
Coates' Canons Blog: Plan Consistency Statements

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Ernie Bass owns a sizable parcel of vacant land on the edge of Mayberry that fronts a major road. He hunted and fished there for decades. The Mayberry bypass was recently completed on the edge of the property and an out-of-town investor approached Ernie about buying the parcel in order to place an automobile dealership there. Ernie is agreeable to the proposal, but his sale of the property is contingent upon it being zoned to allow the proposed new land use. The land is now in a medium-density residential zoning district. It must be rezoned to highway commercial to allow the auto dealership. So Ernie submitted a rezoning petition to the town.

As the town staff, planning board, and town council consider the proposed rezoning, does it matter what Mayberry's recently adopted comprehensive plan says about the future development of this site? If so, how does the town go about plan consideration? Are there legal requirements to be met and documented?

In some states, the policy guidance set out in the plan is binding and must be followed by the town council. In other states, the council is free to ignore the plan. North Carolina follows a middle ground. The planning board and town council must consider the plan. Both boards must document that they have done so. But the plan is advisory only. The council may elect to make a rezoning decision that is contrary to the plan. State law sets procedural steps that the boards must follow. Any zoning amendment that is adopted without following those steps will be invalidated if challenged in court. A new bulletin on plan consistency analysis from the School of Government, described below, sets out the law to be followed and reports on how cities and counties are doing so.

A new SOG Planning and Zoning Law Bulletin, **Plan Consistency Statements**, ([click for link to free copy of the bulletin](#)), summarizes the statutes and case law in North Carolina regarding how plans are to be considered by local governments when zoning ordinances are amended. The School surveyed all North Carolina cities and counties in 2018 about various land use practices. This bulletin includes the survey responses about how local governments prepare and consider mandatory plan consistency statements when zoning amendments are proposed. The bulletin also includes 20 consistency statements approved by cities and counties on a variety of types of zoning amendment decisions to illustrate the ways local governments have complied with this statutory mandate.

Legal Requirements

The statutes in North Carolina, and in most every state around the country, require that zoning be undertaken "in accordance with a comprehensive plan." Our courts, like the majority of those in the U.S., have over the decades interpreted this to mean that local governments must apply zoning comprehensively to all of the territory within in planning and development regulation. Further, our courts have said that reasoned study and analysis of a full range of land use issues facing the city or county should serve as the foundation for regulations, even though the plan itself is advisory only.

In a few instances, the plan takes on greater significance. First, spot zoning is legal only if it is "reasonable." Consistency with an adopted plan is a significant factor in determining what is reasonable. Second, it is common that zoning ordinances make plan consistency a mandatory standard for issuance of special or conditional use permits. Third, several cities and counties have included a provision in their ordinance that all rezonings must be consistent with their adopted plan, a self-imposed limit on the board's discretion. Otherwise, the plan is advisory and provides information to be considered when zoning amendments are proposed, but the plan does not dictate what decision must be made.

In 2005, the city and county zoning statutes were amended to require that a plan consistency statement be approved by both the planning board and governing board when any zoning amendment is considered. The intent of this amendment

was to require local governments to be aware of what advice and analysis is included in adopted plans so that it can be thoughtfully considered as zoning amendments are processed. The law explicitly says the policies and recommendations in a plan are advisory only. However, the plan consistency analysis must be prepared, written, and approved by the boards at the time zoning amendments are decided. The General Assembly in 2017 modified this requirement to specify the form the statements must take and provided that if a zoning amendment is approved that is inconsistent with the plan, the zoning amendment is deemed to have amended the plan as well. Earlier blog posts address this statutory requirement and its amendment [here](#), [here](#), and [here](#).

While the substance of a plan consistency statement is not subject to judicial review, litigation regarding plan consistency analysis has made several procedural points clear. The courts will examine whether the statement in fact exists, whether it was approved by the governing board, and whether it includes some minimal description of plan consistency. A statement prepared by the staff and included in the meeting packet, but not approved by the governing board, is inadequate. A simple conclusive statement that the action is or is not consistent with the plan, with no description of how or why that is so, is likewise inadequate. A brief, summary notation of which plan policies support a zoning decision is adequate.

Local Government Practice

Compliance with the mandate to approve plan consistency statements has been noncontroversial in most North Carolina cities and counties.

In most jurisdictions – some 77% of responding cities and counties – the planning or zoning staff prepares the first draft of the plan consistency statement. In lower population jurisdictions with modest planning staff, this statement is prepared with some frequency by consultants, regional staff, local government attorneys, the applicant, or a board member. In almost all responding jurisdictions – nearly 90% of responding cities and counties — both the planning board and governing board routinely approve the statements without modification.

The effect of the plan consistency statement is difficult to measure. About a third of responding jurisdictions report it has made their boards more familiar with the contents of the plan. About 40% report that it has led to zoning decisions being more likely to be consistent with the plan. The general exception to these reports are cities with populations under 1,000. These cities are much less likely to have a plan in the first place and thus the plan consistency statement has had only modest impacts for them.

Conclusion

State law mandates that a plan consistency statement be prepared and approved for every zoning amendment. Failure to do so can invalidate a zoning amendment. Compliance is not difficult. While a simple check of consistent/inconsistent on a form is not enough, a short paragraph noting relevant policies that are implicated by the choice before the governing board is sufficient. Failure of the planning board and governing board to approve a simple plan consistency statement, however, will render the decision invalid if challenged. Having the planning board and governing board pause to consider the plan, and to briefly document in writing how it applies to the amendment under consideration, is a simple but necessary step in the zoning amendment process.

In our example, the planning board and town council board will need to look at the future land use map in the Mayberry plan to see what it shows for Ernie's property. They will need to check to see if there are any policy statements about future development adjacent to the new bypass. Policies on economic development, availability of utilities, and resource protection might also be implicated. The policies and maps in the plan will not determine whether or not the council approves Ernie's rezoning request, but the boards must document that they are aware of and have considered the advice and guidance provided by the plan.

Links

- www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/20180809_PZLB27_2018-11-30_0.pdf