
Coates' Canons Blog: Fixing an Error on a Zoning Map

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The mayor is finishing lunch with a couple of friends at the diner downtown. Just as she is about to dig into the best banana pudding in the state, an irate constituent barges in. Reaching the mayor's booth, the red-faced constituent blurts, "I've really had it. Your gross incompetence is costing me thousands. Somebody needs to fix this zoning mess, Madame Mayor, and they better fix it fast. If you can't get this fixed by the end of the day, you'll be hearing from my lawyer. You'll never get elected dog catcher if you can't straighten this out in a hurry."

The mayor calmly asks what the nature of the problem seems to be. After a little more ranting about the clowns running the town, the basic facts emerge.

It turns out the constituent has been working on a land development deal for the past year. He owns twenty acres on the edge of town and has visions of an apartment building, some offices, and a couple of shops on the site. His first step in the development process was getting the site rezoned. Six months ago, after much discussion with the town staff, the planning board, and neighbors, he was successful in getting the town council to approve a rezoning from a low density residential district to a mixed use zoning district.

He has been working since then with his engineers, surveyors, planners, and bankers on the site plan. When his agent went by the planning department this morning to finally turn in the permit applications for the initial buildings in his project, the new town planner pointed out that the zoning map showed only ten acres of the site was zoned to allow a mixed use development. The remaining ten acres was still shown as residential. When the agent complained that the entire twenty acres was supposed to have been rezoned six months ago, the planner responded that the zoning map is what it is and gave him the forms to initiate another rezoning for the ten acres still shown as being in a residential zoning district. The planner told the agent that if this turned out to be noncontroversial, perhaps the town could get the rest of the site rezoned in about four or five months and that, if nothing else changed, the agent could then bring these permit applications back.

Winding down his tale of woe, the constituent leaned in to the mayor and concluded, in only a slightly calmer tone, "Four or five months. Can you believe your planner said that? Do you know what that will cost me? I need you to get this fixed right now. Four or five hours, ok. A day or two, maybe. But months to fix this picayune mistake? Are you nuts?"

The mayor assures him she will promptly look into this and will get back with him later in the day with a report on her findings. When she finishes her banana pudding and checks this out with the city staff, is she going to be able to get the constituent any immediate relief? As with many legal responses to zoning questions, it depends.

In this situation we can assume an error has been made. The landowner wanted all of his twenty acre tract rezoned. Somehow only ten acres is shown on the current official zoning map as having been rezoned. If we assume both the owner and the town intended for the entire twenty acres to be rezoned (and it is always very important to check that assumption carefully), the question for today is how the error can be remedied. Whether it can be fixed quickly depends on the exact nature of the error and when it was made.

There is one type of error that can be fixed quickly. If the error occurred after the town council voted on the rezoning, the fix is easy and can be made immediately. Suppose the twenty acre area involved in the rezoning consisted of two ten acre parcels. Suppose further that after the vote on the rezoning, the staff member entering the council's action on the official zoning map inadvertently only made the change for one of the two parcels so that only ten of the twenty acres show up as rezoned. This can accurately be described as a clerical mistake, what the courts sometimes call a "scrivener's error" (conjuring images of Bob Cratchit scribbling in a dim light). If an investigation clearly establishes this is the nature of the

error, it can be immediately corrected by the staff so that the zoning map accurately reflects that true action taken by the council.

An example of this type error is discussed in a recent court of appeals case, **Laurel Valley Watch, Inc. v. Mountain Enterprises of Wolf Ridge, LLC**, 192 N.C. App. 391, 665 S.E.2d 561 (2008). In that case the county commissioners approved a rezoning, but the board's minutes incorrectly specified the new zoning district for the property. Since the application, hearing notices, planning board discussion, staff recommendation, and commissioners' discussion all clearly referenced the intended district, the court easily found the minutes to be a scrivener's error that could be summarily corrected. Even though it is not legally necessary for the governing board to take action to fix this type error, it is a good practice to report the fix to the board and have the correction noted in their minutes (and particularly cautious local governments may want to have the board adopt a resolution noting and approving the correction).

But if the error was made earlier in the process, it is likely the town will have to go through the full rezoning process to correct the mistake. The key here is that if the zoning map accurately reflects what the town council actually did, rather than what they may have thought they did, a legislative rather than a clerical correction is required. For example, suppose the landowner meant to include both of his ten acre parcels in the rezoning, but his application mistakenly listed only one of the parcels. Suppose further that the applicant's mistaken property description was reflected in the notice of the hearing and the rezoning motion adopted by the council. Even though the discussion throughout the process may have been on the entire twenty acre area, the council actually rezoned only the ten acres included in the application, the notice of hearing, and the rezoning motion.

Another recent court of appeals case illustrates this second type of error. In **Murdock v. Chatham County**, ___ N.C. App. ___, 679 S.E.2d 850 (2009), *review denied*, ___ N.C. ___, ___ S.E.2d ___ (2010), the plaintiffs challenged (among other things) a zoning administrator's attempted fix of a zoning map error. In 2006 a landowner approached the county about a development project that would require a rezoning. In the course of the discussions with the county staff it was discovered that a 1974 rezoning was erroneously entered on the county's zoning map, as the area shown on the zoning map did not match the legal descriptions of the property that was supposed to have been rezoned over twenty years ago. However, in 1988 the county had adopted a new zoning map and that map adoption incorporated the mistaken delineation that had been put on the map in the 1970s. The court held that even if the metes and bounds property description from 1974 had been incorrectly entered on the zoning map (even if it was a "manifest error"), the county commissioners in 1988 had adopted an official zoning map based on that incorrect depiction. The map with the error had therefore become the official zoning map that must be applied by staff until the map is amended. Since governing board action is required to amend the zoning map, the full rezoning process must be followed if the county wanted to correct the original error.

So if the investigation into the complaint made to the mayor turns up a simple staff error *after* the town council action, the mayor can have a pleasant chat with her irate constituent and let him know an expeditious fix is in the works (or perhaps has already been made). But if the error arose *before* the town council actually adopted a rezoning of only the smaller area, the planner's initial estimate of the time to fix the problem is fairly accurate. The town can take some action to minimize the impacts of the error – it could initiate the fix itself (thereby avoiding a second rezoning petition fee) and give it priority scheduling with the planning board and council agendas. But it will have to complete the full zoning amendment process to get the entire twenty acres into the proper zoning district. If that turns out to be the case, the mayor may want to break the news to the landowner over a complementary dish of that famous banana pudding.



A Southern Staple:

Banana Puddin

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