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Into the Danger Zone: *Massey v. City of Charlotte* and the Fate of Conditional Zoning in North Carolina

Of all the dramatic growth in North Carolina's urban areas in the past decade,¹ the most startling changes have occurred in Mecklenburg County, where the ascension of local banks has fueled a development explosion.² In an attempt to channel the flood of residential and commercial development, the City of Charlotte enacted a zoning procedure, featuring a single public hearing, that encouraged neighborhood participation while remaining friendly to developers.³ The streamlined process enabled developers to negotiate with residents and incorporate compromises into the zoning proposal.⁴ Proponents of this purely legislative approach to zoning

1. The Brookings Institution Center on Urban and Metropolitan Policy ranked North Carolina as the sixth fastest growing state in the nation. See BROOKINGS INSTITUTION CENTER ON URBAN AND METROPOLITAN POLICY, *ADDING IT UP: GROWTH TRENDS AND POLICIES IN NORTH CAROLINA 1* (July 2000) (on file with the North Carolina Law Review) [hereinafter *ADDING IT UP*]. This growth centers largely on the state's metropolitan areas. *Id.* at 2. In the 1980s and 1990s the state's seven largest urban areas gained over seventy percent of the state's new residents; the three largest metropolitan clusters—Charlotte, Raleigh-Durham, and Greensboro/Winston-Salem—accounted for sixty-three percent of the state's population growth between 1980 and 1998. *Id.* at 4. Between 1992 and 1997, the state ranked fifth in the number of acres developed. *Id.* at 11. North Carolina's population increased by 1.4 million people in the 1990s, constituting a 21.4% growth rate during that decade. Scott Dodd, *Slow Answers to Rapid Growth*, CHARLOTTE OBSERVER, Jan. 7, 2001, at 1B [hereinafter Dodd, *Slow Answers*]. One out of every five North Carolina residents did not live in the state ten years ago. *Id.*

2. Lauren Markoe, *Albemarle Road Zoning Draws Suit*, CHARLOTTE OBSERVER, Dec. 17, 1999, at 1B. In 1980, Mecklenburg County had a population of 404,270. By 1996, the figure had ballooned nearly fifty percent to 597,339. Mecklenburg County, N.C., *Estimated Population by Census Tract*, at www.charmeck.nc.us/ciplanning/complan/demographics/estpopulation.htm (last visited May 15, 2001) (on file with the North Carolina Law Review). By 2000, the Charlotte metropolitan area, consisting primarily of Mecklenburg County, had a population of about 1,000,000, up twenty-five percent since 1990. Chris Burritt, *Ruling Tossing Out Zoning Process Raises Ire in Charlotte*, ATLANTA J. CONST., May 1, 2000, at B4. As the director of the UNC Charlotte Urban Institute observed, "There are more people moving here than anyone ever thought." Dodd, *Slow Answers*, *supra* note 1. According to the Charlotte Chamber of Commerce, 7838 new businesses arrived in Charlotte between 1988 and 1998, creating more than 68,000 jobs and 76.2 million square feet of work space. Paul Nowell, *Judge Orders Charlotte to Overhaul Its Fast-Track Rules on Development; At Least 50 Projects Are Now On Hold*, CHI. TRIB., Apr. 22, 2000, § 1, at 5.

3. Charlotte adopted its current zoning code in 1991. See CHARLOTTE, N.C., CODE OF ORDINANCES §§ 6.101–6.208 (2000), <http://www.municode.com> (last visited May 15, 2001).

4. See Scott Dodd, *Real Battle Waged Out of Sight*, CHARLOTTE OBSERVER, Apr. 9,

applaud its flexibility, efficiency, and capacity to nourish “compromise and consensus” between developers and residents—two groups with vastly disproportionate power and resources.⁵

In *Massey v. City of Charlotte*, however, Superior Court Judge Ben Tennille of the North Carolina Business Court invalidated Charlotte’s zoning process, halting development in its bulldozer tracks.⁶ Albemarle Land Company filed a petition in June 1999 to rezone approximately forty-two acres along Albemarle Road in Charlotte from residential to commercial use.⁷ Despite the company’s concessions, local residents resisted the development and filed a petition against the application.⁸ In the face of opposition from the zoning board, the planning commission, and its own planning staff,⁹ the Charlotte City Council, in a single legislative hearing, voted six-to-five to approve the rezoning and issue a

2000, at 1A [hereinafter Dodd, *Real Battle Waged*].

5. See, e.g., Record at 103, *Massey v. City of Charlotte*, No. COA00-905 (N.C. Ct. App. filed May 16, 2000) (affidavit of Fred Ernest Bryant) (conveying his belief that the process “creates avenues and opportunities for compromise and consensus-building”); *id.* at 106 (affidavit of Haywood Bush) (articulating his opinion that a legislative process “encourages compromise” between developers and neighboring residents); *id.* at 105 (affidavit of Stan Campbell) (stating his belief that a legislative process “encourages . . . consensus and compromise”); *id.* at 110 (affidavit of Mark C. Cramer) (asserting that a legislative process “encourages and facilitates a search for compromise and consensus” among the developer, local residents, and elected officials). Homeowners’ groups, such as the North Carolina Homeowners Association, have failed to match the developers’ lobbying clout. See Ames Alexander, *They Are Used to Getting Their Way*, CHARLOTTE OBSERVER, Dec. 9, 1998, at 19A (describing the lobbying success of the North Carolina Home Builders Association).

6. See *Massey v. City of Charlotte*, 2000 N.C. Bus. Ct. 4, ¶ 22 (Apr. 17, 2000), available at www.ncbusinesscourt.net/opinions; Nowell, *supra* note 2. Although the decision applies to the entire state, it invalidated a zoning process that was unique to Charlotte. See *infra* notes 74–78 and accompanying text.

7. *Massey*, 2000 N.C. Bus. Ct. ¶ 2. The company intended to build a retail center featuring a Target and a Lowe’s Home Improvement Warehouse and proposed a 100-foot buffer between the new construction and adjacent property. *Id.*

8. *Id.* Neighborhood residents opposed the retail center development because they feared it would depress the property value of their homes and affect their quality of life. See, e.g., Record at 129, *Massey* (No. COA00-905) (affidavit of Richard Gilbert) (listing five factors caused by the development that negatively affected neighborhood residents, including light pollution, noise pollution, and diminution of property value); see also *id.* at 122–23 (affidavit of Bethanie C. Massey) (citing an increase in noise, light, and traffic); *id.* at 125–126 (affidavit of Ragan Ryoti) (expressing fear for her children’s safety and concerns about a loss of privacy and erosion of the “neighborhood atmosphere”).

9. Markoe, *supra* note 2. In the words of city planners, the approved plan violated “all adopted land-use plans and policies for the area.” Scott Dodd, *City Invites New Zoning Ideas*, CHARLOTTE OBSERVER, May 3, 2000, at 3B [hereinafter Dodd, *City Invites*]. One neighbor wondered, “Why have a planning staff? Why have a zoning committee? What’s the point if nobody pays attention?” Markoe, *supra* note 2.

conditional use permit to Albermarle.¹⁰ One month later, frustrated neighboring residents sought judicial review of the decision via writ of certiorari.¹¹

The North Carolina Business Court granted certiorari and struck down Charlotte's conditional use district zoning ordinance. Judge Ben Tennille determined that Charlotte's purely legislative procedure for approving the rezoning exceeded its authority under state law.¹² Proper execution of conditional use district zoning, the court concluded, requires a two-step process: (1) a legislative hearing regarding rezoning, and (2) a quasi-judicial hearing regarding the issuance of a conditional use permit.¹³ Because Charlotte ignored the quasi-judicial element, its zoning decision concerning the Albemarle tract and subsequent decisions employing the same process were deemed invalid.¹⁴

The *Massey* decision casts doubt on Charlotte's efforts to shape future development.¹⁵ A reliable, predictable, and unquestionably legal zoning process is crucial to managing the city's emergence as one of the country's fastest growing metropolitan areas.¹⁶ Legal setbacks like *Massey* cost developers time and treasure in one of the nation's tightest markets for office space.¹⁷

10. *Massey*, 2000 N.C. Bus. Ct. ¶ 2; Scott Dodd, *17 Fought City Hall on Zoning and Won*, CHARLOTTE OBSERVER, Apr. 19, 2000, at 1A [hereinafter Dodd, *17 Fought City Hall*]. Lynn Wheeler, one of the two Council members who remain in office, admitted she "just didn't pay attention" to the proposal. *Id.* In an approach unique in the state, Charlotte began using a single-step conditional use zoning procedure in 1991. *See Massey*, 2000 N.C. Bus. Ct. ¶ 24; *supra* note 3; *infra* notes 74-78 and accompanying text.

11. Quasi-judicial zoning decisions, including the issuance of conditional use permits, are subject to judicial review. N.C. GEN. STAT. § 160A-381(c) (1999) ("[E]very such decision of the city council shall be subject to review by the superior court by proceedings in the nature of certiorari."). Acting on a motion from the Superior Court judge presiding over the case, the Chief Justice of the North Carolina Supreme Court designated the dispute as a complex business case and assigned it to the North Carolina Business Court. N.C. SUP. CT. R. 2.1(a) (empowering the Chief Justice to designate any dispute as a complex business case on the motion of a party or the presiding trial judge).

12. *Massey*, 2000 N.C. Bus. Ct. ¶ 22.

13. *Id.* ¶ 11.

14. *Id.* ¶ 35.

15. *See* Nowell, *supra* note 2.

16. *Id.* (citing an estimate from *Area Development* magazine). In the next twenty years, the Charlotte area reportedly will grow by as much as thirty-seven percent. *See* ADDING IT UP, *supra* note 1, at 4.

17. *See* Nowell, *supra* note 2. This delay postponed new development for much of the 2000 summer, forcing some developers to pay carrying costs on land they owned pending rezoning. J. Lee Howard, *Court Decision Puts Developers in Limbo*, BUS. J. OF CHARLOTTE, Apr. 21, 2000, at 3 [hereinafter Howard, *Developers in Limbo*]. The large backlog is exacerbated by the fact that Charlotte frequently uses conditional zoning—approximately eighty percent of the rezoning cases considered by the city council employ

Cognizant of this pressure, Charlotte reacted swiftly to the *Massey* decision.¹⁸ Within weeks, the planning commission sponsored public forums to educate developers and neighborhood activists about the city's options.¹⁹ Local officials wanted to avoid a complete overhaul of the one-step rezoning process, which had midmimed Charlotte's emergence as an urban center.²⁰ Instead, they merely sought to "fix what is specifically directed and required by the [*Massey* decision]."²¹ They also wanted to preserve the "open process" and "good communication" between elected officials, developers, and neighborhood groups.²² By creating a "high level of legal certainty" in the new rezoning process, they hoped to avoid future judicial rulings that could derail development and lead to

this process. See J. Lee Howard, *City Gets Bill Passed to Aid Rezoning*, BUS. J. OF CHARLOTTE, July 7, 2000, at 8. According to Keith MacVean, the Land Development Coordinator for the Charlotte-Mecklenburg Planning Commission, between 1997 and 1999, the City of Charlotte considered 254 conditional zoning requests, compared to 74 general district proposals. Record at 112-13, *Massey v. City of Charlotte*, No. COA00-905 (N.C. Ct. App. filed May 16, 2000) (affidavit of Keith MacVean). At the end of 1999, there were twenty-eight buildings with 4.4 million square feet of office space under construction, including office towers of nineteen and thirty-two stories. *Id.* *Massey* resulted in the indefinite suspension of forty-seven active rezoning cases. See Scott Dodd & Lauren Markoe, *Stop Sign for Development*, CHARLOTTE OBSERVER, Apr. 18, 2000, at 1A; see also *Charlotte Plans Appeal of Ruling on Zoning*, MORNING STAR (Wilmington, N.C.), Apr. 26, 2000, at 3B (reporting that the decision froze about fifty projects involving several hundred million dollars).

18. See Dodd, *City Invites*, *supra* note 9.

19. See *id.*; Charlotte-Mecklenburg Planning Commission, Conditional Rezoning Process, at www.charmeck.nc.us/ciplanning/rezsub/rezoning/newcdrezoningprocess/conditionalrezoningprocess.htm (last modified May 9, 2001) (on file with the North Carolina Law Review). The city's planning director strongly supported the single-step process, and the planning board reluctantly developed a two-step procedure in the hope that it would not become necessary. Scott Dodd, *Zoning Proposal Will Look Familiar*, CHARLOTTE OBSERVER, June 6, 2000, at 1B [hereinafter Dodd, *Zoning Proposal*].

20. See Burritt, *supra* note 2.

21. Charlotte-Mecklenburg Planning Commission, Conditional Rezoning Process Guiding Principles, at www.charmeck.nc.us/ciplanning/rezsub/rezoning/newcdrezoningprocess/guidingprincp.htm (last modified May 9, 2001) (on file with the North Carolina Law Review) [hereinafter Guiding Principles]. Martin Cramton, Charlotte's Planning Director, wanted to revise the single-step system to ensure greater community involvement and closer attention to overall land-use plans (the crucial provisions of the eventual legislative fix in July). See Act to Permit Mecklenburg County to Engage in Conditional Zoning, 2000 N.C. Sess. Laws 77; Act to Permit the City of Charlotte and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, and Pineville to Engage in Conditional Zoning, 2000 N.C. Sess. Laws 84; Dodd, *Zoning Proposal*, *supra* note 19.

22. Guiding Principles, *supra* note 21. This principle reflects an aversion to conflict characteristic of North Carolina's business community. See *supra* note 5 and accompanying text. Opponents of the quasi-judicial step also worry that "adversarial [conditional] use hearings leave a bad image" for the city. Chapel Hill Town Council meeting, Oct. 18, 2000 (statement of Lane Kendig).

instability.²³ Encouraged and joined by the Albemarle Land Company, Charlotte appealed the *Massey* decision. Further, officials turned to the North Carolina General Assembly for help in passing a law that enabled Mecklenburg County and its six municipalities to perpetuate their existing zoning process.²⁴ The law approved a process similar to the one Judge Tennille invalidated, but added a handful of precautions to address concerns raised by the court's ruling.²⁵ Because this authorization expires in August 2001,²⁶ real estate development in Charlotte continues on uncertain footing as developers appeal the decision.²⁷

23. Guiding Principles, *supra* note 21. The climate of uncertainty may be traced to Charlotte's decision to use an exclusively legislative zoning process, which probed the procedural limits established under North Carolina case law. *See infra* notes 56-68 and accompanying text. "When you create an aura of uncertainty," noted one executive contemplating new construction in Charlotte, "it can make it difficult, if not impossible, to do business." Howard, *Developers in Limbo*, *supra* note 17 (quoting Jeff Brotman, chairman of Costco Cos., Inc.). Charlotte's planning commission seemed more concerned with refining an inherently legislative process than achieving certainty by complying with the spirit, as well as the letter, of *Massey*. Dodd, *Zoning Proposal*, *supra* note 19.

24. *See* Act to Permit Mecklenburg County to Engage in Conditional Zoning § 1(a) (authorizing Mecklenburg County to employ a "conditional zoning district" that "shall not require the issuance of a conditional use . . . permit or permitting process apart from the establishment of the district and its application to particular properties"); Act to Permit the City of Charlotte and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, and Pineville to Engage in Conditional Zoning § 1(a) (granting municipalities in the county the same authority); Anna Griffin, *Senate Approved Bill Allows Zoning to Resume*, CHARLOTTE OBSERVER, June 13, 2000, at 1B (explaining that the statutes authorize the resumption of Charlotte's zoning process). The new laws authorize Mecklenburg County and the City of Charlotte to engage in conditional zoning, a practice outlawed by *Decker v. Coleman*, 6 N.C. App. 102, 107-08, 169 S.E.2d 487, 491 (1969).

25. *See Massey*, 2000 N.C. Bus. Ct. ¶ 34. The legislation requires the council to make decisions in light of overall land-use plans, prohibits lame-duck votes in the month after a council election, and demands that developers meet with neighbors before seeking the council's approval of a rezoning. Act to Permit Mecklenburg County to Engage in Conditional Zoning § 1; Act to Permit the City of Charlotte and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, and Pineville to Engage in Conditional Zoning § 1. By expressly enabling Mecklenburg County and its municipalities to employ an exclusively legislative process, the bill compromises the foundation of Judge Tennille's opinion: that Charlotte had no authority under state law to use the procedure. *See Massey*, 2000 N.C. Bus. Ct. ¶ 11; *see also* Griffin, *supra* note 24 (reporting the close connection between the *Massey* holding and the General Assembly's action).

26. Act to Permit Mecklenburg County to Engage in Conditional Zoning § 2; Act to Permit the City of Charlotte and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, and Pineville to Engage in Conditional Zoning § 2; Griffin, *supra* note 24. State Senator Dan Clodfelter, who sponsored the Senate bill, emphasized the temporary nature of the legislation. *See* Griffin, *supra* note 24. "This gives [the Charlotte City Council] a framework," he told reporters. *Id.* "It says if they want a permanent solution, they have to come back next year." *Id.*

27. Smith Helms Mulliss, & Moore, L.L.P., Charlotte Rezoning Issue Finally Resolved, City Council Adopted Land-Zoning Ordinance Amendment Monday July 24th, *at*

Appreciating *Massey's* implications requires an understanding of conditional use zoning law in North Carolina.²⁸ State courts have struck down several attempts by local governments to hold landowners to their promises to the zoning authority, such as contract zoning and unreasonable spot zoning.²⁹ North Carolina courts also

www.shmm.com/hottopics/realestate/resolution.htm (last visited May 15, 2001) (on file with the North Carolina Law Review). The city's planning commission voted unanimously to amend the local ordinance allowing rezonings based on the new guidelines, and the Charlotte City Council approved the amendment on July 24, 2000. See CHARLOTTE, N.C., CODE OF ORDINANCES app. A, §§ 6.103 (2000), <http://www.municode.com> (last visited May 15, 2001); see also Act to Permit Mecklenburg County to Engage in Conditional Zoning § 1 (authorizing Mecklenburg County to employ conditional zoning); Act to Permit the City of Charlotte and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, and Pineville to Engage in Conditional Zoning § 1 (empowering these municipalities to use conditional zoning). The law concerning Mecklenburg County suggests a degree of hesitance by the General Assembly. It only applies to conditional zoning decisions made after the *Massey* decision was announced, and it remains in effect only until August 31, 2001. Act to Permit Mecklenburg County to Engage in Conditional Zoning § 2. Significantly, the legislation "shall not affect any rezoning case that is the subject of pending litigation," which means the new law should not disturb the *Massey* appeal. *Id.*

28. Since New York City passed the first zoning ordinance in 1916, city planners have used zoning to regulate land use. See *Lincoln Trust Co. v. Williams Bldg. Corp.*, 128 N.E. 209, 209 (N.Y. 1920); see also *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926) (establishing the general validity of comprehensive zoning as a planning tool); 1 EDWARD H. ZEIGLER, JR., RATHKOPF'S THE LAW OF PLANNING AND ZONING § 1.01, at 1-16 (4th ed. 2000). This tool initially protected residential neighborhoods from commercial and industrial encroachment and planners now employ it to regulate myriad land uses. See *id.* § 1.01, at 1-17. The validity of zoning stems from the police power inherent in the state's sovereign power to regulate behavior to protect the health, safety, or general welfare of the community. See LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 1046-47 (3d ed. 2000); ZEIGLER, *supra*, § 1.01, at 1-16. Like most states, North Carolina delegated some of this power to local governments. N.C. GEN. STAT. §§ 160A-381 to -382 (1999). Consequently, zoning ordinances cannot exceed the authority granted by the enabling legislation. See *Heaton v. City of Charlotte*, 277 N.C. 506, 513, 178 S.E.2d 352, 356 (1971) (maintaining that limitations in the enabling statute constrain a municipality's authority to amend a zoning ordinance); *Decker v. Coleman*, 6 N.C. App. 102, 106, 169 S.E.2d 487, 490 (1969) (describing these enabling statutes as the "sole source" of a municipality's power to zone). In addition to this constraint, local governments must abide by restrictions on the police power itself. If a zoning regulation appears unreasonable, arbitrary, or capricious when applied to a specific parcel of property, courts will generally find it invalid as an improper exercise of the police power. See *Village of Euclid v. Amber Realty Co.*, 272 U.S. 365, 395 (1926).

29. See *Massey*, 2000 N.C. Bus. Ct. ¶ 10; see also *Decker*, 6 N.C. at 109, 169 S.E.2d at 492 (deeming a landowner's promise to maintain a traffic-free buffer on one side of tract unenforceable); STEPHEN E. DAVENPORT & PHILIP P. GREEN, JR., SPECIAL USE AND CONDITIONAL USE DISTRICTS: A WAY TO IMPOSE MORE SPECIFIC ZONING CONTROLS 4-5 (1980). For example, municipalities may not engage in contract zoning, where the landowner promises to use the tract in a specific way in exchange for the city council's promise to approve the zoning application. See DAVENPORT & GREEN, *supra*, at 2-3. By binding itself to a contract with the property owner, the city council impermissibly surrenders the police power, which must be exercised in the public interest and not for

forbid conditional zoning, where a city council imposes conditions in the zoning ordinance for a specific tract that are not imposed on similarly zoned tracts in the municipality.³⁰ Conditional use district zoning (not to be confused with conditional zoning) was designed to give local governments the ability to hold landowners to their promises without running afoul of prohibitions against contract zoning, spot zoning, and conditional zoning.³¹ Under this scheme, a landowner must request a rezoning to a conditional use district, and the local government must issue a conditional use permit before any desired use will be permitted.³² By placing the conditions in the permit, not in the zoning ordinance itself, this approach neatly avoids the objectionable aspects of conditional zoning.³³

private gain. See DAVID W. OWENS, LEGISLATIVE ZONING DECISIONS: LEGAL ASPECTS 86 (2d ed. 1999). Such a case of "pure" contract zoning has not surfaced in North Carolina, but state courts have invalidated zoning decisions based on implied promises about a parcel's development. *Allred v. City of Raleigh*, 277 N.C. 530, 545, 178 S.E.2d 432, 441 (1971) (invalidating as contract zoning a decision where the city considered only the landowner's proposed use, not all permitted uses in the zoning classification). Courts have also invalidated single-purpose zoning, where a municipality crafts a new kind of zoning district for a landowner's property, permitting only the use proposed by the landowner. See *Helms v. City of Charlotte*, 255 N.C. 647, 653-54, 122 S.E.2d 817, 822 (1961) (concluding that a zoning ordinance cannot deprive a property owner of the reasonable value of her land and all practical uses of it, including limiting owners to a single use). Spot zoning, also prohibited in North Carolina in some circumstances, applies single-purpose zoning to a relatively small tract of land enjoying zoning different from the surrounding area. See *Chrismon v. Guilford County*, 322 N.C. 611, 625-27, 370 S.E.2d 579, 587-89 (1988); *Blades v. City of Raleigh*, 280 N.C. 531, 549-50, 187 S.E.2d 35, 45-46 (1972); OWENS, *supra*, at 72, 74-75. Spot zoning is legal in North Carolina only if a local government can affirmatively show that its action was reasonable. *Id.* at 76. The *Chrismon* court suggested that reasonable spot zoning would be permitted if it met certain criteria. See *Chrismon*, 322 N.C. at 628, 370 S.E.2d at 589. Spot zoning decisions are evaluated for reasonableness on a case-by-case basis using several factors that "exist to provide guidelines for a judicial balancing of interests." *Id.* The factors include: the size of the tract; compatibility with the locality's comprehensive plan; the benefits and detriments to the owner, the neighbors, and the community; and the relationship between the previous and the proposed uses of the property. *Id.*

30. See, e.g., *Decker*, 6 N.C. App. at 106-08, 169 S.E.2d at 490-91 (holding conditions on a rezoning decision unenforceable on the landowner).

31. See DAVENPORT & GREEN, *supra* note 29, at 6. Conditional use district zoning also avoids problems with single-purpose zoning, the practice of creating a new kind of zoning district for each applicant's property, which permits only the use promised by the landowner. *Id.* at 5.

32. *Id.* at 7. Practically, this means that any land use must be authorized by a conditional use permit once the land has been rezoned as a conditional use district.

33. *Id.* at 8-9. North Carolina authorized conditional use district zoning in 1985, amending the enabling statutes to give local governments more flexibility over zoning decisions than the existing legal apparatus allowed. N.C. GEN. STAT. § 160A-382 (1999).

The flexibility of conditional use district zoning, however, demands adherence to strict procedural guidelines.³⁴ As initially conceived, conditional use district zoning consisted of two steps: (1) a legislative process to consider the rezoning requests,³⁵ and (2) a quasi-judicial proceeding to determine whether a permit is appropriate under the circumstances presented by the application.³⁶ Different standards of judicial review apply to each step. Judges generally defer to the judgment of local officials regarding legislative zoning decisions and intervene only to correct arbitrary or unreasonable acts.³⁷ In contrast, a local government's quasi-judicial decision to issue a conditional use permit faces more rigorous scrutiny.³⁸ In addition to acting reasonably, a municipality must act in good faith based on findings of fact that are supported by competent evidence in

34. DAVENPORT & GREEN, *supra* note 29, at 10–12. The original champions of conditional use district zoning, Stephen Davenport and Philip Green, warned that the practice “is not for amateurs.” *Id.* at 10. A local government which is not “meticulous” in following the process, they cautioned, “stands a good chance of not only having its [conditional use] provisions invalidated by the courts but also (in extreme cases) endangering its entire zoning ordinance.” *Id.* Such “maladministration,” they warned, “could be catastrophic.” *Id.* at v.

35. Routine zoning decisions are legislative because they are made by elected officials or their designees exercising the police power in the public interest. *See supra* notes 28–29 and accompanying text.

36. *Humble Oil & Refining Co. v. Bd. of Aldermen*, 284 N.C. 458, 469–70, 202 S.E.2d 129, 136–37 (1974); *Massey*, 2000 N.C. Bus. Ct. ¶¶ 25–28; DAVENPORT & GREEN, *supra* note 29, at 11–12. A landowner may apply to have her property rezoned to a conditional use district and submit a conditional use permit application simultaneously. *See* Louis W. Doherty, Comment, *Chrismon v. Guilford County and Hall v. City of Durham: Redefining Contract Zoning and Approving Conditional Use Zoning in North Carolina*, 68 N.C. L. REV. 177, 203 (1989). Regardless of the sequence, however, the municipality must retain a quasi-judicial element. *See Humble Oil*, 284 N.C. at 471, 202 S.E.2d at 138. Furthermore, the quasi-judicial decision to issue a permit must rely on “competent, material, and substantial evidence that establishes the existence or nonexistence of the facts” presented by the application. DAVENPORT & GREEN, *supra* note 29, at 12.

37. As the North Carolina Court of Appeals has noted, a court “may not substitute its judgment for that of the legislative body concerning the wisdom of imposing restrictions upon the use of properties within that body’s legislative jurisdiction.” *Blades v. City of Raleigh*, 280 N.C. 531, 550, 187 S.E.2d 35, 46 (1972). The court may, however, “inquire into procedures followed by the board . . . and determine whether the ordinance was adopted in violation of required procedures, or is arbitrary and without reasonable basis in view of the established circumstances.” *Id.* at 550–51, 187 S.E.2d at 46; *see also In re Parker*, 214 N.C. 51, 55, 197 S.E. 706, 709 (1938) (elucidating the presumption of validity).

38. *See Humble Oil*, 284 N.C. at 469–70, 202 S.E.2d at 136–37; *Zopfi v. City of Wilmington*, 273 N.C. 430, 438, 160 S.E.2d 325, 333 (1968). The theoretical explanation for this difference lies in the distinction between legislative zoning decisions (enacting public policy under the police power) and quasi-judicial decisions (applying that policy to specific tracts). *See OWENS, supra* note 29, at 10–12; *infra* notes 42–44 and accompanying text.

the record of the proceeding.³⁹ The quasi-judicial decision must be insulated from “the whim of the decision-making body” and must conform to due process requirements including notice, an opportunity for parties to be heard, and an opportunity to confront opposing witnesses.⁴⁰ The North Carolina Supreme Court signaled the importance of this standard by qualifying its support for conditional use district zoning with repeated warnings that it must be “properly implemented.”⁴¹

The *Massey* decision outlawing Charlotte’s one-step conditional use district zoning process arose from this context. Under the enabling statute,⁴² the court concluded, a conditional use district zoning procedure requires a two-step process.⁴³ Without the second step, the quasi-judicial hearing, the zoning decision would be based on the proposed use of the property—a classic illustration of illegal contract zoning.⁴⁴ Charlotte, by contrast, made a rezoning decision and issued a permit in a single, legislative procedure.⁴⁵ Almost by definition, then, Charlotte’s decision constituted either contract zoning or an improperly executed conditional use district zoning.⁴⁶ Because either alternative exceeds a local government’s authority under the enabling statute, the zoning decision must be invalid.⁴⁷

This reasoning, however, struggles to impose a false sense of order on the somewhat unsettled state of zoning law in North Carolina. In *Massey*, Judge Tennille asserted that courts have invalidated “most methods of zoning which require a landowner to develop his property in accordance with specific conditions or subject

39. See, e.g., *Zoppi*, 273 N.C. at 438, 160 S.E.2d at 333.

40. *DAVENPORT & GREEN*, *supra* note 29, at 11–12; see also *OWENS*, *supra* note 29, at 12 (listing the elements of quasi-judicial proceedings).

41. *Chrismon v. Guilford County*, 322 N.C. 611, 622, 370 S.E.2d 579, 586 (1988). The court added that conditional use district zoning must be “carried out properly” and “carefully applied.” *Id.* at 622–23, 370 S.E.2d at 586. The court also “hasten[ed] to add that, just as this type of zoning can provide much-needed and valuable flexibility to the planning efforts of local zoning authorities, it could also be easily abused.” *Id.* at 622, 370 S.E.2d at 586.

42. N.C. GEN. STAT. § 160A-382 (1999); see also *supra* notes 28–29 and accompanying text (explaining the origin and function of enabling statutes in zoning).

43. N.C. GEN. STAT. § 160A-382; *Massey*, 2000 N.C.B.C. at 12.

44. *Massey*, 2000 N.C. Bus. Ct. ¶ 11; see, e.g., *Blades v. City of Raleigh*, 280 N.C. 531, 550–51, 187 S.E.2d 35, 46 (1972) (invalidating as contract zoning Raleigh’s decision to rezone a tract based on the landowner’s promised use of the property).

45. *Massey*, 2000 N.C. Bus. Ct. ¶¶ 34–35.

46. See *id.* ¶¶ 18–21.

47. See *id.* ¶¶ 34–35; *supra* notes 29–36 and accompanying text (describing the limits of local government action under the enabling statutes).

to certain limitations.”⁴⁸ Since the 1970s, however, state courts have recognized the need for more precise zoning tools.⁴⁹ Consequently, the once-clear prohibitions against spot zoning, contract zoning, and conditional zoning now appear less clear than in the past.⁵⁰

The uncertainty regarding rezoning rules arises mostly from the North Carolina Supreme Court’s decision in *Chrismon v. Guilford County*,⁵¹ which upheld the validity of conditional use district zoning.⁵² The court expressly approved the practice because it “add[s] a valuable and desirable flexibility to the planning efforts of local authorities throughout [the] state.”⁵³ In distinguishing contract zoning from conditional use district zoning, the court held that the latter “features merely a unilateral promise from the landowner” regarding future use, instead of a bilateral contract binding the zoning authority (and illegally surrendering the police power).⁵⁴ Following

48. *Massey*, 2000 N.C. Bus. Ct. ¶ 11. This statement remains literally true; decisions handed down in the late 1960s and early 1970s rejected zoning decisions that compelled landowners to meet certain conditions. See *Blades*, 280 N.C. at 550, 187 S.E.2d at 46; *Allred v. City of Raleigh*, 277 N.C. 530, 546-47, 178 S.E.2d 432, 441 (1971); *Decker v. Coleman*, 6 N.C. App. 102, 106-07, 169 S.E.2d 487, 490-91 (1969).

49. Judge Tennille even noted this desire, a response to “fast-paced change” and “significant growth” in North Carolina’s metropolitan areas. *Massey*, 2000 N.C. Bus. Ct. ¶ 29. The opinion acknowledges that “[t]he sheer number of zoning decisions existing in today’s rapid growth areas makes the use of a quasi-judicial proceeding a burden on zoning authorities in those areas.” *Id.* In fact, the North Carolina Supreme Court explicitly praised conditional use district zoning for its “valuable and desirable flexibility.” *Chrismon v. Guilford County*, 322 N.C. 611, 622, 370 S.E.2d 579, 586 (1988). For evidence of a desire for more flexibility in land use controls, see Judith Welch Wegner, *Moving Toward the Bargaining Table: Contract Zoning, Development Agreements, and the Theoretical Foundations of Government Land Use Deals*, 65 N.C. L. REV. 957, 1038 (1987) (providing theoretical support for more flexible ways of binding public officials and private landowners); DAVENPORT & GREEN, *supra* note 29, at v (stating that the concept of conditional use district zoning developed “in response to persistent requests from planners and other local officials who wanted a legal war to hold developers to promises made when they applied for their land”). Furthermore, a trend toward greater flexibility in zoning arrangements has influenced zoning law since the 1920s. 1 PATRICK J. ROHAN, *ZONING AND LAND USE CONTROLS*, § 5.01[1], at 5-3 n.2 (2000).

50. Much of this confusion arises from the North Carolina Supreme Court’s decision in *Chrismon*, 322 N.C. at 622, 370 S.E.2d at 586; see *infra* text accompanying notes 51-68. The court’s subsequent holding in *Hall v. City of Durham* further blurred the lines, however, by rejecting the conclusion that “rezoning may not be based . . . on assurances that the applicant will make a specific use of the property.” 323 N.C. 293, 297-98, 372 S.E.2d 564, 567 (1988). The court upheld the city’s rezoning decision against the plaintiffs’ charge of contract zoning, but it invalidated the action on other grounds. *Id.* at 298-99, 305, 372 S.E.2d at 567-68, 572.

51. 322 N.C. 611, 370 S.E.2d 579 (1988).

52. *Id.* at 617, 370 S.E.2d at 583.

53. *Id.* at 622, 370 S.E. 2d at 586.

54. *Id.* at 636, 370 S.E.2d at 594. Under this formulation, the local zoning authority retains its independence because it makes no reciprocal promise to the landowner. See *id.*

Chrismon, constraints on zoning agreements between a local government and a landowner became less rigid.⁵⁵

The *Chrismon* decision blurred the legal landscape for municipalities more than the clear-eyed language of *Massey* suggests.⁵⁶ Before *Chrismon*, if a local government made a zoning change based on a landowner's promise to construct a certain building, that decision would have constituted illegal contract zoning.⁵⁷ *Chrismon* allowed local governments to consider a specific development proposal when making a zoning decision,⁵⁸ but the court failed to stipulate specific procedural guidelines for this function.⁵⁹ Charlotte's one-step legislative process exploited this omission and forced the *Massey* court to determine exactly how much latitude *Chrismon* afforded local governments.

The *Massey* opinion presumed that because *Chrismon* approved conditional use district zoning for the purpose of allowing local officials to consider a proposed land use when evaluating a zoning application,⁶⁰ the North Carolina Supreme Court intended local

55. See Doherty, *supra* note 36, at 178; see also Wegner, *supra* note 49, at 1038 (arguing for "[p]ublic-private dealmaking as a means of fashioning land use controls" to produce "a more flexible, equitable, and efficient approach").

56. See Doherty, *supra* note 36, at 179 (raising "serious questions" after *Chrismon* about "the practical application of conditional use zoning"); see also Wegner, *supra* note 49, at 1038 (speculating that it "remains to be seen" whether new types of public-private deal-making "can be brought to fruition" within legal constraints).

57. See *Allred v. City of Raleigh*, 277 N.C. 530, 545, 178 S.E.2d 432, 441 (1971) (holding that rezoning may only be effected by the exercise of legislative power rather than by special arrangements with the owner of the land). To Justice Webb, who dissented in *Chrismon*, the majority holding contradicted this principle and overruled earlier decisions outlawing spot zoning and contract zoning on which *Massey* relies. See *Chrismon*, 322 N.C. at 641-42, 370 S.E.2d at 597 (Webb, J., dissenting) (citing *Blades v. City of Raleigh*, 280 N.C. 531, 187 S.E.2d 35 (1972); *Allred*, 277 N.C. 530, 178 S.E.2d 432 (1971)).

58. To reiterate, this is the exact capability which conditional use district zoning provides. Before its creation, a municipality considering specific uses of a tract when rezoning it ran afoul of prohibitions against contract zoning and/or conditional zoning. See *supra* notes 29-33 and accompanying text.

59. *Chrismon*, 322 N.C. at 622, 370 S.E.2d at 586. The opinion quoted from the relevant enabling statute, North Carolina General Statutes section 153A-342 (1987), which required a conditional use permit but stopped short of describing a procedure for its issuance. *Id.* at 621, 370 S.E.2d at 585 (quoting N.C. GEN. STAT. § 153A-342 (1987)). It also described Guilford County's two-step process, as "appropriate." *Id.* at 638, 370 S.E.2d at 595. The court recognized that conditional use district zoning "could lead to private or public abuse of government power" and urged that certain "limiting standards" must be "consistently and carefully applied." *Id.* at 622-23, 370 S.E.2d at 586. The standards it described, however, merely prohibit contract and unreasonable spot zoning and require that conditional use district zoning to be reasonable, in the public interest, and neither arbitrary nor unduly discriminatory. *Id.*

60. See *id.* at 622, 370 S.E.2d at 586.

officials to adhere to the two-step process.⁶¹ This interpretation of *Chrismon*, the linchpin of *Massey*, rests on a solid foundation.⁶² The *Chrismon* majority, however, also announced that North Carolina was joining a “growing trend of jurisdictions in recognizing the validity of properly employed conditional use zoning.”⁶³ No other jurisdiction, however, employed conditional use district zoning at the time;⁶⁴ the court approved, perhaps unintentionally, a zoning mechanism unique to North Carolina.⁶⁵ The possibility existed, then, that the court had joined other jurisdictions in approving *conditional zoning* (as opposed to *conditional use district zoning*) of a sort presumably outlawed in the state since 1969.⁶⁶ *Chrismon*’s ambiguous

61. See *Massey*, 2000 N.C. Bus. Ct. ¶ 35. Judge Tennille stated that this procedure “was central to the [*Chrismon*] court’s decision to uphold conditional use district zoning.” *Id.* ¶ 26. Further, according to Judge Tennille, “[t]o attempt to eliminate the quasi-judicial aspect of conditional use district zoning runs afoul of the grant of authority” in the enabling statute. *Id.*; see also N.C. GEN. STAT. § 160A-382 (1999) (granting authority to create conditional use districts “only upon the issuance of a . . . conditional use permit”).

62. First, the enabling statute requires the issuance of a conditional use permit, N.C. GEN. STAT. § 160A-382, and a proceeding with quasi-judicial features. See N.C. GEN. STAT. §§ 160A-388(a)–(g) (1999). Second, *Chrismon* deemed Guilford County’s two-step process of conditional use district zoning an “appropriate” procedure. *Chrismon*, 322 N.C. at 638, 370 S.E.2d at 595. Third, including a quasi-judicial step bolsters protections for adjacent property owners who may have limited legislative influence. See *Massey*, 2000 N.C. Bus. Ct. ¶¶ 27–29. The presumption of validity inherent in judicial review of legislative zoning decisions, Judge Tennille concluded, “does not adequately protect neighboring landowners who seek to prevent specific uses of adjacent property.” *Id.* ¶ 27.

63. *Chrismon*, 322 N.C. at 621, 370 S.E.2d at 585. The *Chrismon* opinion improperly cited cases involving conditional zoning to support its contention that other jurisdictions endorsed conditional use district zoning. See *Chrismon*, 322 N.C. at 620 n.3, 370 S.E.2d at 585 n.3 (citing *Haas v. City of Mobile*, 265 So.2d 564, 565–66 (Ala. 1972)); *Transamerica Title Ins. Co. v. City of Tuscon*, 533 P.2d 693, 696 (Ariz. Ct. App. 1975) (upholding the power of municipalities to “impose conditions on zoning”); *Warshaw v. City of Atlanta*, 299 S.E.2d 552, 553 (Ga. 1983) (approving conditions on zoning imposed for the benefit of neighbors “‘to ameliorate the effects of the zoning change’”) (citing *Gross v. Hall County*, 235 S.E.2d 379, 382 (Ga. 1977); *Sylvania Elec. Products, Inc. v. Newton*, 183 N.E.2d 118, 122 (Mass. 1962) (deciding that conditions attached to a rezoning represented “an appropriate and untainted exercise of the zoning power”); *Sweetman v. Town of Cumberland*, 364 A.2d 1277, 1289 (R.I. 1976) (accepting the state legislature’s policy decision to allow conditional zoning); *City of Redmond v. Kezner*, 517 P.2d 625, 630 (Wash. App. 1973) (holding that approval of a rezoning conditional upon a future event is “entirely legal”). This ambiguity may have resulted from imprecise drafting, rather than a desire to authorize conditional zoning.

64. See Doherty, *supra* note 36, at 209–10.

65. See *id.* at 209–10. The opinion’s apparently mistaken reliance on rulings upholding conditional zoning (as opposed to conditional use district zoning) encouraged this impression. See *supra* note 63 (citing holdings in other states).

66. See Doherty, *supra* note 36, at 209–10; see also *Decker v. Coleman*, 6 N.C. App. 102, 107–08, 169 S.E.2d 487, 491 (1969) (invalidating conditional zoning). Conditional zoning involves a one-step legislative hearing, replacing the quasi-judicial hearing with other constitutional safeguards. See Doherty, *supra* note 36, at 202 (explaining that other

conflation of conditional zoning and conditional use district zoning produced an ad hoc zoning regime in North Carolina, resulting in local governments employing a wide variety of conditional use district zoning procedures.⁶⁷ Charlotte's argument in *Massey* that it had the authority to engage in a purely legislative process of conditional use district zoning illustrates the effect of *Chrismon*'s ambiguous language.⁶⁸ *Massey*, in this context, represents an attempt to limit the procedural liberties taken by local governments in the wake of *Chrismon*'s muddled diction.⁶⁹

The General Assembly's intervention⁷⁰ has further confused the issue. Under new legislation authorizing conditional zoning in Mecklenburg County until August 2001,⁷¹ North Carolina has parallel zoning rules: one set for Mecklenburg County and municipalities inside its borders and another for the rest of the state. In most of the state, local governments employ a legislative process to make zoning decisions and may not consider a specific use in making that zoning decision.⁷² Once the rezoning has occurred, the municipality then holds a quasi-judicial hearing to issue a conditional use permit for the specific use.⁷³ Because the intricacies of conditional use district zoning procedures vary widely across the state,⁷⁴ and because

states tolerate conditional zoning as long as the decision would have been appropriate without the conditions). Such a rule has never been part of North Carolina's zoning scheme. See OWENS, *supra* note 29, at 97. It allows municipalities, before approving a rezoning, to extract promises from a developer in exchange for a promise not to change the zoning ordinance for a period of time—the essence of contract zoning. See ROHAN, *supra* note 49, § 5.01, at 5-9 n.8 and accompanying text.

67. See Lori Johnston, *Zoning Processes Vary By City*, BUS. J. OF CHARLOTTE, Apr. 21, 2000, at 66; Charlotte-Mecklenburg Planning Commission, Conditional Rezoning Processing in Other Cities, at www.ci.charlotte.nc.us/ciplanning/rezsub/rezoning/newcdrezoningprocess/othercities.htm (last modified May 9, 2001) (on file with the North Carolina Law Review) [hereinafter Conditional Rezoning]. Typically, local governments “consider the rezoning and the permit at the same time, with both decisions made by the governing board.” OWENS, *supra* note 29, at 94.

68. See *Massey*, 2000 N.C. Bus. Ct. ¶ 22.

69. See *Massey*, 2000 N.C. Bus. Ct. ¶ 31 (noting that the *Chrismon* court “failed to properly distinguish between” conditional use district zoning and conditional zoning).

70. See *supra* notes 24–27 and accompanying text.

71. An Act to Permit Mecklenburg Count to Engage in Conditional Zoning, 2000 N.C. Sess. Law 77 (2000); An Act to Permit the City of Charlotte and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, and Pineville to Engage in Conditional Zoning, 2000 N.C. Sess. Laws 84 (2000).

72. See, e.g., Conditional Rezoning, *supra* note 67.

73. DAVENPORT & GREEN, *supra* note 29, at 11–12; OWENS, *supra* note 29, at 93–94. The issuance of a permit is required under section 160A-382 of the North Carolina General Statutes. N.C. GEN. STAT. § 160A-382 (1999).

74. See Johnston, *supra* note 67. Nearly all municipalities in the state require a two-step process, but the steps can take place concurrently after a single hearing. See OWENS,

Charlotte was a pioneer in aggressively pursuing the semantic ambiguity in *Chrismon*, *Massey* appears to have had little effect on municipalities outside of Mecklenburg County.⁷⁵ Within the county, however, local governments now have the temporary statutory authority to approve a rezoning using a single-step, purely legislative process, subject to deferential judicial review, and may consider the tract's proposed use in making the zoning decision.⁷⁶ In short, the new law can be viewed as authorizing conditional zoning and contract zoning in Mecklenburg County—thereby contradicting over thirty years of state-wide jurisprudence to the contrary.⁷⁷ Because the legislation applies only to local governments in Mecklenburg County, other municipalities may not engage in conditional zoning unless the court of appeals overturns *Massey*.⁷⁸

In its brief to the court of appeals, Charlotte sought to exploit the confusion over conditional use district zoning by insisting that it engaged in conditional zoning, not conditional use district zoning, as

supra note 29, at 94. Wilmington and Greensboro employ a quasi-judicial hearing that includes sworn testimony. Johnston, *supra* note 67; *see also* Conditional Rezoning, *supra* note 67 (describing rezoning procedures elsewhere in North Carolina to guide Charlotte's response to *Massey*). Winston-Salem also uses a two-step process, featuring council approval of the rezoning apart from its decision on a specific site plan. Johnston, *supra* note 67; Conditional Rezoning, *supra* note 67. Raleigh avoids zoning property for a particular use whenever possible. Johnston, *supra* note 67; Conditional Rezoning, *supra* note 67. Only Cary's system resembles Charlotte's. Johnston, *supra* note 67; Conditional Rezoning, *supra* note 67.

75. *See* Richard Stradling, *Superior Court Decision Probably Will Not Alter Triangle Zoning*, NEWS & OBSERVER (Raleigh, N.C.), Apr. 25, 2000, at 3B. In the Research Triangle, for example, several counties and towns use the prescribed two-step process, while other jurisdictions have zoning procedures explicitly authorized by special state legislation. *Id.* Should the courts overturn the *Massey* decision, however, local governments may be enticed to change radically their zoning procedures. The town of Chapel Hill, for example, has entertained the notion of jettisoning its two-step, conditional use district zoning procedure in favor of a less confrontational method. *See* Anne Blythe, *Town Mulls Development Review*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 20, 2000, at 4B. This proposal, initiated by outside consultants, had the strong support of the local Chamber of Commerce. *See id.*

76. Act to Permit Mecklenburg County to Engage in Conditional Zoning, 2000 N.C. Sess. Laws 77; Act to Permit the City of Charlotte and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, and Pineville to Engage in Conditional Zoning, 2000 N.C. Sess. Laws 84.

77. *Cf.* *Chrismon v. Guilford County*, 322 N.C. 611, 639–40, 370 S.E.2d 579, 596 (1989); *Hall v. City of Durham*, 323 N.C. 293, 305, 372 S.E.2d 564, 572 (1988); *Blades v. City of Raleigh*, 280 N.C. 531, 550–51, 187 S.E.2d 35, 46 (1972); *Allred v. City of Raleigh*, 277 N.C. 530, 546, 178 S.E.2d 432, 441 (1971); *Decker v. Coleman*, 6 N.C. App. 102, 107–08, 169 S.E.2d 487, 491 (1969).

78. Using *Massey's* logic, other local governments may not engage in conditional zoning under the existing enabling statute. *See Massey*, 2000 N.C. Bus. Ct. ¶ 16.

authorized by the enabling statute.⁷⁹ The city urges the court “to limit its consideration to the singular question” of whether statutory authority existed for Charlotte’s legislative process of conditional zoning, and “to do so with an understanding that the outcome of this case will have no effect” beyond the facts of this zoning decision.⁸⁰ Stated bluntly, the city hopes the court of appeals will issue a narrow decision, neglect to clarify *Chrismon*, and leave unresolved the possibility that conditional zoning is permissible in North Carolina based on temporary legislation.⁸¹

The legal setback to Charlotte’s zoning process has unsettled groups on both sides of the zoning debate. Developers have reason for concern about more frequent lawsuits; another community group sued the City of Charlotte over a zoning decision in the weeks following the *Massey* decision.⁸² In turn, invigorated neighborhood

79. Brief for the City of Charlotte at 7, *Massey v. City of Charlotte*, No. COA00-905, (N.C. Ct. App. filed May 16, 2000). Charlotte’s position appears to be that the enabling statute empowers local governments to engage in conditional zoning. See *id.* at 7–8. The “Conditional Use District Permit” issued to Albemarle, the city claims, was “a superfluous vestige of an earlier zoning practice,” not a conditional use permit required by statute. *Id.* Prior to the adoption of a new zoning code in 1991, Charlotte had issued a “parallel conditional use permit” to landowners approved for conditional rezoning. Record at 102, *Massey v. City of Charlotte*, No. COA00-905 (N.C. Ct. App. filed May 16, 2000) (affidavit of Fred Ernest Bryant). This practice did not imply that the city engaged, then or since, in conditional use zoning. Brief for the City of Charlotte at 7, *Massey* (No. COA00-905).

80. Brief for the City of Charlotte at 8–9, *Massey* (No. COA00-905).

81. The question before the court of appeals is whether to enter this quagmire, and, if so, how to clean it up. The court has several options. First, it could uphold Judge Tennille’s decision, making Charlotte’s process illegal without specific legislative authority. This scenario may seem unlikely because of the General Assembly’s action in the summer of 2000, but the Act authorizing Charlotte’s zoning procedure specifically exempted any decision pending appellate review. See Act to Permit Mecklenburg County to Engage in Conditional Zoning § 2 (stating that the act “shall not apply to conditional zoning petitions that were approved or denied . . . prior to April 17, 2000 [the date of the *Massey* decision], and shall not affect any rezoning case that is the subject of pending litigation”); Act to Permit the City of Charlotte and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, and Pineville to Engage in Conditional Zoning § 2 (applying identical language to municipalities in Mecklenburg County). Second, the Court could acknowledge the General Assembly’s action, but uphold the spirit of *Massey*: that conditional use zoning requires a quasi-judicial hearing subject to heightened scrutiny. Third, it could rule the issue moot and pass on the question now that the General Assembly has corrected, even temporarily, the lack of statutory authority. Fourth, the court could announce that the city council’s judgment, as a legislative body, does not warrant strict judicial review—a holding tantamount to reversing the lower court. Fifth, it could directly overturn *Massey*, essentially allowing conditional zoning in North Carolina. Such a ruling would approve conditional zoning throughout the state. This final result seems more plausible from the state supreme court.

82. Scott Dodd, *City Sued Again on Zoning Process*, CHARLOTTE OBSERVER, June 1, 2000, at 1B. More disturbing, the hotly contested rezoning of SouthPark mall to allow new development spawned another lawsuit. Scott Dodd, *SouthPark-Area Residents Sue City*,

activism and the threat of litigation may drive local governments to be more cautious in their zoning decisions devote more attention to building a defensible record that can withstand appellate scrutiny.⁸³ The heightened attention from developers and residents, as well as the newly-codified principles of conditional zoning in the General Assembly's one-year authorizing statute, place a premium on development that is consistent with adopted land-use plans.⁸⁴ To determine if proposals are consistent with these plans, council members will likely rely more heavily on the city's planning staff, who, in turn, will face increased pressure to provide more recent and detailed small-area plans.⁸⁵ The new law also requires a formally documented community meeting or reasonable attempts to hold one.⁸⁶ This requirement will likely cause logistical complications and demand better record keeping by rezoning applicants.⁸⁷ Developers might also be concerned that local officials will defer granting a rezoning unless the community has been heard formally on the

Mall Owner, CHARLOTTE OBSERVER, Dec. 12, 2000, at 1B [hereinafter Dodd, *SouthPark-Area Residents*]. The suit also targets Carnegie Town Center, a mixed-use development close to the mall. *Id.* Predictably, the first skirmish in the SouthPark case revolved around whether to certify the dispute as a "complex legal case," a move that would land the parties in Judge Tennille's courtroom. See Scott Dodd, *SouthPark Foes Fight Over Judge for Case*, CHARLOTTE OBSERVER, Jan. 5, 2001, at 1B. The high profile of these cases has Charlotte's development community "skittish about another legal battle" and frustrated by the possibility of more zoning delays. Dodd, *SouthPark-Area Residents*, *supra*.

83. Mark C. Cramer & Bailey Patrick, Jr., NAIOP Luncheon Presentation, Charlotte-Mecklenburg Conditional Use Rezoning Process: Overview and Update, at 14 (2000) (on file with the North Carolina Law Review). Developing an adequate record facilitates judicial review and the protection of rights, but it also impedes zoning decisions. This illustrates the elusive balance local governments must find between spurring economic development and protecting the interests of neighboring property owners.

84. *Id.* at 15. The statute mandates consideration of a local government's comprehensive plan in zoning decisions, thus highlighting such development. See Act to Permit Mecklenburg County to Engage in Conditional Zoning, 2000 N.C. Sess. Laws 77; Act to Permit the City of Charlotte and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, and Pineville to Engage in Conditional Zoning, 2000 N.C. Sess. Laws 84. As the basis for its legal challenge to new development at SouthPark mall, area residents point to Charlotte's failure to consider its long-range plans for land use and transit when approving the rezoning. See Dodd, *SouthPark-Area Residents*, *supra* note 82.

85. Cramer & Patrick, *supra* note 83, at 15.

86. See Act to Permit Mecklenburg County to Engage in Conditional Zoning, 2000 N.C. Sess. Laws 77; Act to Permit the City of Charlotte and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, and Pineville to Engage in Conditional Zoning, 2000 N.C. Sess. Laws 84.

87. See Act to Permit Mecklenburg County to Engage in Conditional Zoning, 2000 N.C. Sess. Laws 77; Act to Permit the City of Charlotte and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, and Pineville to Engage in Conditional Zoning, 2000 N.C. Sess. Laws 84.

matter. This constraint will reduce the effectiveness of *ex parte* communications and slow the zoning process.⁸⁸ In fact, the *Massey* plaintiffs sought to achieve precisely this result, among others.⁸⁹

Developers championed Charlotte's rezoning procedure because it had the capacity to expedite growth.⁹⁰ By condensing the process to one step, foregoing the potentially time-consuming quasi-judicial requirements, developers could receive the zoning decision and conditional use permit quickly.⁹¹ The additional step required by *Massey* constitutes, to some developers, an "additional procedural hurdle" that merely slows and complicates the process.⁹²

Developers eager to retain an exclusively legislative process should also consider, however, the inherently unpredictable nature of local politics.⁹³ Local governments may welcome development for a time, as municipalities prove willing to test the limits of their

88. Cramer & Patrick, *supra* note 83, at 16; *see also* Scott Dodd, *Real Battle Waged*, *supra* note 4 (explaining that lobbying over the expansion of SouthPark Mall would take place largely in living rooms, not in public forums). The *Massey* opinion acknowledges that "[t]he sheer number of zoning decisions existing in today's rapid growth areas makes the use of a quasi-judicial proceeding a burden on zoning authorities in those areas." *Massey*, 2000 N.C. Bus. Ct. ¶ 29.

89. "Our ultimate goal here is to have a process that works," one Albemarle resident declared, "something that gives the public equal input to the developers, without all the back-door shenanigans." Scott Dodd, *City Asks State to Revise Charter to Clarify Conditional Zoning Power*, CHARLOTTE OBSERVER, Apr. 12, 2000, at 1B.

90. Advocates for developers applaud the speed of the one-step procedure and its permissive approach to *ex parte* communications. *See* Howard, *Developers in Limbo*, *supra* note 17; Doug Smith, *A Village at South Park*, CHARLOTTE OBSERVER, Jan. 26, 2000, at 1D; *see also supra* note 5 and accompanying text (discussing the pervasive belief in the development community that Charlotte's procedure discourages conflict and fosters compromise).

91. The proposed expansion of Charlotte's SouthPark Mall demonstrates just how quickly such decisions may be issued. Because of its scale, the development raised serious questions about the character of regional economic development, in addition to local concerns such as the impact on adjacent neighborhoods and increased traffic. To confront such complicated issues surrounding "the toughest zoning fight in Charlotte history," the city council scheduled a mere fifteen minutes per side to articulate their views on the rezoning proposal. Dodd, *Real Battle Waged*, *supra* note 4. The *Massey* decision delayed consideration of the proposal, but the city council unanimously approved the developer's request in October, triggering a lawsuit by neighboring residents. Scott Dodd, *South Park-Area Residents*, *supra* note 82.

92. Cramer & Patrick, *supra* note 83, at 18.

93. Lyndon B. Johnson, perhaps the most accomplished practitioner of American legislative politics in the twentieth century, once told a staff member that in any democratic process (including local government), "Things get done only by agreement between opposing forces. The best decisions are neither bought [n]or sold. Before you do anything, your last thought ought to be 'I've got to live with the son-of-a-bitch.'" RICHARD N. GOODWIN, REMEMBERING AMERICA: A VOICE FROM THE SIXTIES 260 (1988).

infrastructures and surge into the surrounding countryside.⁹⁴ But as the costs of development increase, including long commutes, crowded schools, and strained water and sewer resources, a backlash seems likely and may have started already.⁹⁵ The power of community groups has grown in recent years. Further, their tactics have expanded from protests at board meetings to methods such as hiring lawyers and consultants, using information technology to publicize their concerns, and joining anti-growth coalitions.⁹⁶ If these trends continue, rapid development could become unpopular in Charlotte.⁹⁷

94. See ADDING IT UP, *supra* note 1, at 11 (ranking North Carolina fifth among states in farm land consumed by development between 1992 and 1997). Charlotte alone developed 150,758 acres of farmland between 1980 and 1990. *Id.* at 12. Between 1992 and 1997, urban areas in the state consumed new land so quickly that an area the size of Charlotte was developed each year. *Id.* at 16.

95. As Charlotte planning commission member Mary Hopper has admitted, "We are at a crucial juncture right now . . . because clearly there's some suspicion of us." Scott Dodd, *Charlotte Planning Board Leader Leaving*, CHARLOTTE OBSERVER, June 26, 2000, at 1B; see also Editorial, *The "Hows" of Growth*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 10, 2000, at 10A (noting "growing concern in the state about overburdened highways, bad air, overcrowded schools, an ever-increasing assault on forests and farmland, and the availability and safety of water supplies"); Scott Dodd, *Neighborhoods Flex Their Muscle*, CHARLOTTE OBSERVER, May 7, 2000, at 1A [hereinafter Dodd, *Neighborhoods Flex*]. A reaction against development in Charlotte could draw upon plentiful political fuel. The American Lung Association ranked the Charlotte metropolitan area eighth worst in the nation for air quality. AMERICAN LUNG ASSOCIATION, *State of Air 2001*, at 10 tbl. 3. Another study found that the number of vehicle miles traveled on the Charlotte area's freeways more than doubled since 1990; the amount of fuel wasted each year due to traffic congestion also doubled. ADDING IT UP, *supra* note 1, at 12. Other North Carolina cities have already experienced significant backlash to growth. Cary elected its mayor, Glen Lang, based on a transparently anti-developer platform. "You'd have to be out your mind," Lang told a reporter, to "actually want the special interests to control their politicians." Damien Jackson, *Beneath the Makeup*, INDEP. WKLY. (Raleigh, N.C.), Jan. 17-23, 2001, at 10. In Chapel Hill, the town council is currently revising the development ordinance. According to one town planner, "[w]e're already battening down the hatches" against undesirable growth. Nancy E. Oates, *The "A" List for the New Year*, CHAPEL HILL NEWS, Jan. 21, 2001, at D1.

96. See Steven Rosenberg, *Zoning Process Leaves Residents Disillusioned*, NEWS & OBSERVER (Raleigh, N.C.), Mar. 17, 2000, at 2B (describing myriad tactics by neighborhood groups). At one rezoning hearing, for example, each county commissioner had an inch-high stack of handwritten postcards opposing the proposal. See, e.g., Dodd, *Neighborhoods Flex*, *supra* note 95 (assessing the growing strength of community activism).

97. See Markoe, *supra* note 2 (reporting that expressions of frustration with the zoning process have become increasingly frequent and vehement). Expressions of discontent with Charlotte's pattern of development have already surfaced. When radio host Juan Williams visited the city and called it "the poster child of sprawl," a commentator in Charlotte's daily newspaper pronounced him "right." See Don Hudson, *Let's Build Something Memorable*, CHARLOTTE OBSERVER, Jan. 1, 2001, at 1B. The editors encouraged city leaders to admit "that in recent history, facing a decision about growth, we have routinely torn down more trees or buildings." *Id.* Further, they called for

If the membership of the city council begins to reflect this political reality, developers may long for a judicial process to protect their interests.⁹⁸

Developers hostile to a quasi-judicial process should also consider that a procedural vent for community frustration might postpone political backlash. In a purely legislative process, the ballot box provides the only effective weapon for a disenchanted public.⁹⁹ If the political winds shift, developers have much to lose.¹⁰⁰ Confronted with a city council dominated by slow-growth community activists, developers would likely complain about an exclusively legislative process.¹⁰¹ Under Charlotte's current rezoning scheme, the council's hostile decision would be subject to deferential judicial review.¹⁰²

"a different age. . . . It's time our public servants . . . listen[ed] to the voices of those who want a better city. Not just the influential who want more." *Id.*

98. See, e.g., *Finch v. City of Durham*, 325 N.C. 352, 370–72, 384 S.E.2d 8, 19–20 (1989) (upholding the rezoning of a tract from commercial to residential use where the rezoning resulted in diminished property value but did not deprive the landowner of all practical use of the property); see also Telephone Interview with H.L. Owens, Partner, Owens & Lapinel, P.A., (Sept. 11, 2000) (predicting that a developer to whom council has denied a conditional rezoning would pose the most effective challenge to a strictly legislative process).

99. See, e.g., Rosenberg, *supra* note 96 (analyzing neighbors' efforts to fight a rezoning in Raleigh with organizations, petitions, and Web sites, only to discover that they were "naïve" about their chances through the political process).

100. In addition to access, developers would lose their considerable investment in gaining that access. From January 1, 1998, through June 30, 2000, local candidates in the Research Triangle received \$1.3 million in campaign contributions, of which the development industry contributed \$550,000. Editorial, *Investment in Access*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 31, 2000, at 10A; see, e.g., Don Wood, *So Far, 'Planning' Hasn't Worked—But It Can*, NEWS & OBSERVER (Raleigh, N.C.), Feb. 1, 2000, at 9A (suggesting that city officials establish local population goals, then refuse to authorize new development, stop building highways, water storage facilities, schools, hospitals, and sewage treatment plants). Statewide, development and real estate interests contributed \$1.3 million to successful General Assembly candidates in the year 2000, more than any other group besides the health care industry. Lynn Bonner & David Raynor, *Campaign Donors Await Decisions*, NEWS & OBSERVER (Raleigh, N.C.), Apr. 8, 2001, at 1A. If anti-growth fervor escalates, and frustrated community activists resort to drastic measures, developers could lose their investment altogether. See, e.g., Al Baker, *Police say an Anti-Sprawl Group Burned New Long Island Homes*, N.Y. TIMES, Jan. 3, 2001, at B1 (reporting a radical environmental group's vandalism and arson of new developments on Long Island and elsewhere).

101. *Finch*, 325 N.C. at 370–72, 384 S.E.2d at 19–20, illustrates the reasons for these complaints. In *Finch*, a parcel originally zoned for residential use was rezoned for office use, then rezoned again back to residential. *Id.* at 355, 384 S.E.2d at 10; OWENS, *supra* note 29, at 349–50. Under a purely legislative regime, the city council could make these changes without a good faith requirement or the need to base the decisions on competent evidence. See *supra* note 37 and accompanying text (discussing the presumption of validity in judicial review of legislative zoning decisions). Davidson, a college town in danger of becoming a bedroom community for Charlotte commuters, imposed a

Similarly, neighborhood activists celebrating the *Massey* decision might have cause to reconsider. By adding a quasi-judicial component to the rezoning process, community groups must ensure that they receive effective representation.¹⁰³ By winning procedural fairness, community activists ultimately may sacrifice practical results in a climate where only a well-organized, well-financed opposition can succeed.¹⁰⁴ The added procedural requirement may afford wealthy neighborhoods a better chance to fend off unwanted development than poorer communities. Neighborhoods would also lose the ability to win solely on political grounds.¹⁰⁵ Large numbers of angry, motivated citizens might influence a rezoning hearing, but to survive judicial review of a quasi-judicial decision, a city council must support its resolution with objective, credible evidence.¹⁰⁶ As resistance to development grows, a purely legislative process might

moratorium on new subdivisions and commercial development last year. Scott Dodd & Casey Jacobus, *Davidson Vote Puts Building on Hold*, CHARLOTTE OBSERVER, Nov. 16, 2000, at 1B. At least one developer, who had invested \$500,000 in land on the edge of town, stood to lose \$30,000 a month because of the decision. *See id.* "It may be legal, but that doesn't make it right," he reluctantly admitted. *Id.* Developers eager to lift the moratorium planned to sue the town. *See* Scott Dodd, *Showdown Looms on Davidson Growth*, CHARLOTTE OBSERVER, Dec. 5, 2000, at 3B. Town leaders "can't just keep adopting moratoriums and keep people from exercising their property rights," the spokesman for one builder complained. *Id.*

102. Courts adhere to a presumption of validity when reviewing legislative zoning decisions. *See supra* note 37 and accompanying text.

103. Howard, *Developers in Limbo*, *supra* note 17 (quoting real estate attorney Adam Foodman predicting that "[p]eople will be forced to hire someone like me, and that can be expensive"). "The neighborhood won, but they lost" the *Massey* decision, one Charlotte City Council member concluded. Dodd, *17 Fought City Hall*, *supra* note 10. "The process is going to be much more limited now. Neighborhoods will have to defend their case, and they aren't prepared to do it like developers are." *Id.* Another city official worried about a zoning process "so complex and expensive for neighborhood groups that there will be a bias toward developers." Dodd & Markoe, *supra* note 17.

104. A former Charlotte city planner predicted "that people will look back in three or four years longingly at the process that just got thrown out" in *Massey*. Dodd & Markoe, *supra* note 17. Not all city planners share this view. Bill Ruska, Greensboro's zoning administrator, remains convinced that the more formal constraints of a quasi-judicial hearing do not intimidate citizens to such an extent that they cannot present their case. *See* Dodd, *17 Fought City Hall*, *supra* note 10.

105. *See supra* notes 37-40 and accompanying text (noting that to survive judicial review, a local government must demonstrate that it acted in good faith, based on credible evidence).

106. *See supra* note 37-40 and accompanying text. Residents could influence a legislative process by merely asserting that a development will increase traffic and decrease property values, but credible evidence must support such assertions under quasi-judicial rules. *See* Doug Smith, *Judge's Ruling Forces New Approach to Rezoning*, CHARLOTTE OBSERVER, Apr. 19, 2000, at 1D (claiming that this change may "make emotion much less of a factor").

eventually benefit neighborhood groups.¹⁰⁷ In a slow-growth political climate, the quasi-judicial step would provide council members political shelter for unpopular zoning decisions; elected officials could claim that the politically expedient course would not survive rigorous judicial review.¹⁰⁸ Strong emotions and threatened reprisals in the next local election may be necessary to achieve the goals of community activists, but the protections of a quasi-judicial process make these political considerations alone insufficient to impose conditions on a proposed rezoning.¹⁰⁹

All told, however, North Carolina residents' celebration of *Massey* and their support for quasi-judicial conditional use district zoning is justified.¹¹⁰ The quasi-judicial process upheld by *Massey* provides an important forum for opponents of conditional use district zoning decisions.¹¹¹ Because elected officials or their designees sit in judgment, the legislative hearing may not provide the full protections of a regular courtroom.¹¹² Nonetheless, quasi-judicial decisions remain subject to rigorous scrutiny by appellate courts, in venues

107. Where anti-sprawl forces dominate local government, quasi-judicial requirements may hinder policies that are aggressively hostile to development. As Charlotte Mayor Pat McCrory observed, "I think the voters are willing to move even faster than we are sometimes" to curb growth. Dodd, *Slow Answers*, *supra* note 1. Even in presently growth-happy Charlotte, neighboring residents of SouthPark Mall forced the developer to scale back expansion plans. See Don Hudson, *SouthPark Win Carries a Price Tag*, CHARLOTTE OBSERVER, Sept. 19, 2000, at 1B. Although the final proposal won unanimous approval from the city council, it had been shorn of plans for two new office buildings, a large hotel, and one hundred residential units. *Id.*

A council rejecting a rezoning request for development purposes must act in good faith based on competent evidence. See *supra* notes 37-40 and accompanying text; cf. *supra* note 100-02 and accompanying text (observing that developers may welcome quasi-judicial protections when the political winds blow against them).

108. See *supra* notes 37-40 and accompanying text (explaining judicial review of quasi-judicial decisions).

109. See *supra* notes 37-40 and accompanying text (discussing the requirements to withstand judicial review of quasi-judicial decisions).

110. Residents appearing before the Chapel Hill Town Council voiced their suspicions that a less adversarial system without a quasi-judicial process would lead to faster, easier development and undermine the democratic process. See Anne Blythe, *Council May Revise Planning Ordinance*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 20, 2000, at 1B (quoting warnings from one council member against "a wholesale change in the way we do business" as a zoning authority).

111. See *Massey*, 2000 N.C. Bus. Ct. ¶ 27. As Judge Tennille explained, "the protection at the ballot box comes too late and does not sufficiently protect an individual landowner from a rezoning decision made by council members outside her district." *Id.*

112. See section 160A-388(g) of the North Carolina General Statutes for procedural requirements of quasi-judicial hearings. N.C. GEN. STAT. § 160A-388(g) (1999). According to Nancy Vaughn, a member of the Greensboro City Council and a former community activist, the quasi-judicial process "actually gives the neighbors a bit more power" than a purely legislative system. Dodd, *17 Fought City Hall*, *supra* note 10.

more removed from the vicissitudes of local politics than open city council meetings.¹¹³ Without this step, in a purely legislative process, well-connected developers enjoy an enormous advantage over unorganized local people suddenly threatened by the rising tide of rapid development.¹¹⁴ The “consensus and compromise” championed by advocates of Charlotte’s method allow developers to negotiate with neighbors who have fewer resources and less chance to act in an organized fashion.¹¹⁵ Put plainly, “[d]evelopers are awfully good at huddling with politicians,” but too often “[r]egular people prefer to stay as far away from politicians as possible.”¹¹⁶ Stripping the conditional use district zoning process of its quasi-judicial element thus deprives community groups a chance to face developers on equal terms. Left to fend for themselves in a purely legislative process, residents remain inherently disadvantaged.¹¹⁷ As Judge Tennille

113. See *supra* notes 37–40 and accompanying text (discussing the standard of review for quasi-judicial decisions). City council members generally serve shorter terms than appellate judges, making them more immediately responsive to the whims of the voters. Charlotte City Council members, for instance, serve two-year terms. See CHARLOTTE, N.C., CODE OF ORDINANCES § 2.03 (2000), <http://www.municode.com> (last visited May 15, 2001). City Council members also serve in transparently political positions, overtly representing the interests of constituents. Some observers suggest that North Carolina’s practice of electing appellate judges exposes them to similar pressures. Mark Hansen, *A Run for the Bench*, 84 A.B.A. J. 68, 68 (Oct. 1998).

114. The notion that political activity disadvantages disorganized residents compared to better-funded, better-organized, and better-connected groups stems from pluralist political theory. See, e.g., ROBERT A. DAHL, *DEMOCRACY, LIBERTY, AND EQUALITY* 244 (1986) (defining “the struggle of individuals and groups to gain autonomy in relation to the control of others” as “a fundamental tendency of political life”); ROBERT A. DAHL, *DILEMMAS OF PLURALIST DEMOCRACY* 1–3 (1982) (explaining that groups organized to influence political decisions are necessary to the functioning of the democratic process, but they also have the capacity to inflict harm on that process); JOHN RAWLS, *POLITICAL LIBERALISM* 35–37 (1993) (describing “reasonable pluralism” as “a permanent feature of the public culture of democracy”).

115. H.L. Owens, the plaintiffs’ lawyer in the *Massey* case, was paid by passing a hat at community meetings. Compare interview with H.L. Owens, *supra* note 98 (describing her fee arrangement) with Record at 105, *Massey v. City of Charlotte*, No. COA00-905 (N.C. Ct. App. filed May 16, 2000) (affidavit of Stan Campbell) (citing consensus and compromise as effective ways for developers to limit conflict in zoning disputes). This complaint simply applies the nearly universal castigation of well-funded “special interests” in American politics to the local level. The plaintiffs represented a diverse group of middle-class residents, including a homemaker, a building contractor, and a retired city firefighter. Dodd, *17 Fought City Hall*, *supra* note 10. When they approached Owens, she told them, “I don’t know anything about zoning law, but you can’t afford anybody that does.” *Id.*

116. Tommy Tomlinson, *Best Rezoning Policy? Let Light Shine*, CHARLOTTE OBSERVER, Apr. 19, 2000, at 1B (“[W]hen homeowners go up against developers, it’s like a featherweight taking on George Foreman.”).

117. In the Research Triangle, for example, the development industry contributed \$550,000 of a total \$1.3 million campaign donations to local politicians between January

concluded, “No matter how burdensome to governmental authorities, the protection afforded individual property owners in a quasi-judicial process must be preserved,”¹¹⁸ despite the exigencies of rapid development. Because of that protection, city council members may still “walk off arm-in-arm with developers, but at least the rest of us will get to hear the line they fell for.”¹¹⁹

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1998 and June 2000. Editorial, *Investment in Access*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 31, 2000, at 10A. Partly because of this disparity in access, David Owens, a leading authority on zoning in North Carolina, advises avoiding zoning procedures “where it’s strictly political and whoever has the most muscle gets whatever they want.” Dodd & Markoe, *supra* note 17.

118. 2000 N.C. Bus. Ct. ¶ 29.

119. Tomlinson, *supra* note 116.