

Mayor, and Council Members

I am writing to follow up on my comments at tonight's meeting regarding the current composition of the Foxfire Planning Board and to clearly place the relevant data and statutory basis into the record.

Current Planning Board Structure

- 5 total members
 - 4 Village residents
 - 1 ETJ resident

While I appreciate the service of all current members, the existing structure raises concerns regarding proportional representation of residents who are subject to Foxfire's planning and zoning authority.

Our population has grown significantly since Foxfire adopted the current board structure. That data below is the latest census data and frankly is 5-years old and not factoring even more growth.

Population Data (Best Available Public Sources)

Based on the most recent official and estimated data:

- Foxfire Village (corporate limits):
 - 2020 Census: 1,288 residents
- Foxfire ETJ (estimated):
 - Approx. 900–1,000 residents
 - This estimate is derived from census tract data covering the Village and surrounding areas, less the official Village population. GIS data collection off residents within ETJ areas.

This places the approximate population split at:

- Village: ~55–60%
 - ETJ: ~40–45%
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Statutory Requirement

North Carolina General Statute §160D-307 requires that when a municipality exercises extraterritorial planning jurisdiction:

- ETJ residents must be represented on the planning board, and
- That representation must be proportional to the population “as nearly as practicable.”

While the statute does not mandate a precise mathematical formula, it does require a good-faith effort to avoid token or illusory representation.

Why the Current 4/1 Structure Is Problematic

- ETJ residents represent approximately 40–45% of the regulated population, but only 20% of the board
 - A single ETJ member can be:
 - Outvoted on every matter
 - Absent, resulting in no ETJ representation at all
 - This creates both perception and legal risk, particularly for zoning or development decisions affecting ETJ property owners
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Recommended Structure

To better align with population reality and statutory intent, I believe the most appropriate, relevant, logical, and defensible structure is:

A 7-member Board

- **4 Village representatives**
- **3 ETJ representatives**

This structure:

- Reflects population proportions more accurately
 - Preserves a Village majority
 - Eliminates token representation
 - Aligns with common best practices across North Carolina municipalities
 - Reduces procedural and legal vulnerability
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Closing

My intent in raising this issue is not to criticize current members, but to ensure that Foxfire's planning process is:

- Statutorily compliant
- Fair to all residents subject to regulation
- Defensible if challenged
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- Provides a stronger perspective base for planning and recommendations to the council for stronger informed decision making

I respectfully request that this issue be reviewed further, with consideration given to expanding the Planning Board to better balance Village and ETJ representation.

Thank you for your consideration.

Kevin Robbins

Current Foxfire UDOs Regarding Boards:

- **Sec. 2-156. - Composition.**

The planning and zoning board shall consist of five members. A quorum shall consist of three members when all five seats are filled or on occasions when there is one vacant seat on the board. On occasions when there are two vacant seats on the board a quorum shall consist of two members. In accordance with **G.S. 160A-362**, the membership shall be proportioned between resident property owners from within the corporate limits of the village, and from resident property owners from the one mile area outside the corporate limits of the village where zoning jurisdiction is allowed (extraterritorial jurisdiction area), **in accordance with the population ratio. A minimum of one member shall be from the extraterritorial jurisdiction area and an additional member from the extraterritorial jurisdiction area shall be appointed for each full fraction represented by the ratio of the extraterritorial jurisdiction area population to the village population multiplied by the total membership of the board.**

As of the date of this amendment, based on the most recent census, four of the members of the board shall be resident property owners from the village and one member shall be a resident property owner from the extraterritorial jurisdiction area. **The population ratio between the village and the extraterritorial jurisdiction area shall be recalculated at least on every federal census,** and more often if significant population shifts have occurred, and adjustments shall be made to the board membership as required; provided, however, changes in membership shall be made only as existing membership terms expire.

The resident property owner from the extraterritorial jurisdiction area shall have equal rights, privileges, and duties with the other members of the board, regardless of whether the matters at issue arise within the village or within the extraterritorial area.

(Ord. No. 2015-03, § 1, 6-9-2015)

- **Sec. 2-157. - Appointment and terms of members.**

(a) The village council shall appoint the members from within the corporate limits of the village. The county board of commissioners shall appoint the member or members from the extraterritorial area. If the county board fails to make such appointment within 90 days after receiving a resolution from the village council requesting that an appointment be made, the council may make the appointment.

(b) Appointments shall be made for staggered terms of three years, but members may continue to serve until their successors have been appointed. Initially, two members who

reside in the village shall be appointed for three-year terms, one member who resides in the village and one member who resides in the extraterritorial area shall be appointed for two-year terms, and one member who resides in the village shall be appointed for a one-year term.

(c) Appointments to fill vacancies created by members who resign or are otherwise unable to complete the terms of their appointments shall be for the unexpired portion of the terms.

(Ord. No. 2015-03, § 1, 6-9-2015)

Sec. 2-170. - Creating the board of adjustment.

There shall be and is hereby created a board of adjustment (hereinafter called the board) consisting of five members.

(a) Composition of board and appointment of board members;

(1) In accordance with G.S. § 160A-362, the board membership shall be proportioned between resident property owners from within the corporate limits of Foxfire Village (the village), and resident property owners from the area outside the corporate limits of the village where zoning jurisdiction is allowed (extraterritorial area), in accordance with the population ratio. A minimum of one member shall be from the extraterritorial area, and an additional member from the extraterritorial area shall be appointed for each full fraction represented by the ratio of the extraterritorial population to the village population multiplied by the total membership of the board.

(2) As of the date of this amendment based on the 2010 census, four members of the board shall be resident property owners from the village and one member shall be a resident property owner from the extraterritorial area. The population ratio between the village and the extraterritorial area shall be re-calculated at least following every federal census, and more often if significant population shifts have occurred, and adjustments made to the board membership as required; provided, however, changes in board membership shall be made only as existing membership terms expire. An alternate member may be appointed by the council to serve in the absence or unavailability of a member. Alternate members may be appointed to a three-year term.

(3) The members from within the corporate limits of the village shall be appointed by the village council. The members from the extraterritorial area shall be appointed by the Moore County Board of Commissioners. If the county board fails to make such appointment

within 90 days after receiving a resolution from the village council requesting that an appointment be made, the council may make the appointment.

(4) Appointments shall be made for staggered terms of three years, but members may continue to serve until their successors have been appointed. Initially, two members who reside in the village shall be appointed for three-year terms, one member who resides in the village and one member who resides in the extraterritorial area shall be appointed for two-year terms, and one member who resides in the village shall be appointed for a one-year term.

(5) Appointments to fill vacancies created by members who resign or are otherwise unable to complete the terms of their appointments shall be for the unexpired portion of the terms.

(6) The resident property owner from the extraterritorial jurisdiction area shall have equal rights, privileges, and duties with the other members of the board, regardless of whether the matters at issue arise within the village or within the extraterritorial area.

(b) Meetings and rules of the board of adjustment;

(1) The board of adjustment may adopt rules to implement performance of its duties in accordance with the provisions of this ordinance and the General Statutes of North Carolina.

(2) Meetings of the board of adjustment shall be held at the call of the chair, who shall be chosen by its own members, and at such other times as the board itself may determine.

(3) A vice-chair shall be elected by the board members from among its regular members. The vice-chair shall act as chair in the absence of the chair, and at such times shall have the same powers and duties as the chair.

(4) The chair, or (in his absence) the acting chair may administer oaths and compel the attendance of witnesses subject to and in accordance with the provisions of **G.S. § 160A-388(f)**.

(5) All meetings of the board of adjustment shall be open to the public.

(6) At all meetings of the board, a secretary (duly appointed by the board of adjustment, from its own members) shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or if failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the village clerk, and shall be a public record.

(7) As provided in **G.S. § 160A-388(e1)**, a member of the board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(8) The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority.

(9) As provided in G.S. § 160A-388((e2), the board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the village clerk. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(Ord. No. 2015-05, § 1, 6-9-2015)

§§ 160A-360 through 160A-459.1: Repealed by Session Laws 2019-111, s. 2.3, as amended by Session Laws 2020-3, s. 4.33(a), and Session Laws 2020-25, s. 51(a), (b), (d), effective June 19, 2020.

§ 160D-307. Extraterritorial representation on boards.

(a) Proportional Representation. – When a city elects to exercise extraterritorial powers under this Chapter, it shall provide a means of proportional representation based on population for residents of the extraterritorial area to be regulated. The population estimates for this calculation shall be updated no less frequently than after each decennial census. Representation shall be provided by appointing at least one resident of the entire extraterritorial planning and development regulation area to the planning board, board of adjustment, appearance commission, and the historic preservation commission if there are historic districts or designated landmarks in the extraterritorial area.

(b) Appointment. – Membership of joint municipal-county planning agencies or boards of adjustment may be appointed as agreed by counties and cities. The extraterritorial representatives on a city advisory board authorized by this Article shall be appointed by the board of county commissioners with jurisdiction over the area. The county shall make the appointments within 90 days following the receipt of a request from the city that the appointments be made. Once a city provides proportional representation, no power available to a city under this Chapter is ineffective in its extraterritorial area solely because county appointments have not yet been made. If there is an insufficient number of qualified residents of the extraterritorial area to meet membership requirements, the board of county commissioners may appoint as many other residents of the county as necessary to make up the requisite number. When the extraterritorial area extends into two or more counties, each board of county commissioners concerned shall appoint representatives from its portion of the area, as specified in the ordinance. If a board of county commissioners fails to make these appointments within 90 days after receiving a resolution from the city council requesting that they be made, the city council may make them.

(c) Voting Rights. – If the ordinance so provides, the outside representatives may have equal rights, privileges, and duties with the other members of the board to which they are appointed, regardless of whether the matters at issue arise within the city or within the extraterritorial area; otherwise, they shall function only with respect to matters within the extraterritorial area. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 8, 51(a), (b), (d).)

§ 160D-302. Boards of adjustment.

(a) **Composition.** – A local government may by ordinance provide for the appointment and compensation of a board of adjustment consisting of five or more members, each to be appointed for three-year terms. In appointing the original members or in the filling of vacancies caused by the expiration of the terms of existing members, the governing board may appoint certain members for less than three years so that the terms of all members shall not expire at the same time. The governing board may appoint and provide compensation for alternate members to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member.

(b) **Duties.** – The board shall hear and decide all matters upon which it is required to pass under any statute or development regulation adopted under this Chapter. The ordinance may designate a planning board or governing board to perform any of the duties of a board of adjustment in addition to its other duties and may create and designate specialized boards to hear technical appeals. If any board other than the board of adjustment is assigned decision-making authority for any quasi-judicial matter, that board shall comply with all of the procedures and the process applicable to a board of adjustment in making quasi-judicial decisions. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)