Chairman
Mr. Jimmy Ray Cobb, Jr.

Planning Director
Libby Hodges

Commissioner's Meeting Room
124 W. Elm Street
Graham, NC 27253
November 12, 2015 at 7:00 PM

ALAMANCE COUNTY PLANNING BOARD

AGENDA

I. CALL TO ORDER

II. APPROVAL OF PLANNING BOARD MINUTES

1. October 8, 2015

III. PUBLIC COMMENTS

IV. NEW BUSINESS

1. Alamance County Strategic Plan Update
2. Legislative Update 2015
3. Upcoming Board Vacancies & Term Limits

V. OTHER BUSINESS

1. Planning Board Ordinance and Rules of Procedure, additional information.
2. Holiday Party (Chair)

VI. ANNOUNCEMENTS

1. Public Hearing: Manufactured Home Ordinance: Nov. 16, 2015 at 7pm, Board of Commissioner's Room, 124 W. Elm St., Graham.

VII. ADJOURNMENT

Meeting Notes:

1. *Those wishing to make public comments should sign-in prior to the meeting.*
2. *In order to be fair and ensure that all citizens wishing to speak may be heard, the Chair may place time limits on public comments.*
3. *Any further discussion by the public on a given agenda item is subject to the discretion of the Chair of the Planning Board*

ALAMANCE COUNTY PLANNING BOARD
REGULAR MEETING MINUTES

Thursday, October 8, 2015
7:00 p.m., Board of County Commissioners Room

Members Present	**Members Absent**	**Staff Present**
Ray Cobb (Chair)	Monte Holland	Libby Hodges,
Rodney Cheek (Vice Chair)	Don Jennings	*Planning Director*
Gene Brooks	Ed Pritchett	
Rob Countiss		
Albert Freeman		
Randall Smith		
Ravi Balan		
Jody Tyree		
Cletus Dodson		
Eddie Boswell		

I. Call to Order

Chairman Cobb called the meeting to order at approximately 7pm.
Mr. Cobb proceeded to take attendance.

II. Approval of Minutes

Members of the Board reviewed the minutes from the September 10, 2015 meeting.
Motion to accept: Cheek
Second: Freeman
Vote: Unanimous

III. Public Comments

No comments.

IV. New Business

None.

V. Other Business

Final Review: Manufactured Home Park Ordinance.
Staff presented revised rules as amended per Fire Marshal's office. Ordinance was reviewed and approved by the Environmental Health Committee on Sept. 15, 2015. Staff explained that the next steps will be to ask for a public hearing from the Board of Commissioners at the next meeting and hold a hearing at the next available meeting.

Motion: Cheek
Second: Tyree
Vote: Unanimous

Mission and Vision Statements.

Staff discussed the adoption of Mission and Vision statements for the Board and why these would be useful to staff and the Board to guide staff activities and Board wishes.

Vision:
The Planning Board works to provide prudent guidance in land planning issues to reflect the values of the community.

Motion: Brooks
Second: Tyree
Vote: Unanimous

Staff explained the Mission statement is related to how we operate on the group. Three examples were provided.

Mr. Balan presented a Mission statement as follows:

The Mission of the Alamance County Planning Board is to respond to needs of its citizens by providing leadership & guidance for the comprehensive, thoughtful and orderly growth & development of our land based upon respect for our rich history, culture & fairness to our citizens.

Motion: Brooks
Second: Dodson
Vote: Unanimous

VI. Announcements

Staff announced that the new Planner, Jessica Dockery will start Oct. 12.

Staff distributed copies of the Board Rules of Procedure and Planning Board Ordinance in preparation for the next meeting.

VII. Adjournment

Motion to adjourn from Mr. Cheek at approximately 7:20 pm.
Second: Freeman
Vote: Unanimous.

Respectfully submitted, November 12, 2015.

Libby Hodges, Planning Director

Alamance County Strategic Plan

Alamance County Planning Department

November 2, 2015

What We've Done…

- Destination 2020 Review

- Visioning Retreat
  - Value of a Strategic Plan
    - Transforms ideas into actions
    - Provides guidance
    - Aligns resources with community values for the future
    - Aligns core government functions with desired strategies
  - Value of an excellent facilitator

Visioning Retreat

- Retreat Objectives:
  - To recognize our successes over the last few years.
    - Destination 2020 Review
  - To assess the implications of upcoming changes in our community.
    - Short Term (next 18 months)
    - Medium Term (18-36 months)
    - Long Term (3-5 years)
  - To establish preliminary vision for the community.
  - To determine expectations for a strategic planning process.

Visioning Retreat

- Findings on Government's Role:
  - To lead the movement forward
  - Set goals and vision (for staff to implement)
  - Develop policies, ordinances, and framework to support vision
  - Represent public views
  - Collaborate with regional partners; promote cohesiveness with all
  - Be positive, complete, and transparent with communications
  - Allocate/raise revenues to resource the plan
  - Seek guidance of experts, when needed
  - Set an example for diversity through hiring choices

Next Steps

- Need approval to:
  - Engage School of Government for facilitation and reviewing draft plans (as outlined in the work plan)
  - Approve funding up to $ 20,000.00
  - Begin implementation of the work plan

ALAMANCE COUNTY 2015-2016 STRATEGIC PLAN WORK PLAN

Stage	Item	Task Description	Responsible Party	Timeline	Cost
I.	**VISIONING**				
	Retreat		School of Government	Sept. 11, 2015 (Complete)	Separate Contract
II.	**DATA GATHERING: IDENTIFY MAJOR TOPICS & PREPARE FOR INPUT SESSIONS**				
	Identify "Staff Resource Group"	Identify members of staff willing and able to participate as "Facilitators" for future community input sessions and as community resources.	Planning Department	ASAP	
	Community Group Identification and Invitation	Invite groups to participate in facilitation training. Identify groups with input from subcommittee and resource group.	Subcommittee/ Staff Resource Group	ASAP	
	Elon Poll	This poll will help us identify major issues and rank issues in order of importance prior to developing the plan. Questions will be developed with assistance from School of Government using information generated from the Visioning exercise. An online version will be posted of this poll as well for public participation.	Subcommittee (with Leon); School of Government	Nov/Dec	TBD
	Data and Information Assembly, Community Input Packets	Using poll information gathered, the data will be used to solidify the questions used to gather additional community input. Packets will be assembled to provide standardized information for all Community Groups to use at their sessions.	Subcommittee/ Staff Resource Group	Dec/Jan	$ 500-1200
	Train the Trainer Events (1 or 2 sessions, depending on interest)	Staff Resource Group volunteers will be trained to in effective facilitation techniques to help lead Community Input Sessions.	School of Government	January/February	$ 2500 - 3000
III.	**COMMUNITY INPUT**				
	"Name This Plan" Contest	The Library will sponsor a contest to name the strategic plan.	Library sponsor		$ 200 - 500
	Community Forums (2)	These two forums will be used to solicit input from the general public and will be facilitated by the School of Government. County staff will assist by coordinating locations and times.	School of Government	December, 2015	$ 2500 - 3000
	County-led Community Forums	These forums will be used to gain input from the general public and will be facilitated by the Staff Resource Group and student facilitators as required.	Staff Resource Group/ Student Facilitators	January/February	$ 500 - 1000
	County Employee Forums (2 or 3)	These forums will be used to gain input from County Employees and will be facilitate by the Staff Resource Group.	Staff Resource Group/ Student Facilitators	January/February	$ 500 - 1000
	Community Led Input Sessions	These forums will be used to solicit input from community partners and will be facilitated by the leadership members of those groups. Additional facilitators will be provided upon request as available.	Community Groups. Staff Resource Group/ Student facilitators as needed.	January/February	$ 1200 - 1500

ALAMANCE COUNTY 2015-2016 STRATEGIC PLAN WORK PLAN

IV.	**PRELIMINARY PLAN DRAFT & FEEDBACK**				
	Create Preliminary Draft	A preliminary draft will be created. The plan will be distributed to participating groups for feedback.	Staff Resource Group, School of Government, Subcommittee	March	$ 1000 - 1500
	Community groups reassemble and provide feedback as needed or desired	If Community Groups that provided input would like to reassemble to review the Preliminary Draft, the County will provide facilitators if requested.	Planning/Staff Resource Group/SOG Student Facilitators?	April	$ 1000 - 1200
	Board of Commissioners Feedback Retreat	Review preliminary information gathered to the Board of Commissioners and obtain feedback.	Staff Resource Group	April	$ 1500 - 2000
	Community Open House	The plan will be presented to the general public. The School of Government will provide facilitation to hear any concerns about plan content and the use of the plan.	School of Government	Late April/May	$ 1800 - 2000
V.	**FINAL DRAFT/PLAN REFINEMENT**				
	Final Draft	Comments will be reveiwed and any needed changes made to the Strategic Plan. Resulting Final Draft will be published to participants and the general public.	Staff Resource Group	June/July	
VI.	**FINAL DOCUMENT PUBLICATION**				
	Final Strategic Plan	After reviewing any remaining comments, a final document will be prepared and presented to the public and Board of Commissioners. Hard copies will be created as needed. Additional public presentations may be held.	Staff Resource Group/ Planning	July	$1800 - 2100
VII.	**IMPLEMENTATION (INTERNAL)**				
	Performance Management Team		County Management and Department Heads		Separate Contract
				Total Cost	$ 15000 - 20000

Alamance County

PLANNING DEPARTMENT
215 N Graham Hopedale Rd.
Burlington, NC 27217
Tel. (336) 570-4053

MEMORANDUM

TO: Mr. Jimmy Ray Cobb, Jr, Planning Board Chair

FROM: Libby Hodges, Planning Director

DATE: November 5, 2015

SUBJECT: Legislative Update, 2015

Mr. Cobb,

Following is a brief review of recent changes passed by the State Legislature in 2015. Staff has attempted to only show changes relating to the Planning Department and items of interest to the Board. The slides shown are from a Legislative Update given by the UNC School of Government. Additional information can be found here:

https://lrs.sog.unc.edu/lrs/legsumms/2015

The Planning Department is in the process of reviewing these changes to ensure any revisions needed in our Ordinances are made at the earliest opportunity.

Please contact me if you have any questions.

Thank you,

Libby Hodges
Planning Director

cc Planning Board
Jessica Dockery, Planner
Ben Pierce, Assistant County Attorney

Public Health

Jill Moore

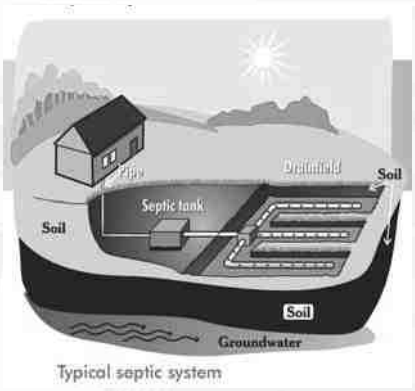
Environmental Health (EH): Food

- Food stands
  - May provide tables and up to 8 seats, no further evaluation of on-site wastewater system required
- Pushcarts/mobile food units – large arenas
  - May prepare and serve food on premises of facilities with > 3000 permanent seats
  - If handling raw food items, must have handwashing sink on unit
  - Raw meat, poultry, fish must be prepared in permitted commissary or restaurant
- S.L. 2015-104 (S 7)

EH: Food

- Plans for franchise/chain restaurants
  - If state has reviewed and approved, no local review required. Local health department may suggest revisions to plan but may not require them.
  - S.L. 2015-246 (H 44), sec. 10
- Permits for multiple owners/lessees in same facility
  - Clarifies that local health department may issue permits to operate a food establishment to more than one owner or lessee when more than one establishment is being operated in the same physical location. Each permittee must meet applicable rules.
  - S.L. 2015-__ (H 765), sec. 3.8

EH: On-Site Wastewater



Typical septic system

- State rules must be amended to:
  - Allow repair areas that accommodate different types of replacement systems.
  - Remove the requirement for a certified operator for a sand lined trench system when drainage is used to lower the water table.
  - Repeal maximum capacity requirements for saprolite systems.
- S.L. 2015-147 (H 705)

EH: On-Site Wastewater

- Engineered option permits
  - Person installing septic system may work with a licensed professional engineer (PE) to plan the design, construction, and operation of the system.
  - System must comply with state OSWW rules and local rules if applicable.
  - Notice of intent to construct & completeness review:
    - Owner or PE must give notice of intent to local health department (LHD).
    - Notice contents are specified and include description of facility served, type and location of system, soil evaluation, proof of insurance held by parties including PE, soil scientist, contractors.
    - Within 15 business days, LHD must determine whether notice is complete and request additional information if incomplete. If additional info required, LHD must re-determine if notice is complete within 10 business days after receipt.
    - Inaction within timeframes → notice may be treated as complete.
    - "A determination of completeness means that the notice of intent to construct includes all of the required components."
  - No public liability for systems designed, constructed, and installed pursuant to this option.
- S.L. 2015-__ (H 765), sec. 4.14.

Other Regulatory Reform

- County maintenance of effort requirement repealed
  - Effective July 1, 2014, counties were required to maintain appropriations to local health department at FY 2010-11 levels. This requirement is repealed effective July 1, 2016.
  - S.L. 2015-246 (H 44), sec. 2.5.
- Well permits
  - Well permits deemed to include authorization for installation, construction, maintenance, or repair of electrical wiring, devices, appliances, or equipment by a certified well contractor.
  - Private drinking water well permits may be issued to property owners developing or improving property located in service area for public water if public lines not yet in place. Owner may not be required to connect to public system if lines subsequently extended, so long as well remains compliant and in use.
  - S.L. 2015-246 (H 44), sec. 3.5.

Community & Economic Development

Tyler Mulligan

Economic Development Powers of Local Governments "Clarified"

- S.L. 2015- 277; S 472 modified G.S. 158- 7.1:
  - Discretionary language removed
  - New board determination required for <u>every</u> appropriation
  - New public hearing required for <u>every</u> appropriation
  - Historic rehab included

G.S. 158-7.1: Discretion Removed, More Process Imposed

- Before:
  - "Each county and city … is authorized to make appropriations for the purposes of aiding and encouraging the location of manufacturing enterprises … and locating industrial and commercial plants … or *other purposes which, in the discretion of the governing body* …
  - "… will increase the population, taxable property, agricultural industries and business prospects of any city or county."
  - Notice and public hearing prior to approving incentives and real estate activities

G.S. 158-7.1: Discretion Removed, More Process Imposed

- After
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  - Board must determine that appropriation "will increase the population, taxable property, agricultural industries, employment, industrial output, or ~~and~~ business prospects of ~~any~~ the city or county."
  - Notice and public hearing prior to approving ~~incentives and real estate activities~~ any appropriation

G.S. 158-7.1: Historic Rehab

- "A county or city may make grants or loans for the rehabilitation of commercial or noncommercial historic structures, whether the structure is publicly or privately owned."
- Still subject to statutory and constitutional limits
  - Statute requires jobs
  - No gifts
  - *Maready* and public purpose of economic development
- Historic Preservation Commission statutes

State Economic Development Incentives Reauthorized

- State historic rehabilitation tax credit
- Recruitment incentives
  - JDIG
  - OneNC Fund
- Certain development tiers favored

Questions?

Evaluation: https://unc.az1.qualtrics.com/SE/?SID=SV_3ObuZxeI5zXmx8h

Legislative Reporting Service

- Subscription information
  - https://lrs.sog.unc.edu/
- Questions?
  - Christine Wunsche, LRS Director
  - 919.733.2484 (Raleigh)
  - 919.962-9180 (Chapel Hill)
  - wunsche@sog.unc.edu
- Follow LRS on Twitter for NCGA updates

  @sog_lrs

Bee Hives

- County may not prohibit any person or entity from owning or possessing 5 or fewer hives. S.L. 2015-246.
- Cities generally must allow up to 5 hives on a single parcel, but retain some authority to regulate them. *Id.*

Display of US & NC Flags

- State agencies & political subdivisions must follow federal Flag Code when handling, displaying, storing, or disposing of US flag or NC flag. S.L. 2015-170.
- Flag Code: 4 USC §§ 1-10.

Objects of Remembrance

New G.S. 100-2.1 prohibits permanent removal of "object of remembrance" from public property. S.L. 2015-170.

Objects of Remembrance (cont'd)

Object of Remembrance:

- monument, memorial, plaque, statue, marker, or display
- of a permanent character
- commemorating an event, person, or military service that's part of NC history.

Objects of Remembrance (cont'd)

When is relocation permitted?

- If appropriate measures to preserve the object are necessary OR
- If necessary for construction, renovation, or reconfiguration of buildings, open spaces, parking, or transportation projects.

Objects of Remembrance (cont'd)

- Temporary Relocation: Object must be returned to original location within 90 days of project completion.
- Permanent Relocation: Object must go to site of similar prominence, honor, visibility, availability, and access.

Objects of Remembrance (cont'd)

New G.S. 100-2.1 does NOT apply to:

- Highway markers set up by BOT in cooperation with DENR and DCR,
- Privately owned object located on public property pursuant to legal agreement governing its removal or relocation, OR
- Object deemed by building inspector or "similar official" to threaten the public safety because of unsafe or dangerous conditions.

Filing County Oaths of Office

- G.S. 153A-26: Oath of office for elected or appointed county officer "shall be filed with the clerk."
- G.S. 153A-26 as of Oct. 1, 2015: Oaths of elected/appointed county officers "shall be filed with the clerk to the board of commissioners." SL 2015-24.

Closing-Out/Distress Sales

- Old Rule: Person wanting to hold a closing-out or distress sale had to obtain a license from the city clerk or, if the sale was to occur in an unincorporated area, from the officer designated by the board of county commissioners. G.S. 66-77.

Closing-Out/Distress Sales (cont'd)

- S.L. 2015-103 repeals G.S. 66-77.
- New Rule: Closing-out or distress sale may be held without a license from the city or county.

Firearms

- G.S. 14-409.40 generally bars cities and counties from regulating the ownership, storage, transfer, sale, purchase, licensing, or registration of firearms, ammunition, or firearms components.
- S.L. 2015-195 amends G.S. 14-409.40 to specify that the restriction on local regulation also applies to the taxation, manufacture, or transportation of firearms, ammunition, or firearms components.

Firearms (cont'd)

- Person adversely affected by local regulation adopted in violation of G.S. 14-409.40 may bring civil action for declaratory and injunctive relief.
- Plaintiff may obtain actual damages arising from violation.
- Court "shall" award prevailing party reasonable attorney's fees and court costs.

Firearms (cont'd)

- As amended, G.S. 14-409.46 protects the owner, operator, or user of a sport shooting range from civil or criminal liability for violating a noise ordinance if the range complies with any noise ordinance applicable to it when it began operating. S.L. 2015-195.

Liability for 911/Public Safety Dispatchers

Liability for 911/Public Safety Dispatchers (cont'd)

Burden of proof for most civil claims is "**preponderance of the evidence**."

Under new G.S. 99E-56, the burden is "**clear and convincing evidence**" if

- Defendant is 911 or public safety dispatcher at primary PSAP or public safety agency to which 911 calls are transferred from primary PSAP, and
- Plaintiff's claim arises from defendant's act or omission in performing assigned job duties. S.L. 2015-71.

Animal Control

Aimee Wall

Standards of Care

Photo by Kerstein Joenssen

- No local ordinances regulating standards of care for farm animals
- Standards of care
  - Construction, repair, or improvement of shelter or housing
  - Restrictions on types of feeds or medicines
  - Exercise and social interaction requirements
- Farm animals – exclusive list
  - Counties – includes poultry
  - Municipalities – includes poultry flocks > 20 birds

S.L. 2015-192 (H 553)

Local Government Support

- Spay/Neuter Account
  - Eligibility changed – individuals with household incomes < 100% FPL
  - Providers of services – role for local veterinarians
  - Recurring funding ($250K)
- S.L. 2015-241 (H 97, Sec. 13.7)

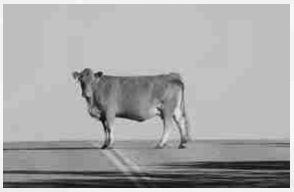
- Shelter Support Fund
  - New fund created
  - Available to reimburse operational expenses incurred if
    - Denial, suspension, or revocation of registration
    - Unforeseen catastrophic disaster at the shelter
  - County match required
  - Recurring funding ($250K)

Animal Welfare Hotline

- New state system for receiving reports of cruelty and animal welfare reports
- Criminal cruelty?
  - Refer to the "appropriate" unit of local government where violation allegedly occurred
  - State will need to collect and maintain this information
- Violation of Animal Welfare Act?
  - Refer to Dept. of Agriculture and Consumer Services
- S.L. 2015-286 (H 765)

Unclaimed Livestock

- New timeline and process for auctions of unclaimed livestock



Notice of impoundment

Unclaimed after 3 days, Sheriff posts notice of sale

After 10 days, impounder may sell at public auction

S.L. 2015-263 (S 513)

Pigeons

- Pigeons are now excepted from the state's civil and criminal animal cruelty laws

S.L. 2015-286 (H 765)

Questions?

Evaluation: https://unc.az1.qualtrics.com/SE/?SID=SV_37C1D2Xnv8tZgNv

Property Tax

Chris McLaughlin

New Property Tax Laws

1. Small overpayments applied to future taxes
2. Authority to waive old RMV interest
3. Remove LEOs from County Tax Websites?
4. "Builders' Inventory" Exclusion

"Builders' Inventory" Exclusion

- S.L. 2015-223 (H168)
- G.S. 105-277.02

"Builders' Inventory" Exclusion

- Real property held for sale
  - Commercial or Residential
- Excludes property taxes on increases in value due to:
  - Subdivision
  - Non-structural improvements (grading, streets)
  - New home construction
- Duration:
  - 3 years residential property
  - 5 years commercial property

"Builders' Inventory" Exclusion

- Parcel A subdivided and graded in July 2016
- Improved parcel first listed 2017
- Tax appraisal of improved Parcel A increases for 2017-2018 year
- Exclusion may cover 2017, 2018, and 2019

What Terminates the Exclusion?

- Sale or Lease
- Removal from the market
- Building permit *(commercial property only)*
- Use as model home or other purpose

"Builders' Inventory" Exclusion

- Applies to improvements made on after **July 1, 2015**
- 2016 first tax year available

"Builders' Inventory" Exclusion

- New home construction begins May 2015, completed October 2015?
- Grading and subdivision completed in 2016, new homes built in 2017?
- Property sold from one "builder" to another?
- Excluded home sold to homeowner prior to July 1?

Questions?

Evaluation: https://unc.az1.qualtrics.com/SE/?SID=SV_37C1D2Xnv8tZgNv

Land Use & Planning

Adam Lovelady

Land Use & Planning Outline

- Limits on Residential Design
- Protest Petition Repealed
- Land Subdivision Changes
- Code Inspection Liability
- Miscellaneous

Residential Design Standards

S.L. 2015-86 (S25)

Adds limits to G.S. 160A-381 and 153A-340

Effective June 19, 2015

Applies to all zoning ordinances

Blog at http://canons.sog.unc.edu/?p=8180

Residential Design Standards

Applies to structures covered by one and two family building code

- Single family
- Duplexes
- Townhouses if built to this code

Not applicable to multifamily, commercial, institutional, industrial buildings

Residential Design Standards

May not regulate:

- Exterior building color;
- Type or style of exterior cladding material;
- Style or materials of roofs or porches
- Exterior nonstructural architectural ornamentation;
- Location or architectural styling of windows and doors, including garage doors;
- Location of rooms; or
- Interior layout of rooms

Residential Design Standards

May regulate:

1) Height, bulk, orientation and location of structure on lot;
2) Use of buffering or screening to minimize visual impacts, to mitigate light or noise, or protect privacy of neighbors; and
3) Regulations governing permitted uses of land or structures

Residential Design Standards

Limits do not apply:

1) Within designated local historic districts;
2) Within historic districts on the National Register;
3) For designated local, state, or national landmarks;
4) Directly and substantially related to safety codes;
5) Manufactured housing; and
6) Adopted as a condition of participation in the flood insurance program

Residential Design Standards

Also allowed:

1) Voluntary consent of all affected owners as part of rezoning or development approval
2) Private covenants and contractual agreements

Protest Petitions

S.L. 2015-160 (H. 201)

- Repeals requirement for ¾ majority if protest filed for zoning map amendment
- Written comments required to be provided to council
- Amends voting statute – abstention does not count as "yes" vote

Land Subdivision

DOT Subdivision Streets Study
(S.L. 2015-217(S581))

- Process for acceptance, standards, and costs for public and homeowners

Development Environmental Impact Statements
(S.L. 2015-90(H795))

- 10 acre minimum

Land Subdivision

Limits on Performance Guarantees
(S.L. 2015-187(H721))

- Statutory Menu
- 125% Cap
- Development Agreements, too
- Completion ONLY

Blog at http://canons.sog.unc.edu/?p=8216

Code Inspections

S.L. 2015-145 (H 255)

- Must conduct all requested inspections at each visit and must inform of all incomplete work or failure to meet code
- Must approve designs from licensed architects and engineers
- May only use fees collected for inspection department

Code Inspections

Defines "willful misconduct, gross negligence, or gross incompetence" as:

- Enforce code requirement applicable to one area to other areas;
- Refuse to accept alternative design or construction method approved by DOI or that is allowed in code;
- Enforce a requirement more stringent than code requirements;
- Refuse to accept an interpretation of the Building Code Council; or
- Habitually fail to provide requested inspections in timely manner.

Local Regulatory Reform

S.L. 2015-246 (H. 44) collects various amendments into omnibus package of local government regulatory reforms

Miscellaneous Others

- Counties may enforce ordinances in public trust areas (S.L. 2015-70 (H346))
- Clarify fracking preemption (S.L. 2015-264(S119))
- Exempt open air camp cabins from building code (S.L. 2015-19(H. 706))
- Numerous annexations/deannexations

Pending with Governor

- H. 765 – Regulatory Relief
  - Cannot impose condition on CUP if no authority for requirement or if court has held unenforceable
  - Study ways to increase allowable built-upon areas with low density stormwater option
  - Modify provisions re vegetated buffers near coastal waters
  - No mitigation for impacts to intermittent streams
  - Study flood elevations and building height requirement impacts on flood insurance rates

Potentially Forthcoming in 2016

Proposed Chapter 160D (H 548)

Reorganization and modernization of planning and development regulation statutes

- Merge city and county statutes
- Reorganize into more accessible sections
- Modernize and clarify language
- Consensus amendments, no major policy initiatives

Questions?

Evaluation: https://unc.az1.qualtrics.com/SE/?SID=SV_37C1D2Xnv8tZgNv

Environment

Richard Whisnant

Environment

- Another big year: from the first ratified bill to the final wee hours, scads of environmental law changes
- Organization of this overview
  - Changes that reduce public information about the environment
  - Changes that allow more pollution, or more development in environmentally sensitive areas
    - Air
    - Water
    - Land
  - Environmentally protective changes
  - Environmental finance
  - Matters in limbo and miscellany

Changes that reduce public information about the environment

- Minimizing SEPA
- Audit privilege and enforcement immunity
- Life of facility permits for landfills
- No local regulation of fracking
- Elimination of air monitors
- Gag on farm photos

Minimizing SEPA

- Threshold for "significant expenditure" raised to $10MM, not including local or in-kind contributions
- Threshold for "use of public land" raised to "substantial, permanent changes" in over 10 acres
- Expands the use by agencies of "minimum criteria" (categorical exclusions) and expands the list of statutory exclusions from SEPA

Minimizing SEPA (cont.)

- Excludes all projects required or authorized by the legislature
- Eliminates analysis of indirect (secondary and cumulative) impacts
- BUT retains that analysis for interbasin transfers of water

Audit privilege & enforcement immunity

- Audit privilege: a way to shield internal environmental assessments from disclosure
- Immunity: a way to avoid fines for noncompliance

Audit privilege & enforcement immunity (cont.)

- Audit privilege largely tracks longstanding agency policy; consult process requirements if you want to conduct an audit
- Immunity provisions allow facility owners and operators to avoid fines by disclosing and working on environmental problems—apparently *even after a State inspection*.
- Radical change in environmental enforcement

Life of facility permits

- Landfills and transfer stations, as well as local solid waste franchises, now get "lifetime permitting" instead of limited duration (5-10 yr) permits
- Apparent contradiction with GS 160A-319 and 153A-36, which limit franchises to 30 years.
- Permit requirements themselves aren't changed, just the fact that there is no need for renewals
- Applies to new permits and major modifications
- EMC is to have rules in place by July 2016

No local regulation of fracking

- Truly last-minute change to 2014 legislation
- Previously, local governments could not pass ordinances that "prohibit or have the effect of prohibiting" fracking
- New language prohibits ordinances that "regulate" oil and gas exploration, development and production

No local regulation of fracking (cont.)

- Also applies to coal ash facilities
- Unclear effect on existing and pending moratoria
- Challenges to local ordinances affecting oil and gas still go through the State Oil and Gas Commission

Limits on documenting problems on other peoples' property

- Easier legal action against people who document problems on property they don't own…$5K/day penalty in addition to damages, plus attorneys' fees
- Debates centered on animal rights activists and farms, but also implications for any workers who record violations of environmental laws, such as improper waste disposal
- Follow-on to Farm Act of 2014, which made agricultural noncompliance records non-public
- Vetoed by Governor, but veto overridden

Eliminating air monitors

- DEQ directed to inform EPA that NC will remove all ambient air monitors that aren't federally required, unless DEQ finds that some extra monitor is necessary to protect health or the environment.

Changes that allow more air pollution

- Toxic air emissions from fracking no longer required to be regulated

Changes that allow more water pollution & development in wet areas

- Reduced stormwater regulation
- Less restrictive riparian buffers
- No regulation in intermittent streams
- Reduced wetlands regulation (isolated wetlands)
- Less focused wetlands and stream mitigation

Changes that allow more water pollution & development in wet areas

- Extending the in-lake treatment (SolarBee) experiment for nutrient impaired waters (Jordan)
- No enforcement of Jordan & other delayed rules?
- More permissive coastal sandbagging
- More hardened structures on coast (terminal groins)
- Cap on sediment & erosion control violation fines

More pollution on land

- No more required noncommercial underground storage tank cleanup
- General increase in “risk based” cleanup
- Broadening of brownfields program to allow current owners entry to program

Environmentally protective changes

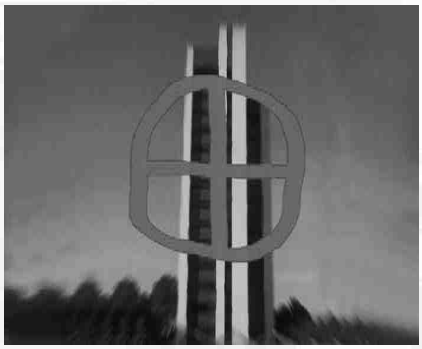
- Coal ash tweaks
- Solid waste tweaks
- Capitalize on wetland mitigation
- Oyster landscaping ban
- Expansion of Jean Preston Oyster sanctuary

Environmental finance

- Water and sewer authorities
- General package of funding changes sought by the State Water Infrastructure Authority
- State funding for dredging
- Phaseout of noncommercial UST fund
- Funding for shale gas exploration
- Solid waste fees
- Water interconnections and required connections

Matters in limbo and misc.

- DENR is now DEQ: restructuring
- Ecosystem Enhancement Program (EEP) is now Division of Mitigation Services
- Rules review and fiscal analysis



Summary: local governments should:

- By Dec. 31, 2015, submit emergency action plans for intermediate and high-hazard dams
- By Mar. 1, 2016, identify any stormwater ordinances requiring State approval under GS 143-214.7 and submit them to DEQ. They will be evaluated for whether they are more stringent than the State model program.
- Before 2017, identify any riparian buffer requirements in excess of 30' in width and prepare scientific justification for any such greater widths you wish to retain.

Questions?

Evaluation: https://unc.az1.qualtrics.com/SE/?SID=SV_37C1D2Xnv8tZgNv

Alamance County

PLANNING DEPARTMENT
215 N Graham Hopedale Rd.
Burlington, NC 27217
Tel. (336) 570-4053

INFORMATIONAL MEMORANDUM

TO: Mr. Jimmy Ray Cobb, Jr, Planning Board Chair

FROM: Libby Hodges, Planning Director

DATE: November 5, 2015

SUBJECT: Planning Board Roles and Responsibilities

Mr. Cobb,

Based on previous discussions with multiple Board members, I have begun assembling material to inform the Planning Board regarding our roles and responsibilities in local land use and development process. Due to our Board's particular responsibilities, it may be helpful to review the attached information from the School of Government regarding the customary responsibilities of a Planning Board and its role in "Quasi-judicial" hearings. I've also re-attached a copy of our Ordinance and Rules for clarity.

I have requested guidance from our legal department regarding the contents and format of the Planning Board Ordinance and the associated Rules of Procedure. Generally speaking, the Planning Board Ordinance is set by the Board of Commissioners and should provide a general outline of the Planning Board's responsibilities (based on the enabling state statute), including their respective roles in member appointment, voting majority numbers, and residency requirements. The Board Rules should provide more specific information about meeting procedure, including location, time, attendance, and Board Officer's responsibilities, among other items. We will consult the County Attorney prior to introducing any changes to the Board of Commissioners or for adoption into our Rules.

I look forward to further discussions regarding the Planning Board's recommendations regarding possible Ordinance and Rule revisions. Please feel free to contact me if you have any questions.

Thank you,

Libby Hodges
Planning Director

cc Planning Board
Jessica Dockery, Planner
Ben Pierce, Assistant County Attorney

Alamance County Planning Board By-Laws and Meeting Procedures

Article I Meetings

Section 1.1 Annual Meetings
The annual meeting of the Alamance County Planning Board shall generally be the in the month of January of each year. At the annual meeting of each year, the Board shall elect members to the office of Chair and Vice-Chair. The Board shall also adopt a meeting schedule for the entire year; including the meeting date of the annual meeting for the next calendar year.

Section 1.2 Regular Meetings
Regular meetings of the Alamance County Planning Board shall take place on the second Thursday of each month. Meetings will be held at 7:00 PM at the Alamance County Office Annex Building located at 217 College St. in Graham, North Carolina.

Section 1.3 Special Meetings, Change of Meeting Date, Time, or Location.
In the event that a special meeting of the Alamance County Planning Board is necessary, Planning Board members shall be notified, either verbally or in writing, no less than forty-eight (48) hours prior to the time of the meeting. Notification of any change in meeting date, time, or location shall be done in accordance with applicable North Carolina General Statutes which regulate such notification. While not required by Statute, reasonable efforts should be made to post such changes on the County website.

Section 1.4 Quorum
No votes or official action may be taken at any Planning Board meeting without the presence of a quorum of members. A quorum shall consist of a majority of regular voting members. In the event that a quorum of regular members does not exist, alternate members may be counted toward the quorum, as they may vote at that time.

Section 1.5 Lack of Quorum
In the event that there is a lack of a quorum, the Chair may adjourn the meeting. Unless otherwise directed by the Chair at the meeting, all agenda items shall be placed on the next regular meeting agenda.

Section 1.6 Order of Proceedings
All Planning Board meetings shall follow, in general, the following order of proceedings:

1. Call to Order
2. Roll Call
3. Approval of Minutes
4. Public Comments
5. New Business

6. Old Business
7. Announcements
8. Adjournment

The Chair of the Planning Board may, at their discretion, make changes to the order the agenda to accommodate the public.

Section 1.7 Public Comments
Anybody that attends a Planning Board meeting shall have the opportunity to make public comments on any agenda item. Prior to speaking, each person shall give their name and address for the minutes of the meeting. Time limitations may be placed on speakers, at the discretion of the Chair, based upon the number of those wishing to address the Board.

Section 1.8 Disruptions
Disruptions or disruptive behavior during a Planning Board meeting shall not be tolerated. All disruptive behavior shall be enforced pursuant to N.C.G.S. 143-318.17 which states: *"A person who willfully interrupts, disturbs, or disrupts an official meeting and who, upon being directed to leave the meeting by the presiding officer, willfully refuses to leave the meeting is guilty of a Class 2 misdemeanor."*

Section 1.9 General Rules of Procedure
All meetings shall follow the general guidelines for procedure:

1. All Planning Board members shall be recognized by the Chair prior to asking questions of Staff or citizens.
2. Staff shall direct all comments to the Chair and request recognition before addressing the Board on any issue.
3. Prior to opening the floor for discussion among the members of the Board; the Chair may, at their discretion, solicit comments from the public.
4. Prior to taking any motions, the Chair shall open the floor for discussion among the members of the Board.
5. No vote may be taken without a motion and a second. In the event that a motion fails to garner a second, the motion shall be considered dead and reported as such in the minutes of the meeting.
6. All votes shall require a simple majority to carry.

Article II Officers

Section 2.1 Officers
The officers of the Alamance County Planning Board shall consist of a Chair and a Vice Chair, each of whom shall serve for a term of one year.

Section 2.2 Election of Officers
The officers of the Planning Board shall be elected for the ensuing year at the annual meeting of the Planning Board. Elections will be determined by a simple majority.

Section 2.3 Duties of Officers

The duties and powers of the officers of the Planning Board shall be as follows:

a. Chair:

1. To preside over the Board at all meetings,
2. To call special meetings in accordance with these By-Laws,
3. To sign all official documents of the Planning Board

b. Vice Chair:

1. During the absence, disability or disqualification of the Chair, the Vice Chair shall exercise or perform all the duties and be subject to all the responsibilities of the Chair.

Section 2.4 Clerk to the Planning Board

The Planning Manager shall serve as the Clerk to the Planning Board. The Clerk shall be responsible for the following:

1. Preparing all agenda packets for the Planning Board
2. Ensuring that accurate minutes of the meeting are taken and reported.
3. Maintaining an archive of agendas and minutes for public review

Article III Voting and Conflicts of Interest

Section 3.1 Voting

Each Planning Board member that counts toward the quorum of a meeting may cast one vote on any given item. A simple majority is necessary for any motion to carry.

Section 3.2 Conflicts of Interest

No Planning Board member may deliberate or vote on any matter in which they have a direct financial interest or may benefit from. In the event that a Planning Board member does have a conflict of interest, the Board member shall request recusal from the Chair. Recusal must occur before deliberation of an agenda item begins. Once recused, the member may not take part in any discussion regarding the issue being considered.

Article IV Board Membership

Section 4.1 General

All Planning Board members shall be appointed by the Alamance County Board of Commissioners in accordance with the Alamance County Planning Ordinance. The Planning Board shall consist of thirteen (13) members. Nine (9) members shall be considered regular members, three (3) members shall be considered alternates, and one (1) member shall be a County Commissioner. No more than two (2) Planning Board members may be from the same Township and no more than one (1) Planning Board member from any given Township shall serve as a regular member.

Section 4.2 Term Limits

In accordance with the Alamance County Planning Ordinance, Planning Board members shall be limited to two (2) consecutive three (3) year terms. After six (6) years of consecutive service, Planning Board members will be ineligible for reappointment for a period of one (1) year.

Section 4.3 Requirements for Appointment
All Planning Board members shall be residents of Alamance County in order to be eligible to serve on the Board

Section 4.4 Recruitment
The Alamance County Planning Board may utilize a number of means to recruit for new members to fill positions of members whose terms are set to expire. Such means should include advertisement on the County website and, if necessary, in the local newspaper. Interested parties will be required to fill out a committee application and submit a brief summary of qualifications or letter of interest. Applications will be kept on file in the Planning Department for a period of two (2) years.

Section 4.5 Review of Applications
Applications for the Planning Board will be reviewed by the Planning Manager to determine basic eligibility based on Township representation and residency. After eligible applicants have been determined by the Planning Manager, their applications will be given to the Planning Board for review at a regular Planning Board meeting. The Planning Board will then make a formal recommendation of appointment to the Board of Commissioners.

Section 4.6 Meeting Attendance
All Planning Board members are expected to attend monthly Planning Board meetings. If a member misses more than two (2) consecutive meetings, the Chair of the Planning Board may request that the member be removed from the Board. Any and all removals must be approved by the Alamance County Board of Commissioners.5

Section 4.7 Vacancies Due to Resignation, Death, Disability, etc.
In the event that a Planning Board vacancy occurs due to resignation, death, disability, relocation out of the County, or any other reason other than normal expiration of a term; the Planning Manager shall immediately make the Clerk to the Board Commissioners aware of the vacancy. Attempts to fill the position shall begin with applications that are kept on file by the Clerk to the Planning Board. If a replacement cannot be found in applications that are kept on file, active recruitment shall begin pursuant to Section 4.4 of these By-Laws. Should such a vacancy be the office of Chairman, the Vice-Chairman will become the Chair and a new Vice-Chairman will be elected at the next regular meeting.

Article V Miscellaneous

Section 5.1 Communication to the Board

All communications to the Board, including applications, petitions, emails, (when specifically directed to the board or appropriate for the Board's information, at the reasonable discretion of staff) or other referrals, shall be directed to the Planning Department and shall thereafter be provided to the Board.

Section 5.2 Board Requests

All requests for information (maps, ordinances, etc.) from the Planning Staff by a Planning Board member shall be directed to the Planning Manager. Any response by the Planning Manager shall be directed to the Planning Board as a whole.

Section 5.3 Amendments

The Planning Board may adopt, amend, repeal, or alter; in whole or in part, these by-laws by a majority vote at any regular meeting; provided that any change requested has been placed on the Board's regular meeting agenda.

Adopted by the Alamance County Planning Board on this the 14th day of May, 2009.

_____ Chairman

_____ Attest, Planning Director

PLANNING ORDINANCE FOR ALAMANCE COUNTY

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS FOR THE COUNTY OF ALAMANCE AS FOLLOWS:

WHEREAS, Article 18, Part 1, Chapter 153A of the General Statutes of North Carolina, grants to counties the authority to designate planning agencies and to assign powers and duties to such agencies, and,

WHEREAS, Alamance County has heretofore established a Planning Board and a Planning Department to carry out some of the functions prescribed by said Statute, ordinance for which was adopted August 1, 1966 and again confirmed on September 7, 1971 and is recorded in the Ordinance Book beginning at Page 16, however, in the judgement of the Board of Commissioners , the planning function and the need therefor has been altered sufficiently to require a reconsideration and a rewriting of the Planning Ordinance;

NOW, THEREFORE, BE IT HEREBY ORDAINED, THAT THE Board of Commissioners for the County of Alamance does hereby designate the Alamance County Planning Department and its staff as the planning agency authorized by G.S. 153A-321 for Alamance County to perform the following duties described in said Statute:

1. Make studies of the county and surrounding areas;

2. Recommend to the Board of Commissioners objectives to be sought in the development of Of the study area;

3. Prepare and Present to the Board of Commissioners plans for achieving these objectives;

4. Develop and recommend policies, ordinances, administrative procedures, and other Means for carrying out plans in a coordinated and efficient manner;

4. Perform any other related duties that the Board of Commissioners may direct.

BE IT FURTHER HEREBY ORDAINED that the Alamance County planning agency is hereby granted the supplemental powers set forth in G. S. 153A-322, to be exercised in the manner set forth in that Statute, and

BE IT FURTHER HEREBY ORDAINED that the Alamance County Planning Department is hereby specifically charged with responsibility, under the direction and subject to final approval of the Board of Commissioners for the following:

1. Developing and proposing a community development plan;

2. Carrying out responsibilities as the County's lead agency for transportation planning;

3. Administration of the County Subdivision Ordinance;

4. Development and Administration of the County's road naming program;

5. Development and uses of the land use survey;

6. Development of an overall plan for water and sewer policy on cooperation with such projects as the 201 Plan and others to establish a uniform and acceptable County-wide system; and

7. Such other responsibilities as the Board of Commissioners may from time to time specifically assign to the Alamance County Planning Department.

BE IT FURTHER HEREBY ORDAINED that there is hereby created an Alamance County Planning Board composed of thirteen (13) citizens of Alamance County, which said Board shall:

1. Serve as advisory body to the Alamance County Planning Department;

2. Study and suggest policies to the Planning Department, the County Manager, and the Board of Commissioners;

3. From time to time make recommendations for the establishment and implementation of the Functions of the Planning Department in addition to those set forth in this ordinance; and

4. Set up a program of public meetings with respect to the role of panning for the County and the Functions of the Planning Department in order to encourage public participation and expression And a better understanding of the needs of the County.

BE IT FURTHER ORDAINED that the membership of the Planning Board shall consist of nine (9) regular members and three (3) alternate members. Alternate members may come to any scheduled meeting, however; their presence shall not count towards a quorum unless a regular member, or members, are not present. Terms for members of the Planning Board shall last for three (3) years with a two (2) term limit. After six (6) consecutive years, outgoing members shall be ineligible for reappointment for a period of one (1) year. Members who miss two (2) consecutive meetings shall be removed from the Board pursuant to policy set forth the by the Alamance County Board of Commissioners in Minute Book 33, Page 16. In order to make the Planning Board widely representative of the County, not more than two persons who reside in the same township shall be members of the Board at the same time, and only one person from a particular township shall serve as a regular member of the Board. It is further provided that a member of the Board of Commissioners shall be named as an ex officio (without vote) member of the Board in order to provide liaison between the Planning Board and the Board of Commissioners.

BE IT FURTHER ORDAINED that meetings of the Planning Board shall be held at least quarterly and members shall be reimbursed for expenses, including mileage, in connection with their attendance at meetings and official duties. At the first meeting in each calendar year, the Planning Board shall elect a Chairman, Vice Chairman, and the Planner-in Charge or his designate shall serve as his secretary to the Planning Board. Additionally at the first meeting in each calendar year, the Planning Board shall adopt an annual meeting schedule which shall be properly posted outside of the meeting room and registered with the Clerk to the Board of County Commissioners.

BE IT FURTHER ORDAINED that any ordinances or parts of ordinances in conflict with this resolution and ordinance hereby repealed, and this ordinance shall be in full force and effect as an ordinance of Alamance County from and after the date of its adoption by the Board of County Commissioners; and should any section, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of the ordinance shall not be affected thereby.

* *

The foregoing Ordinance shall become effective immediately and shall rescind all previous versions of the Planning Ordinance for Alamance County.

Adopted this the 6th day of August, 2007.

_____
Chairman

_____
Vice-Chairman

_____
Commissioner

_____
Commissioner

_____
Commissioner

Coates' Canons Blog: Planning Board Basics

By Adam Lovelady

Article: http://canons.sog.unc.edu/?p=7228

This entry was posted on July 24, 2013 and is filed under Board Structure & Procedures, Board Structures, Land Use & Code Enforcement, Planning

The local planning board may take many forms and perform many roles. The core responsibilities are clearly set forth by statute. The General Statutes also grant fairly wide ranging authority for additional responsibilities, giving local governments the ability to use the planning board in a variety of ways. This blog outlines the basic requirements for planning boards and explores those options for additional activities.

Organization

Before a local government exercises the powers of zoning and subdivision, it must designate a planning board (GS 160A-387 & GS 153A-344). A local government may create one or more boards to perform the duties. The statutes are flexible with regard to composition of the planning board: A planning board must have at least three members, but otherwise, the size, composition, and organization are open to the local governing board's discretion (GS 160A-361 & GS 153A-321). For municipalities that have extraterritorial planning jurisdiction, the planning board must include proportional representation for the extraterritorial area (GS 160A-362). Unless prohibited by charter or ordinance, a governing board may appoint nonresidents to serve on the planning board (GS 160A-60 & 153A-25). There are no specific qualification requirements for planning board members, except in cases where the planning board acts as a historic preservation commission (described below). Terms for planning board members may be set by local ordinance, or members may serve for indefinite periods at the pleasure of the governing board.

Core Responsibilities

The General Statutes grant planning boards fairly broad authority for comprehensive planning and implementation of that comprehensive plan (GS 160A-361 & GS 153A-321). The planning board may

1. Make studies of the area within its jurisdiction and surrounding areas;
2. Determine objectives to be sought in the development of the study area;
3. Prepare and adopt plans for achieving these objectives;
4. Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
5. Advise the council concerning the use and amendment of means for carrying out plans;
6. Exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct;
7. Perform any other related duties that the council may direct.

In practice, the essential responsibility of planning boards is drafting the zoning ordinance and reviewing proposed amendments. The planning board is charged with preparing and reviewing a locality's initial zoning ordinance and map as well as making written recommendation about its adoption (GS 160A-387 & GS 153A-344). This generally applies to comprehensive revisions to the zoning ordinance and map, as well.

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Subsequent amendments to the zoning ordinance or map must be submitted to the planning board for review and comment. The planning board must provide written recommendation to the governing board that addresses whether the proposed amendment is consistent with the comprehensive plan or other applicable adopted plans. The governing board may act on a proposed amendment after the planning board makes recommendation or 30 days pass. The governing board is not bound by the recommendation of the planning board, if any (GS 160A-383 & -387; GS 153A-341 & -344).

In carrying out its task of reviewing ordinances and amendments, the planning board is not required to hold formal public hearings, but many local governments do require hearings by ordinance (GS 160A-387 & GS 153A-344). Of course, open meeting requirements still apply and many planning boards accept public comments on the issue, even if no formal hearing is held.

Additional Responsibilities

The governing board may designate the planning board to receive and disburse funds in furtherance of its functions, as well as enter contracts with federal or state agencies for planning assistance. Planning boards may procure technical planning assistance from another city, county, or regional planning agency; planning boards may also provide such technical assistance to other planning agencies (GS 160A-363 & GS 153A-322). In practice, the administrative staff typically manages the funds and contracts, with the board serving an advisory role.

The planning board may be tasked with decision-making for applications for special use permits or conditional use permits (GS 160A-381& GS 153A-340).

A planning board may provide final decisions on preliminary and final subdivision plats (GS 160A-373 & GS 153A-332). Also, related to subdivision approvals, the planning board may have responsibilities for school site reservation including plan adoption and school board notification (GS 160A-372 & GS 153A-331).

The North Carolina Urban Redevelopment Law outlines specific additional roles for planning boards, referenced in the law as “planning commissions” (GS 160-500 et seq.). First, the planning board must certify areas as “redevelopment areas.” The local redevelopment commission then may craft a redevelopment plan. The planning board reviews and certifies a recommendation on that redevelopment plan before it is finalized and sent to the governing board (GS 160A-513).

Filling In

Local governments are authorized to have the planning board serve as other specific boards. The planning board may perform some or all of the duties of a board of adjustment, if designated as such by the local governing board (GS 160A-388 & GS 153A-345). So, some planning boards may handle variance decisions, appeals of administrative zoning decisions, and appeals from the historic preservation commission.

Speaking of preservation commissions, the planning board also may perform the duties of a historic preservation commission, if designated by the governing board (GS 160A-400.7). When serving as a preservation commission, the planning board must have at least three members with special interest, experience, or education in history, architecture, or related fields. Preservation commission duties include, among other things, determinations of certificates of appropriateness for construction and alterations in a historic district.

Types of Actions

A planning board may have both advisory and quasi-judicial decision-making authority. Acting in an advisory capacity, it reviews ordinances and ordinance amendments and advises the governing board on the matter. Other times the planning board is making quasi-judicial decisions and must follow particular procedures. A quasi-judicial decision is the application of a broad legislative decision to an individual situation. In a quasi-judicial decision the reviewing board takes evidence, makes findings of fact concerning the specific proposal, and exercises discretion in applying the broad policy to the particular applicant. Quasi-judicial decisions require heightened procedures, including sworn testimony, unbiased decision-makers, and a detailed record. (GS 160A-393 & GS 153A-349).

A planning board must follow quasi-judicial procedures when it serves as the board of adjustment, reviews special use

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permits and conditional use permits, considers certificates of appropriateness (when serving as a historic preservation commission), and certain subdivision decisions that involve discretionary decisions (GS 160A-377 & GS 153A-336).

Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-387.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-344.html
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_160a/gs_160a-361.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-321.html
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_160a/gs_160a-362.html
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_160a/gs_160a-383.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-341.html
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_160a/gs_160a-363.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-322.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-381.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-340.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-400.7.html
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_160a/gs_160a-372.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-331.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_160A/Article_22.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-513.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-388.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-345.html
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_160a/gs_160a-393.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-349.html
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_160a/gs_160a-377.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-336.html

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§ 153A-321. Planning boards.

A county may by ordinance create or designate one or more boards or commissions to perform the following duties:

(1) Make studies of the county and surrounding areas;
(2) Determine objectives to be sought in the development of the study area;
(3) Prepare and adopt plans for achieving these objectives;
(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
(5) Advise the board of commissioners concerning the use and amendment of means for carrying out plans;
(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the board of commissioners may direct;
(7) Perform any other related duties that the board of commissioners may direct.

A board or commission created or designated pursuant to this section may include but shall not be limited to one or more of the following:

(1) A planning board or commission of any size (with not fewer than three members) or composition considered appropriate, organized in any manner considered appropriate;
(2) A joint planning board created by two or more local governments according to the procedures and provisions of Chapter 160A, Article 20, Part 1. (1945, c. 1040, s. 1; 1955, c. 1252; 1957, c. 947; 1959, c. 327, s. 1; c. 390; 1973, c. 822, s. 1; 1979, c. 611, s. 6; 1997-309, s. 5; 2004-199, s. 41(c).)

Coates' Canons Blog: Building the Record for a Quasi-Judicial Decision

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"Every quasi-judicial decision shall be based upon competent, material, and substantial evidence ***in the record***" (NCGS 160A-388(e2)). Without such evidence, the decision is arbitrary and an abuse of the discretion vested in the board (Godfrey v. Zoning Board of Adjustment, 317 N.C. 51 (1986)). So what is the record? What evidence goes in that record? And how is the evidence obtained? This blog explores those and other questions.

Evidentiary Hearings, Generally

For a typical quasi-judicial decision—a special or conditional use permit or a variance—the decision-making board is acting like a trial court. The board holds an evidentiary hearing to accept and review documents and testimony. The board is determining the facts and ruling on the law. The board is answering the broad question: Does the evidence show that the applicant meets the standards for the variance or permit? Through the evidentiary hearing, the board builds the record upon which the decision is based. And, if the decision is appealed, the superior court will base its review upon that record.

According to NCGS 160A-393, the record created by the evidentiary hearing "shall consist of all documents and exhibits submitted to the decision-making board . . . together with the minutes of the meeting or meetings at which the decision being appealed was considered." This may include the application; the staff report; photographs, plans, and diagrams; studies and reports prepared by the applicant; exhibits presented by opposing parties; and all of the testimony at the evidentiary hearing. In other words, the record includes all of the materials and input that is presented to the board.

The evidentiary hearing may be taped (audio and/or video), but there is no requirement for taping. If a tape is made and the quasi-judicial decision is appealed to superior court, then any party may request that a tape be included in the record. Additionally, a party may request that a transcript be included in the record on appeal. The requesting party bears the cost of producing the transcript (NCGS 160A-393(i)).

What if the tape messes up? In Fehrenbacher v. City of Durham, __ N.C. App. __, COA14-712 (February 3, 2015), the city taping equipment malfunctioned and failed to record the first hour of testimony. The court noted that affidavits from the neighbors covered the substance of the missing testimony, and moreover, the statutory requirement states that tapes may be requested "if such a recording was made." In this case, a recording was not made for a portion, and there is no obligation to create a recording.

Distinguishing Evidence within the Record

We need to make a clear distinction, here. The record of a quasi-judicial decision is composed of various pieces of evidence. Some of that evidence in the record is good: the application, factual testimony from opposing parties, expert opinion testimony. Some of that evidence in the record is incompetent, immaterial, and insubstantial. This may include unqualified speculative opinion, a petition from neighbors, hearsay evidence, or irrelevant facts, for example. For this discussion, I will call that insufficient evidence. In other blogs, my colleagues David Owens and Rich Ducker have written about distinguishing good evidence from insufficient evidence and the details of sworn testimony, opinion evidence, expert evidence, and ex parte evidence.

Legally, the board must base its decision on competent, material, and substantial evidence in the record—good evidence. But, in practice and as a result of the process, the record may include incompetent, immaterial, or insubstantial evidence. So what do we do with all of the insufficient evidence? Do we strike it from the record?

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No. Insufficient evidence may remain in the record, but may not be the basis of the quasi-judicial decision. Quasi-judicial boards must adhere to the procedural requirements of constitutional due process, but boards are not required to follow the strict rules of evidence that apply in a courtroom. Some informality is allowed for the quasi-judicial board. As such, courts allow that the inclusion of some insufficient evidence as part of the record is not a due process violation.

"The question is whether there is substantial evidence in *the whole record* to support the findings and conclusions." Where the court has determined that the record includes competent, material, and substantial evidence to support the Board's decision, the admission of other arguably incompetent evidence does not infringe upon the parties' due process rights (Dobo v. Zoning Bd. of Adjustment of City of Wilmington, 149 N.C. App. 701, 709-10, 562 S.E.2d 108, 114 (2002)rev'd on other ground, 356 N.C. 656, 576 S.E.2d 324 (2003)).

To be clear the board cannot base its decision upon insufficient evidence in the record. Where an applicant presents evidence to show the he meets the standards for a special use permit, the burden shifts to opponents to produce evidence to the contrary. If neighbors produce nothing more than unrelated comments and speculative opinions (insufficient evidence), then the board does not have sufficient evidence to deny the permit. The board must approve the permit. (Blair Investments, LLC v. Roanoke Rapids City Council, 752 S.E.2d 524 (N.C. Ct. App. 2013)).

Getting the Evidence

Application and Evidentiary Hearing. Generally, the evidence creating the record is provided by the parties, either in advance of the hearing (with the application) or as part of the evidentiary hearing. Indeed, the burden typically is on the applicant to present the evidence that they meet the applicable standards.

Administrative Record.In addition to the typical evidentiary hearings described above, the board of adjustment is tasked with handling appeals from decisions made by zoning administrators and historic preservation commissions. David Owens has written about these types of appeals to the board of adjustment. When that happens, the case comes to the board of adjustment with a record.

Consider an appeal of an administrative decision such as issuing a notice of violation or making a formal interpretation of the ordinance. When an administrative decision is appealed, the zoning administrator who made the decision "shall transmit to the board all documents and exhibits constituting the record." The zoning administrator also must provide the record to the appealing party and owner of the property (NCGS 160A-388(b1)).

Preservation Commission Record.When a decision from the historic preservation commission is appealed to the board of adjustment, the preservation commission should transmit to the board of adjustment the record of its decision, including all documents, exhibits, and minutes. Tapes and transcripts, if any, may be included.

For these appeals from the preservation commission, the board of adjustment is acting as an appeals court. The technical scope of review is outlined at NC General Statute 160A-393(k). In sum, the board reviews the record to determine whether there is sufficient evidence to support the decision made by the preservation commission, and to determine whether the actions taken were authorized and appropriate under the law. The board of adjustment may hear legal arguments from the parties, but the board does not take new factual evidence or testimony.

Subpoena. In some cases, though, the quasi-judicial board may need to compel production of evidence. Under NC General Statute 160A-388(g) boards of adjustment and other boards making quasi-judicial decisions are authorized to subpoena witnesses and compel the production of evidence. A party to the case may request that the chair of the board subpoena a witness or compel evidence. The chair makes the decision about issuing subpoenas; that decision may be appealed to the full board. If a party fails to comply, the board or the party requesting may seek an order requiring compliance from the General Court of Justice.

Appeals to Court—Supplementing the Record

When a decision from a quasi-judicial board is appealed to superior court, the reviewing court is acting like an appeals court. Generally, the court must base its decision on the record that was before the decision-making board.

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But, for certain topics, the court may supplement the record. The reviewing court may “allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the record is not adequate to allow an appropriate determination” of specific legal standards:

- legal standing
- conflicts of interest
- actions that are unconstitutional or in excess of the board’s statutory authority

Additionally, under NC General Statute160A-393(i), the court may direct that matters be deleted from or added to the record (Fehrenbacher, __ N.C. App. __, COA14-712 (February 3, 2015)).

Conclusion

As stated in the statutes and case law, “[e]very quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.” The record is all of the materials and input that is presented to the board, including the application, exhibits, testimony, and related materials. The record for a quasi-judicial decision may include some insufficient evidence, but the board may not base its decision on it. If necessary, the quasi-judicial board may subpoena witnesses and compel production of evidence for the record. In the case of appeals to the board of adjustment, the case comes with its own record. And, in the case of appeals from the quasi-judicial decision, the superior court must rely on the record before the board and may supplement the record for certain topics.

Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-388.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-393.html

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