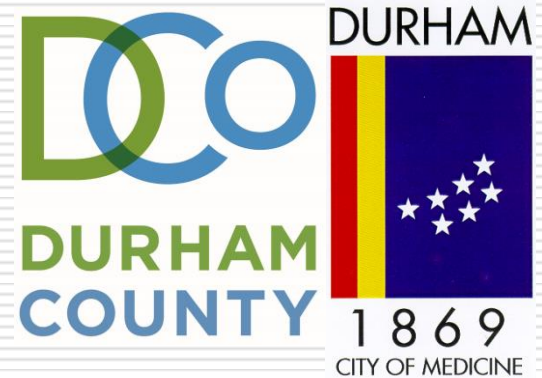


Durham Planning Academy

November 15, 2016

Aaron Cain, AICP



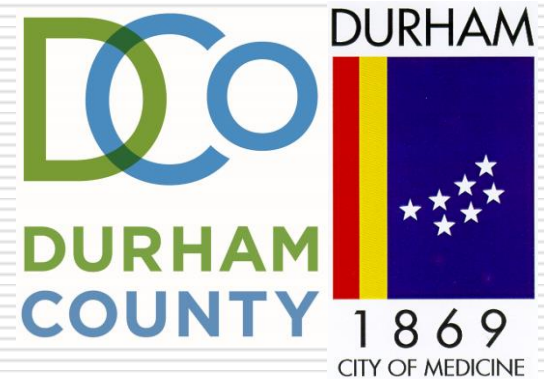
Today's Agenda

- Durham Planning History
- Legal Basis of Planning
- Comprehensive Planning
- Zoning

Durham Planning Academy

Durham Planning History

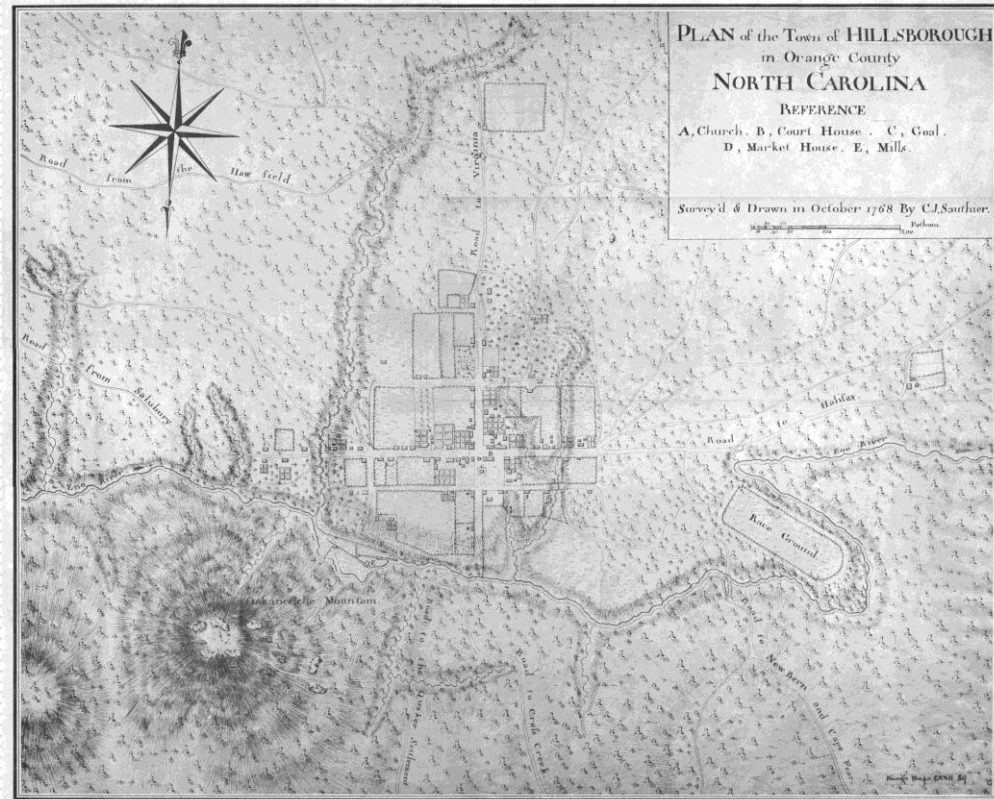
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History of Planning

□ Cities have been planned since America's founding

- ❖ Mostly roads and building locations
- ❖ 1927 Durham Comprehensive Plan all about roads
- ❖ Did not separate uses



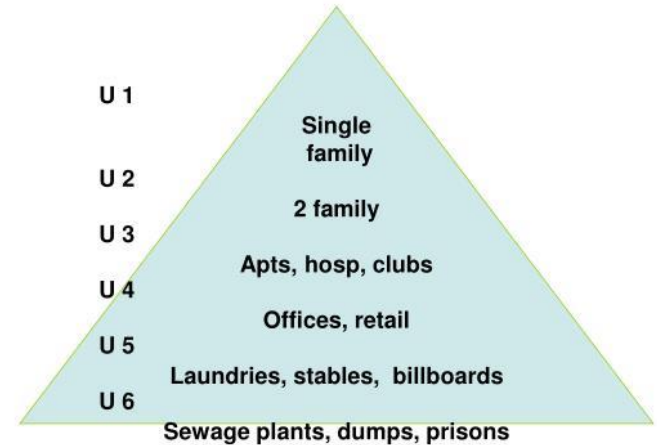
History of Durham Planning

Early 1900s

- Early zoning ordinances restricted use in a pyramid system
- NC authorizes zoning in cities in 1923
- Euclid v. Ambler (1926) - zoning is constitutional

EUCLIDEAN (USE) ZONING

The Zoning Pyramid: the highest use



History of Durham Planning

Mid 1900s

- Post-WWII suburban building boom
 - ❖ Focus on use-based zoning
- NC authorizes County zoning in 1959
- Urban Renewal and Redevelopment focus in 1960s

History of Durham Planning

Late 1900s

- ❑ Focus on suburban-style development in early 1970s
 - ❖ Durham Freeway and Downtown Loop “suburbanize” Downtown
- ❑ South Square Mall built 1974
 - ❖ South Square seen as “new downtown” by early 1980s
- ❑ Durham avoids residential development until mid-1980s (Treyburn, Woodcroft)
- ❑ City-County Planning merger in 1988



History of Durham Planning

Early 21st Century

- Renewed focus on Downtown
- Greater emphasis on non-vehicular travel
- Implementation of form-based codes
 - ❖ Focus on building size and placement
 - ❖ Less focus on use
 - ❖ Similar to very early city planning

Legal Basis of Planning



I am not a lawyer, nor do I play one on TV



Legal Framework of Planning

- Enabling Legislation
- State Law and Local Ordinances
- Case Law

Home Rule vs. Dillon's Rule

- ❑ Home Rule - local governments can do what they want as long as it doesn't violate state law
- ❑ Dillon's Rule - local governments can only do what the state explicitly says you can
 - ❖ NC one of the Dillonest of Dillon's Rule states

Enabling Legislation

- ❑ State Legislature grants counties and municipalities zoning powers
 - ❖ Height
 - ❖ Density/Lot Size
 - ❖ Uses
 - ❖ Building Placement
- ❑ Does not include
 - ❖ Affordable Housing
 - ❖ Single Family Home Aesthetics

Other Delegated Powers

- Subdivisions
- Signs
- Riparian Buffers
- Transportation (roads)
- Development Plans
 - ❖ Durham only

Case Law

- ❑ Case law, rulings handed down by courts, have great influence on planning matters
- ❑ NC courts have historically favored private property rights
- ❑ Several federal cases have guided planning over last 100 years
 - ❖ “Essential Nexus”
 - ❖ Rough Proportionality
 - ❖ Takings

Essential Nexus and Rough Proportionality

- ❑ A governmental exaction must be both proportional *and* have a locational connection
 - ❖ Nollan v. California Coastal Commission (1987)
 - ❖ Dolan v. Tigard (1994)
 - ❖ Koontz v. St. Johns (2013)

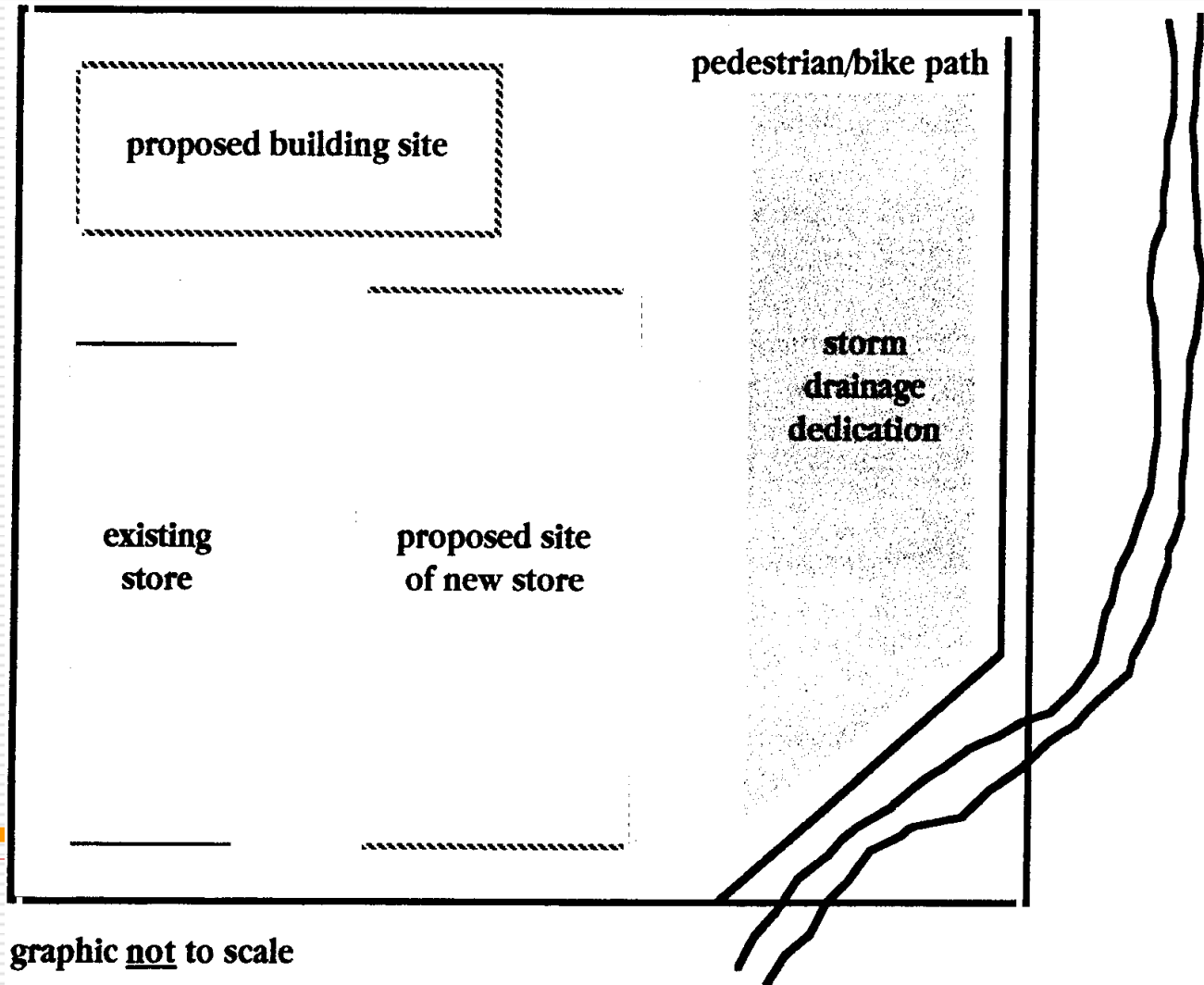
Nollan v. California Coastal Commission (1987)



Nollan v. California Coastal Commission (1987)

- ❑ Government cannot condition permit approvals on exactions that do not “substantially advance” public interest
- ❑ Those public interests must have an “essential nexus” between the permit and the exaction being sought

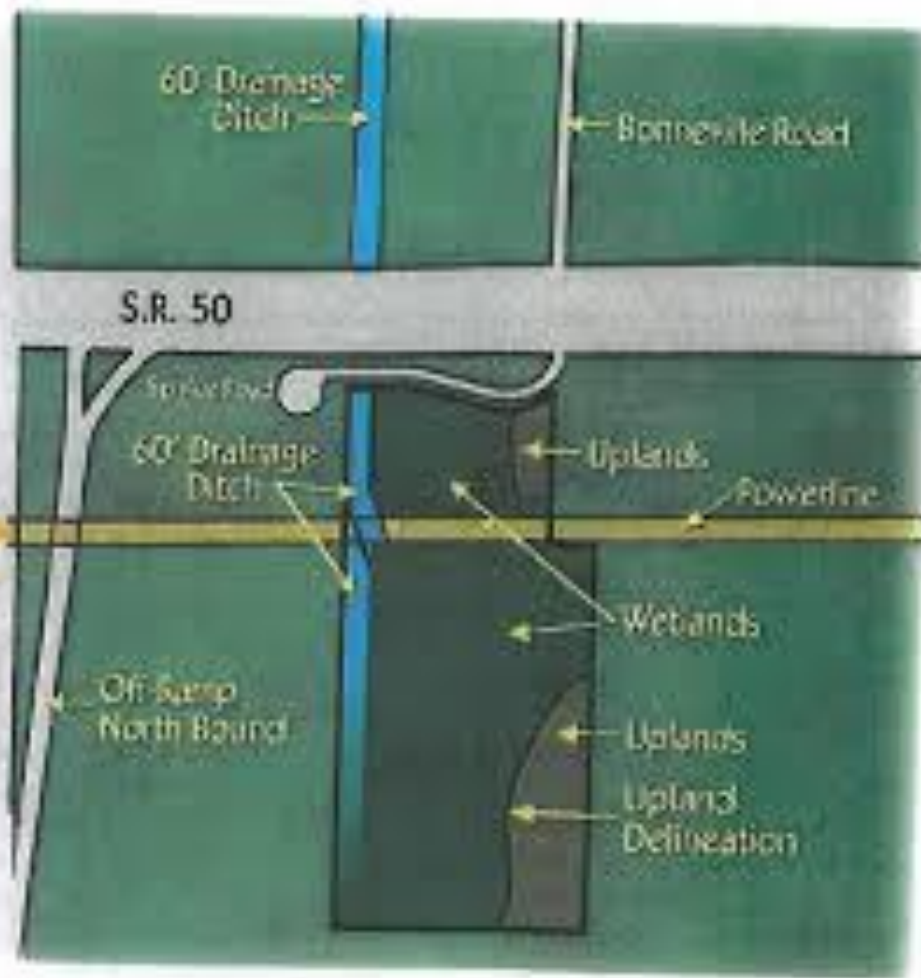
Dolan v. Tigard (1994)



Dolan v. Tigard (1994)

- ❑ If an essential nexus is established, the exaction must be *proportional*
- ❑ An exaction must have a *rough proportionality* to the impact being sought by the property owner

Koontz v. St. John's (2013)



Koontz v. St. Johns (2013)

- ❑ An exaction must pass both the Nollan and Dolan tests to be valid
- ❑ Governments cannot use the permitting process to exact improvements not relevant to the proposed development

Taking

□ “...nor shall private property be taken for public use, without just compensation.” - Fifth Amendment to the United States Constitution

- ❖ Pennsylvania Coal v. Mahon (1922)
- ❖ Penn Central v. New York City (1978)
- ❖ Keystone Bituminous Coal v. DeBenedictis (1987)
- ❖ Lucas v. SC Coastal Council (1992)



Pennsylvania Coal v. Mahon (1922)

- ❑ PA passed law saying coal companies had to leave “pillars” to support “human habitation”
- ❑ Pennsylvania Coal Co. sued that this was a taking

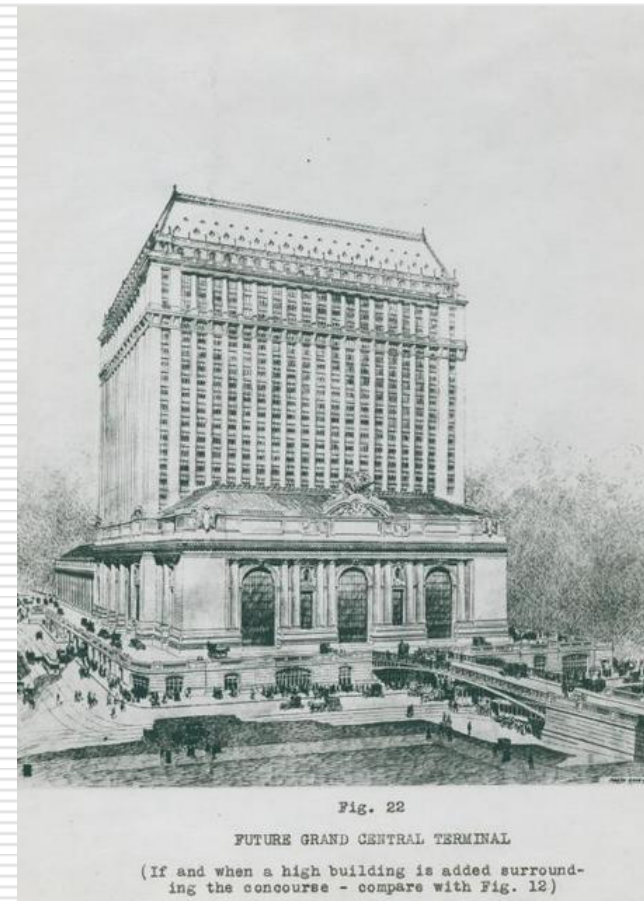


Pennsylvania Coal v. Mahon (1922)

- ❑ A diminution of value can be considered a taking, requiring compensation
- ❑ In this case, since the damage to be done was to a private entity, and not public health, it is eminent domain and therefore a taking

Penn Central v. New York City (1978)

- ❑ Penn Central station declared a landmark by City of New York
- ❑ Penn Central applies to have high-rise built above station; denied by Landmark Preservation Commission
- ❑ Penn Central sues claiming taking



Penn Central v. New York City (1978)

- Economic impact (diminution) is not sufficient for a takings claim
- Regulation does not interfere with present use
- No compensation is required for Penn Central

Keystone Coal v. DeBenedictis (1987)

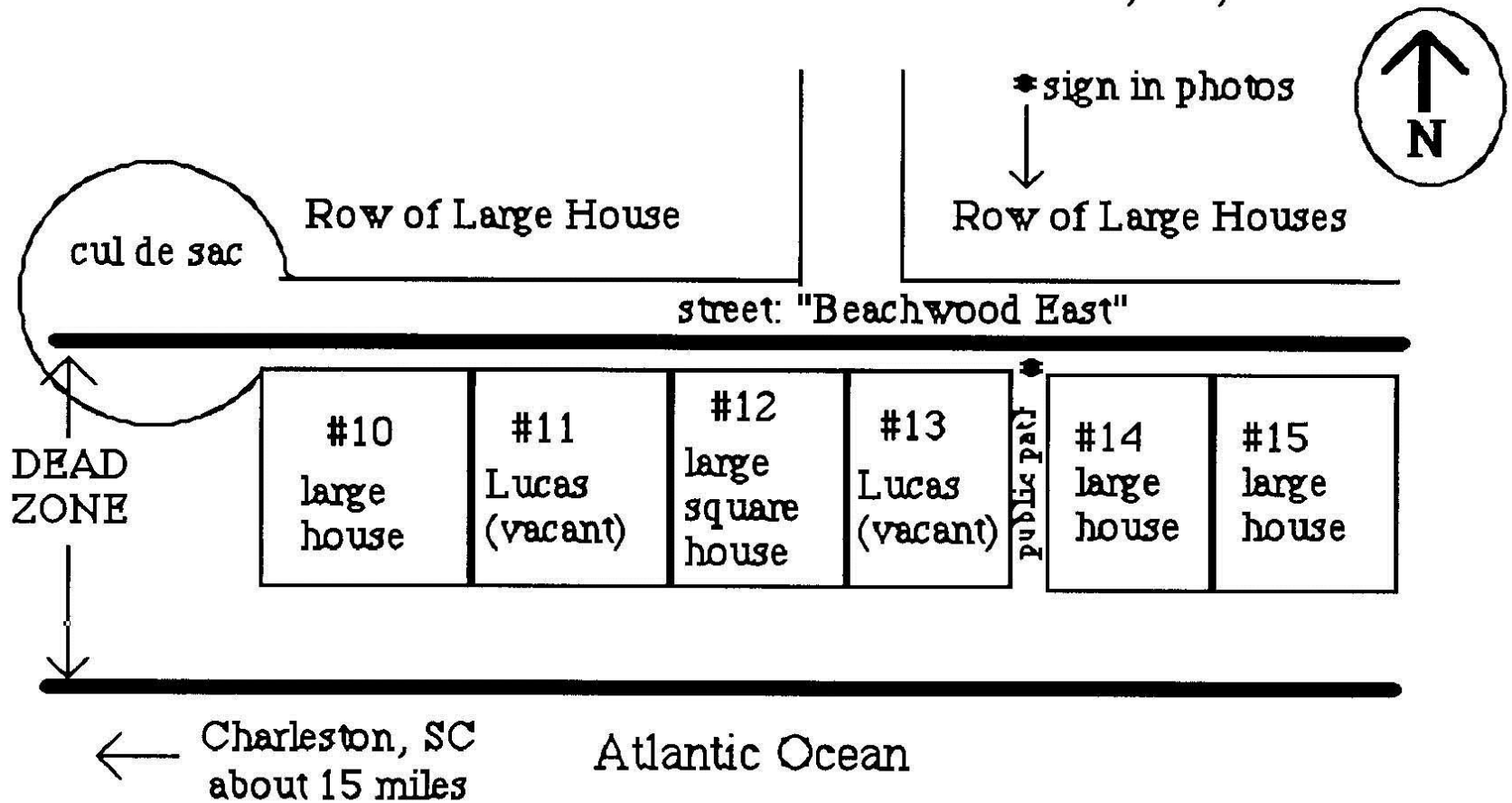
- ❑ Keystone Bituminous Coal Association sued the State of Pennsylvania contending a law requiring portions of a mining operation remain as a “support structure” is a taking
- ❑ The amount that could not be mined was less than 2% of total coal available
- ❑ Keystone cited *Mahon*

Keystone Coal v. DeBenedictis (1987)

- ❑ Supreme Court ruled there was no taking
- ❑ Two factors to determine a taking:
 - ❖ Does not substantially further public interest, or
 - ❖ Denies owner economically viable use of land
- ❑ Court found there was a public interest and land was still economically viable

Lucas v. South Carolina Coastal Council (1992)

Part of "Wild Dunes" resort on Isles of Palms, SC, 11/94



Lucas v. South Carolina Coastal Council (1992)

- ❑ Where a regulation deprives a property owner of all value of the land, it is a taking
- ❑ “Categorical taking” rule

Other Prominent Case Law

- Belle Terre v. Boraas (1974)
 - ❖ Cities and Counties can define “family”
 - ❖ Subsequent federal law, such as fair housing, is eroding “family” statutes
- Renton v. Playtime Theatres (1986)
 - ❖ Cities can regulate “adult establishments”

Other Prominent Case Law

- Kelo v. New London (2005)
 - ❖ Eminent domain can be used to transfer land from one private owner to another
- Reed v. Gilbert (2015)
 - ❖ Cities cannot regulate signs based on content

Legal Summary

- ❑ State enabling legislation allows cities and counties to do planning and zoning activities
- ❑ NC a Dillon's Rule state - state law trumps local law
- ❑ Case law creates important legal precedence
 - ❖ Federal courts limit takings
 - ❖ NC emphasis on private property rights

Homework

- Read the Plan Amendment and Zoning Staff Reports
- Visit the proposed site
- Watch the a Planning Commission meeting (if you have not already done so)
 - ❖ Online
 - ❖ DTV8
- Prep your character