

MINUTES
TOWN OF PITTSBORO
BOARD OF COMMISSIONERS
REGULAR MEETING
TUESDAY, NOVEMBER 13, 2012
7:00 PM

Mayor Randolph Voller called the meeting to order and asked for a moment of silence.

ATTENDANCE

Members present: Mayor Randolph Voller, Commissioners Pamela Baldwin, Jay Farrell, Michael Fiocco, Bett Wilson Foley and Beth Turner.

Staff present: Interim Manager Bob Morgan, Clerk Alice F. Lloyd, Attorney Paul S. Messick, Jr., Planning Director Stuart Bass and Mandy Cartrette, Finance Officer.

CONSENT AGENDA

Motion made by Commissioner Farrell seconded by Commissioner Turner to approve the consent agenda as submitted.

Approve minutes of the September 24, 2012 regular meeting.

Motion carried 5-0

Appoint Ned Kelly to serve as a member of the ABC Board for a three (3) year term ending December 31, 2015.

Motion carried 5-0

Motion made by Commissioner Baldwin seconded by Commissioner Fiocco to approve the regular agenda as submitted. Mayor Voller stated under FYI it states the Fire Department Audit is included but it is the ABC Store Audit. Mayor Voller asked staff to get the Fire Department Audit and present it to the Board at the next meeting.

Vote Aye-5 Nay-0

REGULAR MEETING AGENDA

CITIZENS MATTERS

Martha Girolami – 473 Mount Pisgah Church Road, Apex brought the following information to the Board for discussion and review:

- Special Use Permits in North Carolina Zoning – David W. Owens
- Section 5.2.1 of the Town of Pittsboro’s Permitted Use Table
- The Community Environmental Legal Defense Fund
- ‘Corporations are Not People’ in Montana, Colorado
- Food and Water Watch
- Banning Fracking at the Local Level

She feels the State is trying to take community rights away.

Mayor Voller thanked Ms. Girolami for all the additional information she submitted for the board’s review tonight

Lesley Landis – 21 Randolph Court President of Chatham County Arts Council stated the purpose of Chatham Arts Council in Chatham County is to enhance education and enliven communities and add to the economic development and quality of life in our small towns.

Ms. Landis stated that on Sunday November 18, 2012 at Fearington Barn Chatham Arts will be presenting the 41st Annual Bluegrass Experience concert. Tickets are available at www.chathamarts.org at \$15.00 for advance tickets or \$20.00 at the door. This is a benefit for Chatham Arts.

Commissioner Farrell stated Mr. Bob Knight had asked that he read into the record the letter that was included in the FYT’s, he would not read it but asked that it be included in the record.

OLD BUSINESS

ZONING ORDINANCE TEXT AMENDMENT FOR HYDRAULIC FRACTURING (STUART BASS, PLANNING DIRECTOR)

Planner Bass submitted the following written report and stated this is a follow up to the October 22, 2012 public hearing when the Board asked that staff come up with proposed standards for conditions of a SUP.

The Town Board of Commissioners has requested a text amendment that would require a proposed fracking operation to receive a Special Use Permit. A draft definition was presented for discussion and a recommendation. The zoning ordinance would be amended to include this use in the Table of Permitted Uses as one requiring a Special Use Permit, limited to the M2 District. A Public Hearing on the proposed amendment was held on October 22, 2012. The Board requested additional information for its next meeting.

The proposed zoning ordinance amendment was as follows:

1. Add to section 5.2.2 “Permitted Use Table” “Hydraulic Fracturing” as a special use in the in the M-2 District under “Mining Use” category.
2. Add to Section 12.1 the following definition:

“Hydraulic Fracturing – An induced drilling method that involves injecting at extremely high pressures a fluid mixture of water, sand and chemicals into the subsurface to break up the shale or other rock formations in order to release and extract petroleum, natural gas (including shale gas, tight gas and coal seam gas), or other fossil fuel substances. This type of fracturing creates fractures from a wellbore drilled into reservoir rock formations.” (The State has not provided a definition for fracturing.)

Add to Section 5.3.3 Regulations for Special Use Permits:

Appropriate standards TBD.

Some standards to consider may include the following:

5.3.3.—Hydraulic fracturing

A. Where Required
M-2 districts.

B. Use Separation

(1) The edges of where a operation is taking place and any equipment used in the processing or other industrial uses operated in conjunction with the hydraulic fracturing operation shall be located at least 300 feet from any property line.

C. Hours of Operation

All operations involving discernible noises in excess of 60 decibels beyond the external property line shall only be conducted between the hours of 7:00 a.m. and 6:00 p.m.

D. Permit

A valid state-issued permit must be obtained.

E. A Site Plan in compliance with Article XV including the following requirements;

(1) Topography - Topography of the site at contour intervals no greater than 5 feet.

(2) Structures - Location and approximate size of all existing and proposed structures within the site and all buildings and structures within 500 feet. All easements or rights-of-way, public or private, adjoining or intersection such property.

(3) Circulation – Vehicular circulation within, to and from the site including proposed points of access and egress and proposed pattern of internal pedestrian circulation. In addition, a traffic impact study will be required for the site.

(4) Parking and Loading - Location and extent of parking and loading areas

- to be followed.
- (5) Proposed lighting for operation, parking and loading areas.
 - (6) Timing- Proposed schedule of development including stage likely to be followed.
 - (7) Other Details:
 - (a) Proposed provision for stormwater controls approved by Town Engineer, including both natural, and man-made features. Provision shall also be made to provide features that retain contamination on the site for proper disposal
 - (b) Size and proposed location of any signs to be visible from a public right of way.
 - (c) Proposed waste storage facilities.
 - (d) Proposed water system and fire fighting facilities such as hydrant or sprinkler connections.
 - (e) Types of surfacing for drives, etc.
 - (f) The location and heights of all fences, walls and hedges shall be shown.

Additional definitions from proposed Senate Bill 820 include the following;

"Hydraulic fracturing additive" shall mean any chemical substance or combination of substances, including any chemical or proppants, which is intentionally added to a base fluid for purposes of preparing a hydraulic fracturing fluid or treatment of a well.

(3b) "Hydraulic fracturing fluid" shall mean the fluid, including the applicable base fluid and all hydraulic fracturing additives, used to perform a hydraulic fracturing treatment.

(3c) "Hydraulic fracturing treatment" shall mean all stages of the treatment of a well by the application of hydraulic fracturing fluid under pressure that is expressly designed to initiate or propagate fractures in a target geologic formation to enhance production of oil and gas.

In talking with the League of Municipalities, with the exception of Creedmoor, no local governments have taken action to regulate fracturing. Most jurisdictions are waiting to see what the State Legislature proposes to do. It was also suggested by the NCLM that this approach would be viewed more positively by the study committee and would make them more receptive to suggestions made by jurisdictions.

The State Legislature has commissioned two studies: 1) Local government authority in regulating fracturing and 2) State regulations for permitting fracturing operations. The first study is getting started and the NCLM will be involved in that study. It is anticipated that local governments will have some role in setting regulations. This study is due by October, 2013 to the legislature. The Legislature will consider the report in May of 2014.

The second report will establish the regulations for permitting fracturing facilities in North Carolina this study is to be completed by July, 2014. Based upon similar processes, observers believe it will be 2015 or 2016 before permitting will begin. This timeline could however change under the new administration.

RECOMMENDATION: The Town Administration recommends that the Board of Commissioners continue to study this issue and monitor the progress made by the State. It is further recommended that the Town focus on identifying those regulations it can easily enforce and administer and be prepared to give input to the study committee. The Town Administration believes that environmental analysis and enforcement is beyond the resources of the Town. Further study and discussion would also place the Board in a position to make comment at the appropriate time on the permitting process.

Commissioner Fiocco said this should be kept as an open item and he has provided Mr. Bass and Mr. Morgan with his thoughts on this matter. He would like to add to the list based on what he has seen here tonight that:

- The definition of fracturing include horizontal extent of the drilling
- They would be subject to regulations i.e. setbacks.
- Setbacks should be set for the operation relative to the wells, geo-thermal systems, and old abandoned wells.
- Setbacks from roads and driveways.
- Thinks source and quantity of water to be used should be specifically required in the application.
- Definition of site should include all land and land used for drilling and operational support.
- Seismic/yield study.

Commissioner Fiocco said he didn't think it was possible to outright ban fracturing after receiving information from Mr. Messick in the past. But, there is an interesting footnote 5 in our table of uses it states some uses are not allowed in Pittsboro.

There was a discussion about banning fracturing all together and state laws under construction.

Attorney Messick stated it is premature to do anything about this until the state decides what it is going to do.

Commissioner Baldwin said she thinks we should be prepared.

Attorney Messick said if we are going to come up with standards there needs to be another public hearing scheduled.

Commissioner Fiocco said he feels we should continue working on it.

Attorney Messick said the League of Municipalities is doing this and they have more resources than we do.

Mayor Voller said are we going to get to the point in this State where local control doesn't matter.

It was the consensus of the Board to continue working on this.

**SPRINGDALE DRIVE/FOX CHAPEL CONNECTION AGREEMENT (BOB MORGAN,
INTERIM TOWN MANAGER)**

Interim Manager Morgan stated Town Attorney, Paul Messick has requested that the agreements with Chatham Forest Home Association and VRC, LTD be reviewed and approved by the Board of Commissioners. The agreements outline terms of cost sharing for connecting Springdale Drive and Fox Chapel Lane.

Mayor Voller asked to be recused from this discussion. Motion was made by Commissioner Fiocco seconded by Commissioner Turner to recuse Mayor Voller.

Vote Aye-5 Nay-0

Commissioner Fiocco stated he is fine with the agreement and he knows we have a surety clause for the Homeowners Association but not VRC.

Attorney Messick stated that was revised out by VRC. Commissioner Fiocco stated that was one of the requirements the board made for approval.

Commissioner Farrell stated we needed to make sure the surety clause is included in the agreement.

Motion made by Commissioner Fiocco seconded by Commissioner Turner to revise the agreement with VRC to include the surety.

Vote Aye-5 Nay-0

Attorney Messick asked about the agreement with the Homeowners Association.

Motion made by Commissioner Fiocco seconded by Commissioner Farrell to authorize the Town Manager to execute the contract with Chatham Forest Homeowners Association.

Vote Aye-5 Nay-0

Attorney Messick asked the Board how they wanted Mr. Morgan to proceed.

The Board agreed that he should wait until the agreement with VRC is signed.

Motion made by Commissioner Fiocco seconded by Commissioner Foley to readmit Mayor Voller.

Vote Aye-5 Nay-0

A copy of this agreement is attached to the minutes.

**AN AGREEMENT WITH CHATHAM FOREST HOMEOWNERS ASSOCIATION IS
RECORDED IN THE BOOK OF RESOLUTIONS NUMBER ONE, PAGES 197-198**

ACCEPTANCE OF CREDIT CARDS FOR PAYMENT OF WATER AND SEWER BILLS (MAYOR VOLLER)

Interim Manager Morgan stated the following memorandum was resubmitted because it is still up to date.

The Board of Commissioners discussed this memorandum in May, 2012 and gave no direction to the Town Administration to proceed. Mayor Voller requested that this item be placed on tonight's agenda. This memorandum is basically the same as in May, 2012 and its purpose is to provide the Board of Commissioners with basic information on the acceptance of credit cards for water and sewer bill payments.

Town of Pittsboro water and sewer customers can currently pay their bills by cash, check, setting up an electronic draft from their checking accounts, or setting up online bill payments through their own banks. The Town currently does not have a mechanism for accepting credit cards for water and sewer bill payments, but there are two options for accepting credit cards for payment:

1. The Town can obtain a credit card machine to accept payments face-to-face at Town Hall.
2. The Town can contract with a third-party company to collect water and sewer payments by credit card through its own website.

Although there has been much discussion in the past about each of these options, the Town has not strongly pursued them because each one presents disadvantages to the Town.

In-Person Credit Card Payments

Credit card companies typically charge fees for each credit card transaction that is processed by a vendor. Many credit card companies contractually prohibit a local government or public authority from assessing these charges on their customers. As a result, if local governments agree to take credit card payments face-to-face, they have to only take those credit cards that allow governments to charge a convenience fee to customers, or they must accept the loss in revenue for each transaction that is paid for with a credit card.

Online Credit Card Payments through Third-Party Vendor

Many municipalities use third-party vendors, such as Official Payments, to accept online credit card payments for water & sewer bills and tax payments. The citizen goes onto the third-party vendor's website and completes the necessary steps through that website to pay a bill. The citizen can use his or her credit card, and he or she is assessed a convenience fee by the third-party company. These convenience fees can be as high as \$6.50 per transaction. The third-party company sends the municipality an e-mail with a list of the customers that have paid using their service, and the municipality must enter each payment into its own financial system to show that each account is paid. Using one of these third-party companies would allow citizens another option to pay their bill, but that seems to be the only advantage of utilizing these services. From the Town's perspective, there is no advantage to using a third-party company for accepting credit

card payments. One drawback is that the Town's money is going through another party before it comes to us, and there is at least a one day lag in the time it takes for the Town to receive its money from these online payments. In addition, the third party company is benefitting from these transactions by collecting convenience fees that citizens must pay when they use this service, but the Town and citizens do not receive any financial benefit from these transactions. It is simply for customer convenience.

RECOMMENDATION: Request that the Board of Commissioners discuss and give direction to the Town Manager

Mandy Cartrette, Finance Officer, stated if we are going to take credit cards in person it is going to cost us. She checked with Chatham County and they do not allow in person credit card transactions. She said OWASA does allow in person credit card transactions and they don't charge the customer.

Commissioner Baldwin asked the cost for face to face transactions. Ms. Cartrette said she has called the bank to get that information and they will be getting back with her tomorrow. But, she knows there is a cost for the machine and each time it is used.

Commissioner Turner asked if we could get a square and use a smart phone. Mr. Morgan stated we can get a price.

Commissioner Farrell asked if this will be additional work for staff. Ms. Cartrette said she knows we will have to post the payment to the account. Commissioner Farrell said he is okay with it as long as we are not losing money on every transaction.

The Board agreed to get more information and resubmit.

NEW BUSINESS

CVS SITE PLAN APPROVAL EXTENSION REQUEST (STUART BASS, PLANNING DIRECTOR)

Planner Bass stated the CVS Site Plan was approved by the Pittsboro Town Board of Commissioners on January 28, 2008.

In 2009, the General Assembly enacted legislation to extend the validity of most state and local developments approvals. The suspension was effective for a three year period, January 1, 2008 until December 31, 2010. 2010 amendments to the law added a fourth year, until December 31, 2011.

Therefore, the approval period of validity began on January 1 of this year.

Zoning Ordinance Article 15.5 - Period of Validity of the Zoning Ordinance states that, "an approved site plan shall become null and void if no significant work is done or no significant development is made on the site within 12 months after site

plan approval, unless, vested right is applied for and granted. Construction of development may begin upon approval of the plan by the Town Board and acquisition of permits. The Town Board may grant a single one-year extension upon written request of the applicant made at least 30 days before the expiration of the approved site plan.

The applicant, CVS Pharmacy in Bellemont Station, is requesting a one year extension to the original approval.

Staff Recommendation

That the Town Board of Commissioner's approve the applicant's one year extension request. Significant work would have to occur by December 31, 2013 or the site plan becomes null and void.

Motion made by Commissioner Fiocco seconded by Commissioner Baldwin to approve the Site Plan extension for CVS for one year (December 31, 2013).

Vote Aye-5 Nay-0

WASTEWATER ALLOCATION REQUEST – CHATHAM COMMONS RESIDENTIAL SUBDIVISION (STUART BASS, PLANNING DIRECTOR)

Planner Bass stated we have received from Chatham Commons Residential Subdivision a formal request for wastewater allocation, which is required prior to the submission of formal development plans. This request is per the Town's adopted wastewater allocation policy, (December 12, 2011).

The request is for an allocation of 4,020 gallons of wastewater capacity per day to construct a residential subdivision.

Please note that this is the fourth such request that the Board has had this year. Granting this allocation would bring the total amount allocated to 14,600 gallons per day for the year. This is well within the amount, (80% of the total that may be allocated or approximately 72,000 gallons per day) that the Board established as a guideline formula for wastewater allocation per the policy.

STAFF RECOMMENDATION:

Staff recommends approval of the proposed request for wastewater allocation in the amount specified.

Commissioner Fiocco said he would like to modify the gallons request it should be 4,080 not 4,020. He asked Mr. Dasher what is the time frame for getting started. Mr. Dasher stated they are developing the plan now and hope to get started early spring.

Motion made by Commissioner Fiocco seconded by Commissioner Foley to approve the wastewater allocation of 4,080 for Chatham Commons Residential Subdivision.

Vote Aye-5 Nay-0

Mayor Voller said looking at the map at some point in the past there was a greenway proposed and it does go on the east side of the property. Mayor Voller asked if he would consider that.

Mr. Dasher said he would love to incorporate it in future greenway plans and he has spoken with Paul Horne about it.

Mayor Voller said on the map there is in/out side lines and at some point the Planning Board should rectify that by contacting property owners to see if they would request annexation.

**BUDGET AMENDMENT FOR OFF-DUTY POLICE WORK (BOB MORGAN,
INTERIM TOWN MANAGER)**

Interim Manager Morgan reported the Police Department until recently had no policy for off-duty work for Police Officers. Officers were paid directly by third parties for their services. In order to better protect the Town from liability issues and to insure officers have workers compensation the Town will enter into agreements with third parties for services for an hourly fee paid to the Town. The Town will then pay the officers in their normal pay check.

This policy puts the Police Department in a better position to monitor this off-duty work and make clear the responsibilities of all parties involved. Fees will be paid to the Town for off-duty work to cover the cost to the Town. The budget amendment is for \$10,000 and the revenues to cover it will be fees paid to the Town. Expenditures will not be made unless services are contracted.

Commissioner Fiocco asked is this police work. Mr. Morgan said it police type work. Commissioner asked if they are in uniform. Mr. Morgan said they are.

Motion made by Commissioner Fiocco seconded by Commissioner Foley to adopt the budget ordinance amendment.

Vote Aye-5 Nay-0

The ordinance is as follows:

**ORDINANCE AMENDING THE
TOWN OF PITTSBORO
2012-2013 OPERATING BUDGET**

Be it ordained by the Board of Commissioners of the Town of Pittsboro in regular session assembled on the 13th day of November, 2012.

For Off-Duty Police Officer Program

Section 1. That the following **GENERAL FUND REVENUE** be increased by the amount indicated:

103510100	Off-Duty Police Officer Fee	\$10,000.00
TOTAL		\$10,000.00

Section 2. That the following **POLICE DEPARTMENT EXPENDITURES** be increased by the amount indicated:

105100020	Salaries	\$7,000.00
105100050	FICA	540.00
105100070	Retirement	475.00
105100071	Special Retirement 401K	350.00
105100310	Automotive & Equipment Fuel	1,635.00
TOTAL		\$10,000.00

AN ORDINANCE AMENDING THE FY 2012-2013 BUDGET IS RECORDED IN THE BOOK OF ORDINANCES NUMBER ONE, PAGE 51

REQUEST TO REVIEW ROBESON CREEK DISCHARGE FOR THE TOWN OF PITTSBORO (FRED ROYAL, P.E., BROWN AND CALDWELL)

Mayor Voller said he asked Mr. Royal to do this and he and Commissioner Fiocco have been looking at it offline and feels the board should look at it.

Mr. Royal said the letter is an ongoing story about wastewater in Pittsboro. He said what's before the board tonight is to get the Board's opinion on the concept of the letter and then he went over the letter.

The proposed letter is as follows:

Mr. Dee Freeman, Secretary
NC Department of Environment and Natural Resources
512 North Salisbury Street
Raleigh, North Carolina, 27699-1601

Subject: Request to Review Robeson Creek Discharge for Town of Pittsboro, NC

Dear Secretary Freeman:

The Town of Pittsboro, NC is fortunate to see early signs of growth and development return to the heart of North Carolina's Piedmont region. As expected, we here in Pittsboro are excited about new economic development opportunities which will add to our rich quality of life and our

local business community. However, we are mindful of our responsibility to preserve, protect, and restore the important environmental resources of the community that contribute to the rich quality of life afforded in Pittsboro.

We are very grateful to the staff of the North Carolina Department of Environment and Natural Resources (NCDENR) for working closely with the Town of Pittsboro to process our Environmental Impact Statement (EIS) for a wastewater treatment plant expansion project that included a dual discharge to Robeson Creek (0.75 mgd) and the Haw River (2.47 mgd). The Record of Decision (ROD) for the EIS was issued on March 29, 2010, and the Town received approval for the permit renewal and modification on June 2, 2011. Once again, I want to extend my sincere appreciation to NCDENR staff for taking the time to work with the Town to achieve this significant milestone for the current and future citizens of Pittsboro.

Since receiving the approved permit renewal and modification on June 2, 2011, the Town has been working to evaluate options to implement the wastewater treatment upgrade and expansion project with a dual discharge to Robeson Creek and the Haw River. In August 2012, the Town Board of Commissioners received an engineering report indicating that the capital cost for the discharge to the Haw River was approximately \$5.1 million. Given the scope, scale, and nature of this project and the associated costs, the Town of Pittsboro respectfully requests an opportunity to meet with you and representatives of your staff to review the dual discharge requirements defined in the approved permit renewal and modification. Specifically, the Town would like to discuss the possibility of working with NCDENR and other stakeholders on a watershed-based study to evaluate the potential to eliminate or modify the dual-discharge requirement and increase the Town of Pittsboro's discharge to Robeson Creek from 0.75 mgd to a level that is sustainable for the ecological function of Robeson Creek.

In making this request to collaborate on a watershed-based study, the Town clearly understands that Robeson Creek was listed as an impaired water body on the 2010 North Carolina 303(d) Impaired Waters List, and that impairment is related to total phosphorus contributions from both non-point and point sources. However, we would very much like to work with NCDENR staff and representatives from the Robeson Creek Watershed Council (RCWC), the Haw River Assembly, the NCSU School of Biological and Agricultural Engineering Department, and other stakeholders to identify the optimum combination of point- and non-point source nutrient reduction measures that can be cost-effectively implemented to mitigate the adverse impacts of excessive nutrient loading, restore the designated uses of Robeson Creek, and accommodate an increased discharge to Robeson Creek from the Pittsboro WWTP. For this purpose of the watershed-based study requested in this letter, the Town would preliminarily view cost-effectiveness in terms of offsetting or minimizing the \$5.1 million required to construct an effluent pumping station and outfall to the Haw River, and the associated annual operations and maintenance costs.

Please know that the Town of Pittsboro is committed to meeting the Town's responsibilities to achieve phosphorus reduction targets established for the Robeson Creek TMDL and the nitrogen and phosphorus reduction targets established for the Jordan Lake TMDL. However, we believe that a unique opportunity exists for the Town to work collaboratively with NCDENR staff and other important stakeholder groups to identify innovative and creative strategies to cost-effectively meet the TMDL requirements through a combination of planned, coordinated, and

targeted nutrient reduction measures for both point and non-point sources of nitrogen and phosphorus. Our ultimate objectives – in order of priority – will be to:

- ✓ Meet or exceed the effluent limitations and allocations required by the June 2, 2011 permit renewal and modification, including the Robeson Creek TMDL for Total Phosphorous and the Jordan Lake TMDL and wastewater rule,
- ✓ Work with your staff and other important stakeholder groups to restore the designated uses of Robeson Creek via a holistic watershed-based investigation,
- ✓ Work to address our impaired 303(d) listed water bodies using point and non-point source nutrient management and education strategies, and;
- ✓ Receive a permit modification for increased discharges into Robeson Creek from the Pittsboro WWTP to the extent it is feasible and based on maintaining the ecological function of the receiving waters.

Attached to this letter request, are letters of interest from key stakeholder groups that would like to participate with NCDENR staff and the Town of Pittsboro to identify opportunities to preserve, protect, and restore the health and condition of Robeson Creek through innovative and alternative approaches. Rest assured, the Town of Pittsboro has no preconceived expectations regarding the findings of such a watershed-based investigation, but given the magnitude of the costs for an effluent pumping station and pipeline, and the importance of Robeson Creek as a community environmental resource, we believe it is in the best interest of our citizens to make this request of NCDENR at this time.

Thank you very much for considering our request. I look forward to meeting with you and your staff soon to discuss the feasibility of initiating this proposed watershed-based investigation which will benefit Robeson Creek, Jordan Lake and the citizens of the Town of Pittsboro.

Sincerely,

Randy Voller, Mayor
Town of Pittsboro, North Carolina

Attachments:

- (a) Letter
- (b) Letter
- (c) Letter

After discussion Mayor Board said what Mr. Royal is requesting is that the Board endorse sending the letter and sending a letter to Robeson Watershed Council to get feedback, that is really what this is all about and the letter would just get the ball rolling.

Commissioner Fiocco stated he would like to see the full package – he would like to see the letters from the stakeholders as well. He asked that Mr. Royal get the letters and bring it back to the next Board meeting.

Attorney Messick asked are these services gratis.

Mayor Voller said at this time it is free going forward he would have to bring a proposal to the Board. Mr. Morgan said we would have to get proposals from others also.

AAT GRANT – TOWN LAKE PARK

Interim Manager Morgan reported the Parks Department has been awarded a \$5,000 Adopt-a-Trail Grant to construct a bare earth trail completing a circuitous loop around Town Lake Park. The project requires a \$5,010 match which is already in the operating budget of the Parks Department.

On May 29, 2012 the Board of Commissioners approved the grant application and provided a letter committing to construct the trail within a one year time frame contingent upon a successful grant award.

This trail project has been envisioned as a far off goal of the Parks and Recreation Advisory Board since their inception in 2006, and has been discussed at a great number of their public meetings. The plan for this trail has been on the Town Lake Park Masterplan for 3 years and is included the Comprehensive Parks Masterplan.

The completion of the recent Wetland Restoration Project at Town Lake Park allows for a complete loop around the park for the first time and transforms the proposed trail from merely a long term goal to a short term possibility with the assistance of the awarded grant funding.

Interim Manager Morgan recommended that we accept the grant funding, to authorize the Town Manager to formalize the terms of the agreement, and to adopt the budget amendment reflecting the acceptance of the grant funds.

Motion made by Commissioner Baldwin seconded by Commissioner Turner to authorize the Town Manager to formalize the terms of the agreement, adopt the Resolution Supporting/Accepting the 2012-2013 Adopt-A-Trail Grant in the amount of \$5,000.

Vote Aye-5 Nay-0

A RESOLUTION SUPPORTING ACCEPTING THE 2012-2013 ADOPT-A-TRAIL GRANT IN THE AMOUNT OF FIVE THOUSAND DOLLARS (\$5,000).

WHEREAS, the Board of Commissioners of the Town of Pittsboro are committed to increasing the number of public trails for the health, enjoyment and betterment of our community; and

WHEREAS, the Parks and Recreation Advisory Board has identified this trails project as a high priority in multiple public meetings; and

Whereas, the Town of Pittsboro has been awarded a grant in the amount of \$5,000 to fund trail construction at Town Lake Park through NCDENR's Adopt-a-Trail Program,

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Town of Pittsboro that the Town of Pittsboro approves the grant funding of \$5,000 to fund trail construction at Town Lake Park.

A RESOLUTION SUPPORTING ACCEPTING THE 2012-2013 ADOPT-A-TRAIL GRANT IN THE AMOUNT OF FIVE THOUSAND DOLLARS (\$5,000) IS RECORDED IN THE BOOK OF RESOLUTIONS NUMBER ONE, PAGE 199

Motion made by Commissioner Baldwin seconded by Commissioner Turner to approve the Budget Amendment for the Adopt-A-Trail Grant in the amount of \$5,000.

Vote Aye-5 Nay-0

The ordinance is as follows:

**ORDINANCE AMENDING THE
TOWN OF PITTSBORO
2012-2013 OPERATING BUDGET**

Be it ordained by the Board of Commissioners of the Town of Pittsboro in regular session assembled on the 13th day of November, 2012.

For Adopt-A-Trail Grant for Town Lake Park

Section 1. That the following **GENERAL FUND REVENUE** be increased by the amount indicated:

103650300	Adopt-A-Trail Grant	\$5,000.00
TOTAL		\$5,000.00

Section 2. That the following **RECREATION DEPARTMENT EXPENDITURE** be increased by the amount indicated:

106200150	Building & Grounds Maintenance	\$5,000.00
TOTAL		\$5,000.00

AN ORDINANCE AMENDING THE 2012-2013 OPERATING BUDGET IS RECORDED IN THE BOOK OF ORDINANCES NUMBER ONE, PAGE 52

CAPITAL PROJECTS REPORT

1. Manager's Update on Capital Projects.

Hillsboro Street Transmission Line Replacement Project

Mr. Morgan said Becky Smith is providing daily updates to the Board on this project. He said that it is possible to reverse the direction of the project but he is not sure it would be cost effective or lessen the impact. He said they would get through quicker going the way they are now.

Mr. Morgan stated he has not received any complaints and that Becky is doing an excellent job with communications.

Mayor Voller said the owner of New Horizon has commented to him about how wonderful the communication has been with this project. Commissioner Foley said she has received calls from three business owners who all were very pleased with communications.

Mr. Morgan said they hope to be pass the Mill on Thursday although they are afraid of what they are going to find when they get downtown – they may have to do a lot of hand digging.

Mayor Voller said it was discovered that some of the people on Water Tank road are not getting the type pressure they should be getting based on elevation. We are going to be putting in new service taps but the rest of the way is on private property and he don't know if they are going to see the increase they expect. He feels we should notify the folks they made be eligible for CDBG grant funds (Administered by Chatham County) to replace the line into their homes.

Mr. Morgan said he would look into service taps downtown to find out how that will be handled.

Commissioner Fiocco said it is frustrating doing work during the holiday seasons. They thought they had a choice and would start from downtown and work their way north. Be mindful the Engineer did not do the traffic control plan and that was at least a month delay. We have to be mindful of the downtown businesses.

Commissioner Foley said we can't turn around now we need to move full speed ahead.

Mayor Voller said we need to do what we can to help the merchants. Mr. Morgan said the President of the Downtown Merchants Association comes to the bi-weekly meetings.

Motion made by Commissioner Baldwin seconded by Commissioner Fiocco to take a five minutes break.

Vote Aye-5 Nay-0

Motion made by Commissioner Fiocco seconded by Commissioner Turner to go back into regular session.

Vote Aye-5 Nay-0

CLOSED SESSION

Motion made by Commissioner Fiocco seconded by Commissioner Turner to go into closed session pursuant to GS 143-318.11(a)(6) to consider the qualifications, competence, performance, fitness of an employees and to appoint a Town Manager.

Vote Aye-5 Nay-0

Commissioner Turner made a motion to appoint Bryan L. Gruesbeck as the new Town Manager seconded by Commissioner Foley.

Vote Aye-5 Nay-0

Motion made by Commissioner Foley seconded by Commissioner Baldwin to approve the contract with Bryan L. Gruesbeck.

Vote Aye-5 Nay-0

Contract is as follows:

STATE OF NORTH CAROLINA

EMPLOYMENT AGREEMENT

COUNTY OF CHATHAM

THIS AGREEMENT, made and entered into this _____ day of _____, 2012, by and between the TOWN OF PITTSBORO, a North Carolina municipal corporation, (hereinafter called "Town") and BRYAN L. GRUESBECK, (hereinafter called "Manager")

Section 1: Term

This agreement shall be effective as of November _____, 2012 and remain in full force and effect until terminated by the Town or Manager as provided herein.

Section 2: Duties and Authority

The Town agrees to employ BRYAN L. GRUESBECK as Town Manager to perform the functions and duties specified in NCGS 160A-147 and NCGS 160A-148 and to perform other legally permissible and proper duties and functions.

Section 3: Compensation

The Town agrees to pay Manager an annual salary of \$75,000.00, payable in bi-monthly installments. The Town shall consider an increase in compensation after three (3) months of employment by Manager. Consideration shall be given thereafter on an annual basis to increase his compensation.

Section 4: Health, Disability and Life Insurance Benefits

The Town agrees to provide and to pay the premiums for health, dental, life and short term disability coverage for the Manager as provided to all other employees of the Town.

Section 5: Vacation, and Sick Leave

The Manager is entitled to accrue all unused leave, without limit, and in the event the Manager's employment is terminated involuntarily, the Manager shall be compensated for all accrued and unpaid vacation time, and other benefits to date. In the event the Manager's employment is terminated voluntarily, he shall be compensated for all accrued and unpaid vacation time up to a maximum of 240 hours.

Section 6: Automobile

A Town vehicle may be available to the Manager for business use. If not suitable, the Town agrees to reimburse the Manager, during the term of this Agreement, and in addition to other salary and benefits herein provided, at the IRS standard mileage rate for any business use of his personal vehicle. Alternatively, the Town may pay the Manager a mutually agreeable allowance for the use of his personal vehicle.

Section 7: Retirement

The Town agrees to enroll the Manager into the applicable local governmental retirement system and to make all the appropriate contributions on the Manager's behalf.

Section 8: General Business Expenses

Town agrees to budget for and to pay for professional dues and subscriptions of the Manager necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Manager's continued professional participation, growth, and advancement, and for the good of the Town. Town also agrees to provide Manager with a laptop computer and cellular telephone service for business use or provide an allowance therefore.

Section 9: Termination

For the purpose of this agreement, termination shall occur when:

A. The majority of the governing body votes to terminate the Manager at a duly authorized public meeting.

B. If the Town, citizens or legislature acts to amend any provisions of the charter, code, or enabling legislation pertaining to the role, powers, duties, authority, responsibilities of the Manager's position that substantially changes the form of government, the Manager shall have the right to declare that such amendments constitute termination.

L. If the Town reduces the base salary, compensation or any other financial benefit of the Manager, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.

D. If the Manager resigns following an offer to accept resignation, whether formal or informal, by the Town as representative of the majority of the governing body that the Manager resigns, then the Manager may declare a termination as of the date of the suggestion.

Section 10: Severance

Except as herein provided, if the Manager is terminated as defined in Section 9 of this agreement, Town shall pay Manager as additional compensation for prior services rendered, a sum calculated as set forth hereinafter. If such termination occurs the sum shall be his salary, accrued and unpaid vacation and sick leave and all other benefits which Manager would have

been entitled to from the date of termination for three (3) months had the termination not occurred.

If the Manager is terminated for (a) demonstrated incompetence or dishonesty, (b) substantial and manifest neglect of duty, and (c) personal conduct which substantially impairs the fulfillment of Town responsibilities, then the Town is not obligated to pay severance under this section.

Section 11: Voluntary Separation

If the Manager voluntarily separates from the Town for other employment or retirement, except for medical necessity, the Manager hereby agrees to give the Town at least 90 days notice and will make every effort to assist the Town in the recruitment and selection of his successor.

Section 12: Hours of Work

It is recognized that the Manager must devote a great deal of time outside the normal office hours for the Town, and to that end Manager shall be allowed to establish an appropriate work schedule.

Section 13: Outside Activities

The employment provided for by this Agreement shall be the Manager's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Town and the community, the Manager may elect to accept limited teaching, consulting with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his responsibilities under this Agreement, with the prior consent of the Town.

Section 14: Moving and Relocation Expenses

Manager agrees to establish residence within the corporate boundaries of Pittsboro within 3 months of employment, and thereafter to maintain residence within the corporate boundaries of the Town. Town shall pay the actual costs of relocating Manager, his family and personal property to Town, but not more than \$5,000.00. The moving and storage carrier shall be selected by Manager. Said relocation expenses may include packing, moving, unpacking, and insurance charges and rental deposits.

The moving costs paid by the Town herein shall be reimbursed by Manager if he voluntarily separates from Town employment as follows: (1) 100% within one year of payment; and (2) 50% within two years of payment.

Section 15: Indemnification

Town shall defend, save harmless and indemnify Manager against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Manager's duties as Town Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved his willful or wanton misconduct. The Town shall indemnify Manager against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Manager in connection with or resulting from any claim, action, suit, or

proceeding, actual or threatened, arising out of or in connection with the performance of his duties. Any settlement of any claim must be made with prior approval of the Town in order for indemnification, as provided in this Section, to be available.

Section 16: Bonding

Town shall bear the full cost of any fidelity or other bonds required of the Manager under any law or ordinance.

Section 17: Other Terms and Conditions of Employment

The Town, only upon agreement with Manager, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Town Charter or any other law.

Section 18: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

A. TOWN: TOWN OF PITTSBORO
P.O. Box 759
Pittsboro, NC 27312

B. MANAGER: BRYAN L. GRUESBECK

IN WITNESS WHEREOF, the parties hereto have hereunto caused this agreement to be executed in their respective names, all by authority duly given, the day and year first above written.

EMPLOYMENT CONTRACT WITH BRYAN L. GRUESBECK IS RECORDED IN THE BOOK OF RESOLUTIONS NUMBER ONE, PAGES 200-206

Mr. Morgan thanked the Board for the opportunity to serve as Interim Manager, he has enjoyed it. The Board also thanked Mr. Morgan for his work.

Commissioner Farrell asked is there going to be any overlap with Mr. Morgan.

Mr. Morgan stated he plans to overlap for one day.

Mr. Gruesbeck said he would like to start on Friday, November 16, 2012. The board agreed that date was acceptable.

MAYOR UPDATES

- EDC – Dianne Reid will come before to request support/monies for the Incubator. Made the Board aware that Omtron has filed Chapter 11 bankruptcy and we need to keep our eyes on this.
- RPO – the sidewalk going all the way to Powell Place is on the TIP. Mr. Morgan stated we received CMAQ funds for the sidewalk from Food Lion to the Post Office and he has been requested to develop a MOU for the project and would like to do this before he leaves.
- Solid Waste
- Fairground Association
- PMA/Downtown

Mayor Voller stated the County purchased the Steele Property and he feels we should be engaged in discussion with the county about it (what's going to go there, etc.) Mr. Morgan said County Manager Horne said they are planning to use the property for a new agricultural building and for future expansion of the Community College.

Mayor Voller advised the board that the Board of Education has deeded over property for the park with the conditions that we installed a port-a-john (and at some point in the future a permanent rest room) and a water foundation by June 30, 2013.

Attorney Messick asked if he was authorized to record the deed. The Board authorized him to record the deed.

Mr. Morgan said he has emailed County Manager Horne and asked they reconsider putting a 8" sewer line beginning past the jail to a 12" line (that is the portion to belong to the town). He has told them they can't have all their capacity at once it would have to be portioned out.

COMMISSIONER CONCERNS

Commissioner Baldwin stated she would like to speak about the information in the packet about a new format for the financial statement. She stated she like the summaries but she also liked what they were getting before which outlined the departments, so she would like both.

Commissioner Fiocco said he thinks what they were getting before did not include revenues, but it was nice to see, to have a breakdown. He would like to see revenues as Mandy proposed but expenditures broken down.

Commissioner Baldwin said they definitely need expenditures like it was before. She wanted to make sure everyone noticed the information submitted about the audit. Mr. Morgan said Mandy has been really short staffed.

Memo is as follows:

MEMORANDUM

TO: Bob Morgan, Interim Town Manager
FROM: Mandy Cartrette, Finance Officer
SUBJECT: Timeline for 2011/2012 Financial Statements and Audit
DATE: November 13, 2012

I spoke with Lynda Ward, the Town of Pittsboro's auditor, and we have developed the following timeline for the audit:

November 13, 2012 – November 30, 2012	Audit Fieldwork
December 1, 2012	Planned Submission of Audit to Local Government Commission
December 10, 2012	Planned Presentation of Audit to Board of Commissioners
January 14, 2013	Back-up Date for Presentation of Audit to Board of Commissioners

I do apologize for the delay in the audit for fiscal year 2011/2012. Because of my maternity leave and the shortage of staff in the Finance Department, I have had great difficulties in ensuring that the audit was completed quickly this year.

Commissioner Fiocco said he would like to see the agenda packet (full content) for the Board of Commissioners and Planning Board posted on line.

He noticed on the future agenda that we have a Planning Board member whose term is expiring. He asked if we knew who's seat it was. Mayor Voller said he thinks it is Alfreda Alston.

Commissioner Foley said Tim Keim is interested in the Planning Board. The Retire NC initiative has raised \$4,500. Galloway Ridge, Fearrington and Carolina Meadows recently donated \$1,500. They would like to raise \$10,000 in the next month. The committee is actively trying to raise the money.

Commissioner Foley reported that the Chatham Transit van has been coming to Powell Springs to pick up people for doctors appointments and instead of going around the back where there is a drop off-pick up area they are leaving the van parked in the street and the street is so narrow that

it completely stops traffic having people sitting for five or ten minutes. She said we need to notify Chatham Transit that the buses need to park in the back. That road is very dangerous.

Commissioner Foley stated her parents had a water line break and didn't know it because it is a considerable way from their house, so they ended up with a water bill of \$750. Her parents are both retired and are on a fixed income. It is too late to do anything about that now but it did make her aware that people living on a limited income with a leak like that can be devastating. Apparently our policy is we will waive sewer but not water fees. They have been looking at ways other counties handle that and some will cut the bill in half one time. We might want to look at our policy, maybe by the next meeting she will share what she found. Again, she is not looking at this for her parents because they have already paid their bill but it just make her aware.

Commissioner Farrell said Mr. Knight had asked him to read his letter that was in the agenda packet but he did not and he does not agree with everything in it. He was asking for Mr. Knight that it be included in the minutes of this meeting. (Letter attached to agenda)

Commissioner Farrell said he asked about a sidewalk a few meetings ago and he knows John Poteat has gotten some estimates. He would like for us to move on it. He understands we can use Powell Bill Funds for that. Mr. Morgan said we will bring back a budget amendment for that.

Mayor Voller said he doesn't have a problem entering letters in the record but it is an opinion letter and the board can decide how they want to do it.

Motion made by Commissioner Farrell seconded by Commissioner Baldwin to adjourn at 10:00 p.m.

Vote Aye-5 Nay-0

FYI -

1. Tentative Future Agendas November 13, 2012.
2. Information on salary for Assistant Town Manager.
3. Status of FY 2011-2012 Audit.
4. Bi-weekly process report – Hillsboro Street Transmission Line.
5. Memorandum from Mandy Cartrette, Finance Officer.
6. ABC Board FY 2011-2012 Audit.
7. Letter from Bob Knight

Randolph Voller, Mayor

ATTEST:

Alice F. Lloyd, CMC, NCCMC

Town Clerk

Information submitted by Martha Girolami

Special Series No. 22

April 2007

Special Use Permits in North Carolina Zoning

David W. Owens

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UNC

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School of Government, University of North Carolina

The School of Government at the University of North Carolina at Chapel Hill works to improve the lives of North Carolinians by engaging in practical scholarship that helps public officials and citizens understand and strengthen state and local government. The core components of the School are the Institute of Government, established in 1931 to provide educational, advisory, and research services for state and local governments, and the two-year Master of Public Administration Program, which prepares graduates for leadership careers in public service. The School also sponsors centers focused on information technology, environmental finance, and civic education for youth.

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MICHAEL R. SMITH, DEAN

THOMAS H. THORNBURG, SENIOR ASSOCIATE DEAN

FRAYDA S. BLUESTEIN, ASSOCIATE DEAN FOR PROGRAMS

ANN CARY SIMPSON, ASSOCIATE DEAN FOR DEVELOPMENT AND COMMUNICATIONS

BRADLEY G. VOLK, ASSOCIATE DEAN FOR ADMINISTRATION

FACULTY

Gregory S. Allison
Stephen Allred (on leave)
David N. Ammons
A. Fleming Bell, II
Maureen M. Berner
Mark E. Borts
Joan G. Brannon
Molly C. Broad
Mary Maureen Brown
Shea Riggsbee Denning
James C. Drennan
Richard D. Ducker
Robert L. Farb
Joseph S. Ferrell
Milton S. Heath Jr.

Norma Houston
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Laurie L. Mesibov
Kara Millonzi
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School of Government

The University of North Carolina at Chapel Hill

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Contents

The Law of Special Use Permits	1
Definition and Authority	1
Adequate Guiding Standards	3
Burden of Production and Persuasion	4
Adequacy of Evidence	5
Endangering the Public Health or Safety	5
Injury to Value of Adjoining Property	6
Harmony with the Area	6
Conformity with the Comprehensive Plan	7
Public Need	7
Traffic Impacts	7
Survey of Special Use Permit Experience in North Carolina	7
Survey	7
Organization and Administration	8
Subject Matter	8
Decision-Making Body	9
Administration	10
Decision-Making Process	11
Standards Used	11
Hearing Length	12
Presentation of Information	12
Preparation of Findings	15
Length of process	16
Decisions Made and Factors Influencing Decisions	16
Outcomes	16
Merits of the Application	17
Other Factors	18
Judicial Appeals	19
Appendix A Survey Instrument	21
Appendix B List of Jurisdictions Responding to the Survey	27

Special Use Permits in North Carolina Zoning

David W. Owens

One of the principal purposes of zoning is to prevent the harm that comes when incompatible land uses are located too close to each other. For example, a fast food restaurant or an industrial facility would generally be zoned out of a residential neighborhood. But what about a small day care facility or home business proposed to be located in a single-family residential neighborhood? If done properly, it might fit in well and be an asset to the neighborhood and community. But it could be a substantial problem for the neighbors if it is not carefully located and designed. The special use permit is zoning's answer to this dilemma. It creates the flexibility of allowing these potentially acceptable land uses but does so in a way that requires a careful review to assure that the use fits within city or county policies.

Most zoning ordinances allow some uses in a zoning district that are permitted only if a detailed, careful review of the application concludes that specified standards are met. These "special uses" are deemed to warrant careful review either because they are potentially appropriate anywhere within the zoning district, but only if carefully designed to meet the standards, or because they are potentially harmful wherever they are located unless carefully designed. Therefore the zoning ordinance designates them as special uses and sets out standards for them that require application of some degree of judgment and discretion. Often many of the most sensitive types of development proposed in a community are placed in the special use category.

This report first summarizes the law in North Carolina regarding special use permits, including the statutory requirements for special use permits and a summary of the case law regarding special use permits. The report then summarizes the results of a detailed survey of all North Carolina cities and counties regarding how special use permits are administered.

The Law of Special Use Permits

Definition and Authority

Zoning ordinances regulate the types of land uses allowed in each zoning district. Most ordinances place each type of land use into one of three categories. First, some uses are automatically permitted in a particular zoning district. These permitted uses are often referred to as "uses by right" and are subject to objective standards set forth in the zoning ordinance. Applications for approval of these uses are a routine matter handled by the zoning staff. Second, uses may be prohibited in a particular district. Prohibited uses are often not listed in the ordinance. Rather, the ordinance simply provides that if the use is not listed as permitted in a particular district, it is prohibited. Third, a smaller group of uses are in the "maybe" category. They are allowed anywhere in the affected zoning district, but only if specified standards and conditions are met. These uses are the "special uses" that are the subject of this report.

The authority to apply specialized review to particularly sensitive land uses has always been a part of zoning law in the United States. The original Standard State Zoning Enabling Act (and the original 1923 North Carolina zoning enabling act) used the term "special exception" for these permits and assigned decision making about them to the board of adjustment.¹ Virtually every state in the country authorizes use of this tool. While zoning ordinances made sparing use of this authorization in the early decades of zoning practice, since the early 1960s use of special exceptions has been increasingly common.

1. "A special exception within the meaning of a zoning ordinance is one which is expressly permitted in a given zone upon proof that certain facts and conditions detailed in the ordinance exist. It is granted by the board, after a public hearing, upon a finding that the specified conditions have been satisfied." *In re Application of Ellis*, 277 N.C. 419, 425, 178 S.E.2d 77, 80-81 (1971).

Contemporary zoning ordinances usually term the land uses designated for specialized review *special uses* or *conditional uses* rather than special exceptions. Some ordinances also retain the term "special exceptions" as well. These terms are interchangeable and have the same legal consequence.² There is no legal significance to the term used in the ordinance to label these permits; the term used in an individual zoning ordinance is a matter of local choice. Some zoning ordinances even use multiple terms for these permits, as they may assign decision making for one class of these permits to one board and another class to a different board and use different names to distinguish the two. For example, a city may send those types of projects considered particularly sensitive to the city council and all of the others to the board of adjustment. They then label those going to the city council as "special use permits" and those going to the board of adjustment as "conditional use permits" to help staff and applicants identify the decision-making route to be followed. However the legal standards discussed in this report are the same for both sets of permits. Throughout this report, the terms "special use" and "special use permit" will be used and are intended to include conditional use permits and special exceptions.

It is important to distinguish special use permits from variances.³ Variances are used when the strict terms of the ordinance cannot be met. An applicant must establish "practical difficulties" or "unnecessary hardship" to qualify for a variance. On the other hand, special use permits do not require a showing of hardship. Rather, they are used to conduct a detailed review of individual applications to determine whether the ordinance's standards have been met.

The decision on a special use permit is quasi-judicial⁴ and

2. The North Carolina statutes were amended in 1967 to explicitly allow use of special and conditional use permits. 1967 N.C. Sess. Laws ch. 1208. The provision was further amended in 2005. This provision, now codified as Sections 153A-340 and 160A-381 of the North Carolina General Statutes (hereinafter G.S.), provides:

The [zoning] regulations may also provide that the board of adjustment, the planning board, or the city council 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.

3. G.S. 153A-345(c) and 160A-388(c) provide that the board of adjustment (and any board acting as a board of adjustment)

may permit special exceptions to the zoning regulations in specified classes of cases or situations as provided in subsection (d) of this section [providing for variances], not including variances in permitted uses, and that the board may use special and conditional use permits, all to be in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance.

For more information on zoning variances, see DAVID OWENS AND ADAM BRUGGEMANN, A SURVEY OF EXPERIENCE WITH ZONING VARIANCES (School of Government Special Series No. 18, Feb. 2004).

4. While the standards for the permit involve application of a degree of judgment and discretion, the applicant is entitled to the permit upon establishing that the standards will be met. This creates a property right in the permit that is different from the entirely discretionary decision on a rezoning, thus making decisions on special and conditional use permits quasi-judicial.

is thus subject to procedural due process requirements regardless of which board makes the decision. There is, however, one important variable that depends on which board is taking action. The statutes provide that the usual four-fifths vote required of action by the board of adjustment does not apply to governing boards or planning boards when they are deciding special use permits.⁵

The court approved the special use permit concept in North Carolina in *Jackson v. Guilford County Board of Adjustment*.⁶ The ordinance involved allowed mobile home parks as a special exception in an agricultural zoning district. The key question addressed by the court was whether assignment of special use permit decision making to the board of adjustment constitutes an unlawful delegation of legislative authority. Justice Lalce wrote that it was not, because the governing board makes the legislative policy decision when it determines whether the use will be allowed in a certain zoning district and under what conditions:

When a statute, or ordinance, provides that a type of structure may not be erected in a specified area, except that such structure may be erected therein when certain conditions exist, one has a right, under the statute or ordinance, to erect such structure upon a showing that the specified conditions exist. The legislative body may confer upon an administrative officer, or board, the authority to determine whether the specified conditions do, in fact, exist and may require a permit from such officer, or board, to be issued when he or it so determines, as a further condition precedent to the right to erect such structure in such area. Such permit is not one for a variance or departure from the statute or ordinance, but is the recognition of a right established by the statute or ordinance itself. Consequently, the delegation to such officer, or board, of authority to make such determination as to the existence of the specified conditions is not a delegation of the legislative power to make law.⁷

A zoning ordinance may require a special use permit for changes in land uses as well as for the establishment of new uses. For example, the court in *Forsyth County v. York*⁸ upheld a zoning provision that required a special use permit for the conversion of a nonconforming use to another use, provided the board of adjustment found the new use to be less intensive or of essentially the same character as the prior use.

A special use permit is not a personal right but is tied to the specific parcel of property for which it is issued. These permits, like variances and other zoning approvals, run with the land.

5. G.S. 153A-340(c) and 160A-381(c). This change was made in 1981 for city councils and boards of county commissioners. The statute was further amended in 2005 to make the simple majority vote applicable to planning boards. This statute also explicitly states that all special and conditional use permit decisions are quasi-judicial.

6. 275 N.C. 155, 166 S.E.2d 78 (1969).

7. *Id.* at 165, 166, 166 S.E.2d at 85.

8. 19 N.C. App. 361, 198 S.E.2d 770, *review denied*, 284 N.C. 253, 200 S.E.2d 653 (1974).

Adequate Guiding Standards

Since decisions on special use permits involve applying legislatively established standards to individual applications, it is essential that the zoning ordinance itself include adequate guiding standards for quasi-judicial decisions. If there are no standards or if the standard provided is so general as to leave the board unbridled discretion in its decision, the courts will invalidate the ordinance provisions as an unlawful delegation of legislative authority.

An ordinance that has decision standards for special use permits that are so general as to offer little practical guidance for individual permit decisions is invalid. *Jackson v. Guilford County Board of Adjustment*⁹ sets the basic rule:

Delegation to an administrative officer, or board, of authority to issue or refuse a permit for the erection of a specified type of structure in a given area, dependent upon whether such officer, or board, considers such structure in such area, under prevailing conditions, conducive to or adverse to the public interest or welfare is a different matter. Such delegation makes the determinative factor the opinion of such officer, or board, as to whether such structure in such area, under prevailing conditions, would be desirable or undesirable, beneficial to the community or harmful to it. This is a delegation of the power to make a different rule of law, case by case. This power may not be conferred by the legislative body upon an administrative officer or board. . . . So much of . . . this ordinance as requires the Board of Adjustment to deny a permit . . . unless it finds "that the granting of the special exception will not adversely affect the public interest" is, therefore, beyond the authority of the Board of Commissioners to enact and so is invalid.¹⁰

In re Application of Ellis answered the question of whether this same restriction also applies to the governing board.¹¹ In response to the adverse ruling in the *Jackson* case, the Guilford County Board of Commissioners adopted a resolution moving special use permit decision making from the board of adjustment to the governing board. The commissioners subsequently denied the applicant's request for a special use permit for a mobile home park under the "public interest" standard, making no findings of fact and stating no reasons for their decision. On appeal the court ruled that a governing board has no more discretionary power for individual special use permits than does a board of adjustment:

Like the board of adjustment, the commissioners cannot deny applicants a permit in their unguided discretion or, stated differently, refuse it solely because, in their view, a

9. 275 N.C. 155, 166 S.E.2d 78 (1969). See also *Town of Spruce Pine v. Avery County*, 346 N.C. 787, 488 S.E.2d 144 (1997); *Adams v. North Carolina Dep't of Natural and Economic Res.*, 295 N.C. 683, 249 S.E.2d 402 (1979); *City of Roanoke Rapids v. Peedin*, 124 N.C. App. 578, 478 S.E.2d 528 (1996).

10. *Id.* at 165-67, 166 S.E.2d at 85-87 (1969). See also *Howard v. City of Kinston*, 148 N.C. App. 238, 246, 558 S.E.2d 221, 227 (2002).

11. 277 N.C. 419, 178 S.E.2d 77 (1971).

mobile-home park would "adversely affect the public interest." The commissioners must also proceed under standards, rules, and regulations, uniformly applicable to all who apply for permits.¹²

A series of cases have held various standards to be so general as to offer inadequate guidance to decision makers. The court held a requirement that a conditional use be consistent with the "purpose and intent" of the zoning ordinance to be an insufficient standard and thus is an unlawful delegation of authority.¹³ The court ruled that it was improper for the Nags Head governing board to deny a special use permit for a planned unit development on the grounds that it was inconsistent with the goals and objectives of the land use plan, even though the ordinance specifically listed the plan as one of the factors in determining the suitability of a special use permit.¹⁴ The court held that it was improper to deny a special use permit for an adult bookstore on the grounds that it would be incompatible with the character and use of surrounding buildings.¹⁵ Its inclusion as a special use by the ordinance is conclusive on the policy question of general use compatibility.

Even so, it is permissible to use relatively general standards for decisions. In a key decision, *Kenan v. Board of Adjustment*,¹⁶ the court of appeals approved the use of four fairly general standards for special use permits. Most North Carolina zoning ordinances now incorporate these same standards. These four standards are that the use

1. Does not materially endanger the public health or safety;
2. Meets all required conditions and specifications;
3. Would not substantially injure the value of adjoining property or be a public necessity,¹⁷ and
4. Will be in harmony with the area in which it is located and be in general conformity with the comprehensive plan.

12. *Id.* at 425, 178 S.E.2d at 81.

13. *Keiger v. Board of Adjustment*, 278 N.C. 17, 23, 178 S.E.2d 616, 620 (1971). See also *Northwestern Financial Group, Inc. v. County of Gaston*, 329 N.C. 180, 190, 405 S.E.2d 138, 144 (1991) (holding approvals under mobile home park ordinance may not be based on general concern about hazards to public welfare).

14. *Woodhouse v. Board of Comm'rs*, 299 N.C. 211, 261 S.E.2d 882 (1980).

15. *Harts Book Stores v. City of Raleigh*, 53 N.C. App. 753, 281 S.E.2d 761 (1981).

16. 13 N.C. App. 688, 187 S.E.2d 496, cert. denied, 281 N.C. 314, 188 S.E.2d 897 (1972).

17. While there is no case law on this point in North Carolina, the implication is that there must be a showing either that the permit will not substantially harm neighboring property values or that, if it does, there is a public necessity for siting the use as proposed. This would customarily arise with a utility use, such as an electrical substation or sewage lift station. Some ordinances require a separate showing that a special use is reasonably necessary for the public convenience or welfare. See *SBA, Inc. v. City of Asheville*, 141 N.C. App. 19, 539 S.E.2d 18 (2000); KENNETH H. YOUNG, *ANDERSON'S AMERICAN LAW OF ZONING* § 21.12 (4th ed. 1996). That, however, is a background standard for approvability, not an alternative to excuse adverse property value impacts.

Some zoning ordinances also add more detailed specific standards for particular uses and often apply those in combination with these general standards.

The standards to be applied in particular quasi-judicial decisions must be clearly identified as such by the ordinance. Only those standards specifically listed as applicable may be applied when making special use permit decisions. Additional standards may not be developed on an ad hoc basis. *C.C. & J. Enterprises, Inc. v. City of Asheville*¹⁸ illustrates this. The city council denied a special use permit for a proposed twenty-four-unit apartment complex after finding the application met all of the technical requirements and development standards in the ordinance, basing the denial on a general concern about impacts on health and safety (citing street conditions, topography, access, flooding potential, and proposed density). The court held that since the ordinance did not in fact list promotion of the public health, safety, and welfare as a standard for special use permit decisions (though it would have been permissible to do so), it was inappropriate for the city council to use it as a standard in reviewing the application. A general statement of intent that "adequate standards will be maintained pertaining to the public health, safety, welfare, and convenience" is not a permit standard and may not be used in decision making. Similarly, only the standards actually in the ordinance may be used as the basis for imposition of conditions on a special use permit that is issued.¹⁹

In making its decision, the board must clearly state whether each of the applicable standards has or has not been met. A board may vote on each standard separately or may vote on a single motion that specifies which standards have been met (so long as the board's conclusions as to each standard are clearly discernible).²⁰

Burden of Production and Persuasion

With special use permits, the general rule is that the applicant has the burden of presenting sufficient evidence that an application meets the standards of the ordinance.²¹ Most zoning ordinances require applications for special use permits to be on forms that are designed to solicit the basic information necessary to assess compliance with the standards. A board has no jurisdiction to consider an incomplete application.²²

18. 132 N.C. App. 550, 512 S.E.2d 766 (1999). See also *Knight v. Town of Knightdale*, 164 N.C. App. 766, 596 S.E.2d 881 (2004) (site plan approvals); *Nazziola v. Landcraft Properties, Inc.*, 143 N.C. App. 564, 545 S.E.2d 801 (2001) (subdivision approval).

19. The authority to impose appropriate conditions and safeguards "cannot be used to justify unbridled discretion" in framing permit conditions. *Hewitt v. County of Brunswick*, 155 N.C. App. 138, 146, 573 S.E.2d 688, 694 (2002). Any condition imposed must be related to the standards for decision in the ordinance.

20. *Richardson v. Union County Bd. of Adjustment*, 136 N.C. App. 134, 523 S.E.2d 432 (1999).

21. *Humble Oil & Refining Co. v. Board of Aldermen*, 284 N.C. 458, 468, 202 S.E.2d 129, 136 (1974).

22. *Wade v. Town of Ayden*, 125 N.C. App. 650, 482 S.E.2d 44 (1997). See also *Richardson v. Union County Bd. of Adjustment*, 136 N.C. App. 134, 523 S.E.2d 432 (1999).

If the applicant presents uncontroverted competent, substantial, and material evidence that the standards have been met, there is a *prima facie* entitlement to the permit and it must be issued.²³ On the other hand, when an applicant fails to produce sufficient evidence for the board to make the requisite findings, the permit must be denied.²⁴ Once an applicant makes the requisite showing that the standards have been met, the burden shifts to those who oppose permit issuance to present countervailing substantial, competent, and material evidence that the standards would not be met. Where there is substantial evidence on both sides, the board makes its determination as to which is correct, and, absent other problems, that determination is accepted by the courts.²⁵

This burden on the applicant certainly applies to specific standards in the ordinance but may not apply to the more general standards. In *Woodhouse v. Board of Commissioners*,²⁶ the court noted that with general standards (such as that the project must not harm the public health, safety and welfare) the burden rests with a challenger who contends the standards would not be met. More recent cases emphasize that while opponents have a burden of producing some contrary evidence on these general standards, the ordinance can place the burden of proof when there is conflicting evidence on the applicant. For example, an ordinance may state that a permit shall only be issued upon the applicant's establishing that the proposed project *will not harm* the public safety or neighboring property values.²⁷ By contrast, if the ordinance says the permit *shall be issued* unless the board finds a standard is violated, the permit must be issued in the absence of evidence that a standard is violated.²⁸

23. *Howard v. City of Kinston*, 148 N.C. App. 238, 246, 558 S.E.2d 221, 227 (2002); *SBA, Inc. v. City of Asheville*, 141 N.C. App. 19, 27, 539 S.E.2d 18, 22 (2000); *Clark v. City of Asheville*, 136 N.C. App. 114, 119-20, 524 S.E.2d 46, 50 (1999); *Triple E Assoc. v. Town of Matthews*, 105 N.C. App. 354, 413 S.E.2d 305, *review denied*, 332 N.C. 150, 419 S.E.2d 578 (1992); *Harts Book Stores, Inc. v. City of Raleigh*, 53 N.C. App. 753, 281 S.E.2d 761 (1981). The same rule of entitlement upon showing all standards have been met applies to subdivision plat approvals. See, e.g., *William Brewster Co., Inc. v. Town of Huntersville*, 161 N.C. App. 132, 588 S.E.2d 16 (2003).

24. *Signorelli v. Town of Highlands*, 93 N.C. App. 704, 379 S.E.2d 55 (1989); *Charlotte Yacht Club, Inc. v. County of Mecklenburg*, 64 N.C. App. 477, 307 S.E.2d 595 (1983).

25. *AT&T Wireless PCS, Inc. v. Winston-Salem Zoning Bd. of Adjustment*, 172 F.3d 307 (4th Cir. 1999).

26. 299 N.C. 211, 261 S.E.2d 882 (1980).

27. See, e.g., *Mann Media, Inc. v. Randolph County Planning Bd.*, 356 N.C. 1, 565 S.E.2d 9 (2002); *Buder v. City Council of the City of Clinton*, 160 N.C. App. 68, 72, 584 S.E.2d 103, 106 (2003). See also *Harding v. Board of Adjustment*, 170 N.C. App. 392, 612 S.E.2d 431 (2005); *SBA, Inc. v. City of Asheville*, 141 N.C. App. 19, 539 S.E.2d 18 (2000).

28. See, e.g., *Coleman v. Town of Hillsborough*, 173 N.C. App. 560, 619 S.E.2d 555 (2005).

Adequacy of Evidence

The question of the quality of evidence necessary to support findings relative to the general standards for special use permits is evolving. More recent cases emphasize the need for a stronger foundation and greater detail in the evidence presented. A brief review of the holdings relative to the most typical general standards follows.

Endangering the Public Health or Safety

Several cases have upheld special use permit denials based on public health and safety impacts. In some instances this resulted from the applicant's failure to establish there would not be harm to public health and safety. In *Mann Media, Inc. v. Randolph County Planning Board*,²⁹ an application for a special use permit to construct a 1,500-foot telecommunications tower was denied on several grounds, including that the applicant had not met the burden of showing "that the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved." At issue was the impact of ice falling from the supporting wires for the tower. The court held that the evidence presented by tower opponents (ice in a cooler and anecdotal hearsay) was not competent to establish a public safety hazard. However, the ordinance placed the burden of establishing that the use would not pose a safety hazard on the applicant. Here the applicant testified that while he believed ice on the wires would not pose a safety problem, he could not state with certainty that falling ice in a storm would not pose a risk to the permanent structures located in close proximity to the towers. The court upheld the denial, concluding the board's finding that the applicant failed to establish that a lack of hazards was "neither whimsical, nor patently in bad faith, and it is not indicative of a lack of any course of reasoning or exercise of judgment."³⁰ In *Butler v. City Council of the City of Clinton*,³¹ the court upheld denial of a special use permit for a crematory. The ordinance required a finding that the use "will not be detrimental to or endanger the public health, safety, morals, or general welfare." Neighboring residents testified about concerns of learning disabilities and cancer caused by the emissions and the psychological effects on children in the neighborhood. A doctor testified about potential health impacts of mercury and dioxin emissions. The court held in a whole-record review that this was sufficient evidence to support a finding that the use could endanger the public welfare. In *Walbarst v. Board of Adjustment of City of Durham*,³² the petitioner requested a special use permit to replace an existing 4-foot-high fence in the

front yard with a 6-foot-high chain link fence so that his dog could roam in the front yard as well as in the backyard (where there was already a six-foot-high fence). The court upheld a denial based on the project being inconsistent with the public health, safety, and welfare based on testimony from neighbors on the negative visual impacts of the fence and allowing the dogs so close to passers-by. In *Signorelli v. Town of Highlands*,³³ the court held that although the applicant had submitted sufficient information to establish a prima facie entitlement to a special use permit for a game room in a donut shop, the lack of specificity in the application as to hours of operation, number of machines, and methods of supervision justified the board of adjustment's finding that it was unable to conclude that the use would not endanger the public health or safety.

Other cases have overturned denials because there was inadequate evidence to show a likely detriment to public health and safety. In *Sun Suites Holdings, LLC v. Town of Garner*,³⁴ the court invalidated a town council's denial of a special use permit for an extended-stay hotel on the grounds that the project would materially endanger public safety. The court held that a whole-record review established that this finding was not supported by substantial evidence. General expressions of a fear of potential increases in crime in the vicinity of any hotel are insufficient to establish a threat to public safety. Similarly, a recitation of crime statistics with reference to another extended-stay hotel in the town, without any foundation as to how those statistics related to the subject project, was held inadequate to support a denial. In *Clark v. City of Asheboro*,³⁵ which involved a special use permit for a proposed manufactured-home park, the applicants presented detailed evidence at the hearing to support the application. Six neighbors appeared and presented testimony in opposition. The court held that the permit was improperly denied, as the evidence in opposition was characterized as being generalized fears that park residents would be low-income residents who would constitute a danger to the neighborhood, concerns unsupported by competent evidence. Similarly, in *Cox v. Hancock*,³⁶ the court upheld issuance of a special use permit for an apartment building where the applicant presented testimony on traffic control, positive impacts on surrounding property values, stormwater drainage, and compatibility with the surrounding neighborhood and the neighbors had only generalized objections.

29. 356 N.C. 1, 565 S.E.2d 9 (2002). By contrast, in *Ward v. Incoe*, 166 N.C. App. 586, 603 S.E.2d 393 (2004), the court held that the applicant's presentation of evidence on landscaping buffers, removal of undergrowth, consideration of traffic counts provided by the state Department of Transportation, modification of existing streets, installation of a traffic light, improvements to storm drainage, and relocation of a fire hydrant adequately supported a finding that the proposed bank would not hinder public safety.

30. *Id.* at 17, 565 S.E.2d at 20.

31. 160 N.C. App. 68, 72, 584 S.E.2d 103, 106 (2003).

32. 116 N.C. App. 638, 448 S.E.2d 858 (1994), *review denied*, 338 N.C. 671, 453 S.E.2d 186 (1995).

33. 93 N.C. App. 704, 379 S.E.2d 55 (1989).

34. 139 N.C. App. 269, 533 S.E.2d 525, *review denied*, 353 N.C. 280 546 S.E.2d 397 (2000).

35. 136 N.C. App. 114, 524 S.E.2d 46 (1999).

36. 160 N.C. 473, 586 S.E.2d 500 (2003).

Injury to Value of Adjoining Property

In *Mann Media, Inc. v. Randolph County Planning Board*,³⁷ the court in dicta noted that a rigorous standard is necessary to establish a foundation for opinion testimony regarding property value impacts. The applicant's witness on property value impacts was a professional appraiser; the objecting neighbors presented testimony from a contractor and a real estate agent. The court noted all three witnesses offered only speculative opinions about values without supporting facts or examples and that cannot be the foundation of a finding of adverse impacts. Similarly, in *Humane Society of Moore County, Inc. v. Town of Southern Pines*,³⁸ the court held that testimony by an appraiser as to the property value impacts of a proposed animal shelter was based on speculative opinions rather than facts and could not be the basis of a finding on value impacts. In *Sun Suites Holdings, LLC v. Town of Garner*,³⁹ speculative comments by a neighbor and a real estate agent about impacts on property values were held to be insubstantial evidence on the impacts of the project on property value.

The fact that evidence of property value impacts is available and not presented can seriously undermine the case of the party with the burden of establishing (or contesting) that fact. In *SBA, Inc. v. City of Asheville*,⁴⁰ the plaintiff appealed the city council's denial of a special use permit for a telecommunications tower. The Asheville ordinance required a conclusion that the project would not substantially injure the value of adjoining or abutting property. The plaintiff presented a property value impact study to demonstrate compliance with this standard, but the city staff expressed concern that the study addressed other towers and neighborhoods, not the neighborhood in question. The court was particularly concerned with the plaintiff's failure to address the property value impacts of an existing telecommunication tower a short distance from the proposed site that potentially affected the same neighborhoods. The court thus held that the plaintiff "simply did not meet their burden of demonstrating the absence of harm" to neighboring property values.⁴¹

Harmony with the Area

Several older cases state that inclusion of a particular use as a special or conditional use establishes a presumption that the use is compatible with the surrounding area. In *Woodhouse v. Board of Commissioners* the court noted that "inclusion of the particular use in the ordinance as one which is permitted under certain conditions, is equivalent to a legislative finding that the prescribed use is one which is in harmony with the other uses

permitted in the district."⁴² Similarly in *Harts Book Stores v. City of Raleigh*⁴³ the court held that it was improper to deny a special use permit for an adult bookstore on the grounds that it would be incompatible with surrounding buildings since its inclusion as a special use by the ordinance is conclusive on the policy question of use compatibility.

However, it is more accurate to say that inclusion of a use as a permissible special use within a zoning district establishes a prima facie showing of harmony with the properties in that district (rather than a conclusive finding of harmony), and the burden is on the challengers to rebut the presumption of harmony at the particular site proposed.⁴⁴

A number of cases uphold special use permit denials based on neighborhood incompatibility. In *Hopkins v. Nash County*⁴⁵ the court upheld the denial of a special use permit for a land clearing and inert debris landfill. The evidence presented by neighbors who objected to the landfill was that the area was previously agricultural in nature, was the site of a long-standing crossroads community, and was now primarily single-family residential in nature and that the thirty to forty trucks per day that would use the landfill would bring disruptive traffic, noise, and dust into the residential area. The court held this to be sufficient evidence to rebut the presumption of harmony with the surrounding area. In *SBA, Inc. v. City of Asheville*⁴⁶ the court upheld the denial of a special use permit for a 175-foot telecommunications tower. There was uncontroverted evidence that the tower would be four times taller than existing buildings in the neighborhood. Twelve witnesses testified that the tower would be an eyesore. The court held that the applicant's own evidence, a computer-generated photograph superimposing the tower, corroborated the proposed tower's visibility and predominance over existing buildings and showed that it would be "in sharp contrast" to its surroundings. The court held this to be sufficient to establish that this particular tower would not be compatible with the neighborhood. In *Vulcan Material Co. v. Guilford County Board of Commissioners*,⁴⁷ the board of county commissioners denied a special use permit for a proposed rock quarry on the grounds that there was insufficient credible evidence to find that the use would be compatible with the surrounding land uses. The court held that it was sufficient that the record showed all uses within two miles of the quarry to be residential. In *Petersilie v. Boone Board of Adjustment*,⁴⁸ the court upheld the denial of a special use permit for an apartment building in a neighborhood of single-family homes. The court ruled that although the applicant submitted sufficient evidence to support the issuance of the permit, there had also been

42. 299 N.C. 211, 216, 261 S.E.2d 882, 886 (1980).

43. 53 N.C. App. 753, 281 S.E.2d 761 (1981).

44. In *Mann Media, Inc. v. Randolph County Planning Board*, 356 N.C. 1, 565 S.E.2d 9 (2002), the court noted in dicta that inclusion of a use as a special or conditional use in a particular district establishes a prima facie case that the use is in harmony with the general zoning plan, but that presumption may be rebutted in the hearing. *Id.* at 19, 565 S.E.2d at 20.

45. 149 N.C. App. 446, 560 S.E.2d 592 (2002).

46. 141 N.C. App. 19, 539 S.E.2d 18 (2000).

47. 115 N.C. App. 319, 444 S.E.2d 639, *review denied*, 337 N.C. 807, 449 S.E.2d 758 (1994).

48. 94 N.C. App. 764, 381 S.E.2d 349 (1989).

37. 356 N.C. 1, 565 S.E.2d 9 (2002). By contrast, the court in *Lefwich v. Gaines*, 134 N.C. App. 502, 511, 521 S.E.2d 717, 724-25 (1999), *review denied*, 351 N.C. 357, 541 S.E.2d 714 (2000), a case for damages resulting from the improper actions of a zoning official, the court allowed testimony from a plaintiff with experience in real estate matters to be used as a foundation for setting property values in the context of assessing damages.

38. 161 N.C. App. 625 589 S.E.2d 162 (2003).

39. 139 N.C. App. 269, 533 S.E.2d 525, *review denied*, 353 N.C. 280, 546 S.E.2d 397 (2000).

40. 141 N.C. App. 19, 539 S.E.2d 18 (2000).

41. *Id.* at 27, 539 S.E.2d at 23.

competent evidence before the board of adjustment regarding problems of noise, traffic congestion, crime, vandalism, and effects on property values to justify the denial of the permit.

On the other hand, in *Humane Society of Moore County, Inc. v. Town of Southern Pines*,⁴⁹ the court overturned the denial of a special use permit for an animal shelter. Noting that inclusion of the use as a possible conditional use in the district creates a prima facie finding of compatibility, the court found inadequate evidence in the record to rebut the presumption. The court found testimony of landscape architects as to noise and odor impacts to be speculative. The court noted that witnesses had also either ignored the fact that an airport, mini-storage warehouses, and another animal hospital were already located in the area or had conceded that the proposed use was in harmony with them. In *Ward v. Jusco*,⁵⁰ involving a special use permit for a bank with four drive-through windows, the court found that presentation of evidence regarding the mix of existing uses in the area, along with conditions imposed relative to street parking, lighting, tree protection, and vegetative buffers, sufficiently supported a finding that the project would not substantially injure adjoining properties. In *MCC Outdoor, LLC v. Town of Franklinton*,⁵¹ the court held that the fact neighbors could see a billboard from their property was insufficient to support a finding the signs would be incompatible with the neighborhood given the presence of other businesses and signs and an active rail line in the immediate area.

Conformity with the Comprehensive Plan

In *Vulcan Material Co. v. Guilford County Board of Commissioners*,⁵² the board of county commissioners denied a special use permit for a proposed rock quarry on the grounds that there was insufficient credible evidence to find that the use would be in conformity with the land use plan. The court of appeals held it sufficient that the record showed that the land use plan reserved the area for residential use.

Public Need

An ordinance may include a requirement that the applicant establish that the special use is "reasonably necessary" for the public health or welfare. In *SBA, Inc. v. City of Asheville*,⁵³ the plaintiff appealed the city council's denial of a special use permit for a 175-foot telecommunication tower. The court held that lack of evidence presented by the applicant regarding the feasibility of alternate sites or stealth technology (and the fact that significant coverage gaps would remain even with this tower) supported a conclusion that it had not been established that the telecommunication tower proposed was reasonably necessary at the proposed site.

49. 161 N.C. App. 625, 589 S.E.2d 162 (2003).

50. 166 N.C. App. 586, 603 S.E.2d 393 (2004).

51. 169 N.C. App. 809, 610 S.E.2d 794 (2005).

52. 115 N.C. App. 319, 444 S.E.2d 639, *review denied*, 337 N.C. 807, 449 S.E.2d 758 (1994).

53. 141 N.C. App. 19, 539 S.E.2d 18 (2000).

Traffic Impacts

Several cases illustrate the evidence needed to support a finding that a proposed special use permit would create adverse traffic impacts. In *Howard v. City of Kinston*,⁵⁴ the court upheld a finding that significant adverse impacts on traffic would endanger public health and safety. The findings were based on testimony from city planning staff that specified trip generation projections and from a neighbor who testified as to the number of children in the area and past experience in this particular area with the safety of walkers and cyclists. In *Ghidorzi Construction, Inc. v. Town of Chapel Hill*,⁵⁵ the court ruled that the council's denial of a special use permit for a ninety-one-unit development on a 15.2-acre tract because of effects on traffic safety was supported by substantial, material, and competent evidence, given the traffic studies and reports submitted by the petitioner and the town staff. The town council was not required to consider possible future road improvements in making its judgment. In *In re Goforth Properties, Inc.*,⁵⁶ the court held that evidence in the record regarding increased traffic counts and their effects on traffic safety at a nearby intersection and for nearby schools and fire stations constituted competent, material, and substantial evidence to support the council's finding that the proposed development would not maintain public health and safety.

By contrast, in *Triple E Associates v. Town of Matthews*,⁵⁷ the court held that the board may not rely on speculative traffic projections to make a finding regarding traffic congestion. The court reached a similar conclusion in a case involving preliminary plat approval, holding that speculative comments about the impact of traffic on children playing in the street was an inadequate basis for plat denial.⁵⁸

Survey of Special Use Permit Experience in North Carolina

Survey

The Institute of Government conducted a survey of North Carolina cities and counties to determine how they have actually used the special use permit authority.⁵⁹ The survey was mailed in

54. 148 N.C. App. 238, 558 S.E.2d 221 (2002).

55. 80 N.C. App. 438, 342 S.E.2d 545, *review denied*, 317 N.C. 703, 347 S.E.2d 41 (1986).

56. 76 N.C. App. 231, 332 S.E.2d 503, *review denied*, 315 N.C. 183, 337 S.E.2d 857 (1985).

57. 105 N.C. App. 354, 413 S.E.2d 305, *review denied*, 332 N.C. 150, 419 S.E.2d 578 (1992).

58. *Guilford Financial Services, LLC v. City of Brevard*, 356 N.C. 655, 576 S.E.2d 325 (2003) (*per curiam*, *adopting dissent in* 150 N.C. App. 1, 563 S.E.2d 27 (2002)).

59. Nathan Branscombe and Adam Levine, students in the Master of Public Administration Program at the University of North Carolina at Chapel Hill, coded all of the survey data and performed much of the initial statistical analysis of the data. Previous reports have addressed other information gathered in this same survey. See DAVID W. OWENS

October 2004 to all 548 incorporated cities and all 100 counties in the state. A second copy was mailed in November 2004 to all jurisdictions that had not responded to the initial mailing. E-mail reminders were sent in January 2005 to non-responding jurisdictions for which electronic contact information was available. A copy of the portion of the survey instrument related to special use permits is set out in Appendix 1.

The response rate was high and represents a strong cross-section of cities and counties in the state. In all, 407 of the 648 jurisdictions in the state responded, a 63 percent response rate (Table 1). Fifty-seven percent of the cities and 95 percent of the counties responded. The combined 2003 population of all responding jurisdictions totaled 7,612,972, some 90 percent of the state's total population (Table 2). A list of responding jurisdictions is set out in Appendix 2. Response from counties and from jurisdictions with larger populations was particularly strong. It should be noted that while the response rate from municipalities with populations under 500 was not strong, previous studies indicate that these very small towns are far less likely to have zoning ordinances.⁶⁰

Table 1 Survey Response by Jurisdiction Population

Population	No.	No. responding	Response rate (%)
<i>Municipalities</i>	548	315	57
< 1,000	231	92	40
1,000–9,999	249	160	64
10,000–24,999	43	36	84
≥ 25,000	25	24	96
<i>Counties</i>	100	95	95
< 10,000	11	9	82
≥ 10,000	89	86	97
All jurisdictions	648	410	63

Table 2 Population of Responding Jurisdictions

Jurisdiction	Total population	Population of responding jurisdictions	Percentage of population represented by responding jurisdictions
<i>Counties</i> (unincorporated areas)	4,019,839	3,755,257	93
<i>Municipalities</i>	4,398,251	3,857,715	88
Total	8,418,090	7,612,972	90

Zoning is widely used by the responding jurisdictions: 89 percent of the municipalities and 77 percent of the counties have adopted zoning ordinances.

The data reported below is based on the number of jurisdictions responding to each survey question.⁶¹ Since all respondents did not answer every question, when the number of respondents is not indicated within the table, the number of those actually responding to a particular query is noted (shown as $n = x$). Percentages are rounded to the nearest whole number.

Organization and Administration

Subject Matter

Special use permits are widely used by North Carolina cities and counties. Of the responding jurisdictions with zoning, 93 percent use special use permits. This high rate of use is consistent for cities and counties and for jurisdictions of all population sizes.

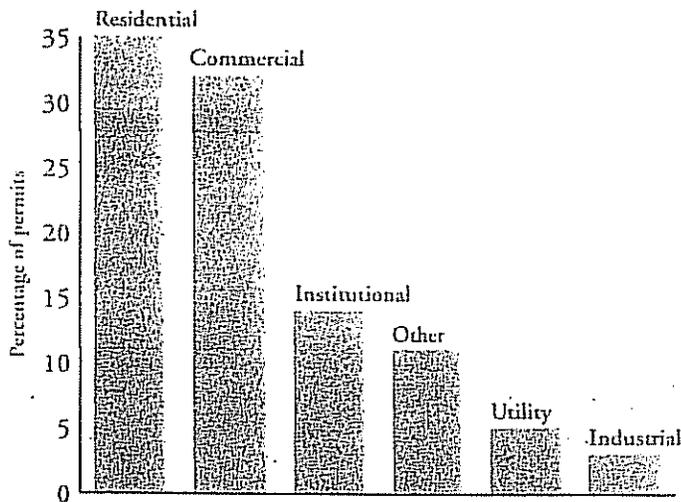
Special use permit requirements are most commonly applied to residential and commercial projects. As shown in Figure 1, two-thirds of the jurisdictions reported that these two types of uses were their most frequently requested special use permits. Within these two categories, respondents cited multifamily housing, manufactured housing, home businesses, and used car sales as the most frequently considered special use permits. Within the institutional use classification, the most commonly requested special use permits were for day care centers and places of worship; for utilities the most common requests were for telecommunication towers. Somewhat surprisingly, only 3 percent of the jurisdictions reported that industrial uses were their most frequently requested special use permits.

AND NATHAN BRANSCOME, AN INVENTORY OF LOCAL GOVERNMENT LAND USE ORDINANCES IN NORTH CAROLINA (School of Government, Special Series No. 21, May 2006); DAVID W. OWENS, THE NORTH CAROLINA EXPERIENCE WITH MUNICIPAL EXTRATERRITORIAL PLANNING JURISDICTION (School of Government, Special Series No. 20, Jan. 2006).

60. A 2002–03 survey of North Carolina cities and counties indicated 46 percent of cities with populations under 500 had a zoning ordinance, while 97 percent of those with populations over 1,000 had zoning. DAVID OWENS AND ADAM BRUGGEMANN, A SURVEY OF EXPERIENCE WITH ZONING VARIANCES 9 (School of Government, Special Series No. 18, Feb. 2004).

61. The tables and charts reported below are based on data compilation performed by Nathan Branscome.

Figure 1 Most Commonly Requested Special Use Permits



Note: $n = 245$

There is some modest movement toward making more projects subject to special use permit review. While a majority of cities and counties—54 percent—reported that there is not a trend toward making more types of land uses subject to a special use permit, 32 percent reported that there was a trend to having more special uses identified, and only 14 percent reported moving toward less use of the special use permit.

Decision-Making Body

The North Carolina statutes allow final decisions on special use permits to be made by the planning board, the board of adjustment, or a governing board (the city council or county board of commissioners). Cities and counties also have the option of assigning these decisions to multiple boards or use; by, for example, having some types of special uses decided by the board of adjustment and other types decided by the governing board. Table 3 shows how responding jurisdictions assign special use permit decision-making authority.

In most responding jurisdictions with special use permits—69 percent—the primary decision-making body for special use permits is the governing board. The assignment of this responsibility to the governing board is particularly common for more populous cities: 85 percent of the cities with populations of 10,000 or more assign special use permit decisions to the city council.

A majority of jurisdictions—53 percent—also assign at least some special use permit decisions to the board of adjustment. This is slightly more common for counties than cities (60 percent of counties as opposed to 50 percent of cities). Somewhat unexpectedly, this is also more common for small cities than for more populous ones. One might expect the high volume of cases would lead more populous cities to delegate this authority to a board other than the city council. However, 55 percent of the cities with populations between 1,000 and 10,000 assign some special use permit decisions to the board of adjustment, while only 35 percent of the cities with populations of 10,000 or more do so.

It is relatively uncommon for the planning board to be given any final decision-making power for special use permits, as only 4 percent of the jurisdictions do so. However, somewhat surprisingly given the strict quasi-judicial procedural requirements in North Carolina, a substantial majority of jurisdictions—67 percent—assign the planning board an advisory review of special use permits.

Most jurisdictions report that administration of special use permit requirements is not a major portion of the workload of the board that makes most special use permit decisions. Half of the jurisdictions report that this occupies less than a quarter of the board's workload (Table 4). There was little variation in this response based on the population of the jurisdiction, with the exception that this was even more the case for municipalities with small populations: 76 percent of the cities with populations under 1,000 reported that the principal board spent under 25 percent of its time on special use permits. This modest impact on workload is related to the fact that in many instances the board involved is the city council or county board of commissioners.

Table 3 Boards Making Advisory and Final Decisions

Population	Planning board		Board of adjustment		Governing board	
	Advisory (%)	Final decision (%)	Advisory (%)	Final decision (%)	Advisory (%)	Final decision (%)
<i>Municipalities</i> ($n = 255$)	71	2	7	50	2	71
≤ 999 ($n = 53$)	60	2	13	40	4	66
1,000–9,999 ($n = 142$)	74	3	7	55	1	66
10,000–24,999 ($n = 37$)	86	0	0	0	3	87
$\geq 25,000$ ($n = 23$)	57	4	0	44	0	83
<i>Counties</i> ($n = 73$)	52	10	6	60	1	62
$\leq 9,999$ ($n = 4$)	100	0	0	50	0	25
$\geq 10,000$ ($n = 69$)	49	10	6	61	1	61
All Jurisdictions ($n = 328$)	67	4	6	53	2	69

Table 4 Proportion of Board Workload in Past Twelve Months Occupied by Special Use Permits

Proportion of board's workload (%)	No. of jurisdictions	Percentage
< 25	140	50
25-49	66	24
50-75	35	13
76-89	0	0
> 90	38	14

Administration

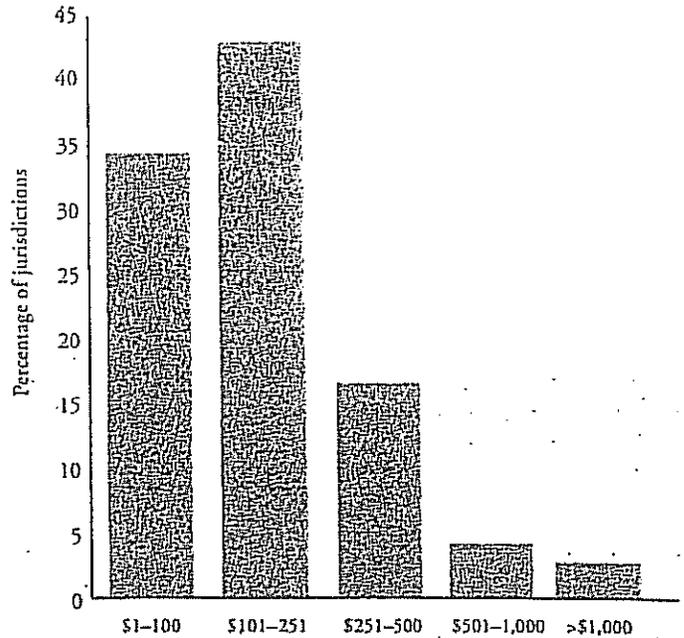
While most of the responding jurisdictions report that the boards deciding special and conditional use permits have considerable experience, only a minority of these boards have received any training in quasi-judicial decision-making.

Only one third of the jurisdictions have provided board training in quasi-judicial procedures within the past twelve months. County boards were slightly more likely to have undertaken training than city boards (42 percent for counties, 33 percent for cities). If a jurisdiction has a second board handling some of the special use permits, that second board is even less likely to have received training within the past year, as only 21 percent of all jurisdictions reported training for the second board. When training has been provided, the most popular means of doing so is a live session conducted either by in-house city and county staff and attorneys (54 percent) or with outside presenters (46 percent). Other means of training were also used, but less frequently: 30 percent provided books and other written material for training, and 18 percent used video tape, teleconferences, or other remote training.

On the other hand, many of the board members are experienced. A solid majority of the board members making special use permit decisions—56 percent—have more than three years of board experience. Only 17 percent of the board members have less than a year of experience.

Almost all of the responding jurisdictions—92 percent—charge a fee for processing a special use permit application. Most charge less than \$250. Figure 2 shows the distribution of fees charged. Less-populous jurisdictions were more likely to have lower application fees: 68 percent of cities with populations under 1,000 charged \$100 or less, while only 10 percent of cities with populations over 25,000 did so. On the other hand, 29 percent of cities with populations over 25,000 charged \$500 or more for an application, but only 3 percent of cities with populations under 1,000 did so.

Figure 2 Fees Charged, by Percentage of Jurisdictions



Note: n = 293

Nearly all local governments provide some staff assistance to applicants for special use permits. Eighty-nine percent of the responding jurisdictions reported that they not only provide application forms, but they also typically provide some other assistance to an applicant. The most common form of assistance is provision of information about permit standards, how to complete the application, and procedures for permit review. This information is provided by almost all jurisdictions (96 percent). A substantial majority—73 percent—also provide information on alternatives to a special use permit that could be considered by the applicant. A majority also provide some advice on the likelihood of success of the application. These responses are summarized in Table 5.

In virtually all North Carolina jurisdictions, the board making special use permit decisions is provided legal assistance. The city or county attorney usually provides this legal support. This is the arrangement used by 91 percent of the responding jurisdictions. Five percent of the jurisdictions always have separate counsel for special use permit cases, and 3 percent sometimes have outside counsel. Only 2 percent of the jurisdictions reported that they do not have a lawyer assist the board with special use permit cases.

Table 5 Staff Assistance to Applicants

<i>Staff assistance provided</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
Information about permit standards, forms, and/or procedures	261	96
Information on alternatives to a special or conditional use permit	199	73
Advice or information about the likelihood of success	167	61

For a substantial number of the jurisdictions, however, legal assistance on special use hearings is provided only on an "as needed" basis and may well not include the attorney's presence at the evidentiary hearing on the permit application. Nearly a third of the jurisdictions report that the attorney for the board rarely or never attends the hearing.⁶² Just over half of the jurisdictions report that the board's attorney is always or almost always in attendance at the hearing. Table 6 summarizes responses on board attorney attendance at the hearing.

Table 6 Frequency Attorney Who Represents the Decision-Making Board Attends the Hearing

<i>Frequency</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
Never	30	10
Rarely	63	21
Occasionally	26	9
Frequently	17	6
Almost always	47	16
Always	112	38
Varies	1	>1

62. Board attorneys attend the evidentiary hearing for special use permits more often than is the case for variance hearings, where half of the jurisdictions reported the board's attorney rarely or never attended. The fact that special use permit decisions are often made by governing boards most likely explains this difference.

Decision-Making Process

Standards Used

Most jurisdictions in North Carolina use some variation of the general standards for special use permits approved in *Kenan v. Board of Adjustment*.⁶³ Three standards are almost universally used—each by 90 percent of the responding jurisdictions. The standards require that the permitted activity (1) meet all ordinance requirements, (2) be harmonious or compatible with the surrounding neighborhood, and (3) not materially endanger public health or safety. Almost as many jurisdictions (84 percent) require that the use not substantially injure adjoining property values or be a public necessity. A strong majority of jurisdictions (69 percent) also require conformance with the comprehensive plan.

Most jurisdictions use only these general standards to guide special use permit decisions. A substantial minority—36 percent—also add specific standards for particular types of special uses. These results are set out in Table 7.

Table 7 Standards Included in Ordinances for Special Use Permits

<i>Standard</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
Meet all required conditions and specifications	300	92
Be in harmony with the area, or compatible with neighborhood	295	90
Not materially endanger public health or safety	292	89
Not substantially injure the value of adjoining property or be a public necessity	275	84
Be in general conformity with comprehensive plan	227	69
Additional specific standards for particular types of special use permits	118	36

63. 13 N.C. App. 688, 187 S.E.2d 496, *cert. denied*, 281 N.C. 314, 188 S.E.2d 897 (1972). See the discussion of this case and the standards above at p. 3.

Hearing Length

The typical hearing for a special use permit in North Carolina lasts anywhere from fifteen minutes to an hour. As shown in Table 8, 78 percent of the responding jurisdictions reported this was the standard length of their special use permit hearings. This has about the same distribution of hearing lengths as previously found for variance hearings.

Table 8 Length of Time the Board Spends on a Typical Hearing

Length of time	No. of jurisdictions	Percentage
< 15 minutes	20	7
15-30 minutes	115	39
31-60 minutes	113	39
> 60 minutes	45	15

There was no significant difference in the time it takes to conduct a special use permit hearing based on the population of the jurisdiction. One exception is that the least-populous cities, those with populations under 1,000, were somewhat more likely to have longer hearings. As shown in Table 9, 24 percent of the jurisdictions with populations under 1,000 reported that the typical hearing ran an hour or longer, while this was the case in only 13 percent of the cities with populations over 25,000. This same pattern of longer hearings in low-population municipalities was reported earlier for variance cases.

Presentation of Information

Since special use permit decisions are quasi-judicial, there must be substantial, competent, and material evidence in the record to support the board's findings as to whether the permit standards are met or not.⁶⁴ Substantial evidence is that which a reasonable person would regard as sufficient support for a specific result.⁶⁵

This evidence is presented to the board in an evidentiary hearing. Witnesses testify under oath and are subject to cross-examination. In addition, written materials (typically applications and staff reports) are usually part of the record and are submitted to the board. Other documentary evidence may be submitted as exhibits.

While the legal burden of production is on the applicant to present sufficient evidence to show that special use permit standards have been met, the city and county staff often play a critical role in presenting background information to the board regarding each application. Eighty percent of the responding jurisdictions reported that the staff makes a presentation at the evidentiary hearing to the decision-making board.

For the most part, the staff presentation consists of factual information about the application and the ordinance. Ninety-five percent provided factual information about the special use permit application and 85 percent provided information about the ordinance (generally regarding the permit standards to be met). A majority also provided photographic evidence (pictures or video) of the site. Interestingly, while these responses are remarkably similar to the information reported to be supplied by staff regarding variance petitions, city and county staffs are substantially more likely to make a recommendation regarding the decisions on special use permits. Sixty percent of the jurisdictions reported that the staff presents a recommended decision on special use permits, while in our 2002-03 survey just under 40 percent did so for variances. These results are shown in Table 10.

Table 9 Average Length of Municipal Special Use Hearing (percentage of cities of each population size reporting)

Length of hearing	Population of city			
	< 1,000 (n = 38)	1,000-9,999 (n = 126)	10,000-24,999 (n = 35)	≥ 25,000 (n = 23)
< 15 minutes	8	6	6	9
15-30 minutes	32	41	46	48
31-60 minutes	37	51	34	30
> 60 minutes	24	14	14	13

64. Jarrell v. Board of Adjustment, 258 N.C. 476, 128 S.E.2d 879 (1963); Tate Terrace Realty Investors, Inc. v. Currituck County, 127 N.C. App. 212, 488 S.E.2d 845, review denied, 347 N.C. 409, 496 S.E.2d 394 (1997); Baker v. Town of Rose Hill, 126 N.C. App. 338, 485 S.E.2d 78 (1997); Brummer v. Board of Adjustment, 81 N.C. App. 307, 343 S.E.2d 603, review denied, 318 N.C. 413, 349 S.E.2d 590 (1986); Jennewein v. City Council of Wilmington, 62 N.C. App. 89, 302 S.E.2d 7, review denied, 309 N.C.461, 307 S.E.2d 365 (1983); Long v. Winston-Salem Bd. of Adjustment, 22 N.C. App. 191, 205 S.E.2d 807 (1974).

65. See, e.g., Robertson v. Zoning Bd. of Adjustment, 167 N.C. App. 531, 605 S.E.2d 723 (2004), review denied, 359 N.C. 322, 611 S.E.2d 417 (2005); C G & T Corp. v. Board of Adjustment, 105 N.C. App. 32, 40, 411 S.E.2d 655, 660 (1992).

Table 10 Information Provided by Staff to Decision-Making Board

Type of information	No. of jurisdictions	Percentage for special use permits	Percentage for variances
Factual information on the application	248	95	98
Information/analysis of ordinance provision involved	223	85	85
Recommendation on decision	158	60	39
Video/photographs of site	147	56	57

Those persons with standing at a quasi-judicial hearing have the right to call witnesses to present evidence to the board. While the applicant or the applicant's agent is almost always present to present the application and answer questions about it, other witnesses may be called by the applicant or the neighbors. This is a fairly common occurrence in North Carolina special use permit hearings. Over a third of the jurisdictions—36 percent—reported that such witnesses are called frequently or more often, while only a quarter of the jurisdictions reported this rarely or never happens. Table 11 reports the data on appearance of witnesses other than the applicant and staff.

Table 11 Frequency a Person Other than the Applicant Appears as a Witness

Frequency	No. of jurisdictions	Percentage
Never	14	5
Rarely	60	21
Occasionally	113	39
Frequently	57	20
Almost always	30	10
Always	19	6

Given the importance of securing sufficient evidence to support findings that the standards for a special use permit have or have not been met, the survey asked a series of questions about how specialized information is presented to the decision-making board. We asked about the appearance of expert witnesses, the submission of documentary evidence, and the particular types of evidence submitted regarding impacts on property values and neighborhood compatibility.

Key factual findings cannot be based upon the unsupported allegations and opinions of nonexpert witnesses, even if the witnesses are neighboring property owners. Therefore the applicants or opponents may call expert witnesses to offer opinions on impacts on property value, neighborhood compatibility, or traffic. For the most part the appearance of expert witnesses is still relatively uncommon in North Carolina special use permit hearings. Fifty-five percent of the jurisdictions

report that expert witnesses either never or only rarely appear. However, 16 percent of the jurisdictions report that experts appear frequently or more often. This is a marked increase in the frequency of expert testimony compared to the 2002–03 survey of zoning variance experience, to which only 8 percent of the jurisdictions reported that experts appeared frequently or more often. These results are summarized in Table 12.

Table 12 Frequency an Expert Witness Appears

Frequency	No. of jurisdictions	Percentage for special use permits	Percentage for variance petitions
Never	36	12	23
Rarely	126	43	46
Occasionally	85	29	23
Frequently	31	11	7
Almost always	10	3	1
Always	6	2	0

As a general rule, the person asserting a particular fact should be physically present before the board to testify on that matter. Purported statements by those who are not present and letters from those who are concerned but not present, as well as petitions and affidavits from those not in attendance are all hearsay evidence. While hearsay evidence can be presented, a board may well accord it considerably less weight. Critical factual findings must not be based solely on hearsay evidence.⁶⁶

The court in several cases has upheld the admission and consideration of letters from persons not testifying at the hearing. In particular letters from government officials that provide unbiased information that is within the specialized professional knowledge of that official or that is based on records or information kept by the official's agency in the normal course of business are generally admitted. For example, a letter from a state agency may be considered even though the author of the letter is not present if the recipient of the letter is present and

66. Jarrell v. Board of Adjustment, 258 N.C. 476, 481, 128 S.E.2d 879, 883 (1963).

testifies under oath and subject to cross-examination.⁶⁷ The court has also allowed consideration of technical reports on noise impacts from a civil engineer who presented test results from another consultant.⁶⁸

It remains uncommon, however, for boards to receive documentary evidence from experts or governmental officials who are not present at the hearing to testify about that document. Seventy percent of the jurisdictions report that this never or only rarely occurs. Table 13 sets out this information.

Table 13 Written Evidence from Expert Witness or Government Official Not Present at Hearing

Frequency	From expert an expert (%)	From a government official (%)
Never	20	26
Rarely	50	43
Occasionally	22	18
Frequently	6	8
Almost always	1	3
Always	3	2

Note: n = 291

When special use permits are contentious, they often involve disputes as to the effect of the project on the character of the neighborhood and on neighboring property values. Responding jurisdictions confirmed that these are the most difficult standards for decision-making boards to apply. When asked if there was any one standard that posed more difficulty than others for their boards, nearly a third identified property value impacts and a quarter identified neighborhood compatibility. These responses are summarized in Table 14.

Table 14 Most Difficult Standards to Apply

Standard	No. of jurisdictions	Percentage
Not substantially injure the value of adjoining property or be a public necessity	64	30
Be in harmony with the area or compatible with the neighborhood	54	25
Meet all required conditions and specifications	36	17
Be in general conformity with the comprehensive plan	30	14
Not materially endanger public health or safety	23	11
Other specific standards	10	5

Given the importance and difficulty of application for these two standards, the survey explored what evidence is typically presented to address property values and neighborhood compatibility. For the most part, the evidence on both of these issues that is most often presented is lay testimony from the applicant and the neighbors. A majority of responding jurisdictions report receipt of evidence on property value from the neighbors (64 percent) and the owner or developer (59 percent). A substantial number of local governments also typically get testimony on property value impacts from real estate professionals. Thirty-nine percent reported testimony on this issue from real estate appraisers and nearly a quarter from real estate agents. Table 15 sets out the responses to this query. When the issue is whether a proposed project is compatible with the surrounding neighborhood, nearly two-thirds of the responding jurisdictions report that evidence on consistency with the adopted plans is typically presented in addition to applicant and neighbor testimony. A substantial number—41 percent—also report testimony from professional planners on this point. These results are set out in Table 16.

67. *Whiteco Outdoor Advertising v. Johnston County Bd. of Adjustment*, 132 N.C. App. 465, 513 S.E.2d 70 (1999); *Tare Terrace Realty Investors, Inc. v. Currituck County*, 127 N.C. App. 212, 488 S.E.2d 845 (1997), *review denied*, 347 N.C. 409, 496 S.E.2d 394 (1997) (allowing consideration of written comment from school superintendent about impacts of proposed project on school capacity).

68. *Harding v. Board of Adjustment*, 170 N.C. App. 392, 612 S.E.2d 431 (2005). Those subsequently complaining had an opportunity to cross-examine the witness and to offer rebuttal testimony. They also made no objection to the testimony at the hearing.

Table 15 Evidence Typically Presented to Establish Property Value Impacts

Type of evidence	No. of jurisdictions	Percentage
Testimony from neighbors	154	64
Testimony from owner or developer of the property	143	59
Evidence from a real estate appraiser	93	39
Evidence from a real estate agent	58	24
No specific evidence	54	22

Table 16 Evidence Typically Presented to Address Neighborhood Compatibility

Type of evidence	No. of jurisdictions	Percentage
Testimony from neighbors	197	74
Testimony from owner or developer of the property	182	68
Information on consistency with adopted plans	170	64
Testimony from a professional planner	110	41
No specific evidence	23	9

Given the legal complexities involved with presentation of competent, material, and relevant evidence to boards making special use permit decisions, one would expect that the applicant and opponents would frequently have legal representation at special use permit hearings. This is not the case. Half of the jurisdictions report that attorneys rarely or never appear at these hearings on behalf of applicants or opponents and another third report that this only occasionally happens. Only 4 percent report that attorneys always or almost always appear for the parties in these hearings. The results are set out in Table 17. These responses were related to population size—the more populous a jurisdiction, the more likely it is for attorneys to appear on behalf of parties to these hearings.

Table 17 Appearance of Attorney for an Applicant or Opponent

Frequency	No. of jurisdictions	Percentage
Never	35	12
Rarely	112	39
Occasionally	100	34
Frequently	32	11
Almost Always	8	3
Always	4	1

North Carolina cities and counties do report that special use permit proceedings are becoming more formal and legalistic over time. Over half of the responding jurisdictions—52 percent—report a trend to more formal hearings over the past five years, compared to only 6 percent noting a trend to less formality. Thirty percent noted no changes in the formality of the proceedings.

Preparation of Findings

A board making a quasi-judicial decision must explicitly set forth what it determines to be the essential facts upon which its decision is based. The findings of fact that are adopted must be sufficiently detailed to inform the parties and a reviewing court as to what induced the decision. A conclusory statement that a standard has or has not been met is insufficient.

The most common means used to prepare the findings is to include them in the minutes of the board making the decision. Fifty-two percent of the jurisdictions responding indicate that the initial draft of the written findings of fact regarding a variance decision is prepared as part of the minutes of the board meeting. The other two means of producing the findings that are used by a substantial number of jurisdictions are preparation of draft findings by the staff, either prior to the hearing (40 percent) or after the hearing (28 percent). Table 18 sets out the full range of options reported. (The number of options employed add to more than the total number of respondents and the percentages add to more than 100 percent because jurisdictions sometimes use alternate methods and were given the option of checking all options they had employed in the past year.)

Table 18 Preparation of First Draft of Findings

<i>Method</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
Initial findings are prepared as part of the minutes of the meeting	151	52
Drafts are proposed prior to or at the hearing by staff	116	40
Initial findings are written after the decision by the zoning staff	82	28
Drafts are proposed prior to or at the hearing by applicants or opponents	41	14
Initial findings are written after the decision by a board member	30	10
Initial findings are written after the decision by the board's attorney	21	7
Drafts are proposed prior to or at the hearing by the board's attorney	9	3

Length of Process

North Carolina cities and counties report that virtually all special use permit applications are decided within ninety days. Eighty percent of the responding jurisdictions report the decision is reached for typical permit applications within sixty days. Only 1 percent of the jurisdictions report a longer time for determining a typical application. These decision-making periods are slightly longer than was reported in 2002–03 for variance decisions, when half of the jurisdictions reported making the typical decision in less than thirty days. These results are shown in Table 19. There was not a substantial difference in permit processing times based on the population size of the jurisdiction, with one exception: 9 percent of cities with populations over 25,000 reported that the time for deciding a typical special use permit was ninety days or more.

Table 19 Typical Time Period from Application to Decision

<i>Time period</i>	<i>No. of jurisdictions</i>	<i>Special use permit percentage</i>	<i>Variance percentage</i>
< 30 days	73	25	52
31 to 60 days	158	55	45
61 to 90 days	55	19	3
> 90 days	4	1	0

Decisions Made and Factors Influencing Decisions

Outcomes

Most special use permit applications in North Carolina are approved. Responding jurisdictions reported that in the most recent twelve-month period for which they had complete records, there were 2,207 special use permit applications. Of these, 1,907 were granted. This is an 86 percent approval rate. By way of comparison, North Carolina cities and counties reported a similar volume of variance petitions in 2002–03, but a somewhat lower approval rate—72 percent of 1,806 petitions approved.

There was no difference in the approval rate between cities and counties, nor was there any significant variation based on the population of the jurisdiction. Cities with smaller populations did have substantially more applications per capita than their more populous counterparts did. The special use permit application rate was 3.07 per thousand citizens for cities with populations under 1,000, 1.12 per thousand for cities with populations between 1,000 and 9,999, and 0.4 per thousand for cities with populations over 10,000.

For the most part, the type of land use involved does not have a significant impact on the outcome of the decision. As shown in Table 20, the distribution of types of special use permit most frequently approved and most frequently denied closely tracks the frequency of applications. There are several notable exceptions to this general rule. Industrial and commercial land uses are more likely than other land uses to be denied. Three percent of the jurisdictions report that industrial uses are their most common applications and, 8 percent report that industrial uses are their most common denial. Landfill permits were cited as the most common of the industrial denials. For commercial uses, 32 percent of the jurisdictions reported that these were their most common applications, while 40 percent reported that they were their most common denials. The commercial uses most frequently noted for denial were junk and salvage yards, dog kennels, and home businesses.

Table 20 Special Use Permit Decisions by Land Use Type

Type	<i>Most commonly requested permits (%)</i>	<i>Most commonly approved permits (%)</i>	<i>Most commonly denied permits (%)</i>
Residential	35	36	32
Commercial	32	33	40
Institutional	14	11	7
Other	11	11	11
Utility	5	4	3
Industrial	3	3	8

Note: $n = 245$

It is very common for individual conditions to be imposed on special use permits. A substantial majority—62 percent—of the jurisdictions reported that conditions are frequently or more often imposed on individual special use permits. Only 10 percent of the jurisdictions report that this is never or only rarely done. Table 21 sets out the responses on this point.

Table 21 Frequency Conditions Are Imposed

Frequency	<i>No. of jurisdictions</i>	<i>Percentage</i>
Never	10	3
Rarely	21	7
Occasionally	82	28
Frequently	77	27
Almost always	67	24
Always	32	11

This raises the question of how records of the permits and conditions are maintained. The most common method is the maintenance of files on each permit by the city or county. A minority of jurisdictions also records the permit in the chain of title or enters the information in a geographic information system. Table 22 sets out the responses on this point.

Table 22 Maintenance of Records on Special Use Permits

Type of records	<i>No. of jurisdictions</i>	<i>Percentage</i>
Permit files are maintained by city/county	280	92
Details are entered into board minutes	240	79
Permit is recorded in chain of title (Register of Deeds)	54	18
Information on permit is entered into GIS	47	14

Merits of the Application

Most city and county boards in North Carolina base decisions on special use permit applications on the standards for decision set out in the ordinance, at least in the view of the staff administering the ordinances. Two-thirds of the jurisdictions report the decision is either always or almost always based on these standards. Table 23 provides the details for this response.

Table 23 Perceived Adherence of Decisions to Ordinance Standards

Frequency	<i>No. of jurisdictions</i>	<i>Percentage</i>
Never	0	0
Rarely	8	3
Occasionally	35	12
Frequently	54	18
Almost always	131	44
Always	72	24

Note: $n = 300$

There was only modest variability in this response based on the population of the jurisdiction. As Table 24 indicates, there was a modest decrease in the perceived adherence to the ordinance standards in mid-sized cities. Just over half the cities with populations in the 10,000 to 24,000 range reported that the board always or almost always adhered to ordinance standards, compared to over 70 percent of the smallest and largest cities reporting that level of adherence.

Table 24 Perceived Adherence of Decisions to Ordinance Standards by Municipal Population

	<i>Population of municipality</i>			
	<i>≤ 999</i>	<i>1,000–9,999</i>	<i>10,000–24,999</i>	<i>≥ 25,000</i>
Never	0%	0%	0%	0%
Rarely	8%	2%	3%	0%
Occasionally	5%	13%	17%	4%
Frequently	15%	16%	28%	22%
Almost always	39%	46%	33%	57%
Always	33%	21%	19%	17%

Note: *n* = 228

The jurisdictions also report general adherence to the standards in the ordinance when boards impose conditions on permit approvals. When asked if specific conditions are based on the standards in the ordinance, over two-thirds of the responding jurisdictions report this is always or almost always done. Table 25 sets out the responses to this query.

Table 25 Adherence of Permit Condition to Ordinance Standards

<i>Frequency</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
Never	4	1
Rarely	14	5
Occasionally	48	17
Frequently	56	19
Almost always	115	40
Always	53	18

To the extent there is a trend in North Carolina, most jurisdictions report that boards deciding special use permits over the past five years have more strictly applied the standards for decisions set out in the ordinance. Forty-two percent of the jurisdictions reported a trend toward more-strict application while only 3 percent were trending toward less-strict application. Forty-one percent noted no changes over the past five years, and 14 percent said trends have gone both ways at different times.

When a special use permit is denied, the most common basis for denial is that the project would be incompatible with the surrounding neighborhood. A third of those responding to this question indicated that their jurisdiction had not denied a special use permit. Where there had been a denial, half reported that neighborhood incompatibility was more likely than any

other standard to be the basis of the denial. The second most common basis for denial was a failure of the project to meet all of the ordinance's required conditions and specifications. Somewhat surprisingly, property value impacts, public safety, and plan compliance only occasionally led to permit denials. Only 8 percent of the jurisdictions reported that property value impacts were most likely to cause a denial; another 8 percent reported denials for endangering public health and safety, and a mere 3 percent noted plan inconsistency as the most likely basis for denial. These results are set out in Table 26.

Table 26 Do Conditions Imposed Adhere to Ordinance Standards?

<i>Standard</i>	<i>Percentage</i>
Be in harmony with the area or compatible with neighborhood	51
Meet all required conditions and specifications	23
Not substantially injure the value of adjoining property or be a public necessity	8
Not materially endanger public health or safety	8
Other specific standards	8
Be in general conformity with the comprehensive plan	3

Note: *n* = 281

Other Factors

The survey asked zoning administrators and planners about a variety of factors beyond compliance with the standards in the ordinance that might influence the outcome of special use permit decisions. The appearance of neighbors to support or oppose an application was reported to be a significant factor, the presence of an attorney to assist the applicant or opponent was less of a factor, and the identity of the applicant and opponents was deemed not to be significant.

Seventy-nine percent of the jurisdictions reported that having neighbors present to support an application increased the likelihood the permit would be issued. This response was consistent for cities and counties of all population sizes. Similarly, 78 percent of the jurisdictions reported that neighbors appearing to oppose a project reduced the chances a special use permit would be approved. Again, this was consistent for cities and counties of all population sizes.

The presence of an attorney to represent either the applicant or an opponent was deemed to be a significant factor, but much less so than the presence of neighbors. While 59 percent of the jurisdictions reported this had no effect on the outcome of the permit decision, a substantial minority—39 percent—reported having an attorney increased the chances of success for the represented party.

The value of having an attorney was considered more important in more populous cities. Fifty-two percent of cities with populations over 25,000 reported that having an attorney increased the likelihood of success for the represented party; only 30 percent of the jurisdictions with populations under 1,000 reported this to be the case.

While the parties to these hearings sometimes complain that the staff recommendation has a disproportionate impact on outcomes, survey respondents did not report this to be the case. The responding jurisdictions report that staff recommendations on special use permits were not particularly influential. Fifty-one percent of the jurisdictions report that the decision-making board rarely or never follows staff recommendations on special use permit applications. Another 32 percent report that the board only occasionally fails to follow staff recommendations. This is generally seen to be the case regardless of whether staff recommends approval or denial of the special use permit. Half of the jurisdictions reported that whether the board followed a staff recommendation was unrelated to whether the staff was recommending approval or denial. However, 44 percent did report that the board was more likely to deny a permit based on the staff recommendation; only 6 percent reported approval was more likely if staff recommended such.

The overwhelming majority of responding jurisdictions reported that the identity of the applicant and neighbors usually has no impact on the outcome of special use permit applications. Fifty-nine percent of the jurisdictions say this rarely or never is a factor in the outcome, and another 30 percent say it arises only occasionally. These results are set out in Table 27. By virtually the same margins, responding jurisdictions reported that sympathy for the personal circumstances of the applicant or the opponents usually has no impact on special use permit decisions. These results are substantially similar to the response on favoritism in variance decisions, though there was modestly less favoritism reported with variances.

Table 27 Does Favoritism for Applicant or Opponents Influence Permit Decision?

<i>Frequency</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
Never	70	24
Rarely	104	35
Occasionally	89	30
Frequently	27	9
Almost always	4	1
Always	0	0

Note: $n = 294$

Judicial Appeals

Very few special use permit decisions are appealed to the courts. Ninety percent of the jurisdictions reported that none of their special use permit decisions were appealed in the past year. The actual number of cases appealed was also very small. Of the thirty jurisdictions reporting a judicial appeal, twenty-five had only a single case appealed. The jurisdictions reported only thirty-six individual appeals in the past year. Given a reported 2,207 applications decided in this period, this is a judicial appeal rate of only 1.6 percent. By comparison, these jurisdictions in 2002–03 reported a 2.5 percent appeal rate for their variance decisions.

The jurisdictions reported twelve cases reaching a final superior court resolution in the past year. The board's decision on the special use permit was upheld by the court in a substantial majority of the cases—the trial court upheld the decision in nine cases (64 percent), reversed the board in three (21 percent), and remanded the matter for further board consideration in two cases (14 percent).

Appendix A

Survey Instrument

[Note: The portion of the survey regarding special use permits that was sent to municipalities is set out below. Questions 1 through 10 dealt with other aspects of development regulation. The same questions were sent to counties, with appropriate adjustments in terminology (e.g., "county boards of commissioners" rather than "city council").

For the purposes of this survey, please consider the terms "special use permit," "conditional use permit," and "special exceptions" to mean the same thing.

11. Does your zoning or development ordinance require a special or conditional use permit or special exception for any land uses?
- No. Thank you. You may skip the remainder of the survey.
- Yes

12. Local governments have flexibility in assigning decision-making responsibility for special and conditional use permits. Please indicate how this is done in your jurisdiction.

Type of board	Makes advisory recommendation	Makes final decision on either SUP or CUP
Planning board		
Board of adjustment		
City council		
Other board: _____		
Other board: _____		

13. Has the board that makes final decisions on special or conditional use permits received any training on zoning law or how to conduct quasi-judicial cases in the past twelve months? [If more than one board makes final decisions on special or conditional use permits in your jurisdiction, please answer for each board separately for questions 13-16.]

_____ (board) _____ (board)

Yes Yes

No No

14. How many of the members of the board have served:
- _____ (board) _____ (board)
- less than one year less than one year
- one to three years one to three years
- more than three years more than three years

15. If they did receive such training on legal/quasi-judicial procedures, what type of training did they have? (check all that apply)

_____ (board)

Live training from an outside source (IOG, COG, others)

Live training from city/county staff or attorneys

Video tape, teleconference, or other remote training

Books and written materials provided

Other. Please specify: _____

_____ (board)

Live training from an outside source (IOG, COG, others)

Live training from city/county staff or attorneys

Video tape, teleconference, or other remote training

Books and written materials provided

Other. Please specify: _____

16. Is a fee currently charged for a special or conditional use permit application?

- No
- Yes. The amount of the fee is \$ _____

17. What standards are included in your ordinance that special and conditional use permits have to meet in order to be approved? (check all that apply)

- Not materially endanger the public health or safety
- Meet all required conditions and specifications
- Not substantially injure the value of adjoining property or be a public necessity
- Be in harmony with the area in which it is located or compatible with surrounding neighborhood
- Be in general conformity with the comprehensive plan
- Other general standards (please specify) _____
- Additional specific standards for particular types of special or conditional use permits _____

For the following questions about special and conditional use permits, please use the most recent 12 month period that is convenient for you or for which you have readily available information (you can use the past calendar year, fiscal year, or most recent 12 months). If you do not have precise numbers readily available, please make your best estimate where possible. The period you considered in completing this information was: _____ to _____.

18. How many special and conditional use permits applications were filed? _____

19. How many of these were approved? _____

20. What were the three most common land uses for which special and conditional uses permits were requested in your jurisdiction in this 12-month period?

1. _____ Most common
2. _____ Second most common
3. _____ Third most common

21. Of those special and conditional use permits requested in this period, what were the three most common land uses for which the permit application was approved?

1. _____ Most common
2. _____ Second most common
3. _____ Third most common

22. Of those special and conditional use permits requested in this period, what were the three most common land uses for which the permit application was denied?

1. _____ Most common
2. _____ Second most common
3. _____ Third most common

23. Is there a trend in your jurisdiction towards requiring more or fewer types of land uses to receive special or conditional use permits?

- More
- Fewer
- No trend

24. Does the staff (either routinely or upon request) provide information other than required forms to persons considering filing for a special or conditional use permit?

- No
- Yes. If yes, what type of information is provided (check all that apply):
 - Information about permit standards, forms, and/or procedures
 - Advice or information about their likelihood of success
 - Information on alternatives to a special or conditional use permit
 - Other. Please specify: _____

25. What is the typical amount of time the decision-making board spends on an individual special or conditional use permit (including hearing evidence, debate, and making a decision)?

- Less than 15 minutes
- 15 to 30 minutes
- 31 to 60 minutes
- More than 60 minutes

26. Does the city staff (including other staff working for the city, such as COG staff or private consultant) make a presentation to the decision-making board regarding special or conditional use permits?

- No
- Yes. If yes, does the presentation include: (Check all that apply)
 - Factual information regarding the application
 - Information/analysis of ordinance provisions involved
 - Video or photographs of site
 - Recommendation regarding decision
 - Other. Please specify: _____

27. If staff recommendations are made on special or conditional use permits, how often is the board's decision consistent with that recommendation?

- Never
- Rarely
- Occasionally
- Frequently
- Almost Always
- Always

28. If staff recommendations are made on special or conditional use permits, is the board more likely to agree with a recommendation to grant it than they are a recommendation to deny it?

- Yes
 No
 No difference based on recommendations to grant or to deny

29. How often does a person other than the applicant and/or city/county staff members appear as a witness in an individual special or conditional use case?

- Never
 Rarely
 Occasionally
 Frequently
 Almost Always
 Always

30. How often does an expert witness -- such as a real estate appraiser, traffic engineer, or other professional -- testify in person in an individual special or conditional use permit case?

- Never
 Rarely
 Occasionally
 Frequently
 Almost Always
 Always

31. How often is written material from an expert -- such as a real estate appraiser, traffic engineer, or other professional -- submitted for the hearing record without the expert attending the hearing in person?

- Never
 Rarely
 Occasionally
 Frequently
 Almost Always
 Always

32. How often is written material from a governmental official -- such as public works or transportation staff, school officials, or a state or federal agency -- submitted for the hearing record without the official attending the hearing in person?

- Never
 Rarely
 Occasionally
 Frequently
 Almost Always
 Always

33. If impact on property values is a standard for a special or conditional use permit, what evidence is typically presented to the board to establish those impacts? (check all that apply)

- Evidence from a real estate appraiser
 Evidence from a real estate agent
 Testimony from owner or developer of the property
 Testimony from neighbors
 No specific evidence
 Other (please specify) _____

34. If compatibility with the surrounding neighborhood is a standard for a special or conditional use permit, what evidence is typically presented to the board to address compatibility? (check all that apply)

- Information of consistency with adopted plans
 Testimony from a professional planner
 Testimony from owner or developer of the property
 Testimony from neighbors
 No specific evidence
 Other (please specify) _____

35. How often do attorneys appear on behalf of the applicant (or) an opponent to a special or conditional use permit?

- Never
 Rarely
 Occasionally
 Frequently
 Almost Always
 Always

36. Who provides legal representation for the board that makes special or conditional use permit decisions?

- City attorney
 Separate attorney always represents board
 Separate attorney represents the board for some cases

37. How often does the attorney who represents the board (either the city attorney or separate attorney who represents the board) attend special or conditional use permit hearings?

- Never
 Rarely
 Occasionally
 Frequently
 Almost Always
 Always

38. How often are project specific conditions imposed on special or conditional use permits that are issued?

- Never
 Rarely
 Occasionally
 Frequently
 Almost Always
 Always

39. How does your jurisdiction maintain records on special and conditional use permits that are issued?

- Permit is recorded in chain of title (with Register of Deeds)
- Information on permit is entered into GIS system
- Permit files are maintained by city
- Details on permit are entered into board minutes
- Other (please specify) _____

40. How is the first draft of the written findings of fact regarding a special or conditional use permit decision prepared? (check more than one if applicable)

- Drafts are proposed prior to or at the hearing by the applicant or opponents
- Drafts are proposed prior to or at the hearing by the staff
- Drafts are proposed prior to the hearing by the board's attorney
- Initial findings are written after the decision by the zoning staff
- Initial findings are written after the decision by the board's attorney
- Initial findings are written after the decision by a board member
- Initial findings are prepared as part of the minutes of the meeting
- Other. Please specify: _____

41. What is the typical period from the time a completed special or conditional use permit application is filed to the time a decision is made?

- Less than 30 days
- 31 to 60 days
- 61 to 90 days
- More than 90 days

42. What proportion of the total workload of the board that makes final decisions is taken up by work on special or conditional use permit applications?

- | | |
|--|--|
| _____ (board) | _____ (board) |
| <input type="checkbox"/> less than 25% | <input type="checkbox"/> less than 25% |
| <input type="checkbox"/> 25-49% | <input type="checkbox"/> 25-49% |
| <input type="checkbox"/> 50-74% | <input type="checkbox"/> 50-74% |
| <input type="checkbox"/> 75% or more | <input type="checkbox"/> 75% or more |

43. Were any of the special or conditional use permit decisions made by your board during this 12-month period appealed to superior court?

- No
- Yes. If so, how many? _____

44. Have there been any superior court decisions during this 12-month period on special or conditional use permit decisions that were appealed to court?

- No
- Yes. If yes, how many court decisions:
 - Upheld the board's decision
 - Reversed the board's decision
 - Remanded the case for further board action.

The following questions ask for your subjective evaluation. Responses to subjective questions and evaluations will not be reported in a way that identifies individual respondents. Please give us your reactions and experience in your current jurisdiction relative to these observations that are sometimes made about special and conditional use permits.

45. Do you feel that special or conditional use permit decisions in your jurisdiction are primarily based on the legal standards for the permits set out in the ordinance?

- Never
- Rarely
- Occasionally
- Frequently
- Almost Always
- Always

46. Is there a particular special or conditional use permit standard that is more difficult than the others for your board to understand and apply? (check only one)

- Not materially endanger the public health or safety
- Meet all required conditions and specifications
- Not substantially injure the value of adjoining property or be a public necessity
- Be in harmony with the area in which it is located or compatible with surrounding neighborhood
- Be in general conformity with the comprehensive plan
- Other _____
_____ (please specify)

47. Are the specific conditions imposed on individual permits tied to compliance with the standards for approval set out in the ordinance?

- Never
- Rarely
- Occasionally
- Frequently
- Almost Always
- Always

48. For those special and conditional use permits that are denied by your board, is there a particular standard that is more likely than others to be the basis for the denial? (check only one)

- Not materially endanger the public health or safety
- Meet all required conditions and specifications
- Not substantially injure the value of adjoining property or be a public necessity
- Be in harmony with the area in which it is located or compatible with surrounding neighborhood
- Be in general conformity with the comprehensive plan
- Other _____
_____ (please specify)

49. Do you think the appearance of an attorney at the hearing to represent the applicant or opponent affects the outcome of the decision?

- Reduces chances for success for represented party
- Has no effect on outcome
- Increases chances for success for represented party

50. Do you think the appearance of neighbors at the hearing to support the application affects the outcome of the decision?

- Reduces chances of approval
- Has no effect on outcome
- Increases chances of approval

51. Do you think the appearance of neighbors at the hearing to oppose the application affects the outcome of the decision?

- Reduces chances of approval
- Has no effect on outcome
- Increases chances of approval

52. Observers have made these criticisms of the special and conditional use process in the past. In your experience, how often do the following factors come into play in these decisions in your jurisdiction?

- a. Favoritism based on the identity of the applicant or opponent.
 - Never
 - Rarely
 - Occasionally
 - Frequently
 - Almost Always
 - Always

b. Sympathy for the personal circumstances of the applicant leading to granting applications that do not meet the legal standards.

- Never
- Rarely
- Occasionally
- Frequently
- Almost Always
- Always

c. Sympathy for opponents leading to denial of applications that meet the legal standards.

- Never
- Rarely
- Occasionally
- Frequently
- Almost Always
- Always

53. Have you noticed an overall trend in the past five years as to how your board addresses special and conditional use permit applications?

- More strictly applying standards
- Less strictly applying standards
- Sometimes more strict, sometimes less
- No trend

54. In general, over the past five years have special and conditional use permit proceedings in your jurisdiction become:

- More formal and legalistic
- Less formal and legalistic
- Sometimes more formal, sometimes less
- No change

If you would like to add any additional comments about special and conditional use permits or the process for handling them in your jurisdiction, please do so in the space below.

We would also appreciate your sending us a copy of special and conditional use permit forms, informational handouts you use regarding special and conditional use permits, statements about the process that are read at the beginning of hearings, or other material you have that may be relevant to this study. These materials may be posted on our website as examples others can consider.

Thanks again for your assistance with this study.

Appendix B

List of Jurisdictions Responding to the Survey

Municipalities				
Aberdeen	Burnsville	Drexel	Greensboro	Landis
Albemarle	Cajah Mountain	Duck	Greenville	Lasker
Alliance	Carolina Beach	Durham	Grifton	Lattimore
Angier	Carolina Shores	East Laurinburg	Halifax	Laurel Park
Ansonville	Carrboro	Eden	Hamlet	Laurinburg
Apex	Carthage	Edenton	Harrellsville	Leland
Archdale	Cary	Elizabeth City	Harrisburg	Lenoir
Asheboro	Catawba	Elizabethtown	Havelock	Lewisville
Asheville	Centerville	Elkin	Henderson	Lexington
Askeville	Chadbourn	Elk Park	Hendersonville	Liberty
Atkinson	Chapel Hill	Elm City	Hertford	Lincolnton
Atlantic Beach	Charlotte	Elon	Hickory	Linden
Autryville	Cherryville	Eureka	High Point	Locust
Badin	Chimney Rock	Fairmont	Highlands	Lowell
Bald Head Island	China Grove	Fairview	Hildebran	Lucama
Banner Elk	Claremont	Faison	Hillsborough	Lumber Bridge
Beaufort	Clayton	Faith	Hoffman	Lumberton
Beech Mountain	Clemmons	Farmville	Holly Springs	Macclesfield
Belwood	Cleveland	Fayetteville	Hope Mills	Madison
Bermuda Run	Clinton	Flat Rock	Huntersville	Maggie Valley
Bessemer City	Coats	Fletcher	Indian Trail	Maiden
Bethania	Columbia	Forest City	Jackson	Manteo
Beulaville	Columbus	Four Oaks	Jacksonville	Marion
Biltmore Forest	Como	Foxfire Village	Jamesville	Mars Hill
Blowing Rock	Concord	Franklin	Jefferson	Matthews
Bogue	Connelly Springs	Franklinton	Kannapolis	Maxton
Boiling Spring	Conover	Fuquay-Varina	Kernersville	Mebane
Lakes	Conway	Gamewell	Kill Devil Hills	Midland
Bolivia	Cornelius	Garner	King	Mills River
Boone	Cove City	Gastonia	Kings Mountain	Minnesott Beach
Brevard	Cramerton	Gibson	Kinston	Mint Hill
Broadway	Creswell	Glen Alpine	Kitty Hawk	Mocksville
Brookford	Dallas	Goldsboro	Knightdale	Monroe
Burlington	Dillsboro	Graham	La Grange	Mooreville
	Dover	Green Level	Lake Park	Morehead City

Morganton	Ruth	Waco	Counies	Mecklenburg
Morrisville	Rutherfordton	Wade	Alexander	Mitchell
Morven	Salemberg	Wadesboro	Alleghany	Montgomery
Mount Airy	Salisbury	Wagram	Anson	Moore
Mount Gilead	Saluda	Wake Forest	Ashc	Nash
Mount Holly	Sanford	Walkertown	Avery	New Hanover
Mount Olive	Scotland Neck	Wallburg	Beaufort	Northampton
Murfreesboro	Sedalia	Walnut Creek	Bertie	Onslow
Murphy	Selma	Warsaw	Bladen	Orange
Nags Head	Seven Devils	Washington	Brunswick	Pamlico
New Bern	Seven Springs	Washington Park	Buncombe	Pasquotank
Newton	Shallotte	Waynesville	Burke	Pender
North Topsail Beach	Sharpsburg	Weaverville	Cabarrus	Perquimans
North Wilkesboro	Shelby	Webster	Caldwell	Person
Northwest	Siler City	Weldon	Camden	Pitt
Norwood	Simpson	Wendell	Carteret	Polk
Oak Island	Smithfield	Wentworth	Caswell	Randolph
Ocean Isle Beach	Snow Hill	Wesley Chapel	Catawba	Richmond
Oriental	Southern Pines	West Jefferson	Chatham	Robeson
Oxford	Southern Shores	Whispering Pines	Cherokee	Rockingham
Pantego	Southport	White Lake	Chowan	Rowan
Patterson Springs	Sparta	Whiteville	Cleveland	Rutherford
Peachland	Spring Hope	Whitsett	Columbus	Sampson
Pikeville	Spring Lake	Wilkesboro	Craven	Scotland
Pinehurst	Spruce Pine	Williamston	Cumberland	Stanly
Pine Knoll Shores	St. James	Wilmington	Currituck	Stokes
Pine Level	Stallings	Wilson	Dare	Surry
Pinetops	Stanley	Windsor	Davidson	Transylvania
Pittsboro	Star	Winfall	Davie	Tyrrell
Pleasant Garden	Statesville	Winston-Salem	Duplin	Union
Polkton	Stoneville	Winterville	Durham	Vance
Polkville	Stovall	Winton	Edgecombe	Wake
Pollocksville	Sugar Mountain	Woodfin	Forsyth	Warren
Princeton	Summerfield	Woodland	Franklin	Washington
Princeville	Sunset Beach	Yadkinville	Gaston	Watauga
Raleigh	Surf City	Youngsville	Gates	Wayne
Ramseur	Swansboro	Zebulon	Graham	Wilkes
Randleman	Sweepsonville		Granville	Wilson
Ranlo	Sylva		Greene	Yadkin
Raynham	Tar Heel		Guilford	Yancey
Red Cross	Tarboro		Halifax	
Red Springs	Taylorsville		Harnett	
Reidsville	Taylorstown		Haywood	
Rhodhiss	Teachey		Henderson	
River Bend	Thomasville		Hertford	
Roanoke Rapids	Tobaccolville		Hoke	
Robbins	Topsail Beach		Iredell	
Rockingham	Trent Woods		Jackson	
Rockwell	Trenton		Johnston	
Rocky Mount	Trinity		Jones	
Rolesville	Troutman		Lee	
Roper	Tryon		Lenoir	
Rose Hill	Unionville		Lincoln	
Rowland	Valdese		Macon	
Roxobel	Vandemere		Madison	
Rural Hall	Varnamtown		Martin	

About the Author

David W. Owens is Professor of Public Law and Government at the School of Government, University of North Carolina at Chapel Hill, where he teaches and advises state and local officials on land use planning and regulation.

Visit the School's North Carolina Planning website at www.ncplan.unc.edu for information about School short courses, other publications, and developments on North Carolina legislation and litigation; summaries of key legal issues related to planning and development; and links to other planning websites.

School of Government Publications of Interest

Introduction to Zoning

David W. Owens

Third edition, Spring 2007

This new edition provides a clear, understandable explanation of zoning law for citizen board members and the public and serves as both an introduction for citizens new to these issues and a refresher for those who have been involved with zoning for some time. Each chapter deals with a distinct aspect of zoning, such as where a city can apply its ordinances, the process that must be followed in rezoning property, or how an ordinance is enforced. Although North Carolina ordinances and cases are cited, this book is useful to anyone interested in zoning law. It contains an index and appendixes that include zoning statutes and references on North Carolina land use law.

Land Use Law in North Carolina

David W. Owens

2006

This legal reference work is intended for those interested in law related to development regulation in North Carolina. It builds and expands on the material originally covered in two editions of *Legislative Zoning Decisions: Legal Aspects*, and addresses various aspects of local government jurisdiction for development regulation, procedures for adopting and amending ordinances, spot zoning, contract zoning, vested rights, nonconformities, and constitutional limits on regulatory authority. New topics covered include quasi-judicial procedures, special and conditional use permits, variances, ordinance administration, and enforcement.

Inventory of Local Government Land Use Ordinances in North Carolina

David W. Owens and Nathan Branscome

Special Series No. 21, May 2006

This report summarizes the responses of North Carolina cities and counties to a survey asking about their adoption of ordinances related to land use. Each local government was asked whether it had adopted zoning, subdivision regulations, housing codes, and a variety of other related regulations. In addition to the summary, the appendix includes two large charts showing the status of ordinance adoption for each county and city that responded to the survey.

North Carolina Experience with Municipal Extraterritorial Planning Jurisdiction

David W. Owens

Special Series No. 20, January 2006

North Carolina statutes allow cities to conduct planning and to apply zoning, subdivision, and other development regulations to areas adjacent to city limits. This publication first examines the law related to the extension of municipal jurisdiction and reviews the authority for this power and the process required to exercise it. Based on a comprehensive survey of North Carolina cities and counties, it then discusses how cities have exercised this power.

Survey of Experience with Zoning Variances

Adam Brueggemann and David W. Owens

Special Series No. 18, February 2004

This publication summarizes and analyzes the responses to a survey of North Carolina cities and counties to determine how they have used the zoning variance power. It also reviews administrative aspects of variance practice, including which local boards make these decisions, the experience and training of board members, the workloads of board members, and fees charged.

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to oppose the application affects the outcome of the decision?

- Reduces chances of approval
- Has no effect on outcome
- Increases chances of approval

- More formal and legalistic
- Less formal and legalistic
- Sometimes more formal, sometimes less
- No change

52. Observers have made these criticisms of the special and conditional use process in the past. In your experience, how often do the following factors come into play in these decisions in your jurisdiction?

- a. Favoritism based on the identity of the applicant or opponent.
 - Never
 - Rarely
 - Occasionally
 - Frequently
 - Almost Always
 - Always

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Ansonville	Carthage	Edenton	Harrellsville	Leland
Apex	Cary	Elizabeth City	Harrisburg	Lenoir
Archdale	Catawba	Elizabethtown	Havelock	Lewisville
Asheboro	Centerville	Elkin	Henderson	Lexington
Asheville	Chadburn	Elk Park	Hendersonville	Liberty
Askewville	Chapel Hill	Elm City	Hertford	Lincolnton
Arlinson	Charlotte	Elon	Hickory	Linden
Atlantic Beach	Cherryville	Eureka	High Point	Locust
Autryville	Chimney Rock	Fairmont	Highlands	Lowell
Badin	China Grove	Fairview	Hildebran	Lucama
Bald Head Island	Claremont	Faison	Hillsborough	Lumber Bridge
Banner Elk	Clayton	Faith	Hoffman	Lumberton
Beaufort	Clemmons	Farmville	Holly Springs	Macclesfield
Beech Mountain	Cleveland	Fayetteville	Hope Mills	Madison
Belwood	Clinton	Flat Rock	Huntersville	Maggie Valley
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Bolivia	Cove City	Gastonia	Kings Mountain	Minnesort Beach
Boone	Cramerton	Gibson	Kinston	Mint Hill
Brevard	Creswell	Glen Alpine	Kitty Hawk	Mocksville
Broadway	Dallas	Goldsboro	Knightdale	Monroe
Brookford	Dillsboro	Graham	La Grange	Mooreville
Burlington	Dover	Green Level	Lake Park	Morehead City

Morganton	Ruth	Waco	Counties	Mecklenburg
Morrisville	Rutherfordton	Wade	Alexander	Mitchell
Morven	Salemburg	Wadesboro	Alleghany	Montgomery
Mount Airy	Salisbury	Wagram	Anson	Moore
Mount Gilead	Saluda	Wake Forest	Ashe	Nash
Mount Holly	Sanford	Walkertown	Avery	New Hanover
Mount Olive	Scotland Neck	Wallburg	Beaufort	Northampton
Murfreesboro	Sedalia	Walnut Creek	Bertie	Onslow
Murphy	Selma	Warsaw	Bladen	Orange
Nags Head	Seven Devils	Washington	Brunswick	Pamlico
New Bern	Seven Springs	Washington Park	Buncombe	Pasquotank
Newton	Shallotte	Waynesville	Burke	Pender
North Topsail Beach	Sharpsburg	Weaverville	Cabarrus	Perquimans
North Wilkesboro	Shelby	Webster	Caldwell	Person
Northwest	Siler City	Weldon	Camden	Pitt
Norwood	Simpson	Wendell	Carteret	Polk
Oak Island	Smithfield	Wentworth	Caswell	Randolph
Ocean Isle Beach	Snow Hill	Wesley Chapel	Catawba	Richmond
Oriental	Southern Pines	West Jefferson	Chatham	Robeson
Oxford	Southern Shores	Whispering Pines	Cherokee	Rockingham
Pantego	Southport	White Lake	Chowan	Rowan
Patterson Springs	Sparta	Whiteville	Cleveland	Rutherford
Peachland	Spring Hope	Whitsett	Columbus	Sampson
Pikeville	Spring Lake	Wilkesboro	Craven	Scotland
Pinehurst	Spruce Pine	Williamston	Cumberland	Stanly
Pine Knoll Shores	St. James	Wilmington	Currituck	Stokes
Pine Level	Stallings	Wilson	Dare	Surry
Pinetops	Stanley	Windsor	Davidson	Transylvania
Pittsboro	Star	Winfall	Davie	Tyrrell
Pleasant Garden	Statesville	Winston-Salem	Duplin	Union
Polkton	Stoneville	Winterville	Durham	Vance
Polkville	Stovall	Winton	Edgecombe	Wake
Pollocksville	Sugar Mountain	Woodfin	Forsyth	Warren
Princeton	Summerfield	Woodland	Franklin	Washington
Princeville	Sunset Beach	Yadkinville	Gaston	Watauga
Raleigh	Surf City	Youngsville	Gates	Wayne
Ramseur	Swansboro	Zebulon	Graham	Wilkes
Randleman	Swepsonville		Granville	Wilson
Ranlo	Sylva		Greene	Yadkin
Raynham	Tar Heel		Guilford	Yancey
Red Cross	Tarboro		Halifax	
Red Springs	Taylorsville		Harnett	
Reidsville	Taylorstown		Haywood	
Rhodhiss	Teachey		Henderson	
River Bend	Thomasville		Hertford	
Roanoke Rapids	Tobaccoville		Hoke	
Robbins	Topsail Beach		Iredell	
Rockingham	Trent Woods		Jackson	
Rockwell	Trenton		Johnston	
Rocky Mount	Trinity		Jones	
Rolesville	Troutman		Lee	
Roper	Tryon		Lenoir	
Rose Hill	Unionville		Lincoln	
Rowland	Valdese		Macon	
Roxobel	Vandemere		Madison	
Rural Hall	Varnamtown		Martin	

About the Author

David W. Owens is Professor of Public Law and Government at the School of Government, University of North Carolina at Chapel Hill, where he teaches and advises state and local officials on land use planning and regulation.

Visit the School's North Carolina Planning website at www.ncplan.unc.edu for information about School short courses, other publications, and developments on North Carolina legislation and litigation; summaries of key legal issues related to planning and development; and links to other planning websites.

School of Government Publications of Interest

Introduction to Zoning

David W. Owens

Third edition, Spring 2007

This new edition provides a clear, understandable explanation of zoning law for citizen board members and the public and serves as both an introduction for citizens new to these issues and a refresher for those who have been involved with zoning for some time. Each chapter deals with a distinct aspect of zoning, such as where a city can apply its ordinances, the process that must be followed in rezoning property, or how an ordinance is enforced. Although North Carolina ordinances and cases are cited, this book is useful to anyone interested in zoning law. It contains an index and appendixes that include zoning statutes and references on North Carolina land use law.

Land Use Law in North Carolina

David W. Owens

2006

This legal reference work is intended for those interested in law related to development regulation in North Carolina. It builds and expands on the material originally covered in two editions of *Legislative Zoning Decisions: Legal Aspects*, and addresses various aspects of local government jurisdiction for development regulation, procedures for adopting and amending ordinances, spot zoning, contract zoning, vested rights, nonconformities, and constitutional limits on regulatory authority. New topics covered include quasi-judicial procedures, special and conditional use permits, variances, ordinance administration, and enforcement.

Inventory of Local Government Land Use Ordinances in North Carolina

David W. Owens and Nathan Branscome

Special Series No. 21, May 2006

This report summarizes the responses of North Carolina cities and counties to a survey asking about their adoption of ordinances related to land use. Each local government was asked whether it had adopted zoning, subdivision regulations, housing codes, and a variety of other related regulations. In addition to the summary, the appendix includes two large charts showing the status of ordinance adoption for each county and city that responded to the survey.

North Carolina Experience with Municipal Extraterritorial Planning Jurisdiction

David W. Owens

Special Series No. 20, January 2006

North Carolina statutes allow cities to conduct planning and to apply zoning, subdivision, and other development regulations to areas adjacent to city limits. This publication first examines the law related to the extension of municipal jurisdiction and reviews the authority for this power and the process required to exercise it. Based on a comprehensive survey of North Carolina cities and counties, it then discusses how cities have exercised this power.

Survey of Experience with Zoning Variances

Adam Brueggemann and David W. Owens

Special Series No. 18, February 2004

This publication summarizes and analyzes the responses to a survey of North Carolina cities and counties to determine how they have used the zoning variance power. It also reviews administrative aspects of variance practice, including which local boards make these decisions, the experience and training of board members, the worldloads of board members, and fees charged.

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**SECTION 5.2.1
PERMITTED USE TABLE**

USE TYPE	R15	R12M	R12	R10	01	C1	C2	C4	M1	M2	RA	RA2	RA5	MU-PD	LUC
AGRIUCTURAL USES															
Agricultural production (crops.)									X	X	X	X	X		1
Agricultural production (live-stock), but not including animal feeder/breeder operation										X	X	X	X		3
Animal feeder/breeder operation												S	S		5
Forestry												X	X		1
Game preserves, fish hatcheries, and ponds												S	S		1
Nurseries, truck farms, commercial greenhouses, etc.									X	X	X	X	X		1
MINING USES															
Quarries and other extractive industries															5
RESIDENTIAL USES															
Bed and breakfast			X	X	X	X	X				X	X	X	X	2
Bed and breakfast with open dining					S	X	X					S	S	X	3
Boarding and rooming houses			X	X	X	X	X				X			X	2
Condominiums, residential	S		S	S	S									X	1
Family care home (see note 10)	S	S	S	S	S						S	S	S	X	1
Group care home					S	S									2
Manufactured home, Class A		X									X	X	X		1
Manufactured home, Class B		X									X	X	X		1

X= permitted by right
S = permitted by SUP only

Permitted Use Table
Town of Pittsboro, N.C.

CELDF Press Release:

Broadview Heights Votes YES for Community Bill of Rights; Bans New Fracking, Injection Wells

The Community Environmental Legal Defense Fund
P.O. Box 360
Mercersburg, PA 17236
www.celdf.org

City Charter Amendment Adopted in Historic Popular Vote
First Municipality in the State of Ohio to Elevate Community Rights over Corporate Privileges
And Ban Fracking and Injection Wells in a City Charter

FOR IMMEDIATE RELEASE
November 6, 2012

CONTACT: Ben Price, Projects Director
BenPrice@celdf.org

(November 6, 2012, Broadview Heights, OH) Today, with a presidential election and an historic City Charter Amendment (Issue 29) before them, voters in Broadview Heights, Ohio came out in record numbers to say overwhelmingly say YES to adoption a Community Bill of Rights banning corporations from conducting new shale gas drilling and related activities in the City. A similar Charter Amendment was also adopted by voters in Mansfield, Ohio by a wide margin. It also adds a Community Bill of Rights to the City Charter and prohibits injection wells without written City approval.

The Broadview Heights charter amendment was drafted by the Community Environmental Legal Defense Fund (CELDF) at the invitation of the community group Mothers Against Drilling In Our Neighborhoods (MADION), a group of citizens concerned about the potential effects of gas and oil drilling on their families and the environment.

Broadview Heights is the first municipality in the state of Ohio to not only include a local Bill of Rights in the City Charter, but to protect those rights by prohibiting all new shale gas drilling, fracking and injection wells. The Village of Yellow Springs became the first community in Ohio to adopt a local law asserting the fundamental rights of residents to clean air and water, and to protect the rights of nature. Broadview Heights' new law includes these same provisions and was placed on the ballot through an initiative petitioning process led by MADION.

MADION co-founders Michelle Aini and Tish O'Dell commented, *"It is abundantly clear that the majority of residents in Broadview Heights feel that pure water, clean air, peaceful enjoyment of home and self-government is our American right for all of our families. Now it is the responsibility of our elected officials to take action, if needed, to protect the public health and well being of each citizen of Broadview Heights if our charter is violated by a drilling company."*

The amendment survived withering attacks by Mayor Sam Alai and City Law Director Vince Ruffa. At the time MADION filed the petitions, members of the group were told that the City was considering asking the court for an injunction against placement of the question on the ballot. But after discussions with

attorney Sean Kelly, representing MADION, a decision was made that City Council had a ministerial obligation to adopt an ordinance required by law to place it before the voters. Mayor Alai later wrote that, *"As an elected official and a strong advocate of voters' rights, council and I believe that placing the drilling ban on the ballot is the right thing to do because it is citizen-sponsored legislation and it deserves our collective consideration."*

But neutrality was not to be the position of the Mayor and Law Director. According to Mr. Ruffa, *"The idea is to follow the law and the law says we can't regulate [drilling]. And if we can't regulate it, my advice to the mayor and council would be that we can't enforce [the ban]."*

Mayor Alai went so far as to publish editorial comments and City-underwritten position statements in opposition to the measure. In those statements the mayor argued that regulation of oil and gas extraction is the exclusive responsibility of the State and that municipalities are preempted from doing so. *"Let me be clear, if this legislation passes after a vote of the people, the community is directing this administration to refuse all future drilling in our city, despite the fact that the ban violates Ohio law and will most certainly subject us to lawsuits and expensive legal bills, since the laws that permit them to drill are solidly in their favor,"* wrote the mayor.

But other city officials took a different stance. *"Issue 29 and the Broadview Heights Bill of Rights, affirms that we as residents have the right to self-governance,"* commented Councilwoman At-Large Jennifer Mahnic. *"With more and more studies showing fracking negatively impacting a community in so many ways – including health risks, decreased home values, plus environmental damage to water and air – I believe residents have a right to say 'no' to drilling in their backyards."*

In fact, the Community Bill of Rights amendment does not "regulate" oil or gas extraction, as its detractors claim. Rather, it asserts fundamental rights that are beyond regulation by the State, and then protects those rights by prohibiting corporate behavior judged to pose threats to those rights. Fracking and related activities are permitted by the state and allow corporations to site drilling and injection wells against the consent of the community. The amendment recognizes the rights of community members as superior to the regulatory laws of Ohio and finds the issuance of such permits, in violation of those rights, to be an illegitimate exercise of state power.

Pat Volk, a resident of Broadview Heights and supporter of MADION, commented, "I've been working on this for over 3 years and it is nice to get some vindication." With passage of the law, Broadview Heights joins a dozen other communities in Pennsylvania, Maryland, New York, Ohio and New Mexico that have taken a stand for fundamental rights by banning fracking or related activities.

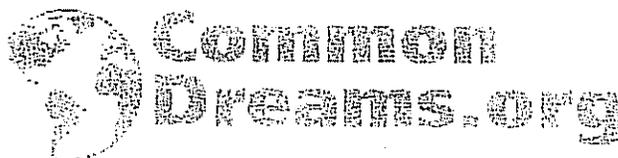
Corporations that violate the prohibitions or that seek to drill or site injection wells in the City will not be afforded "personhood" rights under the U.S. or Ohio Constitution, nor will they be afforded protections under the Commerce Clause or Contracts Clause under the federal or state constitution.

In addition, the ordinance recognizes the legally enforceable Rights of Nature to exist and flourish. Residents of the City now possess legal standing to enforce those rights on behalf of natural communities and ecosystems.

~ 30 ~

The Community Environmental Legal Defense Fund, located in Mercersburg, has been working with people in Pennsylvania since 1995 to assert their fundamental rights to democratic local self-governance, and to draft laws which end destructive and rights-denying corporate action aided and abetted by state and federal governments.

Return



Published on Wednesday, November 7, 2012 by Common Dreams

'Corporations Are Not People' in Montana, Colorado

- Common Dreams staff

In a landslide victory Tuesday night, Montana voters approved an initiative stating "that corporations are not entitled to constitutional rights because they are not human beings" -- corporations are not people.

The initiative directly challenges the now infamous *Citizens United* decision, which allows corporations to contribute unlimited amounts of money for campaign groups known as super PACS and 'shadow money' organizations.

Initiative 166 will win roughly 75 percent to 25 percent, according to the likely, but not yet final, results, Montana's *Billings Gazette* reports.

The initiative states:

"Ballot initiative I-166 establishes a state policy that corporations are not entitled to constitutional rights because they are not human beings, and charges Montana elected and appointed officials, state and federal, to implement that policy. With this policy, the people of Montana establish that there should be a level playing field in campaign spending, in part by prohibiting corporate campaign contributions and expenditures and by limiting political spending in elections..."

The measure, proposed by the group Stand with Montanans, will determine state policy on prohibiting corporate contributions and expenditures in state and national elections, and will charge state lawmakers with furthering the state's policy on the matter, asking congressional delegates to support efforts to overrule the *Citizens United* decision by amending the U.S. Constitution.

Similarly, Colorado Amendment 65 looks like a victory. 65 instructs Colorado's congressional delegation to propose and support an amendment to the U.S. Constitution that allows congress to overturn *Citizens United*.

Results from the CO Secretary of State show a YES for Amendment 65 with a margin of 73% with 23 of 64 counties reporting.

FOOD & WATER WATCH

November 7th, 2012

Longmont Makes History as First Colorado City to Ban Fracking

Despite Half-Million Dollars Spent by Oil and Gas Industry to Oppose Measure, Question 300 Wins With Nearly 60 Percent of Vote

Longmont, Colo.—Today is a historic day for the city of Longmont, Colorado. Nearly 60 percent of Longmont voters approved an amendment to the city's charter to prohibit hydraulic fracturing, more commonly known as fracking, and disposal of waste products connected with the process within city limits.

For more than six months Longmont and its citizens have been threatened, bullied and out-spent by the oil and gas industry. Longmont's victory over this highly industrialized and dangerous oil and gas extraction process signals to communities throughout the state and the nation that they can and will prevail over state officials who answer to the oil and gas industry rather than to their constituents.

According to Michael Belmont, a member of Our Health, Our Future, Our Longmont (Our Longmont), "We have shown that Big Oil money does NOT always win and that our constitutionally guaranteed right to health, safety, and protection of property is NOT for sale. We proved that ordinary citizens with very little money but a lot of determination, intelligence, passion and boot leather can prevail."

Over 100 volunteers worked in hot summer days to gather the necessary signatures to place the measure on the ballot. Over 8,200 signatures were submitted, well over the 5,700 required to move the measure to today's ballot. Also, more than 200 citizens contributed the funds necessary to carry out the Yes on 300 campaign. The opposition raised over a half-million dollars to oppose Question 300. All of their funds came from the oil and gas industry and their trade associations. Not one Longmont resident contributed.

"The people of Longmont have made history: they have chosen to ban fracking," said Sam Schabacker, a Longmont area native and Mountain West Regional Director for Food & Water Watch, the national consumer group who supported Our Longmont's efforts. "Longmont residents were not frightened away or fooled by the oil and gas industry's attempt to buy the election, to the tune of \$500,000, through deceptive and threatening TV commercials, full-page newspaper advertisements and multiple mailers. Hopefully this citizen-led effort will inspire other communities to stand up and protect their health, safety and property against the risky practice of fracking as well.

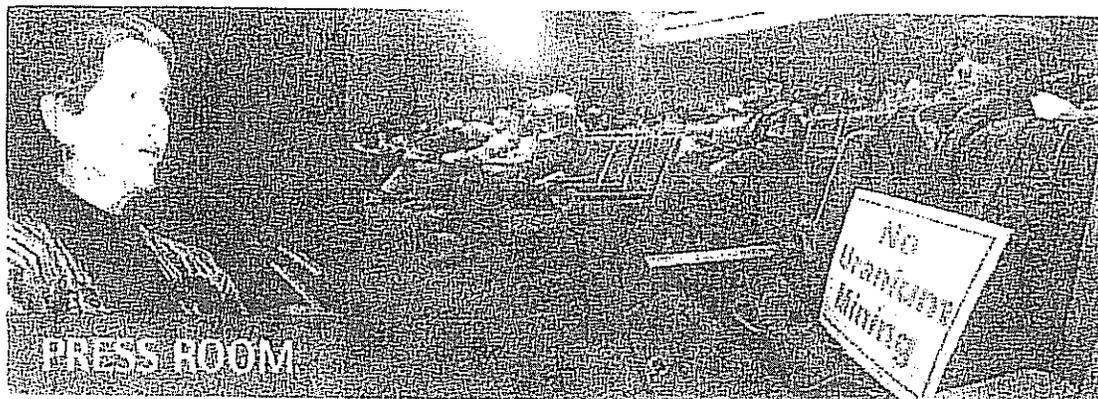
Our Health, Our Future, Our Longmont, a group of concerned citizens from throughout Longmont, believes that Longmont has a right to protect the public health, safety, and welfare of our community. By protecting the health, safety, and welfare of our citizens, we will preserve our economic vitality, our home values, our water, parks, wildlife, lakes, trails, streams, open space, recreational areas and our quality of life for ourselves and future generations.

Contact: Sam Schabacker, Food & Water Watch, 720-295-1036

Michael Belmont, Our Longmont, 303-678-9470

Food & Water Watch works to ensure the food, water and fish we consume is safe, accessible and sustainable. So we can all enjoy and trust in what we eat and drink, we help people take charge of where their food comes from, keep clean, affordable, public tap water flowing freely to our homes, protect the environmental quality of oceans, force government to do its job protecting citizens, and educate about the importance of keeping shared resources under public control.

###



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News

Press Action: Pa. Farmer Bans Fracking on Land through Conservation Easement

by Press Action, Press Action
November 10th, 2012

A Pennsylvania farmer has become the first landowner in the United States to use a conservation easement to recognize and protect the rights of water, forests and wild ecosystems. Stephen Cleghorn, who owns a 50-acre organic farm in Jefferson County, Pa., said the easement will ban activities such as hydraulic fracturing and will "elevate the rights of nature above the power claimed by extractive energy corporations to despoil the environment."...Cleghorn said he hopes other landowners across Pennsylvania, as well as municipal governments, will take action to recognize the rights of communities and nature through both easements and local laws. The Community Environmental Legal Defense Fund, or CELDF, a nonprofit Pennsylvania law firm, worked with Cleghorn to help create the easement, which secures the rights of nature legally on his property.

Midwest Energy News: Ohio city votes to block wastewater injection wells

by Ellen M. Gillmer, Midwest Energy News
November 8th, 2012

Voters in Mansfield, Ohio, sent a clear message Tuesday that oil and gas wastewater is not welcome in their city. More than 60 percent voted in favor of an "environmental bill of rights" that would essentially give the city license to ban wastewater injection wells — scattered across the Ohio landscape — on grounds that the operations threaten community rights to clean air and water.

CELDf Press Release: Mansfield Voters Adopt Community Rights Charter Amendment That Bans Toxic Injection Wells

by CELDF
November 7th, 2012

By a vote of 62.87% in favor, the people of the City of Mansfield, seat of Richland County in north-central Ohio and home to nearly 48,000 people, adopted an amendment to their home rule charter that recognizes a community Bill of Rights, and allows for the prohibition of the injection of fracking wastewater on grounds that such prohibition is necessary to secure and protect those rights. The resolve of the citizens of Mansfield to vindicate these rights was demonstrated by a majority vote even

Common Sense

Banning Fracking at the Local Level



A Publication of
THE COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

HOW TO BAN FRACKING DESPITE CORPORATE RIGHTS and STATE PREEMPTION Community Rights Ordinances

"There is no undeliverable right to local self-government."

—Attorney General Thomas Colbert

He has refused his Assent to laws, the most wholesome and necessary for the public Good...

He has called together legislative Bodies at Places unusual, uncomfortable, and distant for the sole Purpose of fatiguing them into Compliance with his Measures...

He has dissolved Representative Houses repeatedly, for opposing with manly Firmness his Invasions on the Rights of the People...

He has erected a Multitude of new Offices and sent hither Swarms of Officers to harass our People, and eat out their Substance...

FOR taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments...

FOR suspending our own Legislatures, and declaring themselves invested with Power to legislate for us in all Cases whatsoever.

According to Martin J. Schiesel, in his book The Politics of Efficiency

(Municipal Administration and Reform in America: 1880-1920), "Simon

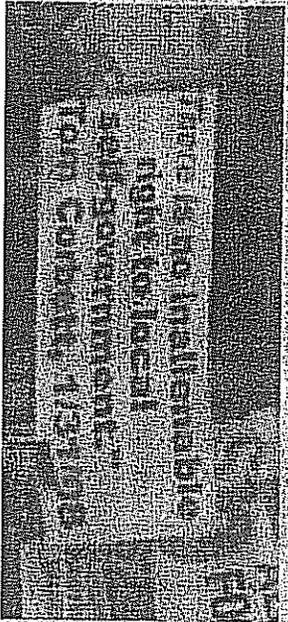
Sterne, a reform lawyer and member of the Tilden commission (formed in 1875 to investigate the Tweed ring in New York), argued in 1877 that the

'principle of universal manhood suffrage' only applied to 'a very limited

degree' in municipal administration because the city was 'not a govern-

ment, but a corporate administration of property interests in which property

should have the leading voice.' In the same vein, Francis Parkman saw the



To Pittsboro Board

The pot calling the kettle black needs to be given a choice! Be the mayor of Pittsboro or continue going around verbally causing grief and disbelief of other elected officials of the county - such as Bi Comm. and BO Education for instance.

When Randy Voller speaks or writes people reflect back as this is the mayor of Pittsboro and should be trust worthy.

When ~~do~~ see or hear or read of Randy Voller I see a disgruntled member of the Chatham Coalition that has supposedly fallen to the side and has practiced or been a part of deceiving the public or half truth for too long. It's time to be mayor or go your way, not both ~~so~~ choose!

Bob Knight
Chatham Resident

STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF CHATHAM

THIS AGREEMENT made and entered into this 17 day of October 2012 by and between the TOWN OF PITTSBORO, hereinafter called "Town", and CHATHAM FOREST HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as "HOA";

WITNESSETH:

WHEREAS, the Town is planning to make certain road improvements at the intersection of Springdale Drive and US Highway 15-501 in order to permit the connection of Springdale Drive and Fox Chapel Lane and the Chatham Forest Subdivision, the cost of which is more particularly described on the attached Hydrostructures, PA letter of August 17, 2012 attached hereto; and

WHEREAS, the CHATHAM FOREST HOMEOWNERS ASSOCIATION, INC. is willing to reimburse Town for a portion of the cost of said improvements referred to herein upon the terms and conditions set forth hereinafter; and

WHEREAS, the parties hereto desire to memorialize their agreement by the execution hereof;

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter, the parties hereto hereby agree as follows:

- A. Town agrees to install the improvements referred to hereinabove. Upon completion of the improvements and acceptance of the same by the Town and the NC Department of Transportation, execution of this agreement and an agreement with VCR, LTD (formerly Voller Realty), whichever is later, the Town shall open and connect Springdale Drive and Fox Chapel Lane for vehicular traffic.
- B. HOA agrees to reimburse the Town the sum of \$8,000.00 in four equal annual installments of \$2,000.00 each beginning April 1, 2013 and on the same day of each calendar year thereafter until paid in full. In order to secure the payment of said sum HOA agrees upon the execution hereof to deliver to the Town adequate security in a form satisfactory to the Town a promissory note reflecting the terms hereof and first deed of trust lien conveying to a designated Trustee real property of the HOA which is mutually satisfactory to the parties hereto. In the event of default in the payment of said reimbursement amount, the Town shall be entitled to enforce the power of sale contained therein or any other remedy as by law provided.

C. Both parties agree as follows:

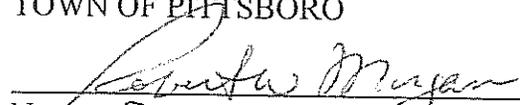
1. Nothing contained herein shall preclude the Town from exercising its discretion with respect to any future issue between the parties including the development of Chatham Forest Subdivision.

2. The exclusive venue for enforcement or interpretation of this agreement shall be the General Court of Justice of Chatham County, North Carolina.

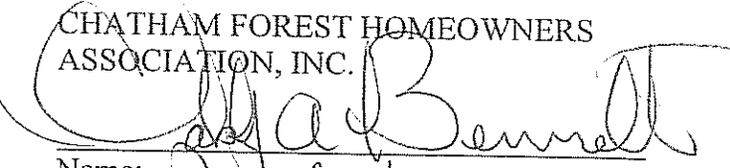
3. This agreement shall supersede and replace any previous agreements, conditions, or approvals regarding the opening of Springdale Drive which have heretofore been considered or approved by the Town.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate originals, all as of the day and year first above written.

TOWN OF PITTSBORO


Name: Robert W. Morgan
Title: Interim Town Manager

CHATHAM FOREST HOMEOWNERS
ASSOCIATION, INC.


Name: David Bennett
Title: President

DARLENE M DURBIN
Notary Public, North Carolina
Wake County
My Commission Expires
3/20/2010

