Coates' Canons Blog: Subdivision Plat Approval: What type of decision is it?

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A decision about a rezoning request is legislative. A review of an application for a special use permit or variance is quasi-judicial. But what about the preliminary plat review? What type of decision is it: administrative, quasi-judicial, or legislative? What is the process for review? And what are the rules for appeal? This blog explores the nature of subdivision plat approvals.

In short, preliminary and final subdivision plat review is either administrative or quasi-judicial, depending on the type of standards set forth in the ordinance. Administrative decisions are those based on clear, objective standards. Quasi-judicial decisions are based on objective standards, as well as standards that require some level of judgment and discretion by the decision-making board.

Subdivision regulation runs parallel to zoning regulation. Indeed, many local governments join these and other development regulations under a unified development ordinance. Even so, the authority for subdivision approvals is distinct from the authority for zoning approvals, so we have to look to the statutory requirements for subdivisions. Under G.S. 153A-330 and 160A-371, "Decisions on approval or denial of preliminary or final plats may be made only on the basis of standards explicitly set forth in the subdivision or unified development ordinance." In other words, preliminary and final plat review decisions are either administrative or quasi-judicial.

The procedural rules that apply depend on the type of decision—either administrative or quasi-judicial. So, even though preliminary and final plat approval may be assigned to the governing board, planning board, or staff, the procedural rules will depend on the type of standards in the ordinance, not the board it is assigned to. *Guilford Fin. Servs., LLC v. City of Brevard*, 356 N.C. 655, 576 S.E.2d 325 (2003). If a decision applies objective standards from the ordinance (no discretion), it is an administrative decision regardless of whether city council or a single staff person makes the decision.

It is worth noting that in some limited circumstances, a legislative decision may be part of the subdivision approval process—when, for example, subdivision standards are incorporated into a form of conditional rezoning. Even then, the subsequent review of the preliminary and final plat must be based on standards set forth by the conditional rezoning.

Administrative Subdivision Review

Most subdivision plat reviews are administrative in nature, often handled by an technical review committee composed of staff from relevant city or county departments. An administrative decision is one based on specific, objective standards set forth in the ordinance (for example, "Minimum lot size of ½ acre"). It is black-and-white, so to speak—an applicant either meets the standards or she does not. The administrative decision is governed by the literal provisions of the ordinance, so the decision-maker can decide an administrative approval based simply on the application; no evidentiary hearing is needed. If the applicant meets the clear standards, she has a right to the permit and, if necessary, may seek a court order to require the decision-maker to grant the permit. *Nazziola v. Landcraft Properties, Inc.*, 143 N.C. App. 564, 545 S.E.2d 801 (2001).

As noted in the discussion of appeals below, the statutes imply that when staff is the decision-maker for a subdivision plat review, the standards should be administrative (not quasi-judicial). As a corollary, it is not recommended for governing boards to handle administrative subdivision plat reviews. While such review is technically allowed, it results in the governing board handling ministerial tasks without any room for policy choices or discretion. Policy choices are made when the subdivision ordinance is first adopted or amended (not when an individual plat is reviewed). If discretion is

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desired, that must be established through quasi-judicial standards, not through administrative review.

Quasi-Judicial Subdivision Review

In contrast to an administrative decision, a quasi-judicial decision is based on standards that require some level of judgment and discretion. The statute states that a decision is quasi-judicial "if the board is authorized to decide whether to approve or deny the plat based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision to be made" by the decision-making board. G.S. 153A336(c); 160A-377(c). In other words, there are some shades of grey in the standards. For instance, a quasi-judicial standard for a subdivision plat might be that "the project does not overburden adjacent roads and utilities." Determining when and how infrastructure is overburdened requires judgment by the decision-maker.

Note that these discretionary standards cannot be so vague that they permit complete discretion. "Whenever the ordinance includes criteria for decisions that require application of judgment, those criteria must provide adequate guiding standards for the entity charged with plat approval." G.S. 153A-330; 160A-371.A standard that the subdivision be the "most advantageous development" is overly vague. *Blue Ridge Co., L.L.C. v. Town of Pineville*, 188 N.C. App. 466, 473, 655 S.E.2d 843, 847 (2008).

Under zoning enabling statutes and case law, certain procedural rules apply to quasi-judicial zoning decisions. Those rules appear to apply to quasi-judicial subdivision decisions. The board must hold an evidentiary hearing. The applicant and any opponents have an opportunity to present evidence in the evidentiary hearing and make their case for approval or denial. The board must have competent, material, and substantial evidence in the record to support its decision. Under the statutes specifying appeals of quasi-judicial decisions, the decision-making board must follow certain procedural requirements. The board must:

- determine contested facts within a reasonable time,
- base decisions on competent, material, and substantial evidence in the record,
- issue and deliver a written decision, signed by the chair, to reflect the board's determination of contested facts and applicable standards

Even with discretionary standards, the board must follow the ordinance and rely on evidence in the record to make its decision. If, for example, a standard calls for "consistency with adopted plans," but there are no clearly adopted school capacity plans and no evidence in the record of school impacts, the board cannot base its denial on generalized notions of school crowding. *Blue Ridge Co., L.L.C. v. Town of Pineville*, 188 N.C. App. 466, 473, 655 S.E.2d 843, 847 (2008). And, if the developer makes a prima facie showing of compliance with the subdivision standards, and there is no evidence from opponents to overcome the developer's evidence, the developer is entitled to the subdivision plat. *Guilford Fin. Servs., LLC v. City of Brevard*, 356 N.C. 655, 576 S.E.2d 325 (2003).

What are the rules of appeal?

The appeal of a subdivision plat approval depends upon the nature of the decision: administrative or quasi-judicial.

Appeal of administrative decisions may follow a couple of routes. First, the subdivision statutes specifically authorize appeal directly to superior court. The applicant has a right to approval if they meet the applicable standard, and any party aggrieved by such administrative decisions may appeal the decision to superior court seeking appropriate declaratory or equitable relief. Such appeal must be filed within the time frame set forth for appeals of quasi-judicial decisions (thirty days from the effective date of the decision or receipt of notice of the decision). G.S. 153A-336(b); 160A-377(b).

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Alternatively, an administrative subdivision decision made by a staff person could be appealed to the board of adjustment under G.S. 160A-388(b1). That statutory authority allows that the board of adjustment shall hear appeals from enforcement of the zoning ordinance or unified development ordinance and “may hear appeals arising out of any other ordinance that regulates land use or development.” That would include the subdivision ordinance. Indeed the option for an applicant to post notice, under (b1)(4), specifically references notice of a “Subdivision Decision.” Appeals to the board of adjustment must be filed within 30 days of notice of the decision. And, parties may appeal the board of adjustment’s decision to the superior court.

It is not clear from the statutes which of these administrative appeal options applies or who gets to choose. Arguably the local ordinance could choose which appeal process applies. Practically it makes sense to have staff decisions appealed to the board of adjustment (similar to other staff decisions) and board decisions (such as a planning board decision on a preliminary plat) appealed straight to superior court.

Now, consider appeals of quasi-judicial subdivision plat decisions. Quasi-judicial plat decisions made by the governing board or planning board are appealed to superior court similar to other quasi-judicial decisions, such as appeals from the board of adjustment. The rules outlined at 160A-388 and -393 apply. The statute excludes from this provision appointed boards comprised solely of planning staff members. The implication is that decisions by staff-only subdivision review boards must be based on administrative standards, not quasi-judicial discretion. G.S. 153A-336(a); 160A-377(a).

Appeals of quasi-judicial decisions may be filed with the clerk the superior court within thirty days of notice or effective date of the decision. The appeal is a petition for writ of certiorari, and must set forth the petitioner’s claims for standing, the grounds upon which the petitioner claims error or conflicts of interest by the board, and the relief sought.

General Statute 160A-393 also sets forth requirements for standing, responding parties, intervening parties, and answers to the petition for writ, as well as sufficiency of evidence, scope of review, and standard of review. The record for appeal consists of all documents and exhibits submitted to the decision-making board for the decision that is being appealed, as well as the minutes of the meeting. The record may include an audio or videotape of the meeting and/or a transcript of the proceeding. The court may allow supplemental evidence on matters of standing, conflicts of interest, or questions of constitutional protections or exceeding statutory authority. G.S. 160A-393(i) & (j).

Conclusion

So, we know that rezoning requests are legislative in nature and that special use permits are quasi-judicial. What about preliminary plat review? Plat review must be based on standards set forth in the ordinance, and the nature of those standards will tell the nature of the review. If those standards are specific and objective (black-and-white), then the preliminary plat review will be administrative, even if town council is the decision-maker. If the ordinance includes some standards that leave room for judgment and discretion (some shades of grey), then the preliminary plat review will be quasi-judicial and, likely, it should be assigned to the planning board or governing board.

Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-330.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-371.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-336.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-377.html
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-388
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-388.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-393.html

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