

Standards for Extending Extra-Territorial Jurisdiction: Written in Black and White?

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The following article examines the public outcry surrounding one town's attempt to establish an extra-territorial jurisdiction (ETJ). Most towns easily establish ETJs with little or no resistance. In contrast, when the predominantly minority Town of Green Level attempted to use this common planning tool, it faced inordinately strong and negative public resistance. The author addresses each of the arguments made by members of the public against Green Level's proposed ETJ, and finds that each argument is unfounded. In the end, she finds, the only difference between the Town of Green Level and its neighbors, who were allowed to extend ETJs, is that of racial composition.

The predominantly-minority Town of Green Level in Alamance County is trying to reserve room for growth and diversity, as many towns in the county are growing so fast that many now abut each other. The Town has initiated an extra-territorial jurisdiction (ETJ), establishing the right to zone neighboring rural parcels and eventually incorporate them into itself. Some of the neighbors, however, have objected to the Town's plans and have prevailed upon the County to stop Green Level.

Seven municipalities in Alamance County already have an ETJ.¹ However, the Alamance County commissioners, who happen to be all white, are making history by attempting to create a new rural overlay district that would block the predominantly-minority town of Green Level from establishing its own ETJ.² Although the population of Green Level makes up only 1.6% of Alamance County's total population, the tiny Town is fighting the County for its right to plan for its own future.

A look at the populations of the town and the surrounding area shows that the town and the rest of the County are almost identical in most respects (education, income, commute to work, percentage on public assistance, home ownership patterns, size of homes, etc.). However, three distinct differences remain: density, mobile homes, and race. Green Level is predominantly African-American (74%), though the County is predominantly white (75%) (See Map 1). While opponents of Green Level's ETJ frame this issue as a con-

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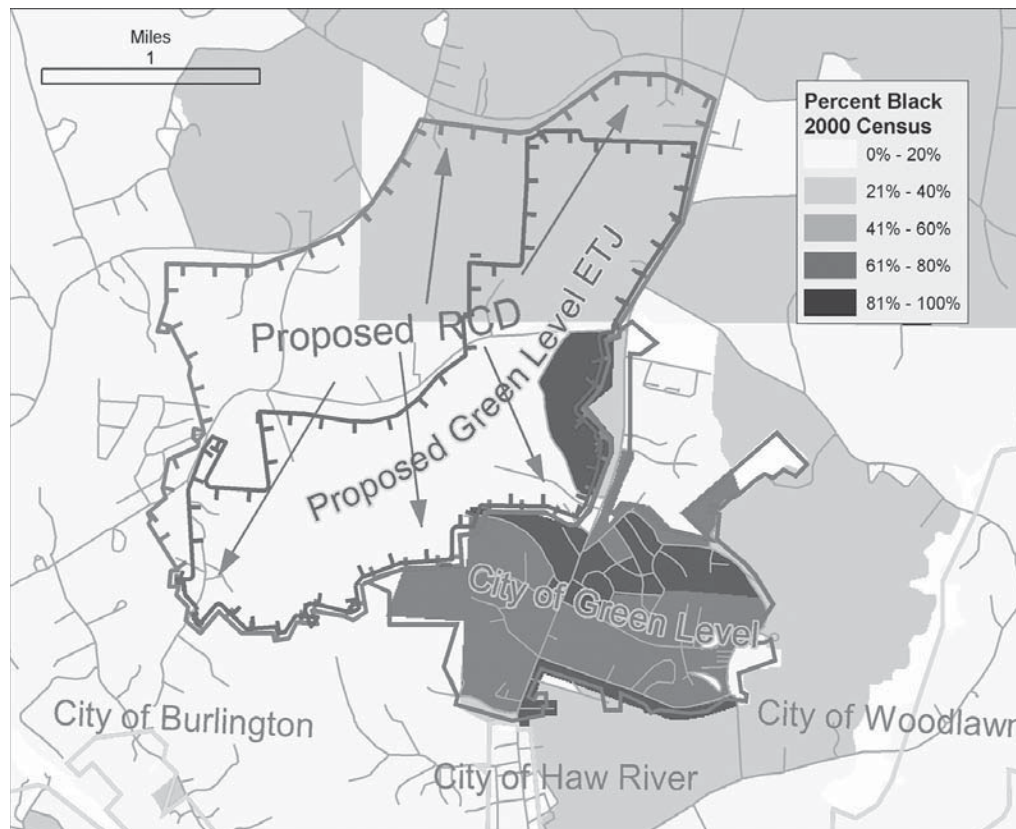
flict between “the city” and “the country,” an analysis of community characteristics, the County’s actions, and the opponents’ complaints suggest that the real story is fundamentally about race. This racial dynamic makes this a potential civil rights issue that sets an important precedent for Alamance County and for the state of North Carolina.

ETJs, most towns in North Carolina have taken advantage of the statutory authority to exercise extraterritorial zoning.³ A 1995 North Carolina League of Municipalities survey indicated that 89% of larger towns and 68% of municipalities the size of Green Level (1,000 to 2,500 people) have ETJs. In designing ETJs, towns may exclude areas if they are separated from the city

by barriers to growth; as an example, Green Level elected to exclude the Water Quality Critical Area surrounding Graham-Mebane Lake (formerly Quaker Lake) from its ETJ.

Why Might Green Level Need an ETJ?

According to the US Census, the population of Alamance County grew by more than 20% from 1990 to 2000, and is projected to increase by 8.6%, to 142,008, between 2000 and 2005. This growth, and the proximity of the towns in Alamance



Map 1. Racial Composition of Alamance County

What is an ETJ?

Extraterritorial Jurisdiction (ETJ) is a zoning “overlay” that allows a town to zone areas outside of its limits in order to plan for future growth. In North Carolina, the state gives municipalities broad powers to control planning and growth for up to three miles beyond their borders (up to one mile for smaller towns like Green Level). NC General Statute §160A-360(b) provides that the area must be based on “existing or projected urban development and areas of critical concern to the city, as evidenced by officially-adopted plans for its development.” While smaller towns are less likely to have

County, together with the concomitant expansion of the towns—especially Haw River—and their ETJs dictate that any town that wants to grow in the future must stake out the right to grow now, before another town expands into that territory. In fact, this has already occurred. The town of Haw River notified Green Level on April 16, 2004 that it intends to expand its ETJ, “especially since some properties have recently been annexed into the city limits, thereby expanding our ETJ capabilities.”⁴ In the same letter, Haw River went on to request that Green Level “reschedule the community meeting and public hearing regarding ETJ until we can further discuss this matter.” Green Level declined.

According to Quentin McPhatter, the Green Level Town Administrator, the town wanted to build economic and racial diversity into its future, an accepted strategy for attracting growth. According to James Johnson Jr., Kenan Professor of Management at the Kenan-Flagler Business School at the University of North Carolina at Chapel Hill, “the ability of cities to thrive and compete...depends on the willingness of communities to respond positively to growing diversity in demographics and lifestyles.”⁵ The North Carolina Human Relations Commission, part of the NC Department of Administration, has a slide show about diversity, which states “when a community develops positive inter-group relations, it has an advantage in attracting investment.” The challenge for Green Level is that the Town is 86% minority and has almost no non-residential tax base, in a county that is 72.5% white.

In an effort to improve Green Level’s quality of life, the town has applied for a US Post Office and a polling place for elections, according to Town Manager McPhatter. In both cases, the requests were turned down because the proximity to other locations made an additional location in Green Level “not economically feasible.”⁶ According to Alamance Board of Elections representative Kathy Holland, “expenses [for a polling place] would include the cost of advertising and the cost of notifying the voter. The positions at the polling places on Election Day are paid positions; however, the amount paid is minimal...”⁷ In addition, according to Senator Elizabeth Dole’s office, the Burlington Post Office (eight miles away) and the Haw River Post Office (two miles away) provide “convenient access.”⁸ Essentially, the Town’s efforts to provide more services for its populace have been stymied by its size and low tax rate.

Growth and diversification would help solve both these problems, but Green Level is bounded to the east by the Water Quality Critical Area and to the south by Haw River and the Town of Haw River’s ETJ. Making mat-

ters more difficult, on April 5, 2004, the Town of Haw River voted unanimously to extend its own ETJ out to the 1-mile limit to all surrounding areas that are not already zoned—further reducing the land available for Green Level to annex.

Precedent

There are ten municipalities in Alamance County, and all but three—including Green Level—have an ETJ, according to County Planning Director Craig Harmon. When creating ETJs, “some towns asked [the County for permission], some didn’t,” Harmon said, and the County has never moved to stop or preclude a town from establishing or extending an ETJ prior to this time.

In the case of Green Level, however, the County has taken a completely different approach.

Unprecedented Opposition

When the town sent out letters to property owners to prepare them for the ETJ extension, many of the neighbors immediately objected. While vocal objection to proposed annexation is common, it is rare to encounter significant objection to proposed extension of ETJ because most people do not know the implications or consequences of an ETJ. In this case, however, neighbors to the northeast mounted a vigorous campaign in opposition to the proposed ETJ, placing anti-ETJ signs in their yards and initiating a petition drive to let their Commissioners know of their complaint. They described the fight as countryside versus town, a common approach in ETJ extensions.

In response to these complaints, the County Commission held a public hearing at its regularly scheduled Commission meeting on April 19, 2004, during which the Commission discussed a Watershed Protection Ordinance Amendment. In this hearing, both the “countryside versus city” theme and thick racial tension were clearly on display, as described by *The Alamance News* (April 22, 2004):

“People on both sides of the conflict have seen the cultural and racial divisions that, they say, exist in this County emerging in this debate, pitting the ‘farm people’ in the Alamance countryside against a small town with an overwhelmingly black population.... About 85 residents were crammed into the Commissioner’s meeting chamber, while dozens more stood in the hall and spilled into the adjacent County Manager’s suite....

According to the minutes, County Planner Craig Harmon “stated a group of citizens presented a petition to the Planning Board asking the County to help in their effort to keep Green Level from extending an Extraterritorial Jurisdiction (ETJ) into their area of the County.” County resident Jerry Rudd, candidate for the NC House of Representatives, “presented petitions with 554 signatures of residents and church members in the affected area. He stated that 146 letters were mailed, and 90.2 % signed in favor of the RCD. He stated the citizens asked the County for zoning because they like the rural setting and do not think the Town of Green Level has anything to offer that would enhance their property or their lives. Several members of the audience spoke in favor of the Ordinance Amendment, noting that the Watershed Protection Ordinance was set up to protect the water and to prevent towns from encroaching on the lakes. Some of the comments were that people want to live in a rural setting, not a town; that Green Level cannot control what it has; and that Green Level has nothing to offer except taxes.

....[R]acial undertones were also easy to detect in the events at [the April 19] meeting. The case against Green Level’s plans was made mostly by white residents who were clustered along the chamber’s back wall or sat on the left side of the room. Whenever one of Green Level’s detractors made a punchy rejoinder, this whole side of the chamber broke into applause. Meanwhile, a few rows, filled with black faces, watched the whole hearing in silence from the right side of the room..... In the end, the County’s all-white board of commissioners voted against Green Level’s request.”

Despite this decision, the Town of Green Level decided to fight on with its plans for extending its ETJ, which triggered additional public opposition. In early June, the Concerned Citizens Against ETJ Expansion Committee called an “emergency meeting” for June 15, 2004 to “discuss our options and generate some funds to help in our legal battle with the Town of Green Level on this issue.” Jerry Rudd and another resident of Green Level’s proposed ETJ then filed for an injunction to stop Green

Level from extending its ETJ. Almost simultaneously, the Town filed suit against the County for a declaratory judgment in order to determine who currently has jurisdiction—the town or the county.

In the midst of this flurry of legal activity, racial tensions continued to flare. On July 3, a citizen sent the following email to Green Level’s Town Manager:

“To: qmcphatter@greenlevelinc.com.
Sent: Saturday, July 03, 2004 7:42 AM

Town has never been much except for an infrequent stop for side road chicken and Mcbroom trash [early garbage pickup business, based in Green Level community]. No fire dept. has ever been spotted there. Keep pushing for that ETJ and maybe you can get the Pleasant Grove Fire dept. under your jurisdiction. Major obstacle to that will be the locals who know all too well what the Green Level intentions really are.

You really need to be able to provide some kind of service for them. Maybe put up one stoplight to lend credibility to city. At least one!!! Tear down those old buildings along 49 and try to keep those drunk residents from stumbling along 49 after midnight. Rumor has it that the recent grant money from the government financed a whale of a nice party for village fathers. The Hispanic population most closely hold [sic] the same values as present day Green Level residents and would assimilate into your culture more easily than those good old boys down the road who bristle at your ETJ proposal. In fact, if the plan for the ETJ had been fully explained as a tax and control method for Green Level village to eventually control the Pleasant Grove fire dept. it would be an easier pill to swallow. So, get a stoplight, provide some kind of service, be upfront, clean up that 49 highway trash, and realize that oil and vinegar can never mix and life will be more peaceful in Green Level. Which by the way is a much nicer name than Rubeedoo...”

There is no one in the Alamance phone book by the name in which the email was signed and there was no response to an email inquiry to the sender, so these comments cannot be explained.

Unprecedented County Response

In order to fully understand the racial dimensions of the Commission's decision, it is important to more closely study the reasoning the Commission gave in support of its decision and to examine the ways in which that decision completely broke with past precedent.

First, it appears that the Commission acted beyond its authority in prohibiting Green Level from expanding, and did so because of concerns over public opposition to the ETJ. The April 22, 2004 issue of *The Alamance News* quoted two Commissioners regarding the lack of precedent for the objections. Commissioner Larry Sharpe (up for re-election) said, "This is the first time we've had many people oppose an ETJ...." Commissioner W.B. Teague said, "I have never received a phone call, in my 17 years sitting in this seat, over any ETJ issue." Commissioner Sharp also commented, "I understand that the only way to expand [the ETJ] is if the community asks for it." According to state statute, however, this is not true—residents should have no say in whether or not they become part of an ETJ.¹⁰ Moreover, a town must ask permission of the County only in those cases where the County has already zoned the area in question.

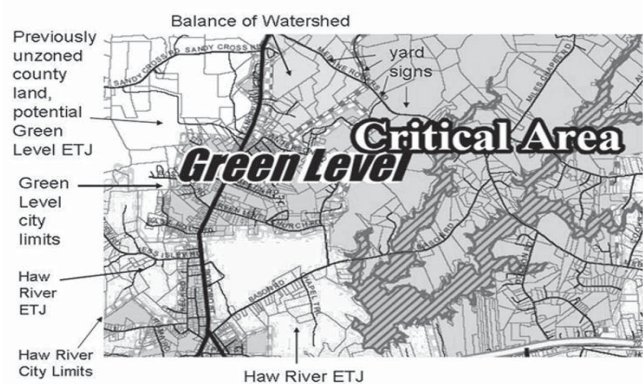
Additionally, Green Level and the County have a basic disagreement concerning the County Watershed Protection Ordinance, which, prior to the Watershed Protection Ordinance Amendment, only applied "within the areas designated as a Public Water Supply Watershed by the NC Environmental Management Commission (EMC) and ... defined and established on the maps entitled, "Watershed Protection Map of Alamance County, North Carolina." In order to support its claim that this document is a zoning ordinance, the County amended the Ordinance to replace the language that restricted it to the management of the water supply.¹¹ The use of a watershed ordinance for zoning purposes is unprecedented, according to Green Level Town Manager McPhatter and the town's attorneys. The distinction is

important, because without current zoning in the area, Green Level does not need to obtain permission from the County to extend an ETJ.

In effect, the County Commission was attempting to claim that its current Watershed Protection ordinance was actually a zoning ordinance. This position is somewhat ironic given the Commission's historical and ongoing opposition to zoning, opposition voiced as recently as June 19, 2004. During this particular meeting of Southern Alamance residents to consider zoning, Commissioner Teague "said he was worried about a 'bureaucrat' from Graham [the county seat] telling the County's farmers what to do," according to the *Burlington Times-News*. "I don't think you're going to find many full-fledged farmers.... [t]hat are going to be for zoning," Teague said. "As the Board of Commissioners stands now, there are probably not enough votes on the five-person board to pass zoning. Commissioners John Patterson, W.B. 'Junior' Teague and Bill Lashley have all come out against it in the past." But yet, when it came to Green Level, the Commission eagerly embraced the expansion of zoning tools.

Checking the Facts

Green Level's neighbors and the County Commissioners have couched the dispute in terms of "city versus country" and a lack of value to the "countryside." As part of this central argument, opponents of Green Lev-



Map 2. Proposed Green Level ETJ and Watershed Land

el's new ETJ made several points, and this article will consider the validity of these points.

Countryside versus City

The demographic characteristics of the residents of Green Level and the residents of Alamance County are similar in all but three areas: race, percentage of mobile homes, and lot size (density). This difference in density is the very core of the difference between town and country, and the reason that the state instituted extra-territorial jurisdiction zoning. Thus, for the County to attempt to deny the Green Level an ETJ without a long-term plan or a study of the area to be zoned—while abstaining from such action when other towns in the County extended similar zoning—appears to be an action based on race.

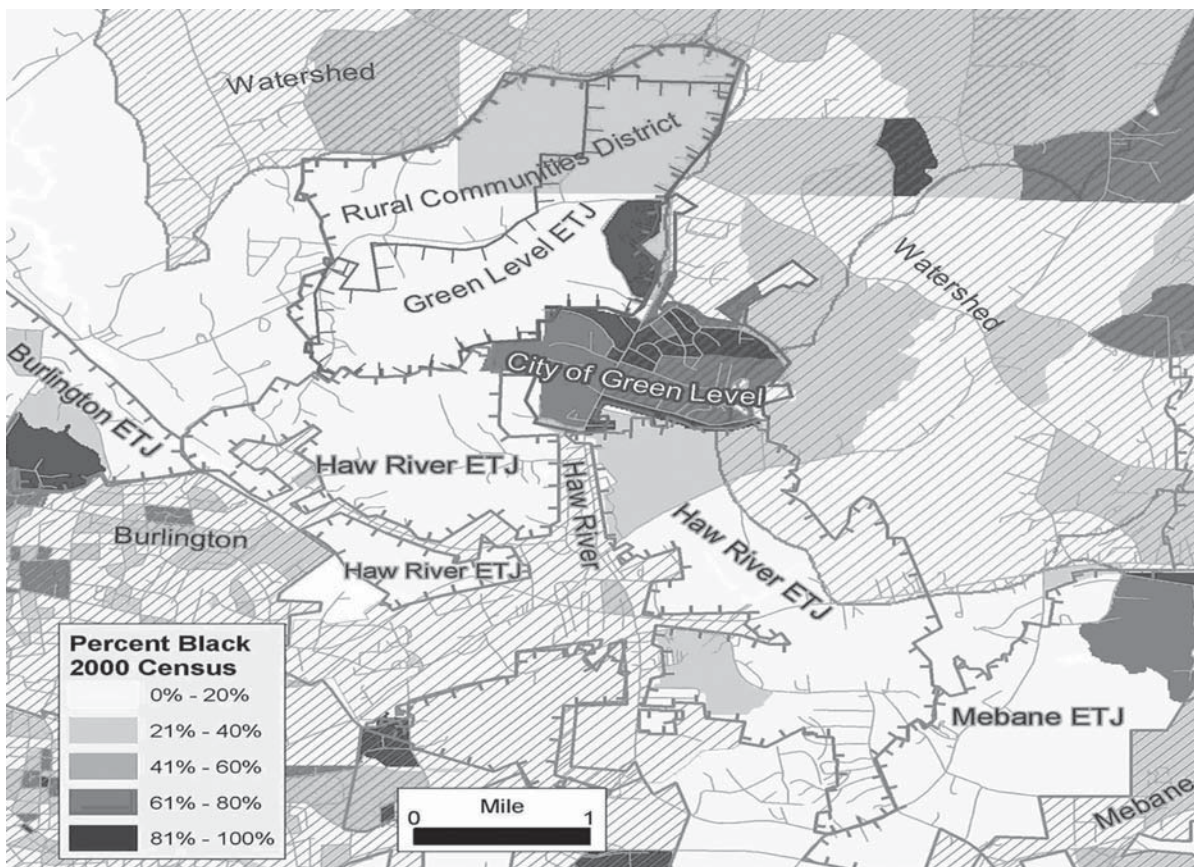
ETJs exist for the logical extension of growth and planning for towns into the countryside. While Green Level

has not yet extended its boundaries, it is a new town, incorporated only in 1990, and its strategic plan calls for growth. That growth is greatly limited to the south by the town of Haw River, whose city limits and ETJ bound Green Level, and to the east and northeast by the Mebane-Graham Lake's Water Quality Critical Area (WQCA) and Balance of the Watershed (BAL). As stated above, Green Level initially intended to extend its ETJ to the north and east as well as to the west—the land to the south is already taken by the town of Graham and Graham's ETJ—but decided to exclude the Watershed land. (See Map 2.)

Map 3 shows how the County's amended Watershed Ordinance and the Rural Communities District it created fit within the current watershed.

Opponents' Petition

An "Agenda Item Profile," prepared by the County



Map 3. New Rural Communities District

Planning Department and presented to the Commissioners at the April 19 hearing, stated, “This action follows a petition signed by a vast majority of the owners in this area.” The petition stated, “We the citizens of Alamance County, listed below, do hereby petition the Alamance County Commissioners to zone our property in the manner in which it is being used—agricultural, residential and heavy industry. This request is a vol-

the area that Green Level designated for its ETJ, and about 20% live in other jurisdictions, including Burlington, Haw River, other ETJs, and some out of state jurisdictions. Map 4 shows the location of the signers’ residences.

While opposition leader Jerry Rudd claimed “554 signatures of residents and church members in the affected



Map 4. Residences of petition-signers. Note how many lie outside the proposed Green Level ETJ.

untary zoning request.” This petition asking for zoning is unusual, as rural residents often oppose zoning since it restricts use of their land. In addition, though the petition requests that the County “zone their property,” about half of the petitioners lived on land already “zoned” by the current Watershed Ordinance prior to its amendment.

Moreover, geocoding the addresses of the petition’s signers reveals that most of the signers do not live in

area,” the petition actually consisted of 206 signatures, of which two individuals signed for two churches: Deep Creek Baptist Church, claiming 150 members, and Long’s UCC Chapel, claiming 145 members. Deep Creek Church, at 1923 Deep Creek Church Road, is not in the proposed ETJ and has an unlisted phone number. A conversation with a Long’s Chapel church member, who asked not to be identified, said that he thought that most people sign a petition as a favor for those who ask, and that many do not understand all of the issues

surrounding the situation.

Of the 206 actual signatures on the petition, 20 are off of this map, and 11 of those are out of the County entirely. Though the Commissioner's statement that the petition was "signed by the vast majority of owners in this area" may be accurate if applied to the greater County area, many of the signers do not actually live in the affected area, and most do not live in the area that Green Level has selected for its ETJ.

Services

When an area becomes part of a town's ETJ—prior to annexation—the town may begin to offer services to property owners. Usually, however, extension of services follows annexation, and the services offered vary significantly across the state. Green Level's opponents argue that the town provides inferior services to its existing residents, and that those in the proposed ETJ area do not want to have to pay for those inferior services.

Jerry Rudd, presenting a petition from opponents, complained to the Commissioners that "Green Level has nothing to offer except taxes." County resident Ray Cobb, candidate for County Commissioner, spoke dismissively of the Town's services at the Commission meeting, saying, "What in my lifetime can they possibly do to benefit me in the county? Maybe they'll put speed bumps on [NC Hwy.] 49. Maybe, if I'm lucky, some day, I can get sewage out of my faucet." The *Alamance News*, reported Cobb as saying that the biggest difference between Green Level and other area towns is the level of service that other communities provide residents of their ETJs, and that Green Level relies on a "rent-a-cop" for its policing.

Are these complaints valid? While larger towns and cities usually provide their own safety officers, many municipalities contract out services like solid waste collection and treatment and recycling. Municipalities, both large and small, "outsource" and "privatize" these

public services, and others negotiate with other governments to realize economies of scale. It is common for smaller towns to have the county perform building inspections for them, and even zoning enforcement and planning, according to David Owens of the UNC-CH Institute of Government. Some small towns have the regional COG do permit administration. Solid waste and recycling trucks owned by Waste Management, Inc., are a common sight in Piedmont North Carolina. Like many small towns, Green Level has purchase agreements for many of its basic services.

A brief survey of Alamance County reveals this to be standard practice. In Alamance County, Mebane and Graham jointly own a reservoir and water treatment facility. Mebane has a contract with the Efland Fire Department to cover part of its area in Orange County. The City of Burlington GIS Division serves as the "GIS Department" for the City of Burlington, the City of Graham, and the Town of Elon by the terms of the recently approved Regional GIS Agreement. Burlington and Alamance County share an animal shelter. Burlington and Graham outsource their MPO contract to Mobility Solutions. The Town of Alamance has a contract with the City of Burlington to receive fire and police protection. In addition to selling its water to Green Level, Graham also sells water to Swepsonville. Swepsonville receives fire and police protection from Graham. The Town of Ossippee has a contract with the County Sheriff's Department for police protection. The City of Burlington provides water for the Town of Gibsonville.

These are but a few of the inter-governmental agreements and private purchasing contracts in this area. It would seem then that the question is not how the town provides the services, but what services the town provides. According to Green Level Town Manager, the Town currently offers the following Services:

- *Water*: Through a purchase agreement with the City of Graham.
- *Sewer*: Through a wastewater agreement with

- Town of Haw River; it is treated in Burlington.
- *Solid Waste and Recycling Service*: Through contracts. Note: Green Level is one of the few municipalities that provides free weekly curbside service or monthly bulk pick-up.
- *Law Enforcement*: Through a law enforcement agreement with Alamance County, signed in December, 2003. Officers operate from donated office space in the Green Level Town Hall.
- *Street Lighting*: The Town pays for 118 street lights throughout the Town.
- *Street Maintenance*: The Town maintains streets within the City Limits and constructs new streets and improves current streets—paving and adding curb and gutter—each year. Currently, the Town is paving Florence Road and Otter Creek Trail, providing both curbs and gutters.
- *Fire Protection*: The Town of Haw River provides fire protection for the Town.
- *City Park*: Matching funds from NC Parks and Recreation Trust Fund, the Town has appropriated \$250,000 to create a 10-acre City Park next to Green Level's Town Hall. The park will include a baseball/softball field, a rectangular multi-use field, a volleyball court, a paved walking track, two horseshoe pits, three playground areas, and a covered picnic area.

Water Quality

According to The Alamance News, County Commission Candidate Ray Cobb “alleged a history of contamination with Green Level’s water system, which he said is reason enough to impose county zoning on outlying areas. ‘They got a letter from the North Carolina Department of Environment and Natural Resources concerning their water,’ he explained. ‘It’s not safe to drink the water down there.’” Cobb expressed the concerns of many people regarding problems that Green Level has had with “dingy water.”

When asked about “sewage” coming from Green Level

taps, Lee Spencer of the North Carolina Department of the Environment and Natural Resources Public Water Supply Section, said, “I don’t think that’s true.” Spencer explained, “Last fall, there were several complaints about the water. Last fall, there was at least one—maybe two—water line breaks. That’s not uncommon for any system. Green Level had to turn off their whole system because there were not enough valves to turn off a small section. That’s being fixed now.” The water was dingy because “when a system’s water is turned off, the pressure increases all at once when it’s turned back on and it scours the distribution water lines.” This can cause residual rust and mud to make the water murky. According to Green Level Town Manager McPhatter, the critical improvements will be completed by the end of June, 2004, with additional valves being added over time.

As it turns out, Green Level’s water comes from the City of Graham, and Green Level is at the end of the line. Spencer explained that this can cause higher levels of “disinfection by-products.” While no bacteria have been found in Green Level’s water, Graham has received an exclusion from the Environmental Protection Agency’s limit on disinfection by-products. When the City of Graham expanded its water plant in 2003, it put in a chloramination system, so “from now on, this should no longer be an issue. Green Level has good chlorine residuals.” Regarding actual sewage from a tap, Spencer said that, to his knowledge, this has never happened in North Carolina. “You might get a smell of sewage out of a tap, that (the smell) is actually coming through the v-trap under the sink, from an improperly-plumbed or missing v-trap, or the presence of a vacuum in the trap.”¹¹

Without water from a public system, like Green Level’s, County residents must rely on well water for their homes. According to the 2000 Healthy Alamance Survey, “about half of the 120,000 residences in Alamance County depend on groundwater for their drinking water. About 500 new wells are constructed each year in the

County. Since 1990, newly constructed wells in Alamance County have been sited and inspected by environmental health specialists, but even though the wells are being sited and inspected now, about 20% are found to have polluted water after the first water samples are tested.”¹² In the 2001 calendar year, the State Laboratory conducted microbiological analyses on 888 water samples from wells in Alamance County. Of these, 240, or 27%, showed the presence of bacteria. In 2002, analyses were performed on 1,013 samples from private wells, with 283 or 28% testing positive for “total coliforms” or *E. coli*. The geographic distribution of the samples positive for total coliforms or *E. coli* is shown in Table 1.¹³

City and ZIP Code	Zip Code	No. Samples	No. Positive	% Positive
Burlington	27215	47	12	25.5
Burlington	27216	0	0	0
Green Level	27217	70	13	18.6
Elon	27244	29	8	27.6
Graham	27253	60	10	16.7
Grover	28073	0	0	0
Haw River	27258	10	3	0.3
Liberty	27298	18	4	22.2
Mebane	27302	24	6	25
Saxapahaw	27340	0	0	0
Snow Camp	27349	36	11	30.6
Sweptonville	27359	0	0	0
No ZIP specified		719	239	33.2
TOTAL		1013	283	28

Table 1: Private wells testing positive for total coliforms or *E. Coli*, by Zip Code, Alamance County (2001-2002)

According to this data, the Alamance County areas, designated by ZIP code, with 25% or more of tested wells with positive analyses were Elon, Mebane, and Snow Camp. The highest percentage of positives pertains to a large number of samples for which no specific ZIP code was given in the analysis report. Graham and Green Level had the lowest percent of contaminated wells in 2002. Green Level had a contamination average of 18.6%, versus the County average of 28%—in spite of the fact that Burlington and Green Level had the highest level of testing in the County, for all areas with a specified zip code.

Additional data from the NC Division of Water Quality Incident Management Data shows 47 incidences of ground water contamination “incidents” in Alamance County in the three years from 2000-2002. None of these occurred in Green Level. The North Carolina Division of Water Quality Incident Management Office keeps track of leaks and spills of chemicals that present risks to health. The majority of the incidents in Alamance County appear to be underground storage tank (UST) leaks. It should be noted that even “old” incidents can be significant because many of the materials may persist in the environment for years, and, through leaching, find their way into ground water that animals and people contact or consume.¹⁴ According to this data, it can be easily argued that Green Level’s critics are mistaken in their criticisms of the Town’s water quality.

Sewer

One of the accusations made against Green Level by residents of the proposed/new ETJ was that the town experienced significant sewer spills that damaged the watershed, with particular mention of a spill this past spring into Otter Creek, which drains into Graham Mebane Lake, their drinking water reservoir. A March 8 email from Jenny Freeman, NC DENR Winston-Salem Regional Office, Division of Water Quality, Water Quality Section, to McPhatter stated: “....As we discussed...our office received two complaints from concerned citizens regarding your last sewer overflow at the Otter Creek pump station. I assured them that it had been reported and was only 7,500 gallons, not reaching surface waters.” Sewage overflows can thus be ruled out as a significant problem.

Taxes

In presenting his petition, Rudd commented, “Green Level has nothing to offer except taxes.” Neither taxes nor services automatically accompany ETJ extension, but if a Town involuntarily annexes an area, the Town must provide services thus subjecting the area to the

Town’s tax rate. In the case of Green Level, Table 2 shows the tax rates and populations of the municipal and county governments in Alamance County grouped by tax rate.

Municipality	Tax Rates per \$100 Valuation	Population
Ossipee	\$0.05	996
Sweepsonville	\$0.09	922
Alamance	\$0.24	310
Green Level	\$0.25	2,042
Elon	\$0.37	6,783
Haw River	\$0.45	1,908
Mebane	\$0.47	7,284
Graham	\$0.48	12,833
Gibsonville	\$0.52	4,372
Burlington	.50+.16 downtown	44,917
Alamance Co.	\$0.52	130,800

Table 2. Tax rate by municipal jurisdiction and population

Green Level has the lowest tax rate in the county for a town its size, and its utility rates are also low. Most recently, in May, 2004, the Town’s application to the Clean Water Management Trust Fund for a \$513,000 grant to improve its wastewater infrastructure was rejected because the agency felt that the town had not maximized the monies it could get from its own fees for service. According to McPhatter, “This grant did not require a match and it was hoped that this funding would help the Town repair sewer lines that are between 30-40 years old. Repair of aging lines is imperative for the Town since inflow and infiltration from rain and other sources increase the sewer flow, thereby increasing the amount of money the Town must pay Haw River for wastewater.” The Town was “encouraged to reapply when the water and sewer rates are complementary with HUC’s [high unit costs].”¹⁵ The Town has spent \$20,000 within the last three years to obtain grant funding for water/sewer projects and has committed \$10,000 for the coming fiscal year for grant applications, according to McPhatter. Taxes and fees can be ruled out as a serious problem for those living in the ETJ.

Characteristics of Town and County Residents

In 2000, Green Level residents comprised 1.6% of the

Alamance County’s population of 130,800.¹⁶ Interestingly, the characteristics shared by the citizens of Green Level and the citizens of the County as a whole are more notable than their differences.

The economic status of the groups is not markedly different. While there are more higher-income residents in the County as a whole, the majority of both groups are solidly middle class, making between \$35,000 and \$99,999 (62% for the county, 61.4% of Green Level). The median household income for both groups is in the \$30,000s—approximately \$39,000 for the County and \$32,000 for Green Level. Most households earn this money through work, with 79% of County households receiving wages or salaries and 85% of Green Level households. Only 2 to 3% of either group receives public assistance.

The median year houses were built shows little difference in the age of the housing stock, although those in Green Level are somewhat newer (1981 versus 1974). In both cases, more than half the houses have been built since 1970 (56% for the county versus 69% for Green Level). While the County has more two-bedroom homes and Green Level has more three-bedroom homes (56% versus 47%), the County had more four-bedroom homes (9% versus 7%). Less than 2% of both groups had five or more bedrooms. Almost all houses have complete plumbing facilities (more than 99% of both groups).

There is a difference in family composition, with more married couples in the County (76%) than Green Level (57%). That difference is primarily made up of “single female head of household” (18% of the county, 33% of Green Level), while Green Level households are more likely to be employed than similar County households (74% versus 66%). Of the households headed by single men, there is no significant difference in employment status: those in Green Level are just as likely to be employed (71%) as those in the county (73%).

The median age of residents of both groups is similar: 36.3 years for the County versus 34.6 years for Green Level, while the median age for the state is between the two: 35.3 years. The age distribution of Alamance County differs slightly from Green Level’s age distribution. Alamance County has a larger proportion of adults of retirement age than the town, but a smaller proportion of children. Both groups have a similar proportion of adults of working age (62.1% versus 61.5%). 6.4 % of County residents are under age 5, versus 6.7% of Green Level residents. 23.8 % of County residents are under age 18, versus 27.9% of Green Level residents. 14.1 % of County residents are over age 64, versus 10.4% of Green Level residents.

Educational attainment for both groups also shows some similar characteristics. While more of the County residents have a B.A., the percentage of those holding other degrees is very similar:

Educational Attainment	Alamance County	Green Level
High school graduate (includes equivalency): male	29.60%	39.40%
High school graduate (includes equivalency): female	32.60%	38.70%
Associate degree: female	7.70%	5.90%
Doctorate degree (female)	0.40%	0.30%

Table 3. Education attainment. Comparison of Alamance County and Green Level

The commuting patterns for both groups are almost identical:

Commute Time To/From Work	Alamance County	Green Level
Less than 30 minutes:	74%	75%
30 to 44 minutes:	16%	17%
45 to 59 minutes:	6%	5%
60 or more minutes:	4%	3%

Table 4. Commuting patterns. Comparison of Alamance County and Green Level

Housing characteristics are also similar. Most houses in both groups are owner-occupied: 70% for the county and 78% for Green Level. Vacancy rates for both groups are similar, with Green Level’s somewhat higher (89% versus 93%), and similar levels of these vacant houses abandoned (15% of the county’s and 11% of Green Level’s vacant houses).

The great majority of both groups’ households are comprised of 1 to 4 people (92.4% of the county’s and 86% of Green Level’s households). While the County has more smaller houses (1-4 rooms), the majority of both groups’ houses have five or more rooms (70% of the County vs. 74% of Green Level). The median number of rooms for both groups is almost identical (5.2% versus 5.1%).

The type of housing shows some major differences, with 15% of County households living in duplexes

or apartments, versus 2.2% of Green Level households. The greatest difference in housing composition is the percentage of mobile homes, which comprises 15% (8,493) of the County’s housing

stock and 46% (382) of Green Level’s. This is not especially something the town has encouraged or allowed, as the census tracts that Green Level lies in contained 727 mobile homes in 1989—before Green Level’s incorporation, when the County held complete jurisdiction. Note that the census areas are larger than the town of Green Level, and contained 646 mobile homes in 2000, again pointing out the similarity of Green Level to its neighbors.¹⁷

Lot size is a major difference; Green Level lots are smaller than the average County lot, although not smaller than the average lots of other towns in the

County. As Commissioner W. B. Teague said at the County’s public hearing on amending the Watershed, “I have never received a phone call in my 17 years sitting in this seat, over any ETJ issue.” With all these similarities between the Town and County and the relative lack of controversy over previous ETJ extensions, what is different about this case?

According to the November 2003 Alamance County Community Health Assessment Final Report, “Among all of the locations in Alamance County for which census data is collected, Green Level is the only place that has a majority black or African-American population.” The Census data presented in Table 5 bears out the unique racial profile of Green Level.

Municipality	% White	% Black	% Hispanic
Burlington	66.3	25.1	10.1
Graham	72.9	21.6	10.1
Mebane	77.4	17.5	5.2
Haw River	89	6.2	6.8
Gibsonville	80.2	15.5	2.7
Elon	87.6	10.2	1.6
Swepsonville	94	3.8	1.8
Alamance	97.1	1.3	0.3
Saxapahaw	81.2	13.4	6.2
Green Level	14.7	73.4	13.5

Table 5. Racial composition of municipalities in Alamance County

Jurisdiction, Timing and Authority

Beyond these differences, the County also handled the case very differently than past ETJ extensions. Green Level first took up the subject of ETJ extension in 1991, soon after its incorporation. At that time, the Council voted to direct the planning board to “proceed immediately with a study of ETJ...”¹⁸ Unfortunately, this study was interrupted by a death on the Planning Board.

Green Level voted to extend an ETJ on August 14, 2003.

According to McPhatter, the Town sent out courtesy letters to the property owners November 26. On December 13, 2003, the Town received a letter from County Attorney advising that the statute “implies directly that any municipality wishing to extend its ETJ must first get the approval of the county.” On January 6, 2004, Green Level’s Town Administrator and Town Attorney met with the County’s attorney and “pointed out that they read the statutes differently and noted that the town is not required to ask for permission for ETJ where the watershed does not exist.” The next day, according to McPhatter, the Town contacted Elon, Mebane, and Village of Alamance, and “learned that they did not ask for the County Commissioners for permission prior to obtaining ETJ.”¹⁹

In response to the complaints they were hearing, the Commissioners took action that broke precedent. At their regular meeting on April 5, 2004, the County Commissioners set these public hearings for April 19: A Scattered Site CDBG; Economic development for a local firm; Amending the Watershed Protection Ordinance; and Amending the Road Naming Ordinance. The Commission also considered 21 other issues. None dealt explicitly with Green Level or a Rural Communities Zoning District designation. According to McPhatter, “there was no public mention of it at the meeting. I was in attendance at this meeting and the public hearing date was approved under the consent agenda at the 4/5/2004 meeting.” At a Special Board meeting held later the same morning, the Board heard a report from Planning Director Craig Harmon, which outlined concerns for the coming year and the need for a Comprehensive Land Use Plan, and this report did not mention Green Level or the need for a “Rural” designation. Harmon reported that this meeting concerned only fiscal year 2004/2005, and that the Green Level matter was current business.

On April 19, 2004, the Commissioners voted unanimously to amend the Watershed Protection Ordinance as a method of zoning the land around Green Level. If the courts determined that this was the equivalent of a zoning, then it meant that Green Level must get permission from the County to extend its ETJ and the Town of Green Level would have to decide whether to challenge the legality of the County's action by filing a lawsuit. Or, since Green Level went ahead and approved its ETJ, the County may elect to file suit against Green Level to declare the town's action invalid. The question of each jurisdiction's authority in this case is unclear. According to North Carolina Institute of Government attorney David Owens: "This question does not have an absolutely clear answer as far as I know."

The timing of the County's action "appears to be motivated by the fact that [the applicable state statute] says that towns don't have to seek permission from the County to extend an ETJ if there's no zoning ordinance," according to Eric Braun, an attorney hired by Green Level. Braun faults the County's action for being "written without having a study of whether or not this should be done," according to *The Alamance News*.

Neither the minutes of the Alamance County Commissioner's January, February, and March meetings, nor the minutes of the County's Special Meeting held on April 5, 2004—characterized by County Planning Director Harmon as concerning only the coming 2004/2005 budget year—mention the Watershed Amendment, zoning the area around Green Level, or Green Level's ETJ. Yet the County Planning Board considered the Amendment to the Watershed Protection Ordinance earlier in April and recommended approval. In spite of the County's action, "The Green Level Town Council held a public hearing to consider establishing the ETJ and the application of Green Level zoning classifications to the affected properties on Thursday, April 22, 2004," according to *Green Level Online*.²⁰ "... [T]he Town Council voted 4-1 to adopt the ETJ Boundary Ordinance and

application of Green Level zoning classifications to the affected properties."²¹ On June 18, 2004, Green Level filed suit against the County for a declaratory judgment to decide the issue. The speed with which the County acted to halt Green Level's actions may have precluded a thorough look at the situation, but the facts may receive a thorough airing in the court.

Conclusion

Our study finds that Green Level's attempt to extend an ETJ does not differ substantially from similar efforts by other towns in the County to expand their ETJs. In fact, the only major discrepancies appear to be related to differences in living conditions in Green Level. Specifically, there are three major differences between the citizens of the town and those who oppose a Green Level ETJ:

1. As with most towns when compared with rural areas, Green Level's housing pattern has higher density than exists in the surrounding area;
2. The town contains a higher percentage of mobile homes than does the surrounding area, though these were present before the town's incorporation, when the County controlled land-use; and
3. Green Level is predominantly African-American (74%) and Latino (13.5%), while the County is predominantly white (75%). The Town of Alamance has a higher percentage of land under its jurisdiction in its ETJ than Green Level proposes, but it encountered no County opposition, and, notably, the Town of Alamance is almost entirely white.

Since ETJs were instituted by the state to accomplish exactly what Green Level is trying to accomplish, we must conclude that the extreme opposition by County citizens who do not live in the proposed ETJ—and the reaction of the County Commissioners to pre-empt that ETJ—appears to be motivated by race.

Who can help with these issues?

The UNC Center for Civil Rights, based out of the UNC-Chapel Hill Law School, is an organization broadly committed to improving social justice and advancing the civil rights of minorities and other groups whose rights have been marginalized. Through research and outreach, the Center connects communities with current legal and academic resources for addressing social justice-related planning issues. Focusing its efforts on communities in the American South, the Center has helped a number of municipalities grapple with difficult topics, such as ETJ issues, voting rights, income tax credit programs, and poverty concerns. Its expertise in these areas can provide planners with valuable insights, options, and action steps for addressing the specific problems facing their communities.

To learn more about the UNC Center for Civil Rights, please visit its website at <http://www.law.unc.edu/civilrights>. For specific information regarding social justice planning issues, please contact Anita Earls at earls@email.unc.edu.

Endnotes

¹ Harmon, Craig, Alamance County Planning Director, interview by Ann Moss Joyner, May 13, 2004.

² Accessed online at <http://www.alamance-nc.com/commissioners/index.html>.

³ Owens, David. (1998). *Extraterritorial Zoning Authority*. Chapel Hill: Institute of Government, The University of North Carolina at Chapel Hill.

⁴ Letter from David Beal, Haw River Town Manager to Quentin McPhatter, Green Level Town Manager.

⁵ Accessed online at <http://www.usc.edu/schools/sppd/lusk/press/item>.

⁶ McPhatter, Quentin. (2004, May 10). Email from Kathy Holland, email from Kathy Holland of Alamance

County Board of Elections.

⁷ Joyce, Bob. (2004, June 15). Email from Bob Joyce, Professor of Public Law and Government, UNC Institute of Government.

⁸ McPhatter, Quentin. (2004, May 27). Letter from David Fields Sr., Sen. Dole's office.

⁹ McPhatter, Quentin, July 3, 2004.

¹⁰ NC General Statute §160A-360.

¹¹ Alamance County Board of Commissioners. (2004). Agenda Item Profile for Public Hearing, April 19.

¹² Alamance County Health Department. (2003, November). Final Report, Alamance County Health Assessment. accessed online at <http://www.alamance-nc.com/healthed/assess.htm>.

¹³ North Carolina State Laboratory for Public Health. (2004, July 25). Accessed online at <http://204.211.171.13/EnvironmentalSciences/Microbiology/TestResult.asp>.

¹⁴ Alamance County Community Health Assessment Final Report. (2003, November). Data from the NC Division of Water Quality Incident Management Data, Wilmington Regional Office. Accessed online at <http://gw.enhr.state.nc.us/database/gwdata2.htm>.

¹⁵ McPhatter, Quentin. (2003). Letter from Bill Holeman, Exec. Dir., Clean Water Management Trust Fund, May 11, 2003.

¹⁶ All demographic statistics in this report are taken from US Census 2000, Summary File 1.

¹⁷ Block Groups 1 and 2, Census Tract 212.01, Alamance County, North Carolina: comprising the area from NC 49 to Sandy Cross Road to the Haw River to Haw River/Hopedale Road to Keck Road to Isley Road, and from Mebane Rogers Road to Bason Road to Back Creek to NC 49.

¹⁸ Town of Green Level, "Minutes of Town Meeting", January 31, 1991 and February 14, 1991.

¹⁹ McPhatter, Quentin, interview by Ann Moss Joyner, April 3, 2005.

²⁰ Accessed online at <http://www.greenlevelinc.com/jobs.html>.

²¹ *Ibid.*