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BARGAIN BASEMENT ANNEXATION: HOW MUNICIPALITIES SUBVERT THE INTENT OF NORTH CAROLINA ANNEXATION LAWS

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I. INTRODUCTION

As the U.S. Open prepared to tee off in the summer of 2005, the communities of southern Moore County, North Carolina received considerable attention when the *New York Times* published a front-page article detailing the exclusion of five unincorporated communities from municipal boundaries.² Subsequently, these communities fought an extensive public relations battle to convince neighboring municipalities to initiate annexation procedures that would provide residents with basic services like water, sewer, garbage disposal, and police and fire protection.³ In so doing, these communities highlighted the vast inequities that characterize North Carolina's annexation laws and emphasized the need to re-assess the wisdom of these laws.

Since its inception in 1959, North Carolina's annexation policy has received considerable national praise for its "progressive" approach to urban development.⁴ Some commentators have gone so far as to call North Carolina's annexation laws "the wisest urban policy in the country."⁵ Locally, the laws have met with mixed results as munici-

1. The author is a third year law student who will graduate from UNC Law in May 2007. She wishes to thank Anita Earls, the UNC Center for Civil Rights and the residents of Moore County's unincorporated communities for exposing her to the problems associated with North Carolina's annexation laws. The author would also like to thank Mike Stone, her family, and the UNC Law Review for their support.

2. See Shaila Dewan, *In County Made Rich by Golf, Some Enclaves Are Left Behind*, N.Y. TIMES, June 7, 2005, at A1.

3. See, e.g., Mike Bianchi, *Pinehurst Won't Talk About What Lies Next Door*, ORLANDO SENTINEL, June 19, 2005, at C1; Michael Gordon, *Residents Say Economic Bias Denies Them Better Services, Stronger Voice*, CHARLOTTE OBSERVER, June 5, 2005, at A1; Martha Quillin, *Pinehurst in Black and White*, NEWS & OBSERVER (Raleigh, N.C.), June 5, 2005; Wright Thompson, *Golfers' Paradise is Lost on this Hamlet: Activists Fight for Annexation and the Municipal Services that Come with It*, KANSAS CITY STAR, June 15, 2005, at D1.

4. In the 1960s, Harvard Law School used the law as a "model" approach to urban planning in its local government course, and the U.S. Advisory Commission on Intergovernmental Relations strongly urged other states to adopt North Carolina's statutory scheme. See MICHAEL CROWELL, N.C. BAR ASS'N GOV'T AND PUB. SECTOR SECTION, ANNEXATION (2005), available at <http://governmentpublicsector.ncbar.org/Newsletters/Newsletters/default.aspx> (follow January 12, 2005 link) (last visited Sept. 16, 2006).

5. *Id.*

palities have increasingly utilized involuntary annexation procedures,⁶ whereby municipal boundaries are extended to include outlying and unincorporated areas without the consent of area landowners.⁷

The North Carolina League of Municipalities has credited the state's generous annexation laws with keeping tax rates low for city residents and businesses, attracting new jobs and protecting "property values, the environment and bond ratings."⁸ Proponents contend that annexation is a fair process whereby residents of fringe areas on the outskirts of town are expected to take responsibility for the municipal services they enjoy.⁹ Yet there is growing dissatisfaction among residents about the value of the state's involuntary annexation procedures.¹⁰ Viewing the statutes as archaic and undemocratic, opponents have organized efforts aimed at repealing the laws.¹¹ Due in part to their efforts, nine separate bills reforming North Carolina's annexation and extra-territorial jurisdiction laws were introduced during the 2005 legislative session alone.¹²

6. See generally N.C. GEN. STAT. §§ 160A-45 to -54 (2003), amended in part by Act of July 24, 2006, ch. 1, §21, 2006 N.C. Sess. Laws 162, 162 (setting out annexation procedures).

7. § 160A-49 (establishing that municipalities can annex areas without the consent of property owners).

8. NORTH CAROLINA LEAGUE OF MUNICIPALITIES, BULLETIN #2 (2005), <http://www.nclm.org/Legal/Bulletin/2005/02-4-05.htm> (last visited Sept 16, 2006).

9. Proponents of involuntary annexation argue that fringe area residents depend heavily on city infrastructure when they enter the municipality to work, shop, entertain themselves, or otherwise utilize services like roads, sidewalks, street-lights, and police protection. Proponents argue that fringe area residents enjoy these benefits while contributing little if anything to the cost of providing such services. See Laurie Reynolds, *Rethinking Municipal Annexation Powers*, 24 Urb. Law. 247, 254 (1992); See also N.C. GEN. ASSEMBLY, SUPPLEMENTARY REPORT OF THE MUN. GOV'T STUDY COMM'N, 103d Gen. Assembly, at 14 (1959) [hereinafter SUPPLEMENTARY COMM'N REPORT] (noting that fringe areas choose to live in the vicinity of a municipality and therefore chose "to identify [themselves] with an urban population, to assume responsibilities of urban living, and to reap the benefits of such location").

10. See Barbara Arntsen, *Commissioners Want More Facts on Annexation Before Supporting Local Legislation Request*, GOLDSBORO NEWS ARGUS (Goldsboro, N.C.), Apr. 6, 2005, available at <http://www.newsargus.com/news/archives/2005/04/06/> (follow "Commissioners want more facts on annexation before supporting local legislation request") (discussing annexation opponents in Goldsboro); Michael Lowrey, *Supreme Court Overturns Asheville Annexation, Puts Stay on Fayetteville's Attempt*, CAROLINA J., Jul. 23, 2004, available at http://www.carolinajournal.com/exclusives/display_exclusive.html?id=1685 (discussing challenged annexations in Asheville and Fayetteville, N.C.); *Anti-Annexation Group Rails Against Municipal Leaders Outside Legislature*, NBC 17, May 11, 2005, <http://www.nbc17.com/news/4477369/detail.html> (last visited Sept. 30, 2005).

11. These efforts are best exemplified by the Stop NC Annexation Coalition, which describes itself as a "grassroots effort to end involuntary annexation in North Carolina." See generally <http://www.stopncannexation.com> (last visited Aug. 31, 2006).

12. See H.R. 302, 151st Gen. Assem., Reg. Sess. (N.C. 2005); H.R. 307 151st Gen. Assem., Reg. Sess. (N.C. 2005); H.R. 363, 151st Gen. Assem., Reg. Sess. (N.C. 2005); H.R. 460, 151st Gen. Assem., Reg. Sess. (N.C. 2005); H.R. 965, 151st Gen. Assem., Reg. Sess. (N.C. 2005); H.R. 1397, 151st Gen. Assem., Reg. Sess. (N.C. 2005), H.R. 1704, 151st Gen. Assem., Reg. Sess. (N.C. 2005); S. 19, 151st Gen. Assem., Reg. Sess. (N.C. 2005); S. 649, 151st Gen. Assem., Reg. Sess. (N.C. 2005).

While both sides have valid arguments about the corresponding costs and benefits of North Carolina's annexation statutes, they continue to ignore fundamental inequalities in the law – both in substance and in practice. Substantively, the law is facially unequal: municipalities may annex areas without the consent of a single resident,¹³ while residents are prevented from requesting annexation absent the consent of 100 percent of area landowners.¹⁴ In practice, the annexation laws have resulted in greater inequities by granting municipalities extraordinary discretion in determining whether and where it will pursue annexation. Municipalities can utilize this discretion to annex new developments or properties with high-tax values while ignoring older, less valuable areas. Thus, municipalities may exercise this discretion by embracing a bottom-line approach to annexation, whereby officials weigh the cost of annexing an area with the expected tax revenue the properties would generate. In keeping with this approach, the communities of southern Moore County provide a striking example of how the uneven application of municipal annexation powers frustrates legislative intent and endangers public health and safety.

This article will utilize the experiences of the communities in southern Moore County to highlight the inherent flaws in North Carolina's annexation statute. First, this article sets out the history of North Carolina's annexation policies and how those policies have been implemented. Second, this article examines the experiences of unincorporated communities in southern Moore County that desperately sought (and were denied) annexation and its corresponding municipal services. Finally, this article briefly analyzes ways in which North Carolina's statutory scheme can be improved to allow for equitable urban development.

II. NORTH CAROLINA ANNEXATION POLICY: BACKGROUND

Annexation is the process by which a municipality extends its borders to include outlying and unincorporated areas. It is intended to allow for the sound and orderly development of urban areas and, in many areas, serves as “an important means of obtaining basic municipal services that would otherwise be unavailable to residents of unincorporated land.”¹⁵ Today, there are four basic annexation procedures utilized throughout the United States: legislative determination, popular determination, municipal determination, and quasi-

13. See N.C. GEN. STAT. § 160A-49 (2003).

14. See N.C. GEN. STAT. § 160A-31 (2003) (setting out the state's voluntary annexation procedures).

15. Reynolds, *supra* note 9, at 256.

legislative determination.¹⁶ Of these procedures, municipal determination annexations – i.e. “involuntary” annexations – are the most contentious.¹⁷ North Carolina is one of only four states in the United States that grant municipalities broad involuntary annexation powers.¹⁸

As mandated by the North Carolina Constitution, the General Assembly is charged with organizing and fixing the boundaries of all counties, cities, towns and other political subdivisions.¹⁹ The ability to alter municipal boundaries derives from these powers of creation and abolition.²⁰ Absent constitutional restrictions, the power to extend municipal boundaries is therefore a political matter within the discretion and control of state legislatures.²¹ As such, the General Assembly is empowered to alter municipal boundaries by directly annexing territory to a municipality, through consolidation of municipalities, or through the prescription of a general policy²² delegating the authority to alter municipal boundaries.²³

The General Assembly retained sole authority over annexations in North Carolina until 1947,²⁴ when, overwhelmed by an ever-increasing number of annexation requests,²⁵ the legislature established non-legislative annexation procedures.²⁶ Under the law, municipalities were given the authority to annex territory; but the power was not absolute, as voters could force the municipality to hold a referendum

16. See Robert H. Pryor, *North Carolina's Referendum Procedure: Texi Industries Inc. v. City of Fayetteville*, 17 WAKE FOREST L. REV. 765, 769-75 (1981) (reviewing the different types of annexation procedures utilized in the United States).

17. Reynolds, *supra* note 9, at 278.

18. See Demorris Lee, *Borderwars*, NEWS & OBSERVER (Raleigh, NC), Feb. 22, 2004, at A21 (recognizing that while seven states allow for a system of involuntary annexation, three of those states, excluding North Carolina, strictly limit that power).

19. N.C. CONST. art. VII, § 1.

20. Nat'l League of Cities, *Adjusting Municipal Boundaries: Law and Practice*, in Selected Materials on Municipal Annexation 80 (Warren Jake Wicker ed., 1980) (noting that “courts have ruled consistently that the power to alter boundaries is incident to the power to create and abolish municipal corporations – a power possessed by state legislatures”).

21. See *Plemmer v. Matthewson*, 281 N.C. 722, 190 S.E. 2d 204 (1972) (holding that the enlargement of municipal boundaries by annexation is a “legitimate subject of legislation”); *Manly v. City of Raleigh*, 57 N.C. 370, 372-73 (1859) (holding the General Assembly could establish a county or incorporate a town through legislative acts).

22. Eugene McQuillin, *Municipal Corporations* (3d ed. 1996).

23. See *Huntley v. Potter*, 225 N.C. 619, 629, 122 S.E. 2d 681, 686 (1961) (noting the power to extend municipal boundaries “may be validly delegated to municipal corporations by the legislature”).

24. Pryor, *supra* note 16, at 770.

25. Lee, *supra* note 18.

26. Act of Apr. 3, 1948, ch. 725 §§ 1-5, 1947 N.C. Sess. Laws 990-91. The statute’s stated purpose was to provide for orderly municipal growth while “easing the General Assembly’s burden on considering numerous individual requests for special legislation.”

on the proposed annexation.²⁷ The policy, however, proved largely unworkable as two out of every five proposals submitted to a referendum were rejected,²⁸ leading municipalities to seek special legislation in the General Assembly enacting municipal annexations.²⁹ In response, the General Assembly established the Municipal Government Study Commission (hereinafter Commission) to reexamine North Carolina's annexation procedures and, if necessary, to propose a new statewide policy. Declaring that "[c]ities cannot continue to remain strong and provide essential municipal services unless their boundaries are periodically extended to take in those areas which require municipal services for sound development,"³⁰ the Commission proposed a number of changes granting municipalities greater control over annexation.³¹ These recommendations were largely accepted by the General Assembly and were enacted into law.³²

Under North Carolina's current statutory scheme, there are two principal mechanisms by which municipal boundaries may be extended: (1) the resident-initiated, or voluntary, annexation procedure;³³ or (2) the municipal-initiated, or involuntary, annexation

27. *Id.* See also Lee, *supra* note 18 (noting that voters could force a municipality to hold a referendum by obtaining petition signatures from fifteen percent of voters in the targeted area).

28. SUPPLEMENTARY COMM'N REPORT, *supra* note 9, at 5.

29. From 1950-1958, the General Assembly, which had retained some authority over annexation procedures, enacted thirty-eight pieces of legislation extending municipal boundaries throughout the state. *Id.*

30. *Report of Municipal Government Study Commission* (1958), reprinted in Selected Materials on Municipal Annexation 41 (J. Wicker ed., 1980) [hereinafter MUNICIPAL GOV'T REPORT].

31. Recognizing the difficulties associated with the referendum procedure, the Commission recommended that the General Assembly adopt a municipal initiated annexation procedure that did not require the consent of fringe area residents but did limit the municipality's power by limiting annexation to areas that were sufficiently developed and urban in nature. The Commission also recommended that municipalities be required to provide services to newly annexed areas and prior residents on an equal basis. MUNICIPAL GOV'T REPORT, *supra* note 30, at 9-10.

32. While the General Assembly retained the constitutional authority to undertake annexations under the new law, it is important to note that ultimately, municipalities have the legal right to determine their own boundaries. See N.C. GEN. STAT. § 160A-21 (2003) ("[b]oundaries of each city shall be those specified in its charter with any alterations that are made from time to time in the manner provided by law or by local act of the General Assembly"). See also 1 DAVID M. LAWRENCE, ANNEXATION LAW IN NORTH CAROLINA 1-5 (Univ. of N.C. Inst. of Gov't et. al. eds., 2003) (discussing annexation powers retained by the General Assembly).

33. N.C. GEN. STAT. § 160A-31(a) (2003) ("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 real property located within such area."). While the voluntary annexation procedure is largely out of the purview of this article, it is important to note that the procedural requirements for voluntary annexations are quite stringent. For example, a municipality may only proceed with annexation where 100 percent of all property owners agree – a requirement that can be quite difficult, if not impossible, in areas where there is considerable absentee-ownership and/or rental properties. Even where residents obtain consent from property owners, the municipality is *not* required to annex the area. See Jannelle D. Allen, Comment, *Carolina Power & Light v. City of Asheville, Municipal Annexation in North Carolina: The Pros, the Cons and the Judiciary*, 27 N.C. CENT. L.J. 224, 231 (2005) (noting that no North

procedure.³⁴ This article focuses on the second mechanism.

Annexations typically occur through the utilization of the involuntary annexation powers conferred by the General Assembly.³⁵ Under the General Statutes of North Carolina, involuntary annexations may proceed under one of two statutes³⁶ that set out specific standards and conditions precedent that must be met before the annexation process may even begin. These standards are intended “to prevent municipalities from extending their boundaries arbitrarily or without due regard for the policy, reasons, and standards mandated by the legislature.”³⁷ In pursuing involuntary annexation, municipalities must fulfill certain procedural requirements including notice, public hearing, and the preparation of an annexation services plan (ASP), detailing both the area to be annexed and how the municipality intends to extend services to newly annexed areas.³⁸ More importantly, municipalities must show that the target area is sufficiently developed to warrant annexation.³⁹

Proponents of North Carolina’s annexation statutes emphasize that involuntary annexation is a fair and efficient means of producing “healthy, attractive, fast-growing cities that have become magnets for new residents and business.”⁴⁰ They argue that allowing municipalities to extend their boundaries – and tax bases – to include fringe areas prevents city centers from becoming “enclaves for the poor”⁴¹ as middle and upper class residents flee to wealthier suburbs.⁴² In a broad

Carolina court has considered the issue of whether landowners have an absolute right to annexation under the voluntary procedures).

34. See N.C. GEN. STAT. §§ 160A-36, 160A-48 (2003). For an in depth examination of the involuntary annexation procedures see generally Karen Ubell, Note: *Consent Not Required: Municipal Annexation in North Carolina*, 83 N.C. L. REV. 104 (2005).

35. See Lee, *supra* note 18.

36. See N.C. GEN. STAT. § 160A-36 (2003) (detailing procedures for municipalities with a population of less than 5,000), See also N.C. GEN. STAT. § 160A-48 (detailing procedures for municipalities with a population of more than 5,000).

37. *Carolina Power & Light Co. v. City of Asheville*, 358 N.C. 512, 516, 597 S.E.2d 717, 721 (2004).

38. N.C. GEN. STAT. § 160A-35(1)(a)-(b). See also, Julia Sullivan Hooten, Comment, *Caught Between a Rock and a Hard Place: Fringe Landowners “Can’t Get No Satisfaction,”* 24 CAMPBELL L. REV. 317, 322 (2002) (discussing requirements for the ASP report).

39. See N.C. GEN. STAT. §§ 160A-36, 160A-48 (establishing that to qualify for involuntary annexation, the subject land must (1) not be within the boundaries of another municipality or under its extra-territorial jurisdiction; (2) be adjacent or contiguous to the municipal boundary such that 1/8 of the target area touches the municipal boundary and; (3) must be urban in nature, such that sixty percent of the total lots were used for “residential, commercial, industrial, institutional, or governmental purposes,” and that sixty percent of residential acreage consist of lots and tracts of three acres or less).

40. Rob Christensen, *Power to Annex is Healthy*, NEWS & OBSERVER (Raleigh, N.C.), May 24, 2004, at A30.

41. DAVID RUSK, CITIES WITHOUT SUBURBS (3d ed. 2003).

42. See *Id.* (arguing that annexation will ultimately benefit poor, inner-city residents because it serves as an economic and social equalizer). Rusk argues: “It is not important that local

sense, North Carolina's policy deserves much of this praise as municipalities throughout the state have successfully extended their borders in a manner that benefits both municipal and fringe area residents.⁴³ It would be erroneous, however, to presume that the state's annexation policy has been an unqualified success. In practice, North Carolina's annexation statutes have been applied in an uneven manner, resulting in annexations that violate the spirit, if not the letter, of the law.⁴⁴

North Carolina's annexation laws were designed to encourage the sound and orderly development of urban areas. In formulating a statewide annexation policy, legislators focused on a variety of factors important to annexation decisions, including the "distribution of developed and vacant land" in areas contiguous to the municipality, and the availability of land within municipal boundaries that was suitable for residential, commercial, or industrial development.⁴⁵ Despite this, lawmakers primarily focused on the provision of municipal-level services "for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and government purposes or in areas undergoing such development."⁴⁶ The provision of municipal-level services was seen as a benefit to both residents of fringe areas, who obtained quality services that were otherwise unavailable, and to the municipalities, which, through annexation, were able to provide services in a more cost-efficient manner.

In theory, North Carolina's annexation policy "steer[ed] a middle path"⁴⁷ between protecting the interests of property owners and the interests of the *greater* community. In practice, however, North Carolina's annexation policy has not fulfilled its promise, as municipalities

residents have their garbage picked up by a metrowide garbage service. . . . It is important that all local governments pursue common policies that will diminish racial and economic segregation. In baldest terms, sustained success requires . . . moving dollars from relatively wealthy suburban governments to poorer city governments." *Id.*

43. See Thompson, *supra* note 3 (discussing the benefits of annexation for the Berkley community and the annexing municipality).

44. Nolan v. Village of Marvin, 17 N.C. App. 84, 615 S.E. 2d 898 (N.C. Ct. App. 2005), *rev'd*, 360 N.C. 256, 624 S.E.2d 305 (2006) (Tyson, J., dissenting) (arguing that while a proposed annexation was procedurally sound, it was a "flagrant violation of the plain language, intent and purpose" of the law because the municipality did not pursue the annexation to "create and foster economic growth and development and make urban services available to developing areas").

45. MUNICIPAL GOV'T REPORT, *supra* note 30, at 36 (pointing to six factors to be considered in making annexation decisions).

46. N.C. GEN. STAT. § 160A-33 (2003). See also Abbott v. Town of Highlands, 52 N.C. App. 69, 73, 277 S.E. 2d 820, 823 (N.C. Ct. App. 1981) (noting the "purpose of annexation is to provide urbanely developed areas with governmental services needed therein for public health, safety, protection and welfare").

47. MUNICIPAL GOV'T REPORT, *supra* note 30, at 40.

frequently pursue annexations that benefit the economic bottom line over those that would best benefit fringe area residents.

As early as 1959, the Commission recognized that “the significant feature of city government today is the system of facilities which the city provides and which is essential to urban living.”⁴⁸ That proposition is equally true today. Modern municipal services typically include infrastructure like water and sewer, paved roads, curb and gutter, and streetlights, as well as public health and safety services like garbage collection, fire and police protection, and recreational facilities. While state law does not require municipalities to provide these services, it does require towns and cities to provide services on an equal basis to all of its residents.⁴⁹ Such a requirement was intended to protect the rights of fringe area property owners,⁵⁰ but it has had unintended consequences: it has led municipalities to embrace a bottom-line approach to annexation decisions. In essence, the equal services provision, in combination with the ASP requirement, forces municipalities to consider the financial consequences of annexation and the attendant extension of municipal services when determining where it will pursue annexation.

Municipalities embracing a bottom-line approach weigh the cost of annexing an area – i.e. the cost of extending police and fire protection, water and sewer service infrastructure, etc. – with the area’s expected tax revenue. Such considerations have increasingly caused government officials to focus on expanding a municipality’s tax base at minimum cost.⁵¹ “Cities try to use [the state’s annexation laws] to their advantage,” says David Lawrence, an annexation expert at the University of North Carolina School of Government. “What they’re interested in, typically, is annexation that doesn’t cost them very much . . . or allows them to break even.”⁵² The bottom-line approach to annexation can thereby translate into the rapid annexation of new, wealthier developments, where infrastructure is already in place. Municipalities view such developments as revenue-producing opportunities, where the costs of annexation are far outweighed by the

48. *Id.* at 41.

49. N.C. GEN. STAT. § 160A-35 (2003). Specifically, the statute requires municipalities to extend “to the area to be annexed each major municipal service performed within the municipality at the time of annexation.” *Id.* Municipalities must extend police and fire protection, garbage collection and street maintenance services on “substantially the same basis and in the same manner” as those services are provided elsewhere in the city prior to annexation. Municipalities are also required to provide water and sewer services – if they provide those services in general – within 1 year of annexation. *Id.* See also, *Greene v. Town of Valdese*, 306 N.C. 79, 87, 291 S.E.2d 630, 635 (1982).

50. MUNICIPAL GOV’T REPORT, *supra* note 30, at 34.

51. See Tim Whitmire, *U.S. Open Offers Stage to Communities*, ASSOCIATED PRESS, Jun. 16, 2005.

52. *Id.*

opportunity to broaden the municipal tax base. Conversely, older neighborhoods are often viewed as tax-neutral or tax-poor communities, due to the extraordinary costs of extending services – especially where the area requires construction of infrastructure such as water and sewer mains, or pump stations. Municipalities frequently bypass such areas in search of revenue-rich areas,⁵³ leaving residents of older communities – arguably those most in need of municipal-level services – to fend for themselves.

Commentators have long recognized the risk of the bottom-line approach. For example, in 1966, the National League of Cities recognized that:

[T]he core city may follow a narrow policy of annexing only highly developed areas that contain the taxable wealth necessary to carry their share of the costs of providing city services. Less well-developed, deteriorated and dilapidated areas may be excluded selectively because they constitute a potential net liability to the city and, although related to the total pattern of desirable fringe area development, these areas continue to wither.⁵⁴

In essence, there was a recognition that older, less-developed areas essentially would be ignored and allowed to⁵⁵ “whither on the vine” by neighboring municipalities bent on expanding their tax revenues. While at least one commentator expressed his belief that North Carolina’s statutory procedures would diminish or eradicate this threat,⁵⁶ such faith in the system has proven misplaced. The communities of southern Moore County – and in particular, the Village of Pinehurst – provide a perfect example of how the uneven application of municipal annexation powers has failed to protect older, less-well-developed areas from deterioration.

III. SOUTHERN MOORE COUNTY: A CASE STUDY

Located about sixty miles southwest of Raleigh, North Carolina, southern Moore County is home to the world-renowned Pinehurst golf resort. Praised for its golf courses, spa facilities and equestrian centers, southern Moore County has developed a reputation for lux-

53. Note, while municipalities are not required to pay for the extension of water and sewer service infrastructure when proceeding under involuntary annexation, its clear that a municipality could consider the cost of extending other services (ie. police and fire protection) when determining whether to proceed with the annexation.

54. Nat’l League of Cities, *Adjusting Municipal Boundaries: Law and Practice*, in *Selected Materials on Municipal Annexation 92* (Warren Jake Wicker ed., 1980).

55. See Reynolds, *supra* note 9, at 257 (recognizing the threat of municipal “land grabs” of lucrative power but arguing that establishing a duty to provide municipal services to an annexed area would prevent municipalities from taking such action).

56. See Nat’l League of Cities, *Adjusting Municipal Boundaries: Law and Practice*, in *Selected Materials on Municipal Annexation 80* (Warren Jake Wicker ed., 1980).

ury and prestige. Yet, this opulence masks the reality of a county divided: “one portion disproportionately white and wealthy, one portion largely black and poor.”⁵⁷ In every way, Moore County is divided by intangible and tangible barriers, the most striking of which are the municipal boundaries themselves.

There are five unincorporated, predominantly African American, communities⁵⁸ in southern Moore County that either butt up against or are completely surrounded by the neighboring municipalities of Aberdeen, Southern Pines, and Pinehurst. As Aberdeen, Southern Pines, and Pinehurst underwent rapid expansion in the 1980s and 1990s,⁵⁹ these unincorporated communities remained on the outside looking in, physically excluded from municipal boundaries even as those boundaries were extended to include other, wealthier neighborhoods.⁶⁰

The economic, psychological, and physical consequences of exclusion have been devastating for these communities. Economically, residents face an uncertain future, their equity jeopardized by their exclusion from municipal boundaries and services.⁶¹ Psychologically, municipal exclusion sends the message that residents of these communities are “less desirable, less important, less worthy than their wealthier neighbors.”⁶² Physically, the effects of exclusion have been astounding as residents face an array of short and long-term threats to public health and safety.

Septic system failure and well-water contamination are the greatest physical threats facing residents of excluded, fringe-area communities. Properly operating septic systems require sufficient space and suitable soil quality.⁶³ Yet these communities are densely populated areas

57. UNIV. OF N.C. CENTER FOR CIVIL RIGHTS, PRESS PACKET: RACIAL EXCLUSION IN MOORE COUNTY, NORTH CAROLINA 4 (2005) (on file with author).

58. Those communities are: Jackson Hamlet, Lost City, Midway, Monroe Town, and Waynor Road. See Dewan, *supra* note 2.

59. For example, when Pinehurst was incorporated in 1980, the village had just 1,746 residents. By 2000, the U.S. Census reported a population of 9,706, a 500 percent increase. U.S. Census Bureau, Census Factfinder available at www.factfinder.census.gov (last visited July 20, 2005). During the same time period, the state of North Carolina grew by only 15.1 percent. See Convention and Visitors Bureau of Pinehurst, Southern Pines, and Aberdeen, available at <http://www.homeofgolf.com> (last visited July 25, 2005).

60. See Gordon, *supra* note 3 (discussing Pinehurst's annexation of Abingdon Square condominiums).

61. See CEDAR GROVES INSTITUTE FOR SUSTAINABLE COMMUNITIES, THE PERSISTENCE OF POLITICAL SEGREGATION: RACIAL UNDERBOUNDING IN NORTH CAROLINA (2004), available at http://www.mcmoss.org/CedarGrove/Docs/regional_underbounding.pdf (last visited Oct. 19, 2005) (arguing that city services provide an essential foundation for protecting property values, economic development and public health).

62. Quillin, *supra* note 3.

63. Grassroots, at http://www.grassroots.ca/homeowner_help_articles/septic_systems_v2.html (last visited Oct. 19, 2005).

comprised of small lots with limited space for wells and septic systems.⁶⁴ Septic system failure has been linked to the spread of diseases like dysentery and hepatitis, the spread of *E. Coli*, and the contamination of well water.⁶⁵ Septic system failure, therefore, poses substantial environmental and health risks.⁶⁶ Even in the best of circumstances, a heightened concentration of septic systems in a given area threatens public health and safety. Residents of southern Moore County's excluded communities, however, are not faced with a best-case scenario. Residents of these areas have been forced to combat leaking raw sewage in their front yards,⁶⁷ cesspools in their backyards,⁶⁸ and the constant fear of total system failure. The situation is further complicated by the poor physical condition of the septic tanks themselves. In Jackson Hamlet, most septic systems are more than twenty years old and others are more than thirty years old.⁶⁹ As most septic systems have a life span of between twenty and thirty years, there is a considerable chance of total system failure in the communities.⁷⁰

Unfortunately, the threat of septic system failure is not the only public health threat faced by residents of these fringe communities as a result of exclusion; there is also an absence of solid waste collection services within the communities.⁷¹ While many residents are able to afford the user fees associated with contracting private trash collection, residents who are unable to afford those costs must resort to alternate means of disposing of their waste – including burning it in

64. For example, in Jackson Hamlet the average lot size is about 1/4 acre, with some lots as small as 1/8 an acre. Ann Moss Joyner and Carolyn J. Christman, *A Case Study of Southern Moore County*, CEDAR GROVE INSTITUTE FOR SUSTAINABLE COMMUNITIES (forthcoming 2006).

65. Mass. Dept. of Environmental Protection, at <http://www.mass.gov/dep/water/waste/water/failing.htm> (last visited Oct. 19, 2005).

66. See Lee, *supra* note 18 (discussing how the location of 60,000 septic tanks in the fringe area outside the city of Fayetteville has the potential to cause severe environmental damage in the area).

67. Whitmire, *supra* note 51 (noting that whenever it rains, Midway resident Randy Thomas is forced to spread truckloads of dirt on his front yard to prevent his septic system from leaking raw sewage into his front yard).

68. John Chappell, *Sharing the Prosperity: Communities Hope to Benefit From Open Spotlight*, THE PILOT (Southern Pines, N.C.), May 22, 2005, at 1 (quoting Jackson Hamlet resident Ida Mae Murchison).

69. UNIV. OF N.C. CTR. FOR CIVIL RIGHTS, JACKSON HAMLET COMMUNITY QUESTIONNAIRE (on file with author).

70. The threat of septic system failure has not escaped the notice of residents, who recognize that the communities "definitely need sewer." Chappell, *supra* note 68 (quoting Jackson Hamlet resident Ida Mae Murchison).

71. See Interview with Trish McWilliams, Dir. of Invisible Fences in (Moore County, NC) (Summer 2004) (quoting Midway resident Steve Utley as saying: "That's the main thing that bothers me . . . filth, trash beside the road – there's no one to pick it up"). "Invisible Fences" is a documentary film on municipal exclusion in Moore County, North Carolina that was directed by UNC Law student Trish McWilliams.

their own backyards.⁷² Such methods pose a significant risk to residential safety – in particular, the risk of fire spreading and the release of harmful chemicals released by burning trash.

Unincorporated communities on the outskirts of Aberdeen, Pinehurst, and Southern Pines have thus made a persuasive showing that their communities are “withering on the vine.” Theirs, however, is a vine of exclusion. As these communities struggle to maintain an adequate quality of life in the face of failing septic tanks and wells, the neighboring municipalities largely ignored their plight.⁷³ Instead, these communities chose to annex revenue-producing areas. For example, in the 1990s Pinehurst agreed to annex Abingdon Square, a condominium development that juts into the Jackson Hamlet neighborhood after developers agreed to underwrite service infrastructure and donate it to local governments.⁷⁴ Residents of Abingdon Square received a full array of municipal services, even as the residents of Jackson Hamlet – mere yards away – went without.

Despite claims to the contrary, it is clear that government officials in Aberdeen, Southern Pines and Pinehurst embrace a bottom-line approach to annexation. Maps of each of these municipalities reveal jagged, arbitrary boundaries that routinely skip over predominantly poor, African American neighborhoods.⁷⁵ In essence, these neighborhoods have become “islands unto themselves.” For example, Jackson Hamlet is surrounded on three sides by Pinehurst and Aberdeen. Only a tenth of a mile separates Aberdeen and Pinehurst – a tenth of a mile occupied by Jackson Hamlet. The irregularity of municipal boundaries has not escaped the notice of local officials. “If you look at the borders of Aberdeen, they make absolutely no sense,” admits Aberdeen Town Manager Bill Zell.⁷⁶ Yet, local officials are unwilling to abandon the bottom-line approach that arguably has led to these

72. See Quillin, *supra* note 3 (discussing how many Midway residents burn their trash in their yards despite state law prohibiting such actions).

73. Having failed to convince county officials to extend water and sewer services to their communities, representatives of southern Moore County’s excluded communities have sought help from municipal officials in Aberdeen, Southern Pines, and Pinehurst. Those officials repeatedly indicated they would not pursue annexation without 100 percent support from all property owners in the community – essentially, they wouldn’t pursue annexation unless the voluntary procedure could be utilized. See Quillin, *supra* note 3; Thompson, *supra* note 3. While there is not 100 percent unanimity among residents of Jackson Hamlet – largely because residents are concerned about the village’s planning and zoning ordinances – a majority of residents favor annexation, whether by Pinehurst or Aberdeen. See Quillin, *supra* note 3; UNIV. N.C. CENTER FOR CIVIL RIGHTS, *supra* note 57. Residents of Midway, however, are in agreement that they want to be annexed by neighboring Aberdeen, which has proved resistant. See Thompson, *supra* note 3.

74. Gordon, *supra* note 3.

75. See UNIV. N.C. CENTER FOR CIVIL RIGHTS, *supra* note 57 at Appendix 4 (reproducing maps of the Pinehurst, Aberdeen, and Southern Pines’ municipal boundaries).

76. Gordon, *supra* note 3.

arbitrary boundaries. In a May 2004 interview about the possibility of annexing these unincorporated communities, Zell said: "If it's going to cost us twice as much to supply the services as we're going to get back in taxes, is it to our benefit? There's a fine line you need to walk . . . we have to make a business decision."⁷⁷

Other officials are less forthcoming about their motivations. For example, Pinehurst Village Manager Andy Wilkison has denied the village embraces a bottom-line approach to annexation. He argues that maps of village boundaries are misleading. "I think if you just looked at the map and didn't know the background, you would think, 'Gosh, Pinehurst is trying to keep these people out,'" he said in an interview with the *Fayetteville Observer* in May 2004.⁷⁸ Wilkison and other village officials, however, have repeatedly emphasized that the village only pursues *voluntary* annexation as a means of deflecting criticism for the village's failure to annex Jackson Hamlet.⁷⁹ Pinehurst's official annexation policy supports this position by noting that annexations "should predominantly be voluntary" and that involuntary annexation should "be considered and undertaken under special conditions to prevent major external damage to the policy, goals, property values of the Village and the welfare of our citizens."⁸⁰ However, despite this emphasis on voluntary annexation, Pinehurst has recently pursued the involuntary annexation of Pinewild, a wealthy community that already has the basic municipal services that Jackson Hamlet so desperately needs.

Located on the western side of the Village of Pinehurst – essentially just up the road from Jackson Hamlet – Pinewild is a gated, golf-course community of roughly 1,100 residents⁸¹ – a population three times that of Jackson Hamlet. In many ways, Pinewild is indistinguishable from the village itself.⁸² For instance, the community is located just over a mile from the village center and visitors to its golf

77. Julia Oliver, *Water Needs Unite Groups*, FAYETTEVILLE OBSERVER, (Fayetteville, N.C.), May 7, 2004.

78. Julia Oliver, *A History of Separation Studied*, FAYETTEVILLE OBSERVER, May 2, 2004.

79. Dewan, *supra* note 2 (quoting Andy Wilkison as saying: "I know what the maps look like and stuff, but the annexations have largely been places where people have come to use wanting to be annexed"); John Boesch, President, Stop the Taking of Pinewild, Pinehurst Petition Presentation to the Pinehurst Village Council Work Session (Sept. 13, 2005) (transcript available at <http://www.villageofpinehurst.org/departments/administration/documents/09-13WorkSessionDocument1.pdf>) (last visited Sept. 20, 2006) (noting that "in written form and in conversations, Village officials have stated that we will not annex anyone who does not want to be annexed" and that "over the past 14 years, successive Village Councils have not once annexed an area where a majority of the residents did not want to be annexed.")

80. Village of Pinehurst Council: Annexation Policy of the Village of Pinehurst.

81. Andrew C. Martel, *Pinewild Group Hails Decision*, FAYETTEVILLE OBSERVER, Feb. 1, 2006.

82. Pinewild abuts Pinehurst along 1.59 miles of the village boundary. Steven J. Smith, *Law Common Sense Supports Annexation*, THE PILOT (Southern Pines, N.C.), Sept. 2, 2005.

course are greeted by a sign announcing: “Pinewild Country Club of Pinehurst.”⁸³ Homes in the development are reminiscent of those already within village boundaries – new single-family homes valued at several hundred thousand dollars apiece.⁸⁴

Residents of Pinewild benefit from the prosperity that golf brings to southern Moore County, and, in many ways, their community exists as a result of that prosperity. As such, residents of the community enjoy a high degree of services that are unavailable to their neighbors in Jackson Hamlet. Pinewild residents receive water and sewer services provided by Moore County,⁸⁵ private streetlights, and, as a gated community, their own security patrol and road maintenance.⁸⁶ The community even has its own residential planning and zoning ordinances – in the form of homeowner’s association rules and covenants – to control the quality of development in their community.⁸⁷ In many ways, Pinewild is the embodiment of “orderly growth” and development envisioned by North Carolina’s annexation statutes. Yet despite this, Pinewild has been targeted by Pinehurst for involuntary annexation.⁸⁸

Opponents of the Pinewild annexation argue that Pinehurst’s interest in the community is unrelated to furthering “the protection of health, safety and welfare”⁸⁹ of the community. In their view, Pinehurst’s interest can only be explained by the estimated six million dollars in revenue the village expects to receive as a result of annexation.⁹⁰ Pinewild, in every sense, is the definition of a revenue-producing annexation opportunity. As previously noted,⁹¹ community residents already have access to a wide array of “municipal” services that Pinehurst would otherwise have to provide. Most notably, Pinehurst would not be responsible for extending water and sewer infra-

83. *Id.*

84. See Pinewild Country Club of Pinehurst, Homes for Sale in Pinewild, <http://www.pinewildcc.com/houseforsale.html> (last visited on Sept. 20, 2006) (listing 11 properties for sale at prices ranging from \$298,500 to 1,239,000).

85. Moore County often provides water and sewer services to developments surrounding Pinehurst because developers have agreed to shoulder initial infrastructure costs and tap-in fees. See Jennifer Strom, *In the Shadow of the U.S. Open*, THE INDEPENDENT WEEKLY (Durham, N.C.), May 4, 2005 (quoting County Commissioner Tim Lea as noting that “[d]evelopers pay for the infrastructure for new communities. They are paying for it. . . . There seems to be a misunderstanding here that what we’ve done for Pinehurst, we’ve given away.”).

86. Smith, *supra* note 82; Boesch, *supra* note 79.

87. Pinewild Property Owners Assoc. Web Site, Declaration of Covenants, Conditions and Restrictions (1994), http://www.pinewild.org/document/ppoa_ccr.htm.

88. Smith, *supra* note 82.

89. N.C. GEN. STAT. § 160A-33(2)-(3) (2005).

90. Telephone Interview with Natalie Dean, Pinehurst Assistant Village Manager, Pinehurst Village (October 7, 2005). Revenue estimates were based on several sources, including: property tax revenues, increased sales tax allocations from the state, and state fuel and utility tax allocations.

91. See *supra* notes 85-90 and accompanying text.

structure or service. As the community has expressed a desire to remain gated,⁹² Pinehurst would be relieved of its maintenance obligations – saving the village a considerable amount of money in service costs. Therefore, should Pinehurst pursue the annexation of Pinewild, it would not face the responsibility and cost of implementing basic services or infrastructure that it would face in pursuing annexation of Jackson Hamlet.

In essence, annexation of Pinewild represents a financial boon for the village as residents will be expected to pay higher taxes in exchange for negligible benefits.⁹³ In this regard, Pinehurst's actions completely disregard accepted justifications for embracing involuntary annexation: namely, that fringe area residents' property rights are protected through the receipt of municipal services and the corresponding property value benefit. As the North Carolina Supreme Court has noted, "[a]nnexation does not bring the burden of taxation without accompanying benefits. Urban level city services of all kinds which come to an annexed area for the first time constitute very substantial benefits, particularly with regard to police and fire protection and water, sewer and garbage collection services."⁹⁴ In light of this, it is hard to deny the injustice of expecting fringe area residents to pay higher taxes for negligible benefits. It is an injustice the Commission acknowledged back in 1959, when it made the observation that if "services are not available, then there is no justification for including such land within the city."⁹⁵

Annexation proponents emphasize that North Carolina's involuntary annexation statutes were intended to provide for sound urban development and growth, with a particular focus on systematic, long-term zoning and planning procedures.⁹⁶ The legislative history, however, does not support this narrow interpretation. Instead, reasonable interpretations of the law recognize that its primary intent was to facil-

92. Smith, *supra* note 82.

93. Village officials argue that Pinewild residents will benefit from garbage disposal services, police and fire protection, and enhanced property values as a result of village permitting and inspection enforcement. Smith, *supra* note 82. Residents dispute the value of these "benefits." For example, residents argue they are satisfied with the protection offered by the Moore County Sheriff's Department and their own private security patrol. They are also quick to note they already pay to receive fire protection from Pinehurst. Boesch, *supra* note 79. In addition, they argue that annexation is unnecessary to protect the community from adverse development as Pinewild is within Pinehurst's extra territorial jurisdiction and is currently subject to the village's planning and zoning ordinances. See also MUNICIPAL GOV'T REPORT, *supra* note 30, at 37 (noting that "unquestionably without a high quality of water and sewer service and fire protection, other municipal services have relatively little attraction").

94. In re Annexation Ordinance, 303 N.C. 220, 233, 278 S.E. 2d 224, 233 (1981).

95. MUNICIPAL GOV'T REPORT, *supra* note 30, at 38. See also Nolan v. Village of Marvin, 360 N.C. 256, 261, 624 S.E.2d 305, 308 (2006).

96. See, e.g., NORTH CAROLINA LEAGUE OF MUNICIPALITIES, *supra* note 8.

itate the extension of municipal services, which, in turn, would lead to sound and orderly urban development.

In 1958, the General Assembly charged the Municipal Study Commission with examining and reforming the state's annexation statutes. The Commission released an initial report in November 1958 that, in its discussion on involuntary annexation, heavily emphasized the need to extend municipal level services in an orderly and efficient manner. As the Commission noted:

[T]he significant feature of city government today is the system of facilities which the city provides and which is essential for urban living. We believe, in general, that the boundaries of a city should include all that part of the urban area which *is developed* in such a fashion as to presently require the package of services offered by a city, as well as that part of the urban area which is presently *being developed* in such a way as to need such services in the very near future. Furthermore, municipal utility systems are absolutely necessary for sound urban development in North Carolina.⁹⁷

Time and again, the Commission reiterated the importance of extending available services in an efficient manner⁹⁸ that avoided the creation of a patchwork of "small and inefficient government units,"⁹⁹ all supplying similar services. While noting that this patchwork of communities could, in some instances, avoid the creation of slums by enacting adequate planning and zoning regulations, the Commission rejected the idea that these communities could provide sufficient services that would outweigh the need for involuntary annexation. The Commission emphasized that "[w]ell conceived ordinances and good intentions will not provide the water and sewer systems that we need, the street systems that are necessary, the high quality fire protection . . . which are accepted as necessary for urban living."¹⁰⁰

The General Assembly adopted the statutory scheme recommended by the Municipal Study Commission, and in doing so retained the Commission's emphasis on the provision of municipal services. In setting out a comprehensive policy statement, the General Assembly emphasized that "municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety, and welfare."¹⁰¹ The General Assembly further underscored the importance of providing essential services by referencing water and sewer services twelve separate times in the stat-

97. MUNICIPAL GOV'T REPORT, *supra* note 30, at 41.

98. See *id.* at 38 (noting state "[i]n order to assure that land in urban areas is used effectively such land must sooner or later receive municipal services").

99. *Id.*

100. *Id.* at 41.

101. N.C. GEN. STAT. § 160A-33 (2005).

utory pre-requisites for annexation.¹⁰² Finally, the courts have recognized that the clear intent of the annexation statutes is the provision of municipal-level services.¹⁰³ As the North Carolina Court of Appeals noted in *Abbott v. Town of Highlands*,¹⁰⁴ “[t]he purpose of annexation is to provide urbanely-developed areas with governmental services needed therein for public health, safety, protection and welfare.”¹⁰⁵ While the General Assembly and state courts have embraced the service-oriented intent of the annexation statutes, many municipalities have not. Instead, these communities have focused on the economic effects of annexation on the community as a whole. Thus, municipalities adopting a bottom-line approach to annexation are not acting within the spirit of the law.

A bottom-line approach, of necessity, results in the annexation of wealthier areas that already have essential services like water and sewer. Additionally, these communities often have the resources to privately contract for other services not provided by the county.¹⁰⁶ In almost every way, residents of wealthier communities targeted by municipalities for annexation are the ones least in need of municipal-level services. Not only do these communities have access to adequate and efficient municipal-level services, but they also avoid many of the pitfalls cited by the Municipal Government Study Commission in support of involuntary annexation. Developers of gated communities like Pinewild strive to maintain a high quality of life in their communities. To do so, community residents are frequently subject to homeowners’ association rules and regulations that, much like municipal zoning and planning regulations, ensure the land will be put to its most efficient use while protecting neighboring property values. In essence, these development communities function as municipalities in their own right and are not in need of most, if any, of the services offered by neighboring municipalities. Pursuit of these communities under North Carolina’s involuntary annexation laws is therefore decidedly at odds with the underlying legislative intent.

Annexation proponents are correct, however, in emphasizing that one underlying purpose of the annexation statutes is to provide for systematic, long-term urban development and growth. The Municipal Government Study Commission emphasized that “[s]tate policy de-

102. See N.C. GEN. STAT. § 160A-47.

103. See *In re Annexation Ordinance*, 304 N.C. 549, 554, 284 S.E.2d 470, 474 (1981); *Nolan*, 172 N.C. App. at 96, 615 S.E.2d. at 906.

104. *Abbott v. Town of Highlands*, 52 N.C. App. 69, 277 S.E.2d 820 (N.C. Ct. App. 1981).

105. *Id.* at 73, 277 S.E.2d at 823.

106. Pinewild residents, for example, contract out for garbage disposal services, a security patrol, and road maintenance services. See *Stop the Taking of Pinewild*, <http://www.sttop.us> (last visited Sept. 1, 2006).

mand[ed] soundly-governed . . . attractive to live-in cities.”¹⁰⁷ One way the General Assembly sought to ensure municipalities could control the development of fringe areas was to extend to the governing board extra-territorial jurisdiction (ETJ) over areas lying from one to three miles beyond the municipal boundary.¹⁰⁸ While the law does not require municipalities to annex areas within their ETJ, it was intended to assist municipalities in developing long-term land use planning, including annexation. In granting municipalities ETJ authority, the General Assembly, in a sense, reiterated that the primary intent of the involuntary annexation scheme was to provide for the orderly extension of municipal services.

If, however, one were to accept that the primary intent of North Carolina’s annexation statutes was to avoid the creation of the “metropolitan problem”¹⁰⁹ – the creation of a decaying, inner city, surrounded by wealthier suburbs – the result would be the same: municipalities embracing a bottom-line approach to annexation are failing to live up to the intent of the statute. As municipalities pursue annexation of revenue-producing communities, revenue-neutral or revenue-poor communities are left to “wither on the vine.” Communities like Jackson Hamlet – lacking in basic infrastructure and unable to pay for privately contracted services – are largely left to fend for themselves.¹¹⁰ Facing the increasing threat of septic system failure, well-water contamination, and increased criminal activity,¹¹¹ residents of Jackson Hamlet pleaded with Pinehurst officials to come to their aid.¹¹² Only after a sustained media campaign¹¹³ – that brought what officials deemed “negative attention” to the village – did town officials even begin considering the possibility of annexing the community. Even then, however, officials continued embracing what can only be

107. MUNICIPAL GOV’T REPORT, *supra* note 30, at 41.

108. See N.C. GEN. STAT. § 160A-360(a) (2005).

109. MUNICIPAL GOV’T REPORT, *supra* note 30, at 41. While parties have argued about the primary intent of the annexation statutes, the North Carolina Supreme Court recently held that “[t]he primary purpose of involuntary annexation . . . is to promote ‘sound urban development’ through the organized extension of municipal services to fringe geographical areas.” Nolan v. Village of Marvin, 360 N.C. 308, 624 S.E.2d 305 (2006).

110. For example, residents of Jackson Hamlet have requested that Moore County provide sewer service to the community. County officials, however, expressed the belief that Jackson Hamlet had “comprehensive needs for municipal level services that County government is neither designed nor legally authorized to provide.” Moore County Government, 2005-2006 Budget Message, http://www.co.moore.nc.us/main/page.asp?rec=/Pages/budget/05_06_Budget.pdf (last visited July 25, 2005).

111. Patrik Jonsson, *African-Americans Enlist to Preserve the All-Black Town*, CHRISTIAN SCI. MONITOR, Aug. 9, 2005 (quoting Jackson Hamlet resident Tom Gibson as saying that crime in the community had “become too pervasive”).

112. See Strom, *supra* note 85; Gordon, *supra* note 3; Quillin, *supra* note 3; Dewan, *supra* note 2.

113. See *id.*

described as a bottom-line approach to annexation by emphasizing that Pinewild would be annexed first.¹¹⁴ By ignoring older communities like Jackson Hamlet while pursuing more “promising” annexation opportunities, the municipalities, in essence, create the very situation the laws were intended to avoid in the first place: run-down fringe areas with troubling sanitary, financial and public safety issues.¹¹⁵

IV. THE NEED FOR REFORM

In pursuing the annexation of the Pinewild community, which neither needs services nor constitutes a threat to the sound and orderly development of the community, and ignoring the residents of Jackson Hamlet, who desperately need municipal services, Pinehurst Village officials have subverted the two primary justifications for annexation. In so doing, those officials have not only highlighted flaws in the system; they have also highlighted the desperate need for legislative reform of North Carolina’s annexation policy.

In *Nolan v. Village of Marvin*,¹¹⁶ the North Carolina Court of Appeals held that annexation was permissible where a municipality provided few, if any, services to new residents.¹¹⁷ While the court acknowledged that the provision of municipal services played an important role in annexation decisions, it noted that, strictly interpreted, the law did not require municipalities to “provide additional services that . . . current residents” did not enjoy, “or to duplicate services already provided to the area to be annexed.”¹¹⁸ The court, however,

114. See WRAL News, *Communities React Differently to Pinehurst Annexation Plans*, Sept. 27, 2005, <http://www.wral.com/news/5027968/detail.html> (last visited Oct. 14, 2005).

115. See MUNICIPAL GOV’T REPORT, *supra* note 30, at 41 (describing the intent of their annexation policy recommendations).

116. *Nolan v. Village of Marvin*, 17 N.C. App. 84, 615 S.E.2d 898 (N.C. Ct. App. 2005), *rev’d*, 360 N.C. 256, 624 S.E.2d 305 (2006).

117. In January 2006, the North Carolina Supreme Court overruled the Court of Appeals’ decision in *Nolan v. Village of Marvin*, 360 N.C. 256, 624 S.E.2d 305 (2006). The court held that N.C. GEN. STAT. §§ 160A-35 and 160A-33 required that municipalities extend municipal services to fringe geographical areas in a manner that provided “a meaningful benefit to newly annexed property owners and residents.” *Id.* at 261, 624 S.E.2d at 308. The significance of the opinion, however, is already being disputed. See, e.g., Martel, *supra* note 81 (noting that Pinehurst Village Manager Andy Wilkison stated the decision did not effect plans to annex Pinewild because it was limited to involuntary annexations pursued by towns with a population below 5,000, while residents of Pinewild believed it meant that Pinehurst could not pursue annexation because they would not offer any additional municipal services). In many respects, the opinion appears to be limited to the specific facts of the case. See *Nolan*, 360 N.C. at 262, 624 S.E.2d at 308 (holding that “Our decision does not require an annexing municipality to provide all categories of public services listed in N.C.G.S. § 160A-35(3). We conclude only that the level of municipal services proposed in the Annexation Report prepared by the Village of Marvin is insufficient.”).

118. *Nolan*, 172 N.C. App. at 89, 615 S.E.2d at 902. The court noted, “[c]ontrary to petitioners’ argument, section 160A-35(3) does not command municipalities to provide certain specific services, but ensures that whatever services provided, are provided in a non-discriminatory fashion to those areas to be annexed.” *Id.*

recognized the injustice of expecting newly annexed residents to pay higher taxes in return for few, if any, additional services. The court said: "We are not unsympathetic to petitioner's contention they will receive very few additional services despite additional taxation. We are, however, bound by the plain language of the statute and case precedent. Petitioners must look to the General Assembly, and not the courts, for relief in such matters."¹¹⁹ It seems clear, therefore, that fringe area residents must look to the General Assembly to provide property-owners with substantive protections that curb municipal annexation powers by directing their application to those areas most in need of services.

In formulating a state-wide policy on annexation, the General Assembly specified standards "so as to prevent municipalities from extending their boundaries arbitrarily or without due regard for the policy reasons and standards mandated by the legislature."¹²⁰ In theory, the current statutory scheme appears to limit arbitrary annexations, but in practice – as exemplified by the communities of southern Moore County – this has not been the case. In practice, the current statutory scheme affords municipalities too much discretion in determining where and when it will pursue annexations.

In order to fulfill the two primary justifications for involuntary annexation – i.e. preventing the development of decaying city centers, or slums, and the orderly extension of municipal services – the General Assembly must amend the annexation statutes to channel and limit municipal discretion. First, the General Assembly should require municipalities to annex densely populated, developed fringe areas that are in need of municipal-level services before it would be allowed to annex wealthier areas that are not in need of such services. In essence, the law should be amended to place a greater emphasis on safety and health protections for the *entire* community. Second, the General Assembly should reconsider the involuntary annexation procedure as it pertains to smaller municipalities. While the Commission's concern about the development of slums was genuine, it was misplaced. North Carolina is a state primarily comprised of small cities and towns, where most annexations occur.¹²¹ Annexations in these smaller localities are frequently challenged in court,¹²² with residents arguing that annexation was primarily about boosting tax revenues and not about sound urban planning or the extension of municipal services. To a certain extent, utilization of annexation powers by

119. *Id.* at 91, 615 S.E.2d at 903.

120. *Carolina Power & Light Company v. City of Asheville*, 358 N.C. 512, 516, 597 S.E.2d 717, 720 (2004).

121. See Hooten, *supra* note 38, at 328.

122. *Id.*

larger cities, like Charlotte, have supported this contention, as these areas have annexed fringe areas regardless of the purported tax value.¹²³ As one commentator aptly noted, “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.”¹²⁴ It is clear that North Carolina needs to update the antiquated views of the 1950s and adopt a statutory scheme that recognizes the laws’ imperfections in practice.

The experiences of the communities of southern Moore County have highlighted the need for a re-examination of the North Carolina’s annexation statutes. As opposition to involuntary annexation continues to grow, it is imperative that the General Assembly addresses the concerns of its constituents while ensuring that the state’s municipalities continue to grow in an orderly, controlled, and healthy fashion.

123. See Gordon, *supra* note 3 (noting that Charlotte Annexation Coordinator, Jonathan Wells has said that “extending city services [only] to those who can most afford them” sends a negative message and emphasizing that Charlotte pursues annexation regardless of the bottom-line figures).

124. See Hooten, *supra* note 38, at 328.