

<b>Topic:</b>	State Land Use Law; Zoning; Local Governance
<b>Resource Type:</b>	Regulations
<b>State:</b>	North Carolina
<b>Jurisdiction Type:</b>	State
<b>Municipality:</b>	N/A
<b>Year (adopted, written, etc.):</b>	2004
<b>Community Type - applicable to:</b>	Urban; Suburban; Rural
<b>Title:</b>	State of North Carolina Zoning Enabling Act
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### ***Abstract***

#### Grant of power

Section 153A-340 permits, but does not require, counties to pass zoning ordinances for the purpose of promoting health, safety, morals, or the general welfare of the community. These ordinances may regulate and restrict the size, location, and use of buildings and other structures; the percentage of lots that may be occupied; the size of yards and other open spaces; and population density. This section also allows counties to provide density credits or severable development rights pursuant to § 136-66.10 or § 136-66.11, and to regulate development over estuarine waters and land covered by navigable water, an authority not given to cities. A county's zoning regulations may not affect bona fide farm purposes, with the exception of large-scale swine farming. And although counties are allowed to regulate large-scale swine farms, they are not allowed to exclude them entirely.

#### Purposes in view

Section 153A-341 requires that a county's zoning regulations be made in accordance with a comprehensive plan and designed to control traffic; secure safety; promote health and the general welfare; provide adequate light and air; prevent overcrowding of the land; avoid undue population concentration; and to facilitate and provide for public requirements such as transportation, schools, parks, water, and sewerage. The regulations should take into account the character and suitability of districts for particular uses and should be aimed towards conserving the value of buildings and encouraging the most appropriate use of land. Additionally, a county's zoning regulations must be made with "reasonable consideration to the expansion and development of any cities within the county, so as to provide for their orderly growth and development."

#### Districts; zoning less than entire jurisdiction

Section 153A-342 permits counties to divide their territorial jurisdiction into districts of any size, shape, and number necessary to carry out the purposes of zoning. A county may choose to zone only portions of its jurisdiction, provided that the zoned areas originally meet certain acre and ownership requirements. Within such districts, counties may regulate and restrict the construction and use of buildings, other structures, and land. The types of districts a county may create include, but are not limited to, general use districts; overlay districts; and special use or conditional use districts. An area may be designated as a special or conditional use district only if all of the property owners to be included in the district have petitioned for such a designation. Building regulations must be uniform within individual districts, but may differ across districts.

### ***Resource***

#### § 153A-340. Grant of power

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and to provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b) (1) These regulations may affect property used for bona fide farm purposes only as provided in subdivision (3) of this subsection. This subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm purposes.

(2) Bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

(3) The definitions set out in G.S. 106-802 apply to this subdivision. A county may adopt zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater provided that the zoning regulations may not have the effect of excluding swine farms served by an animal waste management system having a design capacity of 600,000 pounds SSLW or greater from the entire zoning jurisdiction.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles,

conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari.

(d) A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

(e) For the purpose of this section, the term "structures" shall include floating homes.

(f) Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board of commissioners is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the board of commissioners may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

#### § 136-66.10. Dedication of right-of-way under local ordinances

(a) Whenever a tract of land located within the territorial jurisdiction of a city or county's zoning or subdivision control ordinance or any other land use control ordinance authorized by local act is proposed for subdivision or for use pursuant to a zoning or building permit, and a portion of it is embraced within a corridor for a street or highway on a plan established and adopted pursuant to G.S. 136-66.2, a city or county zoning or subdivision ordinance may provide for the dedication of right-of-way within that corridor pursuant to any applicable legal authority, or:

(1) A city or county may require an applicant for subdivision plat approval or for a special use permit, conditional use permit, or special exception, or for any other permission pursuant to a land use control ordinance authorized by local act to dedicate for street or highway purpose, the right-of-way within such corridor if the city or county allows the applicant to transfer density credits attributable to the dedicated right-of-way to contiguous land owned by the applicant. No dedication of right-of-way shall be required pursuant to this subdivision unless the board or agency granting final subdivision plat approval or the special use permit, conditional use permit, special exception, or permission shall find, prior to the grant, that the dedication does not result in the deprivation of a reasonable use of the original tract and that the dedication is either reasonably related to the traffic generated by the proposed subdivision or use of the remaining land or the impact of the dedication is mitigated by measures provided in the local ordinance.

(2) If a city or county does not require the dedication of right-of-way within the corridor pursuant to subdivision (1) of this subsection or other applicable legal authority, but an applicant for subdivision plat approval or a zoning or building permit, or any other permission pursuant to a land use control ordinance authorized by local act elects to dedicate the right-of-way, the city or county may allow the applicant to transfer density credits attributable to the dedicated right-of-way to contiguous land that is part of a common development plan or to transfer severable development rights attributable to the dedicated right-of-way to noncontiguous land in designated receiving districts pursuant to G.S. 136-66.11.

(b) When used in this section, the term "density credit" means the potential for the improvement or subdivision of part or all of a parcel of real property, as permitted under the terms of a zoning and/or subdivision ordinance, and/or other land use control ordinance authorized by local act, expressed in dwelling unit equivalents or other measures of development density or intensity or a fraction or multiple of that potential that may be transferred to other portions of the same parcel or to contiguous land in that is part of a common development plan.

#### § 136-66.11. Transfer of severable development rights

(a) When used in this section and in G.S. 136-66.10, the term "severable development right" means the potential for the improvement or subdivision of part or all of a parcel of real property, as permitted under the terms of a zoning and/or subdivision ordinance, expressed in dwelling unit equivalents or other measures of development density or intensity or a fraction or multiple of that potential that may be severed or detached from the parcel from which they are derived and transferred to one or more other parcels located in receiving districts where they may be exercised in conjunction with the use or subdivision of property, in accordance with the provisions of this section.

(b) A city or county may provide in its zoning and subdivision control ordinances for the establishment, transfer, and exercise of severable development rights to implement the provisions of G.S. 136-66.10 and this section.

(c) City or county zoning or subdivision control provisions adopted pursuant to this authority shall provide that if right-of-way area is dedicated and severable development rights are provided pursuant to G.S. 136-66.10(a)(2) and this section, within 10 days after the approval of the final subdivision plat or issuance of the building permit, the city or county shall convey to the dedicator a deed for the severable development rights that are attributable to the right-of-way area dedicated under those subdivisions. If the deed for the severable development rights conveyed by the city or county to the dedicator is not recorded in the office of the register of deeds within 15 days of its receipt, the deed shall be null and void.

(d) In order to provide for the transfer of severable development rights pursuant to this section, the governing board shall amend the zoning ordinance to designate severable

development rights receiving districts. These districts may be designated as separate use districts or as overlaying other zoning districts. No severable development rights shall be exercised in conjunction with the development or subdivision of any parcel of land that is not located in a receiving district. A city or county may, however, limit the maximum development density or intensity or the minimum size of lots allowed when severable development rights are exercised in conjunction with the development or subdivision of any eligible site in a receiving district. No plat for a subdivision in conjunction with which severable development rights are exercised shall be recorded by the register of deeds, and no new building, or part thereof, or addition to or enlargement of an existing building, that is part of a development project in conjunction with which severable development rights are exercised shall be occupied, until documents have been recorded in the office of the register of deeds transferring title from the owner of the severable development rights to the granting city or county and providing for their subsequent extinguishment. These documents shall also include any other information that the city or county ordinance may prescribe.

(e) In order to implement the purposes of this section a city or county may by ordinance adopt regulations consistent with the provisions of this section.

(f) A severable development right shall be treated as an interest in real property. Once a deed for severable development rights has been transferred by a city or county to the dedicant and recorded, the severable development rights shall vest and become freely alienable.

#### § 153A-341. Purposes in view

Zoning regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration as to, among other things, the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the county. In addition, the regulations shall be made with reasonable consideration to expansion and development of any cities within the county, so as to provide for their orderly growth and development.

#### § 153A-342. Districts; zoning less than entire jurisdiction

A county may divide its territorial jurisdiction into districts of any number, shape, and area that it may consider best suited to carry out the purposes of this Part. Within these districts a county may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are

imposed on certain properties within one or more underlying general or special use districts; and special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use permit. Property may be placed in a special use district or conditional use district only in response to a petition by the owners of all the property to be included. Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

A county may determine that the public interest does not require that the entire territorial jurisdiction of the county be zoned and may designate one or more portions of that jurisdiction as a zoning area or areas. A zoning area must originally contain at least 640 acres and at least 10 separate tracts of land in separate ownership and may thereafter be expanded by the addition of any amount of territory. A zoning area may be regulated in the same manner as if the entire county were zoned, and the remainder of the county need not be regulated.