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## Coates' Canons Blog: Agreements to Petition for Voluntary Annexation: Do They Run With the Land?

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A developer purchases land located outside the city limits and plans to construct a residential development. The area is not served by city or county utility systems, but the city will agree to extend water and sewer services to the property if the developer agrees to petition for voluntary annexation. The city doesn't immediately act on the petition, but when they do, lots have been developed and sold, the city has extended the utilities, and they are in use by the new property owners. The city proposes to annex the property based on the original petition filed by the developer. But the new property owners oppose the annexation.

Under North Carolina law, a city may annex property by petition only if it is signed by all of the owners of the property to be annexed. The law also allows any property owner to withdraw a petition for voluntary annexation any time before the city adopts the ordinance to annex the property. Is the developer's promise binding on these subsequent property owners, or is the withdrawal of the petition by subsequent property owners valid? The North Carolina Court of Appeals has upheld the withdrawal of annexation petitions in a case involving essentially these facts, holding that the developer's agreement to request annexation did not bind subsequent property owners. The case, *Cunningham v. City of Greensboro*, involves the application of various property law rules that determine when agreements creating rights or obligations "run with the land" – that is, are binding on anyone who owns the property even if they haven't separately consented to the agreement. This decision is the first to weigh in on the validity of these types of annexation agreements.

The parties in *Cunningham v. City of Greensboro* agreed about the facts. The city entered into three separate agreements (there were three developers and three separate projects), under which the developers agreed to petition for voluntary annexation in exchange for receiving water and sewer service to their properties. When the city annexed the property (several years after the agreements were signed) the city relied on the three petitions from the developers. But by that time, there were new property owners, the people who purchased lots in the developments. They opposed the annexation of their property and filed withdrawals of petitions for annexation before the board adopted the ordinance. The trial court voided the ordinance and the Court of Appeals unanimously affirmed that ruling, finding that the petition withdrawals were valid.

There was no legal problem with the basic agreement conditioning service upon a petition or promise to petition for annexation. The city has no legal obligation to serve properties outside the city and has authority to condition service on an agreement to request annexation. The *Cunningham* opinion doesn't directly affirm this authority, but notes, "Even if a municipality has the authority to condition the provision of water and sewer service upon the customer's agreement to support annexation of the area served, the record contains no indication that Defendant did so at the time that it connected any individual customer residing in the affected developments to its water and sewer facilities." *Slip op. at 16*

So the legal issue was whether the developers' agreements to allow the city to annex the property were binding on the subsequent property owners. The agreements stated that the parties intended them to be binding on subsequent owners of the property and they were recorded with the Register of Deeds. The deeds to the individual lots, however, made no mention of the agreements. Citing established North Carolina law, the court held that in order to be binding on subsequent property owners, the promise must be included in the "chain of title" – that is, in their deeds, or some prior title document that describes the interest in property that they obtain through their deeds.

Covenants (promises) may be either personal (binding only on those who made them), or real. Real covenants run with the land. The opinion summarizes the tests for determining when a covenant runs with land and concludes that the developer agreements failed to satisfy the requirement of "horizontal privity." Under this requirement, the agreement must

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be part of a transfer of property between the original parties (here, the city and the developers). The court reviewed the evidence and did not find such a transfer to have taken place. The city did not acquire any property under the agreements. It seems possible that this defect could be overcome in a future case, if the contract incorporated reference to the dedication of streets, easements, rights of way, or other improvements, if any, that are made as part of the development.

The city also argued that the obligation to allow annexation was an “equitable servitude” that burdened the property and bound the subsequent owners even if there was no enforceable real covenant. An equitable servitude has the same effect as a real covenant in that the obligation is binding on subsequent property owners, but it does not require privity. This means that it can arise even if the obligation is not reflected in the deed, as long as the property owners have actual notice of the agreement. The Court of Appeals rejected this argument, quoting *Harry v. Crescent Resources, Inc.*, 136 N.C. App. 71, 80-81 (1999), “We have not adopted the doctrine of implied equitable servitudes in North Carolina...”

The result of this holding is that in order for an annexation agreement of this type to be enforceable against subsequent property owners, a city will have to ensure that the obligation is incorporated into their deeds, or obtain separate agreements from the property owners themselves, perhaps as a condition of providing utility service to individual lots.

## Links

- [appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC01ODQtMS5wZGY=](http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC01ODQtMS5wZGY=)