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North Carolina Chapter of the Appraisal Institute

Final Legislative Report - 2019

Although the legislature has not officially adjourned the 2019 "long" session, they have adjourned for the calendar year. The 2019 session began on January 9, 2019, and is technically still ongoing. The last "mini-session" of the 2019 legislative session adjourned on November 15, 2019, and the adjournment resolution provides that the legislature will return on January 14, 2020. Once the January 14, 2020 session ends, the legislature should be out of session until they convene the "short" session in April 2020.

The Governor's veto of the state budget bill and the legislature's need to redraw legislative and congressional districts are the primary causes for the protracted legislative session. Given that the Republicans do not have a veto-proof majority in the House or Senate this year, the Governor's veto of the state budget bill still stands. Although the House Republicans successfully voted to override the veto in a controversial vote held in September when many Democrats were not present in the House chamber, the Senate has yet to vote on a veto override. The veto override issue appeared on the Senate calendar a few times, but each time it was withdrawn because the votes were not present to override the veto. The Senate needs one Democrat to vote with the Republicans if everyone is present and voting. When the legislature returns on January 14, 2020, Senate leader Phil Berger says he will try again to override the Governor's budget veto.

Due to a number of court challenges, the legislature considered and re-drew the state legislative and congressional districts this fall. These changes will be in place for the 2020 elections. Many speculate that the newly drawn state legislative and congressional district maps will allow the Democrats to pick up a few legislative seats and two congressional seats. However, nothing is certain heading into what will be an interesting and eventful 2020 election cycle.

The adjournment resolution adopted by the House and Senate as one of their last acts in November 2019 provides that the legislature could address a variety of topics at the January 14 session, including overriding any vetoes from Governor Cooper, legislative or Governor appointments, bills currently in negotiations between the House and Senate, bills addressing access to healthcare, bills addressing funding for and oversight of the Department of Transportation, and/or bills to respond to lawsuits over the legislative or congressional districts.

Once the 2019 legislative session adjourns, which is expected to occur in January 2020, the General Assembly should be out of session until they reconvene in April 2020 for the "short" session. However, given how things have gone the last few years, the legislative schedule is subject to change.

This Final Legislative Report for 2019 includes a summary of all the bills enacted by this year's General Assembly that are of interest to the association, and some bills that were considered but not enacted this year.

BILLS OF INTEREST ENACTED INTO LAW

House Bill 131, Repeal Map Act, repeals the Transportation Corridor Official Map Act, which the NC Department of Transportation used for many years to impact land that would be in the path of a highway project. **Effective: June 21, 2019. Session Law 2019-35.**

House Bill 620, Street Database/Manual/Public Record Except, 1) requires the North Carolina Department of Transportation (NCDOT) to compile a readily available Public Street Information Database; 2) requires NCDOT to update its Subdivision Roads Minimum Construction Standards Manual; and 3) amends the public records law to designate proprietary design work, work product, and certain intra-agency communications as confidential during the competitive bid process. **Effective: July 22, 2019. Session Law 2019-156**.

House Bill 675, Building Code Regulatory Reform, makes various changes to the building code. The bill amends GS 160A-372, concerning city subdivision control ordinances, to prohibit an ordinance from requiring a developer or builder to bury power lines that existed at the time of the first submission of a plat or development plan to the city and are located outside the boundaries of the parcel of land that contains the subdivision or the property covered by the development plan. The bill also prohibits the ordinance from setting a minimum square footage of any structures subject to regulation under the NC Residential Code for One-and Two-Family Dwellings. The bill makes identical changes to GS 153A-331 concerning county subdivision control ordinances.

The bill requires a city to perform a review, if it chooses, of submitted residential building plans within fifteen (15) days of the submission of sealed plans. The bill makes identical changes to GS 153A-357 concerning counties. The bill provides that a city or county shall not require residential building plans for one- and two-family residential dwellings to be sealed by a licensed engineer or architect unless required by the North Carolina State Building Code. **Effective: October 1, 2019. Session Law 2019-174.**

Senate Bill 332, Civil Procedure/Limitations/Land Surveyors, modifies GS 1-47 and 1-52 to clarify that the statute of limitations is 3 years and the statute of repose is 7 years for actions against a professional land surveyor or any person acting under the surveyor's supervision or control for physical damage or economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting. A cause of action for physical damage shall be deemed to accrue at the time of the occurrence of the physical damage giving rise to the cause of action. **Effective: July 26, 2019. Session Law 2019-164.**

Senate Bill 355, Land-Use Regulatory Changes, makes various changes to the land use and zoning statutes. **Part 1** of the bill contains the following changes:

Vested Rights Statutes Changes

Section 1.3 amends county and city land development statutes to define the terms "development," "development permit," and "land development regulation" as they are defined in the permit choice statute, as amended by Section 1.1 of the bill, and to provide that:

- Without the land owner's written consent, amendments to land development regulations are not enforceable with regard to:
    - o Uses of buildings or land, or subdivisions of land, for which a development permit application was submitted, and the permit subsequently issued, in accordance with permit choice statutes.
    - o Vested rights established by a development agreement between a developer and a local government.
- Statutory vesting starts when the application for the development permit or building permit is submitted and lasts for as long as the permit remains valid.
- Local development permits expire one year after issuance if work authorized by the permit has not substantially commenced, unless otherwise specified in statute.
- The establishment of a vested right under one law does not preclude vesting under another, or vesting by application of common law principles.
- A vested right, once established, precludes any action by a county or city that would change, delay, or stop the development or use of the property, except where a change in State or federal law mandating local government enforcement occurring after the development application has a fundamental and retroactive effect on such development or use.
- Provide that except where a longer vesting period is provided by statute, the vesting period established by this section expires:
    - o For an uncompleted project, if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months.
    - o For a nonconforming use of property, if the use is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months.

  The discontinuance period would be tolled during the pendency of any board of adjustment proceeding or state or federal civil action regarding the permit validity, use of the property, or the existence of the statutory vesting period, and during the pendency of any litigation involving the project or property that is the subject of the vesting.
- Where a local government requires multiple development permits in order for a development project to be completed, the project applicant can choose the version of each local land regulation applicable to the project upon submitting the initial development permit application. This provision would only apply to subsequent development permit applications filed within 18 months of the initial permit's approval date. An erosion and sedimentation control permit or a sign permit would not be considered an erosion and sedimentation control permit.

Section 1.3 also expands the current definition of the term "multi-phased development" as used in county and city land development statutes by reducing the minimum size of a multi-phased development from 100 acres to 25 acres and by eliminating the current requirement that the master development plan include a requirement to offer land for public use as a condition of plan approval.

<u>Down Zoning Amendments Not Initiated by a City or County</u>

Section 1.4 and 1.5 prohibits initiation or enforcement of a zoning amendment that down zones property without the written consent of all property owners subject to the amendment, unless the amendment is initiated by a city or county, and would delete a notice requirement that would be rendered obsolete by these changes. These sections also define the term "down zoning."

Procedure for Challenges to Land Regulation Decisions

Section 1.6 provides that when a notice of violation or other enforcement order is stayed upon by an appeal to the board of adjustment, the stay applies to any accumulation of fines during the pendency of the appeal to the board of adjustment and any subsequent appeal, or during the pendency of any civil proceeding authorized by law, including a civil action authorized under Section 1.7 of the bill, and related appeals.

Section 1.7 adds a new section to the General Statute authorizing landowners or permit applicants to bring an original civil action in superior court or federal court challenging the enforceability, validity, or effect of a local land development regulation based on grounds of unconstitutionality, preemption, or exceeding statutory authority. This section also provides that, subject to state and federal law limitations, an action would not be rendered moot if the aggrieved person loses the applicable property interest as a result of a challenge to the local government action, and exhaustion of an appeal is required to preserve a claim for damages.

Section 1.8 provides that a statute of limitation will not bar a party in an action provided for in Section 1.7 of the bill from raising as a claim or defense the enforceability or invalidity of an ordinance.

Section 1.9 provides that in an appeal to superior court from a quasi-judicial decision of a city council, planning board, board of adjustment or other similar board, the court must allow the record to be supplemented through discovery if the appeal raises issues of lack of standing, due process violations, or action exceeding the board's statutory authority. This section would also provide that in an appeal raising these issues, whether the record contains competent, material, and substantial evidence is reviewable de novo.

Section 1.10 provides that in a proceeding brought before a board of adjustment or in any civil action challenging conditions that were imposed without consent of a landowner or permit applicant, a city or county cannot assert the defense of estoppel based on a landowner's or permit applicant's having proceeded with development authorized under the permit choice statutes.

Section 1.11 requires a court to award attorneys' fees and costs to a party successfully challenging a city's or county's action, upon a finding that the city or county violated a statute or case law setting forth unambiguous limits on its authority, or took action inconsistent with or in violation of the permit choice statutes.

Restrictions on Permit Conditions Not Authorized by Otherwise Applicable Law

Sections 1.12 and 1.13 prohibits cities and counties from including as a permit condition any of the following requirements for which either the city or county does not have authority to regulate: taxes, impact fees, certain building elements, driveway-related improvements in excess of those statutorily authorized, or other unauthorized limitations on land development or use.

Sections 1.14 and 1.15 prohibits, without the written consent of the rezoning applicant, the denial of a conditional rezoning request based on conditions not authorized by statute or the enforcement of such unauthorized conditions.

Miscellaneous Provisions

Section 1.16 prohibits a city from requiring a permit applicant for driveway improvements to acquire right-of-way from property the applicant does not own.

Section 1.17 provides that the definition of "building" and "dwelling" a city uses when adopting zoning regulations must be consistent with any definition of those terms in another statute or in a rule adopted by a State agency, including the State Building Code Council. **Effective: July 11, 2019. Session Law 2019-111.**

Part 2 of the bill contains the Ch 160D recodification of the land use and zoning statutes proposed by the Zoning, Planning and Land Use Section of the NC Bar Association. **Effective: January 1, 2021. Session Law 2019-111.**

Senate Bill 462, Modifications to NC Appraisal Board, amends GS 93E-1-6, concerning the qualifications for licensure and certification as a real estate appraiser. The bill eliminates the existing education requirements for registration as a trainee, application for licensure as a licensed real estate appraiser, application for certification as a certified residential real estate appraiser, and application for certification as a certified general real estate appraiser. Instead, the bill requires each applicant for registration, licensure, or certification to (1) successfully complete education, experience, and examination as required by The Appraisal Foundation Appraiser Qualifications Board for each level of registration, licensure, or certification and (2) satisfy any additional education or experience requirements the NC Appraisal Board (Board) imposes by rule. The bill requires the applicant to pay the fee for the required competency examination directly to the private testing service rather than to the Board to defray the cost of testing administered by private service. The bill adds that action will be deferred pending a hearing before the Board for any applicant that has not affirmatively demonstrated satisfaction of the requirements for licensure (previously, only applies to registration and certification).

The bill amends GS 93E-1-9, removing provisions concerning nonresident real estate trainee registration. The bill authorizes the Board to undertake to license or certify on a reciprocal basis persons licensed or certified in another state if the appraiser licensing and certification program of the other state is in compliance with 12 USC 3331, et seq. (regarding the Appraisal Subcommittee of Federal Financial Institutions Examinations Council [Appraisal Subcommittee]; previously required the Board to deem the person to possess qualifications equivalent to NC resident licensed or certified real estate appraisers).

The bill enacts GS 93E-2-6, requiring the Board to collect from registrants any additional fees required pursuant to 12 USC 3338 (Roster of State certified or licensed appraisers; authority to collect and transmit fees) to render NC registered appraisal management companies eligible to perform services in connection with federally related transactions. Directs the Board to remit the additional fees to the Appraisal Management Company (AMC) National Registry of the Appraisal Subcommittee. The bill further authorizes the Board to collect a fee from an appraisal management

company that is a subsidiary wholly owned and controlled by a financial institution in order to be eligible to be placed on the AMC National Registry.

The bill amends GS 93E-2-7, prohibiting an appraisal management company from requiring or attempting to require an appraiser to prepare an appraisal if the appraiser might have a direct or indirect interest in the property or transaction involved. The bill prohibits any appraisal management company procuring or facilitating an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer to have a direct or indirect interest in the property or transaction involved. **Effective: October 1, 2019. Session Law 2019-146.**

Senate Bill 594, Register of Deeds Updates. Section 1: changes the margins required on all instruments, except UCC financing statements, presented for registration on paper at the register of deeds. Currently these instruments must have a blank margin of 3 inches at the top of the first page and at least ¼ inch on the remaining sides of the first page and on all subsequent pages. The bill changes ¼ inch to ½ inch. **Effective: October 1, 2019, and apply to instruments, certificates, and amended certificates submitted on or after that date.**

Section 2: creates a new section under GS 161-30 for electronically recorded maps or instruments. These maps and instruments are not required to have the name and address of the person to whom the instrument is to be returned on the face of the document. The register of deeds is not required to return the item, but may do so in accordance with an authorizing agreement. **Effective: October 1, 2019, and apply to instruments, certificates, and amended certificates submitted on or after that date.**

Section 3: Currently, it is illegal to file a false lien or encumbrance against real or personal property of a public officer, a public employee, or their immediate family member on account of the performance of the public officer of public employee's official duties. This section modifies the existing criminal statute for filing false liens and encumbrances by doing the following:

- Making it illegal to present for filing or recording a false lien or encumbrance against the real or personal property of an owner or beneficial interest holder.
- Allowing the register of deeds to refuse to record the purported lien or encumbrance if they have a reasonable suspicion that the instrument is materially false, fictitious, or fraudulent.
- Requiring that the party submitting an instrument pay the filing fee.
- Clarifying that the presentation of an instrument that is determined to be materially false, fictitious, or fraudulent shall constitute a violation GS 75-1.1, unfair or deceptive trade practices.

Effective: December 1, 2019

Section 4: would add a list of specified terms that may not be included in an assumed business name, including "corporation," "limited liability company," "limited partnership," and "limited liability partnership." **Effective: October 1, 2019, and apply to instruments, certificates, and amended certificates submitted on or after that date.**

Section 5: would add 2 new forms, Assumed Business Name Certificate and Amendment of Assumed Business Name Certificate, to the General Statutes and allow a form that complies with these forms to be sufficient to satisfy the requirements for the certificate's content. **Effective: October 1, 2019, and apply to instruments, certificates, and amended certificates submitted on or after that date.**

Session Law 2019-117.

BILLS OF INTEREST NOT ENACTED INTO LAW

House Bill 3, Eminent Domain, would limit the purposes for which eminent domain can be used to public use (currently, public use or benefit). The bill would place a constitutional amendment on the March 2020 primary ballot on this subject. The bill would specifically allow condemnors to use the power of eminent domain to connect customers to its facilities. **The bill was not enacted into law but is eligible for consideration during the 2020 legislative session.**

House Bill 309, Adverse Possession Changes, would make various changes to the adverse possession law. The bill would extend the period to acquire property by adverse possession from 20 years to 30 years. The bill provides that if a possessor acquires title in fee to property by means of adverse possession, the possessor shall pay the previous owner the fair market value of the property at the time of the acquisition and shall reimburse the previous owner for all property taxes incurred for the 30 years that the property was adversely possessed. The bill provides that title to property may not transfer by adverse possession if the property that is being adversely possessed is entirely within one foot of the recorded boundary of the property. The bill would be effective when it becomes law and would apply to actions for the recovery or possession of real property, or the issues and profits thereof, commenced on or after that date. **This bill has not been considered by any legislative committee and has not been enacted into law.**

House Bill 594, HOAS- Leased Properties, provides that an amendment to any declaration of covenants or bylaws that prohibits the lease of a lot within a planned community for more than 30 days is not effective against a lot in a planned community. The bill would be effective October 1, 2019 and apply to planned communities established on or after the effective date of this Act if the declaration of covenants or bylaws contain no restrictions or limitations upon the ability of a lot owner to lease a lot within the planned community. **The bill was not enacted into law but is eligible for consideration during the 2020 legislative session.**

House Bill 645, Revisions to Outdoor Advertising Laws, would amend the criteria for the relocation site of any legally erected outdoor advertising sign due to the property the sign is lawfully existing upon being acquired and the acquiring party requiring its removal. This bill would add that the sign cannot be relocated adjacent to any highway as provided in GS 136-129.2, except within the same sign location or site (previously, was included as a specification for permitted relocation sites in areas zoned commercial or industrial within the same zoning jurisdiction only). This bill would make various other changes to the outdoor advertising laws. **The bill was enacted by the legislature, but vetoed by the Governor on August 22, 2019. The legislature has not yet attempted to override the Governor's veto. So at this time, the bill is not law.**

House Bill 750, Clarify Deed Restrictions/Solar Collectors, would clarify the law governing deed restrictions on solar collectors. The bill would amend G.S. 22B-20, which makes deed restrictions and other agreements prohibiting solar collectors on residential property void and unenforceable. The bill would explicitly permit a deed restriction, covenant, or similar binding agreement that runs with the land to regulate the location or screening of solar collectors so long as the restriction, covenant, or agreement does not have the effect of reducing the operating efficiency of a solar collector for a residential property (was the effect of preventing the reasonable use). The bill would define *reducing the operating efficiency of a solar collector* to mean the regulation of the location or screening of the solar collector would decrease the efficiency or performance of the solar collector by more than 10% of the amount that was originally specified for the solar collector. The bill would remove subsection (d) of G.S. 22B-20, which explicitly permits a deed restriction, covenant, or agreement that runs with the land that would prohibit the location of solar collectors that are visible by a person on the ground on or within specified areas of common or public access faced by the structure. **This bill has not been considered by any legislative committee and has not been enacted into law.**

Senate Bill 315, North Carolina Farm Act of 2019, would, among other things, create a process by which the underlying fee owner of land encumbered by any easement acquired by a utility company, on which the utility company has not commenced construction within 20 years of the date of acquisition, may file a complaint with the Utilities Commission for an order requiring the utility company to terminate the easement in exchange for payment by the underlying fee owner of the current fair market value of the easement. If the utility company does not agree that the easement should be terminated, the utility company may request a determination from the Utilities Commission as to whether the easement is necessary or advisable for the utility company's long range needs for the provision of utilities to serve its service area, and whether termination of the easement would be contrary to the interests of the using and consuming public. If the parties cannot reach a mutually agreeable fair market value, the Commission would request the clerk of superior court in the county where the easement is located to appoint commissioners to determine the fair market value in accordance with the eminent domain valuation process. This section would become effective October 1, 2019, and would apply to easements acquired on or after that date. **The bill was not enacted into law but is eligible for consideration during the January 14, 2020 legislative session and the 2020 "short" legislative session.**

Senate Bill 362, Annual Report Standardization, Business Annual Reporting requirements would (1) be extended to require principals as well as officers be reported, and a contact who can provide information about those with authority to bind the entity, (2) be extended to corporations (including non-profits), LLC's, LLP's, limited partnerships, and all filed directly with the NC Secretary of State, removing insurance companies under Ch. 58, the Insurance Act, per G.S. 55-16-22(a1), (3) standardize fees for all for-profit entities, (4) be extended to non-profit entities but free. The bill also includes GS 55D-18, Penalty for signing false document, with enforcement by the Secretary of State. This has appropriations provisions so was not subject to cross-over. **This bill has not been considered by any legislative committee and has not been enacted into law.**

Senate Bill 553, Regulatory Reform Act of 2019, would, among other things:

- Require every occupational licensing board to study and report on any available options offered for online continuing education if continuing education is a requirement for licensure under the occupational licensing board's applicable laws or regulations. Each occupational licensing board required to study and report must provide its report to the Joint Legislative Administrative Procedure Oversight Committee and the Program Evaluation Division no later than December 1, 2019.
- Require the Revenue Laws Study Committee to review the methods used to determine the fair market value of outdoor advertising signs in North Carolina. The Committee must submit its report, along with any recommended legislation, to the 2020 General Assembly.
- Under current law, electric companies are permitted to use easements held for the purpose of supplying power to also supply high-speed internet. A provision in this bill would clarify the easements held by electric companies to supply high-speed internet and power would be subject to the same notice, safety, and permitting requirements as easements held solely to supply power
- Prohibit cities from requiring masonry curtain walls or masonry skirting from being installed on manufactured homes located on land leased to the homeowner.

The bill was enacted by the legislature, but vetoed by the Governor on September 20, 2019. The legislature has not yet attempted to override the Governor's veto. So at this time, the bill is <u>not</u> law.

For more information about legislation described in this final legislative report, feel free to contact me at dferrell@nexsenpruet.com or (919) 573-7421. Information is also available on the General Assembly's website: www.ncleg.gov.

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