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SENATE BILL DRS35184-RW-10* (03/15)

Short Title: Land-Use Regulatory Changes. (Public)

Sponsors: Senators Gunn, Wade, and Krawiec (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE LAND-USE REGULATORY LAWS OF THE
3 STATE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 143-755 reads as rewritten:

6 "§ 143-755. Permit choice.

7 (a) If a permit applicant submits a permit application for any type of development and a
8 rule or ordinance ~~changes~~changes, including an amendment to a zoning map or text of any
9 applicable land development regulation as defined in G.S. 160A-400.21 or a change to a State
10 agency regulation affecting the development of property, between the time the permit
11 application was submitted and a permit decision is made, the permit applicant may choose
12 which version of the rule or ordinance will apply to the permit. The permit applicant shall not
13 be required to wait for a pending rule or ordinance to be adopted in order to choose which
14 version of the rule or ordinance applies to the permit.

15 (b) This section applies to all development permits issued by the State and by local
16 governments. For purposes of development permits issued by local governments, the
17 definitions contained in G.S. 160A-400.21 shall be applicable.

18 (c) Repealed by Session Laws 2015 246, s. 5(a), effective September 23, 2015.

19 (d) Any person aggrieved by the failure of a State agency or local government to
20 comply with this section or G.S. 160A-360.1 or G.S. 153A-320.1 may apply to the appropriate
21 division of the General Court of Justice for an order compelling compliance by the offending
22 agency, and the court shall have jurisdiction to issue that order. Actions brought pursuant to
23 any of these sections shall be set down for immediate hearing, and subsequent proceedings in
24 those actions shall be accorded priority by the trial and appellate courts. If any State agency or
25 local government takes action that is inconsistent with, or in violation of, this section, the
26 permit applicant shall be entitled to any damages that can be demonstrated as a result of the
27 State agency or local government's actions."

28 SECTION 2. G.S. 160A-360.1 reads as rewritten:

29 "§ 160A-360.1. Permit choice.

30 If a rule or ~~ordinance~~ordinance, including an amendment to a zoning map or text of any
31 applicable land development regulation as defined in G.S. 160A-400.21, changes between the
32 time a development permit application is submitted and a development permit decision is made,
33 then G.S. 143-755 shall apply."

34 SECTION 3. G.S. 153A-320.1 reads as rewritten:

35 "§ 153A-320.1. Permit choice.



1 If a rule or ~~ordinance~~ ordinance, including an amendment to a zoning map or text of any
 2 applicable land development regulation as defined in G.S. 160A-400.21, changes between the
 3 time a development permit application is submitted and a development permit decision is made,
 4 then G.S. 143-755 shall apply."

5 SECTION 4. G.S. 160A-400.21 reads as rewritten:

6 "§ 160A-400.21. Definitions.

7 The following definitions apply in this Part:

8 ...
 9 (4) Development permit. – A building permit, zoning permit, subdivision
 10 approval, special or conditional use permit, variance, site plan, or any other
 11 official action of local government having the effect of permitting the
 12 development of property.

13"

14 SECTION 5. G.S. 160A-385 reads as rewritten:

15 "§ 160A-385. Changes.

16 (a) Citizen Comments. –

17 (1) ~~Zoning~~ Subject to the limitations in this Chapter, zoning ordinances may
 18 from time to time be amended, supplemented, changed, modified or
 19 repealed. If any resident or property owner in the city submits a written
 20 statement regarding a proposed amendment, modification, or repeal to a
 21 zoning ~~ordinance~~ ordinance, including a zoning map or text, that has been
 22 properly initiated as provided in G.S. 160A-384, to the clerk to the board at
 23 least two business days prior to the proposed vote on such change, the clerk
 24 to the board shall deliver such written statement to the city council. If the
 25 proposed change is the subject of a quasi-judicial proceeding under
 26 G.S. 160A-388, or any other statute, the clerk shall provide only the names
 27 and addresses of the individuals providing written comment, and the
 28 provision of such names and addresses to all members of the board shall not
 29 disqualify any member of the board from voting.

30 (2), (3) Repealed by Session Laws 2015-160, s. 1, effective August 1, 2015, and
 31 applicable to zoning ordinance changes initiated on or after that date.

32 (b) Amendments in land development regulations, as defined in G.S. 160A-400.21,
 33 including zoning ~~ordinances~~ ordinances, subdivision ordinances, or unified development
 34 ordinances, shall not be applicable or enforceable without the written consent of the owner with
 35 regard to buildings and uses for which either (i) building permits have been issued pursuant to
 36 G.S. 160A-417 prior to the enactment of the ordinance making the change or changes so long
 37 as the permits remain valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant
 38 to G.S. 160A-422 or (ii)(i) uses of buildings or land, or subdivisions of land, for which a
 39 development permit, as defined in G.S. 160A-400.21, has been issued that authorizes the use or
 40 subdivision of land or (ii) buildings, or uses thereof, for which a building permit has been
 41 issued pursuant to this Chapter. The statutory vesting granted by this subsection commences
 42 when the applicable application for either such development permit or building permit is
 43 submitted in accordance with G.S. 143-755 prior to the change in the land development
 44 regulations so long as the permit remains valid and unexpired pursuant to law. Unless
 45 otherwise specified by statute, local development permits expire one year after issuance unless
 46 work authorized by such permit has substantially commenced. Amendments shall also not be
 47 applicable or enforceable without the written consent of the owner if a vested right has been
 48 established pursuant to G.S. 160A-385.1 and such vested right remains valid and unexpired
 49 pursuant to G.S. 160A-385.1 thereto or if a vested right is established by the terms of a
 50 development agreement authorized by Part 3D of this Article. The establishment of a vested
 51 right under one subsection does not preclude vesting under one or more other subsections or

1 vesting by application of common law principles. A vested right, once established as provided
 2 for in this subsection, precludes any action by a city that would change, alter, impair, prevent,
 3 diminish, or otherwise delay the development or use of the property as set forth in the
 4 application, except where a change in State or federal law mandating local government
 5 enforcement occurs after the application is submitted that has a fundamental and retroactive
 6 effect on such development or use.

7 (c) Amendments in land development regulations, as defined in G.S. 160A-400.21,
 8 including zoning ordinances, subdivision ordinances, and or unified development ordinances
 9 ordinances, shall not be applicable or enforceable without the written consent of the owner with
 10 regard to a multi-phased development as defined in G.S. 160A-385.1(b)(7), provided for in this
 11 subsection. A multi-phased development shall be vested for the entire development with the
 12 zoning ordinances, subdivision ordinances, and unified development ordinances land
 13 development regulations then in place at the time a site plan approval is granted for the initial
 14 phase of the multi-phased development. the applicable application for a development permit is
 15 submitted in accordance with G.S. 143-755 prior to the change in the land development
 16 regulations, so long as the permit remains valid and unexpired pursuant to law. A right which
 17 has been vested as provided for in this subsection shall remain vested for a period of seven
 18 years from the time a site plan approval is granted for the initial phase of the multi-phased
 19 development. For purposes of this subsection, a "multi-phased development" shall mean a
 20 development containing 25 acres or more that (i) is submitted for development permit approval
 21 to occur in more than one phase and (ii) is subject to a master development plan with
 22 committed elements, showing the type and intensity of use of each phase."

23 **SECTION 6.** G.S. 160A-385.1 reads as rewritten:

24 **"§ 160A-385.1. Vested rights.**

25 ...

26 (b) Definitions. –

27 ...

28 (7) "Multi-phased development" means a development containing 100 acres or
 29 more that (i) is submitted for site plan approval for construction to occur in
 30 more than one phase and (ii) is subject to a master development plan with
 31 committed elements, including a requirement to offer land for public use as a
 32 condition of its master development plan approval.

33"

34 **SECTION 7.** G.S. 153A-344 reads as rewritten:

35 **"§ 153A-344. Planning board; zoning plan; certification to board of commissioners.**

36 ...

37 (b) Amendments in land development regulations, as defined in G.S. 153A-349.2,
 38 including zoning ordinances, subdivision ordinances, or unified development
 39 ordinances, shall not be applicable or enforceable without the written consent of the owner with
 40 regard to buildings and uses for which either (i) building permits have been issued pursuant to
 41 G.S. 153A-357 prior to the enactment of the ordinance making the change or changes so long
 42 as the permits remain valid and unexpired pursuant to G.S. 153A-358 and unrevoked pursuant
 43 to G.S. 153A-362 or (ii)(i) uses of buildings or land, or subdivisions of land, for which a
 44 development permit, as defined in G.S. 153A-349.2, has been issued that authorizes the use or
 45 subdivision of land or (ii) buildings, or uses thereof, for which a building permit has been
 46 issued pursuant to this Chapter. The statutory vesting granted by this subsection commences
 47 when the applicable application for either such development permit or building permit is
 48 submitted in accordance with G.S. 143-755 prior to the change in the land development
 49 regulations so long as the permit remains valid and unexpired pursuant to law. Unless
 50 otherwise specified by statute, local development permits expire one year after issuance unless
 51 work authorized by such permit has substantially commenced. Amendments shall also not be

1 applicable or enforceable without the written consent of the owner if a vested right has been
 2 established pursuant to G.S. 153A-344.1 and such vested right remains valid and unexpired
 3 pursuant to ~~G.S. 153A-344.1~~thereto or if a vested right is established by the terms of a
 4 development agreement authorized by Part 3A of this Article. The establishment of a vested
 5 right under one subsection does not preclude vesting under one or more other subsections or
 6 vesting by application of common law principles. A vested right, once established as provided
 7 for in this subsection, precludes any action by a county that would change, alter, impair,
 8 prevent, diminish, or otherwise delay the development or use of the property as set forth in the
 9 application, except where a change in State or federal law mandating local government
 10 enforcement occurs after the application is submitted that has a fundamental and retroactive
 11 effect on such development or use.

12 (b1) Amendments in land development regulations, as defined in G.S. 153A-349.2,
 13 including zoning ordinances, subdivision ordinances, and or unified development ordinances
 14 ordinances, shall not be applicable or enforceable without the written consent of the owner with
 15 regard to a multi-phased development as defined in G.S. 153A-344.1(b)(7) as provided in this
 16 subsection. A multi-phased development shall be vested for the entire development with the
 17 zoning ordinances, subdivision ordinances, and unified development ordinancesland
 18 development regulations then in place at the time a site plan approval is granted for the initial
 19 phase of the multi-phased development.the applicable application for a development permit is
 20 submitted in accordance with G.S. 143-755 prior to the change in the land development
 21 regulations, so long as the permit remains valid and unexpired pursuant to law. A right which
 22 has been vested as provided for in this subsection shall remain vested for a period of seven
 23 years from the time a site plan approval is granted for the initial phase of the multi-phased
 24 development. For purposes of this subsection, a "multi-phased development" shall mean a
 25 development containing 25 acres or more that (i) is submitted for development permit approval
 26 to occur in more than one phase and (ii) is subject to a master development plan with
 27 committed elements, showing the type and intensity of use of each phase."

28 **SECTION 8.** G.S. 153A-344.1 reads as rewritten:

29 **"§ 153A-344.1. Vesting rights.**

30 ...

31 (b) Definitions.

32 ...

33 (7) ~~"Multi-phased development" means a development containing 100 acres or~~
 34 ~~more that (i) is submitted for site plan approval for construction to occur in~~
 35 ~~more than one phase and (ii) is subject to a master development plan with~~
 36 ~~committed elements, including a requirement to offer land for public use as a~~
 37 ~~condition of its master development plan approval.~~

38"

39 **SECTION 9.** G.S. 160A-384 reads as rewritten:

40 **"§ 160A-384. Method of procedure.**

41 (a) ~~The~~Subject to the limitations of this Chapter, the city council shall provide for the
 42 manner in which zoning regulations and restrictions and the boundaries of zoning districts shall
 43 be determined, established and enforced, and from time to time amended, supplemented or
 44 changed, in accordance with the provisions of this Article. The procedures adopted pursuant to
 45 this section shall provide that whenever there is a zoning map amendment, the owner of that
 46 parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting
 47 that parcel of land as shown on the county tax listing, shall be mailed a notice of a public
 48 hearing on the proposed amendment by first class mail at the last addresses listed for such
 49 owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not
 50 more than 25 days prior to the date of the public hearing. No zoning map amendment shall be
 51 initiated nor shall it be enforceable without the written consent of all property owners whose

1 ~~property is the subject of the zoning map amendment, unless the zoning map amendment is~~
2 ~~initiated by the city. Except for a city-initiated zoning map amendment, when an application is~~
3 ~~filed to request a zoning map amendment and that application is not made by the owner of the~~
4 ~~parcel of land to which the amendment would apply, the applicant shall certify to the city~~
5 ~~council that the owner of the parcel of land as shown on the county tax listing has received~~
6 ~~actual notice of the proposed amendment and a copy of the notice of public hearing. The person~~
7 ~~or persons required to provide notice shall certify to the city council that proper notice has been~~
8 ~~provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.~~

9 (b) The first class mail notice required under subsection (a) of this section shall not be
10 required if the zoning map amendment directly affects more than 50 properties, owned by a
11 total of at least 50 different property owners, and the city elects to use the expanded published
12 notice provided for in this subsection. In this instance, a city may elect to either make the
13 mailed notice provided for in subsection (a) of this section or may as an alternative elect to
14 publish notice of the hearing as required by G.S. 160A-364, but provided that each
15 advertisement shall not be less than one-half of a newspaper page in size. The advertisement
16 shall only be effective for property owners who reside in the area of general circulation of the
17 newspaper which publishes the notice. Property owners who reside outside of the newspaper
18 circulation area, according to the address listed on the most recent property tax listing for the
19 affected property, shall be notified according to the provisions of subsection (a) of this section.

20 ~~(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing~~
21 ~~required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1,~~
22 ~~Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or~~
23 ~~certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. §~~
24 ~~7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This~~
25 ~~subsection applies only to an application to request a zoning map amendment where the~~
26 ~~application is not made by the owner of the parcel of land to which the amendment would~~
27 ~~apply. This subsection does not apply to a city-initiated zoning map amendment.~~

28 (c) When a zoning map amendment is proposed, the city shall prominently post a notice
29 of the public hearing on the site proposed for rezoning or on an adjacent public street or
30 highway right-of-way. When multiple parcels are included within a proposed zoning map
31 amendment, a posting on each individual parcel is not required, but the city shall post sufficient
32 notices to provide reasonable notice to interested persons."

33 **SECTION 10.** G.S. 153A-343 reads as rewritten:

34 "**§ 153A-343. Method of procedure.**

35 (a) The board of commissioners shall, in accordance with the provisions of this Article,
36 provide for the manner in which zoning regulations and restrictions and the boundaries of
37 zoning districts shall be determined, established, and enforced, and from time to time amended,
38 supplemented, or changed. The procedures adopted pursuant to this section shall provide that
39 whenever there is a zoning map amendment, the owner of that parcel of land as shown on the
40 county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on
41 the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment
42 by first class mail at the last addresses listed for such owners on the county tax abstracts. This
43 notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of
44 the public hearing. No zoning map amendment shall be initiated nor shall it be enforceable
45 without the written consent of all property owners whose property is the subject of the zoning
46 map amendment, unless the zoning map amendment is initiated by the county. ~~Except for a~~
47 ~~county-initiated zoning map amendment, when an application is filed to request a zoning map~~
48 ~~amendment and that application is not made by the owner of the parcel of land to which the~~
49 ~~amendment would apply, the applicant shall certify to the board of commissioners that the~~
50 ~~owner of the parcel of land as shown on the county tax listing has received actual notice of the~~
51 ~~proposed amendment and a copy of the notice of public hearing. The person or persons~~

1 required to provide notice shall certify to the board of commissioners that proper notice has
2 been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.

3 (b) The first class mail notice required under subsection (a) of this section shall not be
4 required if the zoning map amendment directly affects more than 50 properties, owned by a
5 total of at least 50 different property owners, and the county elects to use the expanded
6 published notice provided for in this subsection. In this instance, a county may elect to either
7 make the mailed notice provided for in subsection (a) of this section or may as an alternative
8 elect to publish notice of the hearings required by G.S. 153A-323, but provided that each of the
9 advertisements shall not be less than one-half of a newspaper page in size. The advertisement
10 shall only be effective for property owners who reside in the area of general circulation of the
11 newspaper which publishes the notice. Property owners who reside outside of the newspaper
12 circulation area, according to the address listed on the most recent property tax listing for the
13 affected property, shall be notified according to the provisions of subsection (a) of this section.

14 ~~(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing~~
15 ~~required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1,~~
16 ~~Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or~~
17 ~~certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. §~~
18 ~~7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This~~
19 ~~subsection applies only to an application to request a zoning map amendment where the~~
20 ~~application is not made by the owner of the parcel of land to which the amendment would~~
21 ~~apply. This subsection does not apply to a county initiated zoning map amendment.~~

22 (c) Repealed by Session Laws 2005-418, s. 4, effective January 1, 2006.

23 (d) When a zoning map amendment is proposed, the county shall prominently post a
24 notice of the public hearing on the site proposed for rezoning or on an adjacent public street or
25 highway right-of-way. When multiple parcels are included within a proposed zoning map
26 amendment, a posting on each individual parcel is not required, but the county shall post
27 sufficient notices to provide reasonable notice to interested persons."

28 **SECTION 11.** Part 3 of Article 19 of Chapter 160A of the General Statutes is
29 amended by adding a new section to read:

30 **"§ 160A-393.1 Civil action for declaratory relief, injunctive relief, or other remedies.**

31 (a) Action for Relief Authorized. – Any landowner, permit applicant, or tenant
32 aggrieved by a final and binding decision of an administrative official involving the application
33 or enforcement of a city or county zoning or unified development ordinance or any other
34 ordinance that regulates land use or development may, in lieu of an appeal to a board of
35 adjustment prescribed by Chapter 153A or Chapter 160A of the General Statutes, maintain an
36 original action in superior court for declaratory relief, injunctive relief, damages, or any other
37 remedies provided by law or equity, where any of the following claims or defenses are asserted
38 by the aggrieved party:

39 (1) That the ordinance, either on its face or as applied by the final decision of
40 the administrative official, violates the United States or North Carolina
41 Constitutions.

42 (2) That the ordinance or the final decision of the administrative official is
43 invalid or unenforceable on grounds of ultra vires or preemption, or is
44 otherwise in excess of authority.

45 (3) That the ordinance or the final decision of the administrative official violates
46 common law or statutory vested rights of the aggrieved party.

47 (4) That the ordinance or final decision of the administrative official constitutes
48 a taking of property.

49 In any action brought pursuant to this subsection, and notwithstanding G.S. 160A-388(b1),
50 the aggrieved party may, in addition to the above, join any other available claims or defenses,
51 arising from or relating to the final decision of the administrative official, including, without

1 limitation, claims or defenses relating to the interpretation or application of the ordinance. The
 2 burden of proof to show a violation of a city or county zoning or unified development
 3 ordinance or any other ordinance that regulates land-use or development rests with the party
 4 seeking to enforce such ordinance.

5 (b) Time for Commencement of Action. – Any action brought pursuant to this section
 6 shall be commenced within one year after the date on which written notice of the final decision
 7 is delivered to the aggrieved party by personal delivery, electronic mail, or by first-class mail.

8 (c) Availability of Alternative Remedy. – Any person entitled to maintain an action
 9 under this section may elect instead to present any of the claims or defenses set forth in
 10 subdivisions (a)(1) through (a)(3) of this section by way of appeal to the board of adjustment as
 11 provided in G.S. 160A-388(b1) and may thereafter appeal from an adverse decision by the
 12 board of adjustment as provided in G.S. 160A-393. Once an appeal setting forth such claims or
 13 defenses has been filed pursuant to G.S. 160A-388(b1)(1) and its related hearing before the
 14 board of adjustment commenced, a party may not thereafter bring an action as authorized by
 15 this section, provided, however, that nothing herein shall be deemed to preclude a party from
 16 maintaining an action under federal law or a takings claim.

17 (d) Notice to Abutting Landowners. – A person who commences an action pursuant to
 18 this section shall notify by first-class mail the owners of all parcels of land abutting the parcel
 19 of land that is the subject of the complaint that such action has been filed. The notice shall
 20 include a copy of the complaint. The party bringing the civil action may rely on the county tax
 21 listings to determine owners of property entitled to mailed notice and the applicable mailing
 22 addresses. The notice shall be mailed no later than 30 days after the commencement of the
 23 action, unless an extension, not to extend 30 days, is granted pursuant to Rule 6(b) of the North
 24 Carolina Rules of Civil Procedure."

25 **SECTION 12.** G.S. 160A-364.1 reads as rewritten:

26 "**§ 160A-364.1. Statute of limitations.**

27 ...

28 (c) Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party in an
 29 action involving the enforcement of a zoning or unified development ordinance or in an action
 30 authorized by G.S. 160A-393.1 from raising as a claim or defense to such enforcement action in
 31 such proceedings the invalidity of the ordinance. Nothing in this section or in G.S. 1-54(10) or
 32 G.S. 1-54.1 shall bar a party who files a timely appeal from an order, requirement, decision, or
 33 determination made by an administrative official contending that such party is in violation of a
 34 zoning or unified development ordinance from raising in the appeal the invalidity of such
 35 ordinance as a defense to such order, requirement, decision, or determination. A party in an
 36 enforcement action or appeal may not assert the invalidity of the ordinance on the basis of an
 37 alleged defect in the adoption process unless the defense is formally raised within three years of
 38 the adoption of the challenged ordinance.

39"

40 **SECTION 13.** G.S. 160A-393 reads as rewritten:

41 "**§ 160A-393. Appeals in the nature of certiorari.**

42 ...

43 (j) Hearing on the Record. – The court shall hear and decide all issues raised by the
 44 petition by reviewing the record submitted in accordance with subsection (h)(i) of this section.
 45 Except that the court may, in its discretion, shall allow the record to be supplemented with
 46 affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that,
 47 the record is not adequate to allow an appropriate determination petition raises any of the
 48 following issues: issues, in which case the rules of discovery set forth in the North Carolina
 49 Rules of Civil Procedure shall apply to the supplementation of the record of said issues:

50 (1) Whether a petitioner or intervenor has standing.

- 1 (2) Whether, as a result of impermissible conflict as described in
2 G.S. 160A-388(e)(2), or locally adopted conflict rules, the decision-making
3 body was not sufficiently impartial to comply with due process principles.
- 4 (3) Whether the decision-making body erred for the reasons set forth in
5 sub-subdivisions a. and b. of subdivision (1) of subsection (k) of this
6 ~~section~~section, including an error related to the claims or defenses in
7 subdivision (k)(4) of this section.
- 8 (k) Scope of Review. –
- 9 (1) When reviewing the decision of a decision-making board under the
10 provisions of this section, the court shall ensure that the rights of petitioners
11 have not been prejudiced because the decision-making body's findings,
12 inferences, conclusions, or decisions were:
- 13 a. In violation of constitutional provisions, including those protecting
14 procedural due process rights.
- 15 b. In excess of the statutory authority conferred upon the city or the
16 authority conferred upon the decision-making board by ordinance.
- 17 c. Inconsistent with applicable procedures specified by statute or
18 ordinance.
- 19 d. Affected by other error of law.
- 20 e. Unsupported by substantial competent evidence in view of the entire
21 record.
- 22 f. Arbitrary or capricious.
- 23 (2) When the issue before the court is one set forth in sub-subdivisions a.
24 through d. of subdivision (1) of this subsection, including whether the
25 decision-making board erred in interpreting an ordinance, the court shall
26 review that issue de novo. The court shall consider the interpretation of the
27 decision-making board, but is not bound by that interpretation, and may
28 freely substitute its judgment as appropriate.
- 29 (3) The term "competent evidence," as used in this subsection, shall not preclude
30 reliance by the decision-making board on evidence that would not be
31 admissible under the rules of evidence as applied in the trial division of the
32 General Court of Justice if (i) except for the items noted in sub-subdivisions
33 a., b., and c. of this subdivision that are conclusively incompetent, the
34 evidence was admitted without objection or (ii) the evidence appears to be
35 sufficiently trustworthy and was admitted under such circumstances that it
36 was reasonable for the decision-making board to rely upon it. The term
37 "competent evidence," as used in this subsection, ~~shall~~shall, regardless of the
38 lack of a timely objection, not be deemed to include the opinion testimony of
39 lay witnesses as to any of the following:
- 40 a. The use of property in a particular way would affect the value of
41 other property.
- 42 b. The increase in vehicular traffic resulting from a proposed
43 development would pose a danger to the public safety.
- 44 c. Matters about which only expert testimony would generally be
45 admissible under the rules of evidence.
- 46 (4) The petitioner may assert and the court shall determine de novo, based on
47 the record, as supplemented in accordance with subsection (j) of this section,
48 any of the following claims or defenses:
- 49 a. That the ordinance, either on its face or as applied by the final
50 decision of the administrative official, violates the United States or
51 North Carolina Constitutions.

1 b. That the ordinance or the final decision of the administrative official
 2 is invalid or unenforceable on grounds of ultra vires or preemption,
 3 or is otherwise in excess of authority.

4 c. That the ordinance or the final decision of the administrative official
 5 violates common law or statutory vested rights of the petitioner.

6 (5) In order to raise any claim or defense listed in subdivision (4) of this
 7 subsection, to the extent that they do not involve some act of the
 8 decision-making board itself or any of its members, the claim or defense
 9 shall be made known to the decision-making board at the hearing.

10 (l) Decision of the Court. – Following its review of the decision-making board in
 11 accordance with subsection (k) of this section, the court may affirm the decision, reverse the
 12 decision and remand the case with appropriate instructions, or remand the case for further
 13 proceedings. If the court does not affirm the decision below in its entirety, then the court shall
 14 be guided by the following in determining what relief should be granted to the petitioners:

15 (1) If the court concludes that the error committed by the decision-making board
 16 is procedural only, the court may remand the case for further proceedings to
 17 correct the procedural error.

18 (2) If the court concludes that the decision-making board has erred by failing to
 19 make findings of fact such that the court cannot properly perform its
 20 function, then the court may remand the case with appropriate instructions so
 21 long as the record contains substantial competent evidence that could
 22 support the decision below with appropriate findings of fact. However,
 23 findings of fact are not necessary when the record sufficiently reveals the
 24 basis for the decision below or when the material facts are undisputed and
 25 the case presents only an issue of law.

26 (3) If the court concludes that the decision by the decision-making board is not
 27 supported by substantial competent evidence in the record or is based upon
 28 an error of law, then the court may remand the case with an order that directs
 29 the decision-making board to take whatever action should have been taken
 30 had the error not been committed or to take such other action as is necessary
 31 to correct the error. Specifically:

32 a. If the court concludes that a permit was wrongfully denied because
 33 the denial was not based on substantial competent evidence or was
 34 otherwise based on an error of law, the court ~~may~~shall remand with
 35 instructions that the permit be issued, subject to ~~reasonable and~~
 36 ~~appropriate conditions.~~any conditions expressly consented to by the
 37 permit applicant as part of the application or during the board of
 38 adjustment appeal or writ of certiorari appeal.

39 b. If the court concludes that a permit was wrongfully issued because
 40 the issuance was not based on substantial competent evidence or was
 41 otherwise based on an error of law, the court may remand with
 42 instructions that the permit be revoked.

43 c. If the court concludes that a zoning board decision upholding a
 44 zoning enforcement action was not supported by substantial
 45 competent evidence or was otherwise based on an error of law, the
 46 court shall reverse the decision.

47 "

48 **SECTION 14.** Part 3 of Article 19 of Chapter 160A of the General Statutes is
 49 amended by adding a new section to read:

50 "§ 160A-393.2. No estoppel effect when challenging unlawful conditions.

1 A city or county may not assert before a board of adjustment or in any civil action the
2 defenses of estoppel, waiver, release, acceptance, or other similar grounds as a result of actions
3 by the landowner or permit applicant to proceed with development authorized by a rezoning or
4 a development permit as defined in G.S. 160A-400.21 while said landowner or permit applicant
5 challenges conditions imposed on said development."

6 **SECTION 15.** G.S. 6-21.7 reads as rewritten:

7 **"§ 6-21.7. Attorneys' fees; cities or counties acting outside the scope of their authority.**

8 In any action in which a city or county is a party, upon a finding by the court that the city or
9 county acted outside the scope of its legal authority, violated a statute or case law setting forth
10 unambiguous limits on its authority, the court may shall award reasonable attorneys' fees and
11 costs to the party who successfully challenged the city's or county's action, provided that if the
12 court also finds that the city's or county's action was an abuse of its discretion, the court shall
13 award attorneys' fees and costs. In any action in which a city or county is a party, upon
14 finding by the court that the city or county took action inconsistent with, or in violation of,
15 G.S. 160A-360.1, 153A-320.1, or 143-755, the court shall award reasonable attorneys' fees and
16 costs to the party who successfully challenged the local government's failure to comply with
17 any of those provisions. In all other matters, the court may award reasonable attorneys' fees and
18 costs to the prevailing private litigant. For purposes of this section, "unambiguous" means that
19 the limits of authority are not reasonably susceptible to multiple constructions."

20 **SECTION 16.** G.S. 160A-372 reads as rewritten:

21 **"§ 160A-372. Contents and requirements of ordinance.**

22 ...
23 (c) The ordinance may provide for the more orderly development of subdivisions by
24 requiring the construction of community service facilities in accordance with municipal plans,
25 policies, and standards. To assure compliance with these and other ordinance requirements, the
26 ordinance may provide for performance guarantees to assure successful completion of required
27 improvements either at the time the plat is recorded as provided in subsection (b) of this
28 section, section or at a time subsequent to the recording of the plat to assure successful
29 completion of required improvements. In the event a city fails to adopt an ordinance setting
30 forth performance guarantees in compliance with subsection (g) of this section, a city shall not
31 be authorized to require the successful completion of required improvements prior to a plat
32 being recorded. For any specific development, the type and term of performance
33 guarantee guarantee, or any extension of the performance guarantee, shall be at the election of
34 the developer, developer provided that any performance guarantee or extension be available to
35 assure the successful completion of improvements for which it is required. The developer shall
36 be allowed, without limitation, to reduce the amount of the performance guarantee to reflect
37 only the remaining incomplete items.

38 ...
39 (g) For purposes of this section, all of the following shall apply with respect to
40 performance guarantees:

- 41 (1) The term "performance guarantee" shall mean any of the following forms of
42 guarantee:
43 a. Surety bond issued by any company authorized to do business in this
44 State.
45 b. Letter of credit issued by any financial institution licensed to do
46 business in this State.
47 c. Other form of guarantee that provides equivalent security to a surety
48 bond or letter of credit.
49 (2) The performance guarantee shall be returned or released, as appropriate, in a
50 timely manner upon the acknowledgement by the city or county that the
51 improvements for which the performance guarantee is being required are

complete. If the improvements are not complete and the current performance guarantee is expiring, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period until such required improvements are complete. A developer shall demonstrate reasonable, good faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension. The form of any extension shall remain at the election of the developer.

(3) The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. Any extension of the performance guarantee necessary to complete required improvements shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained. At the election of the developer, one hundred twenty-five percent (125%) of the reasonably estimated cost of completion may be conclusively determined by a report provided under seal by an architect licensed under the provisions of Chapter 83A of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes. This report may contain unit pricing information provided by a general contractor, licensed under Chapter 87 of the General Statutes, or any other competent source that the architect or engineer certifies, under seal, as accurate. The reasonably estimated cost of completion shall include all costs of inflation and costs of administration and enforcement, no matter how such related fees or charges are denominated.

(4) The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.

(5) The developer shall have the option to post one form of a performance guarantee as provided for in subdivision (1) of this subsection, in lieu of multiple bonds, letters of credit or other equivalent security, for all development matters related to the same project requiring performance guarantees, including, without limitation, subdivision, erosion control, and stormwater.

(6) No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:

- a. The local government to whom such performance guarantee is provided.
- b. The developer at whose request or for whose benefit such performance guarantee is given.
- c. The person or entity issuing or providing such performance guarantee at the request of or for the benefit of the developer."

SECTION 17. G.S. 153A-331 reads as rewritten:

"§ 153A-331. Contents and requirements of ordinance.

...

(e) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees ~~to assure successful completion of required improvements~~ either at the time the plat is recorded as provided in subsection (b) of this section-section or at a time subsequent to the recording of the plat to assure successful completion of required improvements. In the event a county fails to adopt an ordinance setting

1 forth performance guarantees in compliance with subsection (g) of this section, a county shall
2 not be authorized to require the successful completion of required improvements prior to a plat
3 being recorded. For any specific development, the type and term of performance guarantee
4 from the range specified by the county guarantee, or any extension of the performance
5 guarantee, shall be at the election of the developer. ~~developer,~~ provided that any performance
6 guarantee or extension be available to assure the successful completion of the improvements
7 for which it is required. The developer shall be allowed, without limitation, to reduce the
8 amount of the performance guarantee to reflect only the remaining incomplete items.

9"

10 **SECTION 18.** G.S. 160A-381 reads as rewritten:

11 "**§ 160A-381. Grant of power.**

12 ...

13 (c) The regulations may also provide that the board of adjustment, the planning board,
14 or the city council may issue special use permits or conditional use permits in the classes of
15 cases or situations and in accordance with the principles, conditions, safeguards, and
16 procedures specified therein and may impose reasonable and appropriate conditions and
17 safeguards upon these permits. Conditions and safeguards imposed under this subsection shall
18 not include requirements for which the city does not have authority under statute to regulate nor
19 requirements for which the courts have held to be unenforceable if imposed directly by the
20 city-city, including, without limitation, taxes, impact fees, building design elements within the
21 scope of subsection (h) of this section not voluntarily offered by the petitioner, street
22 improvements in excess of those allowed in G.S. 160A-372, driveway-related improvements in
23 excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized
24 limitations on the development or use of land. When deciding special use permits or
25 conditional use permits, the city council or planning board shall follow quasi-judicial
26 procedures. Notice of hearings on special or conditional use permit applications shall be as
27 provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the
28 city council or planning board to issue such permits. For the purposes of this section, vacant
29 positions on the board and members who are disqualified from voting on a quasi-judicial matter
30 shall not be considered "members of the board" for calculation of the requisite majority. Every
31 such decision of the city council or planning board shall be subject to review of the superior
32 court in the nature of certiorari in accordance with G.S. 160A-388.

33 Where appropriate, such conditions may include requirements that street and utility
34 rights-of-way be dedicated to the public and that provision be made of recreational space and
35 facilities. Notwithstanding anything to the contrary, a development permit authorized pursuant
36 to this subsection shall not be denied on the basis that existing public facilities are inadequate to
37 serve the property described in the permit application regardless of the type of use or
38 development of said property.

39"

40 **SECTION 19.** G.S. 153A-340 reads as rewritten:

41 "**§ 153A-340. Grant of power.**

42 ...

43 (c1) The regulations may also provide that the board of adjustment, the planning board,
44 or the board of commissioners may issue special use permits or conditional use permits in the
45 classes of cases or situations and in accordance with the principles, conditions, safeguards, and
46 procedures specified therein and may impose reasonable and appropriate conditions and
47 safeguards upon these permits. Conditions and safeguards imposed under this subsection shall
48 not include requirements for which the county does not have authority under statute to regulate
49 nor requirements for which the courts have held to be unenforceable if imposed directly by the
50 county-county, including, without limitation, taxes, impact fees, building design elements
51 within the scope of subsection (l) of this section not voluntarily offered by the petitioner, street

1 improvements in excess of those allowed in G.S. 160A-372, driveway-related improvements in
2 excess of those allowed in G.S. 136-18(29), or other unauthorized limitations on the
3 development or use of land. Where appropriate, the conditions may include requirements that
4 street and utility rights-of-way be dedicated to the public and that recreational space be
5 provided. Notwithstanding anything to the contrary, a development permit authorized pursuant
6 to this subsection shall not be denied on the basis that existing public facilities are inadequate to
7 serve the property described in the permit application regardless of the type of use or
8 development of said property. When deciding special use permits or conditional use permits,
9 the board of county commissioners or planning board shall follow quasi-judicial procedures.
10 Notice of hearings on special or conditional use permit applications shall be as provided in
11 G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the board of
12 county commissioners or planning board to issue such permits. For the purposes of this section,
13 vacant positions on the board and members who are disqualified from voting on a quasi-judicial
14 matter shall not be considered "members of the board" for calculation of the requisite majority.
15 Every such decision of the board of county commissioners or planning board shall be subject to
16 review of the superior court in the nature of certiorari consistent with G.S. 160A-388.

17"

18 **SECTION 20.** G.S. 153A-352 reads as rewritten:

19 **"§ 153A-352. Duties and responsibilities.**

20 ...

21 (b) Except as provided in G.S. 153A-364, a county may not adopt a new local
22 ordinance or resolution or any other policy or enforce an existing local ordinance, resolution, or
23 policy that requires regular, routine inspections of buildings or structures constructed in
24 compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in
25 addition to the specific inspections required by the North Carolina Building Code without first
26 obtaining approval from the North Carolina Building Code Council. The North Carolina
27 Building Code Council shall review all applications for additional inspections requested by a
28 county and shall, in a reasonable manner, approve or disapprove the additional inspections.
29 This subsection does not limit the authority of the county to require inspections upon
30 unforeseen or unique circumstances that require immediate action. In performing the specific
31 inspections required by the North Carolina Building Code, the inspector shall conduct all
32 inspections requested by the permit holder for each scheduled inspection visit. For each
33 requested inspection, the inspector shall inform the permit holder of instances in which the
34 work inspected is incomplete or otherwise fails to meet the requirements of the North Carolina
35 Residential Code for One- and Two-Family Dwellings.

36"

37 **SECTION 21.** G.S. 160A-412 reads as rewritten:

38 **"§ 160A-412. Duties and responsibilities.**

39 ...

40 (b) Except as provided in G.S. 160A-424, a city may not adopt a new local ordinance or
41 resolution or any other policy or enforce an existing local ordinance, resolution, or policy that
42 requires regular, routine inspections of buildings or structures constructed in compliance with
43 the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the
44 specific inspections required by the North Carolina Building Code without first obtaining
45 approval from the North Carolina Building Code Council. The North Carolina Building Code
46 Council shall review all applications for additional inspections requested by a city and shall, in
47 a reasonable manner, approve or disapprove the additional inspections. This subsection does
48 not limit the authority of the city to require inspections upon unforeseen or unique
49 circumstances that require immediate action. In performing the specific inspections required by
50 the North Carolina Building Code, the inspector shall conduct all inspections requested by the
51 permit holder for each scheduled inspection visit. For each requested inspection, the inspector

1 shall inform the permit holder of instances in which the work inspected is incomplete or
2 otherwise fails to meet the requirements of the North Carolina Residential Code for One- and
3 Two-Family Dwellings.

4"

5 **SECTION 22.** G.S. 160A-37 reads as rewritten:

6 "**§ 160A-307. Curb cut regulations.**

7 A city may by ordinance regulate the size, location, direction of traffic flow, and manner of
8 construction of driveway connections into any street or alley. The ordinance may require the
9 construction or reimbursement of the cost of construction and public dedication of medians,
10 acceleration and deceleration lanes, and traffic storage lanes for driveway connections into any
11 street or alley if:

12 (1) The need for such improvements is reasonably attributable to the traffic
13 using the driveway; and

14 (2) The improvements serve the traffic of the driveway.

15 No street or alley under the control of the Department of Transportation may be improved
16 without the consent of the Department of Transportation. ~~However, if there is a conflict~~
17 ~~between the written driveway regulations of the Department of Transportation and the related~~
18 ~~driveway improvements required by the city, the more stringent requirement shall apply.~~ A city
19 may not require the applicant to acquire right-of-way from property not owned by the
20 applicant."

21 **SECTION 23.** G.S. 160A-385(c), as enacted by Section 5 of this act, and
22 G.S. 153A-344(b1), as enacted by Section 7 of this act, are effective with respect to phased
23 development approvals that are valid and unexpired on the effective date of this act. The
24 remainder of this act is effective when it becomes law and applies to permits previously issued
25 that remain valid and unexpired on the date this act becomes law and to permit actions filed,
26 actions filed in court, and claims and defenses asserted on or after that date.