

TUESDAY, FEBRUARY 9, 2021
TOWN OF SAWMILLS ANNUAL BUDGET RETREAT
9:00 AM

COUNCIL PRESENT

Johnnie Greene
Clay Wilson
Rebecca Johnson
Melissa Curtis

STAFF PRESENT

Chase Winebarger
Julie A Good
Terry Taylor

COUNCIL ABSENT

Keith Warren
Joe Wesson

CALL TO ORDER: Mayor Johnny Greene called the meeting to order at approximately 9:06am.

INVOCATION: Town Manager Chase Winebarger gave the invocation.

PLEDGE OF ALLEGIANCE: Mayor Johnnie Greene led the Pledge of Allegiance.

ADOPT AGENDA: Mayor Johnnie Greene asked for a motion to adopt the February 9, 2021 Budget Retreat Agenda.

Rebecca Johnson made a motion, and Clay Wilson seconded, to adopt the February 9, 2021 Budget Retreat Agenda. All were in favor.

FINANCIAL UPDATES: FINANCIAL UPDATE: Town Finance Officer Karen Clontz presented to the council the following financial information for the Town Council.

1 – Attached is the summary sheet for revenues and expenditures year to date – 12/31/2020 – for all funds. The budget total is \$2,966,769 with \$1,908,838 budgeted for the General Fund and \$1,057,931 for the Utility Fund.

**General Fund includes the \$19,000 budget amendment for paving, original budget = \$1,889,838*

	Annual Budget	YTD Actual	Remaining Budget %
Revenue	\$1,908,838	\$1,167,470	38%
Expenditures	\$1,908,838	\$796,233	58%
Under		\$371,237	

2 - Cash Balance and Budget by Fund as of 12/31/2019:

A. Cash Balance by Fund Summary

General Fund Balance – Unassigned	\$6,335,860
Powell Bill Fund Balance- Restricted/Streets	\$ 475,523
Utility Fund Net Assets-Unassigned	\$4,588,746
Capital Reserve Fund – Restricted	\$ 374,000
Total:	\$11,774,129

Attached is a breakdown of the cash on hand and investments for each fund. The outline also compares the current fiscal year to the same time last year. Interest rates remain low.

B. Budget by Fund Summary:

<u>General Fund</u>	<u>Budget 20/21</u>	<u>Dec 2020 YTD</u>	<u>Remaining Budget %</u>
Revenue	\$1,908,838	\$ 1,167,470	38%
Expenditure	\$1,908,838	\$ 796,233	58%
Over/Under		\$ 371,237	

<u>Powell Bill Fund</u>	<u>Budget 20/21</u>	<u>Dec 2020 YTD</u>	<u>Remaining Budget %</u>
Revenue-State	\$130,000	\$137,230	-5%
Revenue-Reserve	\$0	\$0	0%
Expenditure	\$37,000	\$ 13,166	64%

Regarding the Powell Bill cash balance – the Town’s cash reserve must stay below the total sum of the past 5 years in revenue received from the State of North Carolina Department of Transportation. This is a result of HB 200 changes to GS 136-41.1 through 136-41.3. In summary, towns with a population over 5,000 cannot have a total reserve in excess of the five-year total revenue received.

<u>Utility Fund</u>	<u>Budget 20/21</u>	<u>Dec 2020 YTD</u>	<u>Remaining Budget %</u>
Revenue	\$1,057,931	\$ 762,637	28%
Expenditure	\$1,057,931	\$ 415,629	61%
Over/Under		\$ 347,008	

Utility Fund revenues continue to remain steady.

DISCUSSION:

2020/21 PROJECTS COMPLETED: Town Manager Chase Winebarger stated that even during the pandemic, the Town got many projects completed. Those projects are as follows:

- **Increased Employee Longevity Pay;**
- **Increased Vacation Accruals;**
- **Salary Increase 3% Cola 2% Merit;**
- **Phase II Stormwater Mapping;**
- **Power at Farmers Market;**
- **PA System;**
- **New Server;**
- **Cameras;**
- **Social Media Outsourced;**
- **Absorbed recreation programs from Optimist;**
- **Paving in Doe Run;**
- **Increased sanitation by \$2;**
- **Implemented year 1 of the NCRWA Water Rate study;**
- **This year we are potentially going to partner with the FD for Ham Day**

2020/21 PROJECTS NOT COMPLETED: Town Manager Chase Winebarger stated that with the pandemic, there were certain items that the Town could not get completed during this budget year. Those projects are as follows:

- **Spring clean-up and shred day;**
- **LCD sign and Flower planters;**
- **Parking concerns;**
- **New logo/Branding;**
- **ADA Assessment Plan;**
- **Town Hall**

2020/21 ITEMS FOR CONSIDERATION DURING 2021/2022 FY: Town Manager Chase Winebarger stated that there were some projects that he would like to discuss for the 2021/2022 FY. Those items are as follows:

- **Meter Service Contract:** Town Manager Chase Winebarger stated that he had received a quote from MeterSys for a yearly contract in the amount of eighteen thousand dollars (\$18,000.00). Town Manager Chase Winebarger stated that the Town can call MeterSys without a yearly contract and they will bill the Town hourly. Town

Manager Chase Winebarger stated that the Town could wait a year to see if a contract is needed.

- **Inhouse Planning:** Town Manager Chase Winebarger stated that the Town of Sawmills is paying the Western Piedmont Council of Governments approximately sixty dollars (\$60.00) an hour for only eight (8) hours a week. Town Manager Chase Winebarger stated that the Town has need for an inhouse Planner. Town Manager Chase Winebarger stated that all of the Town Ordinances need to be updated, which takes more time than a contracted Planner can give. Town Manager Chase Winebarger stated that he would get a full job description together and get back to Council with more details.
- **EDC-Sales Tax Reinvestment:** Town Manager Chase Winebarger stated that the EDC Sales Tax Reinvestment is up for renewal this year. Town Manager Chase Winebarger stated that Council will need to vote on the renewal during a regular scheduled Council meeting at a later time.
- **Additional Parking Lot at Veterans Park:** Town Manager Chase Winebarger stated that in the lease of project lands between the Town and Duke Power for Veterans Park, an additional parking lot was to be built by the Town. Town Manager Chase Winebarger stated that he would get with Town Public Works Director Ronnie Coffey and Town Engineer Todd Poteet with West and Consultants to discuss the parking lot and bring plans back to Council during the next budget meeting.
- **Multipurpose paved area at Baird Park:** Town Manager Chase Winebarger stated that the Town could possibly use an overflow parking lot at Baird Park. Town Manager Chase Winebarger stated that when the parking lot was not needed for overflow parking that the Town could build it to have additional uses, such as a basketball court or some other type of outside activity.
- **Charging Landlords a Deposit:** Town Manager Chase Winebarger stated that he had been discussing deposit with staff and referred the topic to Town Clerk Julie A Good. Town Clerk Julie A Good stated that everyone within the Town pays a deposit for water, sewer and sanitation, with the exception of a landlord, the only deposit a landlord has to pay right now is for sanitation. Town Clerk Julie A Good stated that the Town defines landlord as, "a person who owns a property and leases that property to another person." A landlord cannot live in the home. Town Clerk Julie A Good stated that all a landlord has to do is fill out an application and ask for the water to be turned on. Town Clerk Julie A Good stated that when the landlord then leases the property and the new customer puts the property in their name, that the Town has no money to put against any outstanding bills and, in some instances, the landlord has not paid, but then can get more water pout in their name as long as it is not the same address. Town Clerk Julie A Good stated that staff has talked about this issue and would like for Council to add landlords in the deposit policy.
- **Fee Schedule for Recreation:** Town Manager Chase Winebarger stated that the Town recently took over the ball programs from the Optimist, and along with that, himself and Recreation Director Tanner Greene have been researching field rental fees, registration fees, and other fees associated with the recreation department. Town Manager Chase Winebarger stated that what they had found, among other issues, was

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that our base line fees for field rentals were too low. Town Manger Chase Winebarger stated that Recreation Director Tanner Greene would prepare new fees for Council for the fee schedule. Town Manager Chase Winebarger also stated that baseball signups have started and that Council would need to vote on a registration fee during the regularly scheduled February 16, 2021 Town Council meeting. Town Manager Chase Winebarger stated that this fee would normally also be on the fee schedule, but with the Town taking over the ball programs during the middle of a fiscal year, that an amount would need to be agreed upon now and in future years it would be on the fee schedule. Town Manager Chase Winebarger stated that himself and Recreation Director Tanner Greene had researched the registration fees for this area and they would likely propose a forty (\$40.00) registration fee, which would include a jersey, the equipment, the umpires, ballfield lights, and trophies, among other items.

- **Police:** Town Manager Chase Winebarger stated that he wanted Councils direction on what to do about looking into the Town starting a Police Department. Town Manager Chase Winebarger stated that some members of the Public had asked him about a Police Department.

UPDATES:

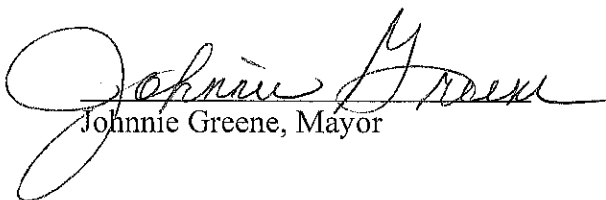
LEGAL UPDATES: Town Attorney Terry Taylor gave Council a handout (which is attached to the minutes) pertaining to Changing Property Values in a Pandemic.

Town Attorney Terry Taylor gave Council a handout (which is attached to the minutes) pertaining to May Nonresidents be Precluded from Enjoying Recreation Facilities?

COUNCIL ADJOURN: Mayor Johnnie Greene asked for a motion to adjourn.

Clay Wilson made a motion, and Rebecca Johnson seconded, to adjourn the meeting. All were in favor.

The meeting was adjourned at approximately 11:59pm.


Johnnie Greene, Mayor


Julie A Good, Town Clerk





Coates' Canons Blog: Changing Property Tax Values in a Pandemic

By Chris McLaughlin

Article: <https://canons.sog.unc.edu/changing-property-tax-values-in-a-pandemic/>

This entry was posted on December 01, 2020 and is filed under Finance & Tax, Property Taxes

How should the pandemic affect property tax values for 2021? The answer depends on (1) whether the property is personal or real and (2) whether the county is conducting a real property reappraisal in 2021. Read on for the details.

First, a quick primer on when and how local governments appraise property for property taxes. The goal for all tax appraisals is to set the appraisal at the property's "true value in money," in other words, at market value. GS 105-283. All taxable property is appraised at the county level except for property owned by "public service" companies (airlines, railroads, power companies, etc.), which is appraised annually by the state Department of Revenue.

Personal property (cars, boats, planes, business equipment, basically everything other than land and buildings) are appraised **annually** by every county. GS 105-285(b). The most common example of the annual personal property appraisal process is the "Invitation to Renew" that we receive from the Division of Motor Vehicles each year for our cars and trucks. That invitation is really a bill for both the annual license plate renewal fee as well as for city and county property taxes on the vehicle. The property tax portion of that bill will show both the local tax rates and the new tax value of the vehicle. That tax value will usually be lower than the previous year's value, because personal property usually depreciates in value over time.

Real property (land and buildings) is appraised at **least every eight years**. GS 105-286. Counties are free to appraise their real property more frequently than every eight years, and many do. Lots of counties are on 4-year reappraisal cycles, and at least one (Durham County) is on a 3-year cycle. In between county-wide reappraisals, the tax value of real property may be changed only in a limited number of circumstances. Most commonly those circumstances include physical changes to the property (new construction, fire damage, etc.) or a change in the legally permitted use of the property (e.g., rezoning to allow commercial use as well as residential). Much more on this topic below.

Whenever property is reappraised, those new tax values are determined as of **January 1** of the year of reappraisal. GS 105-285. For property being reappraised in 2021, the tax value should match the true market value of the property on that January 1, 2021. This date is set six months before the tax year begins on July 1 so that local governments know their tax bases when they begin the annual budgeting process each spring. (Special rules apply to tax appraisals for registered motor vehicles, which I'll avoid discussing here to minimize confusion.)

Now, back to the question at hand: how should the pandemic affect property tax values? As discussed, tax values should reflect market values. Many residential property markets in North Carolina have done exceptionally well in 2020 despite the pandemic. The Research Triangle area, for example, saw the number of residential sales increase by more than 20% in October 2020 as compared to a year ago. And the vacation home market from the mountains to the beaches has been bonkers. But the commercial real estate market in North Carolina faces great uncertainty. Many restaurants have closed permanently and hotels suffered a drop of nearly 50% in occupancy rates over the summer, while demand for office space remained reasonably healthy in some areas of the state.

Assuming that property values have changed over the past year, then the assessor needs to address personal property differently from real property.

As mentioned above, all personal property is reappraised annually. If the market value for personal property has changed, the tax value of that property should also change. It's possible that the market might be flooded with used restaurant equipment, for example. If so, then presumably the market value for such equipment would have dropped. Tax values should also.

A more difficult question is how to value property owned by a business that has closed due to the pandemic. The fact that



a business has closed does not mean its personal property is worthless to other potential users. A forklift, for example, probably has a strong secondary market. But restaurant furnishings that were custom ordered for a particular space might be of little value to other users. Assessors would have to lower the value of that property to account for the costs a new user would incur to remove the property and repurpose it elsewhere.

With real property, there is another important question to ask: Is 2021 a reappraisal year for the county? If so, then all changes in market value as of January 1, 2021 should be reflected in the new 2021 real property tax values.

If 2021 is **not** a reappraisal year for the county, the assessor's ability to change tax values is dramatically more limited. Real property tax values cannot be changed in a non-reappraisal year due to economic issues affecting the county generally. GS 105-287. Pandemic-driven market value fluctuations for different types of real property should not be reflected in 2021 real property tax values. Those market changes will be captured in the county's next reappraisal.

There is one legal justification for changes to real property tax values in a non-reappraisal year that might be triggered by the pandemic. GS 105-287(a)(2c) states that a tax value may be changed in a non-reappraisal year to "recognize an increase or decrease in the value of the property resulting from a change in the legally permitted use of the property." As mentioned above, this provision usually applies to zoning changes. But could state or local public health orders that restrict how some businesses may operate also justify a change in tax value in a non-reappraisal year?

North Carolina's COVID restrictions began in March and remain at least partially in place today. As of late November 2020, North Carolina was in "Phase 3" of the governor's COVID response plan. Restrictions on business activity under Phase 3 include 30% capacity restrictions for bars, movie theaters, and amusement parks as well as 11:00 p.m. curfews on alcohol sales in bars and restaurants.

Do these public health-related restrictions constitute changes in the "legally-permitted use" of the affected properties under GS 105-287? If so, and if they depressed the market values of those properties, then the restrictions could justify lower tax values for those properties even if 2021 were not a reappraisal year for the county.

This is a difficult question to answer. GS 105-287 does not define what type of changes to the legal use of a property may justify a tax value change in a non-reappraisal year. Nor have the Property Tax Commission or the state courts opined on this issue.

Clearly these public health restrictions affect how these businesses operate. But if a bar is no longer permitted to sell alcohol after 11:00 p.m. due to public health restrictions, is that a substantial enough change in the "legally-permitted use" of the property that could justify a change in tax value under GS 105-287? Or is the fact that the property can still be legally used as a bar (albeit one with an earlier last call) mean that GS 105-287 is not satisfied and the tax value may not be changed in a non-reappraisal year?

I could make a good argument for either position. But it may not matter. Because even if we conclude that the COVID restrictions constitute a change in the legally permitted use of the property under GS 105-287, that statute also requires that the change in legally permitted use be the cause of the change in the property's market value. I'm not sure that is the case.

Remember, these restrictions are temporary. Given that vaccines and the end of public health restrictions are (hopefully) on the horizon, owners of previously successful bars or restaurants seem unlikely to accept materially less to sell their businesses today than they would have back in February.

And even if there is evidence of suppressed market prices for bars, restaurants, and other businesses affected by public health restrictions, it would be almost impossible to know how much of that drop were due to the restrictions and how much were related to generally sluggish economic conditions. GS 105-287 doesn't permit changes in tax values due to economic concerns in non-reappraisal years.

The bottom line:



2021 tax values for real property in counties conducting reappraisals in 2021 and all personal property should be changed to reflect the impact of COVID-19 and other factors on their market value as of January 1, 2021.

2021 tax values for real property in counties that are **not** conducting reappraisals in 2021 should **not** be changed to reflect changes in market value due to general economic factors caused by the pandemic. GS 105-287 limits real property tax value changes in non-reappraisal years to very limited circumstances such as clerical or mathematical errors, appraisal errors made in the last year of reappraisal, physical changes to the property, and changes to the legally permitted use of the property.

It is possible that public health restrictions on the hours, capacity and other operational details of certain commercial activities could constitute changes in the legally permitted uses of certain commercial properties. If so, then under 105-287(a)(2c) the 2021 tax values of these properties could be lowered to reflect the limitation on legally permitted uses. But this may occur only if there is evidence that the properties suffered changes in market value due to those temporary restrictions and not due to general economic conditions. This is high bar to clear, meaning in most cases real property tax values should remain unchanged for 2021 in counties not conducting reappraisals.

Links

- www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-283.pdf
- www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-285.pdf
- www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-286.pdf
- www.trianglemls.com/clientuploads/TMLS/Market%20Trends/Local%20Market%20Updates/2020/Oct%202020/Entire-Triangle-Region.pdf
- charlotteledger.substack.com/p/the-vacation-home-market-is-bonkers
- www.gastongazette.com/news/20200829/is-pain-on-way-in-commercial-real-estate
- www.newsobserver.com/living/food-drink/article242743881.html
- www.newsobserver.com/news/coronavirus/article245335715.html#:~:text=Coronavirus%3A%20Latest%20news&text=Hotel%20occupancy%20in%20July%20in,provides%20data%20for%20hospitality%20companies.
- www.wraltechwire.com/2020/09/30/triangle-office-space-drawing-interest-due-to-pandemic-real-estate-services-provider-says/
- www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-287.pdf
- www.nc.gov/covid-19/staying-ahead-curve



Coates' Canons Blog: Local Residents Only: May Nonresidents be Precluded from Enjoying Public Recreation Facilities?

By Rebecca Badgett

Article: <https://canons.sog.unc.edu/local-residents-only-may-nonresidents-be-precluded-from-enjoying-public-recreation-facilities/>

This entry was posted on December 01, 2020 and is filed under General Local Government (Miscellaneous)

A town recently constructed a recreational center that offers an indoor pool, exercise equipment, and fitness classes. Several town residents have asked the town council to limit use of the facility to town residents and their invited guests. The residents are concerned that the center will become overcrowded if nonresidents can join the facility. Because the town funded the construction of the recreational center with local taxes, the council has agreed to restrict membership to town residents to ensure that they may fully enjoy the space. May the town legally restrict the new facility in this way?

Like many legal questions, the best answer to the above hypothetical may be, *it depends*. G.S. 160A-353 grants cities and counties authority to establish supervised recreational programs and set apart land for recreation centers and similar recreational facilities. However, neither the statute nor our courts indicate whether a local government may exclude nonresidents from enjoying locally-funded recreational facilities. Nonetheless, local officials do sometimes differentiate between residents and nonresidents in providing access to some right, privilege, or benefit.

For example, local governments often distinguish between residents and nonresidents by charging nonresidents higher fees than residents for the privilege of engaging in local recreational activities. The term "recreation" has been defined to include any activity that promotes entertainment, pleasure, relaxation, instruction, or cultural development, including using a recreation facility, or participating in a class or activity. G.S. § 160A-352. As such, nonresidents could theoretically be charged more to reserve a room in a public library, swim at an aquatic facility, or participate in a sport, class, or lesson offered at a public recreation center. The Supreme Court has held that it is "not in itself invidious or unconstitutional" to impose a reasonable differential in cost between residents and nonresidents to engage in state-funded recreational activities. *Baldwin v. Fish & Game Comm'n of Montana*, 436 U.S. 371, 390 (1978).

Most challenges to classifications that distinguish between residents and nonresidents are brought on equal protection grounds. For a residency classification to be upheld, a local government must satisfy the rational basis test by demonstrating a reasonable relationship between the residency classification and a legitimate governmental interest. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432 (1985). Additionally, residency classifications may not violate other constitutional mandates, such as the First Amendment or the privileges and immunities clause. Further, an ordinance will be void if it arbitrarily or unreasonably discriminates against nonresidents or has a disparate impact on a protected class, such as race or nationality. 5 McQuillin Mun. Corp. § 19:25 (3d ed.).

Residency Classifications and Recreational Activities

There is case law in other jurisdictions (albeit limited) that suggests that a local government may sometimes distinguish between residents and nonresidents when it comes to using local recreational facilities. In these cases, the courts focused on the limited capacity of the respective recreational facility as the primary basis to uphold the residency classification. However, it was also important that the recreational facilities at issue were developed and maintained through local taxes financed by residents and the facilities were never dedicated to or intended for general public use.

For example, in *Zarogian v. Town of Narragansett*, 701 F. Supp. 302 (D.R.I. 1988), a Rhode Island state statute enabled a town to operate a general beach and bathhouse business for the benefit of the public. Accordingly, the town granted the public full access to the beach, rest rooms, and concessions. Pursuant to a "resident priority policy," the town reserved the use of the shower rooms and the rental of beach cabanas for town residents. When the resident priority policy was challenged on equal protection grounds, the district court upheld the policy, concluding it was a "reasonable rule and regulation" because the facilities at issue were maintained through local taxes and were never intended for use by the general public. Further, the beach cabanas and shower rooms were a "scarce resource" for which the "very nature of the



use require[ed] exclusion."

Similarly, in *Van Ness v. Borough of Deal*, 367 A.2d 1191 (App. Div. 1976), a New Jersey court held that there was no equal protection violation when a city adopted a residency classification to exclude nonresidents from joining a municipal-owned beach club that consisted of a 350-car parking lot, a large pool, 484 changing facilities, a snack bar, and recreational facilities including shuffleboard, ping pong, and basketball. In reaching its conclusion, the court noted that the construction of the facility was financed by a bond issue and subsequent improvements were financed by municipal revenues. Further, there was evidence that facility was fully utilized by residents, and there had been a tendency toward over-utilization in recent years. Thus, because the club was a "limited capacity facility" that had never been dedicated for public use, the town had a legitimate interest in reserving membership to town residents who "contributed to its creation and continue[ed] to contribute to its maintenance."

Residency Classifications and Public Parks

Public parks are generally not the type of recreational spaces that may be reserved for use by local residents. Instead, land held by a local government for park purposes is "held for the benefit of the *people of the state at large* and not only for the benefit of local inhabitants." 64 C.J.S. Municipal Corporations § 1996. This is because public parks are used for purposes of assembly and as locations for free expression, making them traditional public forums for First Amendment purposes. And a residency-based classification that excludes nonresidents from visiting a public park will likely raise First Amendment concerns. *Kunz v. People of State of New York*, 340 U.S. 290, 293 (1951). When a residency classification is challenged on First Amendment grounds, the regulation must pass strict scrutiny. Strict scrutiny requires a local government to demonstrate that the regulation serves a compelling governmental interest and that it is narrowly drawn to achieve that interest. This is a difficult burden to satisfy.

This principle is illustrated in *Leydon v. Town of Greenwich*, 257 Conn. 318 (2001), where the Connecticut Supreme Court struck down a town ordinance that imposed a residency requirement to visit Greenwich Point, a 147-acre facility with a small beachfront area, picnic shelters, a marina, ponds, walkways, trails, and a public library book drop. The town argued the residency classification served a compelling government interest because, foremost, the town funded and operated the facility for the benefit of local residents, and, secondly, the limited capacity at the small beachfront area made it difficult for residents to enjoy the space. The court was not persuaded. It overturned the ordinance on the basis that the town failed to show a compelling governmental interest in excluding nonresidents from this park, a traditional public forum. It also held that the ordinance was substantially overbroad because it barred a large class of people, namely all nonresidents, from visiting the public forum and engaging in "a multitude of expressive and associational activities[.]" *Id.* at 347.

Residency Classifications and Access to Navigable Waters

The public trust doctrine protects the public's right to the unobstructed access to the state's natural waters, including oceans, river, and lakes, for purposes of commerce, navigation, or to enjoy recreational activities, such as boating, swimming, and other shore activities. *Fish House, Inc. v. Clarke*, 204 N.C. App. 130, 134 (2010) (the public trust doctrine protects the public's access to all navigable watercourses, whether tidal or inland, for "all purposes of pleasure or profit[.]"). Implicit in the public trust doctrine is a duty not to discriminate between residents and nonresidents when it comes to the enjoyment of the state's waters. As such, nonresidents may not be charged higher fees than residents to access or enjoy the state's navigable waterways. And local governments may not prefer its residents when providing access to public waterways.

For example, *State v. Town of Linn*, 556 N.W.2d 394 (Ct. App. 1996), a court struck down a village ordinance that reserved most parking spaces at a public boat launch for village residents on the basis that the public trust doctrine mandated that access to navigable waterways must be equally available to all users—residents and nonresidents alike needed to park at the boat launch to be able to enjoy the water. Extending this logic, it would similarly violate the public trust doctrine if a local government were to preclude nonresidents from using a public boat ramp to launch watercraft into navigable waters.

Key Takeaways

While these cases do not necessarily predict how North Carolina courts would rule in a case involving a residency-based classification, some standards can be derived from these decisions. Foremost, courts will probably consider the nature of



the use of a recreational facility, as well as its overall capacity, in determining whether a classification that excludes nonresidents from enjoying a recreational facility is reasonable. The funding source for the construction and ongoing maintenance of a facility is also an important factor. Finally, the extent to which the facility was dedicated for general public use is also important, as would be any conduct to by the local government to suggests an intent to hold the facility in trust for the benefit of the public. See 57 A.L.R.3d 998. If a recreational facility has limited capacity and local residents contribute significantly to the costs incurred in the construction and/or maintenance of the recreation space, there is a greater chance that a residency classification will withstand an equal protection challenge. However these factors probably would not be sufficient to survive the strict scrutiny that courts apply to First Amendment challenges, but those challenges usually arise with public parks or other public forums not recreation centers or other limited-use facilities.