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## Coates' Canons Blog: Zoning and Satellite Annexations

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One of these days the developer of a proposed new energy-efficient open-space development (Greenfields) will come calling on the city. It will propose that the city satellite annex the Greenfields property, located almost a mile outside of town. Greenfields will need city water and sewer and will be prepared to pay for its extension. City council members will talk about how the expensive housing units and innovative design will generate more in city revenues than they will cost in services. The zoning? That won't be a problem, will it? Read on if you want to ensure that the zoning of such a satellite annexation (or, for that matter, any voluntary annexation) is well-conceived and proceeds as planned.

**Procedural Issues.** May the city review the zoning that may be applied to the property contemporaneously with its review of the annexation petition itself? The answer is generally yes, but with several caveats. If, prior to annexation, the property is located within the city's extraterritorial planning jurisdiction (ETPJ), then the answer seems obvious. The city, upon the motion of the council or the petition of the developer, may refer to the planning board and staff the question of how the property should be zoned once it becomes municipal and may set a date for the council's own public hearing on the matter. The city already has regulatory jurisdiction over the property. It can consider rezoning the land at any time.

If the property is located in the county's planning jurisdiction, then action on the part of the city will be necessary to apply city zoning to the property when it is annexed. Subsection (f) of G.S. 160A-360, which deals with the transition of planning jurisdiction from a county to a city, provides that county zoning remains in effect until municipal zoning is applied or a period of 60 days has elapsed after annexation. The statute clearly implies that the municipal zoning amendment action comes after the annexation ordinance is adopted, as logic would appear to dictate. But the subsection goes on to say that "(d)uring this period (the 60-day transition period after annexation) the city may hold hearings and take any other measures that may be required in order to adopts its regulations for the area." What the statute fails to address is whether the city may prepare to zone the property in the period prior to the annexation becoming effective. Is this a problem? The lack of a statute outlining broad comprehensive planning powers for municipalities does not help. But it is unlikely that a city will be faulted for planning how it will zone property that may be expected to become part of the city by beginning the process before the annexation is adopted rather than after.

A second procedural issue is a more practical and political one. Most satellite annexations will involve either the rezoning or the initial zoning of the property by the municipality. Such annexations generally signal plans for the initial development (or more intensive development) of the site. The owners and developers of the satellite property will have a relatively intense interest in how the property will be zoned after annexation. But how can they guarantee it? Greenfields may say that it is interested in the annexation only if its property is zoned in a way it proposes. Can Greenfields obtain an enforceable promise that once the annexation petition is submitted and the ordinance adopted, the city will zone the property in a particular way? The answer is no; to do so would mean the city would be engaging in illegal contract zoning. Illegal contract zoning typically involves a bilateral agreement between the landowner and the zoning authority that calls for the local zoning authority to abandon its independent legislative decision-making authority by binding itself to exercise its zoning authority in a particular way in the future. In the circumstance described above, the contract would be illegal, and Greenfields would be unable to enforce it. Similarly a city lacks authorization to enter into a bilateral agreement promising to exercise its annexation power in a particular way in the future. Indeed, the authority adopted in 2005 for cities to enter into development agreements (G.S. 160A-400.20 to -400.32) does not provide a means for altering this result.

So what is a developer to do? All mutual assurances between developers and local governments may not be legally unenforceable, but they are often honored. The council public hearings on the proposed annexation ordinance and zoning map amendment may be held at the same meeting. If Greenfields is not confident that the zoning being considered will be satisfactory, it may withdraw the annexation petition before the governing board makes the various findings that allow it to

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adopt the annexation ordinance.

**Substantive Issues.** One other pitfall involved in the zoning of satellite annexations is the risk of illegal spot zoning. Many voluntary annexation requests involve undeveloped property on the urban fringe owned by a single owner. They also often involve proposals to change the zoning from low-density residential zoning to a district allowing higher-density development. The submission of a voluntary annexation petition may be the price that a developer must pay in order to take advantage of municipal utility service. But the availability of those utilities should make the affected property suitable for more intense use and supports less restrictive zoning even if other property in the vicinity is not so blessed.

Spot zoning has been defined as a zoning classification that singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to relieve the small tract from restrictions to which the rest of the area is subjected. This zoning pattern is not inherently illegal; however, the burden of proof does shift to the city to demonstrate a reasonable basis for its zoning decision. Factors relevant to the reasonability of spot zoning include: (1) the size of the tract in question, (2) the compatibility of the disputed zoning action with an existing zoning plan, (3) the benefits and detriments resulting from the zoning for the owner of the parcel, his neighbors, and the surrounding community, and (4) the relationship between the uses envisioned under the new zoning and the uses currently present in the adjacent tracts.

Cities should take special note of the case of *Good Neighbors of South Davidson v. Town of Denton* (2002). In this case the North Carolina Supreme Court invalidated the rezoning of a 50-acre tract annexed as a satellite. The property, which featured an existing chemical plant, was reclassified from a county rural residential zoning district (which made the plant nonconforming) to the town's Light Industrial District. The court found that a spot zoning pattern existed and that the town failed to establish a reasonable basis for its zoning. According to the court, neighboring landowners living in the county's unincorporated area objected strongly to the rezoning, which would enable future plant expansion. Apparently neighboring land owners did not need or intend to make use of the expanded town services planned for the vicinity, and neighboring properties would not increase in value. Instead there was a risk of increased traffic and pollution, and a decline in property values. The tenor of the decision suggests that the court believed that the chemical company exercised undue influence over the town's decision at the expense of neighbors in the unincorporated area, who lacked representation on the town council that made the decision and whose interests were not given sufficient weight. One may conclude, then, that it is particularly important that a town that zones a satellite area consider and explain how it has chosen to address the legitimate concerns of the neighbors even if they are not town residents, perhaps especially if they are not.

So, will the annexation of Greenfields proceed smoothly? The procedural issues can likely be resolved. But the town would be well advised to consider carefully the advantages and disadvantages that satellite annexation offers and the leap-frog development that it engenders. The town should also remember that protecting the public interest means protecting the interests of even those who not only do not reside in town but have no desire ever to do so.

## Links

- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-360](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-360)
- [appellate.nccourts.org/opinions/?c=1&pdf=MjAwMi8xNzBQQTAxLTEucGRm](http://appellate.nccourts.org/opinions/?c=1&pdf=MjAwMi8xNzBQQTAxLTEucGRm)