Coates' Canons Blog: Mandated Notices in Land Development Regulations

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Local governments make hundreds of decisions every day under local development regulations. Permits are issued or denied. Enforcement actions are initiated. Ordinance provisions are interpreted. Property is rezoned. Ordinances are amended.

When a local government is considering these, does it have to provide notice that a decision is pending and solicit comments? Once the decision is made, who has to be told about it?

Because many of these decisions have a significant impact on landowners, neighbors, and the community, state law requires the local government to provide notice and an opportunity to comment prior to some land use regulatory decisions. Since the time for appeals is limited for some types of decisions, state law also requires that written notice of those decisions be provided. These notices should provide sufficient information to alert a reasonable person as to the nature of the action involved, where and how they can get more information, and how they can offer comments or take needed action.

This post summarizes when state law requires that notices be provided and the minimum amount and form of the notice required. A summary table of the requirements is included. Individual local ordinances can add or expand upon these minimum requirements, but every city and county is required to at meet these state notice requirements.

Staff Determinations

For the most part there is no state mandate for prior notice of *pending* administrative decisions made by a local government staff. Since these decisions involve application of existing, objective standards rather than making policy choices, the need for and use of public input is very limited. Thus there is no public hearing required when an administrative staff member makes a decision on a building permit, a certificate of zoning compliance, a notice of violation, a preliminary or final plat, or similar ministerial decision by the staff. A few local ordinances may require notice to neighbors for these, but that is rare. For the most part these routine decisions are handled through direct communication between the applicant and the staff only. See this **post** by my colleague Rich Ducker for a discussion of additional aspects of the law on notice of administrative decisions.

When a staff member makes a *final, binding determination* under a zoning ordinance, the right of the person receiving the decision to make an appeal to the board of adjustment is triggered. State law requires the local government to provide written notice of the determination to the party who sought the determination, and to the owner of the property involved. **G.S. 160A-388(b1)(2)**. The notice may be delivered by personal delivery, electronic mail, or first-class mail. Those persons then have 30 days from receipt of the written notice to file an appeal to the board of adjustment. Other persons who are directly affected by that determination have 30 days from the time they receive actual or constructive notice of the decision to file an appeal. There is no state requirement to send the notice to neighbors. State law gives the property owner the option of posting the site with a sign notifying neighbors that a determination has been made, which triggers the start of the neighbors' time to make an appeal. **G.S. 160A-388(b1)(4)**.

Another important variation arises with enforcement orders that require repairing, vacating, or demolishing residences that are unsafe for habitation under housing codes (**G.S. 160A-443**, **-445**). Notices to the owner by personal service or registered/certified mail and posting the property are required. There are similar statutory notice and hearing requirements for determinations regarding unsafe buildings (G.S. 153A-366 to –369; 160A-425 to 429).

Hearings on Pending Quasi-Judicial Zoning Decisions

When a local government board makes a quasi-judicial decision – deciding a special or conditional use permit application, a variance request, or an appeal of a staff determination – it must hold an evidentiary hearing. Prior to 2013, state law left it to local ordinances to determine what "reasonable notice" of the hearing was to be provided. State law now sets a uniform standard for mandated notice of these hearings.

The local government holding the evidentiary hearing must provide both mailed and posted notice of the hearing. **G.S. 160A-388(a2**). A notice of the hearing must be mailed to the person who initiated the hearing, the owner of the affected property, and the owners of abutting properties. Some local ordinances expand the mailing requirement to the owners of all properties within a set distance of the affected property (typically those within 100 feet). The notice must be deposited in the mail at least 10 but not more than 25 days prior to the hearing. The local government must also post a notice of the hearing on the site involved. That sign has to be put up at least 10 but not more than 25 days prior to the hearing. There is no state mandate for publishing the notice of an evidentiary hearing in the newspaper, since the purpose of these hearings is to gather facts about a particular case, not to solicit public opinion about a pending policy choice. The notion here is that the interests of those most directly affected and who are most likely to have relevant evidence to offer are best served by mailed and posted notice, while newspaper publication is oriented more to the general public. Some local ordinances, however, do require published notice of these hearings.

The Open Meetings Law also applies to these hearings, so in addition to the specific requirements noted above, the notices required by that law must also be provided. **G.S. 143-318.10**. A copy of the regular meeting schedule must be filed in a central location and posted on the local government's web site (if it has one). A special meeting held outside the regular meeting schedule requires posting written notice of the meeting on the local government's principal bulletin board, posting notice on the local government's web site, and mailing a copy of the notice 48 hours in advance of the meeting to each person who has made a request for notification. Notice of an emergency meeting must be provided to the local news media.

Quasi-Judicial Zoning Decisions

Once a local government board makes a decision on a quasi-judicial matter, that decision must be reduced to writing. The written decision has to include the resolution of any contested facts and must apply the applicable standards to the facts of the case. Once signed by the board chair, the written decision must be filed with the clerk to the board. The decision must then be delivered to the applicant, the owner of the affected property, and to any person who has made a written request for a copy of the decision prior to the time the decision is filed with the clerk. The decision can be delivered by personal delivery, electronic mail, or by first-class mail. The person who delivers the decision is to certify that proper notice of the decision has been made. **G.S. 160A-388(e2)(1)**. Persons affected by a quasi-judicial decision only have 30 days from the time this notice is provided to initiate judicial review (three days is added to the time notice is sent if that is done by first-class mail).

These statutes are directly applicable only to zoning decisions. A local government can make plat approval (or other development approval) quasi-judicial by including standards for approval that require judgment and discretion. If that is done, the notice required for zoning decisions provides a useful guide to the notice that should also be provided for those decisions.

Hearings on Pending Legislative Decisions

Whenever a local government adopts, amends, or repeals a development regulation, it must first hold a public hearing to solicit public comments. This applies to zoning, subdivision ordinances, housing codes, and any other development regulation. The requirement for a hearing on pending legislative decisions has been a feature of North Carolina statutes

since the initial authorization to adopt zoning was granted to the state's cities in 1923. The requirements for how notice of that hearing is to be provided have evolved over the decades.

Current law requires that notice of the hearing be published in a newspaper**. G.S. 153A-323**, **160A-364**. This requirement applies to all development ordinances, not just zoning. It applies to subdivision ordinances, unified development ordinances, housing codes, and so forth. The notice must be published twice, with the first notice appearing at least 10 but not more than 25 days prior to the hearing (the date of publication is not included in this calculation, but the day of the hearing is). A few local governments have been given legislative authorization to substitute electronic notice for these published notices, but recent efforts to extend that option to all cities and counties have faced stiff opposition from newspapers. Notice of the hearing must also be sent by certified mail to the base commander if the proposed amendment affects permitted uses, major subdivisions, or tall structures within five miles of a military base.

If the ordinance amendment is a rezoning – an amendment of the zoning map – there are three additional notice requirements mandated. **G.S. 153A-343**, **160A-384**. First, notice of the hearing must be mailed to the owner of each affected property and the owners of all abutting properties (it is fairly common for local governments to extend mailed notice to all those owning property within a set distance, such as within 100 feet, not just abutting owners). The notice must be deposited in the mail at least 10 but not more than 25 days prior to the hearing. Second, a sign notifying the public of the hearing must be posted on the site affected or the adjacent street right of way. State law does not specify the time of the posting, but many local governments use the same 10 to 25 day window required for the mailed notice. Third, if the rezoning was not requested by the owner of the affected property or by the local government involved, actual notice of the hearing must be provided to the property owner. This must be done in the same manner personal service is required in civil suits — personal delivery, registered or certified mail, or delivery with signature confirmation. The person who requested the rezoning is responsible for making this actual notice to the owner. Also, notice of the hearing must be sent by certified mail to the base commander for any rezoning of land located within five miles of a military base.

The requirements for notice of these various actions are summarized by the table below:

Type of Action	***Type of Notice***	***Recipient***	***Timing***
Final Staff Determination	Personal service, email, or mail; Posting by owner (optional)	Person requesting; Property owner	When made
Hearing on Quasi-judicial Decision	Mail; Post site	Applicant; Property owner; Abutting property owners	10 to 25 days prior to hearing
Quasi-judicial Decision	File with clerk; Personal service, email, or mail	Applicant; Property owner; Others making written request prior to effective date	When made
Hearing on Ordinance Text Amendment	Newspaper; Certified mail if near military base	Public; Base commander	10 to 25 days prior to hearing
Hearing on Rezoning	Newspaper; Mail; Post site; Personal service if not initiated by owner or government; Certified mail if near military base	Property owner; Adjacent property owner; Base commander	10 to 25 days prior to hearing

Consequences of Failure to Provide Notice

All of the state statutory requirements noted above must be strictly followed. Any additional requirements included in local ordinances must also be strictly followed. The courts have held that these notice requirements are a vital part of land development regulations, providing essential notice to property owners, neighbors, and citizens as to proposed decisions. An ordinance amendment made without observing the notice requirements will be invalidated if challenged in court. The notices required for final decisions that have been made are critical for initiating appeal times, as well as for providing essential information to those affected by the actions taken. Failure to provide notice could be a basis for allowing a

challenge beyond the time provided in the statutes. It is therefore essential that all of those administering development regulations know and follow these mandates.

Links

- canons.sog.unc.edu/?p=1802
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-388
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-443
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A-323
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-364
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A-343
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-384