

## THE TERRITORIAL JURISDICTION OF CITIES AND COUNTIES IN PLANNING AND REGULATING DEVELOPMENT

### I. Introduction and Brief History

The issue of whether and to what extent a North Carolina municipality should be authorized to influence and regulate land development outside its limits has been debated in this state for a long time. One early statement justifying municipal extraterritorial land use authority comes from a 1958 study commission report. In 1958 the Municipal Government Study Commission of the General Assembly considered the issue of extraterritorial planning jurisdiction and concluded as follows:

The Commission recognizes that municipalities have a special interest in the areas immediately adjacent to their limits. These areas, in the normal course of events, will at some time be annexed to the city, bringing with them any problems growing out of chaotic and disorganized development. Even prior to that time they affect the city. Health and safety problems arising outside the city do not always respect city limits as they spread. . . . Subdividers of land outside the city commonly wish to tie to city water and sewerage systems. New industrial and commercial developments may, for a variety of reason, take place just outside the corporate limits. Visitors to the city receive their first impression from these outlying areas.<sup>1</sup>

These considerations are probably still part of the justification of municipal extraterritorial planning and development authority today.

The North Carolina General Assembly first granted local governments the power to regulate the use and development of land 88 years ago. In 1923 North Carolina cities were first authorized to engage in municipal zoning.<sup>2</sup> The first grant of municipal extraterritorial power over land development was made in 1927 when cities were authorized to review plats of land within one mile outside their corporate limits to determine whether the streets and sidewalks in a proposed subdivision were aligned with the city's existing and

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1. Report of the Municipal Government Study Commission of the North Carolina General Assembly, at 18 (1958).

2. Act of March 5, 1923, ch. 250, s. 5, 1923 N.C. Public Laws.

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planned street and sidewalk system.<sup>3</sup> Municipal extraterritorial subdivision control powers were expanded in 1955 when the first modern enabling statutes for land subdivision control were adopted.<sup>4</sup> Those statutes permitted cities of all sizes to regulate the subdivision of land within one mile outside their corporate boundaries. Four years later, in 1959, municipal extraterritorial zoning power was first granted, but only for municipalities with a population of over 2,500.<sup>5</sup> This same year counties were first authorized to adopt subdivision control ordinances<sup>6</sup> and zoning ordinances<sup>7</sup> that applied to unincorporated areas beyond municipal jurisdiction. The power of cities to inspect buildings and enforce the Building Code beyond city limits came still later. Cities with a population of over 1,000 were authorized to appoint a building inspector and enforce building construction standards as early as 1905<sup>8</sup>. It was not until 1969 until cities were first authorized to enforce the State Building Code outside their corporate limits.<sup>9</sup> However, cities could do so only within the area that was already subject to the city's extraterritorial zoning jurisdiction and only if the county had been requested by the city to enforce the Code within the area of the city's extraterritorial zoning but had failed to do so.

As both cities and counties were empowered to use new planning tools and became more active in planning, it became clear that a more comprehensive approach to determining the territory within cities and counties could employ their powers was needed. The rewrite of the municipal code (G.S. 160A)<sup>10</sup>, which became effective in 1972, and the adoption of a new county code (G.S. 153A)<sup>11</sup>, which became effective in 1974, provided the opportunity to develop a more systematic approach. The new codes were based on the proposition that (1) counties should be authorized to exercise most of the planning powers available to cities; (2) the territories subject to city and county planning jurisdiction should not overlap; (3) a municipality should enjoy the power to plan and regulate development outside city limits if a county had not adopted certain features of a planning program of its own; and (4) the territorial area within which a city or county employed its planning powers should, as a general rule, be the same for each power. The new municipal extraterritorial planning legislation was codified as G.S. 160A-360

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3. Act of March 16, 1929, ch. 186, 1929 N.C. Public Laws (later codified as G.S. 160-226 to -227)

4. Act of May 26, 1955, ch. 1334, s.1, 1955 N.C. Sess. Laws (codified as revised G.S. 160-226 to -227)

5. Act of June 19, 1959, ch. 1204, s.1, 1959 N.C. Sess. Laws (codified as G.S. 160-181.2)

6. Act of June 16, 1959, ch. 1007, 1959 N.C. Sess. Laws (codified as G.S. 153-266.1 to -266.10).

7. Act of June 16, 1959, ch. 1006, 1959 N.C. Sess. Laws (codified as G.S. 153-266.10 to -266.22).

8. Act of March 6, 1905, ch. 506, 1905 N.C. Public Laws.

9. Act of June 27, 1969, ch. 1065, s.1, 1969 N.C. Sess. Laws (codified as G.S. 160-115 to -143).

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10. Act of June 30, 1971, ch. 698, s.1, 1971 N.C. Sess. Laws.

11. Act of May 24, 1973, ch. 822, s.1, 1973 N.C. Sess. Laws.

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and -362; a complementary county statute was adopted as G.S. 153A-320. Although both cities and counties have been delegated new powers by the General Assembly in the last several decades, and the statutes have been made subject to various elaborating amendments, many of the jurisdictional arrangements for city and county planning in place today remain much the same as they were twenty-four years ago.

The prevalence and use of municipal extraterritorial jurisdiction with respect to community planning and development powers has become widespread in North Carolina. A 2005 survey of municipalities revealed that of 315 municipalities that responded to the survey, 62% exercised some extraterritorial planning jurisdiction.<sup>12</sup> Only a third of the responding cities with populations under 1,000 exercised such jurisdiction, but 85% of those with population over 10,000 did so.<sup>13</sup> Similarly, 85% of the responding cities reported that the extent of their ETPJ was within one mile of city limits or less.<sup>14</sup>

## II. Powers Subject to Municipal Extraterritorial Planning Jurisdiction (ETPJ)

Today, special territorial arrangements for city and county planning apply to a number of different powers. Although zoning may be the best known of these, a number of others are also involved. These include the local government power to undertake (1) land subdivision regulation;<sup>15</sup> (2) zoning;<sup>16</sup> (3) enforcement of the State Building Code;<sup>17</sup> (4) community development projects;<sup>18</sup> (5) historic preservation;<sup>19</sup> (6) minimum housing code enforcement;<sup>20</sup> (7) acquisition of open space;<sup>21</sup> (8) community appearance activities;<sup>22</sup> (9) floodway regulation;<sup>23</sup> (10) soil erosion and sedimentation control;<sup>24</sup> (11) mountain ridge protection;<sup>25</sup> and (12) designation of roadway corridor official maps<sup>26</sup>. Several other activities are authorized only for cities (e.g., urban homesteading programs;<sup>27</sup> use of Urban Development Action

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12. D. Owens, The North Carolina Experience with Municipal Extraterritorial Planning Jurisdiction, UNC-Chapel Hill School of Govt. Special Series No. 20, at 9.

13. *Id.* at 10.

14. *Id.* at 10

15. G.S. 160A-371 to -376 (cities); G.S. 153A-330 to -335 (counties).

16. G.S. 160A-381 to -392 (cities); G.S. 153A-340 to -347 (counties).

17. G.S. 160A-411 to -438 (cities); G.S. 153A-350 to -375 (counties).

18. G.S. 160A-456 to -457 (cities); G.S. 153A-376 (counties).

19. G.S. 160A-400.1 to -400.14 (cities and counties).

20. G.S. 160A-441 to -450 (cities and counties).

21. G.S. 160A-401 to -407 (cities and counties).

22. G.S. 160A-451 to -455 (cities and counties).

23. G.S. 160A-458.1(cities); G.S. 143-215.51 to -215.61(cities and counties).

24. G.S. 160A-458 (cities); G.S. 113-50 to -66 (cities and counties).

25. G.S. 160A-458.2 (cities); G.S. 113A-205 to -214 (cities and counties).

26. G.S. 136-44.50 to -44.53.

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27. G.S. 160A-457.2.

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Grants;<sup>28</sup> and downtown development projects)<sup>29</sup> and may also be undertaken by cities in their extraterritorial areas.

In 2011 the General Assembly adopted a significant change affecting the application of these powers. It added G.S. 160A-360(k) to exempt property located in a municipality's extraterritorial jurisdiction that is used for bona fide farm purposes from the exercise of any and all powers that a city may exercise in its ETPJ area. Since this amendment became effective, municipal planning and development powers have become inapplicable to these properties if they are located within the boundaries of a city's ETPJ. The sweep of this change is notable, particularly when compared to the county planning statutes. It is true that bona fide farms are exempt from county zoning, and the building construction regulations of the North Carolina State Building Code do not apply to farm buildings. But most of the rest of the county planning and development powers apply to some degree to agricultural activities.

### III. Municipal Powers Subject to Other Jurisdictional Arrangements

#### A. Municipal Police Power Ordinances

The planning arrangements described above, however, do not apply to every local government power that affects growth and development. One exception is the authority for a city<sup>30</sup> or county<sup>31</sup> to adopt an ordinance under its general ordinance-making (police) power. For example, a city or county may adopt an ordinance regulating junkyards or flea markets or outdoor advertising that is separate and apart from zoning. Generally a municipal ordinance of this type may apply only inside city limits. In contrast, a county police-power ordinance may apply in some or all of the county's unincorporated area. A county ordinance of this type may apply inside a city's limits only with the approval of that city.<sup>32</sup>

#### B. Municipal Public Enterprises

Another territorial variation applies when a city or county operates a public enterprise such as a public water system or public sewer system. A city may operate its utility system not only within its city limits but also may extend service "outside its corporate limits, within reasonable limitations."<sup>33</sup> A city is under no obligation to extend public utilities into an area subject to its

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28. G.S. 160A-457.1.  
29. G.S. 160A-458.3  
30. G.S. 160A-174.  
31. G.S. 153A-121.  
32. G.S. 153A-122.

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33. G.S. 160A-312.

extraterritorial planning jurisdiction. Neither does the ETPJ serve as a limitation; a public enterprise may be operated in areas beyond a city's planning jurisdiction. A county, by way of comparison, may operate a public enterprise within any portion of the county or beyond its boundaries.<sup>34</sup>

#### C. Municipal Economic Development Activities

Still other territorial arrangements apply when a city or county exercises certain economic development powers. These powers include the power to buy land for an economic development, to build shell buildings, to install infrastructure, and to dispose of land for an economic development project. For example, a city may buy land for and develop an industrial park anywhere within the county in which it is located. A county may also do so anywhere in the county, including inside city boundaries.<sup>35</sup>

#### D. Municipal Annexation

One of the justifications for a city to establish extraterritorial planning jurisdiction is to ensure that areas that are urbanizing and may be annexed in the future are not developed in a haphazard, substandard manner. North Carolina law, however, does not require that a city's ETPJ directly reflect its annexation plans, nor does it require annexation plans to be consistent with its planning jurisdiction. Both the resolution of consideration<sup>36</sup> and the resolution of intent<sup>37</sup> to annex that must generally be adopted by a city prior to annexation may refer to potential annexation areas that are not subject to the municipality's ETPJ. Similarly, a city's ETPJ may include areas for which the city has no current annexation plans.

The 2005 School of Government survey revealed that 9% of responding cities agreed with the statement that the ETPJ area was generally planned to be annexed within ten years. Another 57% agreed that the EPTJ area was likely to be annexed, but had no definite plans or timetable for annexation. The remaining 34% of the cities declared that the ETPJ area was unrelated to annexation planning.<sup>38</sup>

It is unclear just how the statistics above might be altered if such a survey were taken today, now that the 2011 changes to the state's annexation laws have become effective.

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34. G.S. 153A-275.

35. G.S. 158-7.1(b)(1).

36. G.S. 160A-49(i)(cities of 5,000 or more); G.S. 160A-37(i)(cities of less than 5,000).

37. G.S. 160A-49(a)(cities of 5,000 or more); G.S. 160A-37(a)(cities of less than 5,000).



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38. The North Carolina Experience with Municipal Extraterritorial Planning Jurisdiction, at 10.

#### IV. How Municipal and County Planning Jurisdiction is Established

##### A. Municipal ETPJ Established Unilaterally

In certain circumstances a city of any size may establish planning jurisdiction outside its limits without gaining the approval of the county. The key is whether the affected county has established certain features of a county planning program. If a county (1) has adopted a land subdivision ordinance; (2) has adopted a zoning ordinance; and (3) is enforcing the State Building Code, then a municipality may not establish extraterritorial planning jurisdiction without the county's approval.<sup>39</sup> However, if the county is exercising none, one, or two of these three powers in the affected areas, then a city of any size may claim planning jurisdiction in an area up to one mile outside its limits by adopting the appropriate extraterritorial boundary ordinance. The boundary ordinance allows a city to exercise any of its planning powers in the new area. However, state law also prohibits a city from exercising any power in its ETPJ area that it does not exercise within its city limits.<sup>40</sup> Thus what is good for the ETPJ area must also be good for the city itself.

If a city expands its boundaries through annexation, it may be entitled to expand its extraterritorial jurisdiction again, but only if the statutory requirements can again be met at the time it wishes to expand. Special arrangements apply, however, to satellite annexations. Satellite corporate limits are not considered part of a city's corporate limits for the purpose of establishing extraterritorial planning jurisdiction under G.S. 160A-360.<sup>41</sup>

As time has passed, however, more and more counties have established planning programs applicable to their unincorporated areas. As a result, opportunities for some cities to establish extraterritorial jurisdiction unilaterally have gradually diminished. In urban counties where cities have been active in annexation, the amount of ETPJ territory claimed without the consent of the county has generally declined.

##### B. Municipal ETPJ Established Bilaterally with a County

The General Assembly has also authorized municipal ETPJ through cooperative bilateral arrangements. For example, with the approval of the county board of commissioners, a city with a population of greater than 10,000 may extend its ETPJ up to two miles outside city limits.<sup>42</sup> In addition, with the county board's approval a city with a population of over 25,000 may

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39. G.S. 160A-360(e).

40. G.S. 160A-360(a).

41. G.S. 160A-58.4

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42. G.S. 160A-360(a)

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extend its jurisdiction up to three miles beyond city boundaries.<sup>43</sup> For a city to extend its jurisdiction beyond one mile requires county approval regardless of whether the county is enforcing zoning, land subdivision controls, and the State Building Code in the affected area.

Other cooperative arrangements are also possible. In growth areas a county may agree to relinquish jurisdiction to a city even though the county already has been enforcing a full complement of powers in the affected area.<sup>44</sup> These agreements are most common in urban counties where the county has established a planning program that applies throughout those areas outside of municipal jurisdiction. A growing number of counties (e.g., Brunswick, Nash, Pitt, Wilson, Wake, and Mecklenburg) have adopted policies intended to guide the decision of the board of county commissioners whether and when to relinquish planning jurisdiction when a city requests it to do so. An example of such a policy, adopted by Wake County as part of its land use plan, is included as an appendix to this paper.

#### C. County Planning Jurisdiction Established Bilaterally with a Municipality

Bilateral city-county agreements do not always result in a county relinquishing planning jurisdiction to a municipality. A city may request that the county assume control over territory that is or was within the city's ETPJ. A city may also request the county to take over the jurisdiction for planning within a municipality's corporate limits.<sup>45</sup> For example, a small town in a mid- size or large county may conclude that the county may administer a planning program inside town limits better than it can.

In addition, a city may request the county to exercise a single power (or several powers) within the city's planning jurisdiction without changing the general jurisdictional boundary.<sup>46</sup> For example, the city may invite the county to enforce the State Building Code or a county soil erosion and sedimentation control ordinance inside the city's jurisdiction even though the city's planning jurisdiction remains the same for all other planning powers.

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#### D. Municipal ETPJ Established Bilaterally with another Municipality

It is not uncommon for the actual ETPJ of one municipality and the potential ETPJ of one or more other municipalities to overlap. In such an instance the statutes provide that the jurisdictional boundary between them shall be a line connecting the midway points of the overlapping area.

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43. *Id.*

44. G.S. 160A-360(e).

45. G.S. 160A-360(d).

46. *Id.*

Alternatively, the city councils may agree to another boundary within the overlapping area, reflecting existing or projected patterns of development.<sup>47</sup>

#### E. Land-Use Planning Requirements

North Carolina law does not require a city to prepare and adopt a land-use plan before it exercises extraterritorial jurisdiction. However, the statutes do suggest that extraterritorial arrangements should be consistent with whatever community plans have been adopted. The delineation of extraterritorial areas is to be “based upon existing or projected urban development and areas of critical concern to the city, as evidenced by officially adopted plans for its development.”<sup>48</sup> In addition, the statute provides that a city “may, in its discretion, exclude from its extraterritorial jurisdiction areas lying in another county, areas separated from the city by barriers to urban growth, or areas whose projected development will have minimal impact on the city.”<sup>49</sup>

#### F. Fixing the Boundary

A city’s ETPJ is established when the city council adopts an extraterritorial boundary ordinance. The boundary ordinance may be adopted separately from the ordinance amending the zoning map to extend zoning into the new area, or it can be combined with the zoning map amendments. The city council may adopt or amend each of these ordinances only after a public hearing concerning the proposal has been held and the hearing has been properly advertised in a local newspaper.<sup>50</sup> However, the notice requirements regarding amendments to the zoning map are more demanding than those that apply to the adoption of the extraterritorial boundary ordinance. Initial extension of city zoning into a city’s ETPJ requires that each property owner be sent a notice concerning the required public hearing by first-class mail. If, however, the zoning of the ETPJ area directly affects more than fifty (50) properties owned by at least fifty (50) different property owners, then the city has the option of providing notice by a different method--by providing more extensive notice of the public hearing in a local newspaper.<sup>51</sup>

The boundaries must be described in the ordinance by a map, by a written description, or by some combination of these techniques. The description of the areas involved must be sufficiently definite. The boundaries “shall be defined, to the extent feasible, in terms of geographical features identifiable on the ground.”<sup>52</sup> The purpose of this requirement is to allow owners of property outside the city to ascertain easily and accurately whether their

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47. G.S. 160A-360(c).

48. G.S. 160A-360(b).

49. *Id.*

50. G.S. 160A-364.

51. G.S. 160A-384.

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52. G.S. 160A-360(b).

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property is within the area of the city's jurisdiction.<sup>53</sup> An ordinance with a description that merely refers to "the territory beyond the corporate limits for a distance of one mile in all directions" with a map showing the mile boundary by means of a series of sweeping curves is invalid.<sup>54</sup>

#### G. The Amendment and Rescission of Bilateral Arrangements

Bilateral arrangements for planning jurisdiction must be evidenced by a resolution adopted by the local government relinquishing jurisdiction. Such arrangements may be dissolved or amended at any time by mutual agreement of the local governments. Otherwise bilateral arrangements may be rescinded if the rescinding local government gives the other local government two years written notice.<sup>55</sup>

### V. Representation of Extraterritorial Residents and Interests

#### A. Legal Issues

North Carolina courts have had several occasions to rule on the legality of municipal extraterritorial regulation. A city may regulate activities outside its corporate limits only with express enabling authority.<sup>56</sup> The General Assembly may grant cities jurisdiction for sanitary and police purposes in territory contiguous to their boundaries.<sup>57</sup> The North Carolina Supreme Court has held that a legislative grant of municipal authority to zone land within one mile of a city's boundaries is not unconstitutional.<sup>58</sup>

The U.S. Supreme Court has not ruled on the constitutionality of extraterritorial planning and land development regulation. However, in *Holt Civic Club v. City of Tuscaloosa*,<sup>59</sup> it sustained the constitutionality of several Alabama enabling acts which allowed municipalities to exercise certain regulatory powers over residents of adjacent, unincorporated areas. In *Holt*, residents of a three-mile area outside of Tuscaloosa were subjected to the city's police, sanitary, and business licensing regulation and enforcement. Residents had no right to vote in municipal elections. The Court rejected claims that the scheme violated equal protection and due process guarantees. It distinguished its voting rights decisions, concluding that these

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53. *Sellers v. City of Asheville*, 33 N.C. App. 544, 236 S.E.2d 283 (1977).

54. *Id.*; see also *Town of Lake Waccamaw v. Savage*, 86 N.C. App. 211, 356 S.E.2d 810, *rev. denied*, 320 N.C. 797, 361 S.E.2d 89 (1987).

55. G.S. 160A-360(g).

56. *State v. Owen*, 242 N.C. 525, 88 S.E. 832 (1950).

57. *State v. Rice*, 158 N.C. 635, 74 S.E. 582 (1912); *Holmes v. City of Fayetteville*, 197 N.C. 740, 150 S.E. 624 (1929)(dictum).

58. *City of Raleigh v. Morand*, 247 N.C. 363, 100 S.E.2d 870 (1957), *appeal dismissed*, 357 U.S. 343, 78 S.Ct. 1369, 2 L.Ed.2d 1367 (1958).



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59. 439 U.S. 60, 99 S.Ct. 383, 58 L.Ed.2d 292 (1978).

decisions involved disparate treatment among voters who were all residents of the same geographic or political subdivision. According to the Court, the grant of extraterritorial police power jurisdiction in this case was a reasonable legislative response to problems associated with spreading urbanization. *Holt* did not specifically involve land-use regulation. However, the Court noted in two footnotes that similar extraterritorial police power jurisdiction was frequently exercised in various states in connection with zoning, land subdivision control, and master planning, apparently recognizing the implications of its decision for extraterritorial planning statutes.<sup>60</sup>

#### B. Current Arrangements in North Carolina for Extraterritorial Representation

A city council acts in its legislative capacity when it adopts or amends the zoning, land subdivision, or any other ordinance that may be enforced extraterritorially. However, North Carolina law provides no mechanism by which residents of a city's ETPJ may vote as members of the city council when the council adopts or amends these ordinances, nor does it allow residents to validate council actions by referendum. Instead, the law provides that residents must be appointed to the municipal planning board and the zoning board of adjustment. Collectively these boards grant subdivision plat approvals, grant zoning variances and special use permits, hear administrative appeals, and advise the city council.

If a city intends to enforce zoning or land subdivision regulations in its extraterritorial area, it must provide for the appointment of residents of that area to the municipal planning agency (i.e., planning board) and to the municipal zoning board of adjustment.<sup>61</sup> The appointments are normally made by the county board of commissioners upon the request of the city governing board. The number of "outside" members on each board is determined by the municipality in its planning and development control ordinances. If there are an insufficient number of qualified residents of the area to meet membership requirements, the board of county commissioners may appoint as many other county residents as necessary to make up the requisite number. If the board of county commissioners fails to make these appointments within 90 days after being requested to do so, the city council may make them. If the municipal ordinance so provides, the "outside" representatives appointed to the planning board and zoning board of adjustment may be granted equal voting rights with "inside" members, regardless of whether the issue concerns property within city limits or within a city's ETPJ. Otherwise, outside members participate in board matters only insofar as such matters concern the extraterritorial area.<sup>62</sup>

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60. 439 U.S. at 72-73, n. 8.

61. G.S. 160A-362.

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62. *Id.*

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In 1996 further changes were made to shore up “outside” representation and expand the role of counties. Municipalities were required to provide “proportional” representation. Initially, cities, towns, and villages were required to provide for the appointment of at least one resident of the ETPJ to the planning board and to the board of adjustment. However, the 1996 amendments to G.S. 160A-362 required an additional member to be appointed to these boards “only when the population of the entire extraterritorial zoning and subdivision area constitutes a full fraction of the municipality’s population divided by the total membership of the planning board or board of adjustment.” To take an example, suppose that a town has a population of 2,100 people. There are six members on the town’s planning board, one “outside” member and five “inside” members. Dividing the population of the town by the size of the board means that there is a board member for each 350 town people. If the population of the ETPJ is 420 and that number is divided by 350, then there is an ETPJ board member for each 1.2 residents in the ETPJ. Under G.S. 160A-362, the town need not add a second ETPJ member to the board until or unless the ETPJ population per board member reaches the full fraction of two (2) residents per board member. In any event a municipality has a certain amount of discretion in determining how it will provide proportional representation for ETPJ residents, particularly how the ETPJ population is determined.<sup>63</sup>

The 1996 amendment also expanded the role of the board of county commissioners in appointing. Now the county board must hold a public hearing before selecting “a new representative to the planning board or to the board of adjustment as a result of an extension of the extraterritorial jurisdiction.”<sup>64</sup> In particular the board may make appointments “only from those who apply at or before the public hearing.” The statutes do not expressly require the board of county commissioners to hold a public hearing before making appointments to fill ETPJ board openings that do not result from a municipality’s expansion of its regulatory jurisdiction, but some boards do so anyway.

#### B. Arrangements in Other States

It is “not uncommon”<sup>65</sup> today for states to provide local governments with some type of extraterritorial land use authority. There exist multiple variations on the themes outlined above. The features of the statutes in several states are set forth below.

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63. *Macon County v. Town of Highlands*, 187 N.C. App. 752, 654 S.E.2d 17 (2007) (county was not party in interest and could not contest town’s method of establishing extraterritorial representation).

64. G.S. 160A-362

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65. 3 Rathkopf's The Law of Planning and Zoning § 35.6 (Edward Zeigler ed., 2005)

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- Wisconsin: Cities have extraterritorial zoning and plat approval authority, but both municipality and county review plats from ETPJ.
- New Mexico: Municipalities with a population of between 1,500 and 20,000 is authorized to zone up to one mile outside limits, but city and county must appoint an extraterritorial land use authority to administer ordinance made up of four county commissioners and four municipal representatives.
- Illinois: Municipalities that have prepared comprehensive plans may exercise regulatory control over subdivisions and public improvements within a mile and a half of their borders.
- Tennessee: City may regulate land subdivisions up to five miles beyond city limits.
- South Dakota: A city has jurisdiction to approve a subdivision plat for property within three miles of its corporate limits, but only if it has a comprehensive plan or major street plan covering the property.

Selected North Carolina General Statutes  
and Session Laws Affecting Local Government Planning Jurisdiction  
(With Amendments through 10/31/2011)

Planning and Regulation of Development.

G.S. 160A, Article 19. Part

1. General Provisions.

§ 160A-360. Territorial jurisdiction.

(a) All of the powers granted by this Article may be exercised by any city within its corporate limits. In addition, any city may exercise these powers within a defined area extending not more than one mile beyond its limits. With the approval of the board or boards of county commissioners with jurisdiction over the area, a city of 10,000 or more population but less than 25,000 may exercise these powers over an area extending not more than two miles beyond its limits and a city of 25,000 or more population may exercise these powers over an area extending not more than three miles beyond its limits. The boundaries of the city's extraterritorial jurisdiction shall be the same for all powers conferred in this Article. No city may exercise extraterritorially any power conferred by this Article that it is not exercising within its corporate limits. In determining the population of a city for the purposes of this Article, the city council and the board of county commissioners may use the most recent annual estimate of population as certified by the Secretary of the North Carolina Department of Administration.

(a1) Any municipality planning to exercise extraterritorial jurisdiction under this Article shall notify the owners of all parcels of land proposed for addition to the area of extraterritorial jurisdiction, as shown on the county tax records. The notice shall be sent by first-class mail to the last addresses listed for affected property owners in the county tax records. The notice shall inform the landowner of the effect of the extension of extraterritorial jurisdiction, of the landowner's right to participate in a public hearing prior to adoption of any ordinance extending the area of extraterritorial jurisdiction, as provided in G.S. 160A-364, and the right of all residents of the area to apply to the board of county commissioners to serve as a representative on the planning board and the board of adjustment, as provided in G.S. 160A-362. The notice shall be mailed at least four weeks prior to the public hearing. The person or persons mailing the notices shall certify to the city council that the notices were sent by first-class mail, and the certificate shall be deemed conclusive in the absence of fraud.

(b) Any council wishing to exercise extraterritorial jurisdiction under this Article shall adopt, and may amend from time to time, an ordinance specifying the areas to be included based upon existing or projected urban development and areas of critical concern to the city, as evidenced by officially adopted plans for its development. Boundaries shall be defined, to the extent feasible, in terms

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of geographical features identifiable on the ground. A council may, in its



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discretion, exclude from its extraterritorial jurisdiction areas lying in another county, areas separated from the city by barriers to urban growth, or areas whose projected development will have minimal impact on the city. The boundaries specified in the ordinance shall at all times be drawn on a map, set forth in a written description, or shown by a combination of these techniques. This delineation shall be maintained in the manner provided in G.S. 160A-22 for the delineation of the corporate limits, and shall be recorded in the office of the register of deeds of each county in which any portion of the area lies.

(c) Where the extraterritorial jurisdiction of two or more cities overlaps, the jurisdictional boundary between them shall be a line connecting the midway points of the overlapping area unless the city councils agree to another boundary line within the overlapping area based upon existing or projected patterns of development.

(d) If a city fails to adopt an ordinance specifying the boundaries of its extraterritorial jurisdiction, the county of which it is a part shall be authorized to exercise the powers granted by this Article in any area beyond the city's corporate limits. The county may also, on request of the city council, exercise any or all these powers in any or all areas lying within the city's corporate limits or within the city's specified area of extraterritorial jurisdiction.

(e) No city may hereafter extend its extraterritorial powers under this Article into any area for which the county at that time has adopted and is enforcing a zoning ordinance and subdivision regulations and within which it is enforcing the State Building Code. However, the city may do so where the county is not exercising all three of these powers, or when the city and the county have agreed upon the area within which each will exercise the powers conferred by this Article.

(f) When a city annexes, or a new city is incorporated in, or a city extends its jurisdiction to include, an area that is currently being regulated by the county, the county regulations and powers of enforcement shall remain in effect until (i) the city has adopted such regulations, or (ii) a period of 60 days has elapsed following the annexation, extension or incorporation, whichever is sooner. During this period the city may hold hearings and take any other measures that may be required in order to adopt its regulations for the area.

(f1) When a city relinquishes jurisdiction over an area that it is regulating under this Article to a county, the city regulations and powers of enforcement shall remain in effect until (i) the county has adopted this regulation or (ii) a period of 60 days has elapsed following the action by which the city relinquished jurisdiction, whichever is sooner. During this period the county may hold hearings and take other measures that may be required in order to adopt its regulations for the area.

(g) When a local government is granted powers by this section subject to the request, approval, or agreement of another local government, the request, approval, or agreement shall be evidenced by a formally adopted resolution of that government's legislative body. Any such request, approval, or agreement can be rescinded upon two years' written notice to the other legislative bodies

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concerned by repealing the resolution. The resolution may be modified at any time by mutual agreement of the legislative bodies concerned.

(h) Nothing in this section shall repeal, modify, or amend any local act which defines the boundaries of a city's extraterritorial jurisdiction by metes and bounds or courses and distances.

(i) Whenever a city or county, pursuant to this section, acquires jurisdiction over a territory that theretofore has been subject to the jurisdiction of another local government, any person who has acquired vested rights under a permit, certificate, or other evidence of compliance issued by the local government surrendering jurisdiction may exercise those rights as if no change of jurisdiction had occurred. The city or county acquiring jurisdiction may take any action regarding such a permit, certificate, or other evidence of compliance that could have been taken by the local government surrendering jurisdiction pursuant to its ordinances and regulations. Except as provided in this subsection, any building, structure, or other land use in a territory over which a city or county has acquired jurisdiction is subject to the ordinances and regulations of the city or county.

(j) Repealed.

(k) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that is located in the geographic area of a municipality's extraterritorial jurisdiction and that is used for bona fide farm purposes is exempt from exercise of the municipality's extraterritorial jurisdiction under this Article. Property that is located in the geographic area of a municipality's extraterritorial jurisdiction and that ceases to be used for bona fide farm purposes shall become subject to exercise of the municipality's extraterritorial jurisdiction under this Article.

#### § 160A-362. Extraterritorial representation.

When a city elects to exercise extraterritorial zoning or subdivision-regulation powers under G.S. 160A-360, it shall in the ordinance creating or designating its planning board provide a means of proportional representation based on population for residents of the extraterritorial area to be regulated. Representation shall be provided by appointing at least one resident of the entire extraterritorial zoning and subdivision regulation area to the planning board and the board of adjustment that makes recommendations or grants relief in these matters. For purposes of this section, an additional member must be appointed to the planning board or board of adjustment to achieve proportional representation only when the population of the entire extraterritorial zoning and subdivision area constitutes a full fraction of the municipality's population divided by the total membership of the planning board or board of adjustment. Membership of joint municipal-county planning agencies or boards of adjustment may be appointed as agreed by counties and municipalities. Any advisory board established prior to

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July 1, 1983, to provide the required extraterritorial representation shall constitute compliance with this section until the board is abolished by ordinance of the city. The representatives on the planning board and the board of adjustment shall be appointed by the board of county commissioners with jurisdiction over the area. When selecting a new representative to the planning board or to the board of adjustment as a result of an extension of the extraterritorial jurisdiction, the board of county commissioners shall hold a public hearing on the selection. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The board of county commissioners shall select appointees only from those who apply at or before the public hearing. The county shall make the appointments within 45 days following the public hearing. Once a city provides proportional representation, no power available to a city under G.S. 160A-360 shall be ineffective in its extraterritorial area solely because county appointments have not yet been made. If there is an insufficient number of qualified residents of the area to meet membership requirements, the board of county commissioners may appoint as many other residents of the county as necessary to make up the requisite number. When the extraterritorial area extends into two or more counties, each board of county commissioners concerned shall appoint representatives from its portion of the area, as specified in the ordinance. If a board of county commissioners fails to make these appointments within 90 days after receiving a resolution from the city council requesting that they be made, the city council may make them. If the ordinance so provides, the outside representatives may have equal rights, privileges, and duties with the other members of the board to which they are appointed, regardless of whether the matters at issue arise within the city or within the extraterritorial area; otherwise they shall function only with respect to matters within the extraterritorial area.

## IV. Expansion of Municipal Planning Jurisdictions

### A. INTRODUCTION

A municipality's planning jurisdiction is the land that lies within its corporate limits plus its extraterritorial jurisdiction (ETJ). Since development occurring in municipal planning jurisdictions greatly affects what occurs in the County's planning jurisdiction, and vice versa, the Land Use Plan should be coordinated with municipal plans, goals, and objectives.

State law authorizes municipalities to have ETJ so they can control development in areas that are expected to come within their corporate limits in the near future. This enables municipalities to better ensure that development patterns and associated infrastructure will allow the efficient provision of urban services. In Wake County, the Board of Commissioners must agree to grant any extension of a municipality's ETJ, and may rescind the approval of an ETJ extension.

### B. CRITERIA FOR REVIEWING MUNICIPAL ETJ EXPANSION PROPOSALS

Although State law provides a framework for evaluating ETJ and deciding whether or not the County should agree to municipal requests for ETJ extensions, it does not provide detailed criteria. For this reason, the Board of Commissioners has adopted criteria to evaluate the potential for an area's development, the municipality's ability to provide services, and its capability and commitment to good planning and managing of development.

In addition to conformance with the criteria, the Board of Commissioners will also consider the opinions of residents and property owners in the area requested for ETJ, and shall include those opinions in its consideration.

Conformity with the criteria does not automatically guarantee that an ETJ request will be granted. The criteria for evaluating requests for extension of ETJ, as well as proposals to rescind previous ETJ extensions, are as follows:

(1) **Classification as Urban Services Area:** The area proposed for ETJ expansion should be classified as Urban Services Area associated with the municipality.

(2) **Commitment to Comprehensive Planning:**

The municipality should demonstrate a commitment to comprehensive planning, preferably including adopted land use, public facilities and transportation plans, engineering studies, and a capital improvements program (CIP) including funding to implement the CIP. This commitment must be demonstrated through official actions by the governing body.

(3) **Adoption of Special Regulations:**

(a) Where the municipality proposes ETJ expansions along major transportation corridors designated by the County as Special Transportation Corridors, the municipality should have adopted, and be willing to apply, regulations comparable to those for Special Transportation Corridors.

(b) Where the municipality proposes ETJ expansions within a water supply watershed, the municipality should have adopted, and be willing to apply, water supply protection policies and provisions that meet or exceed the applicable State water supply watershed regulations or an adopted Plan for the water supply watershed.

(c) For evaluating an ETJ expansion request, the municipality's application of such special regulations to its existing ETJ should be considered as evidence of its willingness to apply these special regulations.

(4) **Municipal Water and Sewer Service:** The municipality should show how the area proposed for ETJ expansion will be served by water and sewer service within five (5) years of the effective date of ETJ extension. The systems should be designed with adequate treatment capacity and adequately sized major

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trunk line extensions to service the area proposed for ETJ expansion. The municipality should include needed improvements in its capital improvements program.

**(5) Evidence of Feasibility for Urban Density Development:**

Areas proposed for ETJ extension by a municipality should be capable of being developed to an average density feasible for municipal annexation. This criterion is closely related to the ability of a municipality to serve the area with water and sewer service in accordance with its plan for development.

**(6) Annexation Within Ten Years:**

ETJ extensions should only be granted for areas anticipated to be substantially developed and annexed within ten (10) years. The ten year period projection should be used as a guideline, and is adopted with the understanding that actual progress in development and annexation of a given ETJ area may vary from that originally projected at the time of ETJ extension. To determine the potential for annexation within ten (10) years the following should be considered: relevant County and Municipal plans and policies, past development experiences, and previous projections.

**(7) Existing ETJs:**

When a municipality requests additional ETJ, the municipality must demonstrate its progress in annexing and supplying municipal services, especially water and sewer, throughout the entirety of its existing ETJ. For all areas of ETJ granted after May 2, 1988, the municipality must specifically address its progress in complying with the criteria under which that ETJ was originally granted. An ETJ expansion may be granted to a municipality only when it demonstrates substantial progress in meeting this criteria.

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