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## Coates' Canons Blog: Can a City Really Zone Land Outside the City?

By David Owens

Article: <https://canons.sog.unc.edu/can-a-city-really-zone-land-outside-the-city/>

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Frank Graham inherited a 600-acre wooded tract located about a half mile outside a small town in rural North Carolina. With the economy turning around he is considering moving forward with development of the tract. He has been thinking a residential subdivision and shopping center would fit nicely on this tract. He thinks a portion of the land might also be great for some industrial development or maybe even a mobile home park. Frank remembered seeing something in the papers about the county adopting zoning a few years ago. So before setting off on this project, he thinks it would be prudent to run his ideas by his cousin Eddie Graham, who is the long-term county manager for the county where this property is located.

Frank drops by Eddie's office. After exchanging pleasantries and catching up about their mutual relatives, Frank briefly sketches out his thoughts about development of his tract. "Well," Eddie says, "sounds like you have some good ideas. A good starting point even if a bit controversial. But I'm afraid I can't be of much help. You need to go see the folks at town hall. City zoning applies out there."

Frank is confused. "Eddie, I don't follow all this government stuff the way you do, but I'm pretty sure this land is still out in the county. The town may be growing out that way, but I think I'd remember if it had been annexed. I'm pretty sure I don't pay city taxes on that land. Are you sure about city zoning?"

"It's outside the city," Eddie explains, "but it has been subject to city planning and zoning a long time. They got ETJ at least a decade ago."

"And what, pray tell, is ETJ?" Frank asks.

"ETJ" is shorthand for extraterritorial jurisdiction. In this context, it is the authority of a city to apply its planning and development regulations to adjacent areas outside the city limits. Folks like Frank often want to know if this is legal and, if so, how it came to be.

For many years states have authorized municipal regulation of extraterritorial areas to protect public health and safety. For example in the early 1800's Georgia allowed Savannah to prohibit rice farms within a mile of the city and Maryland allowed Baltimore to apply health regulations to ships within three miles of the city. Most other states followed suit. The North Carolina supreme court in 1912 upheld a law giving Greensboro authority to impose sanitary regulations in the area one mile beyond the city limits. *State v. Rice*, 158 N.C. 635, 74 S.E. 582 (1912). The legislature in 1917 gave all cities the authority to adopt similar health and safety regulations for areas within a mile of the city limits, an authority that is found today in G.S. 160A-193.

So how did the municipal authority in North Carolina to regulate nuisances in adjacent areas get extended to allow city planning, zoning, subdivision, and other regulations in extraterritorial areas?

As zoning and other land use regulations first came into widespread use in North Carolina, planning and development regulation were almost exclusively municipal concerns. Most cities of any size had adopted zoning by the late 1940s. By contrast, a handful of urban counties had gotten individual approval to adopt zoning, but most counties in the state had no authority to adopt zoning ordinances until 1959. As the post–World War II development boom took off, a good deal of the development occurred along the urban fringe, often in unregulated areas just outside of city corporate limits. The Institute of Government’s land use law expert, Phil Green, observed in 1953 that most of this fringe area development was taking place in “relatively chaotic fashion.”

To deal with this issue of unregulated development on the urban fringe, several cities sought authority to adopt “perimeter zoning.” Raleigh, Chapel Hill, Gastonia, and Tarboro were granted a one-mile ETJ for planning regulations in 1949. By 1958, nineteen municipalities had secured similar local legislation as extraterritorial zoning authority had been granted to Carrboro, Chapel Hill, Charlotte, Elizabeth City, Farmville, Gastonia, Goldsboro, Greensboro, High Point, Jacksonville, Kinston, Mooresville, Raleigh, Salisbury, Snow Hill, Spencer, Statesville, Tarboro, and Winston-Salem. At this point the legislature decided to look into whether this authority should be extended to all cities.

The Municipal Government Study Commission examined the issue in 1958 and came to this conclusion:

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 development may, for a variety of reasons, take place just outside the corporate limits.

The study commission recommended that all cities with populations at least 2,500 be granted a one-mile area of extraterritorial jurisdiction and that cities with larger populations be granted up to five miles of extraterritorial jurisdiction, provided the county agreed. The commission noted the concern that residents of these areas were not entitled to vote in city elections and 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.” The legislature adopted the bulk of the study commission’s recommendations and granted statewide authority for municipal extraterritorial land use regulation in 1959. The statute on extraterritorial jurisdiction has undergone a number of amendments since its enactment. The current statutory scheme of tiered extraterritorial jurisdiction of one to three miles based on city population was adopted in 1971.



ETJ Boundary Sign

When a city adopts an extraterritorial boundary ordinance, the city acquires jurisdiction for all of its development ordinances and the county loses its jurisdiction for the same range of ordinances. This includes not only zoning and subdivision ordinances but also housing and building codes and regulations on historic districts and historic landmarks, open spaces, community development, erosion and sedimentation control, floodways, mountain ridges, and roadway corridors (though cities and counties can by mutual agreement modify this allocation). 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 a nuisance lot, junked car, or noise ordinances. G.S. 160A-360 includes a detailed process that must be followed by a city in establishing extraterritorial jurisdiction, including newspaper notice, mailed notice, and public hearing requirements.

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In certain instances, county approval must be given 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 approval be secured for the extension of city extraterritorial jurisdiction into any area wherein the county is enforcing zoning, subdivision regulations, and the building code. This includes the one-mile area adjacent to cities.

A 2005 **survey** by the School of Government indicated that 62% of the responding North Carolina cities had adopted extraterritorial zoning. Cities with larger populations are far more likely to have done so than their less populous counterparts. The overwhelming majority (85%) of cities with ETJ only exercise this jurisdiction within one mile of the city limits.

A principal concern with granting municipalities extraterritorial power has been the lack of political representation for extraterritorial residents. The legal aspects of this concern were largely resolved when the U.S. Supreme Court concluded that federal constitutional guarantees of due process and equal protection are not violated when states grant municipalities extraterritorial jurisdiction without extending the right to vote in municipal elections to extraterritorial residents. *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 70–75 (1978).

While most cities in the state have had authority to adopt extraterritorial development regulations for over a half-century, controversy remains. Several counties have established policies that limit their approval of new municipal ETJ to those areas that are planned to be annexed within a set time or where the city can show it has plans to extend urban services. Bills have been introduced in the 2011 session of the General Assembly to exempt farms from ETJ areas or farming from coverage by city regulations in the ETJ (**H. 168**, **H. 195**, **S. 380**), to limit ETJ to “urban purposes” (**H. 797**), and to prohibit ETJ where there is county zoning and to allow ETJ residents to vote in city elections (**H. 281**).

Frank Graham had straightforward questions. What is ETJ, is it legal, and why was it allowed? Those questions have straightforward answers. The more difficult questions revolve around how the state should state organize its local governments to deal with growth and development on urban fringes. How do we best manage the transition from rural to suburban? Who should plan for orderly and efficient growth in these areas? Which units of government should provide what types of urban services? How should provision of services be coordinated with planning and development regulation? How should cities and counties coordinate their planning efforts? How should we manage for transitions in jurisdiction over time? What is fair, reasonable, equitable, and effective for cities, for counties, and for residents and landowners in these areas? Those questions are likely to be before our city councils, county boards of commissioners, and the legislature for some time to come. As long as they are, we will continue to grapple with the broader implications of Frank’s questions.

**Note: For a subsequent post on which ordinances are applicable in an ETJ, see thispost from January 2013.**

## Links

- [canons.sog.unc.edu/wp-content/uploads/2011/04/sign-ETJ-robsnv11.jpg](https://canons.sog.unc.edu/wp-content/uploads/2011/04/sign-ETJ-robsnv11.jpg)
- [www.sog.unc.edu/pubs/electronicversions/pdfs/ss20.pdf](http://www.sog.unc.edu/pubs/electronicversions/pdfs/ss20.pdf)
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