Shores	Foxfire Village
Harnett	Yancey	Carrboro	Franklin
Henderson		Carthage	Franklinville
Hoke		Caswell Beach	Fuquay-Varina
Hyde		Chapel Hill	Garner
Iredell		Charlotte	Gibson

Gibsonville	Lexington	Pembroke	Stoneville
Godwin	Lillington	Pilot Mountain	Stonewall
Goldsboro	Linden	Pinebluff	Stovall
Graham	Locust	Pinehurst	Sugar Mountain
Granite Falls	Lumberton	Pinetops	Summerfield
Granite Quarry	Madison	Pittsboro	Sunset Beach
Grantsboro	Maggie Valley	Princeville	Sylva
Greensboro	Magnolia	Proctorville	Tar Heel
Greenville	Maiden	Raeford	Tarboro
Grimesland	Manteo	Raleigh	Teachey
Hamlet	Marshall	Ramseur	Thomasville
Harrellsville	Marshville	Randleman	Trent Woods
Harrisburg	Matthews	Rich Square	Trinity
Havelock	Mayodan	Richlands	Troutman
Hayesville	McDonald	River Bend	Turkey
Hemby Bridge	Mebane	Roanoke Rapids	Valdese
Henderson	Micro	Robersonville	Vanceboro
Hendersonville	Middlesex	Rockingham	Varnamtown
Hickory	Midland	Rockwell	Waco
High Point	Mills River	Rocky Mount	Wadesboro
Hillsborough	Mineral Springs	Rolesville	Wake Forest
Hoffman	Minnesott Beach	Rose Hill	Walstonburg
Holly Ridge	Mint Hill	Roxboro	Washington
Holly Springs	Mocksville	Ruth	Washington Park
Hope Mills	Momeyer	Rutherfordton	Waxhaw
Huntersville	Monroe	Salemburg	Waynesville
Indian Trail	Montreat	Saluda	Weddington
Jacksonville	Mooreville	Sandyfield	Wendell
Jamestown	Morganton	Seven Devils	Wentworth
Jonesville	Morrisville	Seven Springs	Wesley Chapel
Kannapolis	Mount Airy	Shalotte	Whispering Pines
Kernersville	Mount Gilead	Shelby	White Lake
Kill Devil Hills	New Bern	Siler City	Whiteville
Kings Mountain	Newport	Snow Hill	Whitsett
Kinston	Newton	Southern Pines	Williamston
Kitty Hawk	Newton Grove	Southern Shores	Wilmington
Kure Beach	North Wilkesboro	Southport	Wilson
La Grange	Norwood	St. Helena	Wilson's Mills
Lake Waccamaw	Oak City	St. Pauls	Windsor
Landis	Oak Island	Staley	Winfall
Lansing	Oak Ridge	Stallings	Wingate
Lattimore	Ocean Isle Beach	Stanfield	Winston-Salem
Laurel Park	Oriental	Star	Winterville
Leland	Orrum	Statesville	Woodland
Lenoir	Pantego	Stem	Yanceyville
Lewisville	Parkton	Stokesdale	