

February 3, 2009

S 44. APPEALS OF QUASI-JUDICIAL LAND-USE DECISIONS. Filed 2/3/09. *TO CLARIFY THE LAW REGARDING APPEALS OF QUASI-JUDICIAL DECISIONS MADE UNDER ARTICLE 19 OF CHAPTER 160A AND ARTICLE 18 OF CHAPTER 153A OF THE GENERAL STATUTES.*

Under current law, any city may adopt zoning and development regulation ordinances that grant authority to the city's decision making board(s) to make quasi-judicial decisions regarding the city's land use.

Enacts new GS 160A-393 to clarify the appeal process from quasi-judicial decisions of decision-making boards when the appeal is (1) to superior court, and (2) in the nature of certiorari (asking the superior court to review the decision of the decision-making board).

Definitions. Defines *decision-making board* to mean a city council, planning board, board of adjustment or other board appointed by the city council that is making quasi-judicial decisions under GS Chapter 160A, Article 19 or comparable provisions of a local act. Defines *person* as used in the proposed new section to mean any legal entity authorized to bring a lawsuit on behalf of the legal entity.

Filing the petition. Provides that the appeal in the nature of certiorari be initiated by filing a petition for writ of certiorari with the superior court that (1) states the facts that show that the person making the petition has standing to ask for review; (2) presents the basis for the petitioner's contention that an error was made and any facts that support allegations of impermissible conflict on the part of the decision-making body as described in GS 160A-388(e1); and (3) states the relief that the petitioner wants.

Standing. Directs that only a petitioner with standing may challenge the decision being appealed; clarifies criteria that a person must meet to have standing. Persons with standing include (1) those with an ownership interest, leasehold interest, or other interest created in the property by easement, restriction, or covenant that is the subject of the appeal, (2) those who may suffer special damages as a result of the decision being appealed, (3) certain incorporated or unincorporated association to which owners or lessees of the property in question belong, (4) a city that contests the decision of the decision making board as not properly interpreting an ordinance adopted by that council, and (5) those with an ownership interest or lease hold interest in property any portion of which is located within 200 feet of the boundary of the property subject to the decision.

Respondent. Provides that the respondent named in the petition is to be the city whose decision-making board made the decision that is being appealed but provides exceptions when the petitioner is a city that has filed a petition against its decision-making board. Provides additional clarification for identifying the respondent.

Writ of certiorari. Provides that the petitioner file a proposed writ of certiorari (writ) upon the filing of the petition with the clerk of court (clerk) in the county in which the conflict arose. Requires that the writ direct (1) the respondent to prepare and certify to the court the record of proceedings within a specified date, and (2) the petitioner to serve the petition and writ in the manner for service of a complaint under Rule 4j of the Rules of Civil Procedure. Provides exceptions to be followed when the petitioner is a city and the respondent is a decision-making board of that city. Requires the clerk to issue the writ without notice to the respondent if the petition has been properly filed and the writ is in proper form. Directs that a copy of the executed writ is to be filed with the court.

Answer to the petition. Provides that the respondent may file an answer to the petition, but is not required to so except, the respondent must file an answer within 30 days prior to the hearing on the petition if the respondent alleges that the petitioner lacks standing to bring the appeal.

Intervention. Provides that motions to intervene as a petitioner or respondent are governed by Rule 24 of the Rules of Civil Procedure with the following exceptions: (1) persons with an ownership interest, leasehold interest or other property interest in the subject of the appeal has standing to intervene as a matter of right; and (2) any other person who wants to intervene must show other grounds for standing under the proposed new section.

Record. Directs that the record be comprehensive and include all documents, exhibits, and minutes of meetings at which the appealed decision was considered. Permits any party to obtain audio or videotape of meetings upon request, if such recordings were made. Provides additional provisions for the inclusion of transcripts of the proceedings, content of the record, and formatting

of the record. Requires that a copy of the record be served by the municipal respondent upon all petitioners within three days after it is filed with the court.

Hearing on the record. Directs the court to hear and decide all issues raised by the petition by reviewing the record, but permits the court to review supplementary evidence at its discretion if the record is not adequate to determine issues regarding standing, impermissible conflict as described in GS 160A-388(e1), violations of constitution provisions, or decisions by the decision-making body in excess of the statutory authority conferred on the board by ordinance.

Scope of review. Directs the trial court to consider in its scope of review whether or not the decision-making board's decision was in violation of constitutional provisions, in excess of its statutorily conferred authority; inconsistent with applicable procedures specified by statute or ordinance; affected by error of law; unsupported by substantial competent evidence in view of the record; or arbitrary or capricious.

Provides for de novo review by the trial court when the issue before the court is whether the decision-making board erred in interpreting an ordinance and provides criteria for allowing the trial court to substitute its judgment for that of the decision-making board. Defines the term *competent evidence* to permit the decision-making board to have relied on evidence that would not be admissible under the rules of evidence as applied in the General Court of justice if specified conditions are met. Provides restrictions as to what opinion testimony of lay witness testimony may not be included as competent evidence.

Decision of the trial court. Permits the trial court, after reviewing the decision making board's decision, to elect to (1) affirm the decision, (2) reverse the decision and remand the case with appropriate instructions, or (3) remand the case for further proceedings. Provides guidelines as to the relief that should be granted to petitioners if the court does not affirm the decision-making board's decision in its entirety. Also provides that upon motion of a party to the proceeding, the court may provide injunctive relief.

Makes conforming changes to GS Chapter 153A, enacting new GS 153A-349 regarding appeals in the nature of certiorari.

Enacts new GS 160A-377 regarding appeals of decisions on subdivision plats to provide that the provisions of GS 160A-381(c) (providing for review of quasi-judicial decisions by superior court); GS 160A-388(e2) (providing for superior court review of decisions by a board of adjustment); and proposed new GS 160A-393 apply to appeals of decisions involving the approval or denial of subdivision plats. Enacts new GS 153A-336 to make similar changes to GS 153A-340(f), 153A-345(e2), and 153A-349.

Makes conforming changes to GS 63-34, 162A-93(b), 160A-388(e1), and 153A-345(e1).

Effective January 1, 2010, and applies to appeals filed on or after that date.

Intro. by Kinnaid.

GS 63, 160A, 153A, 162A

May 6, 2009

S 44. APPEALS OF QUASI-JUDICIAL LAND-USE DECISIONS. Filed 2/3/09. Senate committee substitute makes the following changes to 1st edition. Amends several subsections of new GS 160A-393. Amends subsection (b) by (1) changing the definition of decision-making board to include boards appointed by the city council pursuant to any interlocal agreement authorized by law and (2) defining the term quasi-judicial decision to mean a decision involving the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Amends subsection (d) to modify the list of individuals who have standing to challenge a board decision. Amends subsection (e) to clarify that a respondent may be any person who has an ownership or leasehold interest in the property and who participated in the hearing or was an applicant before the board. Amends subsection (f) to clarify how process may be served upon the decision-making board when a petition for writ of certiorari has been filed. Amends subsection (h) to make conforming changes. Amends subsection (i) to allow service of the record on the decision-making board in lieu of the municipal respondent. Amends subsection (k)(2), which specifies the scope of review for the court, to require the court to review *de novo* any petition alleging that the board erred in interpreting its ordinance and removing language authorizing the court to give due consideration to the construction adopted by the entities responsible for administering the ordinance. Amends

subsection (l) to provide that if the court remands to the board with instructions that the permit be issued, the permit issuance may be subject to reasonable and appropriate conditions. Makes technical changes including renumbering provisions in GS 160A-393(c), clarifying applicability of definitions, replacing the term “trial court” with “court” throughout, and clarifying that the act applies to quasi-judicial decisions rendered on or after January 1, 2010.

May 7, 2009

S 44. APPEALS OF QUASI-JUDICIAL LAND-USE DECISIONS. Filed 2/3/09. Senate amendment makes the following changes to 2nd edition. Makes clarifying changes only to new GS 160A-393(d)(1)a.

July 14, 2009

S 44. APPEALS OF QUASI-JUDICIAL LAND-USE DECISIONS. Filed 2/3/09. House committee substitute makes the following changes to 3rd edition. Amends proposed GS 160A-393(f) to provide that the petition filed to initiate an appeal in the nature of certiorari must be presented with the proposed writ of certiorari to the clerk of superior court (was, clerk of court) of the county in which the matter arose. Provides in subsection (k) that the scope of review is de novo when the issue before the court is whether the decision-making board erred in interpreting an ordinance. Directs the court to consider the interpretation of the decision-making board, and clarifies that (1) the court is not bound by the decision-making board’s decision and (2) the court may freely substitute its judgment as appropriate.

July 15, 2009

S 44. APPEALS OF QUASI-JUDICIAL LAND-USE DECISIONS. Filed 2/3/09. House amendment makes the following changes to 4th edition. Clarifies in proposed GS 160A-393(h)(1) that any person described in GS 160A-393(1)(d) has standing to intervene in an action initiated under the statute and must be allowed to intervene as a matter of (was, or) right.

August 5, 2009

SL 2009-421 (S 44). APPEALS OF QUASI-JUDICIAL LAND-USE DECISIONS. AN ACT TO CLARIFY THE LAW REGARDING APPEALS OF QUASI-JUDICIAL DECISIONS MADE UNDER ARTICLE 19 OF CHAPTER 160A AND ARTICLE 18 OF CHAPTER 153A OF THE GENERAL STATUTES. Summarized in *Daily Bulletin* 2/3/09, 5/6/09, 5/7/09, 7/14/09, and 7/15/09. Enacted August 5, 2009. Effective January 1, 2010.