

[Home](#) / [Opinion](#) / [2006](#) / [2006 Letters to the Editor](#)

opinion

letters to the editor

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Commissioners need to climb this hill

For the past several months, County Attorney Joe Connolly and the Board of Commissioners have suggested to concerned Buncombe County residents that it would be difficult and time-consuming to impose a temporary development moratorium.

Municipal development moratoriums have been legally and successfully used to deal with a variety of land-use concerns. The issue is whether the elected officials are willing and able to impose a temporary moratorium on all mountain construction.

It is important to look at legal precedent: On April 23, 2002, the Supreme Court ruled in *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency* that temporary moratoriums on construction were legitimate regulatory actions, affirming the power of governmental entities to control private property while environmental issues were studied and land-use regulations were reviewed.

A moratorium imposed by the Tahoe planning agency had prohibited all new construction for a 32-month period. Landowners sued the agency, arguing that any government action that caused their property to become worthless – even short-term and regardless of the reason – would constitute compensable taking under the Fifth Amendment.

The Supreme Court ruled that temporary restrictions placed on development do not dispossess the property owners of the entire economic value of their property, and that because the property in question continued to have economic worth after the moratorium, the agency was not obligated to provide any compensation to the owners.

The reason for the development moratorium had been the agency's concern that rapid development around the lake would lead to water-quality degradation.

In 1983, the N.C. General Assembly clearly identified the dangers of mountain-ridge and slope construction with the passage of the Mountain Ridge Protection Act and this legislative finding: "The construction of tall or major buildings and structures on the ridges and higher elevations of North Carolina mountains in an inappropriate or badly designed manner can cause unusual problems and hazards to the residents of and visitors to the mountains. Supplying water to, and disposing of the sewage from buildings at higher elevations with significant numbers of residents may infringe on the ground water rights and endanger the health of persons living at lower elevations."

Does Buncombe County's permitting of 23 major subdivisions on mountain slopes constitute significant construction?

Buncombe and the other 20 counties that make up Western North Carolina have been identified by the N.C. Division of Emergency Management to be at high risk for landslides. Buncombe was one of 15 WNC counties declared a federal disaster area in September 2004. State geologists and other professionals have published extensive reports about slope instability and safe slope construction.

For the commissioners to continue to allow these major mountain subdivisions without benefit of the state-authorized and funded landslide mapping, set to begin next year, is unwise and possibly negligent. And when slope-construction regulations are passed, they *must* require a site-specific stability analysis by a licensed professional. Public safety concerns dictate that Buncombe County control and regulate for all slopes if there is evidence that ground disturbance will precipitate landslides.

Past, current and pending slope regulations in Buncombe County do not adequately address the serious consequences of the construction of thousands of homes on unmapped and potentially unstable ground. A temporary development moratorium would allow county government to revisit and review land-use policy for all slope construction.

– Lynne Vogel
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