
Coates' Canons Blog: Relinquishing Extraterritorial Planning Jurisdiction

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So you've got this extraterritorial planning jurisdiction, but how do you get rid of it? Fair question. The statutes give clear procedures for establishing extraterritorial jurisdiction, or ETJ, but there is less clarity for relinquishment. A good rule of thumb is this: Follow the statutory notice and procedures for establishing ETJ under GS 160A-360. This blog walks through some of the common questions for relinquishing ETJ, using the establishment procedures as a guide.

North Carolina municipalities are authorized to exercise zoning, subdivision, building code, and other development regulations in a defined area just outside of the municipal boundary. The purpose for this authority is rooted in the basics of community growth. Development commonly occurs on the edge of town and often just across the formal municipal boundary. But, the town has an interest in the style and pace of growth on its edge, especially if that area is likely to be annexed or otherwise served by municipal services.

For more on extraterritorial jurisdiction, David Owens has authored blogs on the fundamentals of ETJ and the important distinction between zoning and police power ordinances in the ETJ.

Through the years many municipalities have established extraterritorial jurisdiction, overseeing development regulation of limited areas just across the municipal boundary. According to a 2005 School of Government survey, 62 percent of responding municipalities had adopted extraterritorial zoning. The number rose to 85 percent for municipalities with a population greater than 10,000.

Occasionally, though, municipalities decide to relinquish that authority for administrative, financial, political, or other reasons. The statutes offer little guidance for the procedures needed to relinquish ETJ. Below are some of the particular questions.

Do we need a hearing? There is not a clear requirement for a public hearing for ETJ relinquishment, but a hearing is prudent. The rules for establishing or extending ETJ call for a public hearing to adopt an ordinance specifying the area to be included in the ETJ. Because a hearing is required to adopt a boundary ordinance extending ETJ, it is prudent to mirror that hearing to adopt or amend a boundary ordinance relinquishing ETJ as well.

What notice should be provided? As with the hearing, it is not clear that any mailed notice is required for relinquishment, but if we follow the procedures for exercising ETJ as a rule of thumb then mailed notice is prudent. Following GS 160A-360(a1), the municipality should notify the owners of all parcels of land in the proposed relinquishment area. Notice should be by first-class mail to the last address listed for the affected property owner as shown on the county tax records. The notice should inform the owner of the effect of the relinquishment and of the owner's right to participate in a public hearing prior to relinquishment. Finally, notice should be mailed four weeks prior to the hearing, and the responsible individual should certify to city council that the notices were sent by first-class mail.

How do we draw the boundary? In order to change or eliminate the ETJ boundary, council must amend or repeal the ordinance that initially established the ETJ boundary pursuant to GS § 160A-360(b). As with establishment of ETJ, boundaries should be defined, to the extent feasible, based on geographic features identifiable on the ground. The new ordinance-specified boundaries should be drawn on a map, set forth by written description, or both.

How do we record the new boundary? The delineation of the ETJ boundary must be maintained by the city clerk the same as the municipal boundary (as provided at GS § 160A-22) and recorded with the county register of deeds.

Can a town relinquish ETJ unilaterally? Generally, yes. There is no requirement for a town to get county approval for relinquishing ETJ. Still, it is prudent for a town to coordinate the action with the county. If the county and municipality have established ETJ boundaries by agreement, a change to the boundaries will require either mutual agreement by the local governments or two years notice. GS § 160A-360(g) states that such agreement “may be modified at any time by mutual agreement of the legislative bodies concerned.” Any such agreement also could be rescinded by one of the governmental units, but that requires two years notice by the local government wishing to rescind.

Does relinquishment require notice of a rezoning? For a town that is exercising zoning in the ETJ, relinquishment may effectively change the zoning for that property. Does that require notice and process for a rezoning? Probably not. First, it would be redundant. With ETJ notice and rezoning notice, the municipality would provide notice four weeks prior to the hearing and 10-25 days prior to the hearing. Such notice would be duplicative. Second, the municipal action to be noticed is relinquishment of jurisdiction—an act of withdrawing municipal authority. Arguably that is substantively different from a zoning map amendment (changing zoning categories). Once the relinquishment is accomplished, there is no zoning to remove. The practical effect, of course, is very similar to a rezoning, but the formal action is not. If and when the county opts to zone the property in the former ETJ area, then zoning notice and procedure will apply.

What does the county need to do? Following relinquishment, GS § 160A-360(f1) states that city regulations remain in effect until the county has adopted regulations or a period of 60 days has elapsed, whichever is sooner. The county may hold any necessary hearings to exercise zoning, subdivision, or other development regulations during that time. As noted above, rezoning notice requirements will apply to the county action.

What about vested rights? If a property owner has established vested rights in a certain development, she may continue that development as approved by the town. The county is authorized to take any permit or enforcement actions that the town could have taken concerning the vested development. GS § 160A-360(i).

What about planning board and board of adjustment representation? The composition of the town planning board and board of adjustment may change after relinquishment. GS § 160A-362 requires municipal planning boards and boards of adjustment to have proportional representation based on the population of residents in the ETJ area. Depending on the extent of relinquishment (all ETJ, or some portion) and the population of the area relinquished, a town may be authorized to reduce the ETJ representation on those boards.

So, to summarize, the statutes provide a detailed process for establishing extraterritorial jurisdiction, but there is little mention of relinquishment. As a rule of thumb, relinquishment should follow the same process required for establishment. Coordination between the town and county, although not always required, is prudent.

Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-360
- canons.sog.unc.edu/?p=4327
- canons.sog.unc.edu/?p=6954