

Town obligations regarding provision of water and sewer service to areas proposed for Town-initiated annexation

A. EXCERPTS FROM CASE LAW


1. Moody v. Town of Carrboro (N.C.S.C. 1980)

Annexation was challenged on a number of grounds. With respect to water and sewer line extension, the Court said:

“Petitioner’s final attack on the Revised Annexation Plan Report deals with the failure of the Town to provide for extension of water and sewer lines. As heretofore pointed out, this is not a service provided by the town to anyone. It is a duty vested with OWASA, an independent water authority. “

2. Wallace v. Town of Chapel Hill (N.C.App. 1989)

“The petitioners argue the twelve-inch water line they were required to install at their cost was a “major water main.” The characterization of a water main as “major” “depends largely upon the size of the municipality or even the number of users within a particular subdivision.” [In re Annexation Ordinance\(Winston-Salem\), 303 N.C. 220, 225, 278 S.E.2d 224, 228 \(1981\)](#). The petitioners offered no evidence from which the trial court or this court could ascertain in this instance that the twelve-inch water extension was a “major *429 water main.” Furthermore, as the policy requiring these petitioners to pay for the cost of water line extensions to their property was consistent with the policy of water line extensions within the pre-existing municipal limits, the trial court was not in error in concluding the Town had “substantially complied with all the relevant provisions of [N.C.G.S. 160A-47](#).”

[4]  We likewise reject any contentions of the petitioners that the Town failed to comply with [Section 160A-47](#) in that OWASA, not the Town, provided the water and sewer services. [Section 160A-47](#) requires the Town to provide in the annexed area “each major municipal service performed within the municipality at the time of annexation.” [N.C.G.S. Sec. 160A-47\(3\)](#). The municipality may delegate responsibility for the providing of these services to others, such as OWASA. [Moody v. Town of Carrboro, 301 N.C. 318, 328, 271 S.E.2d 265, 272 \(1980\)](#), *reh’g denied*, [301 N.C. 889, 274 S.E.2d 230 \(1981\)](#). However, the municipality is not “relieved of its primary duty” to comply with the statute. [In re Annexation Ordinance, 255 N.C. 633, 646, 122 S.E.2d 690, 700 \(1961\)](#); *see also* [Cockrell v. City of Raleigh, 306 N.C. 479, 486, 293 S.E.2d 770, 775 \(1982\)](#) (annexation report must contain a statement regarding extension of “major municipal service[s] performed within the municipality at the time of annexation ... whether provided by the City work force, or ... by an independent authority such as a countywide water-sewer authority”). If such services are not provided, the residents of the annexed area are entitled to a Writ of Mandamus requiring the municipality to live up to its commitments. [N.C.G.S. Sec. 160A-49\(h\)](#).

b3. Chapel Hill Country Club v. Town of Chapel Hill (N.C. Ct. App. 1990)

The legislative purpose behind our annexation statutes is to assure that in return for the burden of municipal taxes all residents receive the benefit of municipal services. *In re Annexation Ordinance* (No. [300-X](#)), [304 N.C. 549, 554, 284 S.E.2d 470, 474 \(1981\)](#). The “minimum requirements” of [§ 160A-47](#)

“are that the City provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service and to allow a reviewing court to determine after the fact whether the municipality has timely provided such services. If such services are not provided, the residents of the annexed area would be entitled to a Writ of Mandamus requiring the municipality to live up to its commitments. [G.S. 160A-49\(h\)](#)....”

... We believe that the report need contain only the following: (1) information on the level of services then available in the City, (2) a commitment by the City to provide this same level of services in the annexed area within the statutory period, and (3) the method by which the City will finance the extension of these services.”

.....

Regarding the extension of water and sewer services to Area 1, petitioners contend that the Town improperly delegates responsibility to Orange Water and Sewer Authority (OWASA), an independent authority operated pursuant to N.C. Gen. Stat. Chap. 162A. They maintain that OWASA has no defined service area and no written policies “concerning the extension of water [and] sewer services into an area.” Thus, they infer that the Town's performance depends “upon a doubtful contingency,” making the annexation ordinance invalid. *In re Annexation Ordinance (Jacksonville)*, [255 N.C. 633, 646, 122 S.E.2d 690, 700 \(1961\)](#).

In *Moody v. Town of Carrboro* the court upheld a Plan which provided for extension of water and sewer lines by OWASA. [301 N.C. 318, 328, 271 S.E.2d 265, 272 \(1980\)](#). The same procedure was affirmed in *Wallace v. Town of Chapel Hill*, [93 N.C.App. 422, 428-29, 378 S.E.2d 225, 229 \(1989\)](#). See also [N.C.Gen.Stat. § 160A-461](#), which provides for authority for interlocal cooperation; and *Trask v. City of Wilmington*, [64 N.C.App. 17, 26-27, 306 S.E.2d 832, 837 \(1983\)](#), *disc. review denied*, [310 N.C. 630, 315 S.E.2d 697 \(1984\)](#), which discusses the desirability of intergovernmental cooperation.

In the case below, the Town's Plan provided that water and sewer service, as within the present Town limits, will be provided in accord with policies adopted by ... (OWASA) to be applicable within the existing Town limits and the annexed area. OWASA's operating expenses ... will be financed from OWASA revenues....

* * * * *

*186 Appendix D-6 shows the location of existing major water mains in the vicinity of this area. Major trunk water mains required to make service generally available to this area have already been completed.

The extension of OWASA water services to areas proposed for annexation by the **177 Town of Chapel Hill will be provided in accord with OWASA policies, regulations and standards applicable throughout the entire OWASA service area (which includes the Town of Chapel Hill in its entirety) at the time extensions are made....

Appendix D-7 shows the location of existing sewer outfalls in the vicinity of area 1. Two wastewater collection system improvements are necessary to support the proposed annexation of Area 1. These improvements will be completed within two years of the effective date of annexation.

1. *Improvements for Westernmost Portion of Area 1c.* Gravity sewer service is in close proximity to the western boundary of, but not within, Area 1c. There are two alternatives for making sewer service generally available to the western portion of Area 1c: the extension of a gravity sewer main along NC Highway 54, or the extension of a gravity sewer main near the southern edge of the annexation area....

2. *Improvements in Pearl Lane/Little John Road Area 1b.* The Pearl Lane/Little John Road area cannot be served by conventional extension of the gravity sewer system within the OWASA system. Construction of a small wastewater pumping station and associated force main would be required to serve this area....

Property owners in the area to be annexed would be able to secure public sewer service from OWASA according to the policies in effect within the Town of Chapel Hill for extending sewer lines to individual lots and subdivisions.

Copies of OWASA documents entitled “Sewer Extension Policy” and “Policy for Extension of Water Service,” each of which included a schedule of fees, were appended to the Plan. Also appended to the Plan was an OWASA Report, dated 8 January 1988, on the extension of water and sewer services to Area 1. At trial the executive director and the chief engineer of OWASA testified that water and sewer services would be provided in Area 1 on *187 the same basis as within the Town and that connection procedures were and would continue to be uniformly applied.

Upon review, the petitioners' other contentions regarding the Town's Plan to extend water and sewer service to Area 1 have been found without basis in law. In light of the documentary evidence and testimony before it, the trial court correctly concluded that the Town substantially complied with [§ 160A-47](#).”