

Planning Board Workshop

David Owens

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UNC
SCHOOL OF GOVERNMENT

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Topics for Discussion

- Spot and Contract Zoning
- Conflicts of Interest
- Vested Rights and Nonconformities
- Subdivision Regulation
- Plan Consistency and Statements
- Moratoria
- Property Rights and Takings
- Others

Spot Zoning and Contract Zoning

Can the city zone the cross-hatched lot to business use if all the rest of this property is zoned residential?

Petition #: 2002-21

Petitioner: Reedy Creek DS, LLC

Hearing Date: February 18, 2002

R-3

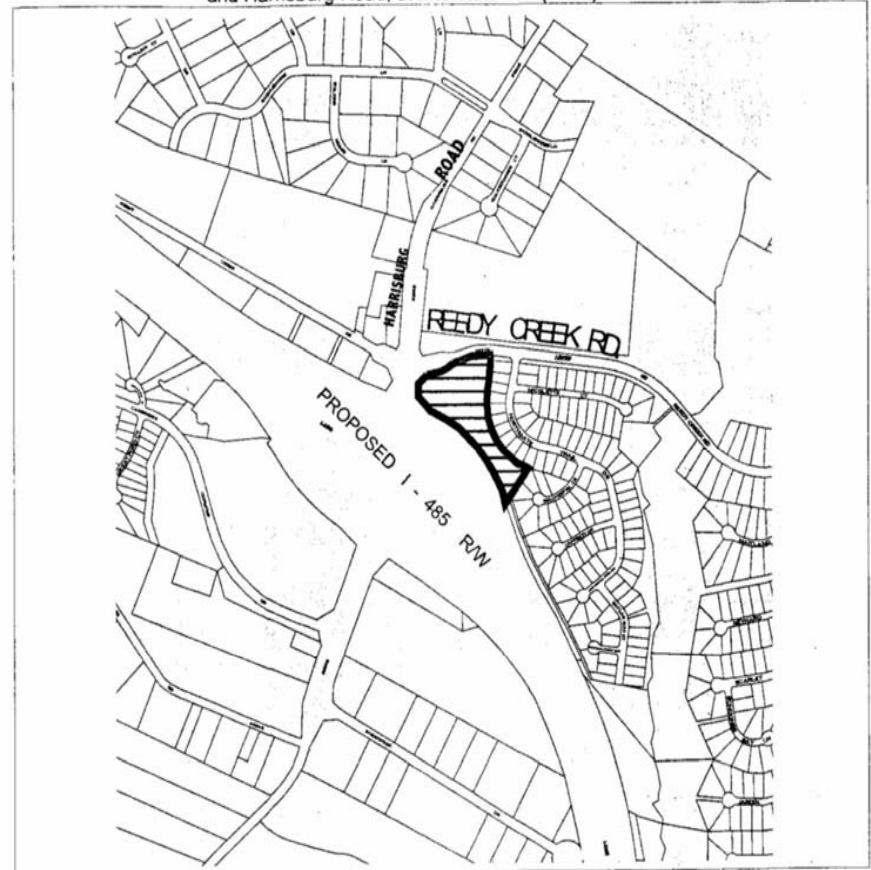
Zoning Classification (Existing):

R-3(CD) and INST(CD)

Zoning Classification (Requested):

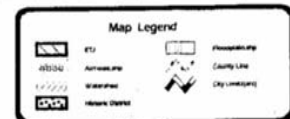
Acresage & Location

Approximately 4 acres located on the southeast corner of Reedy Creek Road and Harrisburg Road, at Interstate 485 (I-485).



Zoning Map #(s):

Map 93



Charlotte-Mecklenburg Planning Commission

Spot Zoning

- Legal IF reasonable
- Factors in “reasonableness”
 - Size of tract
 - Consistency with plan
 - Relation to surrounding uses
 - Benefits and detriments to:
 - Owner
 - Neighbors
 - Community

Can the city and owner agree to limit use of this single lot to certain businesses and add special buffers if rezoned?

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Acreage & Location: Approximately 4 acres located on the southeast corner of Reedy Creek Road and Harrisburg Road, at Interstate 485 (I-485).

Map Legend

	RTU		Proposed Use
	ABD/C		Arterial
	Arterial		County Line
	Waterway		City Limits
	Heavy District		

Zoning Map #(s): Map 93

Charlotte-Mecklenburg Planning Commission

Contract Zoning

- Mutual promises made -- illegal
- Based on a single proposed use rather than all potential uses -- illegal
- Conditions imposed on rezonings that are not applicable to all property in district are unenforceable

Conditional Use District Zoning

- Must be requested by owner
- Involves two decisions
 - Rezoning to a district with only CUP/SUP, no permitted uses
 - Conditional/special use permit
- May conduct single hearing and make both decisions concurrently

Conditional Zoning

- Unlike CUD, no CUP involved
- Create new, unique zoning district, with individualized standards/site plan made a part of the ordinance standards
- Use approved by courts and allowed by statute

Conditional Zoning

- Limits conditions to those:
 - Needed for ordinance/plan compliance
 - Impacts reasonably expected to be generated by project
- Require reasonableness analysis for all small-scale rezonings

Conflicts of Interest

Legislative and Advisory Decisions

- Prohibits:
 - Direct, substantial, readily identifiable financial interest in the outcome of the decision
- May participate in discussion, but must not vote

Quasi-judicial Decisions

- Impartiality required. Prohibits:
 - Fixed opinion prior to hearing
 - Undisclosed ex parte communication
 - Close family, business, or other relationship
 - Financial interest in outcome
- Must not participate in discussion or vote

Vested Rights

Vested Rights

1. Common law --
 - Substantial expenditures
 - Good faith
 - Reliance
 - Valid approval
 - Detriment

Vested Rights

2. Current, valid building permit
 - Six months to start
3. “Site specific development plan” or “Phased development plan”
 - Two to five years
4. Development agreements

Development Agreements

- Entirely optional
- 25 developable acre minimum, 20 year maximum duration
- Must specify land uses, density, building types, placement and design
- Must specify new public improvements, who will provide them, and when

Development Agreements

- May not impose tax or fee not otherwise authorized
- Based on current regulatory requirements
- Lock in respective infrastructure and regulatory requirements
- Must be adopted by ordinance following hearing, then recorded

Options for Nonconformities

- 1. Terminate
 - Threat to health and safety
- 2. Limit
 - Expansion
 - Enlargement
 - Repair
 - Change in use
 - Resumption if abandoned, discontinued
- 3. Amortize
 - Need reasonable period, considering income and investment

Subdivision Regulation

Subdivision Regulations

- Coverage -- Divisions for sale or development, present or future
- Exemptions – 10 acre lots, 2 acres into 3 or less lots, recombinations
- Typical requirements -- Design, infrastructure

Subdivision Regulations

- Review process
 - Sketch plan – check concept
 - Preliminary plat – allow improvements to be installed
 - Final plat – allow lots to be sold

As a condition of subdivision approval, can the city require the developer to:

- Install water and sewer lines and give them to the city?
- Donate land for a new park?

- Add a turn lane and pay for a traffic light at the intersection leading into the subdivision?
- Donate land for a new school?

Subdivision Exactions

- Can include land, construction of improvements, or payment of cash
- Need statutory authority

Takings and Subdivision Exactions

- Exaction must be related to the impacts generated
- Amount of exaction can be no more than amount “roughly proportional” to impacts

Moratoria

Can a city temporarily stop
issuing permits while it
revises its ordinance?

Moratoria

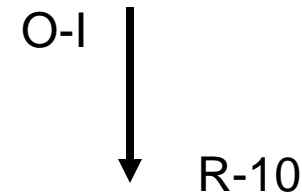
- Development moratoria allowed on any development approval
- May require public hearing
 - Not required if imminent threat to public health and safety
 - Hearing with one published notice (7 days in advance) if moratorium is 60 days or less
 - Hearing with two published notices (first 10 days in advance) if moratorium is more than 60 days

Moratoria

- Require written statement prior to adoption on:
 - Reasons needed
 - Why alternatives are inadequate
 - Scope and duration (must be reasonable)
 - Action plan to address reasons for imposition

Property Rights and the Takings Clause

Can a city
rezone a
commercial
area to
residential use if
that reduces the
property value
by 80%?



Taking

- **“NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE WITHOUT JUST COMPENSATION”**

– Amendment V

Regulatory Takings

- Regulation can be a “taking” if it “goes too far”
- Compensation automatically required in two situations
 - Physical invasion of property
 - Property rendered totally valueless

Regulatory Takings

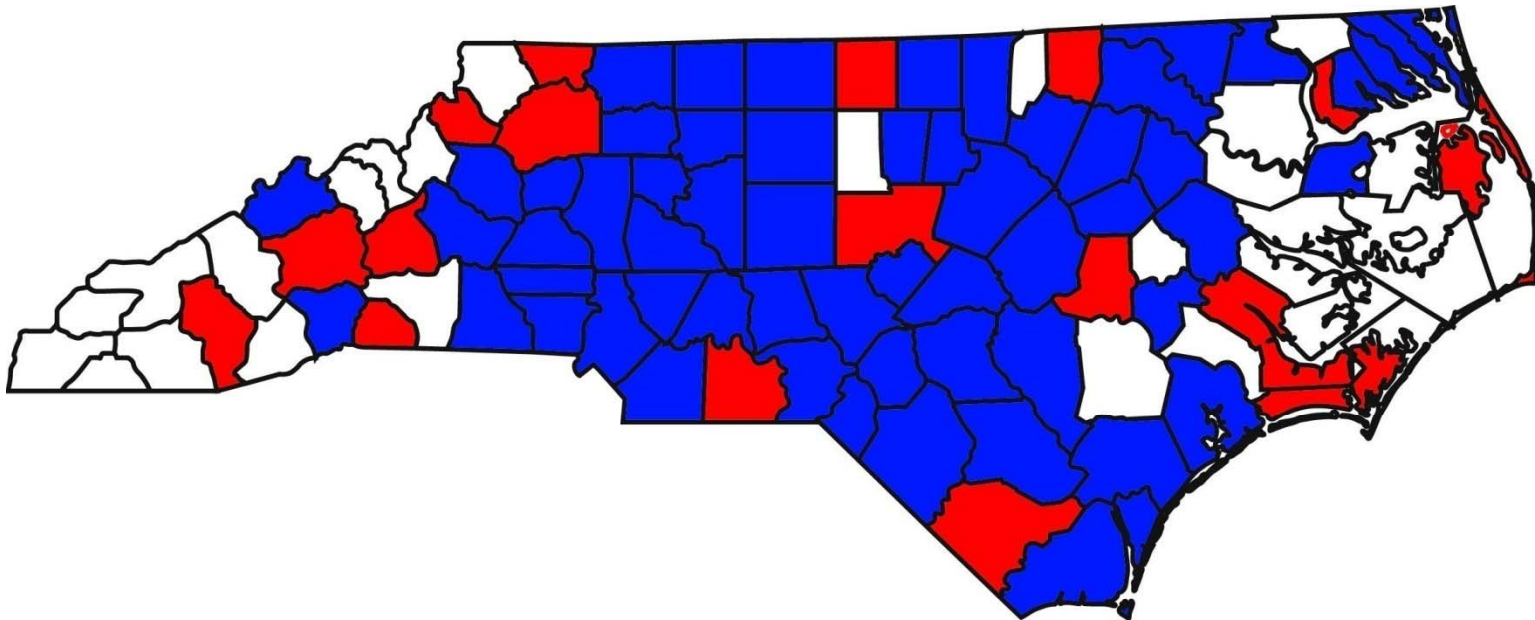
- Case by Case Analysis Otherwise
 - Economic impact on owner
 - Character of governmental action
 - Focus on reasonable investment backed expectation
 - Reduction in value not a taking

Regulatory Takings

- North Carolina Standard
 - Reduction in value not a taking
 - Practical use with reasonable value must remain

Miscellaneous

County Zoning



Blue=Countywide (60)

Red=Partial (17)

White=None (23)

9/08

Conditional Use, Special Use, Special Exception

- Standards must be in ordinance
- May use general standards, specific standards, or combination of the two
- Standard may not be so general as to offer no practical guidance

Typical General SUP/CUP Standards

- Use will not have a significant adverse effect on neighboring property values
- Use will be compatible with the surrounding neighborhood
- Use will be consistent with the land use plan and other ordinances

Statutory Limitations

Can a city or town completely prohibit mobile homes in certain residential areas?



Statutory Limits

- Manufactured housing
 - Can not totally exclude from entire city
 - *Can* regulate location, dimension, and appearance

Can a single family
home in a quiet
residential area be used
to house and treat six
emotionally disturbed,
violent teenage boys?

Statutory Limits

- Family care homes
 - State: 6 or fewer handicapped persons, must treat same as single family residence
 - Federal: “reasonable accommodation” required

Can a city prohibit cell towers in residential areas?

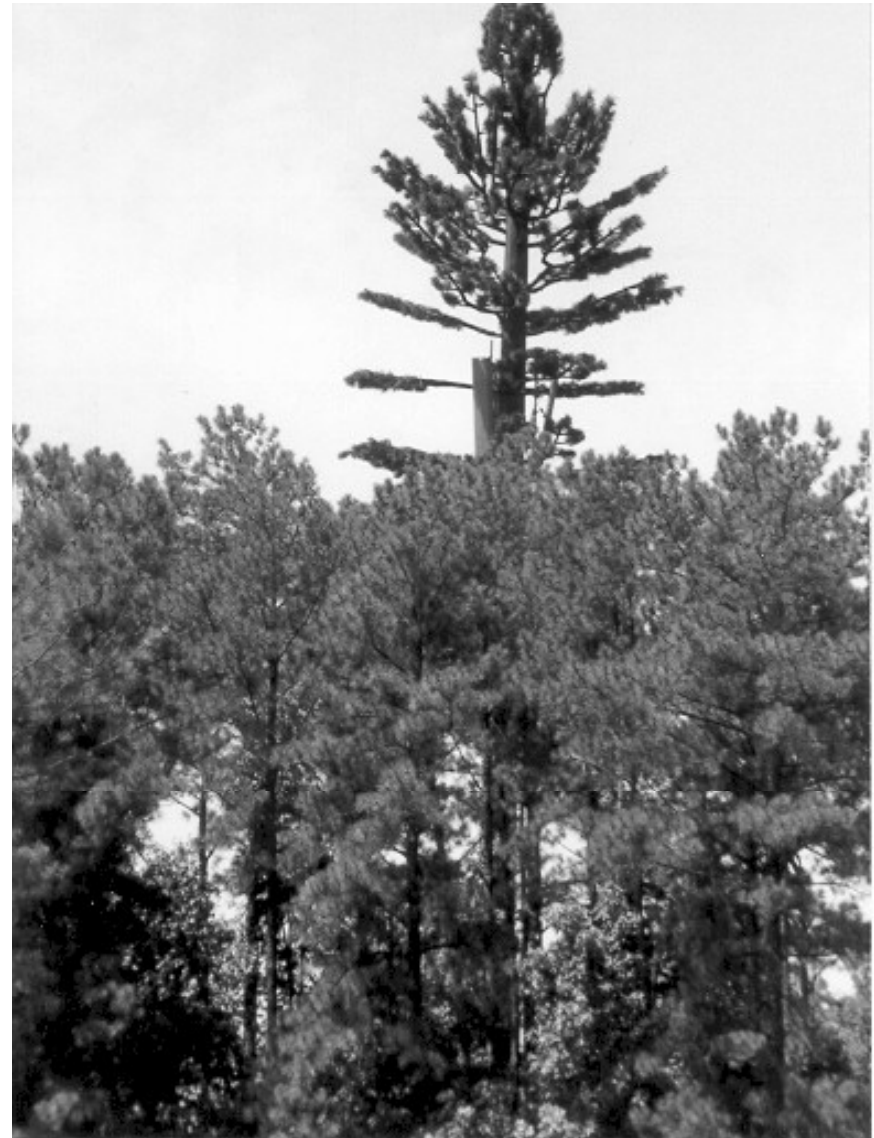
Telecommunication Towers

- Can not totally exclude citywide
- Can not regulate on health basis
- Decisions must be in reasonable time and in writing



Telecommunication Towers

- Can impose limits on siting
- Can impose standards: height, fencing, co-location, stealth technology, etc.



Statutory Limits on Discretion --

Alcohol sales

- State ABC permits overrule zoning

- Agricultural uses

- Bona fide farm uses only
- Not applicable to city zoning (or ETJ)

Constitutional Limitations

Can a town prevent location of storefront churches in the central business district?



First Amendment:

Congress shall make no law
respecting an establishment
of religion, or prohibiting the
free exercise thereof; . . .

Constitutional Test:

- If the regulation is a uniform law of general application
 - No religious accommodation or exemption required

Congressional Response

- Religious Land Use and Institutionalized Persons Act (RLUIPA)
 - Test in land use
 - If substantial burden,
 - Need compelling government interest
 - Least restrictive means
 - No total exclusion or unreasonable limitation
 - So far upheld in the courts

RLUIPA litigation to date

- Cases filed on:
 - Limits on places of worship in commercial areas
 - Use of single family homes for worship services
 - Expansion of religious nonconformities (schools, shelters, places of worship)
 - Historic district regulations
 - Location of facilities in agricultural area

Can a zoning ordinance prohibit the location of a topless bar within the city?



HARPER'S JJ
GENTLEMEN'S CLUB
plus
EXOTIC CARWASH

OPEN MON - FRI 5 TO 7

SAT & SUN 7 TO ?

CAR WASH OPEN

MON - SAT 12 TO 8

Constitutional Test:

- Can not totally exclude protected speech from the entire jurisdiction
- Can not regulate based on content
- Can regulate to prevent adverse secondary impacts (crime, property values)

Can a zoning ordinance prohibit all political signs in the road right of way?



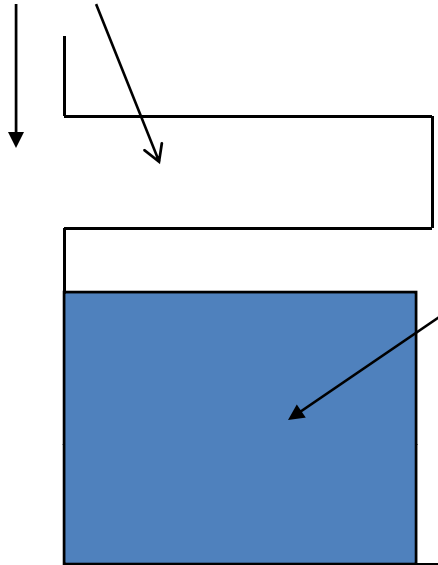
Constitutional Tests

- Signs
 - Aesthetics is a legitimate basis
 - Content neutrality required
 - Can limit all signs in right of way

Protest Petition

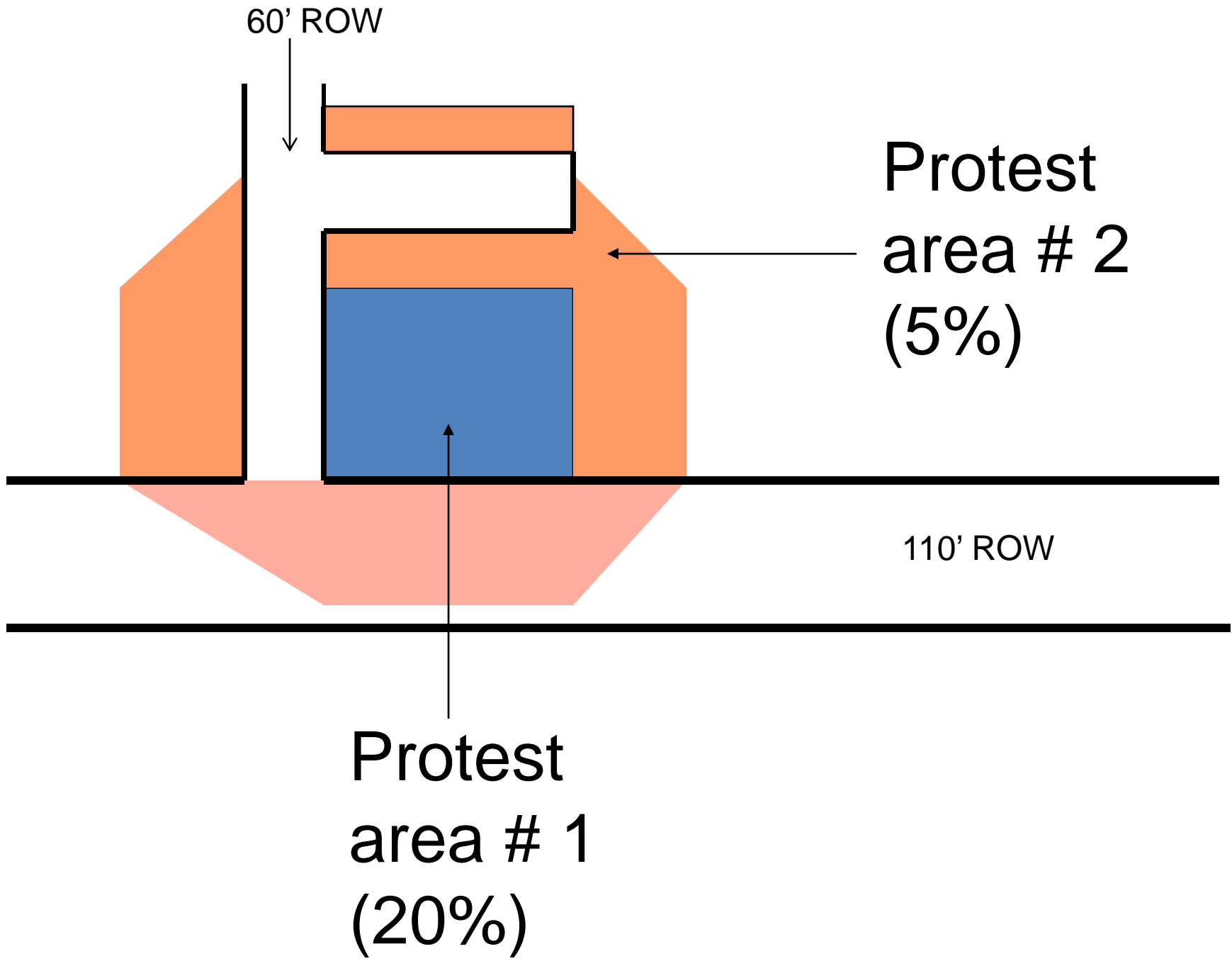
- 3/4 vote required if valid protest
- Owners of 20% of area being rezoned or 5% of a 100 foot perimeter buffer
- Filed two working days prior to date of hearing
- Signed by owners
- City may require form

60' ROW



Property to be rezoned

110' ROW



Quasi-judicial Decisions

- Rules apply when there is:
 - Fact finding
 - Standards with judgment/discretion
- Examples:
 - Variances
 - Special/conditional use permits
 - Appeals

Making Quasi-judicial Decisions

- **Substantial, competent, and material** evidence in the record is *required* for each key factual determination

Making Quasi-judicial Decisions

- Witnesses
 - Oaths
 - Cross-examination
- Evidence
 - Hearsay and opinion
 - Documents
- Only evidence presented at hearing may be considered

Making Quasi-judicial Decisions

- Written findings are required
 - Set out facts determined, not just conclusions
 - Provide sufficient level of detail

Voting

- Statutes require 4/5 BOA vote on many decisions