



Special Series No. 24

February 2008

Zoning Amendments in North Carolina

David W. Owens

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UNC
SCHOOL OF GOVERNMENT

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Zoning Amendments in North Carolina

Overview of Zoning Amendments

Over five hundred North Carolina cities and counties have adopted zoning ordinances. These ordinances regulate many aspects of land use and development. For example, a zoning ordinance determines whether a particular property can be devoted to residential, commercial, industrial, or other uses. It sets minimum lot sizes and defines the permissible density of development for new projects. It regulates, for example, the amount of required open space on a lot, how close a structure can be located to a property line, or where fences can be placed. Zoning also often deals with development-related issues by regulating matters such as how much parking a business must provide and what kind of signs are allowed. In short, for landowners, neighbors, and the community at large, zoning ordinances play a critical regulatory role in shaping the character of a community's development.

There is substantial public interest in how zoning ordinances are amended, as this is the process by which the rules for development are created and modified. If a landowner can secure a rezoning from low-density residential to commercial use, the value of the land is likely to increase several fold. If neighbors can limit the amount of development on a nearby vacant parcel, they can inhibit increases in traffic and noise and other harmful effects on the neighborhood. If a town can manage the location of new industrial development, it can significantly affect the cost (and its ability) to provide needed water, sewer, roads, and other public services. Many issues regarding the type and intensity of future land uses are resolved by amendments to the zoning ordinance.

Given the impact zoning ordinances have on landowners, neighbors, and the public, it is not surprising that there is a considerable body of law setting standards that cities and counties must follow in the adoption and amendment of these

ordinances.¹ This report reviews the law and practice of zoning ordinance amendment in North Carolina. It summarizes the rules set by the legislature and courts for the process that local governments must follow and reports the results of a survey of how this process is applied by the state's cities and counties.

North Carolina cities and counties consider a relatively high volume of zoning amendments. Our survey respondents reported that over 4,500 petitions for zoning amendments were taken up in the previous year. This is more than the reported number of special and conditional use permits and variances combined that are considered each year. The rezoning of an individual parcel of land is thus the most common land use regulatory decision considered by city councils, county boards of commissioners, planning boards, and boards of adjustment.

Consideration of zoning amendments is for the most part relatively routine. A substantial majority of the jurisdictions, especially those other than large cities, reported that most rezonings are noncontroversial. Nearly half of the jurisdictions reported that only occasionally does a person other than the petitioner and staff appear at a rezoning hearing. Only 14 percent of the jurisdictions reported that attorneys appear frequently or more often at these hearings. Only 6 percent of the rezonings considered were the subject of a protest petition (which triggers a three-fourths majority requirement for city council adoption). Court appeals of rezoning decisions are rare—less than 1 percent of these decisions end up in court.

The vast majority of proposed zoning amendments are decided relatively quickly. The typical rezoning hearing lasts between fifteen minutes and an hour. Ninety-two percent of the jurisdictions reported that a typical rezoning petition is decided in less than ninety days.

1. For a more detailed analysis of the legal issues involved with zoning amendments, see DAVID W. OWENS, *LAND USE LAW IN NORTH CAROLINA* 65–82 (2006).

Most proposed zoning amendments are approved. The approval rate for text amendments was reported to be 82 percent, with another 9 percent pending. The approval rate for zoning map amendments (rezonings) was reported to be 76 percent, with another 9 percent pending.

The role of plans and the planning process in guiding these decisions is receiving increased attention at both the state and local levels. State legislation effective in 2006 requires explicit, written consideration of adopted plans as part of the process of making decisions on zoning amendments. Most frequently city and county staff members prepare the required analysis of plan conformance, and 98 percent of the jurisdictions reported that rezonings were frequently or more often consistent with their plans. Inconsistency with the jurisdiction's adopted plans was the second most frequently cited ground for denial of rezoning petitions.

Apparently the zoning amendment process is becoming more complex, particularly in jurisdictions with large populations or fast growth rates. Neighborhood concerns about development drive a good deal of this complexity. By far the most common reason cited for denial of rezoning petitions is inconsistency of the project with the surrounding neighborhood. Neighborhood support or opposition was cited by a large majority of jurisdictions as influencing the outcome of rezoning votes. More frequently cities and counties are also using conditional zoning to tailor regulations to particular site conditions. Over a third of all rezonings in the state are now made to conditional zoning districts. Survey respondents reported this trend is increasing, particularly in larger cities.

Survey

The School of Government periodically surveys North Carolina cities and counties regarding zoning practices. The 2002 survey concerned experiences with zoning variances.² The 2004 survey addressed types of ordinances adopted,³ experiences with special use permits,⁴ and municipal extraterritorial jurisdiction.⁵

The 2006 survey queried North Carolina local governments about zoning amendments; those responses are summarized here. That survey also asked local governments about the number and type of zoning districts in ordinances, use of design standards, and experiences with traditional neighborhood design projects; these topics are covered in a separate report.⁶

2. DAVID OWENS AND ADAM BRUEGGEMANN, *A SURVEY OF EXPERIENCE WITH ZONING VARIANCES* (Chapel Hill: School of Government Special Series No. 18, Feb. 2004).

3. DAVID W. OWENS AND NATHAN BRANSCOME, *AN INVENTORY OF LOCAL GOVERNMENT LAND USE ORDINANCES IN NORTH CAROLINA* (Chapel Hill: School of Government Special Series No. 21, May 2006).

4. DAVID W. OWENS, *SPECIAL USE PERMITS IN NORTH CAROLINA ZONING* (Chapel Hill: School of Government Special Series No. 22, April 2007).

5. DAVID OWENS, *THE NORTH CAROLINA EXPERIENCE WITH MUNICIPAL EXTRATERRITORIAL PLANNING JURISDICTION* (Chapel Hill: School of Government Special Series No. 20, Jan. 2006).

6. DAVID OWENS AND ANDREW STEVENSON, *AN OVERVIEW*

The 2006 zoning survey was conducted in two phases. First, in September and October 2006, we began updating our list of North Carolina cities and counties having zoning ordinances. To determine whether additional jurisdictions had adopted zoning since our earlier surveys, an inquiry as to whether zoning had been adopted was sent to all cities and counties that had responded to previous surveys saying they did not have zoning as well as to those that had not responded at all to previous surveys. We later sent e-mail inquiries to those jurisdictions that did not respond to the written queries, searched government websites, and made telephone inquiries to determine whether zoning had been adopted in those jurisdictions.

We were thus able to confirm that 509 of North Carolina's 643 cities and counties had adopted zoning ordinances as of late 2006. In addition to the 509 jurisdictions reporting adoption of zoning, 24 municipalities reported that county zoning was by mutual agreement applied within the municipality. Forty-seven jurisdictions confirmed that they had not adopted or applied zoning ordinances. We had no responses from 63 jurisdictions, primarily municipalities with populations of less than 1,000. These results are set out in Table 1.

We then sent surveys to all jurisdictions confirmed to have adopted zoning seeking information about zoning districts, design standards, and experiences with zoning amendments. The surveys were mailed to each jurisdiction's planning director if this person could be identified. For jurisdictions without a planning director, the survey was mailed to (in order of priority) the zoning administrator, the manager or administrator, the clerk, or the chief elected official. Each jurisdiction was asked to have the survey completed by the person within the jurisdiction who most directly works with zoning amendments.

This survey was mailed in mid-October 2006 to the 509 jurisdictions in the state known to have zoning ordinances—433 incorporated cities and 76 counties. The portion of the survey instrument related to zoning amendments is reproduced in Appendix A. A second copy of the survey was mailed in late November 2006 to all jurisdictions that had not responded to the initial mailing. E-mail reminders were sent in January 2007 to all nonresponding jurisdictions for which electronic contact information was available.

The response rate was very high and the responses provide an excellent representational cross section of cities and counties in North Carolina. In all, 358 of the 509 jurisdictions in the state responded, a 70 percent response rate (Table 2). The response rate of counties and jurisdictions with larger populations was particularly strong. The combined 2005 population of all responding jurisdictions totaled over 7.6 million, some 90 percent of the state's overall population. The population of responding jurisdictions is set out in Table 3. A list of responding jurisdictions is provided in Appendix B.

OF ZONING DISTRICTS, DESIGN STANDARDS, AND TRADITIONAL NEIGHBORHOOD DEVELOPMENT IN NORTH CAROLINA ZONING ORDINANCES (Chapel Hill: School of Government Special Series No. 23, Oct. 2007).

Table 1. Adoption of Zoning by Jurisdiction Type and Population

<i>Population</i>	<i>Zoning adopted</i>	<i>No zoning</i>	<i>Use county zoning</i>	<i>No response</i>	<i>Total</i>
<i>Municipalities</i>	433	23	24	63	543
< 1,000	132	23	18	54	227
1,000–9,999	231	0	6	9	246
10,000–24,999	41	0	0	0	41
> 25,000	29	0	0	0	29
<i>Counties</i>	76	24	na	0	100
1,000–24,999	19	17	na	0	36
> 25,000	57	7	na	0	64
All jurisdictions	509	47	24	63	643

Table 2. Survey Response by Jurisdiction Population

<i>Population</i>	<i>Number of jurisdictions</i>	<i>No. responding</i>	<i>Response rate (%)</i>
<i>Municipalities</i>	433	295	68
< 1,000	132	68	52
1,000–9,999	231	173	75
10,000–24,999	41	30	73
> 25,000	29	24	83
<i>Counties</i>	76	63	83
1,000–24,999	19	14	74
> 25,000	57	49	86
All jurisdictions	509	358	70

The data reported below is based on the number of jurisdictions responding to a particular survey question.⁷ Since all respondents did not answer every question, the number of those actually responding to a particular query is noted in each table (indicated by $n = x$).

Table 3. Population of Responding Jurisdictions

	<i>Total 2005 population</i>	<i>Population of responding jurisdictions</i>	<i>Percentage of population represented by responding jurisdictions</i>
Municipalities	4,398,251	3,857,715	87.7
Counties (unincorporated areas)	4,019,839	3,755,257	93.4
Total	8,418,090	7,612,972	90.4

The survey is based on the responses of the staff persons who most directly work with the zoning amendment process in each jurisdiction. While most of the survey questions deal with objective measures, some involve the perceptions and observations of those most familiar with the process. Readers should keep this “insider perspective” in mind when considering responses.

7. The survey responses were coded and initial data summary tables prepared by Andrew Stevenson, a graduate student in public administration and planning at the University of North Carolina at Chapel Hill.

Number and Types of Amendments Considered

Text Amendments

The survey asked cities and counties how many separate petitions for zoning ordinance text amendments had been filed in the past year. The responding jurisdictions reported that 1,520 proposed text amendments were considered. Of these, 1,245 (82 percent) were adopted during the year and 9 percent were still pending. The remainder were denied or withdrawn. City and county responses are provided in Table 4.

Table 4. Petitions for Text Amendment in the Past Year

	<i>Petitions received</i>	<i>Number adopted</i>	<i>Percentage adopted</i>	<i>Number pending</i>	<i>Percentage pending</i>
Cities	1,238	1,017	82	97	8
Counties	282	228	80	37	13
Total	1,520	1,245	82	134	9

Not surprisingly, the median number of text amendments considered was related to population size, particularly for cities. For example, cities with populations between 1,000 and 9,999 had a median of two text amendment petitions while the median number of petitions in cities with populations over 25,000 was nine.

Most text amendments are proposed by the local government staff. The responding jurisdictions reported that 59 percent of the text amendment petitions in the past year originated with the city or county staff. Twenty percent were proposed by members of the public, 10 percent by the city or county governing board, 9 percent by the planning board, and 2 percent by miscellaneous others (such as the board of adjustment, the school board, another unit of government, or a neighborhood or business association).

The need to bring ordinances into conformance with state statutory amendments had some residual effect on the number of reported text amendment proposals. Major amendments were made to the zoning statutes in 2005, most of which became effective on January 1, 2006. While most local ordinances were updated to reflect these amendments in the year prior to this survey, some local governments did not make their requisite text amendments until the period covered by the survey (six municipalities expressly reported this to be the case).

Map Amendments/Rezoning

One of the most common zoning amendments is a zoning map amendment, typically referred to as a “rezoning.” A petition is made, often by an individual property owner, to change the zoning classification applied to a particular parcel of land (for example, a petition is made to rezone the property located at 1525 Oak Street from a single family residential zoning district to a neighborhood commercial zoning district).

Consideration of rezoning petitions is the most common type of zoning decision a local government board must make. Responding jurisdictions reported that they received 3,029 rezoning petitions in the past year. By way of general comparison, Table 5 and Figure 1 show the number of applications made for quasi-judicial zoning approvals—variances and special or conditional use permits—and the zoning amendments discussed in this report. The data is from the same universe of jurisdictions—all of the cities and counties in North Carolina with zoning ordinances, and the three surveys involved all had similar response rates. The numbers are not directly comparable, as there is an interval of two years between each of the three surveys and slightly different jurisdictions responded to each survey. But the three surveys are sufficiently close in time and the three populations sufficiently similar to provide a good indicator of the relative frequency that each type of decision arises.

Table 5. Frequency of Types of Zoning Approvals Sought

<i>Type of approval (year surveyed)</i>	<i>Total sought in previous year</i>
Variance petitions (2002)	1,806
Special and conditional use permit applications (2004)	2,207
Zoning text amendments (2006)	1,520
Zoning map amendments (rezonings) (2006)	3,029

Figure 1. Annual Volume of Approvals Sought

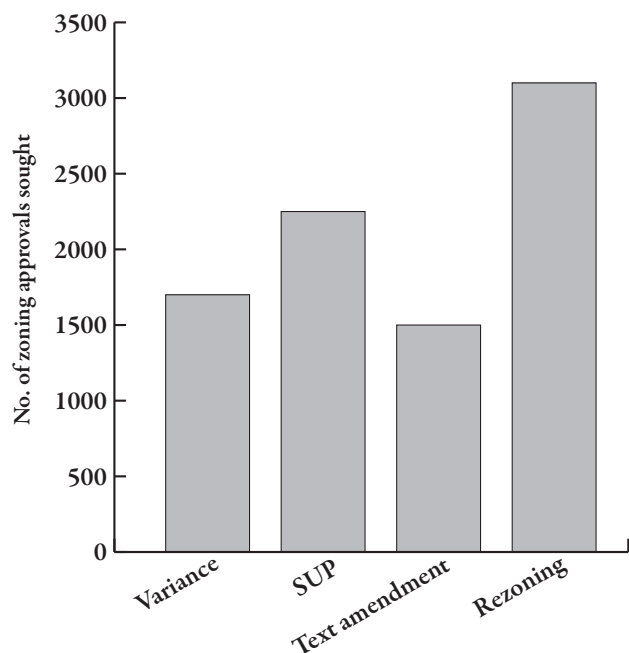


Table 6. Rezoning Sought by Type

Type of rezoning	Municipal (number)	Municipal (%)	County (number)	County (%)	Total petitions made	Percentage of total
To conventional district	1,135	52	604	70	1,739	57
To overlay district	72	3	39	5	111	4
To floating district	58	3	10	1	68	2
To conditional use district	496	23	154	18	650	21
To conditional district	406	19	55	6	461	15
Total	2,167		862		3,029	

Rezoning petitions can seek to place property into one of several different types of zoning districts. The most common type of rezoning sought is to change the zoning to a different *conventional* zoning district, such as a rezoning from single family residential to highway commercial. Conventional zoning districts (also sometimes termed “general use districts” or “base districts”) are those with a variety of permitted land uses in each district. Conventional zoning districts may also include some uses allowed only by special or conditional use permits.

Alternatively, the proposal may be to place the property in an *overlay zone*. These are special zones in which requirements are imposed in addition to the basic or underlying zoning district requirements. Typical overlay districts include floodplain districts, historic districts, airport districts, and highway corridor districts.

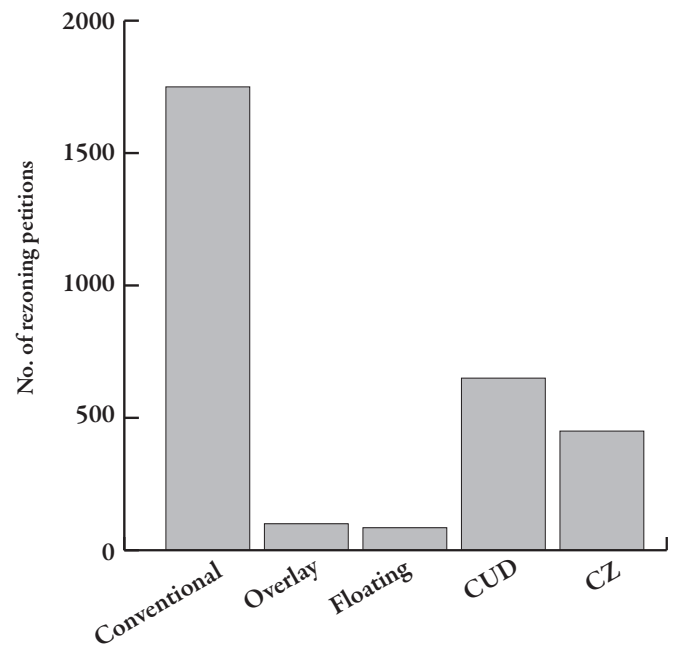
A zoning ordinance may also include *floating districts*, districts that are defined in the text of the ordinance but are applied or mapped only upon petition.⁸ Examples include mobile home park districts, shopping center districts, and mixed-use districts. Special mixed-use districts, often termed “planned unit development” (PUD) districts, usually require a minimum acreage and an overall concept plan for development of the entire tract prior to rezoning.

Zoning districts that include detailed site-specific conditions may also be created. North Carolina law allows two types of zoning districts that apply site-specific development standards—conditional use districts and conditional zoning. Both are allowed only upon petition of the landowner. *Conditional use district* (CUD) zoning is involved when a landowner requests that property be placed in a new zoning district having no permitted uses, only special or conditional uses. No new use of land may be undertaken within the district unless a special or conditional use permit is first secured. Often there is one conditional use district to correspond with each conventional zoning district, with all of the permitted uses in a particular

zoning district being converted to special or conditional uses in the parallel special/conditional use district. An alternative developed in the 1990s is purely legislative *conditional zoning*. This method eliminates the conditional use permit and incorporates all the site-specific standards directly into the zoning district regulations (and then applies that zoning district only to the single parcel that is the subject of the rezoning petition).

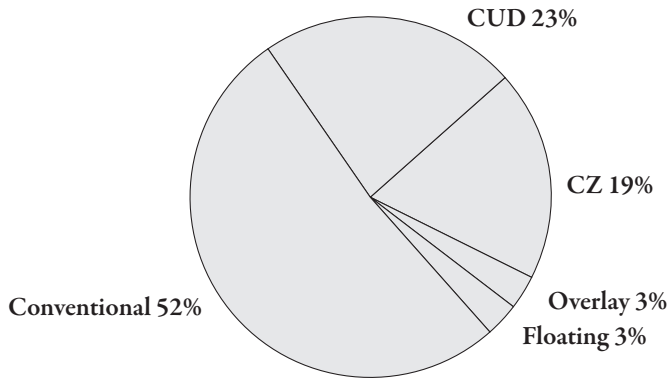
The majority of rezoning petitions—57 percent—considered by responding jurisdictions in the past year were for rezoning to conventional zoning districts. However, over a third of all rezoning petitions were reported to include site-specific conditions. Thirty-seven percent of all rezoning petitions were for conditional use districts or conditional districts. These results are shown in Table 6 and Figure 2.

Figure 2. Type of Rezoning Sought



8. The use of unmapped floating zones for planned unit developments, planned industrial parks, and shopping centers has been upheld by the North Carolina courts. See *Allgood v. Town of Tarboro*, 281 N.C. 430, 189 S.E.2d 255 (1972); *Armstrong v. McInnis*, 264 N.C. 616, 142 S.E.2d 670 (1965).

Figure 3. Types of Rezoning Sought in Municipalities



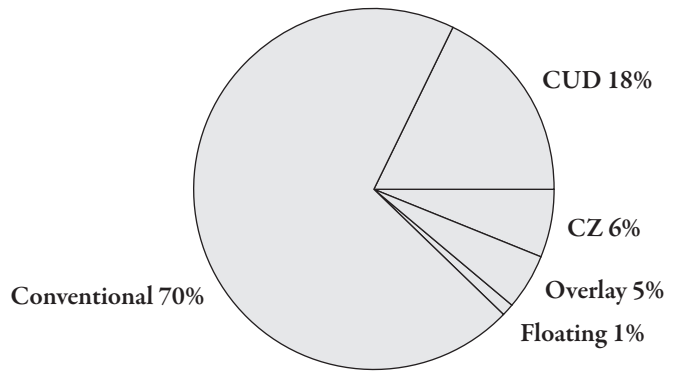
There was a significant difference between the municipal and county experiences on this point. Counties were far more likely to have petitions for conventional rezonings. Seventy percent of all rezoning petitions in counties were for conventional rezoning, compared to 52 percent for municipalities. By contrast, cities much more frequently consider purely legislative conditional zoning. Nineteen percent of all municipal rezoning petitions were for conditional rezoning, as compared to only 6 percent for counties. These results are shown in Table 6 and Figures 3 and 4.

This municipal propensity toward greater use of conditional zoning is even more pronounced for cities with high populations. The twenty-four responding cities with populations over 25,000 reported over half of their rezoning petitions were for conditional or conditional use district rezonings. For these cities, 40 percent of their petitions were for conventional rezonings, 32 percent for conditional rezonings, and 22 percent for conditional use district rezonings. This is particularly significant given that these cities have a population of over 2.7 million and handled approximately one-third of all of the rezonings in the state. For the six cities with populations over 100,000, only a third of the total rezoning petitions were for conventional rezonings (37 percent were for conditional rezonings and 24 percent for conditional use district rezonings).

Cities and counties of all population sizes reported a trend toward more rather than less use of conditional and conditional use district zoning. Twenty-seven percent of both responding cities and counties noted more use and only 4 percent of the cities and 6 percent of the counties reported less. Larger cities were far more likely to report a trend toward more use of conditional zoning. Sixty-three percent of cities with populations over 25,000 and 50 percent of cities with populations between 10,000 and 25,000 reported a trend toward more use of conditional zoning. By contrast, only 27 percent of the counties and 22 percent of the cities with populations in the 1,000 to 10,000 population range reported a trend toward increased use of conditional zoning.

For the most part, rezonings were sought to allow either commercial or residential land uses for both conventional and conditional rezonings. Cities with populations under 25,000 and counties with unincorporated populations over 25,000 reported commercial rezonings as most common; cities with

Figure 4. Types of Rezoning Sought in Counties



populations over 25,000 and counties with unincorporated populations under 25,000 reported residential rezonings as their most common type of petition. Cities with populations over 25,000 reported that rezonings to office and institutional uses were less frequent but not uncommon and more populous counties reported the same for industrial uses.

Administration and Process

Fees

Reasonable application fees can be charged to offset the cost of processing petitions for zoning amendments.⁹ The amount of the fee charged cannot exceed the administrative cost to the local government for conducting the review process.

A substantial majority of jurisdictions charge a fee for proposed zoning text amendments. Seventy-one percent of responding cities and 65 percent of responding counties charge such a fee, typically in the \$100 to \$200 range. Table 7 shows the median fee charged by jurisdictions of varying population groups for a proposed text amendment.

Table 7. Median Fee Charged for Proposed Zoning Text Amendment

<i>Population</i>	<i>Median fee</i>
Municipalities	
< 1,000	100
1,000–9,999	150
10,000–24,999	200
> 25,000	200
Counties	
1,000–24,999	250
> 25,000	200

9. Homebuilders Ass’n of Charlotte v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994).

Table 8. Types of Information Provided by Local Government Staff to Persons Seeking a Rezoning

<i>Population</i>	<i>Zoning districts, forms, and procedures (%)</i>	<i>Adopted plans (%)</i>	<i>Political climate (%)</i>	<i>Expected items (%)</i>	<i>Rezoning alternatives (%)</i>	<i>Other (%)</i>	<i>None (%)</i>
<i>Municipalities</i>	84	65	70	71	70	6	7
< 1,000 (<i>n</i> = 56)	54	25	29	35	31	1	18
1,000–9,999 (<i>n</i> = 164)	90	54	69	72	65	1	5
10,000–24,999 (<i>n</i> = 29)	93	83	90	83	83	7	3
> 25,000 (<i>n</i> = 24)	100	96	92	92	100	13	0
<i>Counties</i>	95	48	76	76	79	8	4
1,000–24,999 (<i>n</i> = 14)	100	50	86	71	79	7	0
> 25,000 (<i>n</i> = 49)	90	45	65	80	78	8	8

It is even more common to charge a fee for a proposed zoning map amendment. Eighty-nine percent of responding municipalities and 97 percent of responding counties charge a fee for map amendment petitions. The amount of the fee charged for a proposed map amendment varies significantly. Approximately three-fourths of the cities and nearly two-thirds of the counties reported use of a flat fee for zoning map amendment petitions, typically in the \$100 to \$500 range, though several were as high as \$1,000. It is not uncommon for jurisdictions to add to this set fee the cost of newspaper advertisements and postage for mailing hearing notices.

A quarter of the cities and over a third of the counties reported using a sliding fee scale for rezoning petitions. This is most common within jurisdictions with higher populations. Most often the variable considered in setting the fee was the number of acres or lots affected. This was particularly true with counties. Other factors used by jurisdictions in setting sliding fees were the type of land use involved (with higher fees common for proposed rezonings to nonresidential uses) and whether the rezoning sought was to a conventional or conditional district (with higher rates for proposed conditional districts). Most of the jurisdictions with sliding fee scales had a minimum fee (typically in the \$250 to \$500 range) and several had maximum fees (typically in the \$1,000 to \$4,000 range).

Jurisdictions using a sliding fee scale should ensure that the amount of the fee charged does not exceed the cost of processing the rezoning petition. Charging a higher fee for projects that have higher processing costs is legally permissible, but it is not legally permissible to charge a higher fee because a project is larger, because the applicant has a greater ability to pay the fee, or to discourage a particular type of application.¹⁰

10. It may be permissible to recoup a higher portion of actual costs from larger projects—such as setting a fee to recoup 50 percent of the processing costs for a small project and 75 percent of the processing costs for a large project—provided the actual fee charged does not exceed a reasonable estimate of actual processing costs.

Information Provided to Petitioners

The process of securing a rezoning or a zoning text amendment can be daunting for persons unfamiliar with these governmental procedures. Therefore most local government staffs provide a variety of background information to those petitioning for amendments.

Virtually all cities and counties provide basic information about the zoning ordinance and forms that must be used to initiate the process. The only modest exception is municipalities with very small populations (and over half of these provide such information).

When a zoning map amendment is being proposed, about three-fourths of both cities and counties also provide information on alternatives to rezoning, tips about items the governing board expects to see addressed during the process, and advice on the likelihood of success and the political climate for rezoning. Again, the only exception to this general rule is municipalities with populations under 1,000. About half of the jurisdictions reported providing information about adopted plans when rezonings are proposed. The percentage of jurisdictions providing each of these types of information is shown in Table 8.

Decision-Making Process

Hearings

State law requires a public hearing before the governing board prior to the adoption, amendment, or repeal of any zoning ordinance. Any zoning ordinance adoption, amendment, or repeal made without a properly noticed hearing will be voided if a timely legal challenge is made.

These mandated public hearings are legislative in nature.¹¹ The purpose of the hearing is to inform the elected officials of the nature of the proposed action and to allow members of the public to express their views on the matter directly to the decision makers.

State statutes require advertisement of these public hearings. Notice for all public hearings on zoning map and text amendments must be published in the newspaper. In addition, if a zoning map amendment is proposed, notice of the hearing must be mailed to neighbors and posted on the site. In addition to these statutory requirements, an increasing number of local governments post a notice of the hearing on their websites (and a few jurisdictions now have authority to substitute this Internet posting for the notice published in the newspaper).

North Carolina local governments were surveyed about a variety of factors related to these mandated public hearings. The survey asked how long they typically last, who appears, and how often multiple hearings related to the same petition are held.

Presentation of Information

At a typical zoning amendment hearing, the staff summarizes the matter before the board, the proponent of the action explains the request, and public comment is invited. Often governing board members ask questions of clarification as needed.

Most responding local governments reported that a staff presentation is made to the governing board at rezoning hearings. Ninety-two percent of responding counties and 79 percent of responding cities reported that they make staff presentations. As for the content of these presentations, virtually all jurisdictions making staff reports provide factual information regarding the rezoning petition. Most also provide background information on the particular site involved and on the relationship of the proposal to adopted plans (the provision of information regarding consistency with plans is discussed in more detail in a subsequent section of this report). A majority of jurisdictions also provide a staff recommendation regarding the decision; site plans; and videos, photographs, or building elevations. Table 9 summarizes these responses.

Table 9. Information Provided by Staff at Rezoning Hearing (n = 228)

<i>Type of information</i>	<i>Percentage providing</i>
Factual information on petition	98
Background information on site	87
Information/analysis on relation to plan	81
Recommendation on decision	72
Site plans	64
Video, photographs, building elevations	51
Information on similar past rezoning petitions	45

The only substantial differences among jurisdictions regarding staff presentations are strongly related to population size. Cities with populations under 1,000 usually make no staff presentations—77 percent of these jurisdictions make no staff presentation at all. By contrast, only 2 percent of the cities with populations over 10,000 reported making no staff presentation. In addition, the presentations made by small-population cities are far more likely to include only basic information on the petition and far less likely to include background information such as photographs or analysis of past similar rezoning petitions.

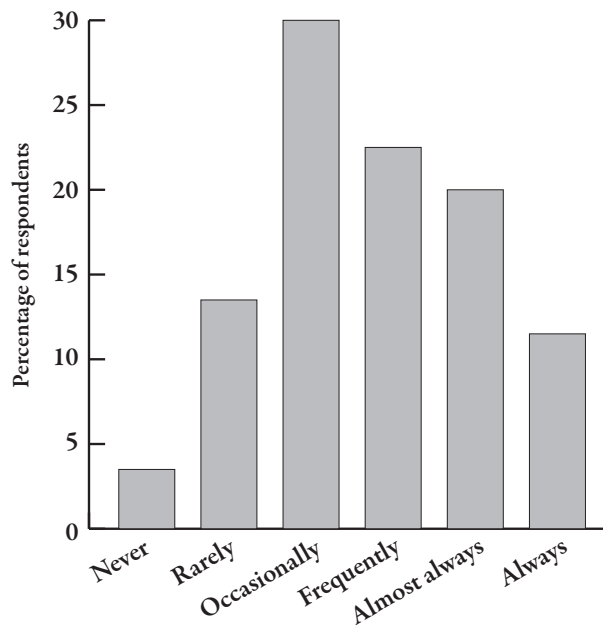
Neighbors and other members of the public are often quite interested in proposed rezonings. Survey respondents reported that it is fairly common for persons other than the petitioner and staff to appear at rezoning hearings. Over half (53 percent) of the responding jurisdictions reported this happens frequently or more often. Only 16 percent reported that it rarely or never happens. These results are summarized in Table 10 and Figure 5.

Table 10. Frequency Person Other than Petitioner or Staff Appear at Rezoning Hearing (n = 331)

<i>Frequency</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
Never	8	2
Rarely	46	14
Occasionally	100	30
Frequently	74	22
Almost always	66	20
Always	37	11

11. The general statutory guidance for legislative public hearings is North Carolina General Statutes (hereinafter G.S.) § 160A-81 for cities and § 153A-52 for counties. These statutes allow the governing board to “adopt reasonable rules governing the conduct of the public hearing, including but not limited to rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing.”

Figure 5. Frequency Persons Other Than Petitioner/Staff Appear



Again, the only substantial variation in these results occurs with cities with very small populations. Forty-two percent of cities with populations under 1,000 reported that persons other than the petitioner and staff rarely or never appear at rezoning hearings, while none of the cities with populations over 10,000 reported the same.

This phenomenon represents a substantially higher level of public involvement than typically occurs with quasi-judicial hearings. As might be expected where witnesses are testifying rather than citizens commenting, earlier survey results indicated that participation by persons other than staff and the applicant is considerably less for special use permit hearings and even less frequent for variance hearings. Thirty-six percent of jurisdictions reported that a person other than the applicant or staff appeared frequently or more often at special use permit hearings; only 21 percent of jurisdictions reported the same for variance hearings.

Rezoning hearings for the most part remain the province of citizens, not lawyers. A majority of responding jurisdictions (54 percent) reported that attorneys never or only rarely appear at a rezoning hearing on behalf of petitioners. Only 14 percent of the jurisdictions reported that attorneys appear frequently or more often. These results are summarized in Table 11.

Table 11. Frequency Attorney Appears for Petitioner at Rezoning Hearings (n = 332)

Frequency	No. of jurisdictions	Percentage
Never	50	15
Rarely	128	39
Occasionally	109	33
Frequently	39	12
Almost always	5	2
Always	1	0

The only substantial variation in these results is with the more populous cities, where attorneys are more likely to be involved in rezoning hearings. Thirty-eight percent of the cities with populations over 25,000 and 33 percent of those with populations between 10,000 and 25,000 reported that attorneys appear for the petitioners frequently or more often at rezoning hearings.

Length of Hearings

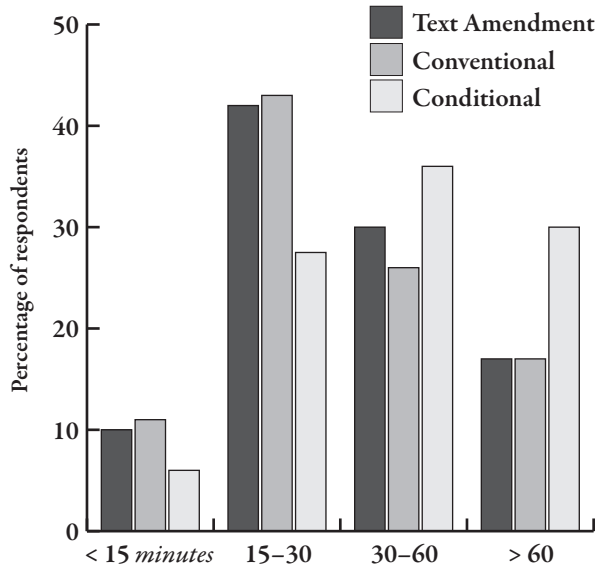
Cities and counties consider a tremendous variety of zoning amendments. Some amendments are technical, routine, and noncontroversial. The hearings on these are often perfunctory. The staff will give a very brief explanation, no one will appear to speak on the matter, the board will have no questions, and the hearing is promptly closed. On the other end of the spectrum, some zoning hearings involve highly controversial issues with tremendous political implications. At these hearings the meeting room is often packed, sometimes overflowing, with video transmission to spill-over rooms. Law enforcement is sometimes called in to maintain order. It is not unusual for these hearings to extend into the early morning hours or to be continued for several meetings. Our survey did not explore either of these extremes. Rather, the survey addressed how routine and more common zoning amendment hearings are conducted. Therefore it inquired about jurisdictions' experiences with "typical" zoning amendments.

The survey asked about the duration of the typical zoning hearing, including time spent for public comment and governing board deliberation. For the most part, the responses were similar for both cities and counties. Jurisdictions reported that their zoning hearings typically take between fifteen minutes and an hour. Seventy-two percent of the jurisdictions reported hearings on text amendments take this amount of time. Sixty-nine percent of the jurisdictions reported the same for hearings on conventional rezonings. As would be expected, hearings on conditional rezonings usually take longer. These tend to be somewhat more controversial and, given the individualized nature of the zoning restrictions, more complex. Thus it is not surprising that 30 percent of the jurisdictions reported hearings on typical conditional rezonings last more than an hour. These results are summarized in Table 12 and Figure 6.

Table 12. Length of Time Board Spends on Typical Hearing

<i>Length of Time</i>	<i>Percentage for text amendment (n = 316)</i>	<i>Percentage for conventional rezoning (n = 307)</i>	<i>Percentage for conditional rezoning (n = 226)</i>
< 15 minutes	10	11	6
15–30 minutes	42	43	28
30–60 minutes	30	26	36
> 60 minutes	18	18	30

Figure 6. Length of Typical Hearing



The reported length of a typical zoning hearing was generally consistent for all jurisdiction population groupings with one exception. Jurisdictions with small populations were far more likely to report longer zoning hearings. For example, 36 percent of cities with populations under 1,000 reported that a typical conventional rezoning hearing lasted over an hour, compared to only 13 percent of cities with populations over 25,000 reporting the same. This was also true of counties with lower populations in their zoning jurisdictions. These responses are consistent with earlier survey results. Lower-population jurisdictions reported having longer hearings than their more populous counterparts on both variances and special use permits.

Additional Hearings

After receiving comments at the public hearing on a proposed zoning amendment, the city council or county board of commissioners will sometimes modify the proposed amendment before adopting it. A second advertised public hearing is

required if the amended proposal is substantially different from the version initially advertised for hearing.¹²

Our survey indicates that it is uncommon to hold additional hearings. Three-quarters of the responding jurisdictions reported that additional hearings are never or only rarely held. Only 3 percent of the jurisdictions reported that this happens frequently or more often. These results are summarized in Table 13.

Table 13. Frequency Additional Hearing Is Required for Zoning Amendment (n = 324)

<i>Frequency</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
Never	98	30
Rarely	148	46
Occasionally	70	22
Frequently	5	2
Almost always	1	0
Always	2	1

The more populous cities were slightly more likely to report additional hearings, but re-hearings are uncommon even for the largest cities. Forty-six percent of the cities with populations over 25,000 reported that additional hearings are held only occasionally.

Protest Petitions

The provision for a protest petition was included in the state’s 1923 zoning enabling act to provide a degree of certainty and stability in zoning while allowing the governing body sufficient flexibility to amend the ordinance to reflect changing needs and circumstances. The provision in North Carolina zoning law for a protest petition, North Carolina General Statute § 160A-385(a) (hereinafter G.S.), specifies that these petitions are mandatory for cities. Counties, on the other hand, do not have the authority to allow protest petitions.¹³

The statutory protest petition provides that if a sufficient number of those most immediately affected by a zoning change object to a proposed zoning amendment, the amendment may be adopted only if approved by a supermajority of the governing board. When a valid protest petition has been filed, G.S. 160A-385(a)(1) provides that adoption of the proposed amendment requires the favorable vote of three-fourths of “all the members of the city council.” This statute also provides that, for purposes of the protest petition, vacant positions on

12. *Heaton v. City of Charlotte*, 277 N.C. 506, 518, 178 S.E.2d 352, 359–60 (1971).

13. The General Assembly can provide exemptions for individual local governments. For example, local legislation provides that the protest petition does not apply in Greensboro but is applicable for Durham County.

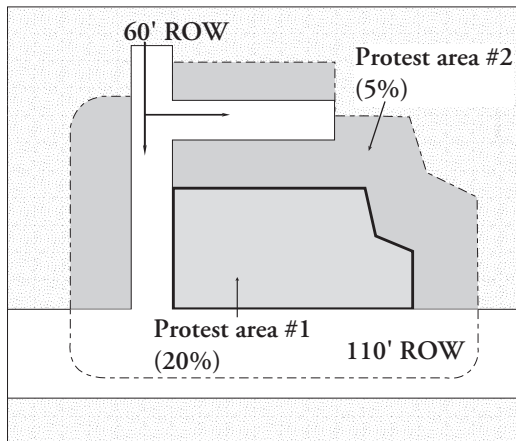
the board and members excused from voting are not to be considered as “members of the board” in computing the requisite supermajority. The protest petition only applies to zoning map amendments (prior to 2006 the statute also applied to text amendments). Protest petitions are most often made when neighbors object to the rezoning of a parcel, but the provision also applies to the creation and application of new overlay zoning districts.

There are two areas that qualify for a protest petition—the property being rezoned itself and a 100-foot-wide strip immediately adjacent to or across the street from it. G.S. 160A-385(a)(2) provides that the petition must be signed by the owners of either of the following:

1. 20 percent or more of the area included in the proposed change
2. 5 percent of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned

Figure 7 illustrates these two areas. The 100-foot buffer qualifying area is measured from the property line of any parcel subject to a proposed rezoning. A street right-of-way is not considered in computing the buffer area if the street right-of-way is 100 feet wide or less.

Figure 7. Qualifying Areas for Protest Petition



G.S. 160A-386 establishes several procedural requirements for protest petitions. The petition must be written and signed by the property owners, and it must specifically state that it protests the proposed zoning change. The petition must be presented to the city clerk in time to allow the clerk two working days before the date of the hearing (excluding weekends and holidays) to determine its sufficiency and accuracy. This mandatory filing deadline cannot be waived by the city, even if the city could determine sufficiency in less time. Cities may require that the petition be on a form provided by the city and that the petition contain any reasonable information necessary to allow the city to verify it. In the absence of evidence to the contrary, G.S. 160A-385(a)(3) provides that the city may rely

on the county tax listing to determine the ownership of qualifying areas.

Even though the protest petition has a long history in zoning, it is not frequently a factor in North Carolina rezonings. Overall, two-thirds of the responding cities reported no protest petitions had been filed in the previous year. However, there are distinct differences in the responses based on the population of the reporting jurisdiction. Only 12 percent of the cities with populations under 10,000 reported receiving any protest petitions in the previous year. By contrast 50 percent of the cities with populations between 10,000 and 25,000 received a protest petition and 71 percent of the cities with populations over 25,000 received one or more protest petitions. In fact, three municipalities—Charlotte, Raleigh, and Durham—accounted for nearly a third (31 percent) of all the reported valid protest petitions in the state.

The overwhelming majority of rezoning petitions are not subjected to a protest petition. Responding municipalities reported a total of 181 protest petitions filed in the previous year. Of these, 134 (75 percent) were determined to be adequate and thereby required a supermajority vote for adoption of the rezoning. These same municipalities reported consideration of 2,167 rezoning petitions in the previous year. Thus only 8 percent of the municipal rezoning petitions had a protest filed and only 6 percent had a sufficient protest so as to subject the proposed rezoning to the supermajority vote requirement.

Even when a valid protest petition is filed, it rarely has a direct effect on the outcome of the proposed rezoning. Survey respondents reported the final outcomes of 88 of the 134 rezoning petitions that had triggered valid protest petitions. Of these 88 rezonings, 43 percent did not receive a simple majority vote in favor of the rezoning and thus would have failed even if no protest petition had been filed. Fifty-two percent were adopted by a governing board majority of three-fourths or more, thus passing despite the protest petition. Only 5 percent of the rezonings subject to a valid protest petition received a majority favorable vote but less than a three-fourths majority, thus failing to be adopted as a direct result of the protest petition. So, of the 2,167 rezoning petitions considered in the past year, only four had a different outcome as a direct result of a protest petition.

A valid protest petition can, however, affect the zoning process in an indirect but significant manner. The approval rate for projects subject to a protest petition is 52 percent, compared to a 76 percent approval rate for rezoning petitions overall. This lower approval rate indicates that the depth of opposition reflected by a protest petition frequently convinces a majority of the city council to oppose a rezoning. In addition, an actual or threatened protest petition may encourage the landowner, the neighbors, and the city to negotiate prior to a vote on the rezoning, which can in turn lead to project revisions. In sum, the informal impacts of a protest petition are typically more substantial than its formal impact on votes.

Respondents also reported that there was no trend toward more protest petitions being filed. Eighty-one percent of the

municipalities reported either that the number of filings was about the same over time or that while frequency varied, there was no overall trend in the number of filings. About the same number of jurisdictions reported a trend toward less frequent filings (9 percent) as did toward more frequent filings (11 percent). The only difference among population groups of cities was that 24 percent of the cities with populations over 25,000 reported a trend toward more filings while 23 percent of the smallest-population cities (those with populations under 1,000) reported less frequent filings.

Decisions Made and Factors Influencing Outcomes

Outcomes

The majority of proposed zoning ordinance amendments considered by cities and counties in North Carolina are fairly routine and attract little attention beyond those most directly affected. When asked what proportion of all zoning amendment petitions would be considered controversial, two-thirds of the responding cities and three-fourths of the responding counties reported that less than 25 percent of the petitions fit this category. Cities with larger populations were considerably more likely to report zoning controversy. About a third of the cities with populations over 10,000 reported that 25 to 49 percent of their zoning petitions were controversial. Almost a quarter of the cities with populations over 25,000 reported the same for more than half of their zoning petitions.

The overwhelming majority of proposed zoning text and zoning map amendments are adopted. Responding jurisdictions reported that 1,245 of 1,520 proposed text amendments (82 percent) had been adopted in the past year. Another 134 (9 percent) were still pending. These jurisdictions reported that 2,300 of 3,029 proposed map amendments (76 percent) had been adopted in the past year. Another 258 (9 percent) were still pending. In both instances the adoption rate was about the same for cities and counties.¹⁴

Interestingly, the reported approval rate was about the same for conventional and conditional rezonings. For all responding jurisdictions, the approval rate for rezonings to conventional zoning districts was 78 percent, while it was 77 percent for rezonings to conditional districts and 73 percent for rezonings to conditional use districts. The approval rates for zoning amendments for overlay and floating districts were slightly lower. Jurisdictions reported 67 percent of the map amendments to add overlay districts had been adopted; 69 percent of the proposed floating district amendments had been adopted. These results are summarized in Table 14.

Table 14. Approval Rates for Proposed Rezoning

<i>Type of map amendment</i>	<i>Number proposed</i>	<i>Percent approved</i>	<i>Percent pending</i>
To conventional district	1,739	78	7
Add overlay district	111	67	9
To floating district	68	69	16
To conditional use district	650	73	10
To conditional district	461	77	11

For the most part, the reported approval rate was similar for cities and counties. One difference is that counties had higher approval rates (and lower pending rates) for overlay and floating zoning district proposals.

Time to Reach Decisions

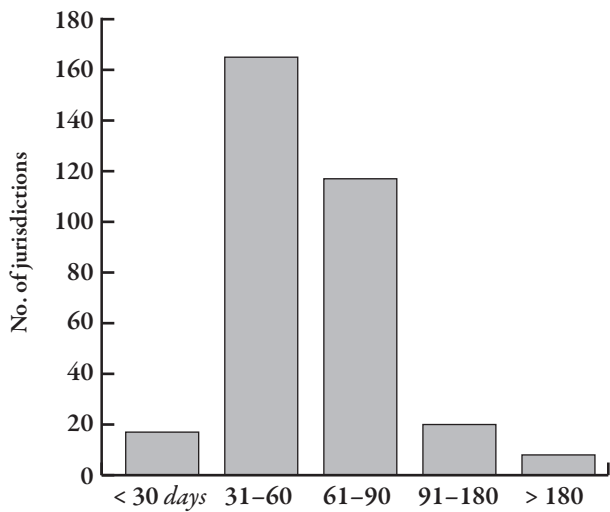
Despite the complexity of the process, most local governments reported that the typical rezoning decision-making process is relatively expeditious. The overwhelming majority of North Carolina cities and counties—88 percent—reported making final decisions on typical rezoning petitions within two to three months of receipt of a completed rezoning petition. These results are summarized in Table 15 and Figure 8.

Table 15. Length of Time to Reach Decision on Typical Rezoning (n = 320)

<i>Time period</i>	<i>No. of jurisdictions</i>	<i>Percentage of jurisdictions</i>
< 30 days	14	4
31–60 days	165	52
61–90 days	115	36
91–180 days	19	6
> 181 days	7	2

14. Rezoning petitions that have not been adopted or are still pending have not necessarily been denied. Many zoning ordinances include a mandatory waiting period between the time a rezoning petition is denied and the time another rezoning petition can be made for the same parcel. To avoid the waiting period, petitioners in some jurisdictions will voluntarily withdraw a rezoning petition if the petitioner believes the proposal cannot readily be modified to address concerns raised during the review process and therefore faces a serious possibility of being denied.

Figure 8. Time to Reach Decision on Typical Rezoning



City and county responses did not differ significantly. Nor was there a difference based on the population size of the jurisdiction, with the modest exception that very low-population municipalities (those with populations under 1,000) were slightly more likely to reach a decision in less than thirty days.

Factors Influencing Decisions

It has long been posited that one of the principal objectives of many zoning ordinances is to minimize the harm to neighbors from inappropriate adjacent land uses. Our survey confirms this notion.

The survey asked jurisdictions to identify the most common reasons offered by governing boards to justify denial of rezonings. Respondents could check all of the rationales for denial commonly cited by the governing board. By far the most common

reason for denial—cited by 85 percent of responding jurisdictions—was that the proposal was inconsistent with surrounding land uses. Also, the most commonly cited open-ended rationale under the “Other” category was neighborhood opposition, which is often generated by neighbors’ perceptions of incompatibility. This concern about land use compatibility predominated for both cities and counties and for all jurisdiction population ranges. Two other reasons were cited as common justifications for denial by about half of the jurisdictions—plan inconsistency and traffic impacts. These responses are summarized in Table 16.

Table 16. Most Common Grounds Cited for Denial of Rezoning (n = 292)

<i>Reason</i>	<i>Number</i>	<i>Percentage citing</i>
Inconsistent with surrounding land uses	248	85
Inconsistent with plans	150	51
Traffic impacts	126	43
Environmental impacts	54	18
Inadequate water or sewer	36	12
Inadequate school capacity	16	5
Miscellaneous others	33	11

While jurisdictions of all sizes cited inconsistency with surrounding land uses, responses about other rationales for denial varied according to a jurisdiction’s population size. For example, 83 percent of cities with populations over 25,000 cited traffic impacts as a ground for denial, while only 11 percent of towns with populations under 1,000 did so. Larger cities were also more likely to cite plan inconsistency and inadequate school capacity as grounds for denial, while small cities were more likely to cite inadequate water and sewer capacity. These variations are shown in Table 17.

Table 17. Most Common Grounds Cited for Denial of Rezoning by Jurisdiction Size (%)

<i>Population group</i>	<i>Inconsistent with surrounding land uses</i>	<i>Plan inconsistency</i>	<i>Traffic impacts</i>	<i>Environmental impacts</i>	<i>Inadequate water and sewer</i>	<i>Inadequate school capacity</i>	<i>Other</i>
<i>Municipalities</i>	87	53	48	19	13	5	15
< 1,000 (n = 36)	86	33	11	19	22	0	6
1,000–9,999 (n = 144)	88	48	42	18	11	5	10
10,000–24,999 (n = 29)	86	69	55	14	10	3	10
> 25,000 (n = 24)	88	63	83	25	8	13	33
<i>Counties</i>	78	54	45	22	14	6	9
1,000–24,999 (n = 12)	75	42	42	25	17	0	8
> 25,000 (n = 44)	80	66	48	18	11	11	9

Impact of Recommendations

The appearance of neighbors to support or oppose a proposed rezoning is perceived to have a significant impact on the likelihood of adoption of a rezoning. Seventy-two percent of the responding jurisdictions reported neighborhood support increased the chances of a rezoning being approved. Similarly, 70 percent of the jurisdictions reported that neighborhood opposition increased the likelihood of a rezoning petition being denied. These results are summarized in Tables 18 and 19.

Table 18. Effect of Neighbors’ Appearance at Hearing to Support Rezoning Petition (n = 333)

<i>Impact</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
Reduces chance of approval	2	1
Has no effect	36	11
Increases chance of approval	240	72
Don’t know	55	17

Table 19. Effect of Neighbors’ Appearance at Hearing to Oppose Rezoning Petition (n = 333)

<i>Impact</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
Reduces chance of approval	233	70
Has no effect	34	10
Increases chance of approval	8	2
Don’t know	58	17

Generally these responses were similar for cities and counties and for all jurisdictions regardless of population size, but there were several notable variations. Counties were somewhat more likely to report that neighborhood support increased the chances of approval. Also, the smaller the municipal population, the more likely it was to report no impact from neighborhood support of or opposition to a rezoning. Seventeen percent of the cities with populations under 1,000 reported no effect from neighborhood support, while only 4 percent of the cities with populations over 25,000 reported no effect. Eighty-five percent of the cities with populations over 10,000 reported that neighborhood opposition decreased the chances for approval of a rezoning, but only 43 percent of the cities with populations under 1,000 reported this effect. This phenomenon may be related to the greater personal familiarity small-town officials have with the sites and issues involved in a proposed rezoning (but, on the other hand, these officials are more likely to know the petitioners and neighbors involved as well).

By contrast, the appearance of an attorney for either the petitioner for or opponents to a rezoning is reported to have only a modest impact. A majority of the responding jurisdictions (52 percent) reported this has no impact on the outcome. Only 12 percent of the jurisdictions reported that this repre-

sentation increased the chances of success for the represented party. Given the relative infrequency that attorneys appear in most rezoning hearings, a substantial number of jurisdictions reported they did not know the impact of attorney appearances. These responses are summarized in Table 20.

Table 20. Effect of Attorney’s Appearance at Hearing on Rezoning Petition (n = 328)

<i>Impact</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
Reduces chance of success for represented party	3	1
Has no effect	170	52
Increases chance of success for represented party	40	12
Don’t know	115	35

The only notable difference between jurisdictions on this response was that the more populous cities and counties, who have far more experience with attorney participation in rezoning hearings, were less likely to report they did not know the impact of an attorney’s appearance. For example, only 16 percent of the cities with populations over 25,000 reported they did not know the impact of an attorney’s appearance (while 61 percent of these large cities reported an attorney’s appearance had no effect and 23 percent reported it improved the chances of success for the represented party).

In addition to comments and recommendations from the petitioner, neighbors, and their representatives, city and county governing boards may also seek advice on rezonings from members of their professional planning staffs. State law also requires that the governing board seek comments from the city or county planning board.

The survey indicates that these recommendations are influential, as governing board decisions are usually consistent with staff and planning board recommendations. These recommendations are not binding; only a modest number of jurisdictions reported that the governing board always follows them. However, 93 percent of the jurisdictions reported that the staff recommendation is followed frequently or more often, and 96 percent reported the same for planning board recommendations. Tables 21 and 22 and Figure 9 summarize these results.

Table 21. Frequency Rezoning Decision Is Consistent with Staff Recommendations (n = 295)

<i>Frequency</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
Never	2	1
Rarely	4	1
Occasionally	15	5
Frequently	110	37
Almost always	153	52
Always	11	4

These responses varied only modestly among cities and counties and different population groups. County boards of commissioners were slightly more likely than their municipal counterparts to follow staff recommendations, largely due to the fact that municipalities with populations under 1,000 were modestly less likely to follow these recommendations (perhaps because few of these jurisdictions have an in-house professional planning staff). Cities and counties varied only slightly as regards following planning board recommendations. There was also little variation among cities with differing populations, with the exception that governing boards in small-population cities were modestly more likely to follow their planning boards' recommendations.

Consistency of Decisions with Plans

The zoning statutes require planning boards and governing boards to consider their jurisdictions' adopted plans as zoning amendments are made. The statutes do not mandate consistency with the plan, only plan consideration. The question thus arises: How often are rezoning decisions that are inconsistent with previously adopted plans made?

Although not mandated to do so, most of the more populous North Carolina cities and counties have adopted comprehensive or land use plans. A 1998 survey reported that 83 percent of the state's counties, 70 percent of the cities with populations over 10,000, and 50 percent of the cities with populations under 10,000 had adopted a plan.¹⁵

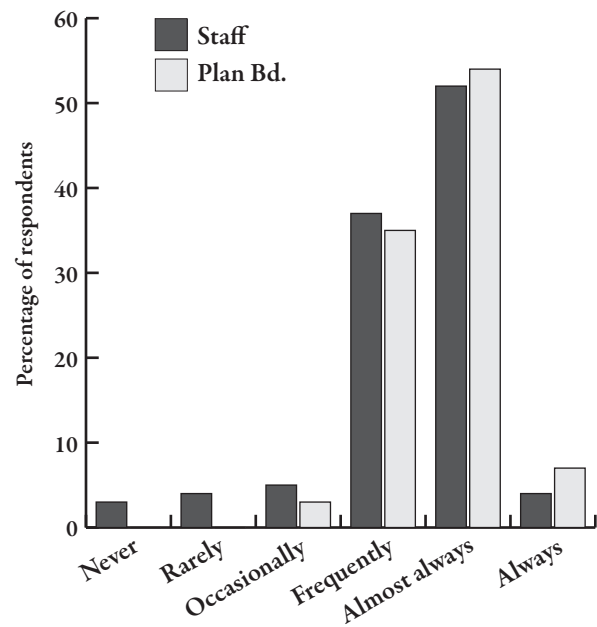
The zoning statutes were amended in 2005 to strengthen the role of adopted plans in the consideration of zoning amendments. G.S. 160A-387 and G.S. 153A-344 require planning board recommendations prior to initial adoption of zoning and mandate referral of proposed zoning amendments to the planning board for review and comment. G.S. 160A-383 and G.S. 153A-341 require that planning board review of zoning amendments include written comments on the consistency of the proposed amendment with the comprehensive plan and any other relevant plans (such as a small area plan, a corridor plan, or a transportation plan) adopted by the governing board. However, a statement from the planning board that the proposed amendment is inconsistent with a plan does not preclude the governing board from adopting the amendment.

The governing board must approve a statement on plan consistency before adopting or rejecting any zoning amendment. The governing board decision does not have to be consistent with the plan, but any inconsistency must be identified and explained. The governing board statement must also explain why the board believes that the action taken is reasonable and in the public interest. The statement on plan consistency approved by the governing board is not subject to judicial review.

Table 22. Frequency Rezoning Decision Is Consistent with Planning Board Recommendations (n = 329)

Frequency	No. of jurisdictions	Percentage
Never	1	0
Rarely	1	0
Occasionally	10	3
Frequently	116	35
Almost always	180	55
Always	21	6

Figure 9. Frequency Rezoning Decision Consistent with Recommendations



The survey examined how cities and counties have begun to comply with this new statutory mandate. About three-fourths of both cities and counties reported that their jurisdictions' planning staffs prepare the initial draft statement on plan consistency considered by the planning board and the governing board. In municipalities with small populations, the petitioner or a board member often undertakes this task. Table 23 summarizes these results.

15. CENTER FOR URBAN AND REGIONAL STUDIES, UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL, LAND DEVELOPMENT PLAN GUIDELINES FOR NORTH CAROLINA LOCAL GOVERNMENTS: INCORPORATING WATER QUALITY OBJECTIVES IN A COMPREHENSIVE PLANNING FRAMEWORK I (1999).

Table 23. Preparation of First Draft of Plan Consistency Statement (%)

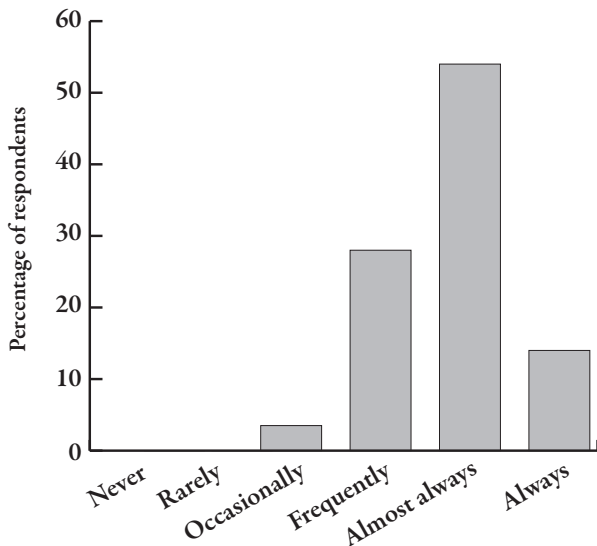
	<i>Petitioner</i>	<i>Planning or zoning staff</i>	<i>Local government attorney</i>	<i>Consultant for local government</i>	<i>Planning board member</i>	<i>Governing board member</i>	<i>Other</i>
<i>Municipalities</i>	14	73	3	2	6	2	1
< 1,000 (<i>n</i> = 51)	24	41	4	6	17	6	2
1,000–9,999 (<i>n</i> = 173)	18	72	3	2	3	1	1
10,000–24,999 (<i>n</i> = 30)	11	83	3	0	3	0	0
> 25,000 (<i>n</i> = 24)	4	96	0	0	0	0	0
<i>Counties</i>	17	77	6	0	0	0	0
1,000–24,999 (<i>n</i> = 13)	23	69	8	0	0	0	0
> 25,000 (<i>n</i> = 47)	11	85	4	0	0	0	0

Two-thirds of the jurisdictions reported that rezonings are either always or almost always consistent with adopted plans. Less than 4 percent of responding jurisdictions reported less than frequent consistency. Table 24 and Figure 10 summarize these responses. The results for cities and counties were substantially similar. They were also generally the same across population categories, with the exception of small-population towns being modestly more likely to report more frequent consistency between rezoning and plans.

Table 24. Frequency Rezoning Is Consistent with Plans (*n* = 306)

<i>Frequency</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
Never	2	0
Rarely	2	0
Occasionally	7	2
Frequently	90	29
Almost always	162	53
Always	43	14

Figure 10. Rezoning Consistent with Plans



The survey also inquired as to whether the number and types of rezonings undercut the purpose and intent of adopted plans. Just under half of the responding jurisdictions reported this does not happen at all. Another third reported it happens

only modestly. Only 2 percent of the jurisdictions reported that rezonings significantly undercut adopted plans. The remainder did not know.

One goal of the 2005 legislation mandating the plan consistency statement for all zoning amendments was to encourage greater familiarity with and use of plans by elected officials. Having just under a year’s experience with this new mandate, local governments reported this is happening to a moderate degree. A quarter of the local governments reported that the new legislation had made their elected officials more familiar with the substance of adopted plans, and just over half reported no noticeable impact (the rest of the respondents indicated they did not know the impact). While the responses were fairly consistent for cities and counties of all sizes, there were two exceptions. Thirty-eight percent of the cities with populations between 10,000 and 25,000 reported the requirement had made their elected officials more familiar with the plans, while only 10 percent of the cities with populations under 1,000 reported the same thing. This moderate increase in familiarity with the plans led to a similar increase in perceived rezoning and plan consistency. Just under a quarter of the jurisdictions

reported that this statutory mandate had, in this first year, led to rezonings being more consistent with adopted plans (while about two-thirds reported no noticeable impact).

Conflicts of Interest

The courts¹⁶ and state statutes have imposed important conflict-of-interest limitations on land development regulatory policy decisions. In 2005 the zoning statutes were amended to specifically address conflicts of interest. G.S. 160A-381(d) and G.S. 153A-340(g) provide that members of city councils and county boards of commissioners “shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.” These statutes also apply the same prohibition to advisory boards making recommendations on zoning amendments.

Some city and county codes also have ethics provisions regarding the disclosure of financial interests in matters coming before elected officials as well as requirements for nonparticipation in such matters. Many of the local code provisions apply to advisory boards as well as to elected officials.

The survey explored the question of how often these limitations on financial conflicts of interest arise during the consideration of zoning amendments. Responding jurisdictions reported this is infrequent for both planning boards and governing boards. Nearly three-quarters of the responding jurisdictions reported that a member of the planning board is never or only rarely required to be recused for a financial conflict of interest, with nearly a quarter of the respondents indicating this happens only occasionally. Only 2 percent of the responding jurisdictions reported this happens frequently or more often. These results are summarized in Table 25. Financial conflicts arise even less frequently for governing board members. Eighty-one percent of the jurisdictions reported that a city council or county board member either never or only rarely has to be recused from a zoning amendment vote due to a financial conflict and 17 percent reported this happens only occasionally. Again, only 2 percent of the responding jurisdictions reported this happens frequently or more often. Table 26 summarizes these results. Figure 11 depicts these results for both planning boards and governing boards.

Table 25. Frequency Planning Board Member Is Recused Due to Financial Conflict of Interest (n = 331)

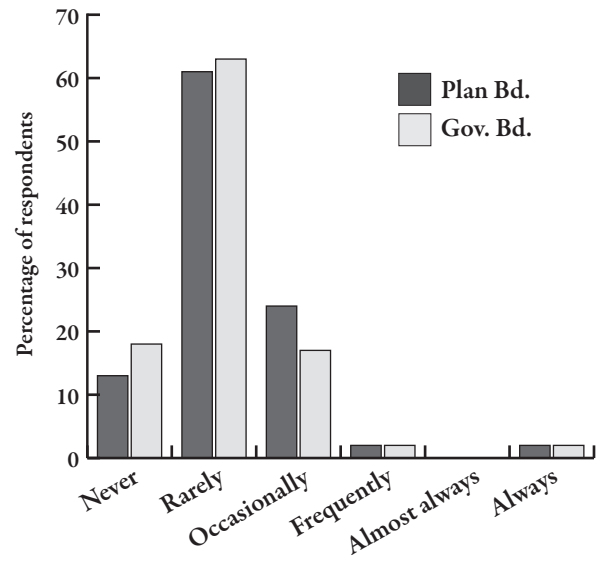
<i>Frequency</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
Never	44	13
Rarely	202	61
Occasionally	78	24
Frequently	4	1
Almost always	0	0
Always	3	1

16. County of Lancaster v. Mecklenburg County, 334 N.C. 496, 511, 434 S.E.2d 604, 614 (1993).

Table 26. Frequency Governing Board Member Is Recused Due to Financial Conflict of Interest (n = 332)

<i>Frequency</i>	<i>No. of jurisdictions</i>	<i>Percentage</i>
Never	60	18
Rarely	209	63
Occasionally	58	17
Frequently	2	1
Almost always	0	0
Always	3	1

Figure 11. Frequency Conflict of Interest Recusal Required



For the most part, responses to this question were consistent for both cities and counties and across population sizes. The only modest (and somewhat surprising) difference was that cities with smaller populations reported fewer conflicts. Cities with populations under 1,000 were somewhat more likely to report that recusals due to financial conflicts of interest never occur for planning board or governing board members, while cities with populations over 25,000 more often reported that these conflicts occur at least occasionally.

Judicial Review

Persons seeking judicial review of zoning amendments may bring a lawsuit under the state’s declaratory judgment statute, G.S. 1-253 to G.S. 1-267. This statute may be used to challenge the constitutionality, the validity, or the construction of ordinances. The statute does not allow for advisory opinions or judgments—a genuine controversy regarding a particular zoning decision must be involved. These cases are heard by the superior court.

Only a party with standing may bring a suit challenging a zoning ordinance amendment. The burden of establishing standing is on the party bringing the action. To have standing, a person must have a specific legal interest in the subject matter affected and be directly and adversely affected by the decision.¹⁷ A citizen or a taxpayer may not file a lawsuit as a member of the general public to bring a conceptual challenge to a legislative decision. G.S. 153A-348 and G.S. 160A-364.1 provide that a suit challenging a zoning amendment must be filed within two months of the legislative action that is the subject of the challenge.

Litigation challenging legislative zoning decisions is relatively rare. Only 21 of 339 responding jurisdictions (6 percent) reported having a rezoning decision challenged in court in the past year. Judicial challenges were made to 26 of the 3,029 rezoning decisions made in the previous year, an appeal rate of less than 1 percent. As shown in Table 27, this appeal rate is even lower than those previously reported for decisions on variances or special and conditional use permits.

Table 27. Frequency of Judicial Review Sought

<i>Type of approval (year surveyed)</i>	<i>Total number sought</i>	<i>Percent appealed to court</i>
Variance petitions (2002)	1,806	2.5
Special and conditional use permit applications (2004)	2,207	1.6
Zoning map amendments (rezonings) (2006)	3,029	0.9

Trial courts usually uphold the original decision of the city or county governing board. Responding jurisdictions reported ten cases had been decided in the previous year. Of these, the local government's decision was upheld in seven cases and reversed in one, and two decisions were remanded for further local government action.

This low rate of appeals and of judicial reversal is in part explained by the limited role of judicial review in legislative zoning decisions. Courts do not review the wisdom or social desirability of the decision on whether to adopt a rezoning or a text amendment. The action taken by the governing board is presumed by the courts to be valid and can be reversed only if there was a failure to follow mandated procedures or if the ordinance is arbitrary, capricious, or violates the constitutional rights of an affected party.

17. Taylor v. City of Raleigh, 290 N.C. 608, 620, 227 S.E.2d 576, 583 (1976). See also Davis v. City of Archdale, 81 N.C. App. 505, 344 S.E.2d 369 (1986).

Appendix A

Applicable Portion of Survey Instrument

Part Two: Zoning Amendments

7. Is a fee currently charged for a person to request a zoning **map** amendment (a rezoning)?

- No
 Yes. The amount of the fee is \$ _____

8. Is a fee currently charged for a person to request a zoning **text** amendment?

- No
 Yes. The amount of the fee is \$ _____

For the following questions about zoning amendments, please use the most recent 12 month period that is convenient for you or for which you have readily available information (you can use the past calendar year, fiscal year, or most recent 12 months). If you do not have precise numbers readily available, please make your best estimate where possible. The period you considered in completing this information was: _____ to _____.
Month/year Month/year

9. How many separate petitions for zoning **text** amendments were filed in this period? _____

10. Of these, please estimate how many of the proposed **text** amendments originated from each of these sources:

- Local government staff
 Planning board
 Governing board
 Member of public
 Other. Please list: _____

11. How many of these **text** amendments were adopted in this period? _____

How many are still pending? _____

12. How many petitions for zoning **map** amendments of each of the following types were filed and adopted in this period?

Rezoning to a conventional district:

_____ Filed _____ Adopted _____ Pending

Rezoning to an overlay district:

_____ Filed _____ Adopted _____ Pending

Rezoning to a floating district:

_____ Filed _____ Adopted _____ Pending

Rezoning to conditional use district:

_____ Filed _____ Adopted _____ Pending

Rezoning to conditional district:

_____ Filed _____ Adopted _____ Pending

13. What were the three most common land uses for which rezonings of **any type** were requested in your jurisdiction in this 12-month period?

1. _____ Most common
2. _____ Second most common
3. _____ Third most common

14. If your jurisdiction uses **conditional** rezonings or **conditional use district** rezonings, what were the three most common land uses for which this type of rezoning was requested in your jurisdiction in this 12-month period?

1. _____ Most common
2. _____ Second most common
3. _____ Third most common
4. _____ Not applicable

15. If your jurisdiction uses **conditional** rezonings or **conditional use district** rezonings, is there a trend in your jurisdiction towards more or fewer proposed rezonings to receive this type of rezoning?

- More
- Fewer
- About the same
- No particular trend
- Not applicable

16. Does the staff (either routinely or upon request) provide information other than required forms to persons considering petitioning for zoning map amendments?

- No
- Yes. If yes, what type of information is provided (check all that apply):
 - Information about zoning districts, forms, and/or procedures
 - Information about adopted municipal plans
 - Advice or information about their likelihood of success, political climate for rezonings, success of similar petitions
 - Advice or information on items council will expect to see addressed, typical conditions imposed on similar projects
 - Information on alternatives to a rezoning
 - Other. Please specify: _____

17. Who typically prepares the first draft of the required statement addressing whether a proposed zoning amendment is consistent with the plan, is reasonable, and in the public interest?

- Petitioner
- Local government planning or zoning staff
- Local government attorney
- Consultant for local government
- Planning board member
- Governing board member
- Other. Please specify: _____

18. What is the typical amount of time the decision-making board spends on an individual request for zoning **text** amendment (including the public hearing, debate, and making a decision)?

- Less than 15 minutes
- 15 to 30 minutes
- 31 to 60 minutes
- More than 60 minutes

19. What is the typical amount of time the decision-making board spends on an individual request for rezoning to a **conventional** zoning district (including the public hearing, debate, and making a decision)?

- Less than 15 minutes
- 15 to 30 minutes

- 31 to 60 minutes
- More than 60 minutes

20. What is the typical amount of time the decision-making board spends on an individual request for rezoning to a **conditional or conditional use district** rezoning (including the public hearing, debate, and making a decision)?

- Less than 15 minutes
- 15 to 30 minutes
- 31 to 60 minutes
- More than 60 minutes
- Not applicable

21. Does the local government staff (including other staff working for the government, such as COG staff or private consultant) make a presentation to the decision-making board regarding rezonings?

- No
- Yes. If yes, does the presentation include: (Check all that apply)
 - Factual information regarding the rezoning petition
 - Information/analysis on relation to adopted plans
 - Background information about the particular site involved
 - Information on past similar rezoning requests
 - Video, photographs, or building elevations
 - Site plans
 - Recommendation regarding decision
 - Other. Please specify: _____

22. How often does a person other than the petitioner and or city staff member appear at the public hearing on a rezoning?

- Never
- Rarely
- Occasionally
- Frequently
- Almost Always
- Always

23. How often do attorneys appear on behalf of the petitioner for a rezoning?

- Never
- Rarely
- Occasionally
- Frequently
- Almost Always
- Always

24. Does the appearance of an attorney at a rezoning hearing to represent the petitioner or opponent affect the outcome of the decision?

- Reduces chances for success for represented party
- Has no effect on outcome
- Increases chances for success for represented party
- Don't know

25. Does the appearance of neighbors at the hearing to **support** a rezoning petition affect the outcome of the decision?

- Reduces chances of approval
- Has no effect on outcome
- Increases chances of approval
- Don't know

26. Does the appearance of neighbors at the hearing to **oppose** a rezoning petition affect the outcome of the decision?

- Reduces chances of approval
- Has no effect on outcome
- Increases chances of approval
- Don't know

27. Have any protest petitions objecting to a proposed rezoning been filed in your jurisdiction in this period?

- Yes
- No

28. If any protest petitions were filed in this period, please provide the numbers for each of the following:

- Total number of protest petitions filed
- Number determined to be adequate to trigger $\frac{3}{4}$ supermajority requirement.

29. For those rezonings where an adequate protest petition was filed, what was the result on the vote on the rezoning:

- Number that did not receive majority vote in favor
- Number that received a majority in favor but not a $\frac{3}{4}$ majority in favor
- Number that received a $\frac{3}{4}$ majority in favor or higher

30. Is there an overall trend in the past five years as to how frequently protest petitions have been filed objecting to zoning amendments?

- More frequently filed
- Less frequently filed
- About the same over time
- Frequency varies from year to year, but no overall trend

31. How often is a zoning amendment submitted to a second public hearing because the governing board wants to consider a proposal that is substantially different from the amendment submitted to the initial public hearing?

- Never
- Rarely
- Occasionally
- Frequently
- Almost Always
- Always

32. How often is a member of the planning board excused/abstain from voting on a zoning amendment due to a conflict of interest?

- Never
- Rarely
- Occasionally
- Frequently
- Almost Always
- Always

33. How often is a member of the governing board excused/abstain from voting on a zoning amendment due to a conflict of interest?

- Never
- Rarely
- Occasionally
- Frequently
- Almost Always
- Always

34. If staff recommendations are made on rezonings, how often is the governing board's decision consistent with that recommendation?

- Never
- Rarely
- Occasionally
- Frequently
- Almost Always
- Always

35. How often is the governing board's decision on rezonings consistent with the planning board's recommendation?

- Never
- Rarely
- Occasionally
- Frequently
- Almost Always
- Always

36. How often is the governing board's decision on rezoning consistent with officially adopted plans?

- Never
- Rarely
- Occasionally
- Frequently
- Almost Always
- Always

37. In 2005 legislation was adopted that requires statements on plan consistency be approved by the planning board and governing board when acting on any zoning amendment. Has this had an effect on your governing board's familiarity with the substance of plan provisions?

- More familiar with the plan
- Less familiar with the plan
- No noticeable impact
- Don't know

38. What has been the effect of the 2005 legislative requirement for statements on plan consistency been on how often a rezoning decision is consistent with adopted plans?

- More often consistent with plans
- Less often consistent with plans
- No noticeable impact
- Don't know

39. To what extent does the number and type of rezonings approved by your governing board undercut the purpose and intent of the comprehensive plan and overall zoning scheme?

- Not at all
- A modest amount
- A significant amount
- Don't know

40. If a rezoning petition is **denied**, what are the most common reasons for the denial stated by the governing board (check all that apply)?

- Plan inconsistency
- Traffic impacts
- Inadequate water and sewer
- Inadequate school capacity
- Inconsistent with surrounding land uses
- Environmental impacts
- Other. Please specify: _____

41. What proportion of the total number of rezoning petitions considered in your jurisdiction during this period would be considered to be controversial (as opposed to a routine matter that attracts little public interest or concern)?

- less than 25%
- 25–49%
- 50–74%
- 75% or more

42. What is the typical period from the time a completed rezoning petition is filed to the time a decision is made?

- Less than 30 days
- 31 to 60 days
- 61 to 90 days
- 91 to 179 days
- 180 days or longer

43. Were any of the rezoning decisions made by your board during this 12-month period appealed to superior court?

- No
- Yes. If so, how many? ____

44. Have there been any superior court decisions during this 12-month period on rezonings that were appealed to court?

- No
- Yes. If yes, how many court decisions:
 - Upheld the decision
 - Reversed the decision
 - Remanded the case for further action.

If you would like to add any general comments about zoning amendments in your jurisdiction, please do so in the space below.

Appendix B

List of Responding Jurisdictions

Municipalities	Hoffman	Winfall	Claremont	Hildebran
	Jackson	Winton	Clinton	Hillsborough
	Lasker	Woodland	Coats	Hudson
Population < 1,000	Littleton		Columbus	Jamestown
Alamance	Lucama	Population	Conover	Kill Devil Hills
Aurora	Magnolia	1,000–9,999	Cramerton	King
Bald Head Island	Middlesex	Aberdeen	Creedmoor	Kitty Hawk
Banner Elk	Momeyer	Ahoskie	Dallas	Knightdale
Bayboro	Morven	Andrews	Davidson	La Grange
Bear Grass	New London	Angier	Denton	Lake Waccamaw
Beech Mountain	Newton Grove	Archdale	Drexel	Landis
Belville	Northwest	Ayden	Dunn	Laurel Park
Bogue	Ocean Isle Beach	Badin	East Spencer	Leland
Bunn	Oriental	Beaufort	Edenton*	Liberty
Candor	Parkton	Belhaven	Elizabethtown	Locust
Castalia	Peachland	Belwood*	Elkin	Longview
Caswell Beach	Pikeville	Bermuda Run	Elm City	Madison
Chimney Rock	Powellsville	Bessemer City	Emerald Isle	Maiden
Columbia	Red Cross	Beulaville	Erwin	Manteo
Como	Roxobel	Biltmore Forest	Fairbluff	Marion
Conway	Salemburg	Black Mountain	Fairview	Marshall
Dillsboro	Saratoga	Bladenboro	Farmville	Marshville
Dover	Star	Blowing Rock	Fletcher	Marvin
Duck	Stovall	Boiling Spring Lakes	Four Oaks	Maxton
East Laurinburg	Sugar Mountain	Brevard	Franklin	Mebane
Ellerbe	Taylortown	Broadway	Franklinton	Midland
Falcon	Teachey	Burgaw	Gibsonville	Mills River
Falkland	Topsail Beach	Cajah's Mountain	Glen Alpine	Mineral Springs
Foxfire Village	Turkey	Canton	Granite Falls	Morehead City
Greenevers	Vass	Cape Carteret	Green Level	Mount Olive
Hamilton	Walnut Creek	Carolina Beach	Hamlet	Mount Airy
Harrells	Washington Park	Carthage	Harrisburg	Murfreesboro
Hayesville	White Lake	Cherryville	Haw River	Murphy
Highlands	Whitsett	China Grove	Hertford	Nags Head
Hobgood				

**Joint city-county survey response filed.*

Newport	Wadesboro	Shelby	Warren	Sampson
North Wilkesboro	Walkertown	Southern Pines	Washington	Stanly
Norwood	Wallace	Tarboro	Wilson	Stokes
Oak Island	Warsaw	Wake Forest		Surry
Oak Ridge	Washington		Unincorporated	Union
Oxford	Waxhaw	Population > 25,000	Population > 25,000	Wake
Pilot Mountain	Waynesville	Apex	Alexander	Watauga
Pine Knoll Shores	Weaverville	Asheville	Bladen	Wayne
Pine Level	Weddington	Burlington	Brunswick	Wilkes
Pinebluff	Weldon	Cary	Buncombe	Yadkin
Pineville	Wendell	Chapel Hill	Burke	
Pittsboro	Wentworth	Charlotte*	Cabarrus	
Pleasant Garden	Wesley Chapel	Durham*	Caldwell	
Plymouth	West Jefferson	Fayetteville	Carteret	
Princeton	Whiteville	Gastonia	Catawba	
Ramseur	Wilkesboro	Goldsboro	Chatham	
Randleman	Williamston	Greensboro	Cleveland*	
Ranlo	Wilson's Mills	Greenville	Columbus	
Richlands	Windsor	Hickory	Craven	
River Bend	Wingate	High Point	Cumberland	
Robersonville	Winterville	Jacksonville	Davidson	
Rockingham	Woodfin	Matthews	Davie	
Rolesville	Yadkinville	Monroe	Durham*	
Roseboro	Zebulon	Raleigh	Forsyth	
Rose Hill		Rocky Mount	Franklin	
Rowland	Population	Salisbury	Gaston	
Roxboro	10,000–24,999	Sanford*	Granville	
Rutherford College	Albemarle	Thomasville	Guilford	
Rutherfordton	Asheboro	Wilmington	Halifax	
Saint Pauls	Boone	Winston-Salem*	Harnett	
Scotland Neck	Carrboro		Henderson	
Shallotte	Clayton	Counties	Hoke	
Siler City	Cornelius		Iredell	
Southport	Elizabeth City	Unincorporated	Jackson	
Sparta	Fuquay-Varina	Population < 25,000	Johnston	
Spencer	Garner	Alleghany	Lee*	
Spindale	Graham	Anson	Lenoir	
Spruce Pine	Havelock	Camden	Lincoln	
Stanfield	Hendersonville	Caswell	McDowell	
Stokesdale	Indian Trail	Chowan*	Mecklenburg*	
Summerfield	Kernersville	Currituck	Moore	
Sunset Beach	Kings Mountain	Dare	Nash	
Surf City	Kinston	Edgecombe	New Hanover	
Swansboro	Laurinburg	Hertford	Onslow	
Sylva	Lexington	Madison	Orange	
Tabor City	Lincolnton	Montgomery	Pender	
Taylorsville	Lumberton	Northampton	Person	
Trinity	Mint Hill	Pasquotank	Pitt	
Troutman	Mooresville	Perquimans	Randolph	
Troy	Newton	Polk	Richmond	
Tryon	Pinehurst	Scotland	Robeson	
Unionville	Reidsville		Rockingham	
Valdese	Roanoke Rapids		Rowan	

*Joint city-county survey response filed.

About the Author

David W. Owens is the Gladys H. Coates Distinguished Professor of Public Law and Government at the School of Government, the University of North Carolina at Chapel Hill, where he teaches and advises state and local officials about land use planning and regulation.

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David W. Owens

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