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Janelle D. Allen

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CASENOTE

CAROLINA POWER & LIGHT v. CITY OF ASHEVILLE MUNICIPAL ANNEXATION IN NORTH CAROLINA: THE PROS, THE CONS AND THE JUDICIARY

JANELLE D. ALLEN*

I. INTRODUCTION

If you live in North Carolina or follow North Carolina news, you probably know that one of the most recently publicized issues state-wide is opposition to municipal annexations. Residents of unincorporated suburban areas have been organizing in opposition to North Carolina's system of involuntary annexation. These groups have been lobbying for change and gone as far as using the Internet as a medium to champion their cause.

North Carolina's current annexation laws state:

[T]he legislature has a practically unlimited general power to extend the boundaries of a municipal corporation or to annex, or authorize the annexation of, territory to it, with or without the consent of the corporate authorities. [T]he legislature may annex, or authorize the annexation of, territory without the consent of the inhabitants of the territory affected, and even over their protest.¹

Municipalities in North Carolina are undoubtedly afforded considerable latitude when it comes to annexation. The major policy interest is in the improvement of services such as water, sewer, streetlights and garbage pickup to the newly annexed areas, as well as to obtain tax dollars for the services most likely to be utilized by residents of these once fringe areas.

North Carolina's annexation legislation has been criticized as being archaic and undemocratic. While proponents of these annexation laws see it as a means of economic and social development, opponents see it as an infringement on their right to choose where to live. Opponents have also argued that over the years North Carolina courts have been instrumental in strengthening the municipality's annexation

* Janelle D. Allen is a rising third year student at North Carolina Central University School of Law.

1. 62 C.J.S. *Municipal Corporations* § 46 (2004).

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power. This strengthening has left many citizens feeling hopeless and powerless in their fight against annexation.

This casenote examines the holding and rationale in *Carolina Power & Light Company v. City of Asheville*² as it reflects the current trend in judicial decisions with respect to annexation law. In *Carolina Power & Light Company*, the North Carolina Supreme Court interpreted the exception set forth in N.C. Gen. Stat. section 160A-48 (d)(2) as it relates to areas of land that are not developed for urban purposes as an issue of first impression for this court.³

II. THE CASE

North Carolina's annexation laws are set forth in N.C. Gen. Stat. sections 160A – 29 through 160A– 58.28. In *Carolina Power & Light Co.*, the fringe landowners, Carolina Power & Light Company (“CP&L”), challenged the City of Asheville's annexation ordinance that purported to annex approximately 1,500 acres of property, which included the CP&L property.

On February 22, 2000, the City of Asheville (the “City”) adopted a resolution of intent to annex approximately 1,500 acres in the Long Shoals Area. This acreage was being utilized in a variety of ways. The largest single property and use within the entire area was the steam-generated electrical power plant owned and operated by CP&L . . . An annexation services plan (“ASP”) depicting the boundaries of the Long Shoals Area to be annexed was approved by the City on March 15, 2000. The ASP purported to qualify the Long Shoals Area under one of the five available tests specified in N.C. General Statutes section 160A-48 for determining whether an area is “developed for urban purposes,” which test under subsection (c)(3) and is known as the “Urban Use/Sudivision Test.” This test . . . provides that an area is developed for urban purposes if at least sixty percent of the total number of lots in the area are used for residential, commercial, industrial, institutional, or governmental purposes and is subdivided into lots such that at least sixty percent of the total acreage of the area, not counting that used for commercial, industrial, governmental, or institutional purposes, consists of lots three acres or less in size.⁴

The city hired a consultant to classify the character of the property to be annexed.⁵ The consultant reported that 75.37% of the total

2. *Carolina Power & Light Co. v. City of Asheville*, 597 S.E.2d 717 (N.C. 2004).

3. *Id.* at 719.

4. *Id.* (The use of property determines whether it may be voluntarily annexed. In contrast, neither ownership of the property nor future plans for use are relevant in determining whether an area may be voluntarily annexed. See *Southern Ry. Co. v. Hook*, 135 S.E.2d 562 (N.C. 1964), holding the trial court improperly classified a thirteen acre tract as industrial where the entire tract was owned by a corporation but only one acre was being used by the corporation as a parking lot at the time of annexation).

5. *Carolina Power & Light Co.*, 597 S.E.2d at 719.

number of lots was used for residential, commercial, industrial, institutional or governmental purposes.⁶ The consultant also reported that only 114.06 acres in the Long Shoals Area were undeveloped or developed areas being used for residential purposes and 63.27% of that total consisted of lots or tracts three acres or less in size.⁷ “In its ASP, the City classified 288.21 acres out of the 1,500 acres of the Long Shoals Area as “non-urban,” or not developed for urban purposes.”⁸ Non-urban areas may still be annexed if the area meets the specified criteria set forth in N.C. Gen. Stat. section 160A-48(d)(2), which provides that:

[I]n addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area . . . is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).⁹

The non-urban areas were divided into five, noncontiguous tracts denominated as Non-Urban Areas 1 through 5.¹⁰ The external boundaries for Non-Urban Areas 1 and 4 were not adjacent to the City’s existing boundary line; however, these areas were adjacent to the areas developed for urban purposes. On May 23, 2000, the city held a meeting concerning the annexation of the Long Shoals Area.¹¹ “On June 13, 2000, the City adopted Ordinance 2708, which purported to annex the Long Shoals Area, including the CP&L property, effective July 1, 2001.”¹²

“On August 11, 2000, CP&L filed a petition for review in Superior Court, Buncombe County, challenging the City’s adoption of Ordinance 2708.”¹³ CP&L contended that the city erroneously characterized the residential or vacant properties in Non-Urban Area 1 and Non-Urban Area 4 as “Non-Urban” under N.C. Gen. Stat. section 160a-48(d)(2).¹⁴ CP&L based their contention on the fact that those areas were not adjacent to the existing municipal boundary as re-

6. *Id.*

7. *Id.*

8. *Id.*

9. N.C. GEN. STAT. § 160A-48(d)(2) (2004). “The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes.”

10. *Carolina Power & Light Co.*, 597 S.E.2d at 719.

11. *Id.* at 720.

12. *Id.*

13. *Id.*

14. *Id.*

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quired by the statute.¹⁵ “With such characterization, CP&L argued that the City erroneously excluded that acreage from the Subdivision Test in N.C.G.S. § 160A-48(c)(3), resulting in a false percentage of at least sixty percent, which ostensibly met the Subdivision Test requirements.”¹⁶ In order for an area to be classified as “developed for urban purposes,” the area must pass both the Urban Use Test and Subdivision Test provided for in subsection (c)(3) of the statute.

The trial court affirmed the City’s Annexation Ordinance 2708.¹⁷ CP&L appealed the decision to the North Carolina Court of Appeals.¹⁸ The North Carolina Court of Appeal’s majority opinion affirmed the trial court’s ruling. Judge Tyson dissented on the issue of the City’s compliance with N.C. Gen. Stat. section 160A-48(d)(2) as it related to Non-Urban Areas 1 and 4.¹⁹

The North Carolina Court of Appeals found that only the Subdivision Test was at issue.²⁰ Therefore, the court had to determine whether Non-Urban Areas 1 and 4 fell within the exception set forth in N.C. Gen. Stat. section 160A-48(d)(2). If the areas did not, then the calculations of the Subdivision Test were made with erroneous values. The North Carolina Court of Appeals interpreted the meaning of subsection (d)(2) based upon the intent of the legislature. The language in that section expressly provides that if an area cannot be classified as “developed for urban purposes,” it can still be annexed if the area is “adjacent, on at least sixty percent of its external boundary, to any *combination* of the municipal boundary *and* the boundary of an area or areas developed for urban purposes.”²¹ More specifically, the court had to interpret the phrase, “to *any combination* of the municipal boundary *and* the boundary of an area or areas developed for urban purposes as defined in subsection (c).”²² The court found that “the amount of border which the non-urban area shares with the municipality *combined* with the amount of border [which] the non-urban area shares with an area or areas developed for urban purposes *equals* sixty percent of the border of the non-urban area.”²³ In effect, the court assigned a value of zero in cases where the area in question was not adjacent to either a municipal boundary or boundary of an area or areas developed for urban purposes. The court of appeals found that

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Carolina Power & Light Co. v. City of Asheville*, 587 S.E.2d 490, at 494-95 (N.C. Ct. App. 2003) (Tyson, J., dissenting), *rev’d*, 597 S.E.2d 717 (N.C. 2004).

21. N.C. GEN. STAT. § 160A-48(d)(2) (2004). (emphasis added).

22. *Id.* (emphasis added).

23. *Carolina Power & Light Co.*, 597 S.E.2d at 721-22.

the plain language of the statute included all possible combinations that made the equation set out in subsection (d)(2) work.²⁴

Judge Tyson dissented from the majority's opinion with respect to the interpretation of the statutory language in N.C. Gen. Stat. section 160A-48(d)(2). He stated:

[T]he statute clearly requires that in order for a municipality to annex non-urban land, at least sixty percent of the external boundary of the land to be annexed must be adjacent to *any* combination of the municipal boundary *and* the boundary of an "area or areas developed for urban purposes," not either boundary standing alone.²⁵

CP&L appealed the court of appeals decision to the North Carolina Supreme Court as a matter of right, based on the dissenting opinion.²⁶ The North Carolina Supreme Court sought to interpret the meaning of the language in N.C. Gen. Stat. section 160A-48(d)(2) as a matter of first impression. "The crux of the statutory language in question focused on the phrase, 'to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes.'"²⁷ The source of confusion and controversy stemmed from the interplay of the word "combination" and the word "and."²⁸ The court had to interpret the meaning of this section while keeping with the intent of the legislature. In examining the statute as plain language, the court concluded that the language of the statute did not allow for annexation of non-urban areas unless the area was adjacent to both the municipal boundary and the boundary of an urban area.²⁹ The supreme court reversed the decision of the court of appeals and remanded the case.³⁰

III. BACKGROUND

A. *History of Annexation Law in North Carolina*

Annexation is the process by which a municipality expands its territorial limits by adding an outlying or unincorporated area.³¹ In order for a municipality to annex the area, the area that is the target of annexation must not already be part of another municipality.³² At one time, cities in North Carolina needed the General Assembly's ap-

24. *Id.*

25. *Carolina Power & Light Co.*, 587 S.E.2d at 500.

26. *Carolina Power & Light Co.*, 597 S.E.2d at 720.

27. *Id.* at 722.

28. *Id.*

29. *Id.*

30. *Id.* at 724.

31. Joni Walser Crinchlow, *Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule*, 63 N.C.L. REV. 1260 (1985).

32. *Id.* at 1261.

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proval to annex an area.³³ By 1947, annexations became time-consuming for lawmakers, and they changed the law in order to give cities the necessary authority.³⁴ Back then, the municipality's power was not absolute; voters could force a referendum with petition signatures from fifteen percent of people in an affected area.³⁵ In 1957, annexation requests in Greensboro and Charlotte induced the General Assembly to reexamine the law.³⁶ The North Carolina Legislature passed a law in 1959 that shifted the approval process of annexation from state representatives to individual municipalities.³⁷ The annexation laws passed in the 1950's are similar to the laws North Carolina still has in place today.³⁸

B. *North Carolina in the Minority*

"In many states, annexation is an important means of obtaining basic municipal services that would otherwise be unavailable to the residents of unincorporated land."³⁹ "Typically, municipal services include police and fire protection, water, sewer, road construction and repair, streetlights, garbage pickup, and parks and recreation."⁴⁰ In North Carolina, responsibility for other services such as health, school, sheriff and corrections, falls to county administrations.⁴¹

Most states in the United States provide a process whereby a municipality may initiate annexation proceedings.⁴² The majority of these states, however, require that "a municipal ordinance expressing the desire to annex be approved by a majority vote of the electors of the territory, or that objection by certain individuals will terminate the municipality's annexation initiative."⁴³ North Carolina does not have such a requirement. North Carolina is one of seven states in the United States that allows for a system of involuntary annexation of land by municipalities. Four of those seven states, including North

33. Demorris Lee, *Borderwars*, NEWS & OBSERVER (Raleigh NC), Feb. 22, 2004, at A21.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. S. 19, 2005-2006 Gen. Assem., Reg. Sess. (N.C. 2005). On January 31, 2005, Senate Bill 19 was introduced to the North Carolina General Assembly for its consideration. The bill calls for the restoration of the Pre-1959 annexation law by requiring a referendum on annexation on petition of the residents being annexed, and to allow the city to provide for referendum on annexation.

39. Laurie Reynolds, *Rethinking Municipal Annexation Powers*, 24 Urb. Law 247, at 256 (1992).

40. Lee, *supra* note 33, at A21.

41. Lee, *supra* note 33, at A21.

42. Reynolds, *supra* note 39, at 278.

43. Reynolds, *supra* note 39, at 278.

Carolina, allow annexation without the consent of the property owners in the area to be annexed.⁴⁴ The remaining three states allow annexation without the property owner's consent only in limited situations.⁴⁵

Under involuntary annexation, "the legislature may annex, or authorize the annexation of, territory without the consent of the inhabitants of the territory affected, and even over their protest."⁴⁶ Thus, North Carolina municipalities may annex irrespective of the wishes of residents in the target areas. Case law has determined that annexation without a vote by fringe residents does not in any way violate their due process rights.⁴⁷ It is well settled that bringing residents into the city limits without their permission, through annexation, thereby making their properties subject to future city taxes, does not result in a deprivation of their liberty or property without due process of law.⁴⁸

C. *Annexation Procedure in North Carolina*

The declaration of state policy for annexation specifies that the process should be done in accordance with uniform legislative standards to provide "governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development."⁴⁹

In order for a municipality to annex a territory, "the record must show prima facie a complete and substantial compliance with the statutory requirements and conditions."⁵⁰ However, as long as there has been substantial compliance with all of the essential provisions of the statute, then slight irregularities will not invalidate the annexation proceedings.⁵¹ The area under consideration must meet specific statutory criteria. The statutes provide a distinction in procedures and standards for a municipality having a population less than 5,000 and municipalities with a population over 5,000 persons.⁵² The population

44. Lee, *supra* note 33, at A21. North Carolina, Tennessee, Idaho and Kansas are the only states where annexation without the property owner's consent is standard.

45. Lee, *supra* note 33, at A21. Louisiana, Illinois and Oregon allow annexation only in limited cases.

46. Municipal Corporations, *supra* note 1, § 46, at 1.

47. 21 N.C. INDEX 4th *Municipal Corporations* § 34 (2004).

48. *Id.*

49. Carolina Power & Light Co. v. City of Asheville, 597 S.E.2d 717, at 720 (N.C. 2004).

50. 21 N.C. INDEX 4th *Municipal Corporations* § 49 (2004).

51. *Id.*

52. N.C. GEN. STAT. §160A-34 (2004). The statute includes an exception for municipalities in Craven County with a population less than 500.

size of any given municipality is based on the last federal decennial census.⁵³

1. Initiation of Annexation Proceedings by Residents

While the municipality initiates most annexations, a property owner in these fringe areas may request annexation. "The governing board of any municipality may annex by ordinance any area contiguous to its boundaries upon presentation to the governing board of a petition signed by the owners of all the real property located within such area."⁵⁴ "The petition shall be signed by each owner of real property in the area and shall contain the address of each such owner."⁵⁵ After all the necessary procedures are executed, the board may decide to annex the area.⁵⁶ However, no North Carolina court has heard the issue as to whether a resident has an absolute right to annexation. Therefore, if a resident petitions for annexation, a municipal governing board may deny the petitioners request although all the statutory requirements are met.

2. Initiation of Annexation Proceedings by Municipality

When a municipal governing board desires to annex territory, it must first pass a resolution stating the intent of the municipality to consider annexation.⁵⁷ The "resolution shall describe the boundaries of the area under consideration, fix a date for a public informational meeting, and fix a date for a public hearing on the question of annexation."⁵⁸ Prior to the public hearing, the board is statutorily required to prepare a report setting forth plans to provide services to the area to be annexed.⁵⁹ This report is also known as the annexation service plan. After the public hearing, the board is allowed to take into consideration facts presented at the public hearing and has the authority to amend the annexation service plan in conformity with such facts, as long as the report comports with statutory requirements.⁶⁰

The total area to be annexed must meet several standards. It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.⁶¹ At least one-eighth of the ag-

53. N.C. GEN. STAT. §§ 160A-34, 46 (2004).

54. N.C. GEN. STAT. § 160A-31(a) (2004).

55. *Id.*

56. N.C. GEN. STAT. § 160A-31(d) (2004).

57. N.C. GEN. STAT. §§ 160A-37, 49 (2004).

58. N.C. GEN. STAT. §§ 160A-37, 49 (2004).

59. N.C. GEN. STAT. §§ 160A-35, 47 (2004).

60. N.C. GEN. STAT. §§ 160A-37, 49 (2004).

61. N.C. GEN. STAT. § 160A-48(b) (2004) (except if the entire territory of a county water and sewer district created under N.C. Gen. Stat. section 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the

gregate external boundaries of the area must coincide with the municipal boundary, and no part of the area can be included within the boundary of another incorporated municipality.⁶²

Further, the area to be annexed generally must have been developed for urban purposes.⁶³ If the area cannot be classified as “developed for urban purposes,” the statute provides exceptions that may still allow annexation.⁶⁴ In order to characterize an area as “developed for urban purposes,” the area must pass the “Urban Use/Subdivision Test” as provided in the statute.⁶⁵ Under the “urban use test,” the municipality must show that at least sixty percent of lots and tracts in the area proposed for annexation are actually being *used* for residential, commercial, industrial, governmental or institutional purposes.⁶⁶ Under the “subdivision test,” the municipality must show that at least sixty percent of acreage in the area to be annexed, not counting acreage used for commercial, industrial, governmental, or institutional purposes, consists of lots and tracts of three acres or less in size.⁶⁷ Both tests must be satisfied in order to classify an area as urban.⁶⁸

In addition to areas developed for urban purposes, a board may include in the area to be annexed any area which does not meet the “Urban Use/Subdivision Test,” if one of two criteria is met. The area must lie between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services, water or sewer lines through such sparsely developed area.⁶⁹ Alternatively, the area must be adjacent, on at least sixty percent of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined by the statute.⁷⁰ If

district with the greatest land area is adjacent or contiguous to the municipality’s boundaries at the time the annexation proceeding is begun).

62. *Id.*

63. N.C. GEN. STAT. § 160A-48(c) (2004).

64. N.C. GEN. STAT. § 160A-48(d) (2004).

65. N.C. GEN. STAT. § 160A-48(c) (2004).

66. *Id.* (“For purposes of this section, acreage in use for commercial, industrial, institutional, or governmental purposes shall include acreage actually occupied by buildings or other man-made structures together with all areas that are reasonably necessary and appurtenant to such facilities for purposes of parking, storage, ingress and egress, utilities, buffering, and other ancillary services and facilities.”) (emphasis added).

67. N.C. GEN. STAT. § 160A-48(c)(3) (2004).

68. *Id.*

69. N.C. GEN. STAT. § 160A-48(d)(1) (2004).

70. N.C. GEN. STAT. § 160A-48(d)(2) (2004).

the annexation sufficiently meets all statutory requirements, then it is effective as of the date of the annexation ordinance.⁷¹

D. *Both Sides of the Battlefield: Proponents and Opponents of North Carolina's Annexation Law*

Between 1999 and 2003, there have been 3,906 annexations across the state of North Carolina.⁷² In an attempt to annex territory, municipalities such as Cary, Fayetteville, Raleigh, Wendell, and Winston-Salem, have been met with opposition.⁷³ A resolution of intent to annex usually arises when a city sets its sights on areas known as doughnut holes, which are small non-city areas surrounded by city development, or fringe areas, which are outlying areas that abut the city.⁷⁴

1. Proponents of Involuntary Annexation

Many city and fringe landowners and legislators alike are advocates of involuntary annexation. Some city residents argue fringe landowners get the benefit of living in a metropolitan area without paying municipal taxes, leaving the city dwellers to pay.⁷⁵ Without annexation laws, the increasing taxes in the city would cause cities to deteriorate while the quality of life of residents in the outlying suburbs would continue to improve. Annexation allows a city to expand the tax base by spreading the cost of essential services and public improvements over a larger pool of taxpayers.⁷⁶ One newspaper journalist wrote, “[w]ithout North Carolina’s annexation law, Raleigh might well be a poor city surrounded by affluent suburban towns.”⁷⁷

While it is true cities gain money through annexation, fiscal gain is not the only consideration driving expansion of corporate limits.⁷⁸ Cities are better situated than counties to provide the services needed for North Carolina’s thriving population.⁷⁹ When businesses scout areas in search of new locations, they look at factors including cultural,

71. N.C. GEN. STAT. § 160A-49(f) (2004).

72. Lee, *supra* note 33, at A21.

73. Lee, *supra* note 33, at A21.

74. Danny Hooley, *Five Areas Up for Annexation*, NEWS & OBSERVER (Raleigh, NC), Feb. 20, 2004, at N1.

75. Rob Christensen, Editorial, *Power to Annex is Healthy*, NEWS & OBSERVER (Raleigh), Jan. 4, 2004, at B1.

76. Lee, *supra* note 33, at A21.

77. Christensen, *supra* note 75, at B1.

78. *An orderly and responsible annexation process will serve Asheville, Buncombe alike*, ASHEVILLE CITIZEN-TIMES, Mar. 13, 2004, at A6 (editorial by staff writers).

79. Lee, *supra* note 33, at A21. (According to Wake County Manager, David Cooke, “[Wake County] grows by 20,000 residents a year. In five years, we will add 100,000 new people, in 10 years 200,000. How we want to grow and where are valid questions. We have said we want that growth in and around municipalities because that’s where the infrastructure is to handle it.”).

recreational and other social amenities an area has to offer. Municipalities are in a position to provide the amenities and services to attract new jobs, thus strengthening the regional and state economies.⁸⁰ “Allowing urban areas bordering a city to remain unincorporated results in services that are either inadequate or expensive due to fragmentation.”⁸¹

2. Opponents of Involuntary Annexation

Fringe residents oppose annexation for many reasons. Some residents argue that North Carolina’s current annexation laws infringe on their right to choose where to live.⁸² Residents of these outlying areas argue they have a right to live outside the city’s limits.⁸³ People move from cities for many reasons. Some people tire of limited space, traffic, schools, and certain rules and regulations they deem excessive.⁸⁴ Others distrust the city government and believe that the municipality would misuse and misplace their tax money.⁸⁵

Some residents of fringe areas argue that the annexation laws serve as a means of excluding minorities and impoverished masses.⁸⁶ This exclusion may be accomplished when cities fail to incorporate adjacent urban areas that are occupied by residents of low socio-economic standing. On the other hand, with annexation comes an elevated cost of living.⁸⁷

Exclusion of certain areas due to the low socio-economic standing of its residents is judicially permissible.⁸⁸ When a municipality considers an area for annexation, it must weigh the potential tax revenue from the area against the cost of annexation.⁸⁹ If the area interested in being annexed does not have the potential for generating increased

80. S. Ellis Hankins, Editorial, *North Carolina’s strength depends in large part on the vitality of our cities.* . . . , NEWS & OBSERVER (Raleigh, NC), Feb. 22, 2004, at A21.

81. *Asheville is correct to pursue present course of annexation*, ASHEVILLE CITIZEN - TIMES, Jan. 16, 2004, at A6 (editorial by staff writers).

82. Edward Sammons, Editorial, *Sunday Forum*, NEWS & OBSERVER (Raleigh, NC), Jan. 11, 2004, at A23.

83. *Id.*

84. *Id.*

85. *Id.*

86. Kristin Collins, *Annexation feud splits N.C. town by race*, NEWS & OBSERVER (Raleigh, NC), Sept. 27, 2004, at A1.

87. Mark Binker, *Summerfield Passes Property Tax; The \$2.8 Million Budget Provides for a New Staff, Town Building, Parks and Water System*, NEWS & RECORD (Greensboro, NC), June 2, 2004, at B1.

88. Donald T. Kramer, Annotation, *Refusal of Municipality to Annex Impoverished Area as Violative of Federal Law*, 22 A.L.R. FED. 272 (2004).

89. See Binyamin Appelbaum, *Sound Growth or Greed? ‘Hopscotch’ Annexation Benefits Mount Holly, But Skips Nearby Areas*, CHARLOTTE OBSERVER, Dec. 19, 2004, at 1L; Jennifer Brevorka, *Asheville Annexation Plan Draws Outrage; Residents Say Tax Burden Outweighs Benefits*, ASHEVILLE-CITIZEN TIMES, Jan. 10, 2004, at 1A.

tax revenue, then it is more likely that a municipality would opt against annexing the area.⁹⁰ There being no common law right to compel annexation, a property owner in an area contiguous to a municipality may petition a municipality for annexation; however, they cannot compel the municipality to annex their area.⁹¹

There is no North Carolina case to date that has decided the issue of whether annexation is a right of the citizens. The United States Court of Appeals for the Eighth Circuit decided the only case to address this issue. "In *Wilkerson v. Coralville*, residents of an unincorporated, impoverished area in a county alleged that various officials of an Iowa city had unlawfully discriminated against them in violation of 42 U.S.C.A. § 1983, by refusing to annex their area because of the poverty of its residents."⁹² The petitioners argued that, "as a consequence, the residents had been deprived of municipal services in violation of the equal protection clause of the Fourteenth Amendment."⁹³ The court held that there is no "right to annexation."⁹⁴ In addition, the court concluded that "[w]hether a municipality should be permitted to exclude an impoverished area from its boundaries is a matter of legislative policy to be decided by a state, and that the exclusion of such an area does not violate either the Federal Constitution or any federal statute."⁹⁵ Until a North Carolina court raises and decides such an issue, this contention does not stand as a strong argument for opponents to annexation.

The biggest complaint of opponents to these annexation laws seems to be the impending hike in property taxes. Once a municipality annexes an area into the city, the residents are required to pay county taxes as well as city taxes, resulting in higher property taxes. Newly annexed residents have seen property tax increases anywhere from thirty-eight cents per \$100⁹⁶ to seventy-one cents per \$100.⁹⁷ For example, in an area around Carrboro, North Carolina, under current tax rates, a property owner in the target area pays county property taxes at a rate of eighty-eight cents per \$100 of valued property.⁹⁸ Once the property owner is incorporated, he would also owe city property taxes

90. See Appelbaum and Brevorka, *supra* note 89.

91. Kramer, *supra* note 88.

92. Kramer, *supra* note 88.

93. Kramer, *supra* note 88.

94. Kramer, *supra* note 88.

95. Kramer, *supra* note 88.

96. Lee, *supra* note 33, at A21.

97. Anne Blythe, *Town OKs annual budget; Carrboro board raises property tax*, NEWS & OBSERVER (Raleigh, NC), June 17, 2004, at B1.

98. *Orange County tax rate to rise 3.5c*, NEWS & OBSERVER (Raleigh, NC), June 25, 2004, at B3.

at seventy-one cents per \$100.⁹⁹ Therefore, the owner of a \$200,000 house who now pays \$1,760 in county property taxes would owe \$3,180 in combined county and city property taxes. Furthermore, the cost of infrastructure expansion is passed to the taxpayers.¹⁰⁰ For example, newly annexed neighborhoods that do not meet the city's regulations for streets and sidewalks can expect to pay fees for construction and resurfacing.¹⁰¹

One of the most prevalent contentions asserted by opponents has been that municipalities have been annexing properties in outlying areas in order to expand the tax base to cope with ever-increasing debt burdens. Supporters of this contention argue that "[w]hile the initial intent of the annexation laws may have been to close 'doughnut holes' in municipalities so that services could be provided more cost-effectively, municipalities across the state have been abusing the spirit of the law."¹⁰² The woes of anti-annexation supporters are not without redress.

IV. ANALYSIS

Fringe landowners are afforded the right to seek judicial review in superior court of the municipal annexation ordinance within sixty days following the passage of the ordinance.¹⁰³ Any party to the proceedings may appeal to the court of appeals from the final judgment of the superior court.¹⁰⁴ This statutory right makes judicial intervention an available recourse for fringe landowners. Yet, over the past few decades, citizens have expressed concern over the role the courts have played in affecting municipalities' annexation power. More specifically, residents have accused the courts of rendering decisions that help to strengthen municipality expansion power at the expense of North Carolina's landowners.¹⁰⁵ However, a close examination of recent court decisions should paint a contrary perspective.

The appellate courts have vigilantly used strict statutory interpretation of the annexation laws in accordance with legislative intent. The legislative intent that is the backbone of these laws was not predicated on a desire to trample the rights of the citizens. Instead, the legisla-

99. Blythe, *supra* note 97, at B1.

100. Hooley, *supra* note 74, at N1.

101. Hooley, *supra* note 74, at N1.

102. <http://www.stopncannexation.com> (This website serves as a medium for citizens in opposition to North Carolina's annexation system. This site provides information on: existing annexation law in North Carolina, annexations in North Carolina, annexation issues in the media, and provides an open forum for the discussion of annexation issues)(December 15, 2004).

103. N.C. GEN. STAT. § 160A-50(a) (2004).

104. N.C. GEN. STAT. § 160A-50(h) (2004).

105. *Supra* note 102.

ture intended the annexation laws to serve as a means of allowing municipalities to regulate development and expand borders in order to adjust to the demands of population and economic growth.¹⁰⁶

The North Carolina court system has been criticized, mainly by opponents of annexation, for its narrow interpretation of the annexation laws; however, the recent line of interpretations has worked very much in favor of the disgruntled landowner.¹⁰⁷ In *Carolina Power & Light Company*, the court's narrow interpretation of the statutory language coupled with its strict adherence to legislative intent worked in favor of the petitioner-residents. The court of appeal's interpretation would have considerably widened the scope of municipalities' annexation power. The North Carolina Supreme Court's decision to interpret the statute's language differently seems to comport more with legislative intent. In handing down this opinion, the supreme court reasoned that "[i]nvoluntary annexation is by its nature a harsh exercise of governmental power affecting private property and so is properly restrained and balanced by legislative policy and mandated standards and procedures."¹⁰⁸ This reasoning evidences the court's cognizance of the potential abuses by a municipality if endowed with unbridled annexation power. The decision and rationale in this case is exemplary and future decisions need to continue in its path.

The court's holding in *Carolina Power & Light Company* is in accord with recent decisions in this area of law. The trend of court decisions has been to construe the statutory language to honor the intent of the legislators, while carefully containing the annexation power of the municipality. In *Ridgefield Properties, L.L.C., v. City of Asheville*, the municipality classified the area under consideration as "developed for urban purposes," purportedly in accordance with the annexation statute.¹⁰⁹ The fringe landowners, however, sought judicial review of the annexation ordinance.¹¹⁰ Under the statute, the lots had to be developed for urban purposes at the time of the city's annexation ser-

106. *Lee, supra note 33*, at A21.

107. See *Carolina Power & Light Co. v. City of Asheville*, 597 S.E.2d 717, 720 (N.C. 2004), *Ridgefield Properties, L.L.C., v. City of Asheville*, 583 S.E.2d 400 (N.C. Ct. App. 2003), *Arquilla v. City of Salisbury*, 523 S.E.2d 155 (N.C. Ct. App. 1999). See also Michael Lowrey, *Supreme Court Overturns Asheville Annexation*, CAROLINA JOURNAL: EXCLUSIVES, July 23, 2004.

108. *Carolina Power & Light Co.* 597 S.E.2d at 720.

109. *Ridgefield Properties, L.L.C.*, 583 S.E.2d 400. (individual and corporate residents (petitioners) contended that the city of Asheville (respondent) did not substantially comply with the annexation statute when classifying tracts of land under construction as commercial property. Around the time of initiation of annexation proceedings, significant construction activity was underway and the properties were being developed as a strip mall and offices. The court concluded that the "use test" could not be met until construction was over and the tenants inhabited the location. The dissent criticized the majority's opinion as being too restrictive).

110. *Id.*

vice plan.¹¹¹ The area in question was still under development; therefore, the land did not qualify for annexation, and the ordinance was declared null and void.¹¹² In *Arquilla v. City of Salisbury*, the municipality sought to annex two areas purportedly developed for urban purposes.¹¹³ In order to be classified as an area developed for urban purposes, at least sixty percent of the area must be used for residential, commercial, industrial, institutional or governmental purposes.¹¹⁴ The area in question was vacant at the time annexation proceedings were initiated.¹¹⁵ The municipality argued that since the land was previously used for governmental purposes, the area qualified as used for governmental purposes.¹¹⁶ The court held that the area had to be currently in use for governmental purposes to qualify under the statute.¹¹⁷ Therefore, the land did not qualify for annexation and the ordinance was declared null and void.¹¹⁸

As the citizens of North Carolina continue to grow leery of the motives of municipal governing boards, the judiciary appears to be the disgruntled landowner's greatest ally. The courts are not necessarily leaning in favor of the landowners. Rather, the foregoing decisions illustrate an exercise in narrow statutory construction and judicial fairness.

V. CONCLUSION

The controversy over annexation will not disappear anytime soon. As long as there is land available to annex, there will be opposition to annexation. Municipalities are afforded considerable latitude to grow through present annexation laws. While proponents argue that municipalities are acting under legislative authority to ensure the best interest of the citizens of this state, opponents simply see these laws as a vehicle for government to impinge upon their rights.

111. *Id.* at 403.

112. *Id.* at 404.

113. *Arquilla v. City of Salisbury*, 523 S.E.2d 155 (N.C. Ct. App. 1999). (fringe landowners (petitioners) challenged two annexation ordinances. Area 1, which was the subject of one of the two annexation ordinances, included four tracts of land purported characterized as used for governmental purposes. Petitioners contended the four tracts of land were not used for governmental purposes. The four tracts of land were mostly wooded areas with no structures built on the land. The trial court indicated on several occasions that the property was owned by Rowan County. However, it is well established that the use of the property and not the ownership determines whether it may be voluntarily annexed. Furthermore, the city presented evidence of past activities on the property as well as future plans of use in support of its contention that the property was used for governmental purposes).

114. *Id.* at 161.

115. *Id.* at 163.

116. *Id.* at 162.

117. *Id.* at 163.

118. *Id.* at 164.

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To any person on the outside looking in, it is easy to empathize with the woes of the fringe landowners when they are forcibly merged into the city limits. However, it would be inaccurate to say that all of their concerns are without redress. Residents may fret over actual and potential abuse in power by the municipal governing board. Still, residents must keep in mind that the courts have remained an impartial and detached entity with respect to adjudicating challenges to annexation ordinances. Opponents of annexation laws must recognize the checks and balances that make up our government and the strong role the judicial branch plays in ensuring the municipality adheres to mandated standards and procedures.

It is unlikely that the current annexation system in North Carolina will be completely restructured, considering that it has been praised as a model system that other states should follow.¹¹⁹ Nevertheless, with the relentless laboring of annexation opponents, there is no telling what the future holds for North Carolina's annexation statutes. In the meantime, courts should follow the holding and rationale in *Carolina Power & Light*, because this case represents a trend in the right direction.

119. Lee, *supra* note 33, at A21. (the article quotes David Rusk, an urban policy consultant from Washington, and a proponent of North Carolina's current annexation system. He states, "[f]or North Carolina to change its annexation laws that promote regional success would be to abandon the wisest urban policy in the country for one that inevitably leads to urban and regional distress.").

