For quasi-judicial decisions, Section 8 of S.L. 2005-418 enacts G.S. 160A-388(e1) and G.S. 153A-345(e1) to require impartiality for board members making quasi-judicial decisions. This mle applies to any board exercising the functions of a board of adjustment or making a quasi-judicial decision (such as a decision on a special or conditional use permit). Members must not participate in or vote on any matter in which they have a fixed opinion on the case prior to the hearing; have had undisclosed ex parte communications; have close family, business, or associational ties with an affected person; or have a financial interest in the outcome of the case.

Moratoria

Given the time required to complete the procedures for adoption or amendment of development regulations or even to rezone property, local governments sometimes adopt moratoria on development to preserve the status quo while plans are made, management strategies are devised and debated, ordinances are revised, or other development management concerns are addressed. Moratoria are also sometimes used when there are insufficient public services necessary to support development, such as inadequate water supply or wastewater treatment capacity.

Before 2005, there was no explicit statutory authority in North Carolina to adopt moratoria on development, with the exception of adult business siting. There was also considerable confusion and litigation regarding the proper procedure for adoption of moratoria. While it was generally agreed that statutory provisions were needed to clarify these questions, debate as to how this should be accomplished was perhaps the single most contentious issue in consideration of S 814. Section 5 of S.L. 2005-426 enacts G.S. 160A-381(e) and G.S. 153A-340(h) to explicitly recognize the authority of cities and counties to adopt temporary moratoria of reasonable duration. The new legislation also codifies the limitations on the use of moratoria and clarifies the procedures to be used in adopting and extending moratoria. These amendments are effective for moratoria adopted or extended on or after September 1, 2005.

The new law explicitly allows temporary moratoria to be placed on city or county development approvals (such as zoning permits, plat approvals, building permits, or any other regulatory approval required by local ordinance). It requires cities and counties to be explicit at the time of adopting a moratorium as to the rationale for the moratorium, its scope and duration, and what actions the jurisdiction plans to take to address the needs that led to imposition of the moratorium. The ordinance establishing a moratorium must expressly include the following four points:

1. A clear statement of the problems or conditions necessitating the moratorium, what courses of action other than a moratorium were considered by the city or county, and why those alternatives were not considered adequate
2. A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems that led to its imposition
3. An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems that led to imposition of the moratorium
4. A clear statement of the actions proposed to be taken by the city or county during the moratorium to address the problems that led to its imposition, and a clear schedule for those actions

Renewal or extensions of moratoria are also limited by these statutes. Extensions are prohibited unless the city or county has taken all reasonable and feasible steps to address the problems or conditions that led to imposition of the moratorium. In addition to the four points noted above, an ordinance extending a moratorium must explicitly address this point and set forth any new facts or conditions warranting the extension.

The confusion in the case law regarding which process is to be followed in adopting moratoria is addressed by these statutes. They provide that if there is an imminent threat to public health and safety, the moratorium may be adopted without notice and hearing. Otherwise, a moratorium with a duration of sixty days or less requires a single public hearing with a notice published not less than seven days in advance of the hearing. and a moratorium with a duration of more than sixty days (and any extension

of a moratorium so that the total duration is more than sixty days) requires a public hearing with the same two published notices required for other land use regulations.

These statutes exempt several types of projects from the coverage of moratoria. In the absence of an imminent threat to public health and safety, moratoria do not apply to projects with legally established vested rights—that is, projects with a valid outstanding building permit or an outstanding approved site specific or phased development plan, or projects where substantial expenditures have been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval. The statutes also provide that moratoria do not apply to special or coiiditional use permits and preliminary or final plats for which complete applications have been accepted by the city or county before the call for a public hearing to adopt the moratorium. If a preliminary plat application is subsequently approved while a moratorium is in effect, that project can also proceed to final plat approval.

The new law also provides for expedited judicial review of moratoria. Any person aggrieved by the imposition of a moratorium may petition the court for an order enjoining its enforcement. Such an action is to be set for immediate hearing and given priority scheduling by both trial and appellate courts. In these challenges, the burden is on the city or county to show compliance with the procedural requirements of the statutory provisions regarding moratoria adoption.

Conditional Zoning

In the 1980s, North Carolina cities and counties began to utilize conditional use district zoning. In this type of zoning; a new district with no automatically permitted uses is created and a concurrent conditional use permit is issued for a particular development within the new district. The use of this technique was approved by the courts and later incorporated into the zoning statutes.

Recently, some local governments began to utilize a variation of this process termed conditional zoning, in this type of zoning, a site is rezoned and site specific conditions are incorporated directly into the ordinance requirements. Unlike conditional use district zoning, conditional zoning does not involve a concurrent quasi-judicial conditional use permit. The entire process is a legislative decision. In 2001 and 2002, the North Carolina Court of Appeals approved the use of this technique. While previous local legislation authorized use of this technique for Charlotte and Mecklenburg County, there was no mention of it in the state statutes.

Section 6 of S.L. 2005-426 amends G.S. 160A-382 and G.S. 153A-342 to provide that zoning ordinances may include "conditional districts, in which site plans and individualized development conditions are imposed." As with conditional use districts, the statute provides that land may be placed in a conditional district only upon petition of all of the owners of the land to be included.

The 2005 amendments also address the origin and nature of conditions that may be imposed. G.S. 160A-382(c) and G.S. 153A-342(c) provide that specific conditions may he suggested by the owner or the government, but only those conditions mutually acceptable to both the owner and the government may be incorporated into the ordinance or individual permit involved. These statutes also provide that any conditions or site specitic srandards imposed are limited to (1) those that address the conformance of the development and use of the site to city or county ordinances and officially adopted plans, and (2) those that address the impacts reasonably expected to be generated from the development or use of the site. These provisions regarding conditions apply to both conditional zoning and to special and conditional use district zoning.

Spot Zoning

Section 6 of S.L. 2005-426 amends G.S. 160A-382 and G.S. 153A-342 to codify the existing court-mandated analysis of the reasonableness of small-scale rezonings. North Carolina courts have held that spot zoning is arbitrary and capricious unless the local government establishes a reasonable basis for it. The amendment requires that a statement analyzing the reasonableness of the proposed rezoning be prepared as part of all rezonings to special/conditional use districts, conditional zonings, and other small-scale zonings. The statute does not specify who must prepare this statement or when it is required, thus leaving some flexibility to local governments. For example, the petitioner for a