

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS65204-LR-71A (3/8)

Short Title: Modernize City/County Planning. (Public)

Sponsors: Senator Clodfelter.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MODERNIZE AND SIMPLIFY CITY AND COUNTY PLANNING
3 AND LAND-USE MANAGEMENT STATUTES.

4 The General Assembly of North Carolina enacts:

5
6 **PART I. GENERAL PROVISIONS**

7
8 **SECTION 1.** G.S. 160A-364 reads as rewritten:

9 "**§ 160A-364. Procedure for adopting or amending ordinances under Article.**

10 (a) ~~Before adopting or amending~~ adopting, amending, or repealing any ordinance
11 authorized by this Article, the city council shall hold a public hearing on it. A notice of
12 the public hearing shall be given once a week for two successive calendar weeks in a
13 newspaper having general circulation in the area. The notice shall be published the first
14 time not less than 10 days nor more than 25 days before the date fixed for the hearing.
15 In computing such period, the day of publication is not to be included but the day of the
16 hearing shall be included.

17 (b) ~~If the adoption or modification of the ordinance would result in changes to~~
18 ~~the zoning map or would change or affect the permitted uses of land located five miles~~
19 ~~or less from the perimeter boundary of a military base, the governing body of the local~~
20 ~~government shall provide written notice of the proposed changes by certified mail,~~
21 ~~return receipt requested, to the commander of the military base not less than 10 days nor~~
22 ~~more than 25 days before the date fixed for the public hearing. If the military provides~~
23 ~~comments or analysis regarding the compatibility of the proposed ordinance or~~
24 ~~amendment with military operations at the base, the governing body of the local~~
25 ~~government shall take the comments and analysis into consideration before making a~~
26 ~~final determination on the ordinance.~~

1 (b1) A city may adopt ordinances providing that notice of public hearings may be
2 given through electronic means, including, but not limited to, the city's Internet site.
3 Electronic notice of public hearings on zoning map amendments may be substituted for
4 the published notice required by this section provided there is also a posting of a notice
5 of the hearing on the affected site, with both the electronic and on-site posting being
6 made not less than 10 days nor more than 25 days before the date fixed for the hearing.
7 If such timely electronic notice of a public hearing on a zoning map amendment or
8 posting of notice of the hearing on the affected site is made, but not both, such
9 electronic or posted notice may be substituted for the second published notice required
10 by this section. Electronic and on-site posting shall not supersede any other law that
11 requires notice by mail to certain classes of people or the posting of signs on certain
12 property and shall not alter the publication schedule for any public notice."

13 **SECTION 2.** G.S. 153A-323 reads as rewritten:

14 **"§ 153A-323. Procedure for adopting or amending ordinances under this Article**
15 **and Chapter 160A, Article 19.**

16 (a) Before adopting or amending adopting, amending, or repealing any ordinance
17 authorized by this Article or Chapter 160A, Article 19, the board of commissioners shall
18 hold a public hearing on the ordinance or amendment. The board shall cause notice of
19 the hearing to be published once a week for two successive calendar weeks. The notice
20 shall be published the first time not less than 10 days nor more than 25 days before the
21 date fixed for the hearing. In computing such period, the day of publication is not to be
22 included but the day of the hearing shall be included.

23 ~~(b) If the adoption or modification of the ordinance would result in changes to~~
24 ~~the zoning map or would change or affect the permitted uses of land located five miles~~
25 ~~or less from the perimeter boundary of a military base, the board of commissioners shall~~
26 ~~provide written notice of the proposed changes by certified mail, return receipt~~
27 ~~requested, to the commander of the military base not less than 10 days nor more than 25~~
28 ~~days before the date fixed for the public hearing. If the military provides comments or~~
29 ~~analysis regarding the compatibility of the proposed ordinance or amendment with~~
30 ~~military operations at the base, the board of commissioners shall take the comments and~~
31 ~~analysis into consideration before making a final determination on the ordinance.~~

32 (b1) A county may adopt ordinances providing that notice of public hearings may
33 be given through electronic means, including, but not limited to, the county's Internet
34 site. Electronic notice of public hearings on zoning map amendments may be substituted
35 for the published notice required by this section provided there is also a posting of a
36 notice of the hearing on the affected site, with both electronic and on-site posting being
37 made not less than 10 days nor more than 25 days before the date fixed for the hearing.
38 If such timely electronic notice of a public hearing on a zoning map amendment or
39 posting of notice of the hearing on the affected site is made, but not both, such
40 electronic or posted notice may be substituted for the second published notice required
41 by this section. Electronic and on-site posting shall not supersede any other law that
42 requires notice by mail to certain classes of people or the posting of signs on certain
43 property and shall not alter the publication schedule for any public notice."

44

1 **PART II. SUBDIVISION REGULATION**

2
3 **SECTION 3.** G.S. 160A-372 reads as rewritten:

4 **"§ 160A-372. Contents and requirements of ordinance.**

5 (a) A subdivision control ordinance may ~~provide~~ provide, among other things,
6 for the orderly growth and development of the city; for the safe and efficient provision
7 of transportation networks, public utilities, education and recreation space and facilities,
8 and other public and community needs; for protection of natural resources and open
9 space; for the coordination of ~~streets and highways~~ streets, highways, and utilities within
10 proposed subdivisions with existing or planned streets and highways and with other
11 public facilities; for the dedication or reservation of recreation areas serving residents of
12 the immediate neighborhood within the subdivision or, alternatively, for provision of
13 funds to be used to acquire recreation areas serving residents of the development or
14 subdivision or more than one subdivision or development within the immediate area,
15 and rights-of-way or easements for street and utility purposes including the dedication
16 of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution
17 of population and traffic in a manner that will avoid congestion and overcrowding and
18 will create conditions ~~essential to~~ that promote public health, safety, and the general
19 welfare.

20 (b) The ordinance may require a plat be prepared, approved, and recorded
21 pursuant to the provisions of the ordinance whenever any subdivision of land takes
22 place. The ordinance may include requirements that ~~the final plat~~ plats show sufficient
23 data to determine readily and reproduce accurately on the ground the location, bearing,
24 and length of every street and alley line, lot line, easement boundary line, and other
25 property boundaries, including the radius and other data for curved property lines, to an
26 appropriate accuracy and in conformance with good surveying practice.

27 (c) The ordinance may provide for the more orderly development of subdivisions
28 by requiring the construction of community service facilities in accordance with
29 municipal ~~policies and standards and, to assure compliance with these requirements, the~~
30 ~~ordinance may provide for the posting of bond or any other method that will offer~~
31 ~~guarantee of compliance.~~ plans, policies, and standards.

32 The ordinance may provide for the reservation of school sites in accordance with
33 comprehensive land use plans approved by the council or the planning agency. In order
34 for this authorization to become effective, before approving such plans the council or
35 planning agency and the board of education with jurisdiction over the area shall jointly
36 determine the specific location and size of any school sites to be reserved, which
37 information shall appear in the comprehensive land use plan. Whenever a subdivision is
38 submitted for approval which includes part or all of a school site to be reserved under
39 the plan, the council or planning agency shall immediately notify the board of education
40 and the board shall promptly decide whether it still wishes the site to be reserved. If the
41 board of education does not wish to reserve the site, it shall so notify the council or
42 planning agency and no site shall be reserved. If the board does wish to reserve the site,
43 the subdivision shall not be approved without such reservation. The board of education
44 shall then have 18 months beginning on the date of final approval of the subdivision

1 within which to acquire the site by purchase or by initiating condemnation proceedings.
2 If the board of education has not purchased or begun proceedings to condemn the site
3 within 18 months, the subdivider may treat the land as freed of the reservation.

4 ~~The ordinance may require that a plat be prepared, approved, and recorded pursuant~~
5 ~~to its provisions whenever any subdivision of land takes place.~~

6 The ordinance may provide that a developer may provide funds to the city whereby
7 the city may acquire recreational land or areas to serve the development or subdivision,
8 including the purchase of land ~~which~~that may be used to serve more than one
9 subdivision or development within the immediate area. All funds received by the city
10 pursuant to this paragraph shall be used only for the acquisition or development of
11 recreation, park, or open space sites. ~~Any formula enacted to determine the amount of~~
12 ~~funds that are to be provided under this paragraph shall be based on the value of the~~
13 ~~development or subdivision for property tax purposes.~~ The ordinance may allow a
14 combination or partial payment of funds and partial dedication of land when the
15 governing body of the city determines that this combination is in the best interests of the
16 citizens of the area to be served.

17 The ordinance may provide that in lieu of required street construction, a developer
18 may be required to provide funds that the city may use for the construction of roads to
19 serve the occupants, residents, or invitees of the subdivision or development and these
20 funds may be used for roads which serve more than one subdivision or development
21 within the area. All funds received by the city pursuant to this paragraph shall be used
22 only for development of roads, including design, land acquisition, and construction.
23 However, a city may undertake these activities in conjunction with the Department of
24 Transportation under an agreement between the city and the Department of
25 Transportation. Any formula adopted to determine the amount of funds the developer is
26 to pay in lieu of required street construction shall be based on the trips generated from
27 the subdivision or development. The ordinance may require a combination of partial
28 payment of funds and partial dedication of constructed streets when the governing body
29 of the city determines that a combination is in the best interests of the citizens of the
30 area to be served.

31 To assure compliance with these and other ordinance requirements, the ordinance
32 may provide for the posting of bonds, letters of credit, or other performance guarantees
33 to assure successful completion of required improvements."

34 **SECTION 4.** G.S. 160A-375 reads as rewritten:

35 **"§ 160A-375. Penalties for transferring lots in unapproved subdivisions.**

36 If a city adopts an ordinance regulating the subdivision of land as authorized herein,
37 any person who, being the owner or agent of the owner of any land located within the
38 jurisdiction of that city, thereafter subdivides his land in violation of the ordinance or
39 transfers or sells land by reference to, exhibition of, or any other use of a plat showing a
40 subdivision of the land before the plat has been properly approved under such ordinance
41 and recorded in the office of the appropriate register of deeds, shall be guilty of a Class
42 1 misdemeanor. The description by metes and bounds in the instrument of transfer or
43 other document used in the process of selling or transferring land shall not exempt the
44 transaction from this penalty. The city may bring an action for injunction of any illegal

1 subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate
2 findings, issue an injunction and order requiring the offending party to comply with the
3 subdivision ordinance. Building permits required pursuant to G.S. 160A-417 may be
4 denied for lots that have been illegally subdivided. In addition to other remedies, a city
5 may institute any appropriate action or proceedings to prevent the unlawful subdivision
6 of land, to restrain, correct, or abate the violation, or to prevent any illegal act or
7 conduct."

8 **SECTION 5.** G.S. 160A-376 reads as rewritten:

9 **"§ 160A-376. Definition.**

10 For the purpose of this Part, "subdivision" means all divisions of a tract or parcel of
11 land into ~~two or more~~ lots, building sites, or other divisions for the purpose of sale or
12 building development (whether immediate or future) and shall include all divisions of
13 land involving the dedication of a new street or a change in existing streets; but the
14 following shall not be included within this definition nor be subject to the regulations
15 authorized by this Part:

- 16 (1) The combination or recombination of portions of previously
17 subdivided and recorded lots where the total number of lots is not
18 increased and the resultant lots and required supporting infrastructure
19 (including streets, utilities, open space, and recreation areas) are equal
20 to or exceed the standards of the municipality as shown in its
21 subdivision regulations;
- 22 (2) The division of land into parcels greater than 10 acres where no street
23 right-of-way dedication is involved;
- 24 (3) The public acquisition by purchase of strips of land for the widening or
25 opening of streets or for public transportation system corridors; and
- 26 (4) The division of a tract in single ownership whose entire area is no
27 greater than two acres into not more than three lots, where no street
28 right-of-way dedication is involved and where the resultant lots and
29 required supporting infrastructure (including streets, utilities, open
30 space, and recreation areas) are equal to or exceed the standards of the
31 municipality, as shown in its subdivision regulations.

32 A city may provide for expedited review of specified classes of subdivisions."

33 **SECTION 6.** G.S. 153A-331 reads as rewritten:

34 **"§ 153A-331. Contents and requirements of ordinance.**

35 (a) A subdivision control ordinance may provide for the orderly growth and
36 development of the county; for the safe and efficient provision of transportation
37 networks, public utilities, education, and recreation space and facilities, and other public
38 and community needs; for protection of natural resources and open space; for the
39 coordination of ~~streets and highways~~ streets, highways, and utilities within proposed
40 subdivisions with existing or planned streets and highways and with other public
41 facilities; for the dedication or reservation of recreation areas serving residents of the
42 immediate neighborhood within the subdivision and of rights-of-way or easements for
43 street and utility purposes including the dedication of rights-of-way pursuant to
44 G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a

1 manner that will avoid congestion and overcrowding and will create conditions essential
2 to ~~that~~ promote public health, safety, and the general welfare.

3 (b) The ordinance may require that a plat be prepared, approved, and recorded
4 pursuant to the provisions of the ordinance whenever any subdivision of land takes
5 place. The ordinance may include requirements that the final plat show sufficient data to
6 determine readily and reproduce accurately on the ground the location, bearing, and
7 length of every street and alley line, lot line, easement boundary line, and other property
8 boundaries, including the radius and other data for curved property lines, to an
9 appropriate accuracy and in conformity with good surveying practice.

10 (c) A subdivision control ordinance may provide that a developer may provide
11 funds to the county whereby the county may acquire recreational land or areas to serve
12 the development or subdivision, including the purchase of land ~~which~~that may be used
13 to serve more than one subdivision or development within the immediate area.

14 The ordinance may provide that in lieu of required street construction, a developer
15 may provide funds to be used for the development of roads to serve the occupants,
16 residents, or invitees of the subdivision or development. All funds received by the
17 county under this section shall be transferred to the municipality to be used solely for
18 the development of roads, including design, land acquisition, and construction. Any
19 municipality receiving funds from a county under this section is authorized to expend
20 such funds outside its corporate limits for the purposes specified in the agreement
21 between the municipality and the county. Any formula adopted to determine the amount
22 of funds the developer is to pay in lieu of required street construction shall be based on
23 the trips generated from the subdivision or development. The ordinance may require a
24 combination of partial payment of funds and partial dedication of constructed streets
25 when the governing body of the county determines that a combination is in the best
26 interest of the citizens of the area to be served.

27 The ordinance may provide for the more orderly development of subdivisions by
28 requiring the construction of community service facilities in accordance with county
29 ~~policies and standards, and, to assure compliance with these requirements, the ordinance~~
30 ~~may provide for the posting of bond or any other method that will offer guarantee of~~
31 ~~compliance.~~ plans, policies, and standards.

32 The ordinance may provide for the reservation of school sites in accordance with
33 comprehensive land use plans approved by the board of commissioners or the planning
34 agency. For the authorization to reserve school sites to be effective, the board of
35 commissioners or planning agency, before approving a comprehensive land use plan,
36 shall determine jointly with the board of education with jurisdiction over the area the
37 specific location and size of each school site to be reserved, and this information shall
38 appear in the plan. Whenever a subdivision that includes part or all of a school site to be
39 reserved under the plan is submitted for approval, the board of commissioners or the
40 planning agency shall immediately notify the board of education. That board shall
41 promptly decide whether it still wishes the site to be reserved and shall notify the board
42 of commissioners or planning agency of its decision. If the board of education does not
43 wish the site to be reserved, no site may be reserved. If the board of education does wish
44 the site to be reserved, the subdivision may not be approved without the reservation.

1 The board of education must acquire the site within 18 months after the date the site is
2 reserved, either by purchase or by exercise of the power of eminent domain. If the board
3 of education has not purchased the site or begun proceedings to condemn the site within
4 the 18 months, the subdivider may treat the land as freed of the reservation.

5 ~~The ordinance may require that a plat be prepared, approved, and recorded pursuant~~
6 ~~to its provisions whenever a subdivision of land takes place.~~

7 To assure compliance with these and other ordinance requirements, the ordinance
8 may provide for the posting of bonds, letters of credit, or other performance guarantees
9 to assure successful completion of required improvements."

10 **SECTION 7.** G.S. 153A-334 reads as rewritten:

11 **"§ 153A-334. Penalties for transferring lots in unapproved subdivisions.**

12 If a person who is the owner or the agent of the owner of any land located within the
13 territorial jurisdiction of a county that has adopted a subdivision regulation ordinance
14 subdivides his land in violation of the ordinance or transfers or sells land by reference
15 to, exhibition of, or any other use of a plat showing a subdivision of the land before the
16 plat has been properly approved under the ordinance and recorded in the office of the
17 appropriate register of deeds, he is guilty of a Class 1 misdemeanor. The description by
18 metes and bounds in the instrument of transfer or other document used in the process of
19 selling or transferring land does not exempt the transaction from this penalty. The
20 county may bring an action for injunction of any illegal subdivision, transfer,
21 conveyance, or sale of land, and the court shall, upon appropriate findings, issue an
22 injunction and order requiring the offending party to comply with the subdivision
23 ordinance. Building permits required pursuant to G.S. 153A-357 may be denied for lots
24 that have been illegally subdivided. In addition to other remedies, a city may institute
25 any appropriate action or proceedings to prevent the unlawful subdivision of land, to
26 restrain, correct, or abate the violation, or to prevent any illegal act or conduct."

27 **SECTION 8.** G.S. 153A-335 reads as rewritten:

28 **"§ 153A-335. "Subdivision" defined.**

29 For purposes of this Part, "subdivision" means all divisions of a tract or parcel of
30 land into ~~two or more~~ lots, building sites, or other divisions for the purpose of sale or
31 building development (whether immediate or future) and includes all division of land
32 involving the dedication of a new street or a change in existing streets; however, the
33 following is not included within this definition and is not subject to any regulations
34 enacted pursuant to this Part:

- 35 (1) The combination or recombination of portions of previously
36 subdivided and recorded lots if the total number of lots is not increased
37 and the resultant lots and required supporting infrastructure (including
38 streets, utilities, open space, and recreation areas) are equal to or
39 exceed the standards of the county as shown in its subdivision
40 regulations;
- 41 (2) The division of land into parcels greater than 10 acres if no street
42 right-of-way dedication is involved;
- 43 (3) The public acquisition by purchase of strips of land for widening or
44 opening streets or for public transportation system corridors; and

- 1 (4) The division of a tract in single ownership the entire area of which is
2 no greater than two acres into not more than three lots, if no street
3 right-of-way dedication is involved and if the resultant lots and
4 required supporting infrastructure (including streets, utilities, open
5 space, and recreation areas) are equal to or exceed the standards of the
6 county as shown by its subdivision regulations.

7 A county may provide for expedited review of specified classes of subdivisions."
8

9 PART III. ZONING REGULATION

10
11 SECTION 9. G.S. 160A-381 reads as rewritten:

12 "§ 160A-381. Grant of power.

13 (a) For the purpose of promoting health, safety, morals, or the general welfare of
14 the community, any city may adopt zoning and development regulation ordinances.
15 These ordinances may be adopted as part of a unified development ordinance or as a
16 separate ordinance. A zoning may regulate and restrict the height, number of stories and
17 the type, form, and size of buildings and other structures, the percentage of lots that may
18 be occupied, the size of yards, courts and other open spaces, the density of population,
19 and the location, maintenance, and use of buildings, structures and land for trade,
20 industry, residence or other purposes and to land. The ordinance may provide density
21 credits or severable development rights for dedicated rights of way pursuant to
22 G.S. 136-66.10 or G.S. 136-66.11 rights.

23 (b) Expired.

24 (b1) These regulations may provide that a board of adjustment may determine and
25 vary their application in harmony with their general purpose and intent and in
26 accordance with general or specific rules therein ~~contained~~contained, provided no
27 change in permitted uses may be authorized by variance.

28 (c) The regulations may also provide that the board of ~~adjustment~~adjustment, the
29 planning board, or the city council may issue special use permits or conditional use
30 permits in the classes of cases or situations and in accordance with the principles,
31 conditions, safeguards, and procedures specified therein and may impose reasonable and
32 appropriate conditions and safeguards upon these permits. When deciding special use
33 permits or conditional use permits, the city council shall follow the procedures for
34 boards of adjustment except that no vote greater than a majority vote shall be required
35 for the city council to issue such permits. For the purposes of this section, vacant
36 positions on the board and members who are disqualified from voting on a
37 quasi-judicial matter shall not be considered 'members of the board' for calculation of
38 the requisite majority. Every such decision of the city council shall be subject to review
39 by the superior court in the manner as is set forth in G.S. 160A-393.

40 (e) Where appropriate, such conditions may include requirements that street and
41 utility rights-of-way be dedicated to the public and that provision be made of
42 recreational space and facilities. ~~When issuing or denying special use permits or~~
43 ~~conditional use permits, the city council shall follow the procedures for boards of~~
44 ~~adjustment except that no vote greater than a majority vote shall be required for the city~~

1 ~~council to issue such permits, and every such decision of the city council shall be~~
2 ~~subject to review by the superior court by proceedings in the nature of certiorari. Any~~
3 ~~petition for review by the superior court shall be filed with the clerk of superior court~~
4 ~~within 30 days after the decision of the city council is filed in such office as the~~
5 ~~ordinance specifies, or after a written copy thereof is delivered to every aggrieved party~~
6 ~~who has filed a written request for such copy with the clerk at the time of the hearing of~~
7 ~~the case, whichever is later. The decision of the city council may be delivered to the~~
8 ~~aggrieved party either by personal service or by registered mail or certified mail return~~
9 ~~receipt requested.~~

10 (d) A city council member shall not vote on any zoning map or text amendment
11 where the outcome of the matter being considered is reasonably likely to have a direct,
12 substantial, and readily identifiable financial impact on the member. Members of
13 appointed boards providing advice to the city council shall not vote on
14 recommendations regarding any zoning map or text amendment where the outcome of
15 the matter being considered is reasonably likely to have a direct, substantial, and readily
16 identifiable financial impact on the member.

17 (e) Cities may adopt temporary development moratoria of reasonable duration on
18 any city development approval required by law. A development moratorium with a
19 duration of 60 days or any shorter period may be adopted without the necessity of a
20 public hearing and notice that would otherwise be required pursuant to G.S. 160A-364.
21 A development moratorium with a duration of 61 days or longer, and any extension of a
22 moratorium adopted without a hearing to a total duration of more than 60 days, is
23 subject to the notice and hearing requirements of G.S. 160A-364. Absent and imminent
24 threat to public health and safety, a development moratorium adopted pursuant to this
25 section shall not apply to any project for which a valid building permit issued pursuant
26 to G.S. 160A-417 is outstanding, to development set forth in a site-specific or phased
27 development plan approved pursuant to G.S. 160A-385.1, or to development for which
28 substantial expenditures have already been made in good faith reliance on a prior valid
29 zoning approval.

30 Any ordinance establishing a development moratorium must expressly include at the
31 time of adoption each of the following:

- 32 (1) A clear statement of the problems or conditions necessitating the
33 moratorium.
- 34 (2) A clear statement of the development approvals subject to the
35 moratorium and how a moratorium on those approvals will address the
36 problems or conditions leading to imposition of the moratorium.
- 37 (3) An express date for termination of the moratorium and a statement
38 setting forth why that duration is reasonably necessary to address the
39 problems or conditions leading to imposition of the moratorium.
- 40 (4) A clear statement of the actions proposed to be taken by the city during
41 the duration of the moratorium to address the problems or conditions
42 leading to imposition of the moratorium.

43 (f) A city may require that site-specific development restrictions imposed by
44 individual special or conditional use permits, variances, site-specific or phased

1 development plans, planned unit development approvals, special or conditional use
2 districts, conditional rezonings, overlay districts, or otherwise be recorded in the chain
3 of title of affected properties."

4 **SECTION 10.** G.S. 160A-382 reads as rewritten:

5 **"§ 160A-382. Districts.**

6 (a) For any or all these purposes, the city may divide its territorial jurisdiction
7 into districts of any number, shape, and area that may be deemed best suited to carry out
8 the purposes of this Part; and within those districts it may regulate and restrict the
9 erection, construction, reconstruction, alteration, repair or use of buildings, structures, or
10 land. Such districts may include, but shall not be limited to, general use districts, in
11 which a variety of uses are permissible in accordance with general standards; overlay
12 districts, in which additional requirements are imposed on certain properties within one
13 or more underlying general or special use districts; and special use districts or
14 conditional use districts, in which uses are permitted only upon the issuance of a special
15 use permit or a conditional use ~~permit~~-permit and conditional zoning districts, in which
16 site plans and individualized development conditions are imposed.

17 (b) Property may be placed in a special use ~~district or conditional use district~~
18 district, conditional use district, or conditional district only in response to a petition by
19 the owners of all the property to be included. Specific conditions applicable to these
20 districts may be proposed by the petitioner, the city or its agencies, or any affected
21 person, but only those conditions mutually approved by the city and the petitioner may
22 be incorporated into the zoning regulations or permit requirements. Conditions and
23 site-specific standards imposed in a conditional district shall be limited to those that
24 address the conformance of the development and use of the site to city ordinances and
25 an officially adopted comprehensive or other plan, and those that address the impacts
26 reasonably expected to be generated by the development or use of the site.

27 A statement analyzing the reasonableness of the proposed rezoning shall be prepared
28 for each petition for a rezoning to a special or conditional use district or a conditional
29 district. This statement may be prepared by the petitioner or by the city, and it shall be
30 completed and available for public inspection at the time notice is provided for the
31 public hearing on the proposed rezoning. This statement shall address the consistency of
32 the proposed rezoning with any comprehensive plan that has been adopted and any
33 other officially adopted plan that is applicable, the compatibility of the proposed
34 rezoning with the site and surrounding area, and the benefits and detriments of the
35 proposed rezoning for the landowner, the immediate neighbors, and the surrounding
36 community. The ordinance may require meetings to be held between the petitioner and
37 neighboring property owners prior to the submittal of a petition for rezoning to a special
38 or conditional use district or a conditional zoning district.

39 (c) Except as authorized by the foregoing, all regulations shall be uniform for
40 each class or kind of building throughout each district, but the regulations in one district
41 may differ from those in other districts."

42 **SECTION 11.** G.S. 160A-383 reads as rewritten:

43 **"§ 160A-383. Purposes in view.**

1 Zoning regulations shall be made in accordance with a comprehensive ~~plan and~~
2 ~~designed to lessen congestion in the streets; to secure safety from fire, panic and other~~
3 ~~dangers;~~plan. Prior to adoption of any zoning provision that is not consistent with an
4 adopted comprehensive plan or any other applicable plan that has been officially
5 adopted by the city, the governing board shall adopt a statement describing the
6 inconsistency and explaining why the board considers the action taken to be reasonable
7 and in the public interest.

8 Zoning regulations shall be designed to promote health~~the public health, safety, and~~
9 ~~the general welfare;~~welfare. To that end, the regulations may address, among other
10 things, the following public purposes: to provide adequate light and air; to prevent the
11 overcrowding of land; to avoid undue concentration of population; to lessen congestion
12 in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient
13 and adequate provision of transportation, water, sewerage, schools, parks, and other
14 public requirements.~~requirements; to manage the impacts of development and land uses~~
15 on other properties and public interests; and to maintain and improve the quality of
16 neighborhoods and communities. The regulations shall be made with reasonable
17 consideration, among other things, as to the character of the district and its peculiar
18 suitability for particular uses, and with a view to conserving the value of buildings and
19 encouraging the most appropriate use of land throughout such city."

20 **SECTION 12.** G.S. 153A-340 reads as rewritten:

21 "**§ 153A-340. Grant of power.**

22 (a) For the purpose of promoting health, safety, morals, or the general welfare, a
23 county may adopt zoning and development regulation ordinances. These ordinances
24 may be adopted as part of a unified development ordinance or as a separate ordinance.
25 A zoning ordinance may regulate and restrict the height, number of stories~~the type,~~
26 form, and size of buildings and other structures, the percentage of lots that may be
27 occupied, the size of yards, courts and other open spaces, the density of population, and
28 ~~the location~~location, maintenance, and use of buildings, structures, and land for trade,
29 industry, residence, or other ~~purposes,~~ and to purposes. The ordinance may provide
30 density credits or severable development ~~rights for dedicated rights of way pursuant to~~
31 ~~G.S. 136-66.10 or G.S. 136-66.11.~~rights.

32 (b) (1) These regulations may affect property used for bona fide farm
33 purposes only as provided in subdivision (3) of this subsection. This
34 subsection does not limit regulation under this Part with respect to the
35 use of farm property for nonfarm purposes.

36 (2) Bona fide farm purposes include the production and activities relating
37 or incidental to the production of crops, fruits, vegetables, ornamental
38 and flowering plants, dairy, livestock, poultry, and all other forms of
39 agricultural products having a domestic or foreign market.

40 (3) The definitions set out in G.S. 106-802 apply to this subdivision. A
41 county may adopt zoning regulations governing swine farms served by
42 animal waste management systems having a design capacity of
43 600,000 pounds steady state live weight (SSLW) or greater provided
44 that the zoning regulations may not have the effect of excluding swine

1 farms served by an animal waste management system having a design
2 capacity of 600,000 pounds SSLW or greater from the entire zoning
3 jurisdiction.

4 (c) The regulations may provide that a board of adjustment may determine and
5 vary their application in harmony with their general purpose and intent and in
6 accordance with general or specific rules therein ~~contained~~contained, provided no
7 change in permitted uses may be authorized by variance.

8 (c1) The regulations may also provide that the board of ~~adjustment~~adjustment, the
9 planning board, or the board of commissioners may issue special use permits or
10 conditional use permits in the classes of cases or situations and in accordance with the
11 principles, conditions, safeguards, and procedures specified therein and may impose
12 reasonable and appropriate conditions and safeguards upon these permits. Where
13 appropriate, the conditions may include requirements that street and utility
14 rights-of-way be dedicated to the public and that recreational space be provided. ~~When~~
15 ~~issuing or denying special use permits or conditional use permits, the board of~~
16 ~~commissioners shall follow the procedures for boards of adjustment except that no vote~~
17 ~~greater than a majority vote shall be required for the board of commissioners to issue~~
18 ~~such permits, and every such decision of the board of commissioners shall be subject to~~
19 ~~review by the superior court by proceedings in the nature of certiorari.~~ When deciding
20 special use permits or conditional use permits, the board of county commissioners shall
21 follow the procedures for boards of adjustment except that no vote greater than a
22 majority vote shall be required for the board of county commissioners to issue such
23 permits. For the purposes of this section, vacant positions on the board and members
24 who are disqualified from voting on a quasi-judicial matter shall not be considered
25 'members of the board' for calculation of the requisite majority. Every such decision of
26 the board of county commissioners shall be subject to review by the superior court in
27 the same manner as is set forth in G.S. 160A-393.

28 (d) A county may regulate the development over estuarine waters and over lands
29 covered by navigable waters owned by the State pursuant to G.S. 146-12, within the
30 bounds of that county.

31 (e) For the purpose of this section, the term "structures" shall include floating
32 homes.

33 (f) ~~Any petition for review by the superior court shall be filed with the clerk of~~
34 ~~superior court within 30 days after the decision of the board of commissioners is filed in~~
35 ~~such office as the ordinance specifies, or after a written copy thereof is delivered to~~
36 ~~every aggrieved party who has filed a written request for such copy with the clerk at the~~
37 ~~time of the hearing of the case, whichever is later. The decision of the board of~~
38 ~~commissioners may be delivered to the aggrieved party either by personal service or by~~
39 ~~registered mail or certified mail return receipt requested.~~

40 (g) A member of the board of county commissioners shall not vote on any zoning
41 map or text amendment where the outcome of the matter being considered is reasonably
42 likely to have a direct, substantial, and readily identifiable financial impact on the
43 member. Members of appointed boards providing advice to the board of county
44 commissioners shall not vote on recommendations regarding any zoning map or text

1 amendment where the outcome of the matter being considered is reasonably likely to
2 have a direct, substantial, and readily identifiable financial impact on the member.

3 (h) Counties may adopt temporary development moratoria of reasonable duration
4 on any county development approval required by law. A development moratorium with
5 a duration of 60 days or any shorter period may be adopted without the necessity of a
6 public hearing and notice that would otherwise be required pursuant to G.S. 153A-323.
7 A development moratorium with a duration of 61 days or longer, and any extension of a
8 moratorium adopted without a hearing to a total duration of more than 60 days, is
9 subject to the notice and hearing requirements of G.S. 153A-323. Absent an imminent
10 threat to public health and safety, a development moratorium adopted pursuant to this
11 section shall not apply to any project for which a valid building permit issued pursuant
12 to G.S. 153A-357 is outstanding, to development set forth in a site-specific or phased
13 development plan approved pursuant to G.S. 153A-344.1, or to development for which
14 substantial expenditures have already been made in good faith reliance on a prior valid
15 zoning approval.

16 Any ordinance establishing a development moratorium must expressly include at the
17 time of adoption each of the following:

- 18 (1) A clear statement of the problems or conditions necessitating the
19 moratorium.
- 20 (2) A clear statement of the development approvals subject to the
21 moratorium and how a moratorium on those approvals will address the
22 problems or conditions leading to imposition of the moratorium.
- 23 (3) An express date for termination of the moratorium and a statement
24 setting forth why that duration is reasonably necessary to address the
25 problems or conditions leading to imposition of the moratorium.
- 26 (4) A clear statement of the actions proposed to be taken by the county
27 during the duration of the moratorium to address the problems or
28 conditions leading to imposition of the moratorium.

29 (i) A county may require that site-specific development restrictions imposed by
30 individual special or conditional use permits, variances, site-specific or phased
31 development plans, planned unit development approvals, special or conditional use
32 districts, conditional rezonings, overlay districts, or otherwise be recorded in the chain
33 of title of affected properties."

34 **SECTION 13.** G.S. 153A-341 reads as rewritten:

35 **"§ 153A-341. Purposes in view.**

36 Zoning regulations shall be made in accordance with a comprehensive ~~plan and~~
37 ~~designed to lessen congestion in the streets; to secure safety from fire, panic, and other~~
38 ~~dangers;~~plan. Prior to adoption of any zoning provision that is not consistent with an
39 adopted comprehensive plan or any other applicable plan that has been officially
40 adopted by the county, the board of county commissioners shall adopt a statement
41 describing the inconsistency and explaining why the board considers the action taken to
42 be reasonable and in the public interest.

43 Zoning regulations shall be designed to promote the public ~~health~~health, safety, and
44 ~~the general welfare;~~welfare. To that end, the regulations may address, among other

1 things, the following public purposes: to provide adequate light and air; to prevent the
2 overcrowding of land; to avoid undue concentration of population; to lessen congestion
3 in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient
4 and adequate provision of transportation, water, sewerage, schools, parks, and other
5 public requirements; requirements; to manage the impacts of development and land uses
6 on other properties and public interests; and to maintain and improve the quality of
7 neighborhoods and communities. The regulations shall be made with reasonable
8 consideration as to, among other things, the character of the district and its peculiar
9 suitability for particular uses, and with a view to conserving the value of buildings and
10 encouraging the most appropriate use of land throughout the county. In addition, the
11 regulations shall be made with reasonable consideration to expansion and development
12 of any cities within the county, so as to provide for their orderly growth and
13 development."

14 **SECTION 14.** G.S. 153A-342 reads as rewritten:

15 "**§ 153A-342. Districts; zoning less than entire jurisdiction.**

16 (a) A county may divide its territorial jurisdiction into districts of any number,
17 shape, and area that it may consider best suited to carry out the purposes of this Part.
18 Within these districts a county may regulate and restrict the erection, construction,
19 reconstruction, alteration, repair, or use of buildings, structures, or land. Such districts
20 may include, but shall not be limited to, general use districts, in which a variety of uses
21 are permissible in accordance with general standards; overlay districts, in which
22 additional requirements are imposed on certain properties within one or more
23 underlying general or special use districts; ~~and~~ special use districts or conditional use
24 districts, in which uses are permitted only upon the issuance of a special use permit or a
25 conditional use ~~permit~~ permit and conditional zoning districts, in which site plans and
26 individualized development conditions are imposed.

27 (b) Property may be placed in a special use ~~district or conditional use district~~
28 district, conditional use district, or conditional district only in response to a petition by
29 the owners of all the property to be included. Specific conditions applicable to the
30 districts may be proposed by the petitioner, the county or its agencies, or any affected
31 person, but only those conditions mutually approved by the county and the petitioner
32 may be incorporated into the zoning regulations or permit requirements.

33 A statement analyzing the reasonableness of the proposed rezoning shall be prepared
34 for each petition for a rezoning to a special or conditional use district or a conditional
35 district. This statement may be prepared by the petitioner or by the county, and it shall
36 be completed and available for public inspection at the time notice is provided for the
37 public hearing on the proposed rezoning. This statement shall address the consistency of
38 the proposed rezoning with any comprehensive plan that has been adopted and any
39 other officially adopted plan that is applicable, the compatibility of the proposed
40 rezoning with the site and surrounding area, and the benefits and detriments of the
41 proposed rezoning for the landowner, the immediate neighbors, and the surrounding
42 community. The ordinance may require meetings to be held between the petitioner and
43 neighboring property owners prior to the submittal of a petition for rezoning to a special
44 or conditional use district or a conditional zoning district.

1 (c) Except as authorized by the foregoing, all regulations shall be uniform for
2 each class or kind of building throughout each district, but the regulations in one district
3 may differ from those in other districts.

4 (d) A county may determine that the public interest does not require that the
5 entire territorial jurisdiction of the county be zoned and may designate one or more
6 portions of that jurisdiction as a zoning area or areas. A zoning area must originally
7 contain at least 640 acres and at least 10 separate tracts of land in separate ownership
8 and may thereafter be expanded by the addition of any amount of territory. A zoning
9 area may be regulated in the same manner as if the entire county were zoned, and the
10 remainder of the county need not be regulated."

11 **SECTION 15.** Article 18 of Chapter 153A of the General Statutes is
12 amended by adding a new section to read:

13 **"§ 153A-343.1. Changes.**

14 (a) Zoning ordinances may from time to time be amended, supplemented,
15 changed, modified, or repealed. A county may elect to provide that when a qualified
16 protest against a zoning map amendment is made, that amendment shall not become
17 effective except by favorable vote of three-fourths of the members of the board of
18 county commissioners. For the purposes of this subsection, vacant positions on the
19 board of county commissioners and members who are excused from voting shall not be
20 considered 'members of the board' for calculation of the requisite supermajority.

21 (b) If a county elects to provide for zoning protest petitions, the provisions and
22 procedures for protest petitions set forth in G.S. 160A-385 and G.S. 160A-386 shall be
23 applicable."

24
25 **PART IV. INFRASTRUCTURE AGREEMENTS**

26
27 **SECTION 16.** Article 21 of Chapter 160A of the General Statutes is
28 amended by adding a new section to read:

29 **"§ 160A-499. Reimbursement agreements.**

30 (a) A city may enter into reimbursement agreements with private developers and
31 property owners for the design and construction of municipal infrastructure that is
32 included on the city's Capital Improvement Plan and serves the developer or property
33 owner. For the purpose of this act, municipal infrastructure includes, without limitation,
34 water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter,
35 sidewalks, traffic control devices, and other associated facilities.

36 (b) A city shall enact ordinances setting forth procedures and terms under which
37 such agreements may be approved.

38 (c) A city may provide for such reimbursements to be paid from any lawful
39 source.

40 (d) No reimbursement pursuant to an agreement authorized by this act shall be
41 deemed to be construction subject to Article 8 of Chapter 143 of the General Statutes or
42 to be deemed to be a violation or evasion of any provision of said Article.
43 Notwithstanding the foregoing provisions of this section, a construction contract subject
44 to a reimbursement agreement authorized by this act shall not be awarded by a

1 developer or property owner who is a party to such reimbursement agreement without
2 complying with the requirements of G.S. 143-129 and G.S. 143-128(f) relating to public
3 advertising and bid opening requirements which would be applicable if the construction
4 contract had been awarded by the city."

5 **SECTION 17.** Article 15 of Chapter 160A of the General Statutes is
6 amended by adding a new section to read:

7 **"§ 160A-309. Intersection and roadway improvements.**

8 A city may contract with a private party for public intersection or roadway
9 improvements that are adjacent or ancillary to a private land development project. Such
10 a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public
11 cost will not exceed one hundred seventy-five thousand dollars (\$175,000) and the city
12 determines that: (i) the public cost will not exceed the estimated cost of providing for
13 such public intersection or roadway improvements through either eligible force account
14 qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of
15 the General Statutes; or (ii) the coordination of separately constructed public
16 intersection or roadway improvements and the adjacent or ancillary private land
17 development improvements would be impracticable."

18 **SECTION 18.** Article 16 of Chapter 160A of the General Statutes is
19 amended by adding a new section to read:

20 **"§ 160A-320. Public enterprise improvements.**

21 (a) Authorization. – A city may contract with a private party for public enterprise
22 improvements that are adjacent or ancillary to a private land development project. Such
23 a contract shall allow the city to reimburse the private party for costs associated with the
24 design and construction of improvements that are in addition to those required by the
25 city's land development regulations. Such a contract is not subject to Article 8 of
26 Chapter 143 of the General Statutes if the public cost will not exceed one hundred
27 seventy-five thousand dollars (\$175,000) and the city determines that: (i) the public cost
28 will not exceed the estimated cost of providing for such improvements through either
29 eligible force account qualified labor or through a public contract let pursuant to Article
30 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately
31 constructed improvements would be impracticable.

32 (b) Property Acquisition. – The improvements may be constructed on property
33 owned or acquired by the private party or on property directly acquired by the city. The
34 private party may assist the city in obtaining easements in favor of the city from private
35 property owners on those properties that will be involved in or affected by the project.
36 The contract between the city and the private party may be entered into before the
37 acquisition of any real property necessary to the project."

38
39 **PART V. DEVELOPMENT AGREEMENTS**

40
41 **SECTION 19.** Article 19 of Chapter 160A of the General Statutes is
42 amended by adding a new Part to read:

43 "Part 3D. Development Agreements.

44 **"§ 160A-400.20. Authorization for development agreements.**

1 (a) The General Assembly finds:

2 (1) The lack of certainty in the approval of development can result in a
3 waste of economic and land resources, can discourage sound capital
4 improvement planning and financing, can cause the cost of housing
5 and development to escalate, and can discourage commitment to
6 comprehensive planning.

7 (2) Developers should be assured that upon receipt of a development
8 permit, they may proceed in accordance with existing laws and
9 policies, subject to the conditions of a development agreement. A
10 development agreement should strengthen the public planning process,
11 encourage sound capital improvement planning and financing, assist in
12 assuring there are adequate capital facilities for the development,
13 encourage private participation in comprehensive planning, reduce the
14 economic costs of development, allow for the orderly planning of
15 public facilities and services, and allow for the equitable allocation of
16 the cost of public services.

17 (3) Because the development approval process involves the expenditure of
18 considerable sums of money, predictability encourages the maximum
19 efficient utilization of resources at the least economic cost to the
20 public.

21 (4) Public benefits derived from development agreements may include,
22 but are not limited to, affordable housing, design standards, and
23 on- and off-site infrastructure and other improvements. These public
24 benefits may be negotiated in return for the vesting of development
25 rights for a specific period.

26 (5) Land planning and development involve review and action by multiple
27 governmental agencies having jurisdiction over land development.

28 (6) Development agreements will encourage the vesting of property rights
29 by protecting such rights from the effect of subsequently enacted local
30 government agencies which may conflict with any term or provision of
31 the development agreement. Development agreements will provide a
32 reasonable certainty as to the lawful requirements that must be met in
33 protecting vested property rights, while maintaining the authority and
34 duty of government to enforce laws and regulations which promote the
35 public safety, health, and general welfare of the citizens of our State.

36 (b) It is the intent of the General Assembly to encourage a stronger commitment
37 to comprehensive and capital facilities planning, ensure the provision of adequate public
38 facilities for development, encourage the efficient use of resources, and reduce the
39 economic cost of development.

40 (c) Local governments and agencies may enter into development agreements
41 with developers, subject to the procedures and requirements of this Part.

42 (d) This Part is supplemental to the powers conferred upon local governments
43 and does not preclude or supersede rights and obligations established pursuant to other

1 law regarding building permits, site-specific development plans, phased development
2 plans, or other provisions of law.

3 **"§ 160A-400.21. Definitions.**

4 The following definitions apply in this Part:

- 5 (1) Comprehensive plan. – The comprehensive plan, land-use plan, small
6 area plans, neighborhood plans, transportation plan, capital
7 improvement plan, official map, and any other plans regarding land
8 use and development that have been officially adopted by the
9 governing board.
- 10 (2) Developer. – A person, including a governmental agency or
11 redevelopment authority, who intends to undertake any development
12 and who has a legal or equitable interest in the property to be
13 developed.
- 14 (3) Development. – The planning for or carrying out of a building activity,
15 the making of a material change in the use or appearance of any
16 structure or property, or the dividing of land into two or more parcels.
17 'Development', as designated in a law or development permit, includes
18 the planning for and all other activity customarily associated with it
19 unless otherwise specified. When appropriate to the context,
20 'development' refers to the planning for or the act of developing or to
21 the result of development. Reference to a specific operation is not
22 intended to mean that the operation or activity, when part of other
23 operations or activities, is not development. Reference to particular
24 operations is not intended to limit the generality of this item.
- 25 (4) Development permit. – A building permit, zoning permit, subdivision
26 approval, special or conditional use permit, variance, or any other
27 official action of local government having the effect of permitting the
28 development of property.
- 29 (5) Governing body. – The city council of a municipality or the board of
30 county commissioners of a county.
- 31 (6) Land development regulations. – Ordinances and regulations enacted
32 by the appropriate governing body for the regulation of any aspect of
33 development and includes zoning, subdivision, or any other land
34 development ordinances.
- 35 (7) Laws. – All ordinances, resolutions, regulations, comprehensive plans,
36 land development regulations, policies, and rules adopted by a local
37 government affecting the development of property, and includes laws
38 governing permitted uses of the property, density, design, and
39 improvements.
- 40 (8) Property. – All real property subject to land use regulation by a local
41 government and includes any improvements or structures customarily
42 regarded as a part of real property.

- 1 (9) Local government. – Any municipality or county that exercises
2 regulatory authority over and grants development permits for land
3 development or which provides public facilities.
- 4 (10) Local planning board. – Any planning board established pursuant to
5 G.S. 160A-361 or G.S. 153A-321.
- 6 (11) Person. – An individual, corporation, business or land trust, estate,
7 trust, partnership, association, two or more persons having a joint or
8 common interest, State agency, or any legal entity.
- 9 (12) Public facilities. – Major capital improvements, including, but not
10 limited to, transportation, sanitary sewer, solid waste, drainage, potable
11 water, educational, parks and recreational, and health systems and
12 facilities.

13 **"§ 160A-400.22. Local governments authorized to enter into development**
14 **agreements; approval of county or municipal governing body required.**

15 A local government may establish procedures and requirements, as provided in this
16 Part, to consider and enter into development agreements with developers. A
17 development agreement must be approved by the governing body of a county or
18 municipality by written resolution.

19 **"§ 160A-400.23. Developed property must contain certain number of acres;**
20 **permissible durations of agreements.**

21 A local government may enter into a development agreement with a developer for
22 the development of property as provided in this Part, provided the property contains 25
23 acres or more of developable property (exclusive of wetlands, mandatory buffers, steep
24 slopes, and other portions of the property precluded from development at the time of
25 application). Development agreements shall be of a term specified in the agreement,
26 provided they may not be for a term exceeding 10 years.

27 **"§ 160A-400.24. Public hearing.**

28 Before entering into a development agreement, a local government shall conduct a
29 public hearing on the proposed agreement following the procedures set forth in
30 G.S. 160A-364 or G.S. 153A-323 regarding zoning ordinance adoption or property
31 subject to the development agreement, the development uses proposed on the property,
32 and must specify a place where a copy of the proposed development agreement can be
33 obtained. In the event that the development agreement provides that the local
34 government shall provide certain public facilities, the development agreement shall
35 provide that the delivery date of such public facilities will be tied to successful
36 performance by the developer in implementing the proposed development (such as
37 meeting defined completion percentages or other performance standards).

38 **"§ 160A-400.25. What development agreement must provide; what it may provide;**
39 **major modification requires public notice and hearing.**

40 (a) A development agreement shall at a minimum include all of the following:

- 41 (1) A legal description of the property subject to the agreement and the
42 names of its legal and equitable property owners.

- 1 (2) The duration of the agreement. However, the parties are not precluded
2 from entering into subsequent development agreements that may
3 extend the original duration period.
- 4 (3) The development uses permitted on the property, including population
5 densities and building types, intensities, placement on the site, and
6 design.
- 7 (4) A description of public facilities that will service the development,
8 including who provides the facilities, the date any new public
9 facilities, if needed, will be constructed, and a schedule to assure
10 public facilities are available concurrent with the impacts of the
11 development.
- 12 (5) A description, where appropriate, of any reservation or dedication of
13 land for public purposes and any provisions to protect environmentally
14 sensitive property.
- 15 (6) A description of all local development permits approved or needed to
16 be approved for the development of the property together with a
17 statement indicating that the failure of the agreement to address a
18 particular permit, condition, term, or restriction does not relieve the
19 developer of the necessity of complying with the law governing their
20 permitting requirements, conditions, terms, or restriction.
- 21 (7) A finding that the development permitted or proposed is consistent
22 with the local government's comprehensive plan and land development
23 regulations.
- 24 (8) A description of any conditions, terms, restrictions, or other
25 requirements determined to be necessary by the local government for
26 the public health, safety, or welfare of its citizens.
- 27 (9) A description, where appropriate, of any provisions for the
28 preservation and restoration of historic structures.
- 29 (b) A development agreement may provide that the entire development or any
30 phase of it be commenced or completed within a specified period of time. The
31 development agreement must provide a development schedule including
32 commencement dates and interim completion dates at no greater than five-year
33 intervals; provided, however, the failure to meet a commencement or completion date
34 shall not, in and of itself, constitute a material breach of the development agreement
35 pursuant to G.S. 160A-400.28 but must be judged based upon the totality of the
36 circumstances. The development agreement may include other defined performance
37 standards to be met by the developer. The developer may request a modification in the
38 dates as set forth in the agreement. Consideration of a proposed major modification of
39 the agreement shall follow the same procedures as required for initial approval of a
40 development agreement.
- 41 (c) If more than one local government is made party to an agreement, the
42 agreement must specify which local government is responsible for the overall
43 administration of the development agreement.

1 (d) The development agreement also may cover any other matter not inconsistent
2 with this Part.

3 **"§ 160A-400.26. Agreement and development must be consistent with local**
4 **government comprehensive plan and land development regulations.**

5 A development agreement and authorized development must be consistent with the
6 local government's comprehensive plan and land development regulations.

7 **"§ 160A-400.27. Law in effect at time of agreement governs development;**
8 **exceptions.**

9 (a) Unless otherwise provided by the development agreement, the laws
10 applicable to development of the property subject to a development agreement are those
11 in force at the time of execution of the agreement.

12 (b) A local government may apply subsequently adopted laws to a development
13 that is subject to a development agreement only for the grounds specified in
14 G.S. 160A-385.1(e).

15 (c) This section does not abrogate any rights preserved by G.S. 160A-385,
16 160A-385.1, 153A-344, and 153A-344.1 or that may vest pursuant to common law or
17 otherwise in the absence of a development agreement.

18 **"§ 160A-400.28. Periodic review to assess compliance with agreement; material**
19 **breach by developer; notice of breach; cure of breach or modification or**
20 **termination of agreement.**

21 (a) Procedures established pursuant to G.S. 160A-400.22 must include a
22 provision for requiring periodic review by the zoning administrator or other appropriate
23 officer of the local government at least every 12 months, at which time the developer
24 must be required to demonstrate good faith compliance with the terms of the
25 development agreement.

26 (b) If, as a result of a periodic review, the local government finds and determines
27 that the developer has committed a material breach of the terms or conditions of the
28 agreement, the local government shall serve notice in writing, within a reasonable time
29 after the periodic review, upon the developer setting forth with reasonable particularity
30 the nature of the breach and the evidence supporting the finding and determination, and
31 providing the developer a reasonable time in which to cure the material breach.

32 (c) If the developer fails to cure the material breach within the time given, then
33 the local government unilaterally may terminate or modify the development agreement;
34 provided, the notice of termination or modification may be appealed to the board of
35 adjustment in the manner provided by G.S. 160A-388(b) and G.S. 153A-345(b).

36 **"§ 160A-400.29. Amendment or cancellation of development agreement by mutual**
37 **consent of parties or successors in interest.**

38 A development agreement may be amended or canceled by mutual consent of the
39 parties to the agreement or by their successors in interest.

40 **"§ 160A-400.30. Validity and duration of agreement entered into prior to change**
41 **of jurisdiction; subsequent modification or suspension.**

42 (a) Except as otherwise provided by this Part, any development agreement
43 entered into by a local government before the effective date of a change of jurisdiction
44 shall be valid for the duration of the agreement, or eight years from the effective date of

1 the change in jurisdiction, whichever is earlier. The parties to the development
2 agreement and the local government assuming jurisdiction have the same rights and
3 obligations with respect to each other regarding matters addressed in the development
4 agreement as if the property had remained in the previous jurisdiction.

5 (b) A local government assuming jurisdiction may modify or suspend the
6 provisions of the development agreement if the local government determines that the
7 failure of the local government to do so would place the residents of the territory subject
8 to the development agreement, or the residents of the local government, or both, in a
9 condition dangerous to their health or safety, or both.

10 **"§ 160A-400.31. Developer to record agreement within 14 days; burdens and**
11 **benefits inure to successors in interest.**

12 Within 14 days after a local government enters into a development agreement, the
13 developer shall record the agreement with the register of deeds in the county where the
14 property is located. The burdens of the development agreement are binding upon, and
15 the benefits of the agreement shall inure to, all successors in interest to the parties to the
16 agreement.

17 **"§ 160A-400.32. Agreement to be modified or suspended to comply with**
18 **later-enacted State or federal laws or regulations.**

19 In the event State or federal laws or regulations, enacted after a development
20 agreement has been entered into, prevent or preclude compliance with one or more
21 provisions of the development agreement, the provisions of the agreement must be
22 modified or suspended as may be necessary to comply with the State or federal laws or
23 regulations.

24 **"§ 160A-400.33. Rights, duties, and privileges of gas and electricity suppliers not**
25 **affected.**

26 The provisions of this act are not intended nor may they be construed in any way to
27 alter or amend in any way the rights, duties, and privileges of suppliers of electricity or
28 natural gas with reference to the provision of electricity or gas service, including, but
29 not limited to, the generation, transmission, distribution, or provision of electricity at
30 wholesale, retail, or in any other capacity.

31 **"§ 160A-400.34. Applicability to local government of constitutional and statutory**
32 **procedures for approval of debt.**

33 In the event that any of the obligations of the local government in the development
34 agreement constitute debt, the local government shall comply, at the time of the
35 obligation to incur the debt and before the debt becomes enforceable against the local
36 government, with any applicable constitutional and statutory procedures for the
37 approval of this debt.

38 **"§ 160A-400.35. Agreement may not contravene or supersede building or housing**
39 **code; compliance with code if subsequently enacted.**

40 Notwithstanding any other provision of law, a development agreement adopted
41 pursuant to this Chapter must comply with any building or housing codes subsequently
42 adopted by the governing body of a municipality or county. A development agreement
43 may not include provisions that supersede or contravene the requirements of any

1 building or housing code adopted by the State or the governing body of a municipality
2 or county."

3 4 **PART VI. APPEALS**

5
6 **SECTION 20.** Article 19 of Chapter 160A of the General Statutes is
7 amended by adding a new section to read:

8 **"§ 160A-393. Appeals in the nature of certiorari.**

9 (a) Applicability. – This section applies to appeals to superior court by
10 proceedings in the nature of certiorari authorized under the provisions of this Article.

11 (b) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by
12 filing with the superior court a petition for Writ of Certiorari. The petition shall state the
13 facts that demonstrate that the petitioner has standing to seek review and shall set forth
14 the grounds upon which the petitioner contends that an error was made as well as the
15 relief the petitioner seeks. The facts in support of allegations that the votes of one or
16 more members of the decision-making body were affected by impermissible bias or
17 conflict of interest shall be set forth with particularity.

18 (c) Standing. –

19 (1) A petition may be filed under this section only by a person who has
20 standing to challenge the decision being appealed. A person has
21 standing if a reasonable person in the position of the person seeking to
22 challenge the decision could reasonably conclude that the use of the
23 property authorized by the decision would be likely to adversely affect
24 the interests of such person in some real, substantial, and concrete (i.e.,
25 not purely speculative, insignificant, or philosophical) way that is
26 demonstrably different in nature or degree than the manner in which
27 the decision affects members of the general public. Without limiting
28 the generality of the foregoing, the following principles shall apply in
29 determining whether a petitioner has standing.

30 (2) If the decision being appealed involves a denial of a permit request, a
31 denial of a variance, or a determination that property is being used in
32 violation of an ordinance adopted under this Article, then any person
33 with an ownership or leasehold interest in the property in question, as
34 well as the applicant for the permit or the variance (if different than the
35 owner), has standing to file a petition.

36 (3) If the decision being appealed involves the issuance of a permit, the
37 granting of a variance, or a determination that property is being used in
38 conformity with an ordinance adopted under this Article, then the
39 following persons shall have standing to file a petition, so long as they
40 satisfy the general criteria set forth at the beginning of this subdivision:

41 a. Any person who resides or owns property in such close
42 proximity to the property that is the subject of the decision that
43 the use of the property authorized by the decision would
44 adversely affect such person's use or enjoyment of his or her

1 residence or property or would adversely affect the value of
2 such property.

3 b. Any person whose economic interests are directly threatened by
4 the use authorized by the decision.

5 c. An incorporated property owners association to which all
6 owners of property in a designated area belong by virtue of their
7 ownership or property in such area shall have standing to
8 challenge the issuance of a permit, the granting of a variance, or
9 a determination that property is being used in conformity with
10 an ordinance adopted under this Part if any of the members of
11 such incorporated property owners association would have
12 standing to challenge the decision as an individual.

13 For purposes of this subsection, the term "person" refers to any legal entity
14 authorized to bring suit in his, her, or its own name, and the term "owner" refers to any
15 person having an ownership interest in property.

16 (d) Respondent. – The respondent named in the petition shall be the city whose
17 council, board of adjustment, planning agency, or other body made the decision that is
18 being appealed. If the petitioner is not the applicant before the council, board of
19 adjustment, or planning agency whose decision is being appealed, the petitioner shall
20 name such applicant as a respondent. Any petitioner may, but need not, also name as a
21 respondent any person who participated in the hearing before the council, board of
22 adjustment, or planning agency.

23 (e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the
24 petition and a proposed Writ of Certiorari to the clerk of court of the county in which
25 the matter arose. The writ shall direct the respondent city to prepare and certify to the
26 court the record of proceedings below within a specified date. The writ shall also direct
27 that the petitioner shall serve the petition and the writ upon each respondent named
28 therein in the manner provided for service of a complaint under Rule 4j of the Rules of
29 Civil Procedure. No summons shall be issued. The clerk shall issue the writ without
30 notice to the respondent or respondents if the petition has been properly filed and the
31 writ is in proper form. A copy of the executed writ shall be filed with the court.

32 (f) Answer to the Petition. – The respondent may, but need not, file an answer to
33 the petition, except that, if the respondent contends that any petitioner lacks standing to
34 bring the appeal, such contention must be set forth in an answer served on all petitioners
35 at least 30 days prior to the hearing on the petition.

36 (g) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions
37 to intervene as a petitioner or respondent in an action initiated under this section, except
38 that:

39 (1) If the petitioner is not the applicant before the council, board of
40 adjustment, or planning agency whose decision is being appealed, and
41 the petitioner fails to name such applicant as a respondent, then such
42 applicant may intervene as a matter of right.

43 (2) Except as otherwise stated in subdivision (1) of this subsection, an
44 intervenor must demonstrate that a reasonable person in the position of

1 the intervenor could reasonably believe that the outcome of the appeal
2 could adversely affect the interests of such person in some real,
3 substantial, and concrete (i.e., not purely speculative, insignificant, or
4 philosophical) way that is demonstrably different in nature or degree
5 than the manner in which the decision affects members of the general
6 public.

7 (h) The Record. – The record shall consist of all documents and exhibits
8 submitted to the council, planning agency, or board of adjustment whose decision is
9 challenged, together with the minutes of the meeting or meetings at which the matter
10 appealed was considered. Upon request of any party, the record shall also contain an
11 audio or videotape of the meeting or meetings at which the matter appealed was
12 considered if such a recording was made. Any party may also include in the record a
13 transcript of such proceedings, which shall be prepared at the cost of the party choosing
14 to include it. The parties may agree, or the court may direct, that matters unnecessary to
15 the court's decision be deleted from the record or that matters other than those specified
16 herein be included. The record shall be bound and paginated or otherwise organized for
17 the convenience of the parties and the court. A copy of the record shall be served by the
18 municipal respondent upon all petitioners within three days after it is filed with the
19 court.

20 (i) Hearing on the Record. – The court shall hear and decide all issues raised by
21 the petition by reviewing the record submitted in accordance with subsection (h) of this
22 section, except that the court may, in its discretion, allow the record to be supplemented
23 with affidavits, testimony of witnesses, or documentary or other evidence if and to the
24 extent that the record is not adequate to allow an appropriate determination of the
25 following issues:

- 26 (1) Whether a petitioner or intervenor has standing.
27 (2) Whether, as a result of bias or conflict of interest, the decision-making
28 body was not sufficiently impartial to comply with due process
29 principles.
30 (3) Whether the decision-making body erred for the reasons set forth in
31 subsection (j) of this section.

32 (j) Scope of Review. –

33 When reviewing the decision of a city council, board of adjustment, or planning
34 agency under the provisions of this section, the trial court shall ensure that the rights of
35 petitioners have not been prejudiced because the decision-making body's findings,
36 inferences, conclusions, or decisions were:

- 37 (1) In violation of constitutional provisions, including but not limited to,
38 those protecting procedural due process rights.
39 (2) In excess of the statutory authority conferred upon the municipality or
40 the authority conferred upon the decision-making body by ordinance.
41 (3) Inconsistent with applicable procedures specified by statute or
42 ordinance.
43 (4) Affected by other error of law.

1 (5) Unsupported by substantial competent evidence in view of the entire
2 record.

3 (6) Arbitrary or capricious.

4 (7) When the issue before the trial court is whether the decision-making
5 body below erred in the interpretation of an ordinance, the trial court
6 may review that issue de novo and substitute its own judgment for that
7 of the decision-making body.

8 The term "competent evidence", as used in this subsection, shall not preclude
9 reliance by the decision-making body on evidence that would not be admissible under
10 the rules of evidence as applied in the trial division of the General Court of Justice if (i)
11 the evidence was admitted without objection, or (ii) the evidence appears to be
12 sufficiently trustworthy and was admitted under such circumstances that were
13 reasonable for the decision-making body to rely upon it. Notwithstanding the foregoing,
14 the term "competent evidence" shall not be deemed to include the opinion testimony of
15 lay witnesses (i.e., persons not qualified by reason of specialized knowledge, skill,
16 experience, training, or education to testify as an expert) as to matters about which only
17 expert testimony would generally be admissible under the rules of evidence. By way of
18 illustration without limitation, the term "competent evidence" shall not be deemed to
19 include the opinion of lay witnesses as to whether (i) the use of property in a particular
20 way would affect the value of other property, or (ii) the increase in vehicular traffic
21 resulting from a proposed development would pose a danger to the public safety.

22 (k) Decision of the Trial Court. – Following its review of the decision making
23 body in accordance with subsection (j) of this section, the trial court may affirm the
24 decision, reverse the decision and remand the case with appropriate instructions, or
25 remand the case for further proceedings. If the court does not affirm the decision below
26 in its entirety, then the court shall be guided by the following in determining what relief
27 should be granted to the petitioners.

28 (1) If the court concludes that the error committed by the decision-making
29 body is procedural only, the court may remand the case for further
30 proceedings to correct the procedural error.

31 (2) If the court concludes that the decision-making body has erred by
32 failing to make findings of fact such that the court cannot properly
33 perform its function, then the court may remand the case with
34 appropriate instructions so long as the record contains substantial
35 competent evidence that could support the decision below with
36 appropriate findings of fact. However, findings of fact are not
37 necessary when the record sufficiently reveals the basis for the
38 decision below or when the material facts are undisputed and the case
39 presents only an issue of law.

40 (3) If the court concludes that the decision below is not supported by
41 substantial competent evidence in the record, or is based upon an error
42 of law, then the court may remand the case with an order that directs
43 the council, board of adjustment, or planning agency to take whatever
44 action should have been taken had the error not been committed or to

1 take such other action as is necessary to correct the error. Without
2 limiting the generality of the foregoing, (i) if the court concludes that a
3 permit was wrongfully denied because the denial was not based on
4 substantial competent evidence or was otherwise based on an error of
5 law, the court shall remand with instructions that the permit be issued;
6 and (ii) if the court concludes that a permit was wrongfully issued
7 because the issuance was not based on substantial competent evidence
8 or was otherwise based on an error of law, the court shall remand with
9 instructions that the permit be revoked.

10 (l) Ancillary Injunctive Relief. – Upon motion of a party to a proceeding under
11 this section, and under appropriate circumstances, the trial court may issue an injunctive
12 order requiring any other party to such proceeding to take certain action or refrain from
13 taking action that is consistent with the court's decision on the merits of the appeal. By
14 way of illustration without limitation, if the court affirms the decision of a board of
15 adjustment that a petitioner is in violation of a zoning ordinance, the court may issue an
16 order enjoining the petitioner from continuing the violation."

17 **SECTION 21.** Article 18 of Chapter 153A of the General Statutes is
18 amended by adding a new section to read:

19 **"§ 153A-349. Appeals in the nature of certiorari.**

20 Whenever appeals to superior court by proceedings in the nature of certiorari are
21 authorized under the provisions of this Article, the provisions of G.S. 160A-393 shall be
22 applicable to such appeals. In this context, the term "city council", as used in
23 G.S. 160A-393, shall be deemed to refer to the "board of commissioners", and the term
24 "municipality" shall be deemed to refer to the "county"."

25 **SECTION 22.** Article 19 of Chapter 160A of the General Statutes is
26 amended by adding a new section to read:

27 **"§ 160A-377. Appeals of decisions on subdivision plats.**

28 (a) When a subdivision ordinance adopted under this Part provides that the
29 decision whether to approve or deny a preliminary or final subdivision plat is to be
30 made by a city council or a designated planning agency (other than a planning agency
31 comprised solely of members of a city planning staff), and the ordinance authorizes the
32 council or planning agency to make a quasi-judicial determination in deciding whether
33 to approve the subdivision plat, then the decision of the council or planning agency shall
34 be subject to review by the superior court by proceedings in the nature of certiorari. The
35 provisions of G.S. 160A-381(c) and G.S. 160A-393 shall apply to such appeals.

36 (b) When a subdivision ordinance adopted under this Part provides that a city
37 council, designated planning agency, or staff member is authorized to make only an
38 administrative or ministerial determination in deciding whether to approve a preliminary
39 or final subdivision plat, then any party aggrieved by such decision may seek to have
40 the decision reviewed by filing an action in superior court seeking appropriate
41 declaratory or equitable relief. Such an action must be filed within the time frame
42 specified in G.S. 160A-381(c) for petitions in the nature of certiorari.

43 (c) For purposes of this section, an ordinance shall be deemed to authorize a
44 quasi-judicial determination on a preliminary or final plat application if the ordinance (i)

1 authorizes the council or planning agency to decide whether to approve or deny the plat
2 based not only on whether the application complies with the specific requirements set
3 forth in the ordinance, but also whether it complies with one or more generally stated
4 standards requiring a discretionary determination to be made by the council or planning
5 agency; or (ii) authorizes the council or planning agency to approve the subdivision plat
6 subject to conditions that impose requirements or limitations on the subdivision beyond
7 those set forth in the ordinance."

8 **SECTION 23.** Article 18 of Chapter 153A of the General Statutes is
9 amended by adding a new section to read:

10 **"§ 153A-336. Appeals of decisions on subdivision plats.**

11 (a) When a subdivision ordinance adopted under this Part provides that the
12 decision whether to approve or deny a preliminary or final subdivision plat is to be
13 made by a board of commissioners or a designated planning agency (other than a
14 planning agency comprised solely of members of a county planning staff), and the
15 ordinance authorizes the board of commissioners or planning agency to make a
16 quasi-judicial determination in deciding whether to approve the subdivision plat, then
17 the decision of the board of commissioners or planning agency shall be subject to
18 review by the superior court by proceedings in the nature of certiorari. The provisions of
19 G.S. 153A-340(f) and G.S. 153A-349 shall apply to such appeals.

20 (b) When a subdivision ordinance adopted under this Part provides that a board
21 of commissioners, planning agency, or staff member is authorized to make only an
22 administrative or ministerial determination in deciding whether to approve a preliminary
23 or final subdivision plat, then any party aggrieved by such decision may seek to have
24 the decision reviewed by filing an action in superior court seeking appropriate
25 declaratory or equitable relief. Such an action must be filed within the time frame
26 specified in G.S. 153A-340(f) for petitions in the nature of certiorari.

27 (c) For purposes of this section, an ordinance shall be deemed to authorize a
28 quasi-judicial determination on a preliminary or final plat application if the ordinance (i)
29 authorizes the board of commissioners or planning agency to decide whether to approve
30 or deny the plat based not only on whether the application complies with the specific
31 requirements set forth in the ordinance, but also whether it complies with one or more
32 generally stated standards requiring a discretionary determination to be made by the
33 board of commissioners or planning agency; or (ii) authorizes the board of
34 commissioners or planning agency to approve the subdivision plat subject to conditions
35 that impose requirements or limitations on the subdivision beyond those set forth in the
36 ordinance."

37
38 **PART VII. EFFECTIVE DATES**

39
40 **SECTION 24.** Sections 1 to 19 of this act become effective October 1, 2005.
41 Sections 20 to 23 of this act become effective January 1, 2006, and apply to actions filed
42 on or after that date.