

## **MEMORANDUM**

TO: Roger L. Stancil, Town Manager

FROM: Ralph Karpinos, Town Attorney  
J.B Culpepper, Planning Director  
David Bonk, Long Range and Transportation Planning Manager

SUBJECT: Follow Up to November 23, 2009 Annexation Report

DATE: January 25, 2010

### **PURPOSE**

The purpose of this memo is to respond to Council's request for more information on the Town's legally mandated service obligations to newly annexed areas.

### **BACKGROUND**

On November 23, 2009 the Council reviewed a two part memorandum dealing with possible future annexation. (Attachment 1) The first part of the memorandum identified areas for possible future Town initiated annexation and requested Council approval of the proposed map of future annexation areas. The Council approved the resolution identifying areas for possible Town initiated annexation. The second portion of the memorandum (Attachment 1) reviewed the methods of annexation available to the Town and provided a review of the status of development and other considerations within each of the identified annexation areas.

During the discussion of these issues a Council Member raised several questions related to the Town's role in providing water and sewer facilities to newly annexed areas. The Council Member requested clarification as to why Town staff cited the costs of providing water and sewer lines to new annexation areas as a barrier to initiating the annexation process; emphasizing that water and sewer are not town provided services.

Additionally, that Council member noted that there are many residential properties within the Town limits that do not have sewer service. Town staff has worked with OWASA to gather sewer main line GIS data. This data is the most accurate sewer line data available for the OWASA service area. Staff has analyzed this data and attached a map displaying the existing OWASA sewer network with parcel and neighborhood boundaries (Attachment 2). The map also identifies specific neighborhoods and subdivisions within Chapel Hill for easy reference.

Staff has also initiated a process with OWASA to identify which residential properties with an active address and inhabitable structure who are not OWASA sewer customers. Staff is coordinating with OWASA to determine which of those properties have a sewer main available that would allow for connection. Since this is the first time OWASA has attempted to aggregate this kind of data at a town wide scale we anticipate it will take some time to assure the completeness and accuracy of the data.

Preliminary results of the analysis suggest that there are approximately three to four hundred residential parcels with an active address within Chapel Hill that are not connected to the OWASA sewer system. Although these parcels are distributed throughout the community there are concentrations in the Morgan Creek/Kings Mill Neighborhood, North Forest Hills, Critz Road, and Shady Lawn Extension.

## DISCUSSION

The legislative purpose behind North Carolina annexation statutes is to assure that in return for the burden of municipal taxes all residents receive the benefit of municipal services.

Under North Carolina Law, a municipality seeking to annex an area under a municipality-initiated annexation must include in an annexation report plans showing how it will extend into the area to be annexed each major municipal service performed within the municipality at the time of annexation.

This includes showing plans for the “for extension of major trunk water mains and sewer outfall lines into the area to be annexed so that when such lines are constructed, property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions.” N.C.G.S. Sec. 160A-47(3)(b)

The application of this legal prerequisite to annexations by the Town requires some additional analysis and interpretation due to the fact that water and sewer service is not a service provided by the Town but is instead provided by the Orange Water and Sewer Authority, a legal entity separate from the Town and established under Chapter 162A of the North Carolina General Statutes. Further complicating the analysis is the fact that the Town appoints a majority of the members of the OWASA Board of Directors.

Based on our review of three appellate court decisions where this issue has been addressed (excerpted in Attachment 3) we believe that the Town continues to have the primary responsibility to arrange for the provision of all services in accordance with the annexation laws to areas it wishes to annex.

The three cases cited in the Attachment involve annexations where water and sewer service are provided by OWASA. Two are from Chapel Hill and one is from Carrboro. Beginning with **Moody** and as interpreted and applied in the **Country Club** and **Wallace** cases, we believe these cases establish a clear guide on what the Town should address and provide for with respect to any annexation report and the provision of water and sewer services. Following the report and service provision standards described by the Court in the **Country Club** case and in that annexation report, modified as appropriate based on the current facts for the specific area and any interim statutory amendments, would appear to be the prudent course of action in considering further annexations in and around the northwestern part of Chapel Hill, as well as elsewhere, if water and sewer service is an issue.

As summarized in the case of *Wallace v. Town of Chapel Hill (N.C.App. 1989)*:

“The municipality may delegate responsibility for the providing of these services to others, such as OWASA. However the municipality is not “relieved of its primary duty” to comply with the statute.”

### **RECOMMENDATION**

On November 23, 2009, staff recommended to Council that no future action be taken with regard annexation of any of the areas identified as possible future annexation areas (Attachment 1). We continue to recommend that no future annexations be pursued at this time.

### **ATTACHMENTS**

1. Memorandum from November 23, 2009 Annexation Item (p. 4).
2. Maps of Sewer Network in Chapel Hill Town Limits – Data from OWASA (p. 15).
3. Annexation Case Law Notes from Town Attorney (p. 19).