"Caught Between a Rock and a Hard Place:" Fringe Landowners "Can't Get No Satisfaction." Is It Time to Rethink Annexation Policy in North Carolina?

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"CAUGHT BETWEEN A ROCK AND A HARD PLACE:” FRINGE LANDOWNERS “CAN'T GET NO SATISFACTION.” IS IT TIME TO RE-THINK ANNEXATION POLICY IN NORTH CAROLINA?

I. PROLOGUE: WESTERN RESIDENTS GET A FORCEFUL INVITATION

In a sleepy little tourist town along the edge of the Great Smoky Mountains National Park, a bitter battle is brewing between the town of Maggie Valley and a group of nearby landowners. Like elsewhere in North Carolina, growth has come to the mountains. The town of Maggie Valley, anxious to seize the opportunities of this new growth, is seeking to annex some 183 acres just outside of the town's borders. In exchange for extending services to those that it will annex, Maggie Valley will be able to increase its tax base and town revenues by roughly $14.5 million. Fringe residents opposed to the annexation formed an alliance called the Good Neighbors Association of Maggie Valley, created a legal defense fund, and retained an attorney to fight the town's attempted acquisition. In the coming months, it is likely that the battle lines will be distinctly drawn, and what used to be a cozy mountain community will be divided and torn, as the growth, ever evident in areas like Raleigh, Charlotte, or Greensboro, sweeps the state indiscriminately.

II. INTRODUCTION: LAND IS POWER; MORE LAND, MORE POWER

According to David Lawrence of the Institute of Government at the University of North Carolina, opposition to annexation can result from evidence of a town's failure to adequately provide services to the newly acquired areas. But unless residents can show the town's "absolutely clear failure to provide equal services," they will not prevail. More successful opposition involves exposure of procedural breakdowns on part of the annexing town, such as "going too far in qualifying an area." How-

2. Id.
5. Id.
ever, even in lawsuits where a town does not follow proper statutory annexation procedure, newly acquired areas face an uphill battle.7

Because North Carolina statutes are squarely on the side of the municipality forcing annexation, and judicial gloss is decidedly in favor of annexation, residential opposition to annexation is rarely successful. At first glance, this sort of policy may seem to benefit the greater good (the needs of the majority of a community over that of the minority, fringe landowners). However, it ultimately leads to untethered growth that stifles the forethought and planning required in community expansion. This is especially true in areas not typically equipped to deal with the complexity of rapid growth, such as the smaller towns in Western North Carolina.

North Carolina's blatant favoritism for involuntary annexation allows municipalities to absorb boundary areas too easily. Even though the ease with which municipalities can annex may benefit larger communities of the state, the policy simultaneously provides smaller communities with a loaded weapon that allows them to quickly act without fully contemplating the consequences. This policy also renders fringe landowners utterly powerless. As such, North Carolina should take a more "middle of the road" approach in municipal annexation litigation; one which takes into account landowner preference, a notion rejected by the court since 1984.8 Before then, residential voices mattered in decisions that concerned the fate of their land.

III. NORTH CAROLINA ANNEXATION CASE LAW AND STATUTES

A. How this Policy Came into Being

Annexation litigation resembles a honeycomb. Residents have repeatedly attempted to penetrate the municipal stronghold which remains a formidable foe in their battle of forced annexation. While fringe landowners throughout North Carolina continue to fight annexation in novel ways, the courts build the wall of municipal fortitude even stronger with their narrow interpretations and holdings.

The cases and statutes discussed below show the varied situations in which annexation disputes arise in North Carolina, as well as their resolution throughout the years. Although these cases seem to bare little rele-

7. Id. Generally, "petitioners must show either failure on part of municipality to comply with statutory requirements, or that procedural irregularities occurred which materially prejudiced rights of petitioners." Weeks v. Town of Coats, 121 N.C. App. 471, 474, 466 S.E.2d 83, 85 (1996).

vance to one another, aside from forced annexation, taken collectively, they reveal a policy decidedly in favor of municipal annexation with little or no regard for landowner preference. The North Carolina Supreme Court reached the limit of this policy when it adopted the prior jurisdiction rule in 1984. Since then, despite landowners' attempts, little headway has been made with the courts, while municipalities rarely lose. The net effect of this slow policy transformation, from one which used to consider public sentiment to one which does not, is insurmountable municipal power that leaves the landowner powerless.

B. And with Annexation Comes Taxation

There is a history of opposition to annexation in North Carolina. In 1879, with the wounds of the revolution still fresh, residents of the eastern part of the state again fought against what they perceived to be taxation without representation. After being annexed by the newly formed Pamlico County, residents of the acquired territory sought an injunction to keep the Commissioners of Pamlico County from levying or collecting taxes. The North Carolina Supreme Court reversed the injunction granted by the lower court, looking to the law in Massachusetts, which states:

[i]f a new corporation is created out of the territory of an old corporation, or if part of its territory or inhabitants is annexed to another corporation, unless some provision is made in the act respecting the property and existing liabilities of the old corporation, the latter will be entitled to all the property and be solely answerable for all the liabilities.

The decision reasoned that although residents enjoyed the benefits of being affiliated with the new county, their liability to pay taxes there did not arise from such attendant advantages. Accordingly, the court instructed that the "validity of legislation" did not depend "upon the will and assent of any of the people to be affected by it" - a clear articulation of a policy refusing to consider public sentiment in annexation concerns. This decision established the strength of municipal power in North Carolina early on, while simultaneously stifling the voice of residents being annexed.

9. Id.
11. Id. at 19.
12. Id.
13. Id.
14. Id.
Though times have changed since 1879, the plight of those seeking to avoid the hefty taxes resulting from annexation is very much a current issue. In North Carolina, the legislature responded with statutory provisions requiring that certain benefits be extended to newly annexed territories, as well as specific procedural requirements demanded of a municipality before it can proceed with annexation. Even still, fringe landowners have little to no refuge from involuntary annexation.\(^\text{15}\)

Like the residents of the newly formed Pamlico County, over a hundred years later residents outside of the Town of Kernersville found their attempt to fight annexation frustrated by the unyielding strength of municipal will. In *Williams v. Town of Kernersville*, involuntarily annexed residents unsuccessfully argued that the town's classification of the proposed annexed territory as contiguous violated the "spirit" of the statutory contiguousness requirement.\(^\text{16}\)

Residents argued that the proposed annexation resembled "ribbon and balloon," or annexation of an area contiguous to only a satellite area.\(^\text{17}\) In attempt to preserve what they perceived to be the essence of the statutory purpose of contiguousness, residents urged the court to consider the broader purpose of the statutes rather than the narrow, literal meaning. Unpersuaded, the court refused the residents' policy argument and instead found the contiguousness requirement fulfilled by a statutory exception.\(^\text{18}\) Like the residents of Pamlico County in 1879, residents outside of Kernersville made little progress with the court in voicing their concerns. Rather, the court only further alienated residents from the fate of their land. Over the last century, the North Carolina courts have continued to maintain municipal preference in annexation proceedings with little regard for the opinion of the fringe landowners being annexed. This judicial gloss, coupled with statutory interpretation which is municipally biased, only exacerbates fringe landowners' struggle against involuntary annexation.

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17. *Id.*
18. *Id.* The court specifically explains how in this case the requirements of the exception to the "general rule that municipalities may only annex contiguous areas," are fulfilled. *Id.* Interestingly, this was a more difficult question when two towns attempted to annex the same area. In *City of Kannapolis v. City of Concord*, the court of appeals decided that the City of Concord could not attempt balloon and ribbon annexation because unlike *Williams*, the City of Concord had not yet annexed the ribbon of the balloon - as of the time of annexation, there was no contiguous area. 95 N.C. App. 591, 594, 383 S.E.2d 402, 404 (1989).
C. Statutory Requirements of Annexation

In order to contemplate annexation, the municipality and the land to be annexed must meet certain criteria. An area to be annexed must be urban in nature when the annexation report is approved and it cannot currently be within the boundaries of another municipality. In addition, at least 60% of the developed tracts to be annexed must consist of lots of three acres or less.

To initiate the annexation process, a municipality must first pass a resolution of intent to consider annexation that describes the area to be annexed. When that resolution is enacted, the municipality must also set dates for a public informational meeting and a public hearing concerning the annexation, within a specific period of time. Notice of the public informational meetings must be mailed to residents of the affected area at least one month before the public informational meeting. If residents are not clearly identifiable, the municipality must post the same notice in public places within the proposed area at least one month in advance of the public informational meeting. In other words, fringe landowners must be given notice of a municipality's intent to annex their land as well as the resulting meetings concerning the annexation.

Before the public meeting discussing possible annexation, a report must be prepared by the municipality explaining how services will be provided to the new area, as well as maps including the current and proposed boundaries of the municipality, and a map of the "proposed extensions of water mains and sewer outfalls" which must "bear the seal of a registered professional engineer or a licensed surveyor." The annexation report must be available to residents at the municipal clerk's office for at least one month before the meetings.

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20. N.C. Gen. Stat. § 160A-36(b)(1)-(3)(c) (1999). This statute and statutes referred to throughout this work refer to "Annexation by Cities of Less than 5,000," because the Town of Maggie Valley falls into that category. However, there are separate statutes for cities of more than 5,000 people that basically mirror those statutes for cities of less than 5,000 people. See id. at § 160A-48 et seq.
22. § 160A-37(a). A resolution of intent to consider annexation must be passed one year before the resolution of intent of annexation, unless the resolution states that the annexation will not occur for at least one year. § 160A-37(j).
23. § 160A-37(a).
24. § 160A-37(b)(4). The statute further explains that failure to mail notice to residents of the proposed area will not invalidate the annexation, unless the municipality fails to "substantially" comply with the requirements. Id. Such vagueness provides room for judicial gloss to uphold annexation while restricting the remedy for residents whose rights were diluted in the process.
26. § 160A-35(1)(a) - (b).
one month before the public informational meeting.\textsuperscript{27} In short, residents must have an explanation of the changes that will occur post-annexation available to them for their contemplation before any meeting concerning annexation.

In addition, the municipality seeking to annex a territory must submit a plan including at least two of the following services: "police protection; fire protection; garbage and refuse collection and disposal; water distribution; sewer collection and disposal; street maintenance, construction, or right of way acquisition; street lighting; or adoption of citywide planning and zoning."\textsuperscript{28} However, if sewer system installation is not economically feasible, the municipality can, in the alternative, provide septic system maintenance until sewer services can be provided.\textsuperscript{29} Not only must a municipality provide a statement of intent of services to be provided, but it must also demonstrate that it will be able to appropriate sufficient funds to "finance construction of any water and sewer lines found necessary . . . to extend the basic water and/or sewer system of the municipality into the area to be annexed," or that it "will have authority to issue bonds" to do so.\textsuperscript{30} Simply put, the municipality must articulate a clear plan of how it will deliver services to the new territory, as well as make this plan available to landowners.

At the informational meeting, a municipal representative is to provide an explanation of the annexation report, and residents must be given an opportunity to have their questions answered.\textsuperscript{31} Similarly, at the public hearing, the annexation report must again be explained, and the landowners must be given the "opportunity to be heard."\textsuperscript{32} The municipality must then take into consideration the responses at these meetings and vote on the annexation ordinance accordingly.\textsuperscript{33} The ordinance itself must

\textsuperscript{27} § 160A-37(3). Unless all of a county water district is being annexed, the area to be annexed must neighbor the municipal boundaries from the onset of the annexation proceedings, "at least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary." § 160A-36(b)(1)-(2).

\textsuperscript{28} Troy G. Crawford, et al., Legislative Survey, 21 Campbell L. Rev. 325, 328 (1999).

\textsuperscript{29} Id.

\textsuperscript{30} N.C. Gen. Stat. § 160A-37(e)(1)(3) (2001). This statute was amended in latest session!

\textsuperscript{31} § 160A-37(c).

\textsuperscript{32} § 160A-37(c)(1). Being heard does not necessarily ensure consideration of residents' desires, because as the court consistently reiterates, the nature of annexation—voluntary or involuntary—is irrelevant in annexation proceedings. See City of Burlington v. Town of Elon College, 310 N.C. 723, 314 S.E.2d 534 (1984).

\textsuperscript{33} N.C. Gen. Stat. § 160A-37(e) (1999). However, in the Maggie Valley case, newspaper reports indicate that residents vehemently and boisterously opposed annexation at these public meetings, yet the ordinance was adopted nonetheless. Scott
explain that the area to be annexed meets the statutory requirements, describe the area in metes and bounds, include a statement of intent to provide services to the new area and how the municipality will finance extension of those services, and fix the date for annexation not less than 40 and no more than 400 days from the date of the enacted ordinance.34

Although these statutes seem to set a high standard of notice and explanation to landowners, as well as to require a good deal of planning on behalf of the municipality, this is not necessarily the reality. Acknowledging the potential for procedural or provisional failures on behalf of the annexing municipality, North Carolina’s annexation statutes provide ready remedies for annexed residents.35 Unfortunately, even those statutory remedies are of little consequence comparatively.

D. Statutory Remedies for Disenchanted Landowners

Generally, a municipality’s failure to provide services to a newly annexed area will not suffice to void annexation.36 Instead, there are statutory remedies for landowners who find municipal promises undelivered after annexation.37 Annexed residents may seek a writ of mandamus to compel the municipality to construct or maintain planned sewer lines and may seek reasonable attorney fees if the municipality fails to follow through with its service plan within a specified time after annexation.38

Likewise, if within 60 days of annexation, a city fails to provide “police protection, fire protection, solid waste or street maintenance services,” landowners may “petition the Local Government Commission for abatement of taxes.”39 However, absent these statutory provisions, no other remedy exists for annexed residents. If a municipality fails to deliver on its promises, residents can do little but complain and waste time and resources battling the municipality in court.


34. § 160A-37(e)(1) - (4).
35. See generally § 160A-37(h) - (k).
36. § 160A-38(a) - (f).
37. § 160A-37(h).
38. § 160A-37(h)(2).
A. Statutes in Action

As evidenced by the statutory provisions, annexation is nearly impossible to fight on substantive grounds after it has already occurred. Landowners are limited to challenging execution of the ordinance rather than dissolution of it. However, in Safrit v. Town of Beaufort, the court dismissed the Town's contention that residents had no right to rely on pre-annexation water line extension reports, and instead decided that residents could pursue a writ of mandamus to compel the Town to deliver the services it promised. Although the court allowed residents to pursue the writ of mandamus against the Town, it thwarted residents' efforts to challenge the validity of the annexation by the Town based upon failure to deliver services post-annexation. The writ served as the only remedial option for disgruntled residents against the town.

However, the court further explained that such writs are not discretionary but mandatory, and that residents were not establishing, but enforcing their legal rights. Nonetheless, the court merely only scolded the town and required that it follow through with delivery of its pre-annexation promises. In the meantime, residents participated in the Town's economy for over a year without reaping any benefits.

40. See generally § 160A-38 (explaining the requirements of appeal for those challenging annexation). The statute limits appeals of annexation to be based on the belief that a landowner in the annexed area "will suffer material injury." § 160A-38(a). That statute further suggests that landowners may file a petition challenging the annexation based on the municipality's failure to comply with the provisions of N.C. Gen. Stat. §§ 160A-35 - 36, 160A-38(f)(2) - (3).

41. See generally § 160A-37(h) - (k) (explaining the limited remedies available to landowners).

42. Safrit v. Costlow, 270 N.C. 680, 684, 155 S.E.2d 252, 254 (1967). Interestingly, in a recent decision, the court of appeals held that an old service plan fulfilled the statutory requirements in a new annexation ordinance even though the old plan was never formally adopted in the new ordinance, and bound the City to the terms of that plan based on equitable estoppel. See Bowers v. City of Thomasville, 143 N.C. App. 291, 547 S.E.2d 68 (2001).


44. Id. at 684-85, 155 S.E.2d at 255.

45. Id.

46. Id. Although simple in theory, defining the kind of services to be provided is difficult. The court in Safrit spoke to that issue, suggesting that residents have "no right to require that any particular type of sewerage system be installed," but just one which would provide "the same benefits offered to other property owners throughout the municipality." Id. Similarly, residents tried to oppose annexation by the Town of Grifton because their new water services were not the same as those of the town and were therefore insufficient to adequately fight fires. The court there sided with the
Even though North Carolina statutes require that some sort of benefit be bestowed on residents in exchange for annexation, little is done to enforce those provisions and nothing is provided to void the annexation if the municipality fails to provide those services. Residents can only complain about not receiving those services and attempt to secure a writ of mandamus to require the municipality to deliver its pre-annexation promises.

All of the above cases dispute annexation from different legal perspectives, by either challenging the ability to tax, the method of categorizing land to be annexed, or the remedy available to disenchanted residents. Each case afforded the court an opportunity to take a step in the direction of considering fringe landowners’ concerns in annexation matters, yet, every time the court sided with the municipality or town forcing annexation. However, the biggest setback for anti-annexation enthusiasts came when North Carolina adopted the prior jurisdiction rule and the subsequent narrow applications of this rule that have followed. 47 With that, any opportunity for fringe residents to voice their opinion of annexation deteriorated once and for all.

B. Two Towns Fight over the Same Area: The Prior Jurisdiction Rule Prevails in North Carolina

Procedural requirements of annexation take on a heightened necessity and complexity in the face of competing municipalities or towns. Situations where two towns both desire to annex the same area become a race of who follows proper annexation procedure first. 48 In City of Burlington v. Town of Elon College, the North Carolina Supreme Court ultimately decided that the water pressure in newly annexed areas would be “at least comparable or better.” Williams v. Town of Grifton, 22 N.C. App. 611, 613, 207 S.E.2d 275, 277 (1974). However, statutory language requires that services be only “substantially the same.” N.C. Gen. Stat. § 160A-35(3)(a) (1999). Annexed residents challenged the constitutionality of that statutory language based on the use of “substantially,” suggesting that it is vague and ambiguous, but the court explained that the term was “wisely” chosen “with sufficient flexibility” so as to apply to diverse situations in annexation. In re Annexation #D-21927, 303 N.C. 220, 225, 278 S.E.2d 224, 228 (1981).

47. For a persuasive argument as to why North Carolina correctly adopted the prior jurisdiction rule, see Joni Wasler Crichlow, Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule, 63 N.C. L. Rev. 1260 (1985).

mately applied the prior jurisdiction rule and decided that whomever takes the first procedural step wins jurisdiction over annexation.\textsuperscript{49}

On discretionary review, the supreme court vacated the lower court's decision, which denied the plaintiff City of Burlington's motion for summary judgment and granted defendant Town of Elon's motion for summary judgment. Knowing that the City of Burlington already adopted a resolution of intent to consider annexation of an area contiguous to the limits of the city, the Town of Elon annexed a portion of the area anyway.\textsuperscript{50} The City of Burlington moved for summary judgment arguing that it earned "prior exclusive jurisdiction" over the annexation because it took the first procedural step by adopting a resolution of intent to consider annexation before the Town of Elon took any annexation actions.\textsuperscript{51} The Town of Elon argued that the prior jurisdiction rule did not apply to this situation because the voluntary nature of its annexation, unlike the City of Burlington's, did not make the proceedings in the present case "equivalent," a requisite of the rule.\textsuperscript{52}

The Town of Elon also maintained that because its voluntary proceedings reflected the will and choice of nearby landowners, applying the prior jurisdiction rule would be an inequitable application of law.\textsuperscript{53} Unconvinced by the Town of Elon's legal theories, the Supreme Court of North Carolina vacated and remanded the lower court's ruling for the Town of Elon, determining that the nature of an annexation, voluntary or not, is "of no consequence" in a situation of competition over annexation.\textsuperscript{54} The court further defined the policy behind its decision, citing the Municipal Government Study Commission of 1959:

> We believe in protection of the essential rights of every person, but we believe that the rights and privileges of residents of urban fringe areas must be interpreted in the context of the rights and privileges of every person in the urban area. We do not believe that an individual who chooses to buy a lot and build a home in the vicinity of a city thereby acquires the right to stand in the way of action which is deemed necessary for the good of the entire urban area. By his very choice to build and live in the vicinity of the city, he has chosen to identify himself

\textsuperscript{49} Id. at 727, 314 S.E.2d at 537. In situations of "separate equivalent proceedings relating to the same subject matter," the prior jurisdiction rule is that the "one which is prior in time is prior in jurisdiction to the exclusion of those subsequently instituted." Id. (citing 2 McQuillin, Municipal Corporations § 7.22(a) (3d ed. 1996)).

\textsuperscript{50} Id. at 726, 314 S.E.2d at 536.

\textsuperscript{51} Id. at 724, 314 S.E.2d at 535.

\textsuperscript{52} Id. at 728, 314 S.E.2d at 537.

\textsuperscript{53} Id. at 729, 314 S.E.2d at 538.

\textsuperscript{54} Id.
with an urban population, to assume the responsibilities of urban liv-
ing, and to reap the benefits of such location... Thus we believe that
individuals who choose to live on urban-type land adjacent to a city
must anticipate annexation sooner or later.55

In its decision, the court noted that although Virginia courts take into
consideration the "interests of all parties," North Carolina would follow
the majority approach and maintain the prior jurisdiction rule without
consideration of the parties' interests, because such an approach rein-
forces the "very essence" of North Carolina's annexation statutes.56

In City of Burlington, the North Carolina Supreme Court also over-
ruled its holding in Town of Hudson v. City of Lenoir, upon which the
Town of Elon heavily relied.57 In overturning Town of Hudson, the court
in City of Burlington further severed public sentiment from considera-
tion in annexation proceedings. Like City of Burlington, Town of Hudson
involved competing municipalities, but unlike its successor, the court in
Town of Hudson found the nature of the proceeding, voluntary or not, sig-
ificant.58 There, the court articulated its understanding of the policy
behind North Carolina's annexation statutes very differently than its later
interpretations, explaining the voluntary proceeding as "simpler and
quicker" than the involuntary proceeding, and thus preferable.59 Not
only did the court take into consideration landowner preference in
Town of Hudson, but it also developed a policy clearly in favor of judicial
and municipal economy. In overruling Town of Hudson, the court in City of
Burlington eliminated the voice of fringe landowners, and severely frus-
trated its earlier attempt at judicial resourcefulness. It exchanged an
effective, thoughtful policy for one that is municipally biased and poten-
tially inefficient.

Although the need for a clear and distinct policy in annexation mat-
ters is apparent, some of the rationale behind these policies may be illogi-
cal and outdated. Proponents of the prior jurisdiction rule argue that it
"ensures predictability and eliminates the incentive to rush to the finish
line."60 However, in doing so, the prior jurisdiction rule merely creates a
rush to the starting line, which exacerbates the situation because it forces a

55. Id. (quoting N.C. Gen. Stat. § 160A-33 et seq. and § 160A-45 et seq. as stated
by the Municipal Government Study Commission of 1959).
57. Id. at 730, 314 S.E.2d at 538.
(1971), overruled by City of Burlington v. Town of Elon College, 310 N.C. 723, 314
59. Id.
60. Joni Wasler Crichlow, Competitive Annexation Among Municipalities: North
town to race into annexation, rather than take the time to fully contemplate the potential benefits and burdens of the situation.

Furthermore, the Municipal Government Study Commission, which the court in *City of Burlington* mentions, suggests that the development of "slums" is a major fear of municipalities that can only be thwarted by annexation.\(^{61}\) Though this is a genuine concern, such fear is displaced, especially in areas more suburban in nature. North Carolina is not exclusively comprised of large urban areas; in fact, most annexation litigation seems to involve relatively small cities or towns. Consequently, to hold all of North Carolina accountable to standards that apply best, if at all, to the limited urban areas like Raleigh or Charlotte, is unfair to the rest of the state. It is upon these inequitable notions which the court in *City of Burlington* relies. By doing so, the court is adopting the antiquated point of view of the 1950s and applying this view to growth indiscriminately across the state from the 1980s forward.

C. *City of Burlington* Applied

The clear policy of *City of Burlington* echoes loudly in the court's decisions since. The remaining questions for the court's contemplation are more narrow; for instance, what exactly is a procedural step and does it have to be a mandatory requirement? Or, what happens when a town takes the first procedural step but later acts inconsistently with the statutes?\(^{62}\)

In a case similar to *City of Burlington*, a few years later, the Town of Hazelwood and the Town of Waynesville fought over annexation of the same area. There, the court specifically addressed whether the resolution of intent to consider annexation is a required procedural step.\(^{63}\) The court of appeals applied the *City of Burlington* standard and rejected the Town of Waynesville's argument that voluntary and involuntary proceedings are not equivalent, and therefore not subject to the prior jurisdiction

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61. *Id.* (quoting the Municipal Government Study Commission, Report of Municipal Government Study Commission 19 (1958), reprinted in Selected Materials on Municipal Annexation 41 (W. Wicker ed. 1980)). (In *City of Burlington*, the court refers to this study. However, it cites the supplement, whereas selections of the report that appear in the above article come from the original source.).


rule. The court also denied the Town of Waynesville’s public policy argument that voluntary annexation proceedings are better than involuntary proceedings, and instead reaffirmed the notion in *City of Burlington* that fringe landowners’ choice in which municipality will annex them is moot.

More importantly, the court in *Town of Hazelwood* found that taking a procedural step that was not a mandatory step in this instance, still qualified as the first procedural step to ensure jurisdiction. The Town of Hazelwood won jurisdiction over the Town of Waynesville for taking a non-required procedural step. The application of the prior jurisdiction rule based on such a narrow interpretation of the statute reinforced the policy articulated in *City of Burlington* - insurmountable municipal momentum and residential powerlessness in annexation proceedings.

### D. The Problems with Policy

The combination of statutes and decisions in the past one hundred years have firmly established the strength of municipal will in North Carolina to the detriment of landowners on the outskirts of town. The court repeatedly fails to adequately address the status and varied character of growth in North Carolina in the latter part of the twentieth century. The notion underlying the court’s articulated policy in *City of Burlington* reasons that, unless a town is freely able to expand town borders, slums will develop or detrimental growth will occur. While this may be a concern in larger cities, it clearly seems inapplicable to smaller towns across the state. Certainly, no one in 1950 could have foreseen the patterns of growth in North Carolina for the latter part of the past millennium. For that matter, growth in North Carolina is not stagnant, but constantly changing with the variations and fluctuations of the state’s economy, for example the transition from manufacturing to research development. To continually look to and refer to that policy articulated in the 1950s as the touchstone for growth in the twenty-first century misses the mark for the complexity of development in North Carolina. It frustrates the voice of

64. *Id.* at 673, 351 S.E.2d at 560.
65. *Id.*
66. *Id.* at 672, 351 S.E.2d at 559. The statute here takes an either/or approach. Either a municipality must adopt a resolution of intent to consider annexation or follow a different path. The Town of Hazelwood followed a course which did not make this step mandatory, but it would have been had it chose otherwise. The court rationalized that the “fact that there was an alternative procedure available to plaintiff is of no consequence,” and allowed this first step, although not technically required, to be the token first procedural step necessary to ‘win’ jurisdiction. *Id.*
those landowners forcibly annexed into municipalities, towns or cities that they had deliberately avoided all along.

North Carolina courts repeatedly ignore landowner consideration in annexation proceedings. Attempts by residents to argue the broader implications of the statutes are moot. The courts simply continue to maintain narrow, literal interpretations. In so doing, the courts squander each opportunity to revitalize antiquated, municipally biased annexation policy into a policy that considers the current growing trends and development in North Carolina, not to mention the expression of those fringe landowners forced into town limits. North Carolina repeatedly misses the mark, each time forfeiting the chance to make equitable case-by-case determinations, and instead, unilaterally applies a notion of growth that suits only limited areas of the state.

North Carolina needs to look ahead to decide how it wants to confront development in the state for the twenty-first century and revamp the archaic policy of a previous day that never adequately described growth in North Carolina in the first place. Contrary to the City of Burlington, the court needs to actually consider landowner preference in annexation proceedings. Even though statutes require annexing municipalities to contemplate landowner preference before adopting the ordinance of annexation, this is merely a hollow gesture. The statutory protection afforded residents is moot without judicial enforcement. If a municipality will not consider residential voice, the court must. It is imperative that the court compensate for the statutory provisions ignored by municipalities, namely landowner opinion. Yet the courts, like the municipalities, completely disregard fringe landowner opinion.

V. CONCLUSION

Although the benefits of growth are apparent, the court’s narrow interpretation of North Carolina’s annexation statutes is problematic because it eliminates public sentiment altogether, creates a “get-rich-quick” scheme for municipal governments in need of additional funding, and potentially eliminates foresight in regional planning. By allowing a municipality to lay claim to an area simply by holding a meeting to consider the intent to annex, that municipality trumps residential opposition

unless they are legally educated to anticipate and beat the municipality to the table.

Instead of creating workable and realistic budgets, a municipality can statutorily express its intent to consider annexation and almost guarantee additional taxes in exchange for extending services. Annexation may mean immediate pecuniary benefit for a municipality, but it also reduces the need to take a focused look at growth situations and base decisions to annex on something other than fiscal gain. Because residents lack the necessary legal knowledge to anticipate or initiate actions to ward off annexation by an anxious municipality, they stand virtually powerless in the annexation process. It is an uneven playing field that leaves fringe residents without reasonable options other than succumbing to the forced will of the municipality.

Furthermore, unilateral applications of a standard that applies best to large urban areas detrimentally impacts the character of North Carolina. Statutes that help prevent the growth of slums in Charlotte, likewise help prevent the maintenance of uniquity in smaller towns across North Carolina. As a result of the applications of these statutes, in lieu of slums, small towns and fringe areas throughout North Carolina become increasingly homogenized. They are merely replicas of each other, towns just further down the road in either direction, no longer someplace unique.

VI. EPILOGUE: RESIDENTS TAKE A STAND

On June 27, 2001, sixty-five residents of the outskirts of Maggie Valley filed a petition with the Superior Court of Haywood County alleging that Maggie Valley’s proposed annexation ordinance is null and void because of its failure to meet necessary statutory requirements. Specifically, residents question the Town’s method in determining the commercial, industrial or governmental nature of land being annexed. Residents also argue that the annexation plan fails to “adequately set forth the methods by which the Town plans to finance the extension of services into the area to be annexed” and whether those services will be provided


69. It goes without saying that this sort of annexation policy exacerbates urban sprawl and turns what precious little natural landscape we do have left in the state into concrete. See generally id.


71. Id. at 3-4.
The petition further questions the town’s ability to provide “police protection, fire protection, solid waste collection, street maintenance as well as water and sewer services . . . on substantially the same basis” as those in town. Lastly, residents suggest that areas of the proposed annexation are “not developed for urban purposes as defined by N.C.G.S. §160A-36(c)” or that the town went too far in qualifying the land it wants to annex.

Motivated by their frustrations, residents are doing all that they can to prevent their land’s annexation by the Town of Maggie Valley. They are trying to fight the annexation machine before it tramples through their backyard. Perhaps they will be able to expose substantial problems in Maggie Valley’s ordinance which would render it null and void. But just as easily, their heroic efforts may succumb to policy that ignores residents’ concerns. As of now, their case has been continued. It’s likely that once it is tried and there is a decision on the annexation, the losing side will appeal. Thus, the matter will assuredly remain tied up in the courts for some time. A strategy of delay that benefits residents opposing annexation only underscores the problems with involuntary annexation - judicial and economic inefficiency. However, despite all of the time the court battle will take and all of the expense the landowners will incur, the question remains - do they really stand a chance?

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72. Id. at 4.
73. Id.
74. Id.