

Master Clerks Academy
November 14, 2019
Adam Lovelady

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Resources: nc160D.sog.unc.edu

- Legislative Text, S.L. 2019-111 (SB 355) available [here](#).
- Annotated Bill (as introduced available [here](#); update with concurrent changes available November 2019)
- On-Demand Training (Winter 2020)
- Explanatory Book (Winter 2020)
- Regional Workshops (Winter 2020)
- Checklist for Ordinance Update (Winter 2020)
- Cross-Over Chart (Winter 2020)
- Conference Sessions
 - NCAZO Annual Conference (August 2019)
 - APA-NC Planning Conference (October 9, 2019)(160D Session and General Legislative Session)
 - NC Permitting Professionals Association (November 4, 2019)
 - Master Clerks Academy (November 14, 2019)
 - NC Bar Association Zoning, Planning, and Land Use Section Meeting (November 7, 2019)
 - County Attorneys Conference (February 2020)
 - City Attorneys Conference (March 2020)
- 2019 North Carolina Legislation Relating to Planning and Development Regulation (general legislative bulletin)

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Regional Workshops

- Durham (AM Course), NC - [Click here to register for this course offering](#)
January 16, 2020
- Durham (PM Course), NC - [Click here to register for this course offering](#)
January 16, 2020
- Asheville, NC - [Click here to register for this course offering](#)
January 21, 2020
- Greensville, NC - [Click here to register for this course offering](#)
January 22, 2020
- Wilmington, NC - [Click here to register for this course offering](#)
January 23, 2020
- Kernersville, NC - [Click here to register for this course offering](#)
January 28, 2020
- Charlotte, NC - [Click here to register for this course offering](#)
January 30, 2020
- Charlotte, NC - [Click here to register for this course offering](#)
January 31, 2020

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Outline

1. Background and Implementation
2. Planning Requirement
3. Jurisdiction & Boards
4. Administration and Record Keeping
5. Types of Decisions
6. Land Use Decision Procedures
7. Vested Rights and Permit Choice

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Origin of Proposal

- Developed as “good government” clarification, simplification, modernization by the NC Bar Association’s Zoning, Planning, and Land Use Section
- Multi-year review and comment by local governments, development community, land use lawyers

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Delayed Effective Date

Chapter 160D effective 1/1/21
Comprehensive Plan requirement effective 7/1/22

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Comprehensive Plan Requirement

Clarification and Changes in Chapter 160D



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New Requirement

Article 5 of Chapter 160D

In order to impose zoning regulations, a local government **must** have a comprehensive plan

Grace period until July 1, 2022



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“reasonably maintain”



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Plan Coordination

- May be coordinated with other plans (CAMA, functional plans, regional plans)



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Jurisdiction & Boards

Clarification and Changes in Chapter 160D

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Geographic Jurisdiction

- No change in basic allocation between cities and counties
- County can adopt development regulation for ETJ if city fails to adopt comparable city regulation there
- Simplify county ETJ appointments to city boards

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Geographic Jurisdiction

- Can accept and process applications and hold hearings in anticipation of jurisdiction shift; final decision after shift
- Can mutually agree that one jurisdiction will handle development regulation if city or county boundaries split a parcel

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Boards

- Must maintain minutes for each board
- Require oath of office for all board members
- Allow rules of procedure for each board (must maintain and post to website)
- Clarify appointment process
- Must have planning board to make recommendations on zoning amendments

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Administration of Development Ordinances

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Art. 4 General Administrative Authority

**Article 4.
Administration,
Enforcement,
and Appeals.**

Prior law

- Administrative authority was scattered or inferred

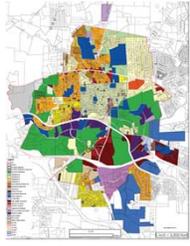
Article 4

- Staffing and administration of development regulations
- Development approvals (permits)
- Determinations
- Enforcement authority
- Appeals
- Quasi-judicial procedures

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Maps



- Official maps may be incorporated by reference (specific map or most recent)
- Clerk or other specified office must maintain for public inspection
 - Current and past zoning maps
 - Current maps incorporated by reference
- Paper or digital format is allowed

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New Staff Conflicts of Interest

- Not make a decision if
 - the outcome would have a direct, substantial, and readily identifiable financial impact on the staff person
 - the staff person has a close familial, business, or other associational relationship with the applicant or other person subject to the decision
- Prior standard is preserved
 - No financial or employment interest in development in the jurisdiction
 - No work inconsistent with duties to local government

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Minor Modifications

- Staff authorized to make modifications to
 - Development Approvals
 - Special Use Permits
 - Conditional Zoning
- Defined in the ordinance; parameters for amount of change
- No change in permitted uses or the density
- Major modification goes through standard approval process




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Types of Land Use Decisions

Clarification and Changes in Chapter 160D

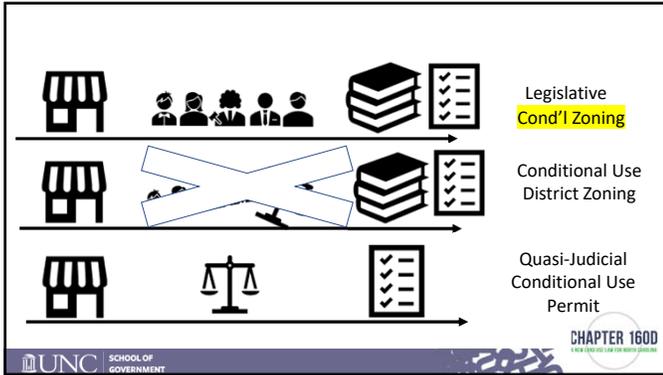



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	Legislative	Quasi-Judicial	Administrative
Character			
Example			
Hearing			
Decision-Maker			




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Uniform Terminology and Streamlined Process

- "Special Use Permit"
 - Quasi-judicial approval with site-specific conditions
 - Replaces conditional use permit and special exception
- "Conditional Zoning"
 - Legislative approval with site-specific conditions
 - Replaces conditional use district zoning
- End of Conditional Use District Zoning
- Transition for existing approvals

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Land Use Decision Procedures

Clarification and Changes in Chapter 160D

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Legislative: Notice and Hearing

- Must hold hearing for all development regulations with published notice
- Clarify "abutting properties" for mailed notice
- Clarify timing for posted notices
 - Same 10-25 day as mailed notice

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Legislative: Plan Consistency

- Simplify plan consistency statements
- Can do with single motion
- Minutes can suffice if no formal statement
- Delete requirement to use one of three forms of consistency statement
- FLUM deemed amended, not entire plan

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Legislative: Reasonableness

- Only mandatory for zoning map amendments, optional for other amendments
- Factors set out
- Can combine plan consistency and reasonableness statements

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Legislative: Voting

- Simple majority vote on municipal first reading of development regulation amendments
- Defines prohibited "close family relationship" for legislative, quasi-judicial, and staff conflicts

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Quasi-Judicial: Uniform Procedures

- Same rules for all quasi-judicial by any board
- Continuation of hearing allowed
- Meeting packets allowed
- Administrative packet entered as evidence
- Anyone may be allowed to present relevant evidence, but only parties may cross-examine, object, etc.
- Advisory review allowed, but may not be used as evidence for decision

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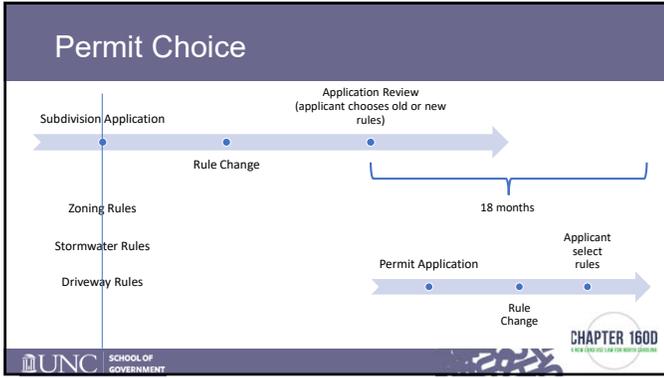
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Permit Choice and Vested Rights

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Permit Choice Appeals

- Aggrieved party may seek court order compelling compliance; set for immediate hearing
- Mandatory attorneys' fees for "action inconsistent with, or in violation of" permit choice of vested rights

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Types and Terms of Vesting

- Building Permit (6 months)
- Development Approval (1 year)
- Site-Specific Vesting Plan (2-5 years)
- Multi-Phase Development (7 years)
- Development Agreement (per agreement)

- Common Law Vested Rights (reasonable)

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Vested Rights and Continuing Review

- Landowner must comply with requirements

- Local government may revoke the original approval for failure to comply with applicable terms, conditions, or development regulations

- Rights continue for set time after discontinuation of development (12 months in 160D; 24 months in Part I)

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For additional resources, training options, and more, visit: nc160D.sog.unc.edu

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