
Coates' Canons Blog: Satellite Area Boundaries are Corporate Limits, But Not for Purposes of Contiguous Annexation or ETJ.

By Frayda Bluestein

Article: <https://canons.sog.unc.edu/satellite-area-boundaries-corporate-limits-not-purposes-contiguous-annexation-etj/>

This entry was posted on December 14, 2017 and is filed under Annexation, Land Use & Code Enforcement

North Carolina annexation law allows non-contiguous, “satellite” annexation by petition, subject to several requirements regarding the size and location of the property to be annexed. Once annexed, these areas are, for almost all purposes, considered to be part of the city: “From and after the effective date of the annexation ordinance, the annexed area and its citizens and property are subject to all debts, laws, ordinances and regulations of the annexing city, and are entitled to the same privileges and benefits as other parts of the city.” G.S. 160A-58.3. For two purposes, however—annexation and extraterritorial regulatory jurisdiction—satellite areas are not considered to be part of the municipal corporate limits.

Annexation

There are four types of municipal annexation; three statutory and one legislative:

- 1) by petition (voluntary) for property contiguous to the city;
- 2) by petition (voluntary) for property not contiguous to the city (satellite);
- 3) city-initiated (involuntary) for property contiguous to the city; and
- 4) legislative annexation, for property contiguous or not contiguous to the city.

Each of the statutory methods is subject to different standards and procedures. Satellite annexations must be no more than three miles from the primary corporate boundary, must not be closer to another city, and may not exceed 10% of the size of the primary corporate limits. (Many cities have obtained local acts exempting them from the size limitation.) See, G.S. 160A-58.1. In contrast, a voluntary petition for a contiguous annexation simply requires that the area is contiguous to the city boundary. So what does it mean to be contiguous to the city boundary? Is property that abuts a satellite area considered to be contiguous? And more specifically, can a city annex property as contiguous if the property is contiguous *only* to a satellite area, or must the petition meet the statutory requirements for a satellite annexation?

It seems unlikely that the legislature intended to authorize contiguous annexation to satellite areas. As just noted, the requirements for satellite annexations include limitations on the size and location of the area to be annexed. These limitations are not included in the contiguous annexation statutes. See, G.S. 160A-31, G.S. 160A-58.54. It doesn't seem likely that the policies underlying those limitations could be so easily evaded by annexing property that is some distance from the primary corporate limits and is contiguous only to a previously annexed satellite area.

Involuntary Annexation Contiguous Only to Satellite Area Not Allowed

We need not guess, however, as this question was addressed in a case involving an involuntary annexation. In *Hawks v. Town of Valdese*, 299 N.C. 1 (1980), the town initiated an annexation of two areas that were separated by a previously annexed satellite area. One area was contiguous to the main corporate boundary and the second area was contiguous only to the satellite area. Owners of property in the area to be annexed argued that the second area was not contiguous to municipal boundaries. The city argued that since the satellite area is in the city, it follows that the boundaries of the satellite are municipal boundaries. The court framed the issue as follows:

The question whether the boundaries of such satellite areas constitute “municipal boundaries” is a serious one indeed since a holding that they were municipal boundaries would allow cities to extend their corporate limits by annexing territory contiguous only to noncontiguous satellite areas. Thus, cities would be permitted to grow from these noncontiguous areas without ever having to annex the intervening territory between the primary corporate limits and the satellite corporate limits.

Valdese at 9. Tracing the history of the North Carolina annexation laws, the court noted that the terms “municipal boundary” and “contiguous” in the involuntary annexation law predated the law authorizing satellite annexation. The court reasoned that when the involuntary annexation law was enacted “the terms ‘municipal boundary’ referred exclusively to the primary corporate limits of a city and ‘contiguous area’ referred exclusively, with certain exceptions not relevant here, to areas which abut directly on the primary corporate limits.” *Id.* at 11.

So the ultimate question was whether the authorization of satellite annexations changed the definition of contiguity for involuntary annexations. The drafting of the satellite statute made the question easy to answer. The satellite annexation statute creates separate definitions of “primary corporate limits” and “satellite corporate limits.” G.S. 160A-58 (1) and (2). And G.S. 160A-58.6 provides that the satellite area “ceases to constitute satellite corporate limits and becomes a part of the primary corporate limits of a city when, through annexation of intervening territory, the two boundaries touch.”

The court concluded that the definitions of municipal boundaries and contiguity in the involuntary annexation statute “remain unaltered and refer exclusively to the primary corporate limits and areas which abut on the primary corporate limits.” *Id.*

Our conclusion that a city may not involuntarily annex territory which is contiguous only to noncontiguous satellite areas is premised not only on the legislative distinction between primary and satellite corporate limits, but also on the meaning and purpose of the concept of contiguity in the law of annexation.

Id. at 12.

Voluntary Annexation Contiguous Only to Satellite Area Likely Not Allowed

The *Valdese* case involved the involuntary annexation statute, which is located in Article 4A of Chapter 160A. The statute authorizing voluntary contiguous annexation, G.S. 160A-31, is in the same article and uses the same terms. Under that provision, property is contiguous if it either “abuts directly on the municipal boundary or is separated from the municipal boundary by the width of a street or street right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina.” Since the statute uses the same terms as those interpreted in *Valdese*, a court would likely apply the same analysis and conclude that a petition for contiguous annexation is allowed only for property that abuts the primary corporate limits.

Legislative Annexation Not Subject to Statutory Provisions

The legislature has constitutional authority to define the boundaries of the local governments. N.C. Const. art. VII, sec. 1. Upon request from a local government or on their own initiative, the legislature can annex or remove areas from cities by local act. The statutory procedures and requirements discussed above only apply to annexations by cities. The legislature has authority to annex property that is contiguous only to a satellite area, or in any other area, even if it does not meet the statutory requirements.

Extraterritorial Jurisdiction (ETJ)

North Carolina cities have authority to exercise certain regulatory powers outside their “corporate boundaries.” See, G.S. 160A-360. (For a detailed discussion of ETJ authority, see David Owens’ blog post [here](#).) Does the reference to corporate boundaries in this statute include satellite area boundaries? Does ETJ authority apply to satellite areas? The satellite annexation statutes specifically address this question and the answer is “no.”

§ 160A – 58.4. Extraterritorial powers.

Satellite corporate limits shall not be considered a part of the city's corporate limits for the purposes of extraterritorial land – use regulation pursuant to G.S. 160A – 360, or abatement of public health nuisances pursuant to G.S. 160A – 193. However, a city's power to regulate land use pursuant to Chapter 160A, Article 19, or to abate public health nuisances pursuant to G.S. 160A – 193, shall be the same within satellite corporate limits as within its primary corporate limits.

Even though ETJ may be extended only from the primary corporate limits, some cities may be able to exercise ETJ authority around or even beyond satellite areas. The ETJ statute allows cities to extend their regulatory jurisdictions from one mile to three miles depending upon the size of the city. Satellite annexation areas must be within three miles of the primary corporate limits. So while ETJ territory can't be *measured from* the satellite area boundaries, the extension from the primary corporate limits may encompass areas around satellite areas.

Links

- mobile.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_160A/GS_160A-58.3.pdf
- www.ncga.state.nc.us/enactedlegislation/statutes/html/bysection/chapter_160a/gs_160a-58.1.html
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-31
- www.ncga.state.nc.us/enactedlegislation/statutes/html/bysection/chapter_160a/gs_160a-58.54.html
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_160A/GS_160A-58.6.pdf
- www.ncga.state.nc.us/legislation/constitution/nconstitution.html
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_160a/gs_160a-360.html