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Politics, growth, and the 'Mother, may I?' rule

How much power should local leaders have to manage growth?

By RICHARD STRADLING, Staff Writer

For years, Ben W. Sanders looked out the back windows of his home on Evans Road in Cary into a forest that began where his back yard ended. Now he looks into a sea of stumps and slashed branches.

"I wish they would come and clean it up," said Sanders, 54, as he dug into the flower bed next to his house recently. "Man comes and leaves a mess like that. They ought to outlaw that."

Actually, the town of Cary has tried to outlaw this kind of clear-cutting but can't without permission from the General Assembly. Under North Carolina's constitution, local governments can do only what the legislature specifically allows.

So in 1997, town officials asked Rep. David Miner to introduce a bill that would let them regulate the cutting of trees. But after four years of debate and amendments, the bill that finally became law last summer had loopholes, including an exemption sought by the state home builders association for land intended for single-family homes and duplexes. The resulting law, Cary officials say, is next to useless.

For more than a century, local leaders have had to get the General Assembly's blessing to try innovative solutions to local problems -- a ritual critics call "Mother, may I?" But tensions over this process are escalating, as more than 100,000 newcomers pour into the state every year, filling roads and schools and changing the landscape.

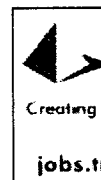
"It's outdated. It's not relevant to a progressive state that's becoming more urbanized," said Jack Smith, Cary's mayor pro tem. "You have to allow the areas that are growing to be able to manage their growth."

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SPEAK OUT Q forum: Is it time to give elected local leaders broader power to govern their communities?

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Local leaders do have broad powers to manage growth through zoning and building regulations, but Smith and others say the current tools aren't enough to keep up with the rapid pace of development. They contend that local governments need more power to enact new controls and to raise money for the added services and infrastructure that growing communities require. The 37-member smart growth commission, formed by the General Assembly last year, will echo that call in a report to the legislature and Gov. Mike Easley this month.

"We shouldn't be involved, in my opinion, in micro-managing these local systems to the extent that we continue to try," said Sen. Howard Lee, a Democrat from Chapel Hill who co-chairs the commission. "I think local governments should have the authority to impose taxes as long as they are not superseding the state. ... We could give local governments that option, let them impose the taxes and pay the penalty for whatever fallout may follow."

That kind of talk agitates developers, home builders and Realtors. They fear more freedom for local governments would lead to regulations and new taxes and fees that will jack up housing costs and hurt their business.

"We work very hard to protect the affordability of housing," said Mike Carpenter, executive vice president of the N.C. Home Builders Association. "Clearly, we have to protect our market, because if folks cannot afford to buy the first house, then they'll never be able to afford another one."

An old division of powers

The relationship between state and local governments in North Carolina begins with the state's Reconstruction constitution of 1868, which says the General Assembly shall create counties, cities and towns and give them the powers and duties it "may deem advisable." That means local leaders must find a state lawmaker to introduce -- and win approval for -- enabling legislation that grants them legal authority for any official action they are not otherwise empowered to take.

This system, known as Dillon's Rule after a 19th century federal judge, contrasts with Home Rule, which allows local officials to govern as they please, as long as they don't violate state law. About 30 states have some form of Home Rule, according to David Owens, a professor at the University of North Carolina's Institute of Government.

Many legislators say that North Carolina's system works well and that they have been plenty generous with local governments' requests over the decades. Miner says the General Assembly plays a vital role in protecting people from the potential excesses of local officials.

"I'm sensitive to the fact that local governments need some flexibility to deal with growth," said Miner, a Republican from Cary. "On the other hand, we have to be careful not to give away the store. We don't want municipalities to go hogwild and tax and regulate the citizens to death."

But local officials say they're more in tune with community needs than state legislators. If they go hogwild, people let them know.

"We have to see these people in the grocery store," said Patricia Moss, mayor pro tem of Hickory.

Enabling legislation is a sizable chunk of the General Assembly's work. In the 1997 session, more than a quarter of all bills were requests to provide new powers to local governments, according to state Sen. Wib Gulley, a Durham Democrat. Some bills apply statewide. Others, such as the Cary tree-cutting bill, apply to one community or just a handful.

Chapel Hill Mayor Rosemary Waldorf can tick off several new powers her town has received in recent years, such as banning open containers of alcohol on city streets and allowing police to enforce parking bans on private property. Waldorf doesn't think the town should have to ask the legislature to enact such routine ordinances, but at least the General Assembly hasn't blocked them.

Lawmakers have repeatedly rejected Chapel Hill's request to use "inclusionary zoning," which would force developers to include some moderately priced dwellings in their projects. "We're perennially disappointed," Waldorf said.

The home builders association has fought inclusionary zoning, saying it would only force builders to charge more for other houses. It's a fight the association wants to have in the legislature, where its political action committee is among the top campaign contributors, rather than in local boards and commissions across the state.

The group also worries about precedent. Letting Cary regulate tree-cutting, for example, could make it easier for other towns to get that power, said Jim Wahlbrink of the Home Builders Association of Wake County.

"They were just trying to protect our membership from over-regulation," Wahlbrink said.

Wanted: creative strategies

But local governments straining to deal with North Carolina's rapid growth want authority to try new controls, such as programs that allow developers to build more on their land by paying landowners elsewhere to leave theirs untouched.

They also want power to levy local taxes and fees, to raise money for infrastructure and services without increasing property taxes. Possibilities include local sales taxes, real estate transfer taxes and even local gas taxes. Many communities already charge developers impact fees to pay for water, sewer and roads to serve their projects, as allowed by law, but some also want to levy fees for parks, schools or other facilities for the entire community.

Home builders and Realtors have consistently fought taxes and fees tied to new homes or development.

"To just do impact fees or transfer taxes penalizes one segment of the population, and that segment is not the only one that utilizes the infrastructure," said Mary Edna Williams, owner of Wilson & Williams 1830 Real Estate in Raleigh. "We need to look at a more broad-based form of funding."

The most notable local tax to win legislative approval in recent years was the half-cent sales tax in Charlotte and Mecklenburg County, which brings in about \$1 million a week for mass transit. The General Assembly allowed city and county officials to put the tax on the ballot in 1997, at the same time Durham, Orange and Wake counties won permission to collect 5 percent of rental car receipts for the Triangle Transit Authority.

The legislative smart growth commission wants the state to extend these and other taxing powers to all local governments. Rep. Mickey Michaux, a Durham Democrat, says he will introduce a bill this year to enable local governments to choose from a menu of taxing options, as long as voters approve at the polls.

Michaux has opposed local taxes in the past, including Durham County's proposal to raise the auto registration fee from \$5 to \$20 to raise money for the Durham Area Transit Authority. But he's willing to put it to the people.

"When it comes to taking money out of people's pockets, I think they ought to be the ones to determine that, not us or a city council or a county commission," Michaux said.

A finite amount of burden

Other lawmakers are reluctant to offer local leaders a menu of taxes. Miner says he supported the Mecklenburg sales tax bill and would do the same for Wake County. But he thinks the state has to keep some control over local taxes to prevent a taxpayer revolt that could ultimately hurt state government.

"There's only so much tax burden citizens will take," he said.

The state's budget shortfall, projected to go as high as \$791 million by June 30, should help local officials make a case for raising money on their own, said Gulley, who was mayor of Durham from 1985 to 1989. Gulley said he thinks North Carolina should join the ranks of Home Rule states, with the General Assembly retaining the power to step in when local governments go too far. But he said he doesn't see that happening any time soon.

"Unfortunately, I think you have a history in this state of being a Dillon Rule state that has left legislators feeling like they can play God when it comes to local government needs and local government requests," Gulley said.

Both sides in the debate cite the need for consistency. Home builders objected to the Cary tree bill in part because it would extend new powers that had been given only to a handful of other cities and towns, including Charlotte and Chapel Hill.

Local officials, though, say that's an argument for expanding powers, not limiting them.

"What's fair for one county should be fair for the whole state," said Durham County Commissioner Becky Heron.

After four years, Cary is still seeking a way to regulate clear-cutting on land slated for development. Town officials are studying a state law designed to prevent erosion and water pollution to see whether it might give them the authority they need.

They're also giving the General Assembly another try. They've asked Miner to introduce a new bill this session that would close the loopholes.

It all comes too late for Sanders, the Evans Road resident who saw his picturesque backyard view destroyed by a clear-cutter's axe. He'll continue to look onto a sea of stumps and slashed branches until someone, someday, decides to develop that land out back.

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