



Module 2. An Overview of Planning In North Carolina

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This training module has four parts:

- **Why do we plan?**
- **How do we plan?** A quick review of governmental roles in planning; the formal duties of the planning board; and, informal considerations for planning board effectiveness
- **What tools are used for planning?** A review of the comprehensive plan and plan implementation tools
- **Where do we plan?** Jurisdiction for planning; other levels of government and their effect on local planning

Why Do We Plan?

Well, good question... Won't things just take care of themselves if we let them alone? Citizens demand a wide array of public services, from garbage collection to good roads to clean air. Most communities have found that to efficiently provide these services, forethought and a road map that clearly outline the rights and responsibilities of citizenship are necessary, along with a vision of a well-maintained, livable, safe and healthy place in the future (a livable, safe, healthy place with low taxes, of course!). Your community leaders have asked you to spend a portion of your time helping out with all this. **It is important to remember that the goal of good planning is to get out in front of potential problems and prepare for quality growth**, not to stifle it or remove any individual's rights.

• **Do we have to plan? What are our mandates?**

- Local planning is generally voluntary in North Carolina, unlike almost half the states where plans are mandated (such as Georgia and Florida).

- There are a few NC mandates for planning. In the twenty county coastal area, comprehensive plans have been mandated since 1974.

**** SEE MODULE 10. COASTAL AREA PLANNING FOR MORE INFORMATION ON COASTAL AREA MANAGEMENT ACT LAND USE PLANS.****

Local governments must also do planning for several specific government functions, including provision of water, city streets, and handling solid waste.

- There are increasing legislative proposals being considered to encourage planning. As growth brings higher costs for transportation, water quality, sewage disposal, solid waste disposal and other public interests of the state, the legislature is increasingly promoting good planning as the most efficient means of managing these costs, and is encouraging local governments to use this tool to better manage their own growth.

• **Plan what? What is the subject matter we are to deal with?**

Local plans in North Carolina typically address these topics, though each local government is free to choose which to address and how:

- *Land use*
- *Infrastructure--utilities, transportation*
- *Economic development*
- *Community development*
- *Environmental*
- *Historic preservation*

The types of general plans adopted by local governments vary widely, with many different emphases.

• **Methods Used by Cities for Influencing Land Use and Development**

(1) Providing Public Programs and Facilities

- **Creating a capital improvement program linked to a comprehensive plan**
 - *determining timing, selecting sites*
- **Influencing pattern of development**
 - *extending utilities*
 - *protecting future roads*
- **Acquiring land**
 - *purchase*
 - *encouraging donations*
 - *requiring dedications*
 - *reservations of land*

(2) Guiding Land Use and Development

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- **Regulating division of land and construction of public improvements**
 - *Enforcing land subdivision ordinance*
 - *Adopting utility extension policies*
 - *Regulating soil erosion and sedimentation control*
 - *Adopting watershed protection ordinance*
 - *Adopting special assessment and reimbursement policies*
 - *Regulating water supply and wastewater disposal systems*
 - *Establishing standards for design, construction and acceptance of streets*
 - *Enforcing driveway permit regulations*

 - **Regulating use and development of land**
 - *Enforcing zoning ordinance*
 - *Adopting watershed protection regulations*
 - *Setting development standards for flood hazard areas*
 - *Adopting airport zoning*
 - *Designating historic landmarks*
 - *Adopting special-purpose police power ordinances (mobile homes, etc.)*
 - *Requiring local environmental impact statements*
 - *Adopting roadway corridor official map ordinances*

 - **Enforcing state building code**

 - **Establishing property maintenance and public health and safety standards**
 - *Adopting minimum housing code*
 - *Condemning unsafe or abandoned structures*
 - *Controlling weeds and litter*
 - *Abating public nuisances*

(3) Providing Direction and Leadership

- **Adopting comprehensive plan and publicizing it**
- **Providing assistance to property owners, neighborhoods, or other groups**
- **Establishing voluntary design guidelines**

(4) Providing Financial Incentives

- **Providing rehabilitation grants and loans for housing**
- **Providing housing rental subsidies**
- **Providing loans and grants for historic preservation**

- **Acting as an economic entrepreneur**
 - *Engaging in land banking*
 - *Construction and leasing shell buildings*
 - *Making site improvements on privately-owned land*

How Do We Plan?

• Formal Duties, Powers and Responsibilities of the Planning Board

- Designation of the "planning agency"

Most local governments create a planning board or planning commission to handle the duties of what the statutes term the "planning agency." Local governments have the option of creating a joint planning board with another governmental unit (examples include **Charlotte and Mecklenburg County, Winston-Salem and Forsyth County, and Durham and Durham County**). In some very small towns the governing board also serves as the planning board.

- Combining functions with other bodies

Local governments have the option of combining the planning board with the zoning board of adjustment, historic preservation, historic district or historic landmarks commission, or other local citizen boards

- Membership

A planning board must have at least three members. Otherwise the size, composition, method of appointment, terms, and organization of the planning board are at the governing board's discretion. If cities have an "extraterritorial planning jurisdiction" (ETJ), they must include members from the county area within the ETJ. The number of "outside" members must be proportional to the "outside" population.

- Duties specified by statute

Unlike many states, North Carolina does not have a long, detailed list of mandatory duties for a planning board. The statutes say the board may be assigned any or all of these duties:

1. *Make studies*
2. *Determine objectives to be sought in development*
3. *Prepare and adopt plans*
4. *Develop and recommend policies, ordinances, and administrative procedures for plan implementation*
5. *Advise the governing board*
6. *Exercise those administrative and enforcement functions directed by the governing board*
7. *Any other related duties assigned by the governing board*

- Zoning related duties

1. A city or county must designate a planning board in order to exercise zoning power because the governing board may not adopt zoning until receipt of a "certified" ordinance from the planning agency.
2. *The planning board is usually charged with holding hearings on zoning amendments.*

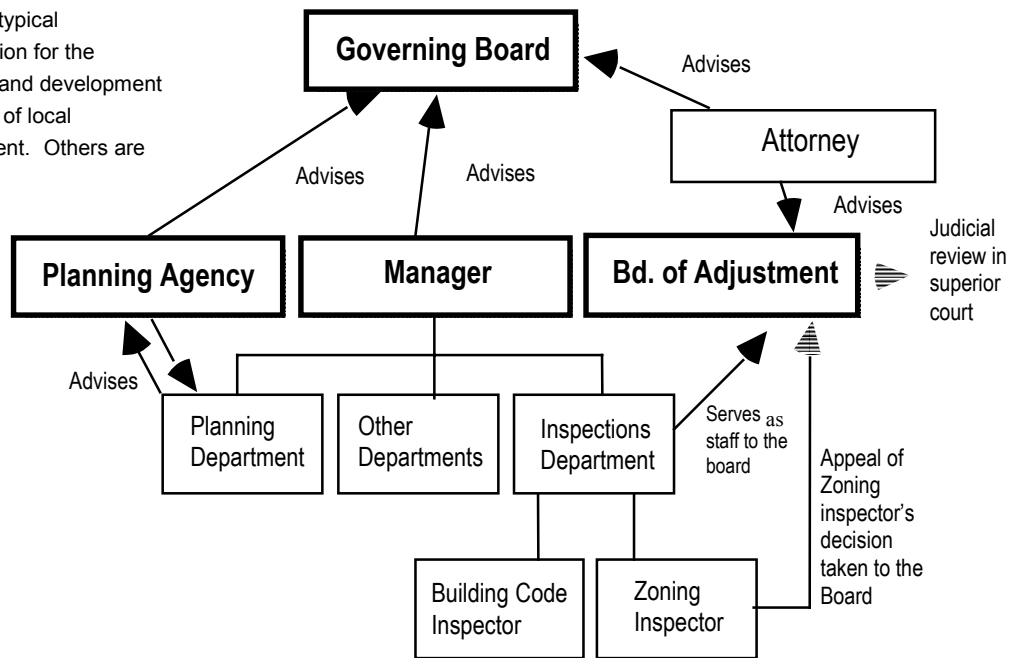
3. Counties must refer zoning amendments to the planning agency for up to a 30 day comment period and non-binding recommendation; referral is optional for municipalities but usually provided for by ordinance.
4. The planning board may be assigned special or conditional use permit, variance, and/or appeal review responsibilities.

- Other possible responsibilities

There are a number of other possible duties that can be assigned to a planning board. These include:

1. Plat approvals or recommendations under subdivision ordinance
2. Required recommendations for urban redevelopment plan
3. Annexation consideration
4. Coordination of public participation
 - a. Public hearings
 - b. Public meetings
 - c. Surveys
 - d. Neighborhood meetings
 - e. Community advisory councils
5. Public education
 - a. Pamphlets and brochures
 - c. Appearances before community groups

This is a typical organization for the planning and development functions of local government. Others are possible



- Conflicts of Interest

The North Carolina courts have confirmed that the Constitution requires an impartial decision-maker for planning decisions. Direct and substantial financial impacts

disqualifies member from participating in a legislative zoning decision (and probably includes advisory decisions). In addition to financial impact, a predetermined opinion that is not susceptible to change and close family or business ties also disqualifies member from participating in quasi-judicial zoning decisions. Non participation includes the discussion as well as voting.

- **Informal Considerations for Planning Board Effectiveness**

- **Appointed boards must understand expectations of governing board**
- **All boards must communicate effectively with one another**
- **Put key items in writing**
 1. By-laws and rules of procedure
 2. Minutes
 3. Conflict of interest policy
 4. Recommendations to the governing board
 5. Findings and conclusions on conditional and special use permits and subdivision plats (an adequate record of evidence considered must be maintained for quasi-judicial decisions)

- **Conduct effective meetings and hearings**

A planning board should have and keep to a regular meeting schedule. The planning board schedule should be coordinated with the governing board. Each meeting should have a clear agenda. Meetings should begin with an explanation to any members of the public present of the rules and purposes of the session.

- **Reserve time for training and planning**

Consider work sessions, retreats, outside speakers and continuing education for key issues.

- **Open meetings law [G.S. 143-318.9 to 143-318.18]**

All meetings of a majority of the board, or any committees of the board, for the purpose of conducting business must be open to the public. Closed sessions may be held only for seven narrow purposes set forth by statute (e.g., receiving legal advice regarding pending litigation). Public notice must be provided for all meetings (regular schedule filed with clerk, special meetings notice posted and mailed to the media).

****SEE MODULE 1. WORKING TOGETHER, FOR MORE DISCUSSION OF PLANNING BOARD EFFECTIVENESS, CONFLICTS OF INTEREST AND THE OPEN MEETINGS LAW.****

- **Public Decision Making**

There are **four types of public decisions**, with a different process and set of rules for each. It is critical that a board member know at all times which type of decision is being made in order to know which rules to apply. The four types of decisions are:

- **Legislative**
These include final, binding decisions on general policies that apply throughout a community. Examples include adoption, amendment, or repeal of land use regulations, adoption of the budget, and so forth. These are almost always assigned to the governing board.
- **Advisory**
These include recommendations on plans, policies, ordinance changes, and the like. A key difference between these and legislative decisions are that these are not final decisions, but are recommendations only. They are often handled less formally than other decisions and have fewer state rules about how they are made.
- **Quasi-judicial**
These are formal decisions that determine the rights of individuals affected by government policies. They include variances, special and conditional use permits, and appeals of administrative decisions. They do not involve setting new policies, but the application of previously adopted policies to the parties involved. These involve fact-finding and the application of some discretion. The zoning board of adjustment makes most of these decisions, but planning boards and the governing board may also be assigned quasi-judicial decisions.
- **Administrative**
These are the routine, day-to-day decisions, such as making individual permit and enforcement decisions. They are usually handled by the professional staff.

LOCAL GOVERNMENT PLANNING FUNCTIONS

<u>Agency</u>	<u>Primary role</u>	<u>Other possibilities</u>
GOVERNING BOARD: (city council, county board of commissioners)	Legislative decisions: adopts ordinances, amendments, policy statements, budgets; approves acquisitions; makes appointments to other bodies	May also serve as planning agency; may approve plats and special use permits
PLANNING AGENCY: (planning board; planning commission; planning committee of governing board)	Advisory decisions: sponsors planning studies; recommends policies, advises governing board; coordinates public participation; must recommend initial zoning ordinance	May also serve as board of adjustment; may approve or review plats
BOARD OF ADJUSTMENT:	Quasi-judicial decisions: hears zoning appeals, variances, special and conditional use permits	
STAFF: (planning department, inspections department, community development department)	Administrative decisions: issues permits, conducts technical studies, initiates enforcement; advises manager	

What Tools Are Used In Planning?

- **The Comprehensive Plan**

What kind of plan? What form should the plan take?

- *Comprehensive Plan* The *comprehensive plan* is traditionally used by local governments as their principal planning tool. This plan takes a long range time perspective--typically ten to twenty years--and looks at the interrelationships between land uses, transportation, utilities, recreation, neighborhood revitalization, historic preservation, and the like. It is common for these plans to focus on physical development.
- *Neighborhood Plan* Many comprehensive plans also include *neighborhood* or *small area plans*, which give detailed attention to smaller geographic areas. They are often prepared with intensive public participation between major updates of the larger comprehensive plan.
- *Rational Planning Process* Most comprehensive plans are based on a *rational planning process*. This involves identification of key issues facing the jurisdiction, collection and analysis of data on community development, identification and debate of alternative policies for addressing these issues, making policy choices, designing implementation strategies, and evaluating the results.
- *Strategic Plan* Many local governments also prepare *strategic plans*. These plans focus on a few key issues, have a shorter time frame (such as two to five years), identify specific implementation responsibility and time line, and have a regular follow-up on results. These plans also often have strong participation by community groups and leaders.
- *Functional Plan* Most local governments also prepare *functional plans*. These are detailed looks at how government functions, such as transportation, water and sewer services, or parks and recreation, will be carried out in the future. Many local governments also have specialized plans, such as *design guidelines* that may address architectural standards in commercial areas or historic districts, *landscaping guidelines*, or the like.

Whose plan is it? What role are we to take as citizen planners?

Good planning is a cooperative venture. The planning board often serves a key organizational role in planning. It provides guidance to the professional staff, coordinates public participation, debates the overall public interest, and makes well reasoned recommendations for action to the governing board. It is important that all of those affected by a planning program be active participants--from the development community and neighborhood groups participating in plan preparation to the governing board that adopts the plan and uses it to guide future decisions.

What and where can we plan? What is our jurisdiction?

As a general rule, cities plan within city boundaries and the county plans for the unincorporated portions of the county.

All North Carolina cities have the opportunity to plan in the area immediately adjacent to the city --its extraterritorial planning jurisdiction. This is often called the ETJ area and it is discussed in detail later in this module.

North Carolina law is very permissive in allowing other joint city-county arrangements. For example, a small city can ask the county to provide its planning or regulatory functions.

So what? What's the legal effect of what we are doing?

Comprehensive plans are *not* regulations. They do not have binding legal effect. Land use ordinances (such as zoning or subdivision regulations) are necessary for plan implementation. The plans can also be used to guide public investments, such as water, sewer, and transportation improvements.

This type of overall general plan is a key planning effort at the local level

While it is often difficult for planning boards to spend adequate time on this effort when accelerating growth demands attention to zoning and subdivision issues, the comprehensive plan traditionally provides the analytic and policy foundation for a community's land use management efforts. Many plans were funded in the 1960's through federal funding (the "701" program), but in some areas the plans have not been updated since then. Almost half the states now mandate a comprehensive plan and set standards for them, but this is not the case in North Carolina.

The Comprehensive Plan is the official statement of policy on future physical development

Challenges to local land use regulation often hinge on consistency with an adopted comprehensive plan. This becomes the community's official blueprint for growth. While not a regulation, it is an important guide increasingly used by the courts when reviewing a claim of improper spot zoning or other challenge to a regulation.

Some things to remember about comprehensive planning:

- Explicitly consider where you want to be going
- Focus on solving important problems

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- Plans are only valuable if used
 - Comprehensive planning is a good vehicle for involving citizens in government
 - It is hard to deal with difficult issues prospectively

****SEE MODULE 3. COMPREHENSIVE PLANNING FOR MORE INFORMATION ON THIS SUBJECT.****

• Land Use Regulation in General

Local Government Authority to Regulate Land Uses

Local authority is limited by state law. In North Carolina, cities and counties do not have "home rule" power. Local governments only have such power to plan and regulate development as has been delegated by the state. So state laws to enable local planning and regulation are very important--they set the limits and procedures local governments must follow.

Enabling legislation has been adopted to give cities and counties the authority to adopt and implement regulations on:

- Zoning, subdivision, housing and building codes, and other specific topics*
- General police power to adopt regulations necessary to protect the public health, safety, and welfare has also been delegated. This authority is sometimes used to adopt sign ordinances, mobile home park requirements, and similar special purpose regulations outside the context of a zoning ordinance.*
- Local legislation is also common. These laws only apply to specified cities and can vary the general rules. For example, a local bill can relieve a city of the obligation to send mailed notices for some rezonings.*

Constitutional Limits on Regulatory Authority

Nature and importance --If constitutional limits to regulatory authority are not followed, the action taken by the government can be invalidated by the courts and the local government can, in some instances, be subject to having to pay monetary damages to those whose rights have been violated.

Specific provisions critical for land use regulation include:

Due process -- Land use regulations must address legitimate objectives, use appropriate means to do so, and must employ fair procedures.

Equal protection -- Distinctions are permissible, such as treating pre-existing development differently from proposed new development, but similarly situated persons must be treated similarly.

Takings -- Land use regulations do not have to allow the most profitable use of property, but they must leave the owner with some practical use of the land that has reasonable value.

Others -- Planning boards should also be familiar with constitutional limits of regulation of speech, religion, assembly, association, movement, and privacy.

• Zoning ordinances

Purpose

A zoning ordinance is the tool most commonly used to implement the goals stated in the Comprehensive Plan. Most zoning ordinances are designed to establish physically-defined areas where certain uses are encouraged, and certain uses restricted. Zoning restrictions began early in this century to prevent industrial uses from encroaching in residential neighborhoods with their noise, smoke and subsequent reduction in residential property values. Today, zoning is still the tool of choice to set the standard not only for the use that will be allowed on the land, but how many off-street parking spaces will be required to be provided, what type of minimum landscaping will be installed, and other design standards that set a baseline for what is considered an acceptable level of quality for development in each community.

Zoning ordinances are intended to:

- *Protect the rights and investments of property owners by making more predictable what may happen on neighboring property.*
- *Ensure that public investment by the taxpayers results in an efficient and attractive community, where the cost of serving properties with utilities, roads and waste removal is offset by the tax revenues that are generated by private development.*

Basic Structure of Zoning Ordinances

Text and map. Zoning ordinances have a text that defines the various zoning districts, describes the rules that apply to development, and establish the administrative structure for implementing zoning. The ordinance also includes a zoning map that applies the districts to the zoned area. The map is a part of the ordinance.

Districts and uniformity. A key aspect of zoning is that different rules for development apply to different zoning districts. Within each district, all development is treated alike. There are no state standards on the number or type of zoning districts allowed--each local government can craft a unique set of districts tailored to their local needs.

Use regulation. A key aspect of zoning is regulation of land uses. The ordinance specifies, for each district, what types of land uses are allowed (permitted uses), which are not allowed (prohibited uses), and which may be allowed if specified standards are met (conditional uses, special uses).

Other standards. In addition to regulating land uses, zoning ordinances usually set minimum criteria for dimensions of lots, setbacks for buildings, and maximum building sizes. Many zoning ordinances also include standards on landscaping, buffering, parking, and signs.

Zoning Ordinance Amendments

Who can request a zoning amendment? Any citizen can request property be rezoned. There is no requirement that all petitions go through the full public hearing process. Local governments can screen requests, such as sending to hearing only those petitions approved by the planning board or made by the owner.

Process for consideration: Each local government can set its own process for review of proposed amendments. State law requires counties to submit amendments to the planning board for review (and most cities do this by choice) and requires the governing board to hold a hearing before acting.

Limits on reconsideration: Many local ordinances provide that once a decision is made on a rezoning proposal, no other zoning petitions affecting that property can be considered for a specified time (often six months or a year).

Public notice and public hearings are required: State law mandates specific notice of the public hearing. The type of notice and the number of days in advance it must be provided is laid out in the state statutes. Public hearings on re-zonings are legislative functions. Speakers need not be under oath and can express opinions about the wisdom of the proposed action:

Protest petitions: - State law mandates these for cities. A qualified petition triggers a requirement that any rezoning be adopted by a 3/4 vote of the governing board.

Quasi-judicial Zoning Decisions

Special rules apply to **all boards** making quasi-judicial zoning decisions--planning board, board of adjustment, or governing board

These special rules apply to all decisions where there is fact-finding and the application of discretionary standards. This includes **appeals, variances, special use permits, and conditional use permits.**

An **evidentiary hearing** is required for each decision. The purpose of the hearing is to establish the facts, not to gather opinions about the desirability or popularity of the project. Witnesses present testimony under oath, cross-examination must be allowed, board members are not allowed to gather evidence outside of the hearing, and written findings of fact are required.

****FOR MORE INFORMATION ON ZONING, SEE MODULE 4.****

• Subdivision regulations

Purpose

Subdivision regulations are used to establish adequate land records, ensure good land planning and subdivision design, ensure that subdivisions are properly equipped, and determine who will be responsible for the construction and maintenance of subdivision improvements such as streets, curbs, sidewalks and underground utility lines.

Coverage

Subdivision ordinances apply to any division of land for the purpose of sale or building.

State law lists five exceptions to the definition of "subdivisions. These include creation of 10 acre lots where there is no street dedication and division of a two acre or smaller lot into three or fewer parcels that meet all subdivision standards. Some communities have local legislation that sets different standards for what is, or is not, a subdivision.

Common Ordinance Requirements

A typical subdivision ordinance requires all subdivisions to be platted. Typical design standards are that all lots must front on an approved street, lots and streets must be properly designed, plans for water supply and sewage disposal must be approved, and certain improvements (such as streets and utilities) must be provided.

Typical Approval Process

- (1) **Pre-application consultation** -- This is suggested as a means to be sure the applicant understands the process and design standards.
- (2) **Sketch plan** -- This is a general concept of the proposed division. It usually requires only informal staff consultation.
- (3) **Preliminary plat** -- This is the critical approval of layout of lots and planned improvements. Once approved, the improvements may be installed.
- (4) **Final plat** -- This is the final check and comes after the improvements are built. Once approved, the plat can be recorded and lots sold.

Exactions of fees, land dedications

Exactions are requirements imposed as a part of a development approval that ensure that a portion of the cost of the public infrastructure necessary to serve the development is borne by the developer (and ultimately by those who will buy residential lots or own commercial land uses in the development) up front as opposed to being paid by all the taxpayers of the City later.

Typical forms of exactions include:

- Land dedications -- This includes transfer of title to land for street rights of way, utility rights of way, and recreation areas.
- Subdivision improvements -- This includes paving streets, installing utility lines and stormwater facilities.
- Fees in lieu of dedication or construction -- This includes payment of a fee for recreation areas, street improvements and the like.

These are allowed if there is a rational relation to needs generated by the subdivision. The amount or size of the exaction must be roughly proportional to the public facility needs generated by the development being approved. The determination of whether an exaction is proper must be made on an individualized basis. The burden of proving an exaction is constitutional is on the government.

Agencies Involved

The **planning department** typically coordinates review of subdivisions.

Approval of preliminary and final plats may be made by either the **planning board, the governing board, or the administrative staff** upon delegation by the planning board or governing board.

Agencies typically involved in review of a proposed subdivision include the **public works and utility departments, county health department, parks and recreation department,** and the state **Department of Transportation.**

****FOR MORE INFORMATION ON SUBDIVISION MANAGEMENT, SEE MODULE 5.****

Where Do We Plan?

• Extraterritorial jurisdiction

The maximum size of this extraterritorial area depends on the city's population. For cities with populations up to 10,000, this area can go up to one mile from the city limits, up to two miles for cities with populations between 10,000 and 25,000, and up to three miles for those cities with populations over 25,000. The limits are summarized in the table below. These limits extend only from a city's principal boundaries. A city can not extend extraterritorial jurisdiction to the fringe area around noncontiguous areas of the city (its "satellite annexations").

Maximum Extraterritorial Jurisdiction

<u>City Population</u>	<u>Maximum Extraterritorial Area</u>
Up to 10,000	1 mile
10,000 to 25,000	2 miles
Over 25,000	3 miles

A city can choose to exercise less than its maximum extraterritorial area. For example, it may establish jurisdiction extending one mile east of town because that is the direction of urban growth, while not establishing any extraterritorial jurisdiction on the west side.

In order to exercise extraterritorial jurisdiction, a city must adopt an extraterritorial boundary map ordinance. The city must follow the same public notice and hearing procedures for this ordinance as it does for a zoning ordinance adoption or amendment. New legislation effective in 1996 requires individual first class mailed notice to landowners when a city expands its extraterritorial area.

County approval is required for some extraterritorial jurisdiction. Within the first mile, county approval is only required if the county is already exercising county zoning, subdivision control, and building code enforcement for that geographic area. The county must be currently exercising all three of these county ordinances in the area proposed to be added to the city's jurisdiction. County approval can be rescinded by the county commissioners, but they must give the city two years written notice before doing so. County approval is required for all extraterritorial jurisdiction beyond one mile, even if county regulations are not in place.

Once a city establishes extraterritorial jurisdiction, it must provide for representation by residents of this area on certain city boards. Residents of the extraterritorial area do not get to vote in city elections and do not pay city taxes. However, the city planning board and board of adjustment have to be expanded to include residents of this area (or other county residents if there are not enough residents in the extraterritorial area itself). These appointments are made by the county board of commissioners (with eventual appointment by the city council if the county commissioners fail to make their appointments). The county must hold a hearing on its appointments and must select members from those applying at or before the hearing. The number of extraterritorial

members appointed must be proportional to the population of the extraterritorial area relative to the population within the city limits.

• **Summary of Requirements for Extraterritorial Land Use Planning and Regulation**

1. **Prepare adequate boundary description.** Boundary may go up to three miles depending on city's population.
2. **Publish newspaper notice of public hearing,** which must appear once a week for two successive weeks, with first notice at least ten, but not more than twenty-five, days before hearing.
3. **Mail notice to individual property owners in affected area.** Mailed notice is required for the hearing on adoption of extraterritorial boundary map itself. This notice must be sent four weeks prior to the hearing. A second mailing on application of zoning is also required, and this must be mailed in the 10 to 25 day period prior to the hearing.
4. **Secure county agreement if county is exercising zoning power, regulating subdivision, and enforcing building code in area affected or if the area extends more than one mile from the city.** A written, formal county resolution is required in either instance.
5. **Adopt ordinance by city governing board** setting extraterritorial planning jurisdiction and its boundary.
6. **File copy of boundary map with city clerk and register of deeds.**
7. **Amend city zoning ordinance** to add area to zoning maps. Also, other city land use regulations -- subdivision, building codes, housing codes, etc. -- being applied in the extraterritorial areas should be amended to reflect this as well.
8. **Appoint extraterritorial members to planning board and board of adjustment.** Appointments are made by the county board of commissioners, after a hearing on the appointments. City appointments are allowed if the county fails to act.

• **Federal and State Planning and their relationship to local government**

Often, planning happens on a broader level than local government. The decisions made by our elected representatives in the State Legislature and in Congress affect us on the local level in several ways:

Environmental Planning

The location of a business or industry in a residential area is clearly a local issue, best solved with a local planning solution. Planning issues become more complex when the sewage effluent placed into a natural watercourse in one community is drawn out in the next as its drinking water. Environmental issues are broadly handled because ecosystems do not respect political boundaries. The decisions made by the many communities across a river basin or a mountain range have a cumulative effect. The

state and federal governments are becoming more active in environmental planning through such programs as:

- *Water supply watershed mandated protective measures*
- *Basin-wide river basin planning (the Neuse River Nutrient Sensitive Management Plan is an example)*
- *The Coastal Area Management Act*
- *The federal wetlands protection program*
- *Solid waste and landfill management programs*

Affordable Housing

State and federal government also influence our ability to ensure quality and affordable housing on the local level primarily by providing grants and low-interest loans to encourage the construction of such housing in our communities where the market is not providing it.

Economic Development and Downtown Revitalization

Particularly at the State level, a great deal of assistance is provided to local government to assist in recruiting new development to NC communities, and to revitalize aging downtown areas. Federal and State grant programs are available for infrastructure such as water and sewer, tourism incentives and direct benefits to employers who choose to locate in North Carolina communities.

Transportation

Perhaps the most powerful influence on local planning is exercised through the North Carolina Department of Transportation, the Board of Transportation and the Legislature as these groups make decisions on transportation programs and funding. The effect of construction of new highways, pavement of rural roads and widening of existing roads, as well as improvements to urban transit systems, on the economic health, community character, and tax base of a community is not to be discounted. The Federal Intermodal Surface Transportation Efficiency Act (ISTEA, pronounced "Ice Tea") has changed the decision-making process by encouraging local involvement in decision-making regarding transportation resources paid for in part by the Federal government.

• Summary of this module...

FOUR THINGS TO REMEMBER ABOUT PLANNING AGENCIES AND FUNCTIONS:

- (1) **Planning is an effort to promote efficiency, equity and quality of life** in the community. It allows a community to get out in front of potential problems and prepare for growth. It is not an effort to remove rights or stifle growth.
- (2) **The Comprehensive Plan is a traditional key planning effort at the local level.** It is an official statement of policy and is the best way to take a complete look at all the issues affecting a community. It is often not given enough time or thoroughness because of the responsibility of Planning Boards to work on more pressing zoning and subdivision issues on a site-by-site basis.
- (3) **Different planning agencies undertake different types of decision making.** Planning Boards, Boards of Adjustment, Professional Staff and Elected Officials all play key planning roles that are generally defined by state and local law. Knowing your role in this decision-making framework will allow you to do your best work.
- (4) **Planning jurisdiction often extends beyond the town limits.** Using your ability under state law to plan for growth beyond your boundaries is an important function of Planning agencies.

FOUR THINGS TO REMEMBER ABOUT LAND USE REGULATION:

- (1) **Regulations are intended to implement the will of the community as written into its Comprehensive Plan.** They are designed to protect people against unwanted effects of land use on neighboring properties, and overall negative impacts, both fiscal and physical, to the community. The ability to regulate local land use is granted by the State. Establishment and amendment of these local regulations is a legislative function to be undertaken by elected officials. Any land use regulation must be tempered by an effort to be fair, reasonable and effective.
- (2) **Zoning ordinances establish physical districts that allow certain land uses and restrict others.** These ordinances also establish standards within which uses may be placed on the land, including setbacks, landscaping, signs, intensity of use, etc. Zoning ordinances generally consist of maps, text and illustrations.
- (3) **Some types of zoning decisions are more discretionary than others.** Variances, special use permits, conditional uses and certain appeals processes are quasi-judicial in nature, and require findings of fact and factual evidence to be the basis of decisions, much like a court proceeding. General decisions on re-zoning cases or text amendments to the zoning code are legislative decisions and can involve broad discretion by the decision-makers.
- (4) **Subdivision regulations are intended to establish standards for extension of public infrastructure as development occurs.** This ensures that those who benefit from growth contribute to the community's costs associated with that growth. This can involve requirements for construction of roads and utility lines to serve the developing property, or fees to cover the community's cost of providing thoroughfares or parks for the citizens who will live in developing areas.

Some Exercises:

Situation 1.

Farmer Brown owns 10 acres on the top of the hill. He raises ostriches and keeps them in large ostrich houses on his property. The land has been in Farmer Brown's family for generations. He is a successful farmer and wants to expand his ostrich operation. He contracts to construct a new ostrich house.

Farmer Smith lives down the hill from Farmer Brown. He raises trout in the stream that runs downhill from Farmer Brown's property. When he finds out that Farmer Brown is about to build another ostrich house he complains loudly to the county board of selectmen to restrict Farmer Brown to his current operation. He argues that the ostrich feathers in the stream are killing his trout and ruining his livelihood, and also that he does not like the constant bellowing of the male ostriches so close to his home. He says that good planning requires that the needs of everybody on the stream be considered and that Farmer Brown has no right to expand his business.

Farmer Brown responds that he was there long before Farmer Smith, and Farmer Smith should have known that he intended to continue to raise ostriches, as he always has. If Smith had a problem with ostriches he should not have moved there. He also argues that it is his constitutionally protected right to pursue life, liberty and happiness on his own property unencumbered by his neighbors' wants and desires, and for the government to restrict this right is unconstitutional.

Who's right? What should the Board do?

Situation 2.

Willis Jones lives on a 4- acre lot outside a medium-sized NC city. His neighborhood was built under the County's regulations and has been brought into the Extraterritorial Jurisdiction (ETJ) of the City through the expansion of the ETJ as the City has grown outward from its center. Mr. Jones applies to subdivide his lot for a new home for one of his sons on his land. The City subdivision administrator informs him that he will not be able to subdivide his property without first dedicating public right-of- way for a street, and obtaining a variance approved by the City Council, because his lot is located on a private drive, and the City's rules require all new lots to be served by public paved streets.

Mr. Jones cannot understand why he is subject to rules that don't make sense to him, imposed by a community that he does not reside in, and that his request must be approved by a Council that he cannot vote for.

Why is this all so? Is Mr. Jones right? Is the City right?

Situation 3.

Wendy Wilson buys a piece of land in Wilsonville. She wants to build an auto repair shop on her property. To do so she must request a re-zoning of the property to allow that use. The property has a stream running through it, and she must place the building far to one side of the property in order to avoid filling the stream. To do so in the proposed zoning district, she must violate a required side yard setback. She will have to appeal for a variance from the zoning standards in order to allow this. Assuming she is granted the re-zoning and the variance, she will apply for a building permit, and her plans will be measured against the site design standards of the community and the North Carolina Building Code.

What sorts of decisions will need to be made here, who is likely to be asked to make each of the decisions in local government, and what are some of the special processes that are characteristic of each one?

Other related subjects:

Ask your professional staff provide you with more training on these issues:

- **Zoning and Re-Zoning**
- **NC and US Legal Cases Regarding "Takings"**
- **Subdivision Regulations**
- **Public Participation in Decision-Making...How Much is Too Much?**
- **Comprehensive Planning**
- **CAMA Land Use Planning in Coastal Counties**
- **ETJ Extensions and Annexation**
- **Aesthetic Regulations - Signs / Billboards/ Landscape**
- **Infrastructure Planning - Utilities and Roadways**
- **Unified Development Ordinances**

Resources:

North Carolina Specific Materials

Books

Brough, Michael B. and Green, Philip P., Jr., **The Zoning Board of Adjustment in North Carolina** (Chapel Hill: Institute of Government, 2d ed. 1984) 128 pages, \$9.50. This is a basic text on the board of adjustment. It covers functions of the board, how it conducts meetings and makes decisions, and the types of findings required for various decisions. It includes suggested forms and rules of procedure.

Ducker, Richard D., **Subdivision Regulations in North Carolina: An Introduction** (Chapel Hill: Institute of Government, 1980) 16 pages, \$4.50. A concise overview of the land subdivision process.

Green, Philip P., Jr., **Legal Responsibilities of the Local Zoning Administrator in North Carolina** (Chapel Hill: Institute of Government, 2d ed., 1987) 124 pages, \$11.00. This is a basic text for zoning administrators. It includes coverage of the duties of a zoning officer, and discussion of record-keeping, permitting, inspection, and enforcement

Green, Philip P., Jr., **Organizing for Local Government Planning in North Carolina** (Chapel Hill: Institute of Government, 1989) 168 pages, \$14.00. This is a review of the various alternatives for organizing local planning agencies in North Carolina.

Lawrence, David M., **Open Meetings and Local Governments in North Carolina: Some Questions and Answers** (Chapel Hill: Institute of Government, 1994) 64 pages, \$6.50. This book uses the question and answer format to review the requirements of state law regarding public access to government meetings. It addresses which groups and meetings are subject to the Open Meetings law, meeting notices that are required, when closed sessions are allowed, and the remedies for violations of the law. Includes the 1994 revisions to the statute.

Owens, David W., **Conflicts of Interest in Land-Use Management Decisions** (Chapel Hill: Institute of Government, 1990) 105 pages, \$10.00. This book covers potential conflicts of interest faced by members of citizen boards dealing with land use issues--governing boards, planning boards, and boards of adjustment. It includes discussion of bias, financial conflicts, and personal relationships with the parties. A model ordinance provision on conflict avoidance is included.

Owens, David W., **Introduction to Zoning** (Chapel Hill: Institute of Government, 1995) 120 pages, \$15.00. This is an overview of zoning for citizen board members and the public. It includes discussion of zoning jurisdiction, rezoning, spot and contract zoning, special and conditional use permits, variances, vested rights, nonconformities, enforcement, and constitutional limitations on zoning.

Owens, David W., **Legislative Zoning Decisions: Legal Aspects** (Chapel Hill: Institute of Government, 1993) 294 pages, \$18.00 paperback, \$21.00 hard cover. This is a detailed review of the law on adoption and amendment of zoning ordinances. It includes coverage of zoning hearings, notice, protest petitions, spot and contract zoning, vested rights, nonconformities, and constitutional limitations. It includes digests of all North Carolina appellate court decisions on zoning.

NOTE: 2nd Edition of this document will be out in February, 1999.

Owens, David W., **Planning Legislation in North Carolina** (Chapel Hill: Institute of Government, 1996) 386 pages, \$30.00. This is the eighteenth edition of a compilation of North Carolina statutes on planning, land use regulation, building, and environmental protection. It includes annotations and cross-references.

Owens, David W., **Regulating Sexually Oriented Businesses** (Chapel Hill: Institute of Government, SPECIAL SERIES No. 15, January 1997) 30 pages., \$15.00. This is a detailed review of the legal aspects of regulating the location and operation of sexually oriented businesses (such as topless bars, adult bookstores, and massage parlors). It includes discussion of what activity can be banned entirely and the legal foundation that must be established for restrictions.

Articles

Ducker, Richard D., Federal and State Programs to Control Signs and Outdoor Advertising, 52 POPULAR GOV'T 28 (Spring 1987)

Ducker, Richard D., Using Impact Fees for Public Schools, SCHOOL LAW BULLETIN 1 (Spring, 1994)

Ducker, Richard D., Off-street Parking in North Carolina Municipalities, 46 POPULAR GOV'T 39 (Summer 1980)

Ducker, Richard D., Land Use Planning in Rural Areas, 46 POPULAR GOV'T 28 (Summer 1980)

Ducker, Richard D., Administering Subdivision Ordinances, 45 POPULAR GOV'T 20 (Summer 1979)

Green, Philip P., Jr., Questions I'm Most Often Asked: What is "Spot Zoning?", 51 POPULAR GOV'T 50 (Spring 1985)

Owens, David W., Amortization: An Old Land-Use Controversy Heats Up, 57 POPULAR GOV'T 20 (Fall 1991)

Owens, David W., Bias and Conflicts of Interest in Land-Use Management Decisions, 55 POPULAR GOV'T 29 (Winter 1990)

Owens, David W., Land Use and Development Moratoria, 56 POPULAR GOV'T 31 (Fall 1990)

Owens, David W., Religious Land Uses, PLANNING AND ZONING BULLETIN No. 10, (1998)

Owens, David W., *Zoning Hearings: Knowing Which Rules to Apply*, 58 POPULAR GOV'T 26
(SPRING, 1993)

Other Materials

Allor, David J., **The Planning Commissioners Guide** (APA Planners Press, 1984)

Bair, Frederick H., Jr., **The Zoning Board Manual** (APA Planners Press, 1984)

Daniels, Thomas L., John W. Keller, and Mark B. Lapping, **The Small Town Planning Handbook**
(APA Planners Press, 1988)

Smith, Herbert H., **The Citizen's Guide to Planning** (APA Planners Press, 1979)

Smith, Herbert H., **The Citizen's Guide to Zoning** (APA Planners Press, 1983)