REQUEST FOR BOARD ACTION

HENDERSON COUNTY
PLANNING BOARD

Meeting Date: August 18, 2011

Subject: Legislative Update

Staff Contact: Anthony W. Starr, AICP, Planning Director

Attachments: 1. School of Government Information

SUMMARY OF REQUEST:

The attached information includes recent legislation affecting local government planning and development issues. Staff will briefly review the changes to state law. The legislative amendments:

- Change local government authority for minimum housing code inspections;
- Expands the definition of a bona fide farm;
- Restricts the circumstances in which local governments can adopt development moratoria;
- Lengthens the periods in which zoning rules can be appealed to the courts; and
- Expands the area that sign companies can clear vegetation around billboards.

PLANNING BOARD ACTION REQUESTED:

No action requested. This item is for informational purposes.

Suggested Motion:
None.

2011 NORTH CAROLINA

COMMUNITY PLANNING AND DEVELOPMENT

LEGISLATION: SELECTED ACTS

Richard Ducker

School of Government

UNC – Chapel Hill

July 18, 2011

2011 COMMUNITY PLANNING AND DEVELOPMENT LAW SUMMARY

Residential Building Inspections

Local government code-enforcement inspectors are involved in three general types of inspections. The first type includes inspections made while construction work is in progress or at its conclusion ("work-in-progress inspections"). These inspections typically involve projects for which a permit is required. A second form of inspection involves inspections made for the purpose of discovering violations of the law in circumstances where no permit is involved, but the inspection is part of a systematic periodic inspection conducted on a regular (but not necessarily frequent) basis ("periodic inspections") . A third form includes inspections involving no permit where the inspection is made in response to a complaint or indications of a violation of some type ("reasonable-cause" inspections).

One of the purposes of S 683 was to curtail periodic inspections substantially (particularly minimum housing code inspections) and to convert inspections of the second type (i.e., periodic inspections) into inspections of the third type ("reasonable-cause" inspections). A Senate version of the bill went so far as to require local governments to obtain approval from the North Carolina Building Code Council for any type of inspection not mandated by the State Building Code. Eventually, however, the version of the bill that became effective June 23, results in a lesser departure from existing law.

Under the new law, periodic inspections that involve dwelling units may be conducted by local governments as before, but only if certain procedures are followed. First, the inspections may be made only as part of a targeted effort within an area designated by the governing board. The local governing board has discretion in selecting the area and housing types targeted, but must be careful not to discriminate between single-family and multi-family dwellings or, although this is not entirely clear, between owner-occupied and rental housing. Second, the local governing board must provide notice to residents and property owners in the area chosen concerning the inspection plan and a public hearing regarding the plan. Third, the local government must hold such a public hearing. Fourth, the local government must establish a plan addressing the ability of low-income residential property owners to comply with code standards. These requirements are consistent with good practice for authorizing periodic inspections. However, the periodic inspections required under the state fire prevention code (State Building Code), or otherwise required by law, are not subject to these requirements.

Unless these conditions are met, then residential inspections of individual properties may be conducted only if there is "reasonable cause" to believe unsafe, unsanitary, or unlawful conditions are present. The act refers to these inspections as a form of "periodic inspections," but they can better be thought of as a separate category of "reasonable-cause inspections." A local government has reasonable cause to inspect an individual property if (i) the owner has a history of more than two violations of local ordinances within a 12-month period; (ii) there "has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected"; (iii) the inspection department has actual knowledge of an unsafe condition within the building; or (iv) violations of local ordinances are visible from the outside of the property.

The major thrust of S 683, however, is the rise in the past few years of local government residential rental property registration programs. These programs, adopted by a relatively small number of larger municipalities regulate the business of operating as a residential landlord and can be construed as an attempt to hold landlords more accountable for the conditions of their properties. These programs sometimes require that a minimum housing inspection be made when a tenant moves out, that a certificate of occupancy be issued before the unit can be rented again, and that a registration program fee be paid. Initial efforts to prohibit such licensing or registration programs failed, but S 683 restricts these programs in several respects.

A local government may not require that residential rental property be enrolled in any governmental program as a condition of obtaining a certificate of occupancy. It also may not enforce an ordinance requiring a permit to rent residential property unless (i) the property has been subject to more than three violations of local ordinances within a 12-month period, or (ii) the property is the subject of crime or disorder problems that put it within the top 10% of all such properties, as provided by ordinance.

A local government may impose a fee for residential rental property registration only if (i) the particular rental units included have been subject to more than two violations of local ordinances within a 12-month period or (ii) the property is the subject of crime or disorder problems that put it within the top 10% of properties, as provided by ordinance. The amount of such a fee may be set no higher than to allow recovery of the cost of administering a residential rental program. However, if a local government was enforcing a registration program for all residential rental properties as of June 1, 2011, it may only charge fees that do not exceed the following amounts: (i) $50, for properties with 20 or more rental units; (ii) $25, for properties with four (4) to nineteen (19) units; and (iii) $15, for properties with three or fewer rental units.

S.L. 2011 – 281 (S 683) became effective June 23, 2011.

Bona Fide Farm Loophole Grows

For many years farms and agricultural activities have enjoyed special treatment under various environmental and land use regulatory programs. One of the more well-known examples involves county zoning. A "bona fide farm" is entirely exempt from such zoning, although nonfarm uses of farm properties are still subject to county zoning. Over time the definition of what constitutes a bona-fide farm has been elaborated, clarified, and expanded to include agriculture, horticulture, forestry activities, the raising of fowl and livestock, and activities relating or incidental to such production. However, most of the statutory language has described the type of activity intended to be included within a "bona fide farm." S.L. 2011 – 363 (H 168) advances the cause of agriculture by listing specific items of proof that a landowner may provide to demonstrate that the property functions as a farm. These include (a) a farm sales tax exemption certificate; (b) a copy of the property tax listing showing that the farm qualifies for the present-use-value property taxation that apples to agricultural, horticultural, and forestry uses; (c) a copy of the farm operator's federal income tax form that demonstrates farm activity; (d) a forestry management plan; or (e) a farm identification number issued by the U.S. Department of Agriculture. It also clarifies that the exemption applies not only to a single property, but it can also apply to an identifiable portion of a single tract that is partially being used for another purpose.

Having broadened the scope of bona-fide farm purposes, S.L. 2011-363 (H 168) goes to provide new benefits to farm owners. It adds a new G.S. 160A-360(k) to provide that land being used for bona-fide farm purposes is also exempt from a municipality's exercise of its powers in its extraterritorial planning jurisdiction. That municipal ETPJ exemption applies not only to municipal zoning, but also to municipal subdivision control, building and housing code enforcement, soil erosion and sedimentation control, flood hazard protection regulations, stormwater control, community development authority, acquisition of open space, and other powers that a municipality may exercise in its ETPJ.

Finally, the act goes on to provide that land used for farming purposes may not be made subject to any form of municipal-initiated annexation without the consent of the owners, if the land was so used on the date the municipal resolution of intent to consider annexation was adopted.

Power to Adopt Development Moratorium Restricted

Since 2007 North Carolina cities and counties have enjoyed express authority to adopt development moratoria. A development moratorium serves as stop-gap measure to suspend the grant of development approvals for a specific period of time until the local government can identify problems, develop plans, adopt or revise ordinances, and take other actions to address perceived development crises of one kind or another. Although the original 2007 legislation was grudgingly supported by development interests, it became clear that land developers, contractors, realtors, and the like were caught off guard by the ability of local governments to adopt moratoria on short notice. In some cases local governments extended moratoria when solutions for addressing planning and regulatory problems had not been completed when the moratorium expired.

Development interests initially tried to gut the 2007 legislation by proposing to ban any moratorium adopted for "the purpose of developing and adopting new or amended plans or ordinances." Since most locally adopted moratorium were adopted for the express purposes of buying time to adopt new plans and revise regulations, most of the authority initially gained by local governments would have been lost. But local government and planning interests fought this approach and finally succeeded in limiting the diminution in local government power. S.L. 2011 – 286 (H 332) simply prohibits a development moratorium adopted "for the purpose of developing and adopting new or amended plans or ordinances as to residential uses." (Underlining added.) Since many moratoria apply to uses of land other than residential, the current moratorium legislation can still be used effectively by cities and counties.

Questions remain about how the current law applies to ordinances establishing "adequate–public-facilities" criteria for new development. New development is delayed or effectively prohibited if the public facilities necessary to serve the development will not be in place concurrently with the development. Home builders particularly have claimed that the use of such criteria amounted to a de-facto moratorium on certain developers. Whether such arrangements are subject to the development moratorium legislation remains to be seen.

County Zoning of Lots Exceeding Ten Acres

Section 5 of S.L. 2011 -384 (H 806) was adopted in order to reverse the effect of a particular North Carolina Court of Appeals case. In Tonter Investments, Inc. v. Pasquotank County, 199 N.C. App. 579, 681 S.E.2d 536 (2007), *rev. denied*, 363 N.C. 663 (2009), the court upheld the ability of a county to establish development standards in zoning districts that include large lots (over ten acres) that were exempt from land subdivision regulations. The county ordinance that was upheld prohibited all residential uses in one of its agricultural zoning districts (A-2). It also prohibited any building or structure from being located on a lot unless (a)

the lot included a minimum of 25 feet of frontage on a state road or a private road approved in accordance with the county subdivision ordinance, and (b) the lot was located within 1,000 feet of a public water supply.

The county offered the following rationales for the prohibitions: (1) the lack of improved roads in areas zoned A-2; (2) the potential strain on the county's ability to proved essential public services in these areas; (3) the fact that only five residences currently existed in the district; and (4) the aerial application of pesticides within a large part of the district. As a result, the court found that the ordinance provisions were based on concern for public safety and that the landowners were still allowed to make other uses of the land, as allowed by the county.

In reaction to this ruling, this year's General Assembly amended G.S. 153A-340 to provide that a county in its zoning ordinance may not prohibit the single-family residential use of lots exceeding ten acres in various circumstances. First, such a prohibition is impermissible in districts where more than half of the land is used agricultural or silvicultural purposes. (Certain commercial and industrial districts are excepted.) Second, such a prohibition may not be adopted because the lot lacks frontage on a public or approved private road. Finally, the prohibition may not be adopted because the lot is not served by public wear or sewer.

The act does, however, direct the Legislative Research Commission (LRC), in consultation with the North Carolina Homebuilders Association and the North Carolina Association of County Commissioners, to study "the extent to which counties shall be able to require that lots exempt from county subdivision regulations must be accessible to emergency service providers." The LRC is to report to the General Assembly by January 15, 2013.

S.L. 2011 – 384 (H 806) became effective July 1, 2011.

Zoning Statutes of Limitation

Property developers in North Carolina generally prefer a relatively short statute of limitations for challenging rezoning decisions. That reflects the fact most rezoning petitions are brought by property owners and developers, and most challenges to those that are successful come from third parties. In contrast lawsuits based on challenges to zoning regulations (text amendments) are generally brought by developers and property owners. They prefer that the period for contesting these features be relatively long.

S.L. 2011 – 384 (H 806) reflects these interests. Before this act was passed, the statute of limitation (SOL) period for challenging all zoning adoption and amendment decisions was two months. The new law first leaves the SOL at two months for challenges to zoning map amendments and clarifies that the period begins to run from the time the amendment is

adopted. Second, the act lengthens the SOL from two months to three years for suits alleging irregularities in ordinance adoption. The period again runs from the date of ordinance adoption. Third, the time for contesting the validity of text amendments is extended from two months to one year. However, in this third instance, the period does not even begin to run until the party (typically the property owner) "first has standing to challenge the ordinance." Since standing typically involves ownership of a property interest affected by the ordinance, this change in the law means that when a particular parcel is sold or resold, each new owner will have standing to challenge the zoning ordinance provision. Thus an ordinance is subject to being challenged by a new property owner years after the ordinance provision was adopted.

The coup de grace involves suits by a local government to enforce the ordinance against a violator. Prior North Carolina case law has held that a violator may not raise the possible invalidity of the ordinance violated as a defense to an enforcement action. S.L. 2011 – 384 (H 806) generally changes this result by allowing the alleged violator to raise this invalidity as a defense whenever the enforcement action is brought, regardless of how many years have passed since the ordinance was adopted. The only restriction is that a defense to any enforcement action that involves a claim that the process for adopting the ordinance was defective must be raised within three years after the ordinance adoption. Unfortunately the act does not clarify how the judicial review of a violation notice (coming after a quasi-judicial appeal heard by the board of adjustment) is to be merged with or complement the judicial review of an ordinance provision (the review of a legislative action by declaratory judgment).

Vegetation Removal along Federal Highways

Outdoor adverting displays (billboards) erected in this state along Interstate and federal primary highways have long been subject to a dual set of regulations, one administered by the North Carolina Department of Transportation (NCDOT) and one administered by local governments that have adopted zoning. As a general rule, local governments may apply more demanding standards to new signs, but state statutes and rules largely govern existing nonconforming signs.

S 183 was first introduced by the outdoor advertising industry both to allow the industry to expand opportunities for the location of "automatic changeable facing signs " (digital signs) and to allow sign owner to clear vegetation with the public right-of-way to allow signs to be better seen by the traveling public. In the past several years digital signs have been allowed by NCDOT rules. But early versions of S 183 would have allowed digital signs to be reconstructed or erected anywhere that a billboard was located that was nonconforming under a local ordinance, effectively overriding local regulatory authority with respect to digital signs. Local government, planning, and environmental interests reacted strongly to this attempt to preempt local authority, and this language was removed from the bill.

Another concern of the outdoor advertising industry has been whether lawfully erected signs may be seen by the traveling public if vegetation within the highway right-of-way obscures the vista to the sign beyond the edge of the right-of-way. Like many states North Carolina through department of transportation rules has permitted the owner of a sign to arrange for the removal of some vegetation within the public right-of-way. Outdoor advertising interests wished to enshrine in the statutes a more generous system for allowing tree pruning and removal in the right-of-way, and they were successful. Along certain federal primary highways the new legislation lets billboard owners cut down trees up to 380 feet from the sign; under prior rules vegetation removal, but not wholesale clear-cutting, was allowed up to 250 feet from the sign. Lesser standards will apply to billboards located inside city boundaries. But the act clarifies that local governments are prohibited from regulating vegetation removal within the limits of federal primary system highways inside their corporate limits.

As a general rule, trees in existence at the time a billboard was erected are not eligible for removal, but the act provides for several exceptions to that rule. The act sets up a permitting system administered by NCDOT. Sign owners must pay fees to get permits reflecting the value of the timber removed. The money must be used by NCDOT highway beautification projects, but not necessarily within the same area as the trees removed. Certain forms of compensatory planting by the sign owner are also permitted.

In the last several years NCDOT has recorded over 150 instances of illegal vegetation cutting under the old NCDOT rules. S 183 offers no clear indication that enforcement will improve, but does provide for the revocation of the outdoor adverting permit itself if certain kinds of illegal cutting are proved.

One potentially ominous provision for local governments that was retained in the act raises another fear that local government billboard regulation along federal highways will be preempted. The provision has nothing to do with removal of vegetation. Instead the act provides that if an outdoor advertising display is to be illuminated and requires an electrical permit (provided by a local government), the electrical permit must be issued if NCDOT has issued a sign permit for the structure. Normally the electrical permit would not be issued until both a local government zoning authority had issued a zoning permit and NCDOT had issued a sign permit. This raises the fear that outdoor advertising industry wishes to make it more difficult for local governments to enforce zoning regulations applicable to signs by coordinating zoning and building permits, or that local zoning of billboards along federal highways is intended to be preempted entirely.

2011 Local Government Legislative Review

Webinar - Session II

July 18, 2011

UNC SCHOOL OF GOVERNMENT www.sog.unc.edu

Agenda – Session II
Monday, July 18, 10-12

Bob Joyce
- Elections
- E-verify

Jill Moore
- Public Health

Richard Whisnant
- Regulatory Reform
- Environment

Jeff Hughes
- Environmental Finance

Rich Ducker
- Community Planning and Development

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Legislative Summaries

- SOG's Legislative Summaries website:

  www.sog.unc.edu/dailybulletin/summaries11

- Materials include bulletins, blog entries, teaching etc.

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Bob Joyce

ELECTIONS LAW
A LOT STILL ON THE TABLE

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Elections Changes Actually Passed

- All municipal boards of elections eliminated
  - S.L. 2011-31 (H 21)
- Changes in military and civilian overseas voting
  - S.L. 2011-182 (H 514)
- So what?

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July Session: Elections, Elections

- Veto'd bills
- A couple of dippy things
- Bills related to elections laws
- Redistricting U.S. House
- Redistricting N.C. House
- Redistricting N.C. Senate

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Picture ID to Vote
H 351

- Passed the General Assembly
- Veto'd by the Governor

Picture ID to Vote
H 351

- Voter must show photo ID—drivers license, passport, military card, etc.
- Provisional ballot if no ID
- County board of elections must supply at no cost
- DMV must supply at no cost
- Enactment requires veto override

Shorten Early Voting
H 658, S 47

- From just over two weeks to just over one
- No Sunday voting
- One version has passed House and another version has passed Senate; both are still eligible

End Same Date Register/Vote

S 47

- In effect since 2007
- Has been applicable only to early voting
- Elimination has passed Senate and is still eligible in the House

End Straight-Ticket Voting

S 47

- Has long been available in the general election
- Has not covered voting for President
- Elimination has passed Senate and is still eligible in the House

End Instant Runoff Voting

H 452, S 47

- NC thrust into the limelight with the Court of Appeals race in 2010
- Not everybody was thrilled
- One version has passed House and another version has passed Senate; both are still eligible

Limit Times for Special Elections

H 366, S 47

- Now, bond elections, ABC elections, etc., can happen on their own
- Change would require that they happen at the time of regular elections
- One version has passed House and another version has passed Senate; both are still eligible

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End Candidate Public Funding

H 452, S 47

- Available now for judicial races and for Auditor, Sup't of Public Instruction, and Comm'r Insurance
- Bill would eliminate it for all but judicial
- One version has passed House and another version has passed Senate; both are still eligible

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Partisan Judicial Races

H 452, S 47

- Over last decade, races for Supreme Court, Court of Appeals, Superior Court, and District Court have been changed from partisan to non-partisan
- Bill would change them back
- One version has passed House and another version has passed Senate; both are still eligible

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Dem/Rep/Dem/Rep/Dem/Rep

H 300, S 47

- Current law calls for parties to appear on ballot in "alphabetical order"
- Change would rotate them every four years
- One version has passed House and another version has passed Senate; both are still eligible

Party Labels/Non-Partisan Races

S 456

- Candidates in non-partisan elections could choose to be identified by party on the ballot
- Passed the Senate, still eligible in the House

Redistricting

- U.S. House
- N.C. House
- N.C. Senate

Two Rules for All of Them

- One-person, one-vote
- Meet Voting Rights Act requirements

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Five Rules for Legislative Districts

- One-person, one-vote
- Meet Voting Rights Act requirements
- Not split counties except where VRA requires it
- All single-member districts
- Districts must be contiguous

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A Different Future?

H 824

- Proposal for "Nonpartisan Redistricting Process"
- Proposal has passed the House and is still eligible in the Senate
- Effective January 1, 2020

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Bob Joyce

PUBLIC EMPLOYMENT MANDATORY E-VERIFY

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What is E-Verify?

- Web-based system
- Operated by DHS in partnership with SSA
- Employer enters agreement with DHS and SSA
- Employer submits info on newly-hired employee
- Employment authorization checked
- Free to employer

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Who Must Use E-Verify S.L. 2011-263 (H 36)

- State agencies, now
- Cities and counties, beginning 10/1/2011
- Private employers over 500, 10/1/2012
- Private employers over 100, 1/1/2012
- Private employers over 25, 7/1/2013
- Smaller private employers, not required

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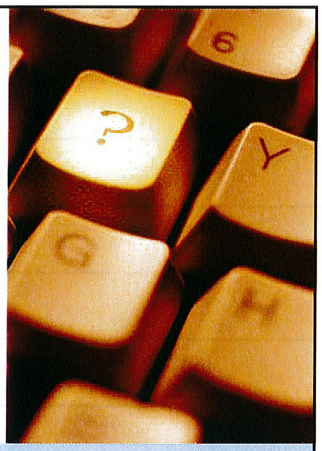
Questions for

Bob?

Please type your question into the box on the left side of your screen



Webinar evaluation

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PUBLIC HEALTH

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Reorganization of State Division of Environmental Health

Transferred to DPH

- Food, lodging & institutional sanitation
- On-site wastewater
- Swimming pools
- Tattoo parlors
- Children's environmental health (child care, lead)
- Mosquito aid-to-counties
- Education & training

Transferred elsewhere

- Other DENR Divisions:
  - Shellfish → Marine Fisheries
  - Public water supply → Water Resources
- Dept. of Agriculture:
  - Milk program
  - Sleep products
- DHHS Division of Health Service Regulation
  - Radiation protection

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Reorganization of State Division of Environmental Health

Programs Eliminated

- Public health pest management
- Wastewater discharge elimination (WaDE)
- On-site water protection quality assurance program

Other

- Private well program—state rules retained but state program staff eliminated (one position retained for FY 2011-12 only)

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Other Legislation

- Public Swimming Pools: S.L. 2011-39 (S 368)
  - Pools permitted before April 2010 not required to meet some fence requirements, unless fence is more than 50% destroyed or operator elects to replace fence
  - Water play attractions that don't collect water for wading/swimming not required to have dressing and sanitary facilities
  - Wading pool fence requirements suspended for one year pending a study

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Other Legislation

- S.L. 2011-261 (H 594)
  - Allows nonstandard wastewater trench systems to be approved if they are functionally equivalent to standard trench systems
- Cooking Schools: S.L. 2011-335 (S 346)
  - Cooking schools that teach cooking for home (not restaurant) environments exempt from food inspection & permitting requirements

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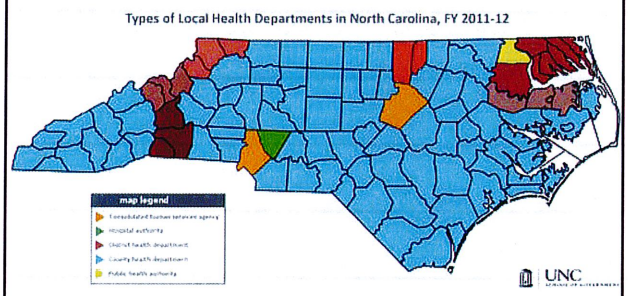
Local Public Health Reorganization



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Local Public Health Reorganization

- Key issues:
  - County-level human services consolidation vs. public health regionalization
  - Governance by county commissioners vs. separate health boards
  - Authority vs. traditional department
  - Public health role as regulator as well as human services provider

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Local Public Health Reorganization

- Bills still eligible for consideration:
  - S 433: Originally county consolidated human services only; later added public health regionalization incentives
  - S 552: Public health regionalization incentives
  - H 438: County consolidated human services (New Hanover county only)

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Jeff Hughes

ENVIRONMENTAL FINANCE

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Water and Sewer Finance Under New Annexation Law

S.L. 2011-396 (H 845)

- Property owners given option to sign up for new service.
- Utility required to cover all cost of service directly to building.
- Property owners that decide later to sign up may be charged pro-rated cost of installation.

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Private Wells

S.L. 2011-255 (S 676)

- Local government policies cannot be used to prohibit new wells or operation of existing wells that otherwise would meet state requirements.
- Earlier versions of this bill included prohibitions against mandatory water hook ups.
- No mention of cross connection protection policies that local governments use to protect water customers.

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Energy

- S.L. 2011-150 (H 266) Allows select local governments to follow special policies for long term renewable energy leases.
- S.L. 2011- 129 (H 117) Additional limits on electric utility fund transfers for three municipal power providers
- S. L. 2011- 252 (S 533) Sub-metering for electricity.
- S. L. 2011-269 (S 708) Legislative approval of new building code.

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Show Us the Money: Budget Bill

S.L. 2011-145 (H 200)

- Clean Water Management Trust
  - **$6.25** Million in new funds
  - Funds cannot be used for land acquisition
- Rural Center
  - No general new water and sewer funds
  - Infrastructure Program **$16.5 Million** (JOBS)
  - Rural Jobs Fund **$5 Millions** (JOBS)

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Show Us the Money: Budget Bill

S.L. 2011-145 (H 200)

- Clean Water and Drinking Water State Revolving Loan Funds
  - "Fully Funded" through continued funding of state match (e.g. drinking Water **$31.7 M** of new state and federal capital in addition to funds from past loans)
  - Drinking water now open to private water utilities
  - Drinking water moved to Division of Water Resources within DENR

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Richard Whisnant

REGULATORY REFORM AND ENVIRONMENT

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Regulatory Reform

- DENR reorganization
  - Soil and Water to Dept. of Agriculture & CS
  - Forestry to Dept. of Agriculture & CS
- Environmental and general rulemaking restrictions
  - No "substantial additional costs" S. 22, S.L. 2011-13
  - No "more stringent than federal law" Budget bill adds new GS § 143B-279.16
- Regulatory reform in general: S 781

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Water Resources

- Several important bills introduced by individual sectors/stakeholders Water resource bills 2011
- Bills passed
  - Promote water supply development S.L. 2011-374 (H 609)
  - CCPCUA IBT exemptions S.L. 2011-298 (H 643)
  - Water/well rights S.L. 2011-255 (S 676)
  - Cost share funding for ag water New Article 5 of GS 139
- Process going forward on water allocation issues? DENR modeling report Fall 2011

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Other Major Changes

- "Risk-based" contamination cleanup H.45, S.L. 2011-186
- Coastal shoreline hardening S.L. 2011-387 (SB110)
- Land conservation
  - Local trust funds for stewardship S.L. 2011-209
  - Make way for billboards S.L. 2011-209
- Drilling for oil and gas
  - Study by DENR S.L. 2011-276 (H 242)
  - Push drilling, inland and offshore S 709 (vetoed)

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Stock car racing, the official "state sport"
S 322 / S.L. 2011-187

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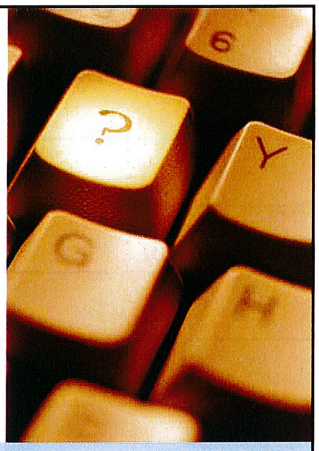
Questions for

- *Jill?*
- *Richard?*
- *Jeff?*

Please type your question into the box on the left side of your screen

Webinar evaluation



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Rich Ducker

COMMUNITY PLANNING AND DEVELOPMENT

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Major Legislation

- S.L. 2011-281 (S 683)
  - Periodic Inspections of Dwelling Units
  - Residential Rental Property
- S.L. 2011-363 (H 168)
  - Bona Fide Farm Loophole
- S.L. 2011-286 (H 332)
  - Development Moratoria
- S.L. 2011-384 (H 806)
  - County Zoning
  - Zoning Suits
- S.L. 2011-000 (S 183)
  - Vegetation Blocking Billboards

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Periodic Inspections of Dwelling Units and "Reasonable Cause"

Effective June 23

LG may conduct periodic inspections of dwellings if:
- City council designates target area, AND
- No discrimination in housing types targeted, AND
- Public hearing held after due notice given, AND
- Plan addresses ability of low-income residential property owners to comply

LG may also conduct periodic inspections if reasonable cause is shown as follows:
- Two code violations within 12-month period, OR
- Request that unit be inspected, OR
- Inspection department has actual knowledge of unsafe condition, OR
- Violation visible from outside of property

LG may also conduct periodic inspections to comply with the state fire code

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Residential Rental Property Licensing /Registration Programs

Effective June 23

- LG may not require participation in a licensing or registration program as condition of obtaining certificate of occupancy
- LG may not require permit or fee for residential rental property registration unless property:
  - Is subject to 3 code violations within 12 month, OR
  - Identified within top 10% of properties in terms of crime or disorder problems
- Residential registration fees may only recover program costs

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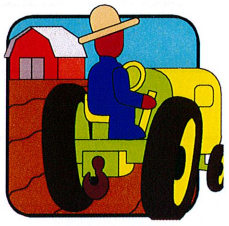
Bona Fide Farm Loophole Grows



- Definition of "bona fide farm" expanded to include property
  - For which owner files a schedule F on federal income tax return
  - Subject to farm sales tax exemption certificate
  - Subject to USDA Farm Identification Number, OR
  - Subject to forest management plan
- Bona fide farms now entirely exempt from any city power exercised pursuant to its extraterritorial planning and development jurisdiction
- Cities prohibited from involuntarily annexing any bona fide farm property wherever located

Effective June 27

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Power to Adopt Development Moratorium Cut Back

Development permit moratorium may not be used as stopgap measure to allow development of plans or ordinance standards affecting residential uses

Effective June 24

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County Zoning of Lots > 10 Acres Curtailed

- Zoning may not prohibit SF residential use of lots > 10 acres
  - In districts where more than 50% of the land used for agricultural or silvicultural purposes, OR
  - Because lot lacks frontage on public or approved private road, OR
  - Because lot is not served by public water or sewer

Effective July 1

UNC

Time Lengthened for Zoning Suits to be Brought

Effective July 1

- Statutes of limitation for suits contesting
  - Procedures for adoption of zoning amendments:
    - Extended to 3 years from adoption
  - Substance of zoning map amendment:
    - Remains 2 months from adoption
  - Substance of zoning text amendment:
    - Extended to 1 year
    - Runs from when challenger first has standing to challenge ordinance
- Ordinance violator able to raise invalidity of ordinance as defense to enforcement action at any time,
  - Except for:
    - Defects in adoption (wi/ 3 years)

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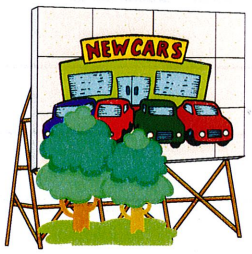
Removal Allowed of Vegetation Blocking Billboards along State Highways



Effective October 1

- Allows vegetation removal within State rights-of-way, even inside city limits
- Establishes sight triangles within which sign owner may arrange for removal, subject to NDCOT permit
- No permit for advertising signs in areas "spot zoned"
- No outdoor advertising permits along scenic byways
- Electrical permit for sign cannot be denied if NCDOT issued sign permit

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Other 2011 Legislation Affecting Community Planning and Development

- S.L. 2011-322 (S 118): Expands eligible projects in downtown revitalization municipal service districts
- S.L. 2011-219 (H 406): Eases landowner participation in voluntary agricultural districts
- S.L. 2011-57 (H 171): Restricts voluntary shoestring satellite annexations
- S.L. 2011-299 (H 687): Provides for awarding of attorney fees for party successfully challenging LG actions
- S.L. 2011-72 (S 281): Allows large cities to use municipal service district to convert private streets to public
- S.L. 2011-362 (H 165): Provides for disclosure statements for residential property concerning restrictive covenants and homeowners' associations

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Major Land Use Bills Eligible for Consideration in 2012

- S 731: Restricting design and aesthetic controls for SF residential
- S 315: Regulation of campaign signs in State highway and city street rights-of-way
- H 887: Zoning must treat "temporary health care structures" as permitted SF accessory uses
- H 281: Study elimination of municipal ETPJ

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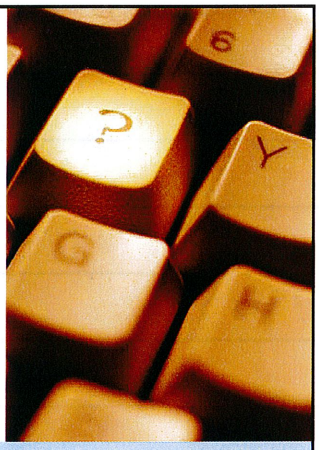
Questions for *Rich?*

Please type your question into the box on the left side of your screen



Webinar evaluation

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Legislative Summaries

- SOG's Legislative Summaries website:

  www.sog.unc.edu/dailybulletin/summaries11

- Materials include bulletins, blog entries, teaching etc.

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Session I: Archived Version Available Soon!

Frayda Bluestein
- Annexation
- Public Records

Norma Houston
- Purchasing/Contracting

Kara Millonzi
- Broadband Authority
- Charter Schools

Jamie Markham
- Justice Reinvestment
- Sex Offenders

Jeff Welty
- Firearms

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Course Evaluation

We value your feedback.
Please click here to fill out our brief evaluation

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