

March 23, 2005

S 814. MODERNIZE CITY/COUNTY PLANNING. *TO MODERNIZE AND SIMPLIFY CITY AND COUNTY PLANNING AND LAND-USE MANAGEMENT STATUTES.* With regard to planning and regulation of development, amends GS 160A-364 and GS 153A-323 to allow cities and counties to adopt ordinances allowing electronic notice of public hearings and an on-site posting to substitute for newspaper publication of notice. With regard to city and county subdivision regulations, amends various sections of GS Chapters 160A and 153A to (1) expand subdivision ordinance enforcement options; (2) clarify that creation of a single new lot or parcel may be considered a subdivision; (3) clarify that to qualify for an exemption under state law a development's supporting infrastructure must equal or exceed standards of the ordinance; and (4) authorize provisions for expedited review of specified classes of subdivisions.

With regard to city and county zoning, rewrites GS 160A-381 to 160A-383 and GS 153A-340 to 153A-347, to (1) specify that zoning ordinances may be incorporated into a unified development ordinance and may regulate building maintenance; (2) delete the limitation on use of severable development credits and rights; (3) codify current laws that prohibit changes in permitted uses by variance and prohibit financial conflicts of interest on zoning amendments, and apply that same rule to planning board advisory decisions; (4) recognize authority to adopt temporary moratoria of reasonable duration and specify limitations on use of moratoria; (5) set out approach to analyzing reasonableness of certain re-zoning requests and allow requirement for meetings of petitioners and neighbors as part of the process of developing a conditional rezoning petition; (6) require a governing board, before adopting a zoning provision inconsistent with a comprehensive plan, to adopt a statement explaining why the board considers the action reasonable and in the public interest; and (7) make various clarifying and simplifying changes. Adds new GS 153A-343.1, authorizing counties to allow for zoning protest petitions in same manner as cities.

Adds to Article 21 of GS Chapter 160A new provisions addressing reimbursement agreements with private developers and property owners with respect to design and construction of infrastructure, intersection and roadway improvements, and public enterprise improvements. Adds to Article 19 detailed provisions authorizing local governments to enter into development agreements, not to exceed 10 years, with developers with respect to developable property of at least 25 acres.

Adds new GS 160A-393 setting out detailed procedures and requirements for appeals to superior court, in the nature of certiorari, for review of decisions on special and conditional use permits, enforcement actions, variances, plats, etc. Requires that the city or county itself be named as respondent in an appeal, and requires a petitioner who is not the applicant to name the applicant as a respondent. Provides that issuance of the writ of certiorari by the clerk of superior court is not discretionary, sets out notice requirements, and specifies that no summons is required. Provides that judicial review is on the record, unless the record is inadequate to permit appropriate determinations as to (1) standing, (2) bias or conflict of interest, or (3) constitutionality of the board's decision or validity of the ordinance. Makes clear that the trial court may issue injunctive relief when appropriate. Makes comparable changes in Article 18 of GS Chapter 153A.

Effective October 1, 2005, and with regard to appeals, applies to actions filed on or after January 1, 2006.

Intro. by Clodfelter.

Ref. to Judiciary I

GS 153A, 160A

May 31, 2005

S 814. MODERNIZE CITY/COUNTY PLANNING. Intro. 3/23/05. Senate committee substitute makes the following changes to 1st edition.

General/Subdivision Regulation. Amends GS 160A-364 and GS 153A-323 to reinstate requirement that notice of certain zoning changes within five miles of a military base be provided to a military base commander. Deletes provisions that authorized city or county to designate its Internet site as a permissible means of providing notice of a public hearing. Amends GS 160A-372 and 153A-331 to delete statement that subdivision control ordinances may provide for education and recreation space and facilities and for the protection of natural resources and open

space, to replace all references to “planning agency” with “planning board,” to reinstate provision requiring that any formula enacted to determine the amount of funds provided by developer be based on the value of the development or subdivision for property tax purposes, and to require that city or county provide options for performance guarantees. Enacts new GS 160A-375(b) and 153A-334(b) to provide that section is not violated by presale or prelease contracts entered into for the purpose of obtaining development financing where contract refers to land by reference to a subdivision plat that has not yet been approved or recorded, as long as contract complies with listed requirements. Amends GS 160A-376 and 153A-335 definitions of “subdivision” to delete references to infrastructure changes.

Zoning Regulation. Amends GS 160A-381 and GS 153A-340 to reinstate limitation on the use of severable development credits and rights and to provide that decisions of the city council or board of county comm’rs are subject to review by the superior court in the nature of certiorari. Further amends sections to provide that a development moratorium may not exceed the period of time necessary to correct, modify, or resolve conditions in question and that a moratorium will not apply to preliminary or final subdivision plats that have been accepted for review prior to the initiation of any procedure to adopt the moratorium. Modifies required contents of an ordinance adopting a development moratorium and deletes proposed GS 160A-381(f) and 153A-340(i) authorizing city or county to require that certain listed site-specific development restrictions be recorded in the chain of title of affected properties. Further modifies sections to provide that a city or county may not renew or extend a moratorium unless the city or county has take all reasonable steps to address the problem leading to the moratorium. Amends GS 160A-382 and GS 153A-342 to modify the content of the required statement analyzing the reasonableness of the proposed rezoning. Amends GS 160A-383 and 153-341 to require that the governing board of city or county adopt statement explaining whether action is consistent with an adopted comprehensive plan before adopting or rejecting any zoning amendment. Deletes proposed GS 153A-343.1, which would have authorized counties to require that certain amendments to a zoning map amendment require a favorable vote of three-fourths of the members of the board of county comm’rs.

Infrastructure/Development Agreements. Modifies proposed GS 160A-499 (reimbursement agreements) and 160A-309 (intersection and roadway improvements) to provide that sections also apply to counties. Deletes requirement that development agreement include a finding that the development permitted or proposed is consistent with the comprehensive plan and land development regulations. Enacts new GS 160A-400.26(c) to authorize a city to modify a development agreement if a change in State or federal law prevents or precludes compliance with a provision of that agreement. Deletes proposed GS 160A-400.32 and 160A-400.33. Also deletes proposed GS 160A-393, 153A-349, 160A-377, and 153A-336, which set out detailed procedures and requirements for appeals to superior court, in the nature of certiorari. Provides that act’s provisions will not be considered to have repealed or amended the validity or enforceability of any local act or charter provision previously enacted by the General Assembly.

Makes technical and conforming changes. Makes act effective January 1, 2006 (was, October 1, 2005).

June 1, 2005

S 814. MODERNIZE CITY/COUNTY PLANNING. Intro. 3/23/05. Senate amendment makes the following changes to 2nd edition. Modifies proposed GS 160A-400.23 to provide that the term of a development agreement may not exceed 20 years (was, 10 years).

August 23, 2005

S 814. MODERNIZE CITY/COUNTY PLANNING. Intro. 3/23/05. House committee substitute makes the following changes to 3rd edition. Makes many technical changes. With regard to changes in zoning regulations, specifies that any person aggrieved by an imposition of a moratorium on development approvals may apply to the court for an order enjoining the moratorium. These proceedings must be given priority by the trial and appellate courts. Also specifies that prior to adopting or rejecting any zoning amendment, the planning board must advise and comment on whether the proposed amendment is consistent with all adopted plans.

Enacts new GS 153A-451 dealing with county reimbursement agreements and GS 153A-280 dealing with county public enterprise improvements. Enacts new Part 3A in Article 18 of GS Chapter 153A to regulate developmental agreements of counties that is substantially the same as proposed Part 3D, Article 19 of GS Chapter 160A, regulating developmental agreements of cities. Changes effective date of authorization of temporary moratoria on development to September 1, 2005 (was January 1, 2006). Provides that any renewal or extension on or after September 1, 2005, of a moratorium on development approvals that is in effect prior to or on that date, is subject to the provisions of this act.

October 5, 2005

SL 2005-426 (S 814). MODERNIZE CITY/COUNTY PLANNING. AN ACT TO MODERNIZE AND SIMPLIFY CITY AND COUNTY PLANNING AND LAND-USE MANAGEMENT STATUTES. Summarized in *Daily Bulletin* 3/23/05, 5/31/05, 6/1/05, and 8/23/05. Enacted September 22, 2005. GS 160A-381(e), as enacted by Section 5(a), and GS 153A-340(h), as enacted by Section 5(b), are effective September 1, 2005. The remainder is effective January 1, 2006.