

MINUTES
TOWN OF PITTSBORO
BOARD OF COMMISSIONERS
REGULAR MEETING
MONDAY, OCTOBER 22, 2012
7:00 PM

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

ATTENDANCE

Members present: Mayor Randolph Voller, Commissioner 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 and Park Planner Paul Horne.

Mayor Voller asked if there were any changes to the agenda. Interim Manager Morgan said that he would like to add a closed session pursuant to GS 143-318.11(a)(6) to discuss a personnel matter. Mayor Voller asked where would he like it placed on the agenda Mr. Morgan said after Capital Projects.

CONSENT AGENDA

Motion made by Commissioner Fiocco seconded by Commissioner Turner to approve the consent agenda tabling the September 24, 2012 regular meeting minutes until the next week to verify a statement made by Commissioner Fiocco on page 7.

- Approve minutes of the September 10, 2012 regular meeting.
Motion carried 5-0
- Approve minutes of the September 24, 2012 regular meeting. (Table until the next meeting)
Motion carried 5-0
- Approve minutes of the October 3, 2012 special meeting.
Motion carried 5-0
- Approve minutes of the October 8, 2012 regular meeting.
Motion carried 5-0
- Approve minutes of the October 11, 2012 special meeting.
Motion carried 5-0
- Approve a Resolution Honoring Veterans and Men and Women Currently Serving In the Armed Forces of the United States of America.

Motion carried 5-0

- Schedule a public hearing on Conditional Zoning Text Amendment on November 26, 2012.

Motion carried 5-0

- Approve a Resolution of Intent to Permanently Abandon a portion of right-of-way along Small Street and to schedule a public hearing on abandoning a portion of Small Street R-O-W on November 26, 2012.

Motion carried 5-0

A RESOLUTION HONORING VETERANS AND MEN AND WOMEN CURRENTLY SERVING IN THE ARMED FORCES OF THE UNITED STATES OF AMERICA IS RECORDED IN THE BOOK OF RESOLUTION NUMBER ONE, PAGE 190

A RESOLUTION OF INTENT TO PERMANENTLY ABANDON A PORTION OF RIGHT OF WAY ALONG SMALL STREET IN THE TOWN OF PITTSBORO IS RECORDED IN THE BOOK OF RESOLUTION NUMBER ONE, PAGE 191

Resolution is as follows:

**A RESOLUTION OF INTENT TO PERMANENTLY ABANDON
A PORTION OF RIGHT OF WAY ALONG SMALL STREET
IN THE TOWN OF PITTSBORO**

WHEREAS, it appears that abandonment of a portion of Small Street as described in Attachment A within the Town of Pittsboro is not contrary to the public interest and that no individual owning property in the vicinity of said streets or portions thereof proposed to be closed would thereby be deprived of reasonable access to his property; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Town of Pittsboro as follows:

1. That pursuant to NCGS 160A-299 it intends to permanently abandonment a portion of Small Street as described in Attachment A within the Town of Pittsboro.
2. That a public hearing on the issue of such closure be, and it hereby is, scheduled for Monday, November 26, 2012 and that a copy hereof shall be published once a week for four successive weeks prior to the hearing.
3. That a copy hereof shall be sent by certified mail to all owners of property adjoining said streets as shown on the Chatham County tax records and a notice of said closure and public hearing shall be prominently posted in at least two places along each street.

A motion was made by Commissioner Baldwin seconded by Commissioner Foley to approve the regular meeting agenda as presented and adding a closed session to discuss a personnel matter after Capital Project Report.

Vote Aye-5 Nay-0

REGULAR MEETING AGENDA

Mayor Voller recognized that we have an Interim Manager, Mr. Morgan, who has actually been on duty now for about 18 days. He said we have not had a regular meeting because we had an interview meeting two weeks ago, but he will be here until the permanent replacement is chosen. Mayor Voller said Mr. Morgan has experience in Durham, Carrboro and his last stop was deputy manager in Greensboro.

Mr. Morgan stated he has enjoyed his first two weeks here. The staff is good and he looks forward to getting to know the community. He said he was looking forward to working with the board.

CITIZENS MATTERS

Jorgie Brown – 51 Westfield Street, Pittsboro. Ms. Brown was present to speak about the Pittsboro Skate Park. She gave the board an update on their organization and stated they have recently gotten their 501(c) 3 status approved, so they are officially a non-profit organization.

Ms. Brown reported over the summer they had one fundraiser so the total funds raised to date is \$13,500.00. They haven't done a lot of community stuff because their big things have been first Sunday's. They plan to be at the street fair, first Sunday in November and the Christmas Parade. They are still working on their logo contest with the art classes and hopefully they will have a fundraiser in the spring. She asked the board if they had an official or unofficial statement or any news on where the land issue is.

Mayor Voller said the Town is waiting for the Board of Education to vote on this. Attorney Messick said the Board of Education will consider the request in November.

Mayor Voller said a couple of items have come up. They want the Town to supply a water fountain. Mr. Poteat has looked into this and it's not that expensive to replace that. The School Board also wanted restrooms installed. Mayor Voller said we currently have portable restrooms at our facilities at Southern Park and at Powell Place Park.

Mr. Horne said that is correct. Mayor Voller said there are plans over time to eventually get to permanent restrooms, but obviously the budget wasn't there and we wanted to open the parks. The School Board of course wants facilities and they were willing to let us put up facilities but he believe it's going to be the position of the Board and they can address this after he is finished speaking that when you guys work with the Town to build the facility that part of the fundraising would include permanent facilities. He said the Town does not have it in their budget for permanent facilities.

Mayor Voller invited Ms. Brown to go to the next Board of Education meeting in November and tell everyone to be excited because that will be the moment upon which they make the motion on whether to approve it because it's gone through this ten month process.

Ms. Brown thanked the board for their support.

Lesley Landis – 21 Randolph Court, Pittsboro. She stated she was here as the President of the Chatham County Arts Council, also known as Chatham Arts. She is very excited about two upcoming events that she wanted to make sure everyone knew about. This Wednesday, October 24, 2012, at the Fearington barn we're going to be showing a film in our sustainable cinema program called *Hell and Back Again*. It references the resolution you were mentioning earlier regarding our veterans because it's a documentary that follows military personnel in Afghanistan and then continues to follow a soldier on his return to small town life in North Carolina. It highlights the difficulty of active duty in Afghanistan but then the equally challenged situation of integration into normal life as a wounded vet. She states it was nominated for a 2011 Academy Award and it won the grand prize at Sundance in 2011. Chatham Arts is honored to show this film at this time and appreciates the sponsorship of Harbin and Associates whose mission is to provide counseling services to military families and to returning vets. Again, the film *Hell and Back Again* will show on October 24, 2012 at the Fearington Barn in Pittsboro. She said she hopes that many of you will be able to attend.

She also wanted to mention their upcoming annual fall concert which is with the Bluegrass Experience on Sunday, November 18, 2012. Doors open at 3:00pm and music starts at 4:00pm. It's always a great time and all funds raised go to support the Chatham Arts Council. We will have as our guest MC George Holt, who is formerly of the North Carolina Arts Council's Folklore program and is currently the Director of the North Carolina Museum of Art's Film and Special Events Programming. He is an expert on folkways and folk traditions in North Carolina and he's going to be sharing some stories, highlights and contexts for music that we will have on Sunday November 18 at 4:00pm. I hope all of you can join us for that.

Ms. Landis stated the purpose of Chatham Arts in Chatham County is to enhance education and enliven communities and add to the economic development and quality of life in our small towns. We very much appreciate the support of all citizens with regard to our events and our committees. So if anyone is looking for volunteer opportunities, we are always happy to have you on board. Thank you.

Ms. Landis is President of Chatham Arts Council and wanted to make the board aware of two events they have planned.

Mayor Voller said he wanted the Resolution Honoring Veterans read into the record. He stated his father used to come every year and do this and as you know he passed on May 13, 2012 and this was one of his big issues. Mayor Voller said someone else may want to read it if you they have family members in the military. Commissioner Baldwin stated maybe he should read it in his father's honor.

Mayor Voller read the following Resolution into the record:

**A RESOLUTION HONORING VETERANS AND MEN AND
WOMEN CURRENTLY SERVING IN THE ARMED
FORCES OF THE UNITED STATES OF AMERICA**

WHEREAS, The United States of America was founded on the principles of liberty, opportunity and justice for all; and

WHEREAS, America has called on her men and women in uniform to protect our national security, to advance our national interests and to preserve our rights and freedoms; and

WHEREAS, on Veterans Day we recognize the men and women of our Armed Forces past and present, who have valiantly defended these values throughout our Nation's history; and

WHEREAS, on Veterans Day we also remember and pay tribute to the millions of patriots whose courage and sacrifice have secured our freedom, beginning with those who suffered through the harsh winter at Valley Forge and up to those who are keeping the peace and defending our values around the globe today; and

WHEREAS, we honor all men and women currently serving in the military for their sacrifices; and

NOW, THEREFORE, BE IT RESOLVED that the Town of Pittsboro Board of Commissioners does hereby recognize all veterans and the men and women that are currently serving in our armed forces around the world.

Mayor Voller further stated that America is an interesting country in the fact that my father could come here as an immigrant from a war torn country and get citizenship and in one generation his son could become Mayor of a town and he could get top security clearance and become a decorated vet in Vietnam, whereas he grew up in a foreign country. So people should remember that we have a country that is open to all and you can come here with no money and just a pair of shoes and end up serving your country.

Motion made by Commissioner Baldwin seconded by Commissioner Turner to go into public hearing.

Vote Aye-5 Nay-0

PUBLIC HEARING

HYDRAULIC FRACTURING ZONING ORDINANCE TEXT AMENDMENT

Planner Bass reported the Town Board of Commissioners has requested a text amendment that would require a proposed fracking operation to receive a Special Use Permit. Please find a draft definition 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. The recommendation is to limit Special Use Permits for Hydraulic Fracturing operations to the following zoning district: M2.

The zoning ordinance would be amended 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.”
3. Add to Section 5.3.3 Regulations for Special Use Permits:

Appropriate standards TBD

Commissioner Fiocco asked Planner Bass, what’s the source of the definition and does it meet North Carolina’s definition?

Planner Bass said he is unaware that North Carolina has a definition. It was something that he gleaned from a couple/three different sources in an attempt to get one. He doesn’t know if there is a standard definition out there, and if there is I am unaware of it.

Commissioner Fiocco Well I think the state of North Carolina has defined what hydraulic fracturing is and I think at a minimum we should use that definition, so if you could look into that.

Commissioner Foley asked if we know if there are already people that lease their land within the Pittsboro district that would be impacted by this.

Planner Bass said he doesn’t know.

Commissioner Fiocco had a question for Mr. Messick. The memo that you’ve written indicates that the burden of proof is on the opposition and I can remember vividly during the Christian Academy Special Use Permit that you advised that the burden of proof is clearly on the applicant.

Attorney Messick said the first burden of persuasion is on the applicant.

Commissioner Fiocco said so certainly the burden of proof is on the applicant to deliver information persuasive enough for the Board to make the four finding of facts.

Attorney Messick said this is not the way our ordinance reads.

Commissioner Fiocco stated he think in the ordinance it clearly states that the applicant has to make the argument that provides information to the Board substantial enough to make the findings.

Attorney Messick said he disagreed with him on that.

Commissioner Fiocco said okay he thinks we need to get clarity on that. Commissioner Baldwin said most definitely, it needs to be very clear.

Commissioner Fiocco said it seems odd that the opposition would have to prove a negative.

Liz Cullington read the following into the record:

Liz Cullington, 390 Rocky Hills Road, Pittsboro NC 27312 (Pittsboro ETJ)

The few differences between fracking and other heavy industry types are those that involve where companies would want to site such facilities in terms of provided infrastructure, rail lines, water, in some cases sewer, and acreage. Fracking does not need any of those. The similarities, however, are almost total in terms of impacts on adjacent properties and neighbors, and argue against allowing fracking more or less anywhere.

Fracking of a shale gas field would involve not just one but multiple wells, most probably drilled in sequence, with weeks or months of truck traffic to construct roads and well pads, bring in water and chemicals, and if productive wells, for the construction of pipelines and compressor stations.

Worse, fracking would subject neighbors to round the clock operation similarly to other heavy industry, with bright lights, loud noise and vibration, and emission of hazardous and toxic air pollutants. Venting of methane might continue until a pipeline is installed, and large scale methane leakage could continue for years until the well is plugged.

A University of Colorado School of Public Health study published in March of this year found that people within a half mile of fracking operations were exposed to air pollutants at a level five times higher than the federal hazard standard including chemicals that can cause neurological, respiratory or other health problems.

<http://www.ucdenver.edu/about/newsroom/newsreleases/Pages/health-impacts-offracking-emissions.aspx>

In addition, fracking involves storage of hazardous chemicals on site, and then storage of hazardous waste (in effect) on site. This is not something allowed in such large quantities in residential, agricultural or commercial zoning. To describe the quantity of chemicals, before dilution, that are brought to the site for a single well as huge or gigantic is really not to do them justice. (See attached handout and more detail at the link.)<http://ecowatch.org/2012/meet-the-frack-family/>

The only way that our local governments can prevent the siting of such facilities too close to livestock, day care centers, schools, nursing homes, residences and so on, is through zoning and the special use permit process which can address the specifics of a proposed particular site.

The special use permit process would also allow our local governments to ensure that water withdrawals and waste storage, handling and disposal, either meet state guidelines or exceed them if they are not adequate, and if nothing else, allows local government to enforce SUP commitments and to inspect facilities, something our current legislature seems unwilling to fund.

It is a mistake to think that people need less protection if fracking is proposed close to or within commercial areas because while the public may be there for shorter periods than they are at schools or at home, the employees of those businesses are there 8 hours or longer every day.

Lastly, there are landowners who are in a position to sign away the health and well-being of others if there are no zoning requirements for fracking. These include timber companies, developers, the owners of rest homes, and even cash-strapped local school boards, who, in other states have allowed fracking next to schools and playgrounds.

Cullington handout 10/22/12 public hearing zoning text amendment:

The imaginary Frack Family at their Beaver County [PA] home, showing off the 131 tons/757 barrels of chemicals used to frack the well near their house - including 373 barrels of "mystery" chemicals [red barrels]. (No Chemical Abstract Numbers included in ingredient list for product.)

Blue barrels: 41 tons of Hydrogen Chloride

Lavender barrels: 6 tons of Potassium Hydroxide

1 green barrel: Ammonium Persulfate

<http://ecowatch.org/2012/meet-the-frack-family/>

Martha Girolami – 473 Mount Pisgah Church Road, Apex. Ms. Girolami stated she was proud that the Board is proactive in trying to make sure fracturing doesn't come in and if it does it is so controlled that the impacts would be small. She is not in favor of fracturing. She referenced information for David W. Owens and others. (The information is attached the minutes) She asked if it is mentioned in the M-2 district does it open it up to other districts. Mayor Voller stated that anyone can request a text amendment but the council doesn't have to approve it. It

should be made clear that the burden of proof is always on the applicants. She feels the board should go ahead and determine the standards but you have a lot of things you don't want to happen.

John Wagner – 210 Jessamine Lane, Pittsboro. Thanked the Board for working to try to protect Pittsboro from some of the hazards that fracturing brings. He would encourage the Board to make the SUP requirements as strong as possible and to make it clear that the burden of proof falls on the applicant. He thinks that is perfectly within the Town's right that that be put in and if it's there the burden does come to them to show that it meets all the requirements you put in. About a month ago he spent several days in Dimock, Pennsylvania talking to residents who had been affected by fracking, watched trucks run through, tasted and smelled the output from some of the compressors. He knows this is not something Pittsboro wants without all the conditions you put there for them to meet.

Mr. Wagner said you should make the strongest possible SUP. If he can provide anything he will be glad to.

Mayor Voller stated Pittsburg had a unanimous vote to ban fracking in 2010. There are different ways to approach this.

Commissioner Fiocco said one thing that came up was the statement about extractive industries is a permitted use by right in the M2 zone. Mr. Messick's memo calls that into questions because he mentions there also is a list of conditions that have to be met because of the SUP, there seems to be contradictions in our zoning ordinance and he thinks we should get to the bottom of that. He tends to believe it suggests extractive industries are allowed as a SUP in the M2 zoning currently. He thinks the "x" is a typo and should be an "S", we should get to the bottom of that at a minimum. It bothers him with the text amendment today #3 which says "Add to Section 5.3.3 Regulations for Special Use Permits; Appropriate standards TBD. He would ask Mr. Bass to endeavor to come up with conditions under which a SUP will be issued and a condition under which the use could be established. Commissioner Foley stated she would like the same thing.

Commissioner Foley asked if we could discourage them from coming here. Attorney Messick said you took an oath to uphold the laws of North Carolina.

Elizabeth Cullington asked if standards are to be developed maybe there should be another public hearing to receive input from the public. Commissioner Fiocco said he agrees and asked Attorney Messick could we hold the public hearing open. Attorney Messick said we would need to hold another one. Mayor Voller stated anyone here or any group that would like to work on the standards to get in contact with Planner Bass.

Commissioner Foley stated maybe the NCLM might have suggestions on how to regulate fracking.

Commissioner Baldwin asked Mr. Wagner during his trip to Pennsylvania what did he find out about the water. Mr. Wagner stated they don't drink the water because it is contaminated. Commissioner Baldwin she just wanted that on the record.

Mr. Wagner recommend the board read a report from Duke – he can send that information to the board.

Attorney Messick discussed the memorandum he submitted for the board's review – his memo is as follows:

As a result of the Planning Board's decision to table any recommendation concerning the proposed text amendment regarding hydraulic fracturing until the State makes the process legal in North Carolina, I offer the following comments for your consideration. The only text that has been proposed is a definition of the process and a placement in the Table of Uses under the M-2 Industrial Use District.

The town ordinance provides relatively specific development standards for 56 different special uses. There are currently no specific development standards proposed for hydraulic fracturing. Nonetheless "Quarries and Other Extractive Industries" are listed in Section 5.3.3.41 as a special use, although such uses are listed as permitted as a matter of right in the Table of Uses for the M-2 District. Perhaps the Table of Use listing is in error.

In any event the standards for quarries are minimal:

1. Location in the M-2 District
2. 300' setback for any pit or industrial use
3. If blasting is involved, the hours of operation are limited to 7 am to 6 pm
4. A valid state mining permit is required

As you may recall, with a special use permit application, the burden of persuasion is placed upon the applicant to show compliance with the ordinance. If fracturing is deemed as "extractive industry", compliance with the terms of the ordinance should be straight forward.

Only if there is competent, relevant, and material evidence in the record produced by opponents showing that the project, if completed as proposed, would, more probably than not:

1. Materially endanger the public health or safety;
2. Substantially injure the value of adjoining property;
3. Not be in harmony with the area;
4. Not be in conformity with the land development plan or other official plans 5.3.2.d.5

Under the ordinance, once you find that an application is complete and that the requirements of the ordinance have been met (the development standards, if any), you cannot reject a proposal without the necessary evidence in the record. It would be difficult to find fault with a conforming application if the ordinance allows the use in a particular location and all of the required development standards have been met. The special use process imposes a substantial burden upon you as decision makers, including impartiality, and affording the applicant both substantive and procedural due process. As local government legislators you can act in the best

interests of the Town, as long as you are not arbitrary or capricious. As quasi-judicial decision makers you do not have the same degree of flexibility.

The issue is particularly complicated by the fact that the process is not currently allowed by the State. That raises several questions, including how the town can allow such a use (even with a special use permit) or why it should at the present time since it is not currently capable of being permitted. Even if allowed in the future, I expect that the State will preempt local regulation.

Consequently, I would urge caution regarding any action following the public hearing. In my opinion the better course would be to wait until the State has acted, if it will. To the extent there is any authority for local regulation thereafter, the Town can better consider the options then.

Motion made by Commissioner Fiocco seconded by Commissioner Baldwin to go out of public hearing.

Vote Aye-5 Nay-0

OLD BUSINESS

SMALL TOWN MAIN STREET PROGRAM UPDATE (PAUL HORNE, PARKS PLANNER/ZONING ENFORCEMENT OFFICER)

Mr. Horne stated their last meeting covered; historical tax credits, Main Street Representatives facilitated a discussion on façade basics, he gave the details of Pittsboro's façade program. They met upstairs at S & T's and then they met with four individual property owners.

Commissioner Foley asked who the four were. Mr. Horne stated Pat and Welford Harris, Wade Barber, Myles Friedman (Bookstore) and Snuffy Smith.

He stated one grant has been executed in the amount of \$500.00 to Steve Carr to repaint the building.

Mr. Horne stated they have worked on bench placement downtown. Commissioner Fiocco said we should be working on benches as well as trash cans downtown. Commissioner Farrell asked are we getting bids from local contractors. Mr. Horne said from both.

TOWN OF PITTSBORO LAND USE PLAN (STUART BASS, PLANNING DIRECTOR)

Planner Bass said edits made to the document incorporating comments received from Commissioner Fiocco and it was reviewed by Mr. Terry before he left and Becky Smith. There were some typos and minor word changes that were made. Mr. Horne made some minor changes that he would like to reference.

Mr. Horne said he made minor edits including language which encouraged the prioritization of the use of existing infrastructure capacity over public construction of new infrastructure; encourage dense residential development within walking distance of downtown; adds references

to a Parks & Recreation Master Plan which will help allocate the best use of parks and recreation resources; and added the implementation of articulated parks priorities to the “Actions” section of the document.

Mayor Voller said page 85-86 doesn't mention anything about pocket development. Planner Bass said density and infill support what we have done, but it can be added in.

Mayor Voller felt that on the acknowledgement page we should add Clinton Bryan, Jr., other former planning board members and land use committee members.

Commissioner Foley would like for the comments from Natural Resource Conservation to be included.

Interim Manager Morgan said it is a living document and you change the plan as things come up, getting the ordinances changed is the next process. He is very impressed with the document for a town this size.

Mayor Voller said changes can be made anytime.

Motion made by Commissioner Foley seconded by Commissioner Baldwin to approve the Land Use Plan with minor changes made tonight and including on the acknowledgement page Clinton E. Bryan, Jr., previous planning board members and advisory board members that worked on the plan.

Vote Aye-5 Nay-0

Motion made by Commissioner Foley seconded by Commissioner Baldwin to go on record commending Planning Staff, Advisory Boards and former Planner David Monroe for a great document.

Vote Aye-5 Nay-0

Motion made by Commissioner Baldwin seconded by Commissioner Turner to approve a Resolution Adopting a Land Use Plan for the Town of Pittsboro.

Vote Aye-5 Nay-0

A RESOLUTION ADOPTING A LAND USE PLAN FOR THE TOWN OF PITTSBORO IS RECORDED IN THE BOOK OF RESOLUTIONS NUMBER ONE, PAGES 192-193

A copy of the Resolution is attached to these minutes.

NEW BUSINESS

CHATHAM PARK, LLC EXTENSION OF TOWN ETJ REQUEST (ATTORNEY PAUL MESSICK)

Attorney Messick said this is the resolution that needs to be sent to the County requesting an extension of the ETJ.

Motion made by Commissioner Fiocco seconded by Commissioner Foley to approve a Resolution Regarding the Extension of the Extraterritorial Planning Jurisdiction of the Town of Pittsboro.

Vote Aye-5 Nay-0

A RESOLUTION REGARDING THE EXTENSION OF THE EXTRATERRITORIAL PLANNING JURISDICTION FO THE TOWN OF PITTSBORO IS RECORDED IN THE BOOK OF RESOLUTIONS NUMBER ONE, PAGES 194-196

Resolution is as follows:

A RESOLUTION REGARDING AN EXTENSION OF THE EXTRATERRITORIAL PLANNING JUDISDICTION OF THE TOWN OF PITTSBORO

WHEREAS, the Charter of the Town of Pittsboro in Article XV thereof provides for a defined area known as “extraterritorial planning jurisdiction” to extend not more than one mile outside the corporate limits wherein the powers granted by Article19, Chapter 160A of the General Statutes may be exercised; and

WHEREAS, pursuant to Section 15.1 of the Town’s Charter, as amended by Chapter 415 of the 1989 Session Laws, the Town may exercise said powers beyond the one mile boundary with the consent of the Board of Commissioners of Chatham County; and

WHEREAS, the Town of Pittsboro and the County of Chatham have previously agreed upon the limit of said extraterritorial planning jurisdiction more than one mile beyond the town’s corporate boundary; and

WHEREAS, Chatham Park Investors LLC, the owner of various tracts or parcels of land within and adjacent to the existing extraterritorial planning jurisdiction limits of the Town of Pittsboro has requested that those limits be extended to include all of its parcels of property which are more particular identified on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Town of Pittsboro is willing to accept such property within its extraterritorial planning jurisdiction in order to provide comprehensive and uniform application of the powers exercised by the Town therein; and

WHEREAS, the Town of Pittsboro desires that Chatham County consent to the extension of the Town’s extraterritorial planning jurisdiction limits as requested by the owner of the lands within the defined area to be added;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Town of Pittsboro that Chatham County be respectfully requested to consent to the extension of the Town's extraterritorial planning jurisdiction to include the parcels described on Exhibit A hereof.

Property description and map is attached to these minutes.

**PIEDMONT HEALTH SERVICES, INC. SITE PLAN REVIEW (STUART BASS,
PLANNING DIRECTOR)**

Planner Bass stated Piedmont Health Services property is zoned C2, Highway Commercial General. The proposed use is permitted by right in this zoning district. The property is currently vacant and undeveloped.

The applicant is proposed to construct a 20,000 square foot building for an adult day care facility. Water and sewer service are available to serve the proposed use. Parking requirements are exceeded. The project has received approval from NC Division of Land Resources, Land Quality Section for the erosion and sedimentation control plan. HydroStructures, PA has provided a review of the plan and recommends approval. The Chatham County Fire Marshal's Office and the Pittsboro Fire Department have provided a review and their comments have been addressed.

The Planning Board recommended approval of the site plan at their regularly scheduled meeting on October 1, 2012.

Commissioner Fiocco said he noticed there was no stormwater device. Planner Bass stated it didn't exceed the impervious requirements. Commissioner Fiocco said it is a low density project. Planner Bass said yes.

Commissioner Fiocco just wanted to mention a few things he observed while reviewing the plan.

- The landscape plan says there are 25 trees required yet the planting list tell contractors to install 10 trees and the symbols for the canopy trees is the same for three species so he don't know if the landscape installer knows where to put either of the species.
- The drainage off the parking lot looks like the drainage on the western side of the parking lot can crease the asphalt and send that water through the dumpster enclosed area which would carry the trash into the woods behind the facility. He doesn't know if there is an easy solution for that, but those are the observations he had.

Mayor Voller thanked them for coming into town and building on these lots that have been vacant for a long time.

- You reference finished floor elevation of 378 on page 3 of 5. Are you intending that this is going to sit lower than the road which is something that has been a problem in Pittsboro because when we have rain events we tend to get higher volumes of water for a short time, so when we build below the road a lot of the time you end up with water issues pooling around these properties. He would ask them to be careful with that.

The engineer stated that although the building and roadway has significant slope on it. It is about a 5% cross slope on that lot. So although the north corner of the building is probably two feet. The road by the time they get to the side front corner of the building they are about four feet above the road which will promote positive drainage.

Mayor Voller asked if they would mind adding a bike rack. The owner said they were not opposed to that.

Motion made by Commissioner Fiocco seconded by Commissioner Baldwin to approve the site plan for Piedmont Health Services, Inc. with the addition that it included a bike rack.

Vote Aye-5 Nay-0

NATURAL RESOURCES CONSERVATION PLANNING GRANT (PAUL HORNE, PARKS PLANNER)

Background

Members of the Chatham Conservation Partners propose to seek grant funding to identify land and water resources within Pittsboro's jurisdiction that are of high conservation value (a greenprint assessment). The grant's deliverables will include recommendations including a menu of options for land use plan language as well as options for ordinance language, design standards and conservation overlay districts.

Discussion

The grant of approximately \$120,000, if awarded, will fund a greenprint assessment, performed by qualified GIS and remote sensing analysts with natural resource experience assisted by state agency experts in conservation related fields. The grant will also fund private consultants to conduct public meetings, craft policy and publicize the findings.

It is hoped that such an endeavor could coincide with the creation of a United Development Ordinance (UDO) to update and consolidate our land management ordinances, to maximize efficiencies.

Recommendation

That the Board of Commissioners authorize the Chatham Conservation Partners to seek the grant funding and to authorize the Town Manager to coordinate with the group.

They made the following power point presentation:

- The Comprehensive Conservation Plan for Chatham County
- Allison Schwarz Weakley, Conservation Planner
- NC Natural Heritage Program
- NC Department of Environment and Natural Resources
- *November 5, 2012*

- **Chatham Conservation Partnership (CCP)**

Mission: to develop and implement strategies for a community conservation vision that builds awareness, protection and stewardship of Chatham County's natural resources.

The CCP consists of over 30 organizations and participants, including federal, state, and local government agencies, non-profits, business owners, developers, and landowners.

- **Funding for the Conservation Plan**
- **Z. Smith Reynolds Foundation**
- **NC Wildlife Action Grant Program**
- **NC Urban and Community Forestry Grant Program**

Grants were administered by the Triangle Land Conservancy (TLC) and Piedmont Conservation Council (PCC)

- **Goals of the Chatham Conservation Plan**

- A community vision for natural resources
- A greater understanding and awareness of the importance and location of natural resources
- An understanding of the economic importance of forest resources for timber, recreation and water quality
- An increased knowledge of the impacts and threats to important natural resources
- Preferred strategies to manage and protect important natural resources
- **Purpose and Need**
- Information on important resources aid in decision-making, planning, and project review, and can support funding opportunities
- Best available, most current GIS data are readily available for use in online mapping tool and as download from FTP site
- Education and outreach – including general public, staff, elected officials and landowners
- **Project Overview**
- Conservation Plan
- Conservation Analysis and Mapping
- Environmental Resource GIS Data – available via FTP and Chatham County's Online Mapping Tool
- Stakeholder Involvement
- **Building on State and Regional Conservation Planning**
- **NC Conservation Planning Tool**
- **NC State Wildlife Action Plan**
- **NC Forest Resource Assessment**
- **Southern Forest Land Assessment**

The Chatham Conservation Plan considers data layers and methods used in these existing models, and provides updates, additions and other modifications for application of these planning efforts at the local level.

- **Conservation Plan Table of Contents**

INTRODUCTION

- Description of the Plan
- Purpose and Need
- Goals and Objectives

- Stakeholder Involvement
- Existing Partners and Coordination

GENERAL DESCRIPTION

- Geography and Topography
- Geology
- Soils
- Land Use Planning and Management

This section provides an overview of what is known about the existing general features that influence natural resources in Chatham

- **Chatham County's Public Resources**
- **Biodiversity/Wildlife Habitat**
 - Natural Plant Communities
 - Plant and Animal Species
 - Significant Natural Heritage Areas (SNHAs)
 - Wildlife Habitat
- **Working Lands**
 - Forestland
 - Farmland
- **Recreation**
- **Water Resources**

METHODS

- Data Compilation and Synthesis
- Identification of Priority Species, Habitats and Forest Resources
- Conservation Ranking and Analysis

ANALYSIS RESULTS

- Biodiversity/Wildlife Habitat Resources
- Forest Resources

RECOMMENDATIONS

- Land Protection
- Land Use Planning, Regulations, and Policies
- Resource Management
- Coordination with Partners
- Funding and Incentives
- Education, Outreach and Stewardship
- Monitoring
- Implementation and Updates

REFERENCES

APPENDICES

- Rare Species
- Plans, Policies and Ordinances
- Funding and Incentives
- GIS Data Information
- Methods for Conservation Ranking and Analysis
- Forest Resource Economic Analyses (Timber, Water Quality and Recreation)
- Surface Waters

- Data inputs each assigned a conservation value from 1 to 10, and aggregated into categories
- **GIS Database Categories**
(see Appendix D)
- Aerial Photography
- Topography/Elevation
- Soils
- Geology
- Water Resources
- Land Use
- Land Cover
- Developed/Infrastructure
- Habitats/Species
- Protected Lands
- Parks and Recreation
- Working Lands
- **Biodiversity/Wildlife Habitat in Pittsboro**
- Other conservation planning resources for Pittsboro
- Southwest Shore Conservation Assessment and Rocky River Watershed Conservation Assessment (both conducted by TLC)

<http://www.triangleland.org/what-we-do/conservation-planning/local-efforts>

- Robeson Creek Watershed Council
<https://www.bae.ncsu.edu/programs/extension/wqg/srp/robeson.html>
- **Some examples of the application and use of conservation planning data for Pittsboro**
- Local land use and conservation planning
- Watershed planning
- Transportation planning
- Parks, recreation, and greenway planning
- Identification of preservation and restoration sites for mitigation
- Grant applications
- Land acquisition
- **Visit the CCP Wiki!**
- **Contact Information**

Allison.Weakley@ncdenr.gov

(919) 707.8629

www.ncnhp.org

www.onencnaturally.org

- **QUESTIONS?**
- **Photo Credits**
- CCP Nature Photo Contest Winners – 2009
- Allison Weakley, NCNHP
- Elaine Chiosso, Haw River Assembly
- Gerald Pottern, RJG&A
- NC Soil and Water Conservation

- NC Wildlife Resources Commission
- Triangle Land Conservancy

The draft proposal is as follows:

**Grant Proposal for
Natural Resource Conservation in Municipal Land Use Planning
Pittsboro, North Carolina
North Carolina Forest Service, North Carolina Wildlife Resources Commission,
and North Carolina Natural Heritage Program
FY 2012**

Abstract:

Increasing development pressure, seen throughout North Carolina, is especially apparent in the Piedmont Crescent, which is developing into the Piedmont Atlantic Megaregion.¹ Current planning documents for regions and counties are essential in defining the needs and the priorities for managing competing usage demands, but may be on too broad a scale for application to a municipality.

The Town of Pittsboro, NC, is in the middle of a large-scale development project by a single business entity; this development will have an impact on natural resources and ecosystem services in the Town and the county. Adapting a recently published countywide conservation plan to the specific needs and priorities of the Town will result in recommendations, including a menu of options for land use plan language, which the Town can choose to adopt. A menu of options for ordinance language, design standards, and recommendations for a conservation overlay district will also be created for the Town to choose to use in order to better manage development in the area. The process will be enhanced through providing opportunities to engage the public in education on the benefits of urban forestry, ecosystem services provided by forests, wildlife habitat conservation and management, and land use planning.

Lead Contact(s):

Nancy Stairs, NC Forest Service, nancy.stairs@ncagr.gov, 919.857.4842; Allison Weakley, NC Natural Heritage Program, allison.weakley@ncdenr.gov; Brooke Massa, NC Wildlife Resources Commission, brooke.massa@ncwildlife.org; Catherine Deininger, Co-coordinator of the Robeson Creek Watershed Council (RCWC), cdeininger@biocenosis.org,

Purpose:

Problem Statement and Expected Benefits:

Pittsboro (population 3,742) is located in the Research Triangle area of North Carolina –the third fastest growing metropolitan area in the United States.² The Town is the county seat of Chatham - a county dominated by forestland, 96% of which is in private ownership.³ The county has over 25 forest product manufacturing facilities and the industry employs over 500 people.⁴

¹ Regional Plan Association. 2012. Piedmont Atlantic MegaRegion. Retrieved from: http://www.america2050.org/piedmont_atlantic.html

² US Census 2012. <http://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf>

³ NC Forest Service. 2012. Retrieved from: <http://ncforestservice.gov/Contacts/chatham.htm>

⁴ <http://www.ncforestry.org/WEBPAGES/PUBS%20AND%20VIDEOS/STATEOFFORESTPRODUCTS.pdf>

With a 7,000 acre + impending multi-use development estimated to bring in 50,000 people into Pittsboro, the Town and county are poised for significant land use changes in the near future. Currently the Town's land use plan envisions that growth be accommodated while simultaneously reducing environmental impacts. However, the land use plan does not currently include a section on how to reduce environmental impacts. The current land use category 'open space and conservation' is limited to riparian buffers, floodplains, and public lands; contiguous forest blocks are not categorized for protection. Fragmentation of private forestland is an immediate and looming threat to wildlife habitat, clean water, the forest products industry, and other important ecosystem services relied upon by the citizens of Pittsboro. The Chatham Conservation Partnership (CCP), a group of local stakeholders interested in conservation, has developed a comprehensive conservation plan for the county. This plan identifies and prioritizes natural resources in the county, and provides recommendations for sustaining these resources. The broad terms of the county conservation plan does not provide the specific direction needed for application to a planning document suitable for a municipality. Guidance to Pittsboro by natural resource and legal professionals, whose expertise is outside the budget of a typical small community, is a valuable component in transitioning from the county-scale to a municipal one.

The purpose of this project is to assist the Town in the adaptation of the CCP plan into conservation standards, zoning ordinance language, and land use planning recommendations to better protect the natural resource base. Establishment and clarification of measures to protect resources will ensure that development is planned in a way which prevents unnecessary degradation of forest resources, wildlife habitat, and clean water. It will also help safeguard the character, local economy, and quality of life in Pittsboro, in times of fast approaching changes.

The end result of these efforts will be improved awareness and protection of forest and other natural resources in Pittsboro. Key stakeholders and direct beneficiaries include: town planning board and elected officials, development corporations, the general public, and landowners. The tracking of the process in developing the standards and protections, as well as the lessons learned, can provide valuable insight for other communities attempting to create a municipal-scale application of regional or county-wide planning documents.

Linkage to Priorities: This project addresses the following strategies outline in North Carolina's Forest Action Plan 'North Carolina's Forest Resources Assessment 2010': Strategies 1.1.1 (p. 292), 1.4.2. (p. 297), 4.3.2. (p. 321), 5.1.1. (p. 324), 5.1.2. (p. 324), 5.1.3. (p.324), 5.1.4. (p. 325), 5.2.3. (p. 329), 5.3.1. (p. 330), 5.3.2. (p. 331), 5.4.2. (p. 333), 6.2.1. (p. 336), 6.3.2. (p. 338), 6.4.2. (p. 340), 7.1.1. (p. 342), 7.1.2. (p. 343), 7.3.2. (p. 345), 7.4.1. (p. 346); 7.4.3. (p. 347).

Scope of Work:

In order to protect forests and priority wildlife habitat through land use planning, the project will include a land use change detection analysis to demonstrate the need for conservation planning; identify and prioritize areas important for conservation and restoration, and model connectivity for priority wildlife habitats. The project will incorporate conservation data into the county's publically available GIS database to inform citizens and decision-makers of the locations of important resources in the community. The results of this project will also serve as a tool for environmental education about ecosystem services provided by forests, community woodlands/parks, and individual trees on private and public property, - and about urban forestry as a planning and management strategy. These tools will provide resources to assist the Town by the creation of recommendations to improve the conservation component of the land use plan

and can be used to create ordinances to protect natural resources in the Town's jurisdiction. The recommendations will be made transparent through a participative public forum process enabled through both the web and in-person meetings scheduled during days and/or times where the working population can attend. Ultimately, the Town of Pittsboro will decide whether or not to adopt the recommended protections of natural resources.

Partners and programs involved include the Town of Pittsboro, the NC Forest Service Urban and Community Forestry Program, Robeson Creek Watershed Council, NC Wildlife Resources Commission (Green Growth Toolbox), NC Natural Heritage Program (Conservation Planning Tool), Duke University Nicholas Institute for Environmental Policy Solutions, Triangle Land Conservancy, US Fish and Wildlife Service, Chatham Soil and Water Conservation District, and the CCP (Chatham Conservation Plan). All work will be done in Pittsboro, Chatham County, NC located in the Haw River and Rocky River Watersheds. Pittsboro is in Congressional District 4.

Goal: The grant will be used to guide the Town of Pittsboro in ways to manage future land use toward conservation of contiguous rural forests, urban forests and associated priority wildlife habitat. The recommendations provided to the Town through this project will protect the integrity of the ecosystem services provided to its citizens by healthy forests. Attempting to address natural resources management and protection as a whole is a daunting task for any community. Patterning the process for other communities to adapt and use, taking a plan from a broad scale to a finer scale, and developing additional tools that can be used by any community, are the overarching goals of this project.

Objectives (Local use (L), Broad use (B)):

1. Identify and prioritize forestland important for conservation. (L)
2. Identify and prioritize wildlife habitats in need of conservation and management. (L)
3. Identify and prioritize important areas for forest and habitat connectivity. (L)
4. Enhance natural resources information used in land use planning. (L,B)
5. Provide information needed to better target landowners on conservation easements, best management practices, cost-share programs, and other incentives to manage forested land for conservation values. (L,B)
6. Direct development away from lands with high conservation value and into areas of lower conservation priority. (L)
7. Increase participation in land use planning decision-making. (L)
8. Provide for increased opportunities for outdoor recreation. (L)
9. Increase housing values by maintaining a high quality of life. (L)
10. Ensure public safety and benefits by protecting flood plain, wildlife habitat, and water resources. (L)
11. Provide guidance, language and expected outcomes for land use planning, zoning and ordinances. (B)

Methodology and Timeline:

- Select a qualified environmental consultant, remote sensing analyst, and legal advisor to implement project objectives. Selection will be made by a committee with representatives from each partnering organization and the Town of Pittsboro. Total estimated time: 2-3 months from notice to proceed; start dates will likely vary for each consultant

To achieve objectives 1 – 4:

- Clip and scale down the NC Conservation Planning Tool and the Green Growth Toolbox and Triangle Appendix to Pittsboro. Update standalone GIS layers from Chatham Conservation Plan and rerun the conservation model(s). (2 months from signed contract with environmental consultant)
- Data should be made publically available on County's website (<http://www.chathamnc.org/>). (2 months from signed contract with environmental consultant)
- Perform change detection analysis and forest cover analysis. (3 months from signed contract with remote sensing analyst)
- Identify lands important for conservation. (5 months from signed contract with environmental consultant)
- Use data to create recommendations for voluntary incorporation into the land use plan (6 months from signed contract with environmental consultant)
- Use data to inform appropriate ordinance recommendations. (8 months from signed contract with environmental consultant)
- Oversight and review of ordinance recommendations by legal advisor. (2 months from signed contract with legal advisor)

To achieve objectives 5-10:

- Present information (i.e., importance of urban forestry, forest conservation, wildlife habitat conservation and land use planning) to stakeholders in the form of public forums on the web and in scheduled meetings. (1 year from signed contract with environmental consultant)
- Stakeholder input will be considered and incorporated into the Town planning process as appropriate. (1.5 years from signed contract with environmental consultant)
- Environmental consultant will work with legal advisor and project partners to draft conservation zoning districts and review existing ordinances to identify updates that would effectively conserve priority forest and associated wildlife habitats. (1.5 years from signed contract with environmental consultant)

Technical guidance will be provided by members of the CCP. Total estimated time: 1.5 years from signed contract with environmental consultant.

To achieve objectives 11:

- Document the development of language recommendations for updates to the existing land use plan, ordinances and zoning, and the lessons learned. The results of the project will be added to the existing Green Growth Toolbox.
- Promotion of project's document on process and lessons learned to audience of conservation professionals. Total estimated time: Finalized at completion of project. (Up to 2 years from signed contract with environmental consultant)

Accomplishment Reporting:

Deliverables:

- Up-to-date GIS database of natural resources (based on the Chatham County data), land cover change, forest canopy analysis, and ecosystem services analysis in Pittsboro, NC - accessible to the public.
- Amendment to Green Growth Toolbox to incorporate canopy analysis data and recommendations for use in the creation of tree protection ordinances and urban forestry planning and management.

- Development of a public forum website devoted to increasing participation of public in developing conservation recommendations for land use planning and education in urban forestry issues.
- Public meetings to increase participation and outreach in conservation and land use planning, and development of proposed ordinance options.
- Recommendations for improvements to the existing land use plan, with a menu of options for language to be considered for incorporation into the land use plan by the community.
- Options for ordinance and zoning language that address natural resource sustainability and recommendations for urban forestry management and conservation design standards tailored to local priorities.
- Documentation of the process used to tailor existing state-, region-, and county-wide conservation planning efforts to a municipal level, to serve as a model for other municipalities. This process will be publicized through presentations at workshops and conferences as a case study.

Performance Measures:

The following performance measures will be reported annually. Project targets have been established and are reflected below.

Performance Measure	Measure Type*	Grant Target
Completion of deliverables		
Acres of high priority forest parcels protected from conversion	National	
Acres of high priority wildlife habitat protected from conversion	National	
Acres of forests conserved for protecting water quality	National	
Population of communities benefiting from improved air quality due to maintaining urban forests	National	
Potential carbon sequestered through protection and restoration of forests	National	
Percentage of population living in a community which has implemented strategies for tree and forest conservation and restoration	National	
Total value of resources leveraged through partnerships	National	
Number of people participating in public land use forums	Project	
Establish permanent conservation of existing currently forested buffers, 300 feet on either side		

* Measure Types:

National = National S&PF Program accomplishment/performance measure

Regional = Region-specific accomplishment/reporting measure

State = State-specific accomplishment/reporting measure

Project = Project-specific accomplishment/reporting measure

End-of-year accomplishment reports will to be submitted to the Forest Service by December 28 of each year the project is active, unless otherwise directed by the Forest Service. It is

anticipated these reports will be entered into the National Information Center's Redesign Tool (<http://spfnic.fs.fed.us/nicportal/default.cfm?action=Login>).

Budget: [10 points]

[In the table below, indicate the percent contribution to the project's outcomes/deliverables for each S&PF program.]

Program contribution to this project is expected to be:

State And Private Forestry Program	% Contribution
Forest Stewardship	[enter %]
Urban & Community Forestry	[enter %]
Forest Health	[enter %]
Fire	[enter %]
Total	100%

[In the table below, indicate the federal grant amount and matching funds. A table format is provided below for inserting budget information by each Object Class Category that is summarized in the SF 424A. Delete or add lines as needed to reflect work in this narrative. Note: This table shows the level of investment for specific project elements but does not imply that financial reporting will occur for these elements.]

[If any of these grant funds will be passed to a third party to complete the work, provide the amount of funding that will be used for the pass through grants.]

[For multi-state projects, please submit a summary budget table for the whole project and then one for each state participating. Copy the table format as needed.]

[Note: The Forest Service is aware that for some multi-state projects it is more efficient for one state to do the contracting/granting on the behalf of everyone. If this is the case for your project, please set up the budget tables showing each state's share of the project. Then in narrative format, explain to the FS what state is going to take on the lead contracting/granting role and how much each state will be providing for that activity.]

Budget Table for: ["Total Project" or individual state name for multi-state proposals.]

Budget Items by SF 424A Object Class Categories	Federal \$	State Match \$	Other Match \$	Source of "Other Match"	Total Project \$
a. Personnel	0	To be determined			
b. Fringe Benefits	0				
c. Travel					
<i>Conferences</i>	1,000				
d. Equipment					
<i>Web page</i>	10,000				
e. Supplies					
<i>Spatial Analyst Extension – Single Use</i>	2,500				
f. Contractual					
<i>Environmental consultant</i>	25,050				
<i>Remote Sensing Analyst</i>	?				
<i>Legal Advisor</i>	25-75,000				
g. Construction	0				
<i>[Specific Budget Item]</i>					
h. Other	0				
<i>[Specific Budget Item]</i>					
i. Total Direct Charges (sum of a-h)					
j. Indirect Charges					
k. Totals (i + j)					
l. Program Income					

[Definitions of Categories:

Equipment: Please list the pieces of equipment greater than \$5,000 that will be purchased. Items with unit costs of less than \$5,000 dollars should be listed under "Supplies". Rented or leased equipment costs should be listed in the "Contractual" category.

Supplies: Please list supply items by categories: office supplies, postage, training materials, printing, etc. Computers usually fall in the supplies category since they are less than \$5,000 per unit to purchase.

Other: List items by major type such as: sub-grants, rent, telephone, janitorial, etc.

There was much discussion about his item with concerns about the amount of staff time required, what would be used as in-kind match and what financial obligations would be required.

Commissioner Foley stated she felt it would be a win-win situation because it would not cost the town any dollars.

After much discussion a motion was made by Commissioner Foley seconded by Commissioner Fiocco to support submission of the abstract.

Commissioner Fiocco stated he is concerned about the financial impact.

Vote Aye-2 Foley/Turner
Nay-3 Baldwin/Farrell/Fiocco

Motion failed.

CAPITAL PROJECTS REPORT

MANAGER'S UPDATE ON CAPITAL PROJECTS

Mr. Morgan reported on the Hillsboro Street Transmission Line Project. He said tomorrow night they will start on the section that actually goes into the travel lane if we get approval from the State. The contractors are about three weeks behind but they say they will complete the project on time.

Commissioner Fiocco stated one of the main objectives besides getting a new water line in the ground is not to disrupt retail sales during the holiday season when 30-40% of retail sales for the year take place. We had asked that they start south and head north and we were told because of pressure and flow conditions it was a better strategy to start north and run south. He is wondering if that still applies and if they could leap frog and start downtown and get out of downtown as quickly as possible. Mr. Morgan said we could pose that question to the engineer.

Commissioner Fiocco said it is his understanding there will always be a lane open for local residents. Mr. Morgan said yes, only local traffic will be allowed to go below construction site.

Mr. Morgan said on the Springdale Drive project we are waiting to get the signed contracts back from each party. Attorney Messick stated he received Chatham Forest Homeowners contract tonight. Mayor Voller asked about the contract for the engineer. Mr. Morgan said he has gotten that he is waiting until we get the signed contracts back that would help fund the project. Commissioner Fiocco said that makes sense to have contracts before we move forward with project.

Mayor Updates

- EDC – had breakfast last Friday
- RPO – Mr. Morgan attended the meeting in Pittsboro
- Solid Waste - none
- Fairground Association
- PMA/Downtown

Motion made by Commissioner Fiocco seconded by Commissioner Baldwin to take a five minute recess.

Vote Aye-5 Nay-0

Motion made by Commissioner Baldwin seconded by Commissioner Fiocco to reconvene.

Vote Aye-5 Nay-0

CLOSED SESSION

Motion made by Commissioner Baldwin seconded by Commissioner Foley to go into closed session pursuant to GS 143-318.11(a)(6) to discuss a personnel matter.

Vote Aye-5 Nay-0

Motion made by Commissioner Fiocco seconded by Commissioner Baldwin to go out of closed session.

Vote Aye-5 Nay-0

COMMISSIONER CONCERNS

Commissioner Fiocco asked if mail was being delivered to Town Hall. He was told no. He said the Postmaster had agreed if we put out a mail box they would deliver to Town Hall. He asked that we make that request. There was a discussion about how secure that would be and it was decided it was not a feasible thing.

Commissioner Fiocco asked that we find out where the County is in designing the County jail sewer project. We are supposed to review and we haven't yet. Mr. Morgan said he would check on that.

Commissioner Farrell stated he wanted to see if we can get some type of financial statement for the general fund and enterprise fund. He would like to see then monthly. He wants to know how much is in the general fund and what the revenues are. Commissioner Fiocco said in the past we did receive the expenditures. Commissioner Farrell said he would like to see both.

Mayor Voller asked about the audit. Mr. Morgan said the audit is going to be late. Staff has not gotten things to the auditor so that she can start the audit process. Mayor Voller said we made it clear the last time the audit was late if it happened again we would put it out for bids. Mr. Morgan stated the issue is not the auditor but staff and that he will get a timeline for Mandy.

Commissioner Baldwin stated she has a Triangle J meeting Wednesday and if anyone has anything they would like for her to take to please let her know.

Mayor Voller stated as some of you may know the County purchased the Steele Property which is zoned mixed use development. This offers a great opportunity for the Town and he would like Mr. Morgan to open up the communications with the County. Mr. Morgan said they are going to expand the Community College.

Mayor Voller said if they have two million dollars to buy property they should revisit making a contribution for water lines. He would also like to meet with them about the downtown annex project.

Motion made by Commissioner Baldwin seconded by Commissioner Turner to adjourn.

FYI -

1. Tentative Future Agendas October 22, 2012

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

Special Series No. 22

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Special Use Permits in North Carolina Zoning

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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 Lake 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. Hewett 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); Butler 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 *Wolbarst 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. Inscow*, 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

37. 356 N.C. 1, 565 S.E.2d 9 (2002). By contrast, the court in *Leftwich 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.

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).

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. Inscoc*,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

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).

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

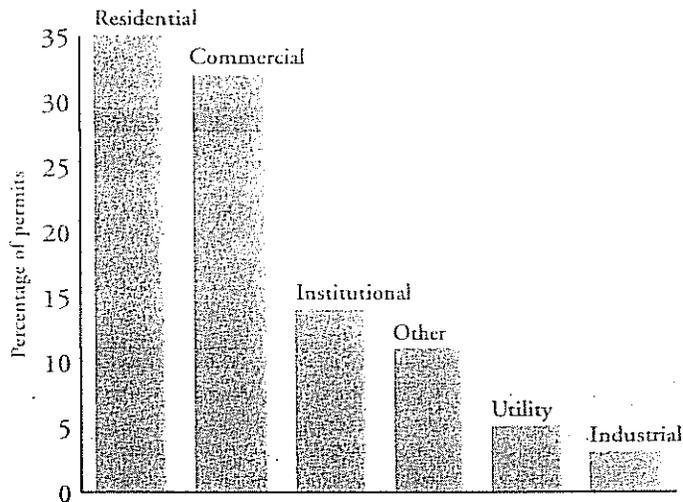
Subject Matter

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.

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

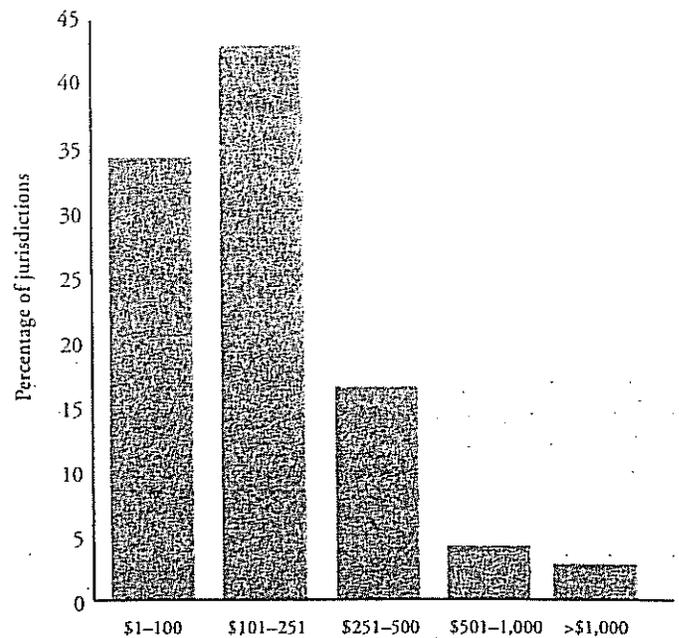
While most of the responding jurisdictions report that the boards deciding special and conditional use permits have considerable experience, only a minority of these boards have received any training in quasi-judicial decision-making.

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

Staff assistance provided	No. of jurisdictions	Percentage
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

Frequency	No. of jurisdictions	Percentage
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

Standard	No. of jurisdictions	Percentage
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

<i>Length of time</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
< 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)

<i>Length of hearing</i>	<i>Population of city</i>			
	<i>< 1,000 (n = 38)</i>	<i>1,000–9,999 (n = 126)</i>	<i>10,000–24,999 (n = 35)</i>	<i>≥ 25,000 (n = 23)</i>
< 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

<i>Type of information</i>	<i>No. of jurisdictions</i>	<i>Percentage for special use permits</i>	<i>Percentage for variances</i>
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

<i>Frequency</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
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

<i>Frequency</i>	<i>No. of jurisdictions</i>	<i>Percentage for special use permits</i>	<i>Percentage for variance petitions</i>
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

<i>Type of evidence</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
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

<i>Type of evidence</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
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

<i>Frequency</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
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
<i>Planning board</i>		
<i>Board of adjustment</i>		
<i>City council</i>		
<i>Other board:</i> _____		
<i>Other board:</i> _____		

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 comparability with the surrounding neighborhood is a standard for a special or conditional use permit, what evidence is typically presented to the board to address comparability? (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
Askewville	Chadbourn	Elk Park	Hendersonville	Liberty
Arkinson	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	Mooresville
	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	Sweepsonville		Granville	Wilson
Ranlo	Sylva		Greene	Yadkin
Raynham	Tar Heel		Guilford	Yancey
Red Cross	Tarboro		Halifax	
Red Springs	Taylorsville		Harnett	
Reidsville	Taylortown		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

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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

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

- 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
Askewville	Chadbourn	Elk Park	Hendersonville	Liberty
Arkinson	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	Mooresville
	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	Shalotte	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
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Red Cross	Tarboro		Halifax	
Red Springs	Taylorsville		Harnett	
Reidsville	Taylorstown		Haywood	
Rhodhiss	Teachey		Henderson	
River Bend	Thomasville		Hoke	
Roanoke Rapids	Tobaccoville		Iredell	
Robbins	Topsail Beach		Jackson	
Rockingham	Trent Woods		Johnston	
Rockwell	Trenton		Jones	
Rocky Mount	Trinity		Lee	
Rolesville	Troutman		Lenoir	
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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.

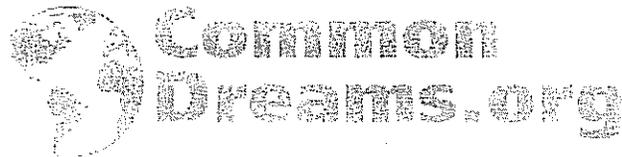
Corporations that violate the prohibitions or that seek to drill or site injection wells in the City will not be afforded "personhood" rights under the U.S. or Ohio Constitution, nor will they be afforded protections under the Commerce Clause or Contracts Clause under the federal or state constitution.

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 of 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 Bellmont, 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.

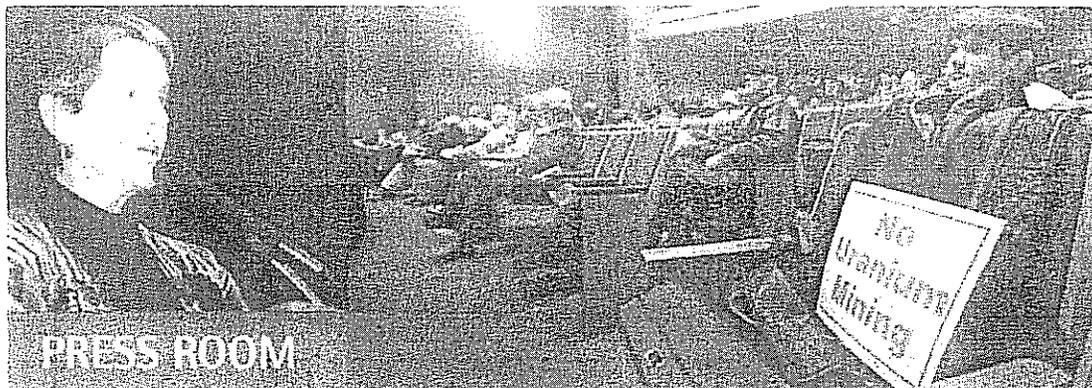
Our Health, Our Future, Our Longmont, a group of concerned citizens from throughout Longmont, believes that Longmont has a right to protect the public health, safety, and welfare of our community. By protecting the health, safety, and welfare of our citizens, we will preserve our economic vitality, our 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 Bellmont, 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 his-of-its-kind 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

**SECTION 5.2.1
PERMITTED USE TABLE**

USE TYPE	R15	R12M	R12	R10	O1	C1	C2	C4	M1	M2	RA	RA2	RA5	MU-PD	IUC
AGRICULTURAL 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	S		5
Forestry											X	X	X		1
Game preserves, fish hatcheries, and ponds											S	S	S		1
Nurseries, truck farms, commercial greenhouses, etc.									X	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	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	S								X	1
Family care home (see note 10)	S	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

Permitted Use Table
Town of Pittsboro, N.C.

X = permitted by right
S = permitted by SUP only

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

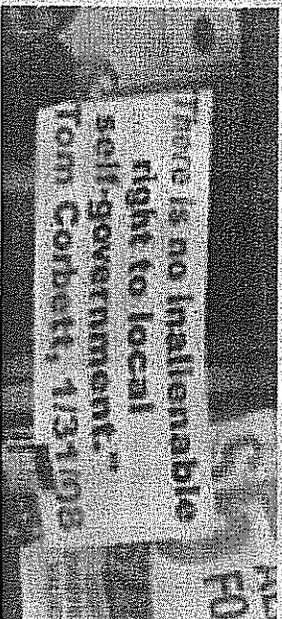
"There is no unalienable right to local self-government."

-Attorney General Thomas Corbett

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 government, but a corporate administration of property interests in which property should have the leading voice.' In the same vein, Francis Parkman saw the

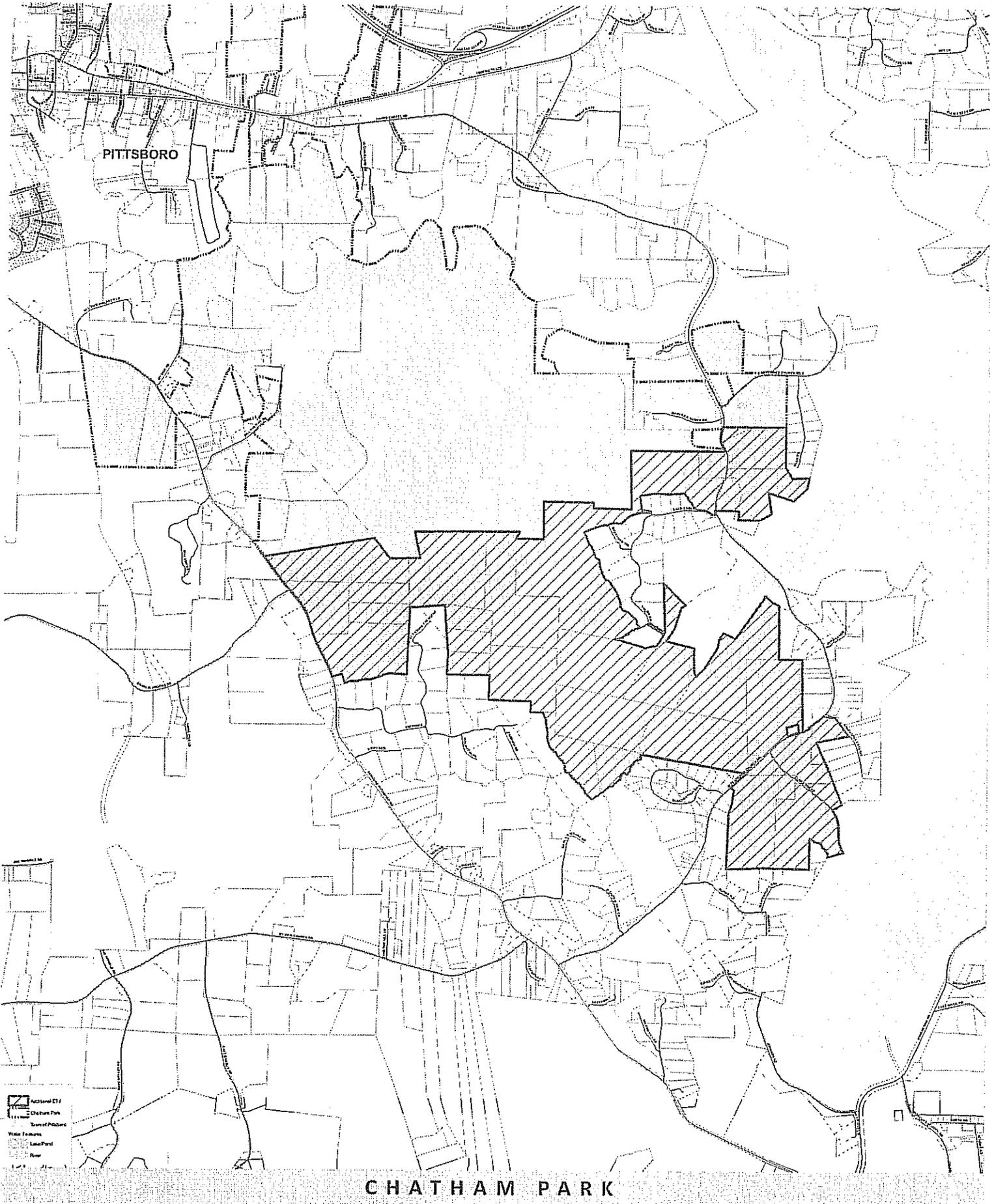


To: Town of Pittsboro, North Carolina
From: Chatham Park Investors LLC
Re: Extension of Pittsboro Extraterritorial Zoning Jurisdiction ("ETJ")

The following is a list of properties owned by Chatham Park Investors LLC with respect to which Chatham Park Investors LLC is requesting the Town of Pittsboro to include in its ETJ:

<u>Chatham County Tax Parcel No.</u>	<u>Book and Page of recorded Deed to Chatham Park Investors LLC</u>	<u>Acreage</u>
63927	Book 1352, Page 956	18.55
7398	Book 1428, Page 527	19.53
7397	Book 1384, Page 170	21.58
87219	Book 1380, Page 1067	112.24
72014	Book 1265, Page 274	25.41
7482	Book 1259, Page 34	25.49
11006	Book 1337, Page 608	88.52
60775	Book 1280, Page 430	50.87
71844	Book 1418, Page 376	95.15
7402	Book 1339, Page 1179	74.89
7578	Book 1416, Page 488	112.18
11198	Book 1352, Page 956	107.90
11183	Book 1352, Page 956	96.75
11221	Book 1352, Page 971	22.25
74581	Book 1352, Page 956	41.77
68705	Book 1352, Page 956	81.72
7399	Book 1438, Page 13	112.24
7590	Book 1291, Page 1070	15.87
7585	Book 1300, Page 537	47.14
7583	Book 1335, Page 774	51.22
74580	Book 1352, Page 971	19.25
11199	Book 1352, Page 956	147.34
68706	Book 1352, Page 971	94.25
60218	Book 1352, Page 956	92.36
part of 7617	Book 1291, Page 1068	
part of 7403	Book 1231, Page 560	

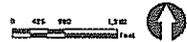
NOTE: Most of Parcels 7617 and 7403 already are within the Town of Pittsboro ETJ. Accordingly. The total acreage of Parcel 7617 is 60.61 acres and the total acreage of Parcel 7403 is 1771.97 acres.



CHATHAM PARK LLC

THESE PLANS AND SPECIFICATIONS ARE THE PROPERTY OF CHATHAM PARK LLC. ANY REPRODUCTION, REVISION, OR ALTERATION OF ANY PART OF ANY INSTRUMENT DRAWING SHALL BE THE PROPERTY OF CHATHAM PARK LLC. NO PART OF ANY INSTRUMENT DRAWING SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT PERMISSION IN WRITING FROM CHATHAM PARK LLC.

CHATHAM COUNTY, NC



DATE: May 2012



Kimley-Horn and Associates, Inc.