

Planning Board Report

To: Mayor Dawn Morgan and the Board of Aldermen

Cc: Curtis Swisher, Town Manager

Agenda Item: KT-197

Planning Board Date:

RE: **Curtis Swisher, Agent for the Town of Kernersville**, for a proposed Zoning Text Amendment to the Unified Development Ordinance (UDO) by amending Chapter B, Zoning Ordinance and Chapter D, Subdivision Regulations mandated by changes made to the planning statutes by the North Carolina General Assembly. **Zoning Docket KT-197**

Jeff Hatling made recommendation and highlighted the overall changes that would be made to the UDO. The following staff report was presented to the Planning Board and a power point presentation was provided.

Staff Recommendations and Planning Board Actions

Members present: Jim Waddell, Chair; Phyllis Mendel, Vice Chair; Margaret Burks; Darrell Davis; Jim Fradenburg; Ed Green; Keith Hooker; Steve Hutchins; Tom McDaniel; Bronda Smith-Martin

Staff and Planning Board Text Amendment Recommendation:

Motion made by Darrell Davis to recommend to the Board of Aldermen approval of the text amendment as presented by Staff.

Seconded by Tom McDaniel.

Vote: (10:0) all for and motion carried.

Community Development Director/Date: *Jeff Hatling* *08/25/10*

**STAFF REPORT
UNIFIED DEVELOPMENT ORDINANCE
TEXT AMENDMENT**

DOCKET #: KT-197
PLANNING BOARD: August 9, 2010

AMENDMENT:

This text amendment pertains to changes made to the planning statutes by the North Carolina General Assembly.

2. PURPOSE:

This text amendment was originally proposed by CCPB (UDO-157) and adopted by the Forsyth County Board of Commissioners along with other municipalities and is proposed to make various amendments to *Chapter B, Zoning Ordinance*, and *Chapter D, Subdivision Regulations*, of the Unified Development Ordinances mandated by changes made to the planning statutes by the North Carolina General Assembly. Following the actual text amendment language is a table compiled by David Owens with the Institute of Government at UNC-Chapel Hill. This table lists the actual North Carolina General Statute reference number and statutory language. For clarity purposes, each “Part” of the staff report includes a cross-reference to the applicable “Item #” in the table, under the headings “Zoning”, “Subdivision”, or “Other” (i.e., Zoning, Item #6 or Subdivision, Item #2). Please note that not all items in the table will be listed as proposed UDO text amendments since some of the items do not apply locally or are simply permissive but not required (in either case, no changes to the UDO are necessary). The amendments are as follows:

- **Amend Chapter B, Article VI, Administration and Amendments, to:**
 - Require the Planning Board to advise and comment on whether the proposed rezoning petition is consistent with any applicable adopted plans and whether the request is reasonable (*Zoning, Item #3*);
 - Modify the notification requirements for zoning map and text amendments to allow for either mailed notices or ½ page ads, depending on the situation (*Zoning, Item #4*);
 - Clarify the procedures for posting of properties involved in a rezoning request (*Zoning, Item #5*);
 - Modify the protest petition procedures to change the method of calculation for a valid petition, to clarify the manner in which the requisite supermajority must be calculated, and to clarify that the protest petition provisions are not applicable for zoning text amendments, initial zoning in an area, annexation zoning conversions, and amendments to previously adopted special use districts (*Zoning, Items #7, #8, #9, #10, and #11*);
 - Clarify that members of the Elected Body may not vote on any zoning map or text amendment where the outcome of the matter is reasonably likely to have a financial impact on the member (*Zoning, Item #12*);
 - Require the Elected Body to adopt a statement describing whether its action on a rezoning request is consistent with the applicable adopted plans and explaining why the Elected Body considers the action taken reasonable and in the public interest (*Zoning, Item #16*);
 - Clarify that a majority vote of the Elected Body is sufficient in approving a Special Use Permit request and how to calculate the requisite majority (*Zoning, Item #23*);

- Clarify that Elected Bodies must utilize quasi-judicial procedures when considering special use permit requests (*Zoning, Item #25*);
- Clarify the types of conditions the Board of Adjustment may place on variances (*Zoning, Item #26*);
- **Amend Chapter B, Article IX, Enforcement**, to add a section regarding violations of the Subdivision Regulations (*Subdivision, Item #6*);
- **Amend Chapter B, Article X, Appointed Boards**, to:
 - Clarify that Planning Board members shall not vote on items where the outcome of the matter being considered is reasonably likely to have a financial impact on the member (*Zoning, Item #2*);
 - Clarify the ‘temporary’ disqualification procedures for the Board of Adjustment, including alternate members, voting procedures and avoiding potential conflicts of interest (*Zoning, Items #20, #21, and #22*); and
- **Amend Chapter D, Subdivision Regulations**, to:
 - Add a cross-reference to Chapter B, Article IX, Enforcement, for violations of the Subdivision Regulations (*Subdivision, Item #6*); and
 - Clarify the Definition of a ‘subdivision’ under the exempt, minor, and major subdivision provisions of the Subdivision regulations (*Subdivision, Item #7*).

ANALYSIS PER SECTION & PART (See Attachment A)

Section 1. CHAPTER B - ZONING ORDINANCE; ARTICLE VI - ADMINISTRATION AND AMENDMENTS

Part 1 (Attachment Item #26):

Adding the words “which must be reasonably related to the condition or circumstance that gives rise to the need for a variance” to this section makes it clear that there must be some relationship between the condition of approval and the impact of the variance request on any condition the Board of Adjustment may add on a variance approval.

Part 2 (Attachment Item #25):

Although the Elected Bodies have been following quasi-judicial procedures in the course of reviewing and deciding Special Use Permit requests, adding “and in doing so, shall follow quasi-judicial procedures.” formalizes this requirement for the Elected Body, the petitioner, and the citizenry.

Part 3 (Attachment Item #23):

This change makes it clear that only a simple majority vote is necessary to approve a Special Use Permit. Further, this addition clarifies that vacant positions on the Elected Body and those members who are absent or excused from voting are not considered ‘members of the board’ for the purpose of determining the required majority.

Part 4 (Attachment Item #4):

This change provides an option to mailing out first class letters when there are more than fifty (50) properties being rezoned, and these properties are owned by fifty (50) or more different property owners. If the above qualifications are met, a ½ page ad can be published in a paper for the property owners who reside in the area of circulation of the newspaper which publishes the notice. For those property owners who live outside of the area of circulation, a mailed notice is still required.

Part 5 (Attachment Item #5):

This change clarifies the procedures for posting signs/notices on property petitioned for rezoning. This change spells out where they may be placed (on the property or on the right-of-way adjacent to the property) and that not every parcel in a petition must be posted, so long as there are sufficient signs to provide reasonable notice to interested persons. Additional clarification is also provided to differentiate between the Elected Body public hearing procedures and the Planning Board public hearing procedures.

Part 6 (Attachment Item #3):

This change requires the Planning Board to advise and provide a written recommendation on whether the proposed rezoning is consistent with the comprehensive plan (Kernersville Development Plan) and other plans that have been officially adopted by the jurisdiction and whether the proposed amendment is reasonable and in the public interest. The statement that a proposed amendment is inconsistent with the adopted plans shall not prevent the Elected Body from approving the request.

Part 7 (Attachment Item #12):

This change clarifies that members of the Elected Body are not allowed to vote on any zoning map or text amendment where the decision has a direct financial impact on the member.

Part 8 (Attachment Item #7, #8, #9, #10, and #11):

This change modifies the qualification requirements for a protest petition and removes the ‘spite strip’ option where a 101’ area can be left around the perimeter of a site to prevent the filing of a protest petition. This change also clarifies that vacant positions of the Elected Body and members who are absent or excused from voting are not considered ‘members of the Elected Body’ for the calculation of the requisite three-quarter (3/4) supermajority. The change further makes it clear that a protest petition cannot be filed for zoning text amendments, establishment of initial zoning in an area, annexation zoning conversions, and amendments to previously adopted special use districts.

There are three (3) significant differences in the proposed language and what currently exists in the UDO. First, instead of 20% of the adjoining property owners on any one side signing onto a petition to make it valid, only 5% of all adjoining property owners are required under the new proposal. Second, rezoning petitioners are no longer protected from protest petitions by leaving a 101’ strip of property out of the request. The proposed language allows for the 101’ strip but goes on to state that for the purposes of a protest petition, the parcel boundary (not the proposed zoning boundary) shall be used. Third, the proposed language makes it clear that protest petitions cannot be used for zoning text amendments, establishment of initial zoning in an area, annexation zoning conversions, and amendments to previously adopted special use districts.

Part 9 (Attachment Item #16):

This change requires the Elected Body to adopt a statement describing whether its rezoning action is consistent with an adopted plan (Kernersville Development Plan) and explaining why the Elected Body considers the action taken to be reasonable and in the public interest.

Section 2. CHAPTER B - ZONING ORDINANCE; ARTICLE IX – ENFORCEMENT

Part 1 (Attachment Item #33)

This change expands the enforcement options for subdivision violations to include building permit denial, injunctions, and other forms of relief.

Section 3. CHAPTER B - ZONING ORDINANCE; ARTICLE X - APPOINTED BOARDS

Part 1 (Attachment Item #20):

This change clarifies that temporary disqualifications, in addition to absences, are grounds for alternate members to be seated in Board of Adjustment proceedings.

Part 2 (Attachment Item #22):

This change clarifies that in Board of Adjustment proceedings, when there are vacant positions and/or when there are members who are temporarily disqualified from voting and there are no alternate members who can be seated, the supermajority vote is calculated using the members who are seated for the matter.

Part 3 (Attachment Item #21):

This change provides greater protection against improper actions during Board of Adjustment proceedings. It clarifies what matters may pose a conflict to an 'impartial' decision and gives the Board the ability to vote on removing a member who may refuse to voluntarily remove themselves from the proceedings when it is clear that they may have a conflict.

Part 4 (Attachment Item #2):

This change clarifies that Planning Board members may not vote on items decided by the Planning Board or on recommendation to the Elected Body on zoning map or text amendments where they have a financial interest in the matter being decided.

Section 4. (Attachment Item #33) CHAPTER D – SUBDIVISION REGULATIONS

Part 1 – GENERAL PROVISIONS AND ADMINISTRATION

This change provides a cross-reference to the newly created enforcement provisions of Chapter B, Article IX, of the Unified Development Ordinances (Section 2 of this document).

Part 2 - SUBDIVISIONS EXEMPTED BY STATE LAW OR COURT JUDGEMENTS

This change makes it clear that a subdivision has occurred when the first lot is subdivided out of a tract of land. Further, this change also allows for the public transportation corridors to be acquired through the purchase of strips of land and remain an exempt subdivision.

Part 3 - MINOR SUBDIVISIONS

This change makes it clear that a subdivision has occurred when the first lot is subdivided out of a tract of land.

Part 4 - MAJOR SUBDIVISIONS

This change makes it clear that a subdivision has occurred when the first lot is subdivided out of a tract of land. Further, it modifies the language concerning public street construction to make it clear that a major subdivision occurs when new public streets are constructed and/or dedicated, and when there are changes to existing streets.

STAFF RECOMMENDATION: Approval of the following KT-197 Ordinance.

KT-197
AN ORDINANCE AMENDING
THE ZONING ORDINANCE AND SUBDIVISION
REGULATIONS OF THE UNIFIED DEVELOPMENT ORDINANCES
TO REFLECT CHANGES MADE IN THE PLANNING LEGISLATION OF THE
NORTH CAROLINA GENERAL STATUTES

Be it resolved, by the Board of Aldermen of the Town of Kernersville, North Carolina, that the *Unified Development Ordinances* (UDO) is hereby amended as follows:

Section 1. Chapter B - Zoning Ordinance; Article VI – Administration and Amendments is amended as follows:

6-1 ADMINISTRATION

Part 1:

6-1.4 BOARD OF ADJUSTMENT

(B) VARIANCE

- (6) Review of Applications.** Any such variance shall observe the spirit and purpose of this Ordinance and shall be granted only with reference to conditions and circumstances peculiar to the property involved. In passing upon such requests the Board of Adjustment may specify additional reasonable and appropriate conditions and safeguards, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, to protect the public health and safety, the value of neighboring properties and the health and safety of neighboring residents. If the Board of Adjustment denies the application for a variance, it shall enter the reasons for the denial in the minutes of the meeting at which the action was taken.

Part 2:

6-1.5 SPECIAL USE PERMITS AUTHORIZED BY THE ELECTED BODY

(A) ELECTED BODY REVIEW

The Elected Body shall review all requests for permits as designated in Table 2.6 and, in doing so, shall follow quasi-judicial procedures.

Part 3:

(E) ELECTED BODY DECISION

The Elected Body shall consider the matter and the recommendations of the Planning Board and may:

- (1) Approve.** Approve the application and direct issuance of the special use permit therefore;

- (2) **Approve with Conditions.** Approve the application with the conditions as recommended by the Planning Board or additional conditions as specified in Section 6-1.3(A)(1) to assure that the site will be developed in a manner conducive to the public health, safety and welfare, and direct issuance of the special use permit; or,
- (3) **Deny.** Deny the application.
No vote greater than a majority vote shall be required for the Elected Body to issue a special use permit. For the purposes of this section, vacant positions on the Elected Body and members who are absent or excused from voting on a special use permit shall not be considered members of the Elected Body for calculation of the requisite majority.

6-2 ORDINANCE AMENDMENTS: ZONING TEXT AND OFFICIAL ZONING MAPS

Part 4:

6-2.1 GENERAL USE DISTRICTS

(F) **NOTICE TO NONPETITIONING OWNERS FOR A PLANNING BOARD PUBLIC HEARING**

Except for petitions providing notification under the provisions of Section 6-2(G), if a petition to amend the zoning is not signed by all of the owners of all land for which rezoning is requested, the following notification procedures shall be followed for a Planning Board Public Hearing:

- (1) **Written Notification.** The petitioner shall notify in writing non-petitioning owners who have not signed the petition that the petition is being submitted. Written notification shall be by letter, in a form supplied by the Planning Board, and shall specify present and proposed zoning classifications. The letter shall be sent by certified or registered mail to the last known address of non-petitioning owners.
- (2) **Alternative Notification.** As an alternative method of notice, the petitioner may obtain the signatures of non-petitioning owners on a statement acknowledging that said owners have received notice that a petition will be filed and heard at a public hearing before the Planning Board. In cases where signatures of non-petitioning owners are obtained, written notification shall not be necessary.
- (3) **Second Notification.** If for any reason the initial letter is not delivered, a second letter on the required form shall be sent by certified or registered mail to the non-petitioning owner's address as shown on the records of the office of the Tax Assessor, if said address is different from the last known address.
- (4) **Undelivered Notices.** If for any reason neither such letter notice is delivered, the petitioner shall then file with the Planning Board a signed certificate setting forth that written notification has been sent to all non-petitioning owners who have not accepted notice by signed statement, and shall attach thereto either the

return receipts showing that the letters have been delivered or the letters themselves and the mailing envelopes thereof.

- (5) **List of Owners Not Notified.** In the event all letters are not delivered, the petitioner shall attach to the certificate a list containing the names and street or mailing addresses and tax lot and block numbers of the property within the boundaries covered by the petition of all non-petitioning owners to whose addresses written notice was not delivered. This list of names and addresses shall be included in the notice of public hearing which shall be published in a newspaper as provided for in this Article.
- (6) **Advertisement.** Such publication of the public hearing, together with the names, addresses and tax lot and block numbers of non-petitioning owners shall be made within one hundred and eighty (180) days of the posting of the first letter to the non-petitioning owner at such person's last known address. Otherwise, said notification procedure shall start anew. The Planning Board shall not advertise the public hearing until receipt of the petitioner's certificate as provided above.

(G) **NOTIFICATION TO PROPERTY OWNERS AND ADJACENT PROPERTY OWNER FOR AN ELECTED BODY PUBLIC HEARING**

- ~~(1) **Mailed Notices.** In the event of petition to amend the zoning maps, letters shall be sent to all property owners within and adjacent to the property for which the amendment is requested, in accordance with State law.~~
- ~~(2) **Newspaper Advertisement.** The first class mail notice required above shall not be required if the zoning map amendment directly affects more than fifty (50) properties, owned by a total of at least fifty (50) different property owners, and the Planning Board or Elected Body elects to use the expanded published notice provided for in this subsection. In this instance, the Planning Board or Elected Body may elect to either make the mailed notice provided for above or may as an alternative elect to publish once a week for at least four successive calendar weeks in a newspaper having general circulation in the area an advertisement of the public hearing that shows the boundaries of the area affected by the proposed zoning map amendment and explains the nature of the proposed change. The amendment shall not be less than one-half of a newspaper page in size, and shall meet the timing requirements of State law and Section B.6-2.1(I). The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the more recent property tax listing for the affected property shall be notified by first class mail pursuant to this section.~~

Notification to property owners and adjacent property owners shall be handled as follows:

- (1) Letters shall be sent via first class mail to all property owners within and adjacent to the property for which the zoning map amendment is requested, in accordance with State law, except as exempted under subsection (2) of this section.
- (2) The first class mail notice required under subsection (1) above shall not be required if the zoning map amendment directly affects more than fifty (50) properties, owned by a total of at least fifty (50) different property owners, and the governing unit uses the expanded published notice provided for in this subsection. In this instance, a municipality or county may choose to either make the mailed notice provided for in subsection (1) of this section or may, as an alternative, elect to publish notice of the hearing as required in G.S. 160A-364 or G.S. 153A-323, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property shall be notified according to the provisions of subsection (1) of the section.
- (3) In all cases of petitions to amend a zoning classification, the property shall be posted with a notice of public hearing by the Elected Body at least fifteen (15) days prior to the date of said public hearing. Said notice shall consist of a sign(s) posted on the property at a conspicuous location(s) or on an adjacent public street or highway right-of-way, which sign shall be legible from the nearest public road. Location(s) which are not conspicuous or require additional notification to the public will be required to have a directional sign(s) posted. The signs are and shall remain the property of the governmental agency which provided them, and shall be prepared, posted, and reclaimed by it. When multiple parcels are included within a proposed amendment, a posting on each individual parcel is not required, but there shall be sufficient signs posted to provide reasonable notice to interested persons.

Part 5:

(I) **ADVERTISING AND POSTING FOR A PLANNING BOARD PUBLIC HEARING**

Whenever a petition to amend this Ordinance is submitted to the Planning Board, the Planning Board shall schedule a public hearing. Notice of the public hearing shall be advertised once in a newspaper of general circulation in the adopting jurisdiction, said notice being not less than ten (10) days prior to the date fixed for the hearing.

In all cases of petitions to amend a zoning classification, the property shall be posted with a notice of public hearing by the Planning Board at least fifteen (15) days prior to the date of said public hearing. Said notice shall consist of a sign(s) posted on the property at a conspicuous location(s) or on an adjacent public street or highway right-of-way, which sign shall be legible from the nearest public road. Location(s) which are not conspicuous or require additional notification to the public will be required to have

a directional sign(s) posted. Each sign(s) or each directional sign(s) will have an additional charge to be determined by the Planning Board to the petitioner. The signs are and shall remain the property of the governmental agency which provided them, and shall be prepared, posted, and reclaimed by it. When multiple parcels are included within a proposed amendment, a posting on each individual parcel is not required, but there shall be sufficient signs posted to provide reasonable notice to interested persons.

Part 6:

(M) PLANNING BOARD REVIEW

~~The Planning Board shall submit a report and recommendations to the Elected Body in writing within one hundred and twenty (120) days after receipt by the Planning Board of a complete petition, including compliance with Section B.6-2.1(F), unless such period is extended by the Elected Body. Failure to submit a report and recommendation shall not be deemed to constitute either approval or disapproval of the petition by the Planning Board. The Planning Board shall, at the same time, mail or deliver to the petitioner, and also to the opponent(s), if any, a copy of the same report and recommendations sent to the Elected Body. In case there is more than one petitioner for or opponent to the proposed change, it shall be sufficient to mail or deliver a copy of the report and notice of any subsequent hearing before the Elected Body to the one petitioner designated by the petitioners to receive same and to any such opponent who requests receipt of such report in writing at the public hearing. Furthermore, in any case where any of the parties are represented by an attorney named in the petition, the mailing, or delivery of a copy of the report and notice of any hearing to the attorney shall be the equivalent of mailing or delivering the same to the party or parties represented by the attorney.~~

The Planning Board shall submit a report and recommendations to the Elected Body in writing within one hundred and twenty (120) days after receipt by the Planning Board of a complete petition, including compliance with Section 6-2.1(F) above, unless such period is extended by the Elected Body. Failure to submit a report and recommendation shall not be deemed to constitute either approval or disapproval of the petition by the Planning Board.

In the report, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the *Kernersville Development Plan* and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Elected Body that addresses plan consistency and whether the proposed amendment is reasonable and in the public interest. A statement by the Planning Board that a proposed amendment is inconsistent with the *Kernersville Development Plan* shall not preclude consideration or approval of the amendment by the Elected Body.

The Planning Board shall, at the same time, mail or deliver to the petitioner and also to the opponent(s), if any, a copy of the same report and recommendations sent to the Elected Body. In case there is more than one petitioner for or opponent to the proposed change, it shall be sufficient to mail or deliver a copy of the report and notice of any subsequent hearing before the Elected Body to the one petitioner designated by the

petitioners to receive same and to any such opponent who requests receipt of such report in writing at the public hearing. Furthermore, in any case where any of the parties are represented by an attorney named in the petition, the mailing or delivery of a copy of the report and notice of any hearing to the attorney shall be the equivalent of mailing or delivering the same to the party or parties represented by the attorney.

Part 7:

(N) **ELECTED BODY PUBLIC HEARING**

A public hearing shall be held by the Elected Body on each proposed amendment to the Zoning Ordinance, after publication of notice and posting of signs, as hereinabove provided. Said proposed amendment shall be placed on the agenda of a regularly scheduled public hearing of the Elected Body within sixty (60) days of receipt of the report and recommendations of the Planning Board.

A member of the Elected Body shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

Part 8:

(O) **PROTEST PETITION**

The Unified Development Ordinances may from time to time be amended, supplemented, changed, modified, or repealed. In case of a protest against any zoning map amendment or change of the Zoning Ordinance signed by the owners of twenty percent (20%) or more, either of the area of the lots included in such proposed change; or of those immediately adjacent thereto, either in the rear thereof or on either side thereof, extending one hundred (100) feet therefrom; or of those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots; either (i) twenty percent (20%) or more of the area included in the proposed change; or (ii) five percent (5%) of a one hundred foot (100') wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned; such amendment shall not become effective except by favorable vote of three-fourths (3/4) of all members of the Elected Body. A street right-of-way shall not be considered in computing the one hundred foot (100') wide buffer area as long as that street right-of-way is one hundred feet (100') wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the one hundred foot (100') wide buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the Elected Body may rely on the county tax listing to determine the owners of potentially qualifying areas. Such amendment shall not become effective except by favorable vote of three-fourths (3/4) of all members of the Elected Body. For the purposes of this subsection, vacant positions on the Elected Body and members who are excused from voting shall not be considered members of the Elected Body for calculation of the requisite supermajority.

No protest against any change or amendment of the Zoning Ordinance zoning map amendment shall be valid or effective under the provisions of the foregoing paragraph unless such protest is in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless such protest shall have been received by the

Elected Body in sufficient time to allow at least two (2) normal workdays, excluding Saturdays, Sundays, and legal holidays, prior to the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. Such petition shall be accompanied by a map or sketch clearly showing the property of the petitioners in such detail as to show that the ownership requirements of the foregoing paragraph are met, ~~which would compel a three-fourths (3/4) favorable vote by the Elected Body.~~ A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning map amendment. Only those protest petitions that meet the qualifying standards set forth above at the time of the vote on the proposed zoning map amendment shall trigger the supermajority voting requirement.

The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to an adopted special use district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening provided for the special use district.

Part 9:

(Q) CONSIDERATION

In deliberating each petition for amendment of the Official Zoning Maps, the Elected Body may consider such information and assertions as are presented in the petition as well as evidence presented and arguments made at the public hearing. Additional considerations by the Elected Body may include, but shall not be limited to the following:

- (1) Whether the proposal is consistent with the purpose statements of the requested zoning districts;
- (2) Whether the uses permitted under the proposed classification would be compatible with uses permitted on other property in the vicinity;
- (3) Whether changing conditions have substantially affected the area included in the petition; and
- (4) Whether the proposed amendment is in conformance with ~~Legacy and the Kernersville Land Use Plan~~ the Kernersville Development Plan. Prior to adopting or rejecting any zoning amendment, the Elected Body shall adopt a statement describing whether its action is consistent with Legacy and explaining why the Elected Body considers the action taken to be reasonable and in the public interest.

Section 2. Chapter B - Zoning Ordinance; Article IX - Enforcement is hereby amended as follows:

9-3 SUBDIVISION REGULATIONS

Any person who, being the owner or agent of the owner of any land subject to the Subdivision Regulations of Forsyth County and the Town of Kernersville, thereafter subdivides his or her land in violation of the Subdivision Regulations or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such Regulations and recorded in the Register of Deeds, shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The respective unit of government may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the Subdivision Regulations. Building permits may be denied for lots that have been illegally subdivided. In addition to other remedies, the unit of government may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

Section 3. Chapter B - Zoning Ordinance; Article X - Appointed Boards is hereby amended as follows:

10-1 BOARD OF ADJUSTMENT

Part 1:

10-1.2 ESTABLISHMENT AND MEMBERSHIP

(B) MEMBERSHIP

- (1) Tenure.** The members are to serve for terms of three (3) years.
- (2) Vacancies.** Any vacancy on the Board of Adjustment is to be filled by the Elected Body for the remainder of the unexpired term; provided, however, that a vacancy in a position filled by appointment of the Board of County Commissioners is to be filled by the Board of County Commissioners.
- (3) Removal for Cause.** Any member of the Board of Adjustment may be removed for cause by the Elected Body upon written charges and after a public hearing.
- (4) Alternate Members.** There shall be two (2) alternates appointed from the townspeople and two (2) representing the extraterritorial area. The alternates shall serve in the absence of a regular member of the Board of Adjustment from their respective areas and shall have all the rights, privileges, and duties of the regular member he or she is replacing. In the absence or temporary disqualification of any regular member at a

regular or special meeting of the Board of Adjustment, an alternate member or members may sit on the Board of Adjustment and serve in replacement while attending the regular or special meeting, and shall have and exercise all the powers and duties of a regular member for that meeting.

Part 2:

(C) FOUR-FIFTHS (4/5) VOTE REQUIRED

~~All members of the Board of Adjustment shall have equal rights, privileges, and duties in all matters that come before the Board of Adjustment no matter where they arise. The concurring vote of eight (8) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which the Board of Adjustment is required to pass judgment, or to grant a variance from the provisions of this Ordinance.~~

The concurring vote of four-fifths (4/5) of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Director or to decide in favor of the applicant on any matter upon which the Board of Adjustment is required to pass judgment or to grant a variance from the provisions of this Ordinance. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

Part 3:

(E) RULES AND PROCEDURES

A member of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

The Board of Adjustment shall adopt other rules and procedures as it deems necessary, as long as they do not conflict with the rules and procedures established in this section.

Part 4:

10-2 PLANNING BOARD

10-2.1 TOWN OF KERNERSVILLE

(D) CONFLICT OF INTEREST

Planning Board members shall not vote on items decided by the Planning Board or on zoning map and text amendment recommendations forwarded to the Elected Body where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member(s).

Section 4. Chapter D - Subdivision Regulations is hereby amended as follows:

1. GENERAL PROVISIONS AND ADMINISTRATION

(M) VIOLATION OF THE SUBDIVISION REGULATIONS

Violations of the Subdivision Regulations shall be enforced through the provisions established in 9-3.

Section 5. Chapter D - Subdivision Regulations is hereby amended as follows:

2. SUBDIVISIONS EXEMPTED BY STATE LAW OR COURT JUDGMENTS.

(A) DEFINITION

A subdivision exempted by State law or court judgments is a division of a tract or parcel of land into two (2) or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of a gift, sale, or building development, whether immediate or future. All lots must comply with the size and area requirements of the Zoning Ordinance or any other applicable local or State land regulatory ordinances and meet any one of the following definitions:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased;
- (2) The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation corridors. The transfer of pieces of property between developed lots where the transfer of property does not create a substandard lot or any setback violations on either lot. (These subdivisions are not required to comply with the size and area requirements of the Zoning Ordinance, nor the provisions in Sections (B) and (C) of this section).
- (4) The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no public or private street right-of-way dedication is involved; or,
- (5) The creation of lots by or pursuant to an order or judgment of a court of competent jurisdiction.

Section 6. Chapter D - Subdivision Regulations is hereby amended as follows:

3. MINOR SUBDIVISIONS

(A) Definition

A minor subdivision shall mean all divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of a gift, sale, or building development, whether immediate or future. All lots must comply with the lot size and area requirements of the Zoning Ordinance or any other applicable local or State land regulatory ordinances and meet any one of the following criteria:

- (1) Is a division of land where the entire area is greater than two (2) acres into not more than a total of three (3) lots, where no street right-of-way dedication is involved (see exception for industrial and commercial subdivisions in Section 5(C));
- (2) Is created by a private access easement established in compliance with the Zoning Ordinance and consists of no more than a total of three (3) lots per tract which do not front on a public street (see exception for industrial and commercial subdivisions in Section 5(C)); or,
- (3) Is created by lots all of which front on an existing public street, provided that the subdivision would not impair ingress and egress to or from the rear or side of the subject tract or any adjacent property. All lots which front on a public street shall not be included in the provisions of Section 3(A)(2). Lots which are approved must front on a public street with right-of-way which meets the standards of the North Carolina Department of Transportation and/or the applicable jurisdiction. Any portion of the lot lying within the required public street right-of-way must be quitclaimed, conveyed, and dedicated as public right-of-way before receiving Planning staff approval. The Planning staff can only require the dedication of standard right-of-way. Additional right-of-way for future widening of roads cannot be required.

Section 7. Chapter D - Subdivision Regulations is hereby amended as follows:

4. MAJOR SUBDIVISIONS

(A) Definition

A major subdivision of land whether in single or multiple ownership shall mean all divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of a gift, sale, or building development, whether immediate or future ~~where new public streets will be constructed~~ and shall include all divisions of land involving the construction and dedication of a new public street or change in existing public streets. All lots must comply with the size and area requirements of the *Zoning Ordinance* or any other applicable local or state land regulatory ordinances. Preliminary subdivision approval of a plat in accordance with Section 4(C) is required by the Elected Body. Final plats

must be recorded in the office of the Register of Deeds in accordance with Section 4(H) when all the requirements of these regulations have been met for the subdivision.

Section 8. This ordinance shall become effective upon adoption.

Attachment A

SUPPLEMENTARY INFORMATION PROVIDED BY THE INSTITUTE OF GOVERNMENT

Statutory Language Regarding Local Ordinance Amendments to Secure Compliance with 2005 Legislation (Compiled by David Owens)

Zoning

<i>Item</i>	<i>Topic</i>	<i>Statute</i>	<i>Statutory Language</i> <i>Note: The city statutes are quoted below. Where there is a corresponding county statute, any change in language is provided in brackets [county language].</i>
1.	Planning board reviews	G.S. 160A-387 G.S. 153A-344	Subsequent to initial adoption of a zoning ordinance, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the governing board may proceed in its consideration of the amendment without the planning board report. The governing board is not bound by the recommendations, if any, of the planning board.
2.	Planning board conflict of interest	G.S. 160A-381(d) G.S. 153A-340(g)	Members of appointed boards providing advice to the city council [board of county commissioners] shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.
3.	Planning board statement	G.S. 160A-383 G.S. 153A-341	The planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other

			matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.
4.	Published hearing notices	G.S. 160A-384(b) G.S. 153A-343(b)	The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city [county] elects to use the expanded published notice provided for in this subsection. In this instance, a city [county] may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish notice of the hearing as required by G.S. 160A-364 [153A-323], but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property shall be notified according to the provisions of subsection (a) of this section.
5.	Posted hearing notices	G.S. 160A-384(c) G.S. 153A-343(d)	When a zoning map amendment is proposed, the city [county] shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the city [county] shall post sufficient notices to provide reasonable notice to interested persons.
6.	Mailed hearing notices	G.S. 153A-343(c)	[County exemption from mailing for initial zoning of land repealed.]
7.	Protest petition applicability	G.S. 160A-385(a)	Zoning ordinances may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a qualified protest against a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths of all the members of the city council. {Note: No county counterpart.}
8.	Protest petition voting	G.S. 160A-385(a)	For the purposes of this subsection, vacant positions on the council and members who are excused from voting shall not be considered 'members of the council' for calculation of the requisite supermajority.
9.	Protest petition	G.S. 160A-385(a)	To qualify as a protest under this section, the petition must be signed by the owners of either (i) qualifying area twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (5%) of a 100-foot-wide buffer

			extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine the 'owners' of potentially qualifying areas.
10.	Protest petition applicability	G.S. 160A-385(a)	The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to an adopted (i) special use district, (ii) conditional use district, or (iii) conditional district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the special use district, conditional use district, or conditional district.
11.	Protest petition verification	G.S. 160A-386	No protest against any change in or amendment to a zoning ordinance or zoning map shall be valid or effective for the purposes of G.S. 160A-385 unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the city clerk in sufficient time to allow the city at least two normal work days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. The city council may by ordinance require that all protest petitions be on a form prescribed and furnished by the city, and such form may prescribe any reasonable information deemed necessary to permit the city to determine the sufficiency and accuracy of the petition. A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth in G.S. 160A-385 at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.
12.	Governing board conflict of	G.S. 160A-381(d) G.S. 153A-340(g) G.S. 160A-75	A city council [board of county commissioners] member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably

	interest	G.S. 153A-44	likely to have a direct, substantial, and readily identifiable financial impact on the member.
13.	Conditional zoning	G.S. 160A-382(a) G.S. 153A-342(a)	Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; and special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use permit and conditional zoning districts, in which site plans and individualized development conditions are imposed.
14.	Conditions in CUD, SUD, Conditional zones	G.S. 160A-382(b) G.S. 153A-342(b)	Property may be placed in a special use district, conditional use district, or conditional district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to these districts may be proposed by the petitioner or the city [county] or its agencies, but only those conditions mutually approved by the city [county] and the petitioner may be incorporated into the zoning regulations or permit requirements. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to city [county] ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.
15.	Statement for small-scale rezonings	G.S. 160A-382(b) G.S. 153A-342(b)	A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district, or a conditional district, or other small-scale rezoning.
16.	Governing board	G.S. 160A-383 G.S. 153A-341	Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest.
17.	Government land	G.S. 160A-392	All of the provisions of this Part are hereby made applicable to the erection, construction, and use of buildings by the State of North Carolina and its political subdivisions. No land owned by the State of North Carolina may be included within a conditional use district without approval of the Council of State or its designate.
18.	Regulation of flags	G.S. 144-7.1	(a) A county, city, consolidated city-county, or unified government shall not prohibit an official governmental flag from being flown or displayed if the official governmental flag is flown or displayed: (1) In accordance with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended; and (2) Upon private or public property with the consent of either the owner of the property or of any person having

			<p>lawful control of the property.</p> <p>(b) Notwithstanding subsection (a) of this section, for the purpose of protecting the public health, safety, and welfare, reasonable restrictions on flag size, number of flags, location, and height of flagpoles are not prohibited, provided that such restrictions shall not discriminate against any official governmental flag in any manner.</p> <p>(c) For purposes of this section, an 'official governmental flag' shall mean any of the following:</p> <ol style="list-style-type: none"> (1) The flag of the United States of America. (2) The flag of nations recognized by the United States of America. (3) The flag of the State of North Carolina. (4) The flag of any state or territory of the United States. (5) The flag of a political subdivision of any state or territory of the United States.
19.	Forestry regulation	G.S. 160A-458.5 G.S. 153A-451	<p>Cities:</p> <p>A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates either:</p> <ol style="list-style-type: none"> (1) Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes. (2) Forestry activity that is conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with Chapter 89B of the General Statutes. <p>This section shall not be construed to limit, expand, or otherwise alter the authority of a city to:</p> <ol style="list-style-type: none"> (1) Regulate activity associated with development. A city may deny a building permit or refuse to approve a site or subdivision plan for either a period of up to: <ol style="list-style-type: none"> a. Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under city regulations governing development from the tract of land for which the permit or approval is sought. b. Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under city regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the city regulations. (2) Regulate trees pursuant to any local act of the General Assembly. (3) Adopt ordinances that are necessary to comply with any federal or State law, regulation, or rule. (4) Exercise its planning or zoning authority under this Article.

			<p>(5) Regulate and protect streets under Article 15 of this Chapter.</p> <p>Counties: A county shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates either: (1) Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes. (2) Forestry activity that is conducted in accordance with a forest management plan. This section shall not be construed to limit, expand, or otherwise alter the authority of a county to: (1) Regulate activity associated with development. A county may deny a building permit or refuse to approve a site or subdivision plan for either a period of up to: a. Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under county regulations governing development from the tract of land for which the permit or approval is sought. b. Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under county regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the county regulations. (2) Regulate trees pursuant to any local act of the General Assembly. (3) Adopt ordinances that are necessary to comply with any federal or State law, regulation, or rule. (4) Exercise its planning or zoning authority under Article 18 of this Chapter.</p>
20.	BOA membership	G.S. 160A-388(a) G.S. 153A-345(a)	The council [board of commissioners] may, in its discretion, appoint and provide compensation for alternate members to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.
21.	Conflicts on quasi-judicial matters	G.S. 160A-388(e1) G.S. 153A-345(e1)	A member of the board or any other body exercising the functions of a board of adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not

			limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.
22.	BOA voting	G.S. 160A-388(e) G.S. 153A-345(e)	For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.
23.	SUP/CUP voting	G.S. 160A-381(c) G.S. 153A-340(c1)	No vote greater than a majority vote shall be required for the city council [board of county commissioners] or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority.
24.	Special and conditional use permits	G.S. 160A-381(c) G.S. 153A-340(c1)	The regulations may also provide that the board of adjustment, the planning board, or the city council [board of commissioners] may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits.
25.	SUP/CUP procedures	G.S. 160A-381(c) G.S. 153A-340(c1)	When deciding special use permits or conditional use permits, the city council [board of county commissioners] or planning board shall follow quasi-judicial procedures.
26.	Use variances	G.S. 160A-388(d) G.S. 153A-345(d) G.S. 160A-381(b1) G.S. 153A-340(c)	When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall have the power to vary or modify any of the regulations or provisions of the ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board. These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained, provided no change in permitted uses may be authorized by variance.
27.	County	G.S. 153A	The board of adjustment may subpoena witnesses subpoena

	BOA		345(g) and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the Board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor.
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Subdivision

	<i>Item</i>	<i>Topic</i>	<i>Statute</i>
28.	Plat approval	G.S. 160A- 373 G.S. 153A-332	The ordinance may provide that final decisions on preliminary plats and final plats are to be made by: (1) The city council [board of commissioners], (2) The city council [board of commissioners] on recommendation of a designated body, or (3) A designated planning board, technical review committee, or other designated body or staff person.
29.	Standards for review	G.S. 160A- 371 G.S. 153A-330	Decisions on approval or denial of preliminary or final plats may be made only on the basis of standards explicitly set forth in the subdivision or unified development ordinance. Whenever the ordinance includes criteria for decision that require application of judgment, those criteria must provide adequate guiding standards for the entity charged with plat approval.
30.	Review procedures	G.S. 160A- 371 G.S. 153A-330 G.S. 160A-376(b) G.S. 153A-335(b)	The ordinance may provide for different review procedures for differing classes of subdivisions. A city [county] may provide for expedited review of specified classes of subdivisions.
31.	Performance guarantees	G.S. 160A-372(c) G.S. 153A-331(c)	To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the city [county] shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the city [county] shall be at the election of the developer.
32.	Pre-sale	G.S. 160A-375(b)	The provisions of this section shall not prohibit any owner

	contracts	G.S. 153A-334(b)	<p>or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision ordinance or recorded with the register of deeds, provided the contract does all of the following:</p> <p>(1) Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.</p> <p>(2) Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat.</p> <p>(3) Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than five days after the delivery of a copy of the final recorded plat.</p> <p>(4) Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than 15 days after the delivery of the final recorded plat, during which 15-day period the buyer or lessee may terminate the contract without breach or any further obligation and may receive a refund of all earnest money or prepaid purchase price.</p> <p>The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat has not been properly approved under the subdivision ordinance or recorded with the register of deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction of residential, commercial, or industrial buildings on the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under the subdivision ordinance and recorded with the register of deeds.</p>
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33.	Enforcement	G.S. 160A-375(a) G.S. 153A-334(a)	<p>If a city [county] adopts an ordinance regulating the subdivision of land as authorized herein, any person who, being the owner or agent of the owner of any land located within the jurisdiction of that city, thereafter subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such ordinance and recorded in the office of the appropriate register of deeds, shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The city [county] may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to G.S. 160A-417 [153A-357] may be denied for lots that have been illegally subdivided. In addition to other remedies, a city [county] may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.</p>
34.	Definition	G.S. 160A-376(a) G.S. 153-335(a)	<p>"Subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Part:</p> <ol style="list-style-type: none"> (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality [county] as shown in its subdivision regulations. (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved. (3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors. (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations.

Other

35.	Moratoria	G.S. 160A-381(e) G.S. 153A-340(h)	<p>Cities [Counties] may adopt temporary moratoria on any city [county] development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 160A-364 [153A-323]. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160A-417 [153A-357] is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 160A-385.1 [153A-344.1], to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the city [county] prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the city [county] prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium. Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:</p> <p>(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the city [county] and why those alternative courses of action were not deemed adequate.</p> <p>(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to</p>
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			<p>imposition of the moratorium.</p> <p>(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.</p> <p>(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the city [county] during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium. No moratorium may be subsequently renewed or extended for any additional period unless the city [county] shall have taken all reasonable and feasible steps proposed to be taken by the city [county] in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.</p> <p>Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the city [county] shall have the burden of showing compliance with the procedural requirements of this subsection.</p>
36.	Unified development ordinance	G.S. 160A-363(d); G.S. 153A-322((d)	A city [county] may elect to combine any of the ordinances authorized by this Article into a unified ordinance. Unless expressly provided otherwise, a city [county] may apply any of the definitions and procedures authorized by law to any or all aspects of the unified ordinance and may employ any organizational structure, board, commission, or staffing arrangement authorized by law to any or all aspects of the ordinance
37.	Development agreements	G.S. 160A-400.22 – 160A-400.32 G.S. 153A-379.1 to 153A-379.13	{ Statute not reprinted due to length; link to online copy is at: http://ncinfo.iog.unc.edu/organizations/planning/index.html }

In Favor:

None presented.

Opposed:

None presented.

There being no others wishing to speak in favor or opposition, the public hearing was declared closed.

Board Discussion:

None

Text Amendment Recommendation:

Motion made by Darrell Davis to recommend to the Board of Aldermen approval of the Text Amendment as presented by Staff.

Seconded by Tom McDaniel.