

William E. Anderson
McDANIEL & ANDERSON, L.L.P.
Raleigh, North Carolina
Tel. (919) 872-30000
FAX. (919) 790-9273
e-mail: w.anderson@mcdas.com
www/mcdas.com

COMPREHENSIVE PLANS, AMENDMENT, CONSISTENCY WITH PLAN

This part of the manuscript will touch on two separate issues:

- (1) consistency with the municipality’s “comprehensive plan” in general,
and
- (2) consistency with the municipality’s “adopted plan” following 2005
amendments to the statutes.

First, the idea that zoning must be consistent with “a comprehensive plan” is inherent in the basic grant of the zoning power: “Zoning regulations shall be made in accordance with a comprehensive plan.” NCGS S 160A-383. The early statutory scheme also required that adoption of the comprehensive zoning plan be preceded by deliberations by a planning board created for that purpose, and also to review and comment on proposed future re-zonings. NCGS S 160A-387.

The “comprehensive plan” required in NCGS §160A-383 is a fairly vague term requiring that the zoning fit into “the big picture.” It is not necessarily a formal written plan, “...such as a master plan based on a comprehensive study.”¹ In *A-S-P Associates*, our Supreme Court declined to “...attempt an all-inclusive definition of the required comprehensive plan.” The Court noted that other state’s courts “...have discovered the requisite comprehensive plan in places

¹ *A-S-P Associates*, 298 N.C. 304, 259 S.E.2d 300(1979); *Allred v. City of Raleigh*, 17 N.C. App. 602, 173 S.E.2d 533 (1970).

ranging from the zoning ordinance itself to the preamble of the zoning amendment in question.”

In *Allred v. City of Raleigh*,² the Court stated that a “comprehensive plan” is “...simply a plan which governs that entire town or city, as opposed to a limited portion thereof arbitrarily selected for zoning....”

Where there is an officially adopted “comprehensive plan,” it is generally referred to as a “long range plan” or “comprehensive long range plan.” Many municipalities have such a plan, which enunciates general concepts about types of use and/or density of development, which is desired, or not desired, in various parts of the zoning jurisdiction. One purpose of the comprehensive or long range land use plan is to guide zoning decisions as the need to make them arises. Many municipalities update these plans every 10, 15 or 20 years. Municipalities often also have other long range plans including the community’s transportation long range plan, and long range capital improvement plans for infrastructure development. (Those plans all, hopefully, work together.)

A long range plan may be amended in one of two ways:

- (1) Comprehensive revision of the plan;
- (2) Ad-hoc, or piecemeal amendment.

When a community embarks on comprehensively creating or updating a long range plan, it may start with the planning board or even appoint a committee whose deliberations will precede those of the planning board, and often retains a consultant to be the facilitator and actual author of the plan. The long range planning process provides an excellent opportunity for developers, land planners and citizens to share views and information which can be useful in ameliorating some of the future possible conflicts.

Ad-hoc amendment of the long range plan occurs when there is positive community interest (e.g., from the planning board, governing board, influential

developers) in promoting the re-zoning of a specific parcel to a use which is not consistent with the long range plan. In some municipalities, the planning staff would take steps to assure that the governing board did not get into the position of approving a zoning change which was inconsistent with the long range plan, by bringing forward to the governing board, prior to action on the re-zoning application, a proposed plan amendment. For example, if “x” use, as proposed in the re-zoning application, was not consistent with the long range plan, then the plan could be amended so that it would be. In that event, the governing board would deal with the “big picture” first, e.g., whether that use should be permitted in that vicinity, then amend the plan, and then adopt the re-zoning application. An ad-hoc plan amendment can also be a text amendment (for example, modifying something as particularized as a set-back requirement in an overlay zone.)

In some communities, however, the piece-meal revision of the plan has apparently been neglected; in such a circumstance, the zoning change, if approved, might be inconsistent with the long range plan. Alternatively, the plan might propose a given use in the area, but the governing board might bow to citizen opposition and deny the re-zoning. (There is no statute which prohibits a local jurisdiction from adopting a zoning change which is inconsistent with its long range plan. On the other hand, consistency with the long range plan is one of the standards applied by reviewing courts to determine if the zoning change is acceptable.)

One scenario is that the board will consider denying, or will deny, a zoning proposal which the comprehensive long range plan would have allowed. Presumably, one idea behind the statute was that if a board member is required to stop and think about the possible inconsistency, a vote in favor of the application is more likely.

² 7 N.C. App. 53, 602, 173 S.E.2d 533 (1980).

One alternative for the board at that point, to avoid having to adopt a statement describing the proposal as consistent with the long range plan but denying it anyway, would possibly be to table the re-zoning and consider amending the long range plan before bringing the re-zoning back for a vote. Another scenario is that the board might grant a zoning request contrary to the jurisdiction's long range plan.

The extent to which local governments re-zone in a fashion consistent with, or possibly inconsistent with, the long range plan was discussed at some length in the General Assembly in the 2004-2005 session. It is my understanding that an issue was raised by the development community, which felt that governing boards were denying zoning applications in some cases because of current public sentiment, although the proposed re-zoning was consistent with the long range plan.

The General Assembly's response was to require, along with a motion to approve or deny a zoning change, a finding stating whether the proposed change is consistent with "an adopted plan." Senate Bill 814, codified in NCGS §160A-382(b), 383, and NCGS §153A-341 and 342(b). (The statute is applicable to the initial zoning of newly annexed parcels as well.) The choice of words, "an adopted plan," leaves it to the municipality whether the plan it adopts is a "comprehensive plan," which could theoretically describe the planning for the present only, or a "long range comprehensive plan" which purports to plan for the future. In any event, if the municipality has a "long range plan" which is "comprehensive" in nature, that plan should qualify for purposes of this statute. To be safe, the zoning action should be consistent with all applicable adopted plans.

The 2005 statutes does not change the basic law under which a board might not follow a comprehensive plan, but it probably makes it harder to do so by requiring specific acknowledgment of the inconsistency.

Attached hereto are some sample forms prepared by the author to assist the board members of one local municipality to comply with the new statute relating to consistency with adopted plans, and stating reasons for the vote when making motions to grant or deny a proposed re-zoning.

ZONING ACTION MOTION WORKSHEET

Application #: _____ Applicant: _____

MOTION TO APPROVE ZONING REQUEST:

I move that the Board find that the zoning request Z- _____

() complies with the Town's comprehensive long range plan and transportation plan

(AND if applicable)

() complies with the applicable small area development plan

(OR)

() does not comply with the _____ plan;

(AND)

that the zoning request Z- _____ is reasonable and in the public interest because it will likely

(use as many of the following as are appropriate):

() allow the development of an appropriate density of housing in the area in which it is located;

() allow appropriate types of business at the described location which will provide opportunities for access to goods and/or services useful to the surrounding area;

() allow appropriate types of business at the described location which will provide employment opportunities for citizens;

() allow the types of businesses at the described location which will enhance the Town's economic development,

allow the types of businesses at the described location which will likely enhance the Town's tax base,

(other) _____

(AND)

I therefore move that the Board

adopt the recommendation of the Planning Commission and approve zoning request number Z-_____, (OR)

approve zoning request number Z-_____.

Application #: _____ Applicant: _____

MOTION TO DENY ZONING REQUEST:

I move that the Board

accept the recommendation of the Planning Commission and deny zoning request number Z-_____;

(OR)

deny zoning request number Z-_____;

(AND)

reasons for denying the Application include that it is not reasonable and is not in the public interest, because (use as many of the following as are appropriate):

it does not comply with the _____ plan,

would allow the development of an excessive density of housing for the area in which it is located;

it would likely lead to an unacceptable additional level of traffic in the area in which it is located;

it would allow types of business at the described location which will not be appropriate for the area in which it is located,

(other) _____.