

Land Use and Zoning – Legislative Report

OVERVIEW:

With Republican majorities running both chambers for the first time since 1870, the N.C. General Assembly changed land use and real estate laws this year in several important ways. Those changes dealt with **annexation, lawsuits challenging zoning ordinances, the recovery of legal fees, limits on government regulations, HOA foreclosures, and liability for injury to trespassers.** In other areas, it considered policy changes but in the end did not enact them. A couple of land use and real estate bills are pending. No further bills to change real estate laws are eligible to be filed or considered until the legislature's next regular session, which is scheduled to begin in May 2012.

Here are the highlights of this year's North Carolina land use and real estate legislation:

Limits on Forced Annexation – Enacted.

[HB 845](#), the Annexation Reform Act, makes it harder for cities to impose forced annexations. Under the bipartisan bill, which became law July 1 without the governor's signature, property owners can reject an involuntary annexation if those who own at least 60 percent of the area to be annexed sign a petition opposing the annexation. In that case, the city may not try a forced annexation again for at least three years. The law also requires cities forcibly annexing land to provide immediate police and fire protection, solid waste collection, and street maintenance. The cities must also provide water and sewer service at their expense to each parcel within three and a half years. The land being involuntarily annexed must be contiguous to the existing corporate limits of the city, which means that there can be no city-initiated satellite annexations.

Another bill, [HB 168](#), forbids the forced annexation of bona fide farms and provides that they are exempt from the exercise of municipal extra-territorial jurisdiction.

Statute of Limitations Extended for Zoning Challenges – Enacted.

[HB 806](#) lengthens from two months to one year the time within which a party may sue to challenge provisions of most zoning or unified development ordinances. It also allows up to three years to challenge an ordinance over a defect in its adoption process. Significantly, however, it retains the short two-month limitations period for legal challenges to zoning map amendments and conditional use rezonings.



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Attorney Fees When Government Exceeds Its Authority - Enacted.

[HB 687](#), which passed with overwhelming bipartisan support, provides that judges may award attorney fees to parties who win lawsuits against cities or counties, when the judge determines that the city or county acted *outside the scope of its legal authority*.

Furthermore, the judge must award attorney fees in cases where the judge determined that the city or county action had been *an abuse of its discretion*.

Regulatory Reform – Veto Overridden (July 25, 2011) – Enacted.

[SB 781](#), the Regulatory Reform Act, is bipartisan legislation designed to lessen the burden of regulations on North Carolina businesses. Under the bill, state agencies are forbidden to write regulations not authorized by federal or state law; the state rulemaking process is made more transparent; and final authority on regulatory matters is transferred from state agencies to administrative law judges. The governor's veto of this bill was overridden by the House on July 25, 2011 following similar action by the Senate during the prior week.

HOA Foreclosure Limits – Enacted.

[HB 165](#), Planned Community & Condominium Act Amendments, requires homeowners associations to wait at least 90 days to foreclose on a lien for unpaid assessments. The bill also requires property sellers to disclose to buyers whether the property is subject to HOA regulation, and to provide to the buyer covenants and other governing documents. It also instructs the N.C. Real Estate Commission to develop and require the sellers' use of standard disclosure statements to comply with the law.

Trespasser Liability Reform – Enacted.

[HB 542](#), Tort Reform for Citizens and Businesses, includes a Trespasser Responsibility provision that exempts property owners, lessees, and occupants from liability for most injuries to a trespasser. There are a few exceptions: intentional harms, excluding reasonable force to repel trespassers who intend to commit a crime; harm that artificial conditions cause to trespassing children under age 14; and failure to use ordinary care to avoid injuring a trespasser in a position of peril or helplessness.

The following bills were introduced and, in some cases actively considered, but were not enacted into law:

Eminent Domain Limitations.

[HB 8](#), Eminent Domain, would propose a constitutional amendment to voters statewide in the Nov. 6, 2012 general election. A response to the notorious 2005 U.S. Supreme Court ruling in *Kelo v. New London*, the amendment, if adopted, would prevent the state and local

governments from taking property by eminent domain except for a public use. It would, for example, bar eminent domain for purported public purposes that are not public uses. The bill passed the House 98-18, but stalled in the Senate Judiciary I Committee. However, it is eligible for consideration later this year during a planned special legislative session on state constitutional amendments.

Prohibiting Zoning Regulation of Residential Design.

[SB 731](#), Zoning/Design and Aesthetic Controls, would forbid cities to use zoning ordinances to regulate design elements of single-family homes in districts with five or fewer houses per acre, except for historic properties, cases involving density bonuses, and manufactured and modular housing. The prohibition would not apply to the structure height, bulk, orientation, or location on a lot, but would apply to such details as exterior color, exterior cladding, roofs, porches, windows, doors, garage doors, architectural ornamentation, and floor plans. The bill passed the Senate 38-10, but stalled in the House Commerce Committee.

Extra-Territorial Jurisdiction Elimination Study.

[HB 281](#), ETJ Restrictions, would order a state study of municipal extra-territorial planning jurisdiction, including the prospects of eliminating ETJs altogether when countywide zoning is in effect, and the prospect of allowing ETJ residents to vote in municipal elections and to run for election to municipal office. The bill passed the House 82-32, but stalled in the Senate Rules Committee.

Use of Land; Attorney Fees in Land Use Cases.

[HB 652](#), Property Owners Protection Act, would have made several significant changes in state land use law. Among them, it would have required all laws and regulations affecting the use of land to be construed strictly in the favor of free use of the land. It would have expressly resolved any ambiguity in municipal land-use ordinances or regulations in favor of property owners. In cases in which property owners won lawsuits challenging municipal property laws and regulations, the losing government would have to pay the owner's attorney fees. It also would have barred municipal governments from fining property owners for land-use violations they themselves had not committed. The bill never saw active consideration and was killed procedurally.

Study of Incentives for Development-Ready Sites – Pending.

[HB 773](#), the Studies Act of 2011, would, among many other things, authorize the joint legislative Revenue Laws Study Committee to study financial incentives for "development-ready sites." The provision, which tracks Senate Bill 545, says the committee may study the issue of enacting incentives to stimulate the creation of development-ready sites that are similar to those for farmland preservation, brownfields redevelopment, historic preservation, and land conservation.

The proposed incentives could include keeping property with horizontal infrastructure valued at agricultural values until developed; granting income tax deductions or credits for land preservation through land banking, the purchase of options, or purchase of development rights; the redevelopment of obsolete industrial buildings or areas; rezoning to appropriate zoning classifications; and the installation of infrastructure improvements to make sites development-ready.

On the final day of the regular session, the studies bill got caught up in a cross-chamber disagreement about another issue to be studied, leaving the entire bill in limbo. The legislature's adjournment resolution did not call for taking up the studies bill during the upcoming special sessions, but the body could vote to allow that when it returns.

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