Coates' Canons Blog: Requirements for Quasi-Judicial Decision Documents

By David Owens

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The town council has just voted to approve a highly controversial special use permit for a new apartment complex. Getting to this point was a long process – two lengthy hearings and a third night of debate and deliberation by the council. There was much discussion about the traffic impacts, whether the evidence showed whether the project would harm neighboring property values, and the adequacy of potential permit conditions. But the council eventually reached a general consensus and voted 6-1 to approve the permit with a long list of detailed conditions. With business concluded, the council meeting was adjourned.

As folks were filing out of the council chambers, the property owner turns to his attorney. “It seemed like this day would never come. Can’t tell you how relieved I am they finally saw things our way. I’m good to go now, right?” In another corner of the room, the chair of the neighborhood association, who had led the fight against the project, likewise turned to her attorney. “What just happened? They left out the most important condition we asked for. No way the evidence justifies that. We appeal now, right?”

Both attorneys tell their clients to sit tight and wait for the final decision. Is that right? Didn’t the council just take a conclusive vote? Isn’t that final?

Not quite. The decision is not final and effective until it is reduced to writing and filed. And the period to appeal doesn’t start until the written decision is delivered.

When a board makes a quasi-judicial decision – deciding a special or conditional use permit, a variance, or an appeal of a staff determination – the courts have long held that a key due process right of the parties is the right to know the basis of the decision. As Justice Susie Sharp noted in the 1974 landmark case *Humble Oil & Refining Co. v. Board of Aldermen*, “[I]n allowing or denying the application, it [the decision-making board] must state the basic facts on which it relied with sufficient specificity to inform the parties, as well as the court, what induced its decision.” 284 N.C. 458, 471, 202 S.E.2d 129, 138 (1974).

In 2013 the General Assembly codified this rule and provided guidance as to how it must be accomplished. **G.S. 160A-388(e2)** sets these specific requirements for quasi-judicial decisions. These requirements apply to both cities and counties and apply to every board that makes quasi-judicial zoning decisions, be it the city council, county board of commissioners, board of adjustment, or the planning board. These requirements are:

1. The decision must be reduced to writing and it must reflect the board’s determination of contested facts and their application to the applicable standards;
2. The written decision must be signed by the board chair or other authorized board member;
3. The decision is not effective until it is filed with the board’s clerk or other officer designated by ordinance;
4. Proper notice of the decision must be delivered to the parties; and,
5. The time for appeal does not start to run until the decision is filed and delivered.

Preparing the Written Decision

It used to be common that the board's decision was not put in writing until the minutes of the meeting were prepared and approved. In our 2002-03 **survey on variances**, 48% of the responding jurisdictions reported the first draft of their written decision was included in the meeting minutes. Our 2004-05 **survey on special and conditional use permits** had similar results – 52% of responding jurisdictions reported the meeting minutes were the initial written version of the required findings for the decision. Given the 2013 legislation noted above, that practice is likely to be less and less common in North Carolina and really should no longer be used.

Some city and county boards ask the parties or the staff to prepare draft decisions prior to the hearing. These are often referred to as "proposed findings of fact and conclusions of law." Having such a draft is legally permissible, but it is not required. Draft decisions are often a helpful forecast of evidence expected to be in the hearing record. They allow board members to assess during the hearing whether or not the evidence presented supports the proposed factual findings and decision. These draft decisions can then be discussed, amended, and adopted after the evidentiary hearing.

If a draft decision document has not been submitted in advance, a written decision document should be prepared immediately after the meeting. It is simply not practical for the oral motion made at the meeting to be adequate for these purposes. Rather, the staff or the board's attorney prepares a draft written decision that accurately reflects the action taken by the board. A few local governments offer the prevailing party the opportunity to draft the decision document, as is often done in court proceedings. And in some places the board chair drafts the document. But in most instances it is the staff to the board or the board's attorney who drafts the written decision.

When the written decision document is complete, the chair of the board reviews it to verify that it accurately reflects the board's decision. After any needed edits are made, the chair (or other duly authorized member of the board) approves and signs the document. At that point the decision is ready to be filed. The signed decision must be filed with the clerk to the board making the decision (although the law does allow the ordinance to specify another officer, such as the zoning administrator, to receive and file the written decision).

There are several problems with the older practice of using the board minutes as the official decision document. For one thing, the statute quoted above now requires all quasi-judicial decisions to be made within a "reasonable time." Waiting a month or two for production and approval of meeting minutes may not be all that reasonable. Plus the chair must sign the individual decision document. So many jurisdictions are moving to the practice of having a separate, discrete decision document for each quasi-judicial decision that is prepared, signed, and filed as soon as feasible after the decision has been made.

Effective Date of Decision

The decision is effective when the signed copy is filed with the clerk to the board. It is important that the official receiving the filed decision clearly stamp it with the date received, as this is the official effective date of the decision.

If the written decision is delivered by email or personal service the same day it is filed, that is also the date the clock starts to run for filing a judicial appeal (but as explained below, the deadline for filing an appeal depends on the delivery date as well as the official effective date).

Delivery of the Decision

Once the written decision is signed and filed, a copy must be delivered to the parties. A copy must be provided to:

1. The applicant;
2. The property owner if that person was not the applicant; and
3. Any other person who has submitted a written request for a copy prior to the effective date of the decision. This is often a neighbor or other person who participated in the hearing. It is a common practice in many jurisdictions to provide an opportunity at the hearing for those present to make a written request for the decision.

The law allows for delivery of the decision by email, first class mail, or personal delivery. The person who handles delivery of the decision is required to certify for the record that it has been done. This is usually done by the clerk signing an

affidavit for the case file that the decision was delivered on a specified date, indicating who it went to and how it was delivered.

Time for Making an Appeal

Final decisions on quasi-judicial matters may be appealed to superior court. There is a relatively short time allowed to bring an appeal. A judicial appeal must be filed with the clerk of superior court within 30 days.

The 30 day clock, however, does not start to run until the decision is effective and is delivered. So it is the later of two events that start the clock running – filing the signed written decision with the clerk or the delivery of the signed written decision as described above. If first class mail is used to deliver the written decision, three days is added from the mailing date to the time allowed to file with courts.

Conclusion

The attorneys' advice in our example at the outset was correct. Once the board voted, the parties know what the outcome of the application will be. But the decision is not final and effective until it is reduced to writing in a way that explains how the board resolved contested facts and applied the facts to the required standards for the decision. Both the applicant and the neighbors need to wait for the written decision before taking whatever next steps they deem appropriate.

Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-388
- sogpubs.unc.edu//electronicversions/pdfs/zonvar.pdf?
- sogpubs.unc.edu/electronicversions/pdfs/ss22.pdf