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# The North Carolina Experience with Municipal Extraterritorial Planning Jurisdiction

David W. Owens

UNC SCHOOL OF GOVERNMENT

*The* University *of* North Carolina *at* Chapel Hill
Institute of Government
Master of Public Administration Program

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# The North Carolina Experience with Municipal Extraterritorial Planning Jurisdiction

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In the past century, North Carolina has seen substantial population growth and a remarkable transition in its urban-rural makeup. In the past fifty years alone, North Carolina's total population has increased by 350 percent.[1] In addition, the state has evolved from a rural, small-farm state to a predominately urban-suburban state. In 1900 only 17 percent of North Carolina's population resided within a city. By July 2003 that number had grown to 52 percent. In 1920 no city in North Carolina had a population over 50,000. While the state still has a large number of small towns, the state's official 2003 population estimates include 16 cities with populations over 50,000; 68 with populations over 10,000; and 318 with populations over 1,000.[2]

A substantial amount of this growth has occurred on the urban-rural fringe. Subdivisions and shopping centers have steadily encroached upon farm fields and forestlands. Whether one views it as desirable development or undesirable sprawl, this growth has been a fact of life in North Carolina.

Such fringe-area growth and associated development have a number of impacts, including:

- Increased demand for roads, water, sewer, utilities, schools, and various other services necessary to support development
- Fiscal implications for cities, counties, and landowners
- Environmental impacts, ranging from the effects of stormwater runoff on water quality to changes in air quality due to increased automobile use
- Implications for farmland preservation
- Dramatic changes in the social and cultural character of affected areas

Given the magnitude of these impacts, a critical question arises: What governmental body should be responsible for planning and managing growth in these transitional urban-fringe areas? Prior to development these are generally rural areas without urban densities or services, subject to county planning and development regulation. Fifty years ago, when much of this growth was just beginning, few counties had any planning programs at all. Today more counties have planning programs, but they tend to be geared toward rural needs. Adjacent cities may eventually annex these developing areas and thus have responsibility for providing municipal services within them. However, when and how (and indeed whether) such annexations will occur often remains uncertain, creating a significant dilemma. If a city cannot secure planning and regulatory jurisdiction until after urban densities are established, it will have no opportunity to influence how development within these areas takes place.

There are various solutions to this dilemma. First, the state can authorize or even mandate county planning and regulation of these developing areas. But an important question remains: Would county plans and regulations adequately address the more municipal concerns of these areas? Second is the creation of regional agencies with authority to plan and regulate development on a broad metropolitan basis. This alternative, however, has often proven politically difficult to achieve. The third and most commonly applied option has been to grant cities extraterritorial jurisdiction—the authority to plan and regulate development in areas immediately outside their corporate limits.

State authorization of municipal regulation of extraterritorial areas to protect public health and safety is well established and has a considerable lineage.[3] In the past fifty years, states

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1. The state's population in 1950 was 2,401,403. The official estimate for 2003 was 8,418,090.

2. There were 230 cities with populations under 1,000. These figures are taken from the North Carolina Office of Management and Budget's 2004 certified July 2003 population counts using the July 1, 2004, city boundaries.

3. An early example of such authorization is an 1825 Georgia statute allowing the city of Savannah to prohibit rice farms within one mile of the city limits. The city adopted such a regulation to promote "dry culture" of the swamp lands near the city as a public health measure. The city's extraterritorial regulation was upheld in *Green v. Mayor of Savannah*, 6

have begun to extend this idea to allow extraterritorial planning and land development regulations as well.[4]

A principal concern with this option, however, has been the lack of political representation for extraterritorial residents.[5] The legal aspects of this issue, if not the political and policy considerations involved, were largely resolved when the United States Supreme Court concluded that federal constitutional guarantees of due process and equal protection are not violated when states grant municipalities extraterritorial jurisdiction without extending to extraterritorial residents the right to vote in municipal elections.[6]

This report explores the law and practice regarding the allocation of planning and development regulatory authority between North Carolina cities and counties. It first reviews the statutes and case law regarding that allocation and then reports on a survey of city and county experience with extraterritorial planning and development regulation jurisdiction.

## North Carolina Law on Planning and Development Regulation Jurisdiction

Cities and counties in North Carolina undertake land use planning and may apply land development regulations only in the geographic areas over which the legislature has delegated them authority to do so. There is no overlapping of city and county land development regulatory jurisdiction in North Carolina—jurisdiction over an area is assigned to either a city or a county.

The general rule[7] is that municipalities have exclusive jurisdiction within their city limits, and counties have exclusive jurisdiction within unincorporated areas outside city limits. The exception to this rule is that municipalities may under certain circumstances extend regulations to a limited area immediately outside their city limits.

### Authority within Municipalities

The basic statute setting territorial jurisdiction for municipal land development regulations, Section 160A-360 of the North Carolina General Statutes (hereinafter G.S.), provides that all land use regulatory powers may be exercised by any city within its corporate limits. Most of the specific enabling statutes for land development regulations simply repeat the authority to enact regulations within a city's "territorial jurisdiction."[8]

The 1923 zoning enabling act[9] granted cities authority to zone within their corporate or city limits. The provision of the act that zoning be in accordance with a comprehensive plan, a requirement that continues in current law, has been interpreted by the North Carolina Supreme Court to require that zoning be applied throughout a municipality. Zoning may not be applied to only part of a city.[10] Cities in North Carolina must zone for their entire internal jurisdiction if they zone at all.

A municipality may also apply its ordinances to city-owned property outside the city limits.[11] If a city owns an airport and has a separate airport zoning ordinance, the city may also extend the coverage of that ordinance to protect the approaches to the airport even if the approaches are not within the city's corporate limits or its extraterritorial land use regulatory jurisdiction.[12]

Ga. 1 (1849). Also see *Harrison v. Mayor of Baltimore*, 1 Gill 264 (Md. 1843), which upheld the authority of the city to enforce health regulations within three miles of the city limits. The authority had been applied to quarantine and disinfect a ship arriving with Irish immigrants infected with smallpox and typhoid fever. Municipal extraterritorial regulation to prevent nuisances, protect water supplies, and regulate various particular land uses and practices (such as uses generating pollution or posing risks to public health, safety, welfare, or morals) has also long been common. Such regulations have addressed the location of high-impact land uses—slaughterhouses, packing houses, tanneries, storage of explosives, distilleries, intensive livestock concentrations, and the like—and places where "unseemly" and illegal activities might take place, particularly gambling, prostitution, or sale of alcohol. The scope of activities that could be regulated and the geographic extent of extraterritorial authority have varied widely from state to state. *See* Russell W. Maddox, Extraterritorial Powers of Municipalities in the United States 58–69 (1955); William Anderson, *The Extraterritorial Powers of Cities (pt. 2)*, 10 Minn. L. Rev. 564, 577–78 (1926).

4. A 1952 report indicated eight states—Alabama, Indiana, Kentucky, Nebraska, North Carolina, South Carolina, Tennessee, and West Virginia—had granted some or all of their cities extraterritorial zoning authority. Am. Society of Plan. Officials, Extraterritorial Zoning 6 (PAS Report No. 42, Sept. 1952). At least two-thirds of the states had granted municipalities extraterritorial planning authority at this time. Frank S. Sangstock, Extraterritorial Powers in the Metropolitan Area 61–63 (1962). Relatively few cities exercised extrateritorial zoning. One national study reported that over 95 percent of cities with populations over 25,000 zoned the land within their corporate limits, but less than 10 percent had authority for extraterritorial zoning. John C. Bollens, *Controls and Services in Unincorporated Urban Fringes*, 1954 Munic. Year Book 53, 54–55.

5. "The crux of the arguments opposing the conferring of unlimited police powers over noncorporate territories is that such a grant involves government without the consent of the governed." Frank S. Sangstock, Extraterritorial Powers in the Metropolitan Area 49 (1962). This concern was a key aspect of several early judical invalidations of broad grants of extraterritorial regulatory authority. *See, e.g.*, Smeltzer v. Messer, 225 S.W.2d 96 (Ky. 1949); Malone v. Williams, 103 S.W. 798 (Tenn. 1907).

6. Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 70–75 (1978). *See also* State v. Rice, 158 N.C. 635, 74 S.E. 582 (1912), discussed below.

7. The General Assembly can modify these general rules for individual cities and counties. The most common local modifications are those for extraterritorial areas, as discussed below. Another example is N.C. Gen. Stat. § 63A-18 (hereinafter G.S.), which gives the North Carolina Global Transpark Authority zoning jurisdiction over its cargo airport complex near Kinston and the area within six miles of the site. Also, G.S. 130A-55(17) allows certain sanitary districts to adopt zoning ordinances that have the same jurisdiction and effect as municipal ordinances. To qualify, the sanitary district must adjoin an incorporated area and also be within three miles of two other cities. Application of this authority is rare.

8. *See, e.g.*, G.S. 160A-371 (subdivision) and G.S. 160A-382 (zoning). G.S. 160A-452 provides that community appearance commissions may operate within a city's "area of zoning jurisdiction."

9. 1923 N.C. Sess. Laws ch. 250.

10. Shuford v. Town of Waynesville, 214 N.C. 135, 138, 198 S.E. 585, 587 (1938).

11. G.S. 160A-176.

12. G.S. 63-31(d).

A municipality is not required to exercise its land development regulatory authority. However, even when a city does not exercise any of its regulatory authority, county development regulations do not apply within a city's corporate limits absent an affirmative request by the city.

## Authority in Unincorporated Areas

The authority for county development regulation in North Carolina was first extended to individual counties by special acts of the General Assembly. Forsyth County received authority to undertake zoning in 1947 and Durham County was granted that authority in 1949.[13] By 1958 six counties (Cumberland, Dare, Durham, Forsyth, Guilford, and Perquimans) had been granted authority to enact zoning.[14] In addition, all counties were granted authority for airport zoning in 1941 and floodplain zoning in 1956.

Authority to enact county zoning was extended to most counties in the state in 1959.[15] Every county now has general authority to enact land development regulations throughout the parts of the county that lie outside of municipal jurisdiction.[16]

Counties may regulate only part of the unincorporated portion of the county. G.S. 153A-342 requires that such an area originally contain at least 640 acres and have at least ten tracts in separate ownership. Subsequent additions to these areas may be of any size. Some counties have used this authority to apply zoning in areas immediately around cities, around lakes and recreation areas, around schools and other sensitive land uses, or in densely populated townships, while leaving the more rural portions of the counties unregulated. As of December 2005, sixty counties had adopted countywide zoning, sixteen partial county zoning, and twenty-four had no county zoning.[17]

G.S. 153A-320 allows county development regulations to be adopted throughout the county except as provided by G.S. 160A-360. Under that statute, when a city adopts an extraterritorial boundary ordinance, the city acquires jurisdiction for all of its ordinances adopted under Article 19 of Chapter 160A of the General Statutes, and the county loses its jurisdiction for the same range of ordinances.[18] This includes not only zoning and subdivision ordinances, but also housing and building codes and regulations on historic districts and landmarks, open spaces, erosion and sedimentation control, floodways, mountain ridges, and roadway corridors.[19] The city does not acquire, nor does the county lose, jurisdiction for regulations adopted under the general ordinance-making power of G.S. 160A-174, such as nuisance lot, junked car, or noise ordinances.[20] So, for example, if sign regulations are a section of a city zoning ordinance, they apply in the extraterritorial area; however, if they are part of a separate sign ordinance, they do not, and the county's sign regulations (if any) continue to apply.

G.S. 160A-360(d) enables counties to exercise land development regulatory power within a city's boundaries upon request from the city's governing board. The city's request and the county's acceptance must be in the form of resolutions formally adopted by each governing board.[21] Any such request or approval may be revoked at any time by mutual agreement of both jurisdictions and with two years' written notice by either of the entities acting alone.

## Legislative Authority to Grant Extraterritorial Power

A city may not extend its regulatory or police powers beyond the city limits without specific legislative authority. The North Carolina Supreme Court ruled in 1894 that the town of Washington did not have the authority to regulate the throwing of dead fish from a pier into the Pamlico River.[22] The city limits extended only to the low-water mark of the river, so the portion of the pier over the river itself was not within the city's regulatory jurisdiction. Because no expanded police power jurisdiction had been granted by the legislature, the city could not enforce its ordinance outside city limits. The court noted, however, that the city's police power jurisdiction could, with legislative approval, be set at other than the city limits.[23]

13. 1947 N.C. Sess. Laws ch. 677 (Forsyth County); 1949 N.C. Sess. Laws ch. 1043 (Durham County). Other local acts authorized activity in other individual counties. *See, e.g.*, 1949 N.C. Sess. Laws ch. 400 (Clay County); 1951 N.C. Sess. Laws ch. 1193 (Dare County). The Dare County authorization allowed zoning of selected areas of the county upon petition of 15 percent of the area's property owners. A similar authorization for Guilford County was introduced in 1951 (House Bill 1128) but not adopted. In other instances county regulation was authorized to deal with particular development issues. Cumberland County was given zoning authority in 1957 to protect the area around the newly established Methodist College outside of Fayetteville. 1957 N.C. Sess. Laws ch. 1455.

14. Ironically, it was another forty-five years before Perquimans County exercised its zoning authority.

15. 1959 N.C. Sess. Laws ch. 1006. This law exempted thirty-one counties from its coverage.

16. G.S. 153A-320. The court in *Cumberland County v. Eastern Federal Corporation,* 48 N.C. App. 518, 269 S.E.2d 672, *rev. denied*, 301 N.C. 527, 273 S.E.2d 453 (1980), confirmed that a county's exercise of zoning power only in the unincorporated portion of the county has a reasonable basis and does not violate the equal protection provisions of the state or federal constitutions.

17. Many of the counties with partial or no zoning have adopted regulations of particular activities, such as mobile home parks, telecommunication towers, and adult business locations. Also, at least eighty-eight counties have adopted subdivision regulations.

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

19. G.S. 143-215.57 establishes an exeception to this general rule for floodplain regulations. If a city exercises extraterritorial jurisdiction, it may apply city floodplain regulations to that area, even if these regulations are included in a separate ordinance rather than incorporated into the city zoning ordinance. However, if the city elects not to exercise floodplain regulations in the extraterritorial area, the county may apply county floodplain regulations to the area. Cities also are granted authority to exercise some operational programs in the extraterritorial area, notably community development programs.

20. G.S. 153A-122.

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

22. State v. Eason, 114 N.C. 787, 19 S.E. 88 (1894).

23. The court ruled:

> The Legislature unquestionably had the power to extend the jurisdiction of the town for police purposes to the middle of the river or to the opposite bank, and . . . the effect would have been to extend the boundary for the exercise of the power to prohibit nuisance delegated to the town across the adjacent bed of the river, while the territorial limits of its authority for all purposes other than the exercise of police powers would have been the low-water mark on the north bank.

The court upheld this type of legislative grant of extraterritorial power in 1912 in *State v. Rice*.[24] Special legislation had granted the city of Greensboro authority to impose sanitary regulations up to one mile beyond the city limits. The city, acting under this authority, had adopted an ordinance that prohibited keeping hogs within the city or within a quarter mile of the corporate limits. The court concluded that the legislature had "unquestioned authority" to grant the city extraterritorial jurisdiction.

In the *Rice* case, the court addressed a contention frequently raised in cases involving extraterritorial jurisdiction—that it should be illegal to regulate those who cannot vote for the regulators.[25] Explaining that the police power is the exercise of a state authority rather than a local power, the court dismissed the complaint. It ruled, "There is nothing in our Constitution which restricts the Legislature in the exercise of its police power from conferring upon the municipal authorities of Greensboro such [extraterritorial] power."[26] The court reached the same conclusion in 1957 for an extraterritorial zoning ordinance adopted by Raleigh pursuant to a specific grant of authority in local legislation.[27]

In addition to the broad extraterritorial planning jurisdiction discussed below, the General Assembly has also granted cities extraterritorial authority in a variety of specific instances. The one-mile extraterritorial authority for sanitary ordinances was extended statewide in the 1917 comprehensive revision of municipal law.[28] In its current form, G.S. 160A-193(a) allows cities to abate public health and safety nuisances within one mile of the city's corporate limits. In 1929 cities were also given authority to regulate subdivisions within one mile of the city's corporate limits.[29] Other individual grants of extraterritorial authority include: G.S. 160A-286, which allows city police officers to act as law enforcement officers within one mile of the city's corporate limits; G.S. 160A-293(a), which allows city fire protection outside of city limits under city–county or city–landowner agreements; G.S. 160A-299(d), which allows street closings in the extraterritorial planning jurisdiction; G.S. 160A-312(a), which allows cities to operate public enterprises[30] outside of the city "within reasonable limits";[31] G.S. 160A-341, which allows cities to establish, operate, and maintain cemeteries outside of the city's corporate limits; and G.S. 160A-353, which allows cities to acquire parks outside of city limits.

## Extraterritorial Planning and Development Regulation Jurisdiction

As zoning and other land use regulations first came into widespread use in North Carolina, they were almost exclusively a municipal concern. Most cities of any significant size adopted zoning in the 1920s, but counties remained largely uninvolved in development planning and regulation. A good deal of post–World War II development and growth occurred along the urban fringe, often in unregulated areas just outside of city corporate limits, and often in a "relatively chaotic fashion."[32] As a result North Carolina began to authorize city "perimeter zoning," now known as municipal extraterritorial jurisdiction.

Authority to adopt zoning ordinances in the one-mile area surrounding the city was granted to Raleigh, Chapel Hill, Gastonia, and Tarboro in 1949.[33] By 1958 nineteen municipalities had secured local legislation authorizing extraterritorial zoning (the additional cities were Carrboro, Charlotte, Elizabeth City, Farmville, Goldsboro, Greensboro, High Point, Jacksonville, Kinston, Mooresville, Salisbury, Snow Hill, Spencer, Statesville, and Winston-Salem). A Municipal Government Study Commission of the General Assembly examined the issue in 1958 and concluded:

> 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 grow-

*Id*. at 792–93, 19 S.E. at 89. In the absence of a specific grant of extraterritorial authority, cities have no inherent extraterritorial power. In *State v. Owen,* 242 N.C. 525, 88 S.E.2d 832 (1955), the court ruled that a general grant of one-mile extraterritorial jurisdiction in Winston-Salem's 1927 charter applied only to the police force and criminal law enforcement. The court further held that a subsequent grant of extraterritorial zoning authority did not apply retroactively, ruling that a 1953 local act granting three miles of extraterritorial zoning jurisdiction did not validate a zoning ordinance adopted by the city in 1948.

24. 158 N.C. 635, 74 S.E. 582 (1912).

25. An example of the ongoing interest in this topic is House Bill 66, 2d Ex. Sess. (N.C. 1993), which proposed to allow residents in extraterritorial zoning areas to vote in municipal elections. Two bills introduced but not adopted in the 2005 session of the General Assembly also addressed the issue. House Bill 362 would have required approval of the voters in affected areas for establishment of extraterritorial jurisdiction, and House Bill 363 would have allowed residents of extraterritorial areas to vote in city elections. For a case addressing the authority of the legislature to allow nonresident voting, see *Locklear v. North Carolina State Bd. of Elections*, 514 F.2d 1152 (4th Cir. 1975) (invalidating provision allowing city residents to vote in county school board elections).

26. *Rice*, 158 N.C. at 638, 74 S.E. at 583.

27. City of Raleigh v. Morand, 247 N.C. 363, 100 S.E.2d 870 (1957), *appeal dismissed*, 357 U.S. 343 (1958). The case is discussed in Philip P. Green, Jr., *Supreme Court Upholds Extra-Territorial Zoning*, Popular Government, March 1958, at 6.

28. 1917 N.C. Sess. Laws ch. 136.

29. 1929 N.C. Sess. Laws ch. 186.

30. This includes provision of electricity, water, sewer, natural gas, public transportation, solid waste collection, cable television, off-street parking, airports, and stormwater management.

31. Cities may impose conditions on the provision of utilities to an extraterritorial customer. Often these conditions include payment of a higher rate than is charged to city residents and compliance with city construction standards for the infrastructure involved. *See, e.g.*, Fulghum v. Town of Selma, 238 N.C. 100, 76 S.E.2d 368 (1953). Some cities also require compliance with city development regulations as a precondition to extraterritorial reciept of city water or sewer, even if the land is not within the city's extraterritorial planning area.

32. Philip P. Green, Jr., *The Zoning of Areas Outside City Limits*, Popular Government, Oct. 1953, at 7. Green offered three options for addressing development regulation in these areas—city extraterritorial zoning, county zoning, or special district zoning.

33. 1949 N.C. Sess. Laws ch. 540 (Raleigh), ch. 629 (Chapel Hill), ch. 700 (Gastonia), and ch. 1192 (Tarboro). In 1951 this authority was extended to Statesville, Farmville, Mooresville, and Kinston. N.C. Sess. Laws 1951 ch. 238 (Statesville), ch. 441 (Farmville), ch. 336 (Mooresville), ch. 273 (Chapel Hill), and ch. 876 (Kinston). In 1953 Winston-Salem was given a three-mile extraterritorial jurisdiction. 1953 N.C. Sess. Laws ch. 777.

> ing 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 development may, for a variety of reasons, take place just outside the corporate limits. Visitors to the city receive their first impression from these outlying areas.[34]

The study commission thus recommended that all cities having populations of 2,500 or more be granted a one-mile area of extraterritorial jurisdiction. The commission also recommended that cities with larger populations be granted up to five miles of extraterritorial jurisdiction, provided the county agreed. The study commission noted the concern that residents of these areas were not entitled to vote in city elections. It recommended mandatory representation of extraterritorial residents on city planning boards and boards of adjustment "to meet this objection in a practical and yet legal manner."[35]

The legislature adopted the bulk of the study commission's recommendations and granted statewide authority for municipal extraterritorial land use regulation in 1959.[36] It allowed up to one mile of extraterritorial jurisdiction for cities with populations greater than 2,500 (but not an enhanced area for the largest cities). Extraterritorial representation on the planning boards and the boards of adjustment of cities exercising such power was mandated.

In 1961 the statute was amended to reduce the municipal population required to exercise extraterritorial planning jurisdiction to 1,250.[37] A number of technical revisions were made to the statute in 1965, including allowing interlocal agreements on extraterritorial boundaries.[38] Other changes included provisions that initial zoning of extraterritorial areas would not be subject to protest petitions,[39] that extraterritorial members of boards be allowed to vote on matters within the city, and that extraterritorial members may reside outside the area being zoned if this is necessary to secure the requisite number of extraterritorial board members.

The current statutory scheme of tiered extraterritorial jurisdiction of from one to three miles based on city population was adopted in 1971.[40] G.S. 160A-360(a) provides that the extraterritorial area may extend up to one mile from the primary city limits[41] for cities with populations of less than 10,000. If county approval is secured, cities with populations of between 10,000 and 25,000 may extend their jurisdiction for up to two miles; cities with populations of more than 25,000, up to three miles.[42] G.S. 160A-360(e) also requires that county agreement be secured for the extension of city extraterritorial jurisdiction into any area wherein the county is enforcing zoning, subdivision regulations, and the state building code. These distances set the maximum potential extraterritorial area, and cities may choose to exercise only part of their potential jurisdiction.

The original extraterritorial authorization exempted bona fide farms from zoning coverage because this exemption existed for county zoning. The farm exemption for the extraterritorial area of cities was deleted in the 1971 recodification.

Subsequent amendments have included provision for vested rights when jurisdiction shifts,[43] allowed for annual updates to be used in determining city populations,[44] and clarified the process whereby a county assumes authority in extraterritorial areas when a city relinquishes jurisdiction.[45] In 1996 the statutes were amended to require mailed notice to affected property owners when zoning jurisdiction is being extended to an extraterritorial area and to add a requirement for proportional representation of extraterritorial residents on city planning boards and boards of adjustment.[46]

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34. Report of the Municipal Government Study Commission of the North Carolina General Assembly, at 18 (1958). For similar concerns about the impacts of development adjacent to cities, see Louis F. Bartelt, Jr., *Extraterritorial Zoning: Reflections on its Validity*, 32 Notre Dame L. Rev. 367 (1957); Otis J. Bouwsma, *The Validity of Extraterritorial Municipal Zoning*, 8 Vand. L. Rev. 806 (1955); Marygold S. Melli and Robert S. Devoy, *Extraterritorial Planning and Urban Growth*, 1959 Wis. L. Rev. 55.

35. Report of the Municipal Government Study Commission at 19. The commission report went on to note that such an arrangement would provide "outside residents an appropriate and essential role in both the legislative process [given the planning board role in recommending regulations] and the admininistration of the ordinance [given the board of adjustment role in granting variances and hearing appeals]."

36. 1959 N.C. Sess. Laws ch. 1204. Nineteen counties were exempted from the coverage of the law authorizing extraterritorial zoning.

37. 1961 N.C. Sess. Laws ch. 548. This law also granted cities authority to appoint the extraterritorial members of the planning board and the board of adjustment if the county failed to make these appointments.

38. 1965 N.C. Sess. Laws ch. 864.

39. The protest petition allows owners of directly affected land to object to a rezoning and thereby require a supermajority vote of the town governing board for adoption.

40. 1971 N.C. Sess. Laws ch. 698.

41. G.S. 160A-58.4 allows zoning to be applied within noncontiguous areas of the city (often referred to as satellite annexations) as in all other parts of the city. However, the city may not extend extraterritorial zoning to the land adjacent to those areas unless that land is within the extraterritorial area authorized for the city's primary corporate limits.

42. A number of local governments have secured local legislation to modify the area of potential extraterritorial jurisdiction. The most common amendment has been to allow towns with populations under 10,000 to add a second mile of extraterritorial jurisdiction. Local variations enacted since 1973, with year of adoption indicated parenthetically, include: Apex (1993); Archdale (2005); Belmont (1991); Blowing Rock (1985); Canton (1983); Caswell Beach (1983); Chadbourn (2004); Charlotte (2001, 1991); Chocowinity (1999); Cornelius (1997, 1992, 1977); Davidson (1997, 1992, 1977); Dunn (1998); Faison (1991); Farmville (1999); Grifton (1993); Huntersville (1997, 1984, 1977); Kings Mountain (1999); Knightdale (1985); Lake Waccamaw (1973); Maggie Valley (1996); Matthews (1999, 1991); Minnesott Beach (2001); Mint Hill (1994, 1991); Mocksville (1990); Montreat (1991); Mooresville (1997, 1991); Morehead City (1997); Mount Airy (2001); Mount Holly (1991); Nashville (1985); Newport (1997); Pilot Mountain (1990); Pinebluff (1999); Pinehurst (1992); Pineville (1991); Pittsboro (1989); River Bend (1997); Roanoke Rapids (2005); Rockingham (2001); Siler City (1989); Smithfield (1977); Stanley (1991); Wake Forest (1985); Wallace (1996); Washington (1981); Warsaw (1990); Whiteville (2000); Williamston (1997); and all municipalities in Johnston County (1986), Moore County (1985), and Pamlico County (1977). G.S. 160A-360(h) provides that the general statute does not repeal or modify any extraterritorial boundaries that have been set by more precise local legislation.

43. 1973 N.C. Sess. Laws ch. 525.

44. 1977 N.C. Sess. Laws ch. 882.

45. *Id.* ch. 912.

46. 1996 N.C. Sess. Laws ch. 746.

## Process to Establish Extraterritorial Jurisdiction

G.S. 160A-360(b) requires that the extraterritorial area be set by an ordinance adopted by the city governing board. This boundary ordinance is subject to newspaper notice, mailed notice, and public hearing requirements. The notice of the hearing must adequately describe both the geographic area affected and the nature and effect of adopting extraterritorial jurisdiction.

The extraterritorial area must be based on "existing or projected urban development and areas of critical concern to the city, as evidenced by officially adopted plans[47] for its development." To the extent feasible, the boundaries of an area must follow geographic features identifiable on the ground but without extending beyond the statutory mileage maximums. Boundaries typically follow property lines but are not required to do so. Cities may exclude areas in another county, areas separated from the city by barriers to growth, or areas where growth will have minimal impact on the city. Neither the boundary ordinance nor the public notice for the boundary ordinance hearing needs to be based on a detailed legal survey. However, the boundary must be described with sufficient precision that landowners can determine without hiring a surveyor whether their properties are included.

In *Sellers v. City of Asheville*[48] the application of Asheville's zoning ordinance to an extraterritorial property was held to be invalid in part because of an inadequate description of the extraterritorial boundary. The wording in the ordinance earmarked "the territory beyond the corporate limits for a distance of one mile in all directions," but the map showed only sweeping curves. The purpose of the statutory mandate in G.S. 160A-360(b), the court held, is to define boundaries, "to the extent feasible, so that owners of property outside the city can easily and accurately ascertain whether their property is within the area over which the city exercises its extraterritorial zoning authority."[49] That an owner could secure a surveyor to measure one mile from the corporate boundaries was held to be insufficient to meet the statutory requirements. *In re Raynor*, on the other hand, provides an example of a public notice description of an extraterritorial area held to be adequate.[50] The notice provided a text description of the area using roads as references to "roughly describe" the boundaries.

The court in *Sellers* also held that the substance of the public notice had been inadequate. The newspaper notice did not mention that the proposed ordinance was the city's initial effort to exercise its extraterritorial prerogative in the area. The court found the notice to be so vague as to give no diligent landowner reasonable cause to suspect that the ordinance affected his or her property. Similarly in *Town of Swansboro v. Odum*,[51] the town's attempt to extend its zoning to an extraterritorial area was held invalid because the public notice for the hearing on the extraterritorial ordinance had simply stated, "The purpose of the hearing shall be to answer questions and receive input as to extra-territorial jurisdiction as authorized by G.S. 160A-360."

G.S. 160A-360(a1) requires that notice of a public hearing on an extraterritorial boundary ordinance adoption or amendment be mailed to all affected property owners four weeks prior to the hearing. The notice must specify the effect of extension of city jurisdiction and advise owners of the hearing, of their rights to participate in the hearing, and of their rights to seek appointment as extraterritorial members of the city's planning board and board of adjustment. Because each land development ordinance also includes a provision defining the territorial jurisdiction covered by the ordinance, the provisions within these ordinances may also need to be amended (and these amendments also require notice and hearing). The hearing on amendment of these ordinances can either be addressed at a separate public hearing or at the same public hearing as the boundary ordinance adoption or amendment. Particular care is needed when the city zoning map is amended to apply city zoning to the new territory. Prior published and mailed notice is required for the zoning amendment also, but because this notice cannot be mailed more than twenty-five days prior to the hearing,[52] two separate mailings are required even if a single hearing is held.

G.S. 160A-360(b) requires that the adopted boundary map be recorded with the register of deeds for any affected county and that the map be retained permanently in the office of the city clerk. If there has been substantial compliance with the notice provisions regarding establishment of an extraterritorial area, and those affected have received actual notice of the hearing, technical failures in the adoption process do not invalidate the ordinance.[53]

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47. The statute does not define *officially adopted plan*. This provision likely requires some formal study, and adoption by resolution of the governing board, of a document setting forth the city's development concerns.

48. 33 N.C. App. 544, 236 S.E.2d 283 (1977).

49. *Id.* at 550, 236 S.E.2d at 287. The use of a very general map also was held to be inadequate in *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). The court held, "[T]he sweeping curves drawn around the lake and town are in no way definable. No distances are shown on the map and the lines themselves do not coincide with any geographical feature on the ground." *Id.* at 215, 356 S.E.2d at 812.

50. 94 N.C. App. 91, 379 S.E.2d 880, *rev. denied*, 325 N.C. 707, 388 S.E.2d 458 (1989). The notice characterized the area as encompassing "approximately 1 mile in width ringing the present Garner [extraterritorial jurisdiction] between Jones Sausage Road east and south across U.S. 70 and White Oak Road to N.C. 50."

51. 96 N.C. App. 115, 384 S.E.2d 302 (1989). The notice failed on several grounds:

> Its notice of the . . . public hearing failed to apprise defendants—or any other property owners within the affected area—of the nature and character of the proposed actions, failed to describe in any way the area in question, and failed to comport with the clear requirements of G.S. 160A-364 in that it was not published in two successive calendar weeks. Furthermore, plaintiff's ordinance was adopted in a proceeding held over eight months subsequent to its initial hearing, and without either further public hearing or notice. Finally, plaintiff never recorded a boundary description as required by G.S. 160A-360(b).

*Id.* at 117, 384 S.E.2d at 304.

52. G.S. 160A-384(a).

53. In *Potter v. City of Hamlet*, 141 N.C. App. 714, 541 S.E.2d 233, *rev. denied*, 353 N.C. 379, 547 S.E.2d 814 (2001), the plaintiff challenged the adoption of extraterritorial jurisdiction some four years earlier on grounds that the boundary map had not been filed with the county register of deeds.

G.S. 160A-360(f) provides for a sixty-day transition period between county and city ordinances after an extraterritorial boundary ordinance is adopted. County ordinances remain in place and enforceable until the effective date of city regulations (or when the sixty-day period expires, whichever comes first).

## The North Carolina Experience with Extraterritorial Planning Jurisdiction

### Survey

The School of Government conducted a survey to determine how North Carolina cities and counties have actually used extraterritorial planning and development regulation jurisdiction.[54] The survey was mailed in October 2004 to all incorporated cities and all counties in the state. A second copy was mailed in November 2004 to all jurisdictions that had not responded to the initial mailing. E-mail reminders were sent in January 2005 to nonresponding jurisdictions for which electronic contact information was available. The text of the survey instrument related to extraterritorial jurisdiction issues is provided in Appendix A.[55]

The response rate was high and the responses represent a strong cross-section of cities and counties in the state. In all, 407 of the 648 jurisdictions responded, a 63 percent response rate (Table 1). Of the 548 cities, 57 percent responded and of the 100 counties, 95 percent responded. The combined 2003 population of all responding jurisdictions totaled 7,612,972, some 90 percent of the state's total population (Table 2). A list of responding jurisdictions is provided in Appendix B. Response from counties and jurisdictions with larger populations was particularly strong. While the response rate from municipalities with populations under 500 was low, previous studies indicate that these very small towns are far less likely to have their own land use regulations or any extraterritorial jurisdiction.[56]

**Table 1 Survey Response of Jurisdictions, by Population**

| *Population* | *No.* | *No. responding* | *Response rate (%)* |
|---|---|---|---|
| ***Municipalities*** | ***548*** | ***315*** | ***57*** |
| <1,000 | 231 | 92 | 40 |
| 1,000–9,999 | 249 | 160 | 64 |
| 10,000–24,999 | 43 | 36 | 84 |
| >25,000 | 25 | 24 | 96 |
| ***Counties*** | ***100*** | ***95*** | ***95*** |
| <10,000 | 11 | 9 | 82 |
| 10,000+ | 89 | 86 | 97 |
| ***All jurisdictions*** | ***648*** | ***410*** | ***63*** |

**Table 2 Population of Responding Jurisdictions**

| *Jurisdiction* | *Total population* | *Population of responding jurisdictions* | *Population represented by responding jurisdictions (%)* |
|---|---|---|---|
| Counties (unincorporated areas) | 4,019,839 | 3,755,257 | 93 |
| Municipalities | 4,398,251 | 3,857,715 | 88 |
| **Total** | **8,418,090** | **7,612,972** | **90** |

**Table 3 Municipalities with ETJ, by Population**

| *Population* | *No. of cities* | *Percent (%)* |
|---|---|---|
| <1,000 | 31 | 34 |
| 1,000–2,499 | 49 | 71 |
| 2,500–9,999 | 63 | 69 |
| >10,000 | 52 | 85 |
| **Cities with ETJ** | **195** | **62** |

The data reported below is based on the number of jurisdictions responding to each survey question. Since all respondents did not answer every question, the number of those actually responding to a particular query is noted in each instance. Percentages are rounded to the nearest whole number.

### Municipal Exercise of Extraterritorial Jurisdiction

A majority of North Carolina municipalities exercise some extraterritorial planning jurisdiction. Of 315 municipalities responding to this query, 62 percent exercise extraterritorial jurisdiction for land development regulation. There is a strong correlation between use of extraterritorial jurisdiction and the population of the municipality. Only a third of the responding cities with populations under 1,000 exercise extraterritorial jurisdiction, but 85 percent of those with populations over 10,000 do so (Table 3).

This rate of use of extraterritorial authority and its correlation with population size has been relatively constant in North

The court noted that (1) there had been proper newspaper notice of the hearing, (2) the plaintiff's predecessor in title had received a mailed notice of the hearing, (3) several hearings were actually held, (4) the ordinance had a metes and bounds boundary description attached, and (5) a map of the area was displayed in the city clerk's office. Thus the court found the city had substantially complied with the notice requirements, and the failure to file a copy of the boundary map with the register of deeds did not invalidate adoption of the extraterritorial area. The court also found the action barred by the statute of limitations, so its comments regarding substantial compliance are dicta.

54. Nathan Branscombe and Adam Levine, MPA students at UNC Chapel Hill, coded all of the survey data and perfomed much of the initial statistical analysis of the data. Without their contributions this report would not have been possible.

55. Other portions of the survey addressed an inventory of adopted ordinances pertaining to development regulation and jurisdictions' experiences with special and conditional use permits in zoning. Subsequent publications will report on those aspects of the survey.

56. A 2002 survey of North Carolina cities and counties indicated 46 percent of cities with populations under 500 had a zoning ordinance while 97 percent of those with populations over 1,000 had zoning. David Owens and Adam Bruggemann, *A Survey of Experience with Zoning Variances*, 18 School of Government Special Series 6 (2004).

Carolina for the past decade.[57] This trend is also reflected in the reported dates for a jurisdiction's original adoption of extraterritorial jurisdiction. Although only two-thirds of the respondents knew when extraterritorial jurisdiction was first adopted by their municipalities, their responses indicate that its use has been relatively common in the state for some time. A third of the jurisdictions with extraterritorial jurisdiction have had it for at least twenty-five years (Table 4).

**Table 4 Year of Initial ETJ Adoption**

| *Date of ETJ adoption* | *No. of cities* | *Percent (%)* |
|---|---|---|
| 1950–59 | 1 | 1 |
| 1960–69 | 11 | 9 |
| 1970–79 | 31 | 25 |
| 1980–89 | 27 | 22 |
| 1990–99 | 35 | 29 |
| 2000–04 | 17 | 14 |
| **Total** | **122** | |

The survey indicates that an overwhelming majority—85 percent—of cities exercise extraterritorial authority only within one mile of their primary corporate city limits. Less than 5 percent of the responding municipalities have up to a three-mile extraterritorial area (Table 5). This is in part due to the relatively small number of cities eligible for more than a one-mile extraterritorial area. Sixty of the responding jurisdictions had populations over 10,000 and were thus allowed more than a one-mile area. Nearly half of these (29) have extended their jurisdictions beyond one mile. Of the 24 responding jurisdictions with populations over 25,000, which would allow up to a three-mile area, 9 exercised that option.

**Table 5 Maximum Distance ETJ Extends from City Limits**

| *Distance* | *No. of cities* | *Percent (%)* |
|---|---|---|
| One mile or less | 162 | 85 |
| Two miles | 20 | 10 |
| Three miles | 9 | 5 |
| **Total** | **191** | |

While there is no mandatory relationship between annexation and extraterritorial jurisdiction, cities often base extraterritorial jurisdiction on anticipated future annexation of covered areas. Two-thirds of the cities with extraterritorial jurisdiction indicated that their choice of jurisdiction is related to future annexation plans. However, only 10 percent associate their choices with a specific timetable (Table 6).

**Table 6 Relationship of ETJ Area to Annexation Plans**

| | *No. of cities* | *Percent (%)* |
|---|---|---|
| ETJ area is generally planned to be annexed within 10 years | 18 | 9 |
| ETJ area is likely to be annexed, but no definite plans or timetable for annexation | 109 | 57 |
| ETJ area is unrelated to annexation planning | 64 | 34 |
| **Total** | **191** | |

## Powers Exercised in the Extraterritorial Area

Cities may apply any ordinance adopted under Article 19 of Chapter 160A of the General Statutes in the extraterritorial area. While a city may not apply an ordinance in the extraterritorial area that is not also applied within the city's corporate limits, there is no statutory mandate that all of the ordinances applied within the city also be applied in the extraterritorial area.

Zoning regulations are by far the most frequently applied municipal regulation in the extraterritorial area; 99 percent of the municipalities exercising extraterritorial authority reported applying zoning in these areas (Table 7). Other frequently applied land development ordinances included subdivision regulation (92 percent), manufactured home park regulation (88 percent), sign regulation (87 percent), telecommunication tower regulation (74 percent), floodplain zoning (69 percent), adult entertainment location regulation (69 percent), junkyard regulation (54 percent), watershed protection regulation (50 percent), stormwater management regulation (45 percent), sediment and erosion control regulation (37 percent), and historic district regulation (17 percent). Of the municipalities responding, 59 percent reported that the city administers the building code and 32 percent reported applying their housing code in the extraterritorial areas.

Somewhat surprisingly, a small but not insignificant number of jurisdictions reported the application in extraterritorial areas of ordinances usually adopted as general police power regulations (even though there is no statutory authority for extraterritorial application of such ordinances). For example, 27 percent reported extraterritorial application of nuisance lot regulations.

57. A 1995 North Carolina League of Municipalities survey of 327 of the state's 524 cities indicated that 64.5 percent of all municipalities responding to the survey had adopted extraterritorial zoning. Ngoc Nguyen & Lee M. Mandell, Results of the 1995 Municipal Ordinance Survey (June 1995). This study also reported a strong link between population size and use of extraterritorial jurisdiction. Of the cities with populations over 10,000, 89 percent had extraterritorial jurisdiction, as did 79 percent of those with populations of 2,500 to 10,000, 68 percent of those with populations of 1,000 to 2,500, and 38 percent of those with populations under 1,000.

**Table 7 Types of Municipal Regulations Applied in the ETJ**

| *Type of regulation* | *No. of cities* | *Percent (%)* |
|---|---|---|
| Zoning | 192 | 99 |
| Subdivision | 180 | 92 |
| Manufactured home park | 171 | 88 |
| Sign regulation | 170 | 87 |
| Telecommunication tower regulation | 144 | 74 |
| Floodplain or flood hazard | 135 | 69 |
| Adult entertainment location | 134 | 69 |
| State building code | 114 | 59 |
| Junkyard regulation | 105 | 54 |
| Watershed protection | 97 | 50 |
| Junk/abandoned car regulation | 89 | 46 |
| Stormwater | 88 | 45 |
| Sediment and erosion control | 73 | 37 |
| Housing code | 62 | 32 |
| Unified development ordinance | 55 | 28 |
| Nuisance lot regulation | 53 | 27 |
| Noise regulation | 49 | 25 |
| Adequate public facility requirement | 42 | 22 |
| Historic district/landmark | 33 | 17 |
| Airport perimeter regulation | 33 | 17 |
| **Total responses** | **195** | |

This selective application of municipal ordinances in the extraterritorial area can create complications. Since the county loses *all* of its land use–related regulatory authority within a municipal extraterritorial area, some of these areas can be left with neither city nor county regulation for a particular type of ordinance, even though both the city and the county may have such ordinances. For example, even though both the city and the county have adopted minimum housing codes, if the city does not apply the municipal code in the extraterritorial area (and only a third of the cities with extraterritorial jurisdiction do so), the housing will be unregulated as the county has no jurisdiction for its housing code in this area.[58] The city can request and the county can agree to county jurisdiction in such an area, but formal resolutions adopted by both governing boards are required.

58. In addition, gaps or overlaps in city–county regulation can occur if the city or county differ about whether a particular type of regulation is handled as a land use regulation or a general ordinance. For example, if the city regulates signs as a general ordinance, sign regulation does not apply in the extraterritorial area; if the county regulates signs as part of its zoning ordinance, sign regulation does not apply in the extraterritorial area. Therefore signs in the extraterritorial area would be unregulated by either the city or county even though both have sign regulations. Alternatively, a city may regulate heavy industries in its zoning ordinance, which is applicable in the extraterritorial area; the county may regulate heavy industries in a general ordinance, which also can be applicable in the extraterritorial area. In this situation the heavy industry would be subject to both city and county regulation. Mutual city–county agreements and careful coordination of ordinance drafting can help jurisdictions avoid these problems, provided all parties agree to the solutions.

## Extraterritorial Representation on Municipal Boards

A city exercising extraterritorial authority must expand membership of both its planning board and its board of adjustment to include extraterritorial representation. Originally the number of extraterritorial members had to equal the number of "inside" members.[59] The requirement of a specific number of extraterritorial members was deleted in the 1971 comprehensive revision of the municipal statutes.[60] The statute was again amended in 1996 to require proportional representation.[61]

G.S. 160A-362 now requires the appointment to both bodies of a proportional number of residents of the extraterritorial area. For example, if a city with a population of 5,000 has a five-member planning board, one extraterritorial member is required for each 1,000 extraterritorial residents. If there are an insufficient number of qualified residents of the extraterritorial area, other county residents may be appointed. The board of county commissioners of each affected county makes the appointments. If appointments are required as a result of an expansion of an extraterritorial area (as opposed to filling a seat where a term has expired), the county board must hold a duly advertised public hearing and make its appointments from persons who have applied at or before the public hearing. If the board of county commissioners fails to make the appointments within ninety days of receiving a resolution from the city governing board requesting that the appointments be made, the city governing board may make the appointments.

A major difficulty in assessing compliance with this statutory mandate is the lack of accurate population estimates for extraterritorial areas. Of the 195 responding cities having extraterritorial jurisdiction, 139 respondents—71 percent—were able to provide an estimated population of their extraterritorial areas and to report the numbers of inside and extraterritorial members on their planning boards and boards of adjustment, thereby making possible a calculation as to whether there is proportional representation on these boards.

For those cities having sufficient information to make a calculation, a substantial majority meet or exceed the requirement for proportional representation. More than half of the jurisdictions have *more* extraterritorial representation than is required, perhaps a carryover effect from the time the statutes mandated an equal number of inside and outside members. Tables 8 and 9 provide the breakdown of these figures for planning boards and boards of adjustment.

59. 1959 N.C. Sess. Laws ch. 1204.
60. 1971 N.C. Sess. Laws ch. 698.
61. 1996 N.C. Sess. Laws ch. 746.

**Table 8 Proportional Representation on Planning Boards**

| | *No. of cities* | *Percent (%)* |
|---|---|---|
| Greater ETJ representation than required | 82 | 59 |
| ETJ representation within statutory guidelines | 23 | 17 |
| Less ETJ representation than required | 34 | 24 |
| **Total responses** | **139** | |

**Table 9 Proportional Representation on Boards of Adjustment**

| | *No. of cities* | *Percent (%)* |
|---|---|---|
| Greater ETJ representation than required | 74 | 53 |
| ETJ representation within statutory guidelines | 26 | 19 |
| Less ETJ representation than required | 39 | 28 |
| **Total responses** | **139** | |

The cities most likely to have underrepresentation on one or both of these boards were those with relatively small internal populations coupled with relatively large extraterritorial populations. Of the cities reporting underrepresentation on their planning boards, 70 percent had populations under 10,000 and more than half had populations under 2,000. In addition, 70 percent of these cities had ETJ populations that equaled or exceeded their internal populations. Neither the length of time zoning or extraterritorial jurisdiction has been in place nor the geographic region of the state in which the cities were located had an impact on whether there was ETJ underrepresentation on planning boards and boards of adjustment.

Extraterritorial members act only on matters affecting the extraterritorial area unless the city ordinance specifically grants them equal authority regarding matters within the city. The overwhelming majority of cities in North Carolina with extraterritorial jurisdiction who responded to the survey—over 90 percent—allow extraterritorial members to vote on all matters coming before the boards.[62]

## City–County Interaction on Extraterritorial Jurisdiction Expansion

In certain instances county approval is necessary for a city to exercise its extraterritorial powers. G.S. 160A-360(a) requires county approval whenever a city with a population of more than 10,000 seeks to extend its extraterritorial jurisdiction beyond one mile. G.S. 160A-360(e) requires that county agreement be secured for the extension of city extraterritorial jurisdiction into any area wherein the county is enforcing zoning, subdivision regulations, and the state building code. This includes the one-mile area adjacent to cities.[63] County ordinances for all three types of regulation must be in place to trigger the approval requirement. G.S. 160A-360(g) requires that county approval as well as any other request, approval, or agreement by a city or a county regarding extraterritorial jurisdiction be established by a formally adopted resolution of the governing boards involved.

For the most part, counties have approved municipal requests for extraterritorial jurisdiction. When asked if the county had ever denied a request for extraterritorial jurisdiction, only 14 percent of the municipalities responded affirmatively (Table 10).

**Table 10 Municipalities Reporting County Denial of a Request for Extraterritorial Jurisdiction**

| | *No. of cities* | *Percent (%)* |
|---|---|---|
| No | 176 | 66 |
| Yes | 38 | 14 |
| Not applicable | 52 | 20 |
| **Total responses** | **266** | |

Once municipal extraterritorial jurisdiction has been established, the city and county may by mutual agreement amend the boundary or eliminate the jurisdiction altogether. Of the county respondents, 13 percent reported a municipality that had been granted extraterritorial jurisdiction had voluntarily surrendered the jurisdiction back to the county. If the city and county do not mutually agree, G.S. 160A-360(g) provides that a prior county approval can be rescinded with two years written notice to the municipality. This, however, rarely happens. Less than 4 percent of the municipalities reported that the county had ever rescinded a prior approval of extraterritorial jurisdiction. The same number of counties—4 percent—reported that they had rescinded a prior extraterritorial jurisdiction approval.

This data may overstate the willingness of many counties to approve municipal requests for extraterritorial jurisdiction. When the counties were asked if they had ever approved a municipal request for extraterritorial jurisdiction, a solid majority responded that they had not (Table 11).

62. David Owens and Adam Bruggemann, *A Survey of Experience with Zoning Variances*, 18 School of Government Special Series 10 (2004).

63. Before the 1971 revisions to the extraterritorial zoning authority statutes, no county approval for city extraterritorial jurisdiction was required. G.S. 160A-360(e), requiring county approval for areas covered by county zoning, subdivision, and building code enforcement, applies to extensions of extraterritorial areas occurring after 1971.

**Table 11 Counties Reporting Approval of Municipal Requests for Extraterritorial Jurisdiction**

| | *No. of counties* | *Percent (%)* |
|---|---|---|
| No | 54 | 59 |
| Yes | 37 | 41 |
| **Total** | **91** | |

One explanation for this combination of municipal reports of relatively high approval rates and county reports of no requests being approved may lie in effective city–county communication about the likelihood of approval before requests are made. For example, one county reported that they had never turned down a municipal request, but that was in large part due to the county advising the only municipality in the county not to bother requesting extraterritorial jurisdiction because the request would be summarily rejected.

The statute does not establish any standards for county approval or disapproval. The decision is left to the discretion of the county board of commissioners. The overwhelming majority of counties have not established any written policies on making decisions regarding municipal requests for extraterritorial jurisdiction.

Only six counties reported adoption of policies for making this decision—Brunswick, Mecklenburg, Nash, Pitt, Wake, and Wilson. Brunswick County requires each municipality requesting extraterritorial jurisdiction to explain its concerns about the area and to demonstrate its capability and qualifications to provide land use planning, infrastructure planning, and development regulation in the area. A city capital improvement plan and budget, zoning, subdivision regulation, and a building code enforcement program are all generally required as preconditions to county approval. The county policy is to generally limit extraterritorial jurisdiction to areas anticipated to be annexed within ten years. Wake County has a similar policy and also limits approvals to areas anticipated to receive city water and sewer services within five years. Nash County spells out a number of factors to be considered, including future annexation plans, utility service areas, municipal capital investments in the extraterritorial area, watershed boundaries, urban densities, barriers to intensive development, municipal commitment to land use planning and regulation, and the timetable for municipal action in the area.

### Coordination between Municipalities on Extraterritorial Jurisdiction

When the extraterritorial jurisdictions of two cities overlap, G.S. 160A-360(c) provides that the potential extraterritorial jurisdiction of each is set at the midway point between the cities' corporate boundaries unless the cities agree otherwise.

The survey indicated that cities occasionally but not frequently agree to split potential extraterritorial areas. Less than 10 percent of the municipalities reported using interlocal agreements to split or share overlapping extraterritorial areas (Table 12).

**Table 12 Jurisdictions with Agreements to Split Area of Extraterritorial Jurisdiction**

| | *No. of cities* | *Percent (%)* |
|---|---|---|
| No | 209 | 77 |
| Yes | 27 | 10 |
| Not applicable | 35 | 13 |
| **Total** | **271** | |

## Conclusion

North Carolina's municipalities were granted the authority to adopt public health regulations in adjacent extraterritorial areas a century ago. Nearly a half century ago, they were given the authority to apply city planning and development regulations in these adjacent areas as well.

While implementation of city extraterritorial development regulation occasionally triggers a highly visible and politically charged debate, for the most part this tool is routinely applied without substantial public controversy. A significant majority of the state's sizeable cities have found extraterritorial jurisdiction to be a necessary authority and have exercised it to apply city zoning, subdivision, and other development regulations. This is particularly true for cities with populations over 1,000. Many cities adopting extraterritorial land use regulations base the delineation of the extraterritorial area on future annexation plans, but the ETJ-annexation link is neither strong nor well defined. For the most part, the cities have complied with statutory mandates regarding the procedures to use in adopting extraterritorial boundary ordinances and in securing extraterritorial representation on city planning boards and boards of adjustment.

A key emerging issue involves the establishment of intergovernmental agreements regarding the extension of extraterritorial boundaries. When extraterritorial planning jurisdiction was first authorized in 1959, the major concern had been whether the unincorporated land near cities would be regulated at all, as few counties had exercised their authority to adopt land use regulations. This phenomenon is increasingly uncommon. In addition, cities in the state have now grown to the extent that there are often areas where cities have overlapping potential extraterritorial jurisdiction. Thus, the question is becoming not whether such areas will be regulated but rather, which jurisdictions will regulate them. There is an emerging practice of having clear, written policies providing guidance on how and when shifts in regulatory jurisdiction will take place. The need for such policies will increase in coming years.

## Appendix A: Portion of Survey Instrument Relative to Extraterritorial Jurisdiction

### Municipalities

1. Does your municipality have extraterritorial jurisdiction (ETJ) for land development regulations?
____ No.
____ Yes. If so, year adopted if known: 19___
20___

2. If your jurisdiction has ETJ, please check each of the type regulation applied in the extraterritorial area (whether done as a separate ordinance or part of a larger ordinance).

| Type of Regulation | Check if applied by municipality in ETJ |
|---|---|
| a. Zoning | |
| b. Subdivision | |
| c. State building code | |
| d. Housing code | |
| e. Unified development ordinance | |
| f. Historic district/landmark | |
| g. Sign regulation | |
| h. Manufactured home park | |
| i. Adult entertainment location | |
| j. Telecommunication tower regulation | |
| k. Adequate public facility requirements | |
| l. Floodplain or flood hazard | |
| m. Stormwater | |
| n. Watershed protection | |
| o. Sediment and erosion control | |
| p. Airport perimeter regulation | |
| q. Junkyard regulation | |
| r. Junk/abandoned car regulation | |
| s. Noise regulation | |
| t. Nuisance lot regulation | |
| u. Others (please specify) | |

3. If you have extraterritorial jurisdiction, what is the maximum distance it extends out from the city limits?
___ One mile or less
___ Two miles
___ Three miles

4. Has the county ever denied a request for extraterritorial jurisdiction by your municipality?
____ No
____ Yes
____ Not applicable

5. Has the county ever rescinded an approval for extraterritorial jurisdiction that had previously been made for your jurisdiction?
____ No
____ Yes
____ Not applicable

6. Has your jurisdiction entered into an agreement with another municipality to split or share an area of extraterritorial jurisdiction?
____ No
____ Yes
____ Not applicable

7. If your jurisdiction is currently exercising extraterritorial jurisdiction, how does your ETJ area relate to your annexation plans?
____ ETJ area is generally planned to be annexed within 10 years
____ ETJ area is likely to be annexed, but no definite plans or timetable for annexation
____ ETJ area is unrelated to annexation planning

8. If your jurisdiction is currently exercising extraterritorial jurisdiction, please complete the information below:

a. _____ Estimated population of ETJ area

b. Number of members on Planning Board:
____ Members from inside corporate limits
____ ETJ members

c. Number of members on Board of Adjustment:
____ Members from inside corporate limits
____ ETJ members

## Counties

1. Has your county approved any municipal requests for extraterritorial jurisdiction for land development regulations?
____ No.
____ Yes. If so, year last approved if known: 19__
20__

2. Has a municipality in your county with extraterritorial jurisdiction voluntarily surrendered jurisdiction back to the county?
____ No.
____ Yes.

3. Has your county ever denied a request for extraterritorial jurisdiction by a municipality?
____ No.
____ Yes.

4. Has the county ever rescinded an approval for extraterritorial jurisdiction that had previously been made?
____ No.
____ Yes.

5. Has your county adopted any written policies regarding approval of municipal requests for extraterritorial jurisdiction?
____ No.
____ Yes. If so, please send us a copy if possible.

## Appendix B: List of Jurisdictions Responding to the Survey

### Municipalities

Aberdeen
Albemarle
Alliance
Angier
Ansonville
Apex
Archdale
Asheboro
Asheville
Askewville
Atkinson
Atlantic Beach
Autryville
Badin
Bald Head Island
Banner Elk
Beaufort
Beech Mountain
Belwood
Bermuda Run
Bessemer City
Bethania
Beulaville
Biltmore Forest
Blowing Rock
Bogue
Boiling Spring Lakes
Bolivia
Boone
Brevard
Broadway
Brookford
Burlington
Burnsville
Cajah Mountain
Carolina Beach
Carolina Shores
Carrboro
Carthage
Cary
Catawba
Centerville
Chadbourn
Chapel Hill
Charlotte
Cherryville
Chimney Rock
China Grove
Claremont
Clayton
Clemmons
Cleveland
Clinton
Coats
Columbia
Columbus
Como
Concord
Connelly Springs
Conover
Conway
Cornelius
Cove City
Cramerton
Creswell
Dallas
Dillsboro
Dover
Drexel
Duck
Durham
East Laurinburg
Eden
Edenton
Elizabeth City
Elizabethtown
Elkin
Elk Park
Elm City
Elon
Eureka
Fairmont
Fairview
Faison
Faith
Farmville
Fayetteville
Flat Rock
Fletcher
Forest City
Four Oaks
Foxfire Village
Franklin
Franklinton
Fuquay-Varina
Gamewell
Garner
Gastonia
Gibson
Glen Alpine
Goldsboro
Graham
Green Level
Greensboro
Greenville
Grifton
Halifax
Hamlet
Harrellsville
Harrisburg
Havelock
Henderson
Hendersonville
Hertford
Hickory
High Point
Highlands
Hildebran
Hillsborough
Hoffman
Holly Springs
Hope Mills
Huntersville
Indian Trail
Jackson
Jacksonville
Jamesville
Jefferson
Kannapolis
Kernersville
Kill Devil Hills
King
Kings Mountain
Kinston
Kitty Hawk
Knightdale
La Grange
Lake Park
Landis
Lasker
Lattimore
Laurel Park
Laurinburg
Leland
Lenoir
Lewisville
Lexington
Liberty
Lincolnton
Linden
Locust
Lowell
Lucama
Lumber Bridge
Lumberton
Macclesfield
Madison
Maggie Valley
Maiden
Manteo
Marion
Mars Hill
Matthews
Maxton
Mebane
Midland
Mills River
Minnesott Beach
Mint Hill
Mocksville
Monroe
Mooresville
Morehead City
Morganton
Morrisville
Morven
Mount Airy
Mount Gilead
Mount Holly
Mount Olive
Murfreesburo
Murphy
Nags Head
New Bern
Newton
North Topsail Beach
North Wilkesboro
Northwest
Norwood
Oak Island
Ocean Isle Beach
Oriental
Oxford
Pantego
Patterson Springs
Peachland
Pikeville
Pinehurst
Pine Knoll Shores
Pine Level
Pinetops
Pittsboro
Pleasant Garden
Polkton
Polkville
Pollocksville
Princeton
Princeville
Raleigh
Ramseur
Randleman
Ranlo
Raynham
Red Cross
Red Springs
Reidsville
Rhodhiss
River Bend
Roanoke Rapids
Robbins
Rockingham
Rockwell
Rocky Mount
Rolesville
Roper
Rose Hill
Rowland
Roxobel
Rural Hall
Ruth
Rutherfordton
Salemburg
Salisbury
Saluda
Sanford
Scotland Neck
Sedalia
Selma
Seven Devils
Seven Springs
Shallotte
Sharpsburg
Shelby
Siler City
Simpson
Smithfield
Snow Hill
Southern Pines
Southern Shores
Southport
Sparta
Spring Hope
Spring Lake
Spruce Pine
St. James
Stallings
Stanley
Star
Statesville
Stoneville
Stovall
Sugar Mountain
Summerfield
Sunset Beach
Surf City
Swansboro
Swepsonville
Sylva
Tar Heel
Tarboro
Taylorsville
Taylortown
Teachey
Thomasville
Tobaccoville
Topsail Beach
Trent Woods
Trenton
Trinity
Troutman
Tryon
Unionville
Valdese
Vandemere
Varnamtown
Waco
Wade
Wadesboro
Wagram
Wake Forest
Walkertown
Wallburg

Walnut Creek
Warsaw
Washington
Washington Park
Waynesville
Weaverville
Webster
Weldon
Wendell
Wentworth
Wesley Chapel
West Jefferson
Whispering Pines
White Lake
Whiteville
Whitsett
Wilkesboro
Williamston
Wilmington
Wilson
Windsor
Winfall
Winston-Salem
Winterville
Winton
Woodfin
Woodland
Yadkinville
Youngsville
Zebulon

## Counties

Alexander
Alleghany
Anson
Ashe
Avery
Beaufort
Bertie
Bladen
Brunswick
Buncombe
Burke
Cabarrus
Caldwell
Camden
Carteret
Caswell
Catawba
Chatham
Cherokee
Chowan
Cleveland
Columbus
Craven
Cumberland
Currituck
Dare
Davidson
Davie
Duplin
Durham
Edgecombe
Forsyth
Franklin
Gaston
Gates
Graham
Granville
Greene
Guilford
Halifax
Harnett
Haywood
Henderson
Hertford
Hoke
Iredell
Jackson
Johnston
Jones
Lee
Lenoir
Lincoln
Macon
Madison
Martin
Mecklenburg
Mitchell
Montgomery
Moore
Nash
New Hanover
Northampton
Onslow
Orange
Pamlico
Pasquotank
Pender
Perquimans
Person
Pitt
Polk
Randolph
Richmond
Robeson
Rockingham
Rowan
Rutherford
Sampson
Scotland
Stanly
Stokes
Surry
Transylvania
Tyrrell
Union
Vance
Wake
Warren
Washington
Watauga
Wayne
Wilkes
Wilson
Yadkin
Yancey

## About the Author

David W. Owens is Professor of Public Law and Government at the School of Government, University of North Carolina at Chapel Hill, where he teaches and advises state and local officials on land use planning and regulation.

Visit the School's **N.C. Planning Web Site** at **www.ncplan.unc.edu**, which features information about School short courses, other publications, and developments on N.C. legislation and litigation; summaries on key legal issues related to planning and development; and links to other planning Web sites.

## School of Government Publications of Interest

### Survey of Experience with Zoning Variances

**Adam Brueggemann and David W. Owens**

*Special Series No. 18, February 2004*

Summarizes and analyzes the responses to a survey of North Carolina cities and counties to determine how they have used the zoning variance power. Reviews administrative aspects of variance practice, including which local boards make these decisions, the experience and training of board members, their workloads, and fees charged.

### Locally Initiated Inclusionary Zoning Programs: A Guide for Local Governments in North Carolina and Beyond

**Edited by Anita R. Brown-Graham**

*2004*

A guide to help local governments balance the myriad legal and policy concerns raised by inclusionary zoning, a strategy for local governments to create more affordable housing for low- and moderate-income residents. A collaborative effort between the UNC School of Government and the UNC School of Law, this publication also contains appendixes on inclusionary zoning ordinances and research methodology.

### Land Use Law in North Carolina

**David W. Owens**

*Forthcoming, Spring 2006*

A legal reference work for those interested in law related to development regulation in North Carolina. It builds and expands on the material originally covered in two editions entitled *Legislative Zoning Decisions: Legal Aspects*. Addresses various aspects of local government jurisdiction for development regulation, procedures for adopting and amending ordinances, spot zoning, contract zoning, vested rights, and nonconformities. New topics covered include quasi-judicial zoning decisions, ordinance administration, and enforcement.

### Planning Legislation in North Carolina

**Compiled by David W. Owens**

*Nineteenth edition, 2002*

A single-volume collection of the planning-related statutes most frequently consulted by planners, elected officials, citizen board members, and others interested in land use, building, transportation, community and economic development, and natural resource protection. Statutes included are current through the 2002 session of the General Assembly.

### Introduction to Zoning

**David W. Owens**

*Second edition, 2001*

Provides a clear, understandable explanation of zoning law for citizen board members and the public. Serves as both an introduction for citizens new to zoning law and a refresher for those who have been involved with zoning for some time. Each chapter deals with a distinct aspect of zoning, such as where a city can apply its ordinances, the process that must be followed in rezoning property, or how ordinances are enforced. Although North Carolina ordinances and cases are cited, this book is useful to anyone interested in zoning law. Contains an index and appendixes that include zoning statutes and references to North Carolina land use law.

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