A Smart Growth Toolbox for Local Governments

Richard D. Ducker and David W. Owens

Builders and environmentalists, business and neighborhood groups, urban and rural residents all champion the idea of their communities growing responsibly and sensibly. Local governments face the daunting task of translating this broad support for smart growth into concrete programs for action. Just what kind of growth is smart, and how does a community accomplish it?

This article provides an overview of the principal management tools that a North Carolina local government might consider in developing and implementing a smart growth program. Each of these tools addresses a particular aspect of growth. Some of the aspects will be important for a particular city or county, some not. However, it is vitally important that a local government adopting a smart growth program carefully consider all the tools and the ways in which they can work together. An effective local program of smart growth must integrate planning, regulations, public investments, and education programs. It must include a mix of incentives and mandates, allowing some development practices, encouraging others, and requiring still others. Further, it must be coordinated with the state and federal transportation and environmental programs described in other articles in this issue. Determining the right mix of management tools for a particular

Among the projects that helped invigorate Charlotte, North Carolina's city center is Ericsson Stadium, home of the Carolina Panthers.

GARY O'BRIEN / THE CHARLOTTE OBSERVER

The authors are Institute of Government faculty members who specialize in community planning and land-use law. Contact them at ducker@iogmail.iog.unc.edu and owens@iogmail.iog.unc.edu.

community requires thoughtful study and planning, active participation by many affected people, and some tough choices for elected officials.

Urban Form and Design

A major thrust of many smart growth programs is encouraging, facilitating, or even mandating new forms of urban development. The mix of land uses, the design of developments, and the reuse of previously developed land all have an influence on urban sprawl. Planners, architects, and developers tout "new urbanism," "traditional neighborhood design," pedestrian-friendly development, and transit-friendly development as means of reducing reliance on automobiles and making more efficient use of existing roads, utilities, schools, and other public services. A variety of management tools are available to address these issues.

Mixed uses. A principal criticism of traditional zoning ordinances is that they overly segregate land uses. A predominant pattern of residential development in the past fifty years has been to have large tracts of single-family homes, with everyone having to drive out of the subdivision to a major road to get to jobs, shopping areas, or schools. Although much of this development pattern may reflect prevailing consumer desires, many zoning ordinances now mandate this pattern. Often, residential zoning districts do not allow multifamily housing, much less any commercial or office uses. Many zoning ordinances prohibit residential uses in downtown commercial areas.

Much as the "planned-unit developments" of the 1960s allowed some mixture of commercial, office, and industrial uses, smart growth proponents today propose amending zoning ordinances to allow a richer mix of residential, office, and commercial uses. For example, a large tract might be zoned to allow construction of a town square or a village center (perhaps with modest-sized shops, theaters, and restaurants; some professional offices; a school; and a church), surrounded by apartments and single-family homes, all within convenient walking distance. Also, zoning ordinances might allow a return to apartments over storefronts in urban areas. In addition, in urban areas with mass transit potential, the area around stops might be zoned for higher-density residential and commercial uses, further reducing reliance on the automobile as the sole source of transit for some people.

Local governments have the authority to allow mixed uses. The typical segregation of uses in zoning ordinances is a policy choice by elected officials, not a statutory mandate. However, allowing closely mixed uses presents a number of planning considerations that need attention to prevent conflict among uses. For example, commercial development should be limited to a neighborhood scale if it is to be compatible with nearby residential uses. Although careful attention and review are needed, if a local government wants to encourage mixed-use development, it should not create a review process that is substantially longer or more burdensome than that required for more traditional developments.

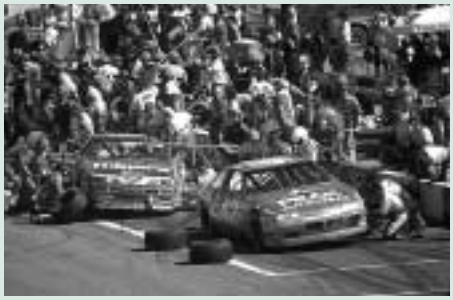
Traffic. How a new development is laid out can have a tremendous influence on traffic, which in turn affects air quality, traffic congestion, and the desirability of neighborhoods. If there are no sidewalks or bikeways, people may have no alternative to use of cars. If one subdivision's streets are not connected to the neighboring subdivision's streets, everyone has to drive out to more congested collector streets to go anywhere. If streets are designed solely to move a lot of traffic as quickly as possible, they will be considerably less attractive to pedestrians and bikers.

A variety of management tools are available to address these considerations. Subdivision ordinances can require that developers install sidewalks. Street-design standards can be revised to allow or require narrower roads, with on-street parking permitted in residential areas.[1] Ordinances can require connection of streets in adjoining subdivisions. Traffic circles and roundabouts are even making a comeback in congested areas as a way to slow cars to a speed that is more compatible with pedestrian presence while

Tapping the Brakes on Growth

Mooresville, North Carolina, is building a national reputation as a NASCAR mecca, boasting the highest concentration of NASCAR race shops in the country, according to a recent article in *The New York Times*.[1] This Iredell County town has doubled in size in the last ten years, fueled by Charlotte's economic engine and aided by the community's proximity to Lake Norman.

Home to more than twenty race shops that build cars and trucks for the Winston Cup and other race circuits, Mooresville gains both jobs and tourism from the racing connection. When race fans come to the nearby Lowe's Motor Speedway, they drop by Mooresville to tour the complex of Dale Earnhardt, stock car racing's top money winner. The race shops and the sport's related businesses provide about 1,400 jobs, said *The New York Times*.



Mooresville welcomes the growth that racing has brought but, for the short term at least, wants to confine that growth to an area served by existing infrastructure.

According to Rick McLean, Mooresville manager, NASCAR drivers and owners chose the community because it was convenient to Interstate 77, Lowe's Motor Speedway, and Lake Norman. "They like living at the lake and being able to get their cars to the races easily," he commented.

Although Mooresville leaders welcome growth, they have taken steps to manage it, using smart growth techniques. In Mooresville's case these include establishing an "urban growth boundary" (see accompanying article) and ensuring the vitality of the downtown core.

Photo courtesy of N.C. Division of Tourism, Film and Sports Development

maintaining a reasonable traffic flow.

Local governments have the legal authority to accomplish most of these purposes. When they create new subdivisions, they clearly may require that developers build roads, sidewalks, and bikeways to specified standards. They also may require developers to pay for or construct these thoroughfares, as long as the required contribution of the developer is no more than an amount roughly proportional to the anticipated impacts of the development. The authority to impose such requirements as a condition of various zoning approvals, such as site-plan or conditional-use permit decisions, is less clear. Legislation giving local governments explicit authority to require such contributions in zoning or other development approvals, as well as in subdivision approvals, would clarify and simplify the law in this area.

Beyond statutory authority the principal questions are ones of design, cost, and political feasibility. How wide must a street be for traffic safety and for accessibility by school buses and garbage trucks without being so wide and fast-moving that it intimidates pedestrians? How much potential pedestrian use must there be to justify the cost of installing sidewalks? These technical and practical considerations should be carefully examined as local governments modernize their subdivision and zoning ordinances.

Other design features. A related issue that arises in smart growth discussions is the design of individual structures. Many neotraditional neighborhood designs feature homes that are built close to the street, are situated close to one another, and have design elements such as "front" porches and garages at the rear of the dwelling, with alleyway access. Local governments can amend existing development regulations to add the flexibility they need to accommodate these features (as several North Carolina cities already have done, including Belmont Abby, Chapel Hill, Cornelius, and Davidson).[2] Mandating these design features is unusual, but it is permissible to provide regulatory incentives (such as expedited permit processing) for developments that incorporate them.

Infill and reuse. Smart growth proponents suggest that one way of securing compact development patterns is more efficient use of vacant or underused land within existing urban areas. Rather than constantly locating new development at or beyond the urban fringe, the notion is to encourage use of land that already has streets, utilities, schools, and other needed urban services available. This tool can be applied to new industrial or commercial development, affordable housing initiatives, or general residential development.

Several management tools allow or encourage this. Some communities are amending zoning regulations to allow carefully designed manufactured-housing units or small multifamily buildings on

An effective local program of smart growth must integrate planning, regulations, public investments, and education programs.

vacant urban lots in existing residential neighborhoods.[3] Communities have amended their zoning ordinances to allow basement or garage apartments within single-family zoning districts. Others have created neighborhood-conservation zoning districts that allow infill while protecting a neighborhood's character. These steps sometimes require amending the list of permitted uses in zoning ordinances or adjusting setbacks or density limits to make new construction feasible on small lots, either of which local governments have legal authority to do. The question is more one of developing carefully crafted design and density standards to address the neighborhood compatibility issues raised by existing residents. There are several approaches to securing active neighborhood involvement in designing these changes, including developing focused small-area or neighborhood plans and working with community organizations such as community development corporations.[4] In addition to reforming regulations, successful infill strategies must address other concerns that are necessary to make

McLean said that the city council adopted the urban growth boundary less than two years ago when it determined that the city's resources might be stretched too thin if unrestrained growth was permitted everywhere. "This is part of the council's planning to ensure adequate infrastructure capacity," he explained.

If a developer comes in with plans that call for extension of water and sewer lines beyond the urban growth boundary, city staff tell the developer to come back in a few years. The boundary has not been in place long enough to determine if it will be successful in guiding growth, McLean said, but so far it has worked well.

Mooresville has undeveloped areas where it wants infill development, McLean continued. In 1996 the city completed a major annexation and then built twenty-six miles of water and sewer lines costing $10 million. With the urban growth boundary, the council wants to encourage development along the existing water and sewer lines.

Mooresville also is looking ahead to regional mass transit. Municipal leaders see that higher-density development will be needed along the rail corridor to support light rail between their city and Charlotte. "We may be looking at the type of development you see in downtown Charleston [South Carolina]," said McLean.

City leaders in this community always have paid close attention to the downtown core. A long-time Main Street Community,[2] Mooresville recently built the Citizen Center, a combination community and civic center in that core.

"It has succeeded beyond all our expectations," said McLean, "bringing 85,000 people into downtown every year." More than 90 percent of the downtown storefronts are occupied, McLean added. The others are vacant mostly because of ownership problems.

Through growth management, downtown revitalization, and regional transportation planning, Mooresville is quietly going about the business of building and protecting its future.

inner-city neighborhoods attractive for residents, such as providing good schools, safe neighborhoods, and ready accessibility to commercial areas.

Innovative "brownfields" programs are available that encourage reuse of old industrial sites by limiting the new user's liability for past environmental problems. These programs require neighborhood involvement and approval of clean-up plans by an environmental regulatory agency.[5] With larger-scale commercial and mixed-use redevelopment projects, public investment in parking and other improvements may be needed to make the project financially viable.

Other examples of public assistance for more efficient use of existing resources include the state and federal tax credits for renovation and restoration of historic structures, the state's Main Street Program (which provides technical assistance for revitalization of small-town commercial centers), creation of municipal service districts to finance downtown revitalization, and public investments in critical public uses in downtown areas (such as courthouses, public safety centers, and post offices).

Protection of Open Space and Natural Areas

Another important goal of many smart growth programs is environmental protection. In the past, many local governments assumed that federal and state environmental programs were adequate to protect air, water, land, critical habitats, natural-hazard areas, and the like. A more active local role has emerged in recent years. Sometimes the local effort is in collaboration with state and federal agencies, as in local floodplain zoning that is necessary for residents to participate in the national flood insurance program, state-mandated programs to protect the watersheds of local water supplies, or local receipt of grants. More recently a number of local governments have undertaken independent efforts to adopt regulations, acquire interests in land, and develop education programs for environmental protection.

Regulatory measures. How new development takes place can have a dramatic impact on the environment. Sediment runoff during construction can choke creeks and streams. Polluted stormwater runoff can degrade downstream rivers. Unmanaged urban sprawl can consume farmland and open spaces. Development in flood-hazard areas can lead to extensive property damage and loss of life.

Local governments have extensive authority to adopt regulations to address these concerns. Land-use plans can clearly identify areas that are appropriate for high-density development and areas suitable for only low-density development, and regulations then can be put into place to guide development levels accordingly. (For full effectiveness, these decisions should be carefully coordinated with decisions to improve transportation and utilities.) Regulations can allow (or require) clustering of new development or require that each development preserve a specified amount of open space. Regulations also can require that vegetated buffers be left along waterways to limit the impacts of stormwater runoff and protect streamside habitats.

Further, regulations can limit the amount of impervious surfaces that are constructed in sensitive areas and can require holding ponds for runoff, or systems that allow the stormwater to sink into the ground. Regulations also can limit development on steep slopes to prevent soil erosion, and local sediment-control regulations (which can exceed minimum state standards) can reduce soil erosion when sites are cleared for development. Regulations can limit development in floodplains and other natural-hazard areas. Landscaping and tree protection regulations can require preservation or restoration of vegetation as development takes place. Agricultural zoning districts can be established in rural areas to limit the intrusion of industrial, commercial, or even residential uses in prime farmlands.[6]

Acquisition of interests in land. Occasionally a local government must go beyond regulation to land acquisition—for example, when there will be active public use of a property (such as

Acting Regionally

When it came time to update their Coastal Area Management Act plan last year, Wilmington and New Hanover County took it to another level. It is no longer just a land-use plan but a comprehensive plan, addressing housing, public infrastructure, economic development, and transportation. Now the city and the county share a comprehensive plan, an uncommon although not unique situation in North Carolina.

According to Mary Gornto, Wilmington's manager, the city and the county now are working on a unified development ordinance. "We are trying to be smart about growth," she said, "trying to be more efficient." Wayne Clark, Wilmington's director of development services, expects the unified development ordinance to be ready in mid-2001.

Located on the Cape Fear River and the Intercoastal Waterway, Wilmington is rich in aquatic resources.

One new element that the city plans to have in place, even before the unified code is finished, is mixed-use districts, combining commercial, residential, and recreational operations. Clark said that such districts offer more flexibility. At least one developer has begun developing a tract this way. The city's requirements will include a 25 percent set-aside for green space and an additional 10 percent for common space (fountains, areas for benches, plantings, and so on).

Clark said that the area local governments are involved in a number of regional cooperative efforts, including planning for transit, roads, and preservation of waterways and corridors along waterways.

Gornto sees smart growth in Wilmington as a means to ensure the vitality of all

PHOTO COURTESY OF N.C. DIVISION OF TOURISM, FILM AND SPORTS DEVELOPMENT

for recreation) or when large tracts must be preserved in a natural state with no development at all. Local governments can acquire land alone or in collaboration with local nonprofit groups, as described in the article in this issue on land trusts (see page 42).

Where no active public use of the land is planned, more management options are available. For example, a regulation can require a buffer or open space to be undeveloped, but the title (and the right to exclude the public) can be retained by the private owner.

A local government can tailor its smart growth land acquisitions to the needs of particular programs. It can buy the land outright (called acquiring the "fee interest") and hold the property for public use as parkland, pathways along streams or natural areas (such as the increasingly popular greenway programs now present in many North Carolina cities), or open space. It can acquire property and later sell or give that property to nonprofit groups under restrictive covenants, as often is done with redevelopment and affordable housing programs. Further, a local government can acquire easements when leaving some aspects of ownership in private hands is appropriate. Examples include acquiring the development rights on farmland or an access easement for greenways.[7] North Carolina local governments have authority to purchase land for open space preservation, farmland preservation, parks and recreation, stormwater management, and any other legitimate governmental purpose.[8]

Development regulations can require the conditioning of subdivision approval on the owner conveying land to the public for open space and recreation, to address the impacts and the public needs that will be created by that subdivision. The amount of land required to be dedicated as a condition of development approval, however, must be reasonably related to the impacts of the development and roughly proportional to their scope.

Beyond the question of legal authority, careful attention should be given to ensuring that there will be adequate maintenance and long-term management of areas acquired, as well as adequate planning to guide acquisition priorities.

In addition to use of local funds, there are several significant state and federal sources of grant funds for land acquisition. These include the state's Clean Water Management, Farmland Preservation, Parks and Recreation, and Natural Heritage Trust Funds and the substantial state and federal funding for acquiring hazard areas following the disastrous floods of 1999. Governor James B. Hunt's recently adopted Million Acre initiative[9] and the proposed massive federal reinvigoration of the Land and Water Conservation Fund may substantially increase the financial resources available to local governments for these acquisition programs.

Tax policies. Tax policies play an important role in protection of open space and natural resources. Examples include income tax deductions for contributions of land, use valuation for property taxes, and innovative financing for local acquisition programs (such as real estate transfer fees). North Carolina local governments have no independent authority to institute or amend such policies; they can only apply laws enacted by the legislature and Congress.

Economic Equity

One criticism of some smart growth programs is that they focus on the concerns of affluent suburban areas—urban sprawl, traffic congestion, design of new subdivisions, environmental protection, and the like—without adequate consideration of economic equity issues. A related criticism is that smart growth programs may actually exacerbate economic inequities by restricting the availability of affordable housing. In response, smart growth proposals increasingly incorporate management measures to address economic equity issues directly. These include efforts to secure more affordable housing and preferences for developments that enhance economic opportunity within the community.

Affordable-housing initiatives. One consequence of rapid development is a concomitant rise in housing prices. Al-

its neighborhoods. The continued cooperation between the city, the county, and other local governments in the area will aid in that effort, said Gornto.

Being Hickory by Choice

No growth management plan is smart unless the citizens support it. Several years ago, through a process called Hickory by Choice, citizens in Hickory, North Carolina, gave serious consideration to how they wanted their community to look.[3] The plan, adopted by the Hickory City Council two years ago, emphasizes downtown revitalization, pedestrian-friendly streets, more mass transit, more open space, and neighborhood centers where people can live, work, and shop.

The City Center Plan, the initiative to restore Hickory's core, is a key element of Hickory by Choice. The plan, developed with tremendous citizen participation, calls for older business districts to become neighborhood service centers. It also envisions narrow streets with tree-lined sidewalks, apartments over shops, and traditional buildings on now-empty lots. Duany Plater-Zyberk & Company, known for its neotraditional planning efforts, helped develop the plans.

To carry out the plan, Hickory has rewritten its zoning codes to permit and encourage housing in its downtown areas and the redevelopment of older commercial areas for multifamily housing.

According to Tom Carr, Hickory's executive assistant for development, the downtown is ready for housing, although market forces will determine exactly when housing will be built.

Hickory took a major step last fall to make the downtown area more accessible and safe: it changed the city's grid of one-way streets to two-way streets. Carr explained that one-way streets were "late sixties or seventies traffic planning" designed to move more cars. The two-way streets provide better access to properties, are more pedestrian friendly, and slow traffic, Carr said.

There now is more interest in locating downtown. Renovations will turn a former grocery store into corporate offices,

though homeowners usually view this as good news, rapidly escalating housing prices make it difficult for the less affluent to enter the housing market. Often, it is not just the poor who have difficulty finding housing; schoolteachers, firefighters, police officers, and many middle-class workers also struggle to find adequate housing in the fast-growing areas where they work.

A variety of techniques are available to local governments to address affordable-housing concerns. Provision of public housing and housing assistance can aid the poor in securing shelter. Zoning can allow more multifamily housing in appropriate areas. Regulations that increase the cost of development can be carefully scrutinized to see if standards might be relaxed and the development-approval process for affordable housing streamlined.

Some communities have experimented with regulatory incentives for affordable housing. For example, if a specified proportion of a development will provide affordable housing, it becomes eligible for expedited permit processing or a density bonus.[10] Other communities move beyond incentives to inclusionary zoning mandates. Carrboro and Chapel Hill, for example, require that new residential developments above a certain size include a specified percentage of smaller houses. Communities in other states (Montgomery County, Maryland, for example) directly mandate that large residential developments include a minimum number of houses with sales prices that meet affordable-housing targets.

North Carolina cities and counties have the legal authority to undertake most of these initiatives. Although the public investment and regulatory incentive programs are on solid legal footing, how far local governments can go with regulatory mandates for affordable housing is unclear. To date, North Carolina courts have been wary of allowing land-use regulations to address socioeconomic concerns directly.[11] Still, securing adequate housing for all segments of the community and promoting geographic diversity for all segments of the housing market are legitimate governmental objectives. To the extent that large new commercial, office, or industrial developments create a need for additional affordable housing, it may well be constitutionally permissible to require the developers to assist in providing that housing through, for example, mandatory contributions to a housing trust fund. However, North Carolina statutes do not currently authorize such requirements.[12]

Employment and other linkage requirements. Unlike local governments in other parts of the country, local governments in North Carolina have infrequently used "linkage" requirements, which tie approval of development to the provision of jobs and services for disadvantaged members of the community. For example, a large commercial development might be required to employ a specified number of low-income residents during construction or as workers in the eventual business.

In North Carolina it is not unusual for a developer to offer such a plan voluntarily during the development-approval process, and for local governments to consider it informally as a factor in the potential community benefits of a project. However, the legality of requiring it is less clear. Although a local government may require that a developer address the impacts it is creating (for example, by helping the people who will work there secure public transportation or adequate day care), requiring that the developer provide jobs to a specified community likely goes beyond what a local government can legally mandate.

Planning and Intergovernmental Coordination

Local government planning is necessary to anticipate the impacts of growth and development, to secure broad public involvement in discussions of how best to deal with these impacts, and to know what management tools to use and how to employ them. Without adequate planning, the tendency is to lurch from crisis to crisis, always trying to catch up with worsening problems. Also, even if a sin-

and a federal agency is considering office space in the core.

The city is increasing its commitment to sidewalk construction throughout the community, setting aside $200,000 per year for that purpose.

In the planning stages is an "artwalk" to link cultural institutions with shopping and other attractions. Hickory has borrowed this idea from Asheville.

Another element in Hickory's growth management is incorporating transportation planning into land-use planning. Streets and roads being built need to accommodate the surrounding land uses. For example, Carr says, the city is working with Catawba Community College to ensure that new streets fit into the campus.

Citizens and visitors flock to Hickory's pedestrian mall during Oktoberfest.

Hickory leaders know that completion of Highway 321 to Gastonia will spur major development south of the city, and they are working to make sure that the growth is deliberate. At one new interchange just two miles from downtown, the city will encourage a connected center of employment, schools, parks, and the like through approval of water and sewer connections. "Being able to decide who can and who can't get water and sewer service will help us guide the growth into a community rather than something that looks like a jumble," Carr said.

Regional cooperation is evident in this area of North Carolina. Local governments are working with the private sector on air quality issues and on water quality planning for the Catawba River.

—Margot Christensen

gle local government is planning and managing its growth, some issues can be effectively addressed only through strong coordination and cooperation among neighboring units of government. Transportation, water quality, water supply, air quality, and habitat protection usually must be addressed regionally as well as locally.

North Carolina local governments have extensive authority to plan together and coordinate with one another. City planning programs were first authorized by statute in 1919, county planning programs in 1945. These statutes include broad authorization to create advisory boards, conduct studies, and prepare plans.

Comprehensive planning is entirely *voluntary,* however (except in the twenty coastal counties, where local land-use plans were mandated by the 1974 Coastal Area Management Act, discussed in the article on page 21). Also, even if local governments adopt a comprehensive plan, there is no state mandate that the local governments (or state agencies) follow the plan in their regulatory or public investment programs. Moreover, there are relatively few state financial incentives for local planning, such as priority access to state transportation or utility funding, though this has begun to change.[13]

The situation with intergovernmental coordination is similar. There is authority for *voluntary* interlocal coordination on planning and management issues. Regional planning commissions and councils of government may undertake cooperative planning efforts, but there is no mandate to do so.[14] The state is beginning to address individual growth management issues on a regional basis, such as regional transportation planning and water quality plans for river basins, but many of those efforts are still in the early stage of development. A critical question for North Carolina's smart growth efforts is whether to provide additional incentives or mandates for local planning and coordination.

Growth and Public Facilities: Impact Fees

It seems elementary that growth should lead to a larger tax base, more tax revenues, and more opportunity for a local government to provide and pay for the new public facilities that are needed. In areas of rapid growth, however, public revenues do not necessarily come in fast enough or in the right form to cover growing public costs. Rapid change can make it difficult for communities and their local governments to adjust. Several important tools of growth management influence the timing of growth and the financing of public facilities. Impact fees are one such tool.[15]

Impact fees, also known as facility fees or project fees, can best be thought of as exactions from developers because they are incident to the power of local governments to regulate the development of land. An "exaction" is "a condition of permission for development that requires a public facility or improvement to be provided at the developer's expense."[16]

The land and the improvements for streets, utility lines, recreation areas, and the like that developers have traditionally been expected to provide have been located on site because these exactions principally serve the residents or the users of the development. But many public facilities, such as arterial streets and community parks, serve far more than a single development. Exactions in the form of impact fees allow public facility costs to be more carefully and equitably apportioned throughout the planning area. Impact fees also can provide a more uniform approach to developer contributions because they apply to all development projects, not just those that are subject to regulation in the form of subdivision approval, special- or conditional-use permits, or site-plan approval.

Although the North Carolina General Statutes authorize various types of exactions from developers (particularly under the power to approve subdivisions), they do not include express enabling legislation for impact fees. As a result, several dozen North Carolina cities and counties have secured local acts authorizing the use of impact fees to provide for various types of public facilities.[17] Only a portion of the affected local governments have actually adopted fee ordinances. Some of these include Raleigh in 1987 (covering roads, parks, and greenways), Durham in 1987 (covering streets, parks and recreation facilities, and open space), and Cary in 1989 (covering roads).

Express enabling legislation authorizing impact fees for certain uses may not always be needed in North Carolina, however. The courts have held that North Carolina cities have the implicit authority to impose impact fees to fund capital improvements for water and sewer systems.[18] In addition, the North Carolina Supreme Court has held that municipal authority must be construed broadly and that cities have the power to charge user fees to recover the costs of reviewing land-development proposals.[19]

An essential ingredient—indeed, a constitutional requirement—of an impact fee program is that the use of the fees be adequately connected to public facility needs resulting from the development for which they are paid.[20] A local government first must show that the development will create a need for the new capital facilities. This is the so-called attribution principle. A second principle, proportionality, requires that the developer shoulder no more than its proportionate share of the needs created by the new development. The third principle, benefit, requires that the lands or the public facilities funded by the developer provide sufficient benefit to the development for which the fees were imposed. The collected fees must be earmarked to ensure that they are for the particular type of public facility for which they

Notes

1. Richard Sandomir, *Auto Racing: Race Car Paradise without Fumes,* THE NEW YORK TIMES, May 25, 2000.

2. The Main Street program seeks to revitalize downtowns by stimulating economic development in the context of historic preservation. It is administered by the North Carolina Main Street Center, which is part of the North Carolina Department of Commerce, Division of Community Assistance.

3. This story is based in part on Eleanore Hajian, *Growing into the Community That Citizens Want,* SOUTHERN CITY, Feb. 1999, at 1; *Strengthening the Core of Hickory,* SOUTHERN CITY, Mar. 1999, at 12.

The author is public affairs director at the North Carolina League of Municipalities. Contact her at mchriste@nclm.org.

were collected (for example, roads) and that the facility is geographically located close enough to the development to be truly beneficial. A corollary requirement is that impact fees be spent soon enough after they are collected to provide such a benefit.

Moratoria on Development

In some communities, planning and management programs that could have anticipated and dealt with the impacts of growth are not in place before the advent of rapid growth. In other communities the political will to do something about these impacts does not exist until the problems become severe and readily apparent. In either situation it takes time to put a smart growth program in place once a decision is made to do so. There are technical studies to conduct, plans to prepare, ordinances to craft, and funding to secure, all with substantial public discussion and debate. While this is taking place, the problems may worsen and become more difficult and expensive to fix.

One technique to maintain the status quo while management tools are developed and put into place is a moratorium on development. For example, a local government may put approval of new subdivisions on hold for six months while it prepares new design standards or crafts an adequate public facilities ordinance (discussed later in this article).

There is no explicit statutory authority for North Carolina cities and counties to adopt a moratorium, but they have the implied authority to do so under their zoning, subdivision, and general ordinance-making authority.[21] In the absence of an urgent public health or safety emergency, it is prudent for a local government to follow all the public notice and hearing requirements for zoning amendments when adopting a moratorium.[22]

To be valid, a moratorium should include the following features. It should be adopted only to address a real need that has been adequately documented. It should apply only to projects that affect the identified need. It should have an explicit duration that is reasonably limited to the time it will take the local government to address the needs that led to its imposition. Finally, the local government must actually initiate and responsibly pursue action to address those needs during the moratorium.

Permit Quotas

Another approach to influencing the pace of growth is to set a limit on the number of residential building permits that the local government will issue each year. The limit may be based on the average growth rates over some period before the most recent surge of construction activity. Some communities base the quota on the availability of key public facilities and services (for example, water supply) and the ability of the local government to expand them according to a schedule of construction during the planning period. Several prominent cities have instituted point systems or "merit systems" for allocating permits.[23] They rate proposed projects according to criteria such as the availability of public services, the quality of architectural and site design, and provisions for amenities such as pedestrian paths and special open spaces. Permit quotas fare reasonably well in the courts as long as the quota and permit allocation systems are an integral part of a well-conceived growth management plan and include no absolute caps on permits.

Urban Growth Boundaries

Urban growth boundaries are one of the most controversial growth management tools used by local and state governments. An "urban growth boundary" is a boundary line used to separate land that may be developed for urban purposes from land that may not. A local government designs such a boundary to accommodate the urban growth projected to occur in the area during the immediate planning period. Although an urban growth boundary may be adjusted from time to time, areas beyond the boundary are meant to remain rural or undeveloped. Such boundaries are generally intended to prevent urban sprawl, protect open space and agricultural land in rural areas, and enhance the vitality of downtowns, urban neighborhoods, and existing urban areas.[24]

A closely related concept is the "urban service area," a geographic area within which urban governmental services are being provided or will be provided within the immediate planning period and outside of which such services will not be extended. For several reasons, urban service areas are most closely associated with extensions of water and sewer services.[25] First, these utility extensions are major shapers of urban growth because they enable development at densities that could not be sustained otherwise. Second, municipalities, the local governments most likely to provide water and sewer services in urban areas, are generally authorized to do so in areas outside as well as inside municipal limits and may be the only public providers of utility service in areas on the urban fringe.

The establishment of an urban service area, however, is only one feature of a program to enforce an urban growth boundary. The integrity of an urban growth boundary also must be protected through policies governing other urban services (such as stormwater services, traffic control, and bus service), through local land-development regulations, and through policies governing annexation of land by the municipality. Most urban growth boundary programs are either based on intergovernmental agreements affecting the responsibilities of at least several local governments or adopted in response to mandates and incentives in state growth management programs. Generally at the heart of an urban growth program is a comprehensive land-use and public facilities plan that serves as its blueprint.

There are few examples of urban growth boundaries in North Carolina that have been used effectively. (For a discussion of the use of urban growth boundaries in other parts of the country, see the article on page 12.) One exception involves Orange County, Carrboro, and Chapel Hill. These units established a "rural buffer" around the two towns in the 1980s. The jurisdictions entered into an interlocal agreement concerning planning jurisdiction, adoption and enforcement of land-development ordinances, extension of water and sewer

Building Bridges—Another Tool for Local Governments

I support smart growth to create investments and housing in central city areas. But I also ask who will benefit from smart growth? Smart growth could create a nomadic poor. Too often the latest planning initiative does more harm than good for minority communities. Who can forget how urban renewal destroyed minority communities?

—Stella Adams, North Carolina Fair Housing Center[1]

Despite lingering concerns about the ability of smart growth programs to address economic and racial equity issues, advocates for low-income and minority communities are an often overlooked ally in communities' efforts to manage growth. Local governments can strengthen their planning for smart growth by helping to build bridges between community development advocates, or "community developers," and smart growth proponents.

The common ground between the two groups is not difficult to find. Both smart growth proponents and community developers readily agree that urban sprawl often has resulted in land use that is segregated by race and economics: the outer rings of communities tend to be more affluent and white; the inner rings, poor and minority. Further, both agree that the abandonment of city centers by industry and higher-income residents has devastated the segregated areas left behind.[2] Thus, both also agree that sprawl and the movement of capital from inner cities "are key points that must be addressed if we aspire to solve the paradox of great wealth and great poverty coexisting in our metropolitan areas today."[3]

Smart growth and community development principles lead to some of the same solutions for the problems of both disinvestment in inner cities and overinvestment in suburbs. These solutions include restoring and reusing existing buildings, reinvesting in existing infrastructure, developing infills, returning jobs to inner cities, improving public transportation, and reusing industrial brownfields.

Proponents of smart growth and community development arrive at the solutions from very different orientations, however. Smart growth proponents typically talk about sprawl in terms of the costs to those who have left city centers or to the community at large: expensive housing and poor quality of life in suburbia, and high infrastructure, transportation, energy, and environmental costs to the community.[4] Community developers focus on the concerns of those who remain in the cities: unemployment, poor schools, poor housing, environmental racism, and crime.

Neither group can solve the problems of its constituency in isolation. Suburbanites will not return to city centers unless the physical and social conditions are improved. Cities will not be able to address their problems fully without the resources of suburbanites. Together the two groups might have an unprecedented opportunity to transcend issues of race and class to craft solutions that address long-unmet economic, environmental, and social problems. Indeed, smart growth may have the greatest chance of sustained success if the planning process reflects a commitment to inclusiveness, diversity of participation, and equity.

On a statewide level, the two groups have begun to build a bridge. In September 2000 the North Carolina Community Development and Smart Growth Leadership Roundtable assembled for the first time to discuss the potential connection between smart growth initiatives and community development efforts. The opportunities for working together to control sprawl, redirect public and private investments into low-income and minority communities, and ultimately manage growth in the interests of the entire community were clear. Local governments encouraging this type of collaboration might begin by simply inviting community developers to participate in the local smart growth debate.

—Anita R. Brown-Graham

The author is an Institute of Government faculty member who specializes in community development and public liability. Contact her at brgraham@iogmail.iog.unc.edu.

Notes

1. Stella Adams, Executive Director, North Carolina Fair Housing Center, Presentation at the North Carolina Community Development and Smart Growth Leadership Roundtable, Durham, N.C. (Sept. 6, 2000).

2. Marc Seitles, *The Perpetration of Residential Segregation in America: Historical Discrimination, Modern Forms of Exclusion, and Inclusionary Remedies,* 14 Journal of Land Use & Environmental Law 89 (1998).

3. Charles M. Haar, Suburbs Under Siege: Race, Space and Audacious Judges 186 (1996).

4. *See, e.g.*, Real Estate Research Corp., The Costs of Sprawl: Environmental and Economic Costs of Alternative Residential Development Patterns at the Urban Fringe, Vol. 1, Detailed Cost Analysis; Vol.2, Literature Review and Bibliography (Washington, D.C.: U.S. Gov't Printing Office, 1974), which does not include any examination of sprawl's social effects, such as its impacts on cities.

lines into the area by the Orange Water and Sewer Authority, and annexation of territory on their fringes.[26]

Advantages and drawbacks. Urban growth boundaries can help steer development to delineated areas and prevent the costly overextension of public services. They have proven to be effective in protecting open space and agricultural land. They also offer the public a simple and understandable means of influencing growth patterns. Generally they benefit current urban residents and property owners.

Nonetheless, urban growth boundaries tend to drive up the price of real estate within the boundary, particularly if inadequate land is provided to accommodate growth there. Further, although

such boundaries are designed to encourage compact development, designated urban growth areas tend not to develop at the densities allowed, perhaps reflecting a market preference for lower-density development. This underdevelopment of existing urban areas tends to encourage more lenient designations of urban growth areas and adjustments to the boundary. Also, the use of urban growth boundaries can be undermined if surrounding jurisdictions allow urban development beyond the boundary, sometimes causing a leapfrog effect that results in development miles away.

Legal issues. The effective use of urban growth boundaries requires cooperation among local governments and, in many instances, regional agencies. Some effective programs rely on intergovernmental agreements initiated by the local governments involved. However, even if the local governments and service providers (such as private water companies and metropolitan sewer districts) bargain with one another in good faith, they may not contract away their legislative powers. For example, North Carolina local governments may not legally obligate themselves to rezone property, annex land, or accept streets at some future time. Legislation is needed to allow a local government to obligate itself in advance to conform its planning jurisdiction and annexation plans to a jointly established urban growth boundary and to amend its land-development ordinances in particular ways.

In addition, legislation is needed to ensure that state agencies that provide public facilities and services (for example, the North Carolina Department of Transportation) respect local and state growth plans in their siting decisions and that state agencies that authorize or regulate nonprofit and private service providers conform their permitting decisions to local plans and growth boundaries. It is no coincidence that many of the local units that employ urban growth boundaries are located in states in which the state legislature has directed local governments to carry out local growth programs that include the establishment of urban growth areas.[27]

A second set of legal issues concerns the legal authority of a provider of water or sewer service to decline to extend service into an area beyond the urban service area or urban growth boundary. North Carolina counties and cities operating water and sewer systems within city limits take on the special obligation of a public service corporation to provide equal service to their current and potential customers.[28] Once such a utility holds itself out as providing service in an area, it generally must serve those in the area who request it.[29] Refusal to extend service within those areas generally must be based on a utility-related reason, such as inadequate system capacity or inadequate financial resources to provide additional service. It is unclear whether a local government that does take on the special utility obligation of a public service corporation may refuse to extend service on the ground that doing so would be inconsistent with a growth management plan. Courts elsewhere have reached mixed conclusions.[30]

However, a North Carolina municipality has no obligation to furnish service outside its city limits and has broad discretionary power to determine whether and on what terms it does so.[31] Thus a North Carolina municipality may refuse to extend water or sewer service beyond an urban service area or urban growth boundary to the extent that such an area or boundary is located outside city limits.

Adequate Public Facilities Standards

Certain growth management techniques demand that a community measure the impacts of a project against its standards for public facilities. One of these techniques involves use of standards for development approval known as "adequate public facilities" (APF) standards.[32] The key feature and perhaps the prime virtue of an APF program is that it regulates the timing of development so as to prevent a community's growth from outpacing government's ability to provide necessary public facilities to serve that growth. It also funnels growth into the geographic areas that are more capable of handling new development. The APF criterion is that for a development project to be approved, the developer must show that public facilities have currently available capacity to accommodate the project or that such capacity will be available when the project is ready for occupancy. Because facilities must be provided concurrently with development, the APF criterion is sometimes known as the "concurrency" criterion.

North Carolina programs. APF programs are widely used in states like Florida and Washington, where concurrency is mandated; in states like Maryland and New Hampshire, where APF standards are expressly authorized by statute; and by a number of other local governments throughout the country. The three major APF programs in North Carolina make adequacy a criterion not only in rezoning decisions but also in various decisions related to project approval. In 1994, Currituck County adopted APF standards in its unified development ordinance for school, fire and rescue, law enforcement, and other county facilities. They apply to large residential subdivisions, multifamily residential developments, and other uses requiring conditional- or special-use permits. Cabarrus County's subdivision ordinance includes an APF standard for most of the facilities covered by Currituck's ordinance, but the standard applies only to residential subdivisions. Cabarrus County and the municipalities within it (Concord, Harrisburg, Kannapolis, and Mount Pleasant) are currently considering adoption of a unified development ordinance that calls for a far-reaching APF program. Cary's ordinance, adopted in 1998, includes APF standards for schools and roads and applies to all subdivisions and site plans.

Legal issues. Under current North Carolina enabling legislation, incorporating APF provisions into a municipal development ordinance appears to be permissible. City and county zoning statutes specifically mention that a purpose of zoning is to "facilitate the adequate provision" of various public facilities.[33] Whether such an ordinance is legally defensible, however, may depend on the justification for the ordinance, the types of development subject to the APF criteria, and the way in which the ordinance is linked to the local government's comprehensive land-use plan and capital improvement program. In the one North Carolina appellate court case involving review of an APF ordinance,

the court did not directly address the question of enabling authority but did uphold Currituck County's denial of a residential development because county schools were inadequate.[34]

Uncertainty about the provider. An APF program can result in some uncertainty about who will provide or pay for a particular street, utility extension, or park improvement. If a public facility is inadequate, the deficiencies can be remedied by either the government or, by implication, the developer. If the developer faces substantial delays, it may be inclined to make concessions to the regulating unit to move ahead, and agree to furnish more than its proportionate share of the costs of the required improvements. These concessions can prompt the local government to spend less on its capital improvement program.

Allocation of excess capacity. Like the use of a permit quota system (discussed earlier), the use of an APF program can result in an erratic pace of development as developers queue up to take advantage of excess capacity for a public facility before the capacity disappears. Most APF programs allow the allocation of excess capacity on a first-come, first-served basis.[35] If the community places a moratorium on applications, then the community may expect a flood of applications once facility capacity is expanded. In any case the pace of development and the rate at which development applications are received can be uneven.

Transfer of Development Rights

Traditional zoning ordinances and related ones controlling development often create uneven impacts on landowners. One way of evening out these impacts is to require all landowners who benefit from an area's development to pay the costs associated with the preservation and the protection of lands that arguably should not be developed. The advantage of such a program is that it allows the owners of land worthy of protection to enjoy economic benefits without having to develop the land and without the government having to purchase it. A transfer of development rights (TDR) program is intended to achieve these purposes.

Most TDR programs are closely associated with resource protection programs. One of the most prominent and long-lasting programs has been adopted in Montgomery County, Maryland, where development rights may be transferred from rural agricultural areas to urban areas just beyond the District of Columbia boundary. TDR programs also have been used to protect open space; to protect historic buildings and landmarks, as in Chicago, Denver, and New York City; to protect areas with critical environmental significance, as in the New Jersey Pinelands; and to protect natural-hazard areas from development.[36]

Concepts of property. TDR programs modify conventional property concepts in several ways. First, they divide "property" into two components: (1) the land itself and (2) the development potential or "development rights" associated with that land, usually measured in terms of the zoning and land-subdivision purposes allowed for the land. Second, they allow the development rights to be severed from the host parcel, thus allowing the rights to be bought, sold, taxed, and used as security. Third, they allow the rights to be acquired by the owner of land at another location and exercised to increase the permissible development at that new location.

The usual TDR approach requires identification of "sending areas"—areas in which property owners may sell development rights—and "receiving areas"—areas to which property owners may transfer development rights. Identifying the sending areas is relatively simple because these are the areas that a community generally is the most concerned about protecting. Identifying receiving areas is more difficult for both political and practical reasons. They are more suitable for intense development because of their location, the availability of public facilities such as utilities, and the community's overall development pattern. There is typically a conventional maximum density in the receiving areas, but that density may be exceeded by the importing of rights severed from land in a sending area.

Administration. Although the concept of TDR programs has been a topic

Without adequate planning, the tendency is to lurch from crisis to crisis, always trying to catch up with worsening problems.

of interest in the planning and legal communities for years, the programs themselves pose notoriously complex administrative problems. This accounts for their rather limited use. For a program to work, development rights must have value, and there must be a balance between sending and receiving zones. If too many development rights flood the market, the owners of the land being protected will be seriously disadvantaged. In addition, the jurisdiction in which the TDR program is used must include growing areas with a strong demand for intense development. If there is no market for intense urban uses of land (that is, high-density residential and compact commercial and office development), there will be little incentive for landowners in receiving areas to purchase development rights. Likewise there will be no market for such rights if the zoning rules in receiving areas allow landowners to develop land to its most profitable use without acquiring any additional development rights.

Legal issues. TDR programs were validated by the U.S. Supreme Court in the seminal case of *Penn Central Transportation Co. v. City of New York*. The city had designated Grand Central Station as a landmark and required all of its exterior alterations to be approved by a city commission. However, it accorded the owner, Penn Central, additional development rights that could be severed and transferred for use at a noncontiguous parcel. When Penn Central proposed to lease the air rights above the terminal for a high-rise office tower, the commission rejected the plans as being destructive of the terminal's aesthetic and historic features. The Court rejected Penn Central's claim that a taking had occurred, stating that although the availability of transferable development rights "may well not have constituted 'just compensation' *if* a 'taking' had occurred, the rights nevertheless undoubt-

edly mitigate whatever financial burdens the law has imposed. . . ."[37]

There is express enabling authority for North Carolina local governments to adopt a TDR program, but the circumstances under which the program may be used are limited. G.S. 136-66.10 and -66.11, adopted in 1987, allow a North Carolina city or county to provide "severable development rights" under its zoning and land subdivision ordinances if a landowner dedicates right-of-way for a new or widened thoroughfare shown on a thoroughfare plan. However, because these development rights are established only when a property owner makes a special form of road right-of-way dedication, the potential supply of development rights is too small to support a viable market. As a result, local governments have made virtually no use of this statute.[38]

Variations. There are several variations on the TDR theme. Perhaps the most conservative alternative involves transfer of development potential from one part of a zoning lot to another. If the less-developed area of the parcel is later subdivided and sold, then a conservation easement may be recorded that restricts the use of that area. For example, Winston-Salem is considering such an arrangement to encourage the transfer of development potential from flood fringe areas to "upland" portions of land parcels.

Conclusion

North Carolina cities and counties have substantial legal authority to enact smart growth programs. Although a few innovative tools may not be legally available, the smart growth toolbox for local governments is robust. Local governments can use a coordinated program of regulations, plans, and public investment strategies to reduce urban sprawl, protect the environment, and promote wider economic opportunities for their citizens. These programs can reduce the public and private costs of growth and promote the development (and maintenance) of the types of communities in which people want to live. The state does not mandate the use of any of these tools. The choice of whether and how to manage growth and how to coordinate efforts has largely been left to local governments. Charting how growth will be managed is in the hands of local citizens and their elected leaders.

Notes

1. The North Carolina Department of Transportation recently approved amendments to its rules to allow construction of narrower streets with on-street parking. These rules set the minimum standards for roads that are turned over to the state for maintenance and thus are very important design considerations for many county subdivisions.

2. Aesthetics is a legitimate basis for local regulation. State v. Jones, 305 N.C. 520, 290 S.E.2d 675 (1982) (upholding junkyard-screening requirement); A-S-P Assoc. v. City of Raleigh, 298 N.C. 207, 216 S.E.2d 444 (1979) (upholding historic district regulations). A few local governments in the state have regulatory appearance codes to prevent dilapidated commercial buildings in redevelopment areas or community entranceways. Others have aesthetic standards for new commercial developments. However, regulation of architectural details for residential development outside historic districts is generally left to private restrictive covenants rather than to governmental regulations (though local regulations in other states do prohibit homes that are either too uniform, or too dissimilar from neighboring homes).

3. Raleigh and the Manufactured Housing Institute recently cooperated in development of a demonstration house to illustrate affordable infill housing.

4. For additional information on community development corporations, *see* Anita R. Brown-Graham, *Thinking Globally, Acting Locally: Community-Based Development Organizations and Local Governments Transform Troubled Neighborhoods*, POPULAR GOVERNMENT, Winter/Spring 1996, at 2.

5. For details on these redevelopment options, see Richard Whisnant, *Brownfields in a Green State*, POPULAR GOVERNMENT, Winter 1999, at 2. The program is codified at N.C. Gen. Stat. § 130A-310.30 through -310.40 (hereinafter the North Carolina General Statutes will be referred to as G.S.).

6. Counties also may establish voluntary agricultural districts that limit water and sewer assessments for farmland and require special public hearings before condemnation of farmland. G.S. 106-735 through -743. Further, state law allows farmland to be assessed at agricultural rather than market value for property taxes and protects preexisting farms from nuisance suits. On the other hand, city and county authority to regulate subdivisions in agricultural areas is somewhat limited by the exemption of land divisions greater than ten acres from subdivision regulation (local governments may, however, establish minimum lot sizes greater than ten acres in appropriate rural-agricultural zoning districts).

7. Another possibility is to establish a program that facilitates sale or transfer of development rights, discussed later in this article.

8. The authority of local governments to "condemn" land (that is, to acquire it from an unwilling landowner by right of eminent domain) is more limited. In the smart growth context, this authority is generally available only for parkland and drainage projects. Local governments also can condemn land for streets and public utilities. Several local governments, including Asheville, Greensboro, Guilford County, High Point, and Raleigh, have secured local legislation authorizing condemnation for acquisition of open space.

9. The goal of protecting an additional one million acres of open space is codified at G.S. 113A-240 and -241.

10. For example, a zoning ordinance might provide that if a development will price at least 10 percent of its housing units at an "affordable" level, the development may have 10 percent more housing units than would be permitted otherwise.

11. For example, the court ruled that Chapel Hill could not use zoning to regulate the conversion of apartments to condominiums, holding that form of ownership was not a legitimate concern of land-use regulation. Graham Court Assoc. v. Town Council of Chapel Hill, 53 N.C. App. 543, 281 S.E.2d 418 (1981). The court invalidated a Harnett County rezoning that was based on concerns about crime (and allegedly the ethnicity of potential residents of manufactured housing parks), noting that, in zoning, it was arbitrary and capricious to consider impacts other than those on land use. Gregory v. County of Harnett, 128 N.C. App. 161, 493 S.E.2d 786 (1997).

12. Although such exactions would meet the constitutional requirement of being reasonably related to the impacts generated by the development approval, the more difficult question in North Carolina is one of statutory authority. Dedications can be required for streets, utilities, and recreational lands, and for construction of "community service facilities," but provision of affordable housing probably does not fit any of these categories.

13. G.S. 159G-10 provides priority funding under the Clean Water Revolving Loan and Grant Fund to local governments with comprehensive plans that protect existing water uses and ensure compliance with water quality standards. The statute gives even higher priority to local plans that exceed minimum standards and are being implemented. After July 1, 2001, local adoption of a flood-hazard ordinance (where applicable) also will be a factor in setting priorities.

14. For additional background on regional planning, *see* James H. Svara, *Regional Councils as Linchpins in North Carolina,* POPULAR GOVERNMENT, Spring 1998, at 21. Coordination of local planning has been a central feature of smart growth initiatives in many states.

15. For a fuller review of the topic, *see* JAMES C. NICHOLAS, ARTHUR C. NELSON, & JULIAN C. JUERGENSMEYER, A PRACTITIONER'S GUIDE TO DEVELOPMENT IMPACT FEES (Chicago: Planners Press, 1991); and DEVELOPMENT IMPACT FEES: POLICY RATIONALE, PRACTICE, THEORY AND ISSUES (Arthur C. Nelson ed., Chicago: Planners Press, 1988). For more on North Carolina's experience, *see* Richard D. Ducker, *Using Impact Fees for Public Schools,* 26 SCHOOL LAW BULLETIN 1; William R. Breazeale, *Raleigh's Facility-Fee Program,* POPULAR GOVERNMENT, Fall 1989, at 2.

16. Batch v. Town of Chapel Hill, 92 N.C. App. 601, 613, 376 S.E.2d 22, 26 (1989), *rev'd on other grounds,* 326 N.C. 1, 387 S.E.2d 655 (1990), *quoting* Richard D. Ducker, *Taking Found for Beach Access Dedication Requirement,* LOCAL GOVERNMENT LAW BULLETIN No. 30, at 2 (1987).

17. Unless otherwise noted, the following acts authorize the affected local governments to adopt fees for (1) streets, roads, and related improvements; (2) parks, open space, and recreational facilities; and (3) stormwater and drainage facilities. 1985 N.C. Sess. Laws ch. 357: *Carrboro* (not open space or recreational facilities); 1985 N.C. Sess. Laws ch. 498, as amended by 1987 N.C. Sess. Laws ch. 514: *Raleigh*; 1985 N.C. Sess. Laws ch. 536, as amended by 1988 N.C. Sess. Laws chs. 986–988: *Kill Devil Hills, Kitty Hawk, Manteo, Nags Head,* and *Southern Shores* (fire stations, city administration buildings, and emergency refuge shelters); 1986 N.C. Sess. Laws ch. 936: *Chapel Hill*; 1986 N.C. Sess. Laws ch. 936: *Hillsborough*; 1987 N.C. Sess. Laws ch. 460: *Chatham County* (water and sewer also); 1987 N.C. Sess. Laws ch. 460, as amended by 1991 N.C. Sess. Laws ch. 324: *Orange County* (water and sewer also); 1987 N.C. Sess. Laws ch. 460: *Pittsboro*; 1987 N.C. Sess. Laws ch. 705: *Hickory* (water and sewer also); 1987 N.C. Sess. Laws ch. 801: *Cary* (roads only); 1987 N.C. Sess. Laws ch. 802, as amended by 1989 N.C. Sess. Laws ch. 476: *Durham*; 1988 N.C. Sess. Laws ch. 996: *Rolesville* (water and sewer, and schools); 1988 N.C. Sess. Laws ch. 1021: *Catawba County* (emergency medical facilities, fire stations, schools, cultural facilities, libraries, and solid waste facilities); 1989 N.C. Sess. Laws ch. 430: *Knightdale*; 1989 N.C. Sess. Laws ch. 502: *Wake Forest* (same as Catawba County); 1989 N.C. Sess. Laws ch. 606: *Zebulon*; 1989 N.C. Sess. Laws ch. 607: *Southern Pines* (water and sewer also); 1991 N.C. Sess. Laws ch. 660: *Dunn*.

18. South Shell Investment v. Town of Wrightsville Beach, 703 F. Supp. 1192 (E.D.N.C. 1988) (finding authority in public enterprise statutes, G.S. 160A-313, -314), *aff'd,* 900 F.2d 255 (4th Cir. 1990). Virtually identical statutes apply to counties. G.S. 153A-276, -277.

19. Homebuilders' Ass'n of Charlotte v. City of Charlotte, 336 N.C. 337, 442 S.E.2d 45 (1994) (finding authority in zoning, land subdivision control, and other development-control enabling statutes), *rev'g* 109 N.C. App. 327, 427 S.E.2d 160 (1993). *See also* River Birch Assoc. v. City of Raleigh, 326 N.C. 100, 388 S.E.2d 538 (1990) (holding that, like other local governmental powers, power to require land dedication under subdivision ordinance must be construed broadly).

20. The test adopted in North Carolina and certain other states is the "rational nexus" test, which consists of the three principles discussed in the text. *See* Batch v. Town of Chapel Hill, 92 N.C. App. 601, 376 S.E.2d 22 (1989), *rev'd on other grounds,* 326 N.C. 1, 387 S.E.2d 655 (1990); Franklin Road Properties v. City of Raleigh, 94 N.C. App. 731, 381 S.E.2d 487 (1989).

21. For more detailed background on the legal issues involved in development moratoria, *see* David W. Owens, *Land-Use and Development Moratoria,* POPULAR GOVERNMENT, Fall 1990, at 31.

22. A two-month moratorium on building permits for projects inconsistent with the land-use plan was invalidated for failure to follow these procedural requirements in Vulcan Materials Co. v. Iredell County, 103 N.C. App. 779, 407 S.E.2d 283 (1991).

23. Perhaps the best known of these systems, from Petaluma, California, was upheld in Construction Industry Ass'n of Sonoma County v. Petaluma, 522 F.2d 897 (9th Cir. 1975), *rev'g* 375 F. Supp. 574 (N.D. Cal. 1974).

24. *See* V. GAIL EASLEY, STAYING INSIDE THE LINE 2 (Planning Advisory Serv. Report No. 440, Chicago: American Planning Ass'n, 1992).

25. Many growth boundary programs also include an urban expansion or reserve area beyond the urban service area or urban growth boundary where services will be phased in during the latter portions of the planning period. The urban growth boundary thus is located at the farthest edge of the urban expansion or reserve area, not necessarily at the urban service boundary.

26. Because the agreement limits the powers of the three units, they sought and obtained local legislation specifically authorizing the agreement's provisions (1987 N.C. Sess. Laws ch. 233). For a discussion of the agreement, *see* Richard D. Ducker, *The Orange County Joint Planning Agreement,* POPULAR GOVERNMENT, Winter 1988, at 47.

27. *See, e.g.,* Washington Growth Management Act (codified in large part as WASH. REV. CODE ANN. ch. 36.70A).

28. Fulghum v. Town of Selma, 238 N.C. 100, 76 S.E.2d 368 (1953).

29. Whether service must be extended is distinct from who will pay for the extension.

30. *Compare* Dateline Bldrs. v. City of Santa Rosa, 194 Cal. Rptr. 258 (Cal. Ct. App. 1983) (holding that refusal of city to provide service because project was outside growth area as designated by city-county growth management plan, was necessary and proper exercise of city's police power), *with* Robinson v. City of Boulder, 547 P.2d 228 (Colo. 1976) (holding that city was obligated to extend service despite city's determination that development in area would conflict with city-county growth management plan).

31. *Fulghum,* 238 N.C. 100, 76 S.E.2d 368; Atlantic Constr. Co. v. City of Raleigh, 230 N.C. 365, 53 S.E.2d 165 (1949).

32. For a fuller discussion of APF standards in the context of state and local growth management, *see* STATE AND REGIONAL COMPREHENSIVE PLANNING: IMPLEMENTING NEW METHODS FOR GROWTH MANAGEMENT (Peter A. Buchsbaum & Larry J. Smith eds., Chicago: American Bar Ass'n, 1993). *See also* S. MARK WHITE, ADEQUATE PUBLIC FACILITIES ORDINANCES AND TRANSPORTATION MANAGEMENT (Planning Advisory Service Report No. 465, Chicago: American Planning Ass'n, 1996).

33. G.S. 160A-383; G.S. 153A-341.

34. Tate Terrace Realty Investors v. Currituck County, 127 N.C. App. 212, 488 S.E.2d 845 (1997).

35. An alternative system used in Ramapo, New York, was upheld in Golden v. Planning Board of Town of Ramapo, 285 N.E.2d 291 (N.Y. 1972). It was based on a comprehensive plan for the development of all land in town according to an eighteen-year capital improvement program. A developer could obtain a development permit by acquiring a designated number of points based on the availability of five essential services, not all of them controlled by the town.

36. For a comprehensive review of TDR programs throughout the country, *see* RICK PRUETZ, SAVED BY DEVELOPMENT: PRESERVING ENVIRONMENTAL AREAS, FARMLAND AND HISTORIC LANDMARKS WITH TRANSFER OF DEVELOPMENT RIGHTS (Burbank, Cal.: Arje Press, 1997).

37. Penn Central Transp. Co. v. City of New York, 438 U.S. 104, 137 (1978) (emphasis added).

38. The existence of these statutes may by implication serve to prevent local governments from adopting TDR programs that are not otherwise expressly enabled. Provisions that would have authorized the town of Huntersville to establish a TDR program were deleted in conference committee from House Bill 684 in the 2000 session of the General Assembly.