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Memo

To: Mayor, Board of Commissioners

From: Paul S. Messick, Jr.

CC: Bill Terry, Stuart Bass

Date: September 6, 2012

Re: ETJ Extension

Historically a North Carolina city or town could not extend its regulatory or police powers beyond the city limits without specific legislative authority. This is an aspect of the limited powers enjoyed by municipalities. For example, the North Carolina Supreme Court ruled in 1894 that Washington did not have the authority to regulate the throwing of dead fish from a pier into the Pamlico River beyond the town limits established by the General Assembly. Now, by specific statutory authority, a town's planning and zoning jurisdiction can extend up to 3 miles from the contiguous town limits to cover portions of the unincorporated county. Subdivision approvals, building permits and rezoning cases in these areas can be processed through the Town's staff, Planning Board and Town Board, as needed. The purpose of this authority is to anticipate portions of the unincorporated county that are urbanizing, and bring them under a set of urban standards for development. The ETJ process tries to anticipate that these areas will become part of the Town in the future. By causing development in these

areas to be constructed to Town standards, the extension of Town zoning and subdivision standards into these urbanizing areas of the County ensures that they can be adequately and efficiently served by municipal services when that time comes. County residents of ETJ areas are represented on both the Board of Adjustment and the Planning Board.

The current statutory scheme of tiered extraterritorial jurisdiction of from one to three miles based on Town population was adopted in 1971; G.S. 160A-360(a) provides that the extraterritorial area may extend up to one mile from the primary Town limits 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. G.S. 160A-360(e) also requires that county agreement be secured for the extension of Town extraterritorial jurisdiction into any area wherein the county is enforcing zoning, subdivision regulations, and the state building code. These distances set the maximum statutory extraterritorial area, but cities may choose to exercise only part of their potential jurisdiction.

Subsequent amendments to Chapter 160A included provision for vested rights when jurisdiction shifts, allowed for annual updates to be used in determining Town populations, and clarified the process whereby a county assumes authority in extraterritorial areas when a Town relinquishes jurisdiction. 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 Town planning boards and boards of adjustment. In 2011 bona fide farms located in the extraterritorial area were exempted from the exercise of any municipal jurisdiction.

By a local act adopted by the General Assembly in 1989 the Town of Pittsboro was given authority to extend its extraterritorial jurisdiction beyond the one mile limit with the consent of Chatham County. The current ETJ limits are significantly more than one mile from the town limits in all directions. Within the past few years the town did relinquish a portion of the ETJ to Chatham County, but no area has previously been added.

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. According to a School of Government survey 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 (50percent), storm water management regulation (45 percent), sediment and erosion control regulation (37 percent), and historic district regulation (17 percent). Of municipalities responding, 59 percent reported that the city administers the building code and 32 percent reported applying their housing code in the extraterritorial areas. (See Owens, David; "The North Carolina Experience with Municipal Extraterritorial Planning Jurisdiction", Special Series No. 20, January 2006)

Since Pittsboro's jurisdiction over the additional area could be implemented either by annexation or an extension of the town ETJ limits, the policy issue for the Board is whether it wishes to accept responsibility for the administration of Article 19 ordinances within the additional ETJ area prior to annexation. It appears that Chatham County currently enforces at least subdivision, sediment and erosion control, telecommunication towers, watershed and flood plain regulation, junkyard and stormwater regulations in this area. The town's ability to do the same is hampered by limited staff and financial resources. Once annexed the area would presumably generate tax revenues commensurate with the services to be provided.

If you need additional information, please advise.