Zoning and Natural Gas Production in Lee County

Brandon King
Department of Agricultural & Resource Economics
North Carolina State University
brandon_king@ncsu.edu (919) 515-4670

Disclaimer

• Presentation and material does not constitute legal advice — or guidance

• General reference purposes only

• Overview of some common regulations, which may impact drilling and production, not all noted

• Always consult with appropriate local government (e.g. planning department) officials or licensed legal counsel
Local and State Law

- No known current preemption of county or municipal planning and zoning authority, or general ordinance making authority, to enact ordinances governing drilling or fracturing

Background

- Lee County, City of Sanford, Town of Broadway fall under one Unified Development Ordinance (UDO)
- Other ordinance provisions (e.g., noise) could be different between jurisdictions
- Extraterritorial jurisdictions (ETJs) or corporate boundaries extended into Lee County?
- UDO includes zoning, flood damage prevention:
  - Uses and creation of uses (development)
Zoning

- Uses not listed as allowed are prohibited by default

- Can be subject to interpretation
  - Use interpreted under definition of another use

- Can be modified over time

Zoning

- Text
  - Definitions, Descriptions of districts

- Table of permitted uses
  - What is allowed in which district
  - How drilling/extraction is conducted also regulated under N.C.G.S., Article 27, Oil and Gas Conservation Act

- Map – zoning districts
  - E.g., Heavy Industrial
"Development. The division of a parcel of land into two or more parcels; the construction, reconstruction conversion, structural alteration, relocation or enlargement of any structure; any mining, drilling, excavation, clearing of roadways or building sites, landfill or land disturbance and any use or extension of the use of land. This definition excludes normal earth working associated with crop farming or landscaping of an individual single-family residential lot. The term "development" includes all of the activities listed in the definition of "development" in 15A NCAC 2H.1002…"

Source: Appendix A, Unified Development Ordinance, Appendix A. - Definitions

"Extractive Uses. Surface and/or subsurface natural resources which may be extracted from the land. This includes exploratory drilling or mining but excludes individual water well drilling."

Source: Appendix A, Unified Development Ordinance, Appendix A. - Definitions
Table of Permitted Uses

Source: Appendix A, Unified Development Ordinance, Article 4, Zoning District Regulations, Table 4.6-1, Permitted Use Matrix

Map

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Current Zoning and UDO

- Drilling not noted as an allowed use in text or table of permitted uses, or defined separately
- “Development” defined within UDO and Flood Protection sections of Code of Ordinances – and includes drilling

Current Zoning

- Gas or electric distributing facilities compressor stations or substations allowed in HI and LI Districts
- Other provisions may be required to allow production (resource extraction)
Other Regulations

- Development defined for flood damage prevention and includes “drilling”
  Source: Code of Ordinances, City of Sanford, North Carolina, Chapter 20, Flood, Article 2, Flood Damage Prevention, Section 20-35, Definitions

- Development = Permit
  "(a) Development permit required. A development permit shall be required in conformance with the provisions of this article prior to the commencement of any development activities. "
  Source: Code of Ordinances, City of Sanford, North Carolina, Chapter 20, Flood, Article 2, Flood Damage Prevention, Section 20-61 Development permit and certification requirements

Other Regulations

“Structure…For purposes of the Floodplain Regulations, a “structure” does not include: ...(2) A gas pipeline or gas transmission or distribution facility, including a compressor station or related facility;…”
Source: Code of Ordinances, City of Sanford, North Carolina, Chapter 20, Flood, Article 2, Flood Damage Prevention, Section 20-35, Definitions
Other Considerations

- Noise
- Lighting
- Fencing
- Setbacks/Buffers
- Sedimentation and erosion
- Waste storage, treatment, transport, and disposal

Owner Protections

- Landowner can be cited and fined for ordinance violations (also civil issues)

- Means of Protection
  - Guidance from local officials – in writing
  - Compliance with ordinances and regulations
  - Work with officials and legal counsel in the beginning of the leasing process
Resources

• Zoning and Land Use Regulation of Forestry (concepts apply to other uses as well)
  www.ces.ncsu.edu/forestry/pdf/WON/won43.pdf

• City of Sanford Planning and Development
  www.sanfordnc.net/planning_development/udo.html

• Municode – Lee County UDO; City of Sanford, Code of Ordinances

• Lee County – GIS Strategic Services
  www.leecountync.gov/Departments/GISStrategicServices/MapGallery/tabid/293/Default.aspx

Resources

• North Carolina Cooperative Extension – N.C. State University
  Department of Agricultural and Resource Economics
  www.ag-econ.ncsu.edu