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*not admitted in MD

Of Counsel
Robert Bennett Lubic*

August 6, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals, TW-A325
445 Twelfth Street, S.W.
Washington, DC 20554

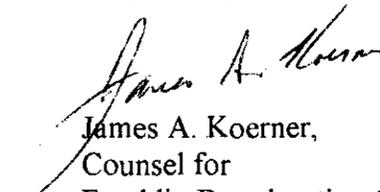
Re: MM Docket No. 02-40

Dear Ms. Dortch:

On behalf of Franklin Broadcasting Co., Inc., there are transmitted herewith an original and four (4) copies of its Comments in support of the Counterproposal in the above-referenced rule making proceeding.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,


James A. Koerner,
Counsel for
Franklin Broadcasting Co., Inc.

Cc: Mollie Evans

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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 02-40
Table of Allotments) RM-10377
FM Broadcast Stations) RM-10508
(Goldsboro, Smithfield,)
Louisburg and Rolesville, North Carolina)

TO: Chief, Allocations Branch

COMMENTS IN SUPPORT OF COUNTERPROPOSAL

Franklin Broadcasting Co., Inc., licensee of Station WHLQ ("WHLQ"), by its attorneys, hereby submits its Comments in support of the Counterproposal advanced by it in the above-captioned proceeding. These Comments are filed in response to the Public Notice, Report No. 2565, released July 22, 2002.

In its Counterproposal, WHLQ demonstrated that its proposal, to change city of license from Louisburg to Rolesville, North Carolina, would result in a preferential arrangement of allotments since it would bring a first local service to Rolesville, whereas the original proposal of New Age Communications, Inc., licensee of Station WKIX ("WKIX") would result in a second local service in its plan to move from Goldsboro to Smithfield, North Carolina.

WHLQ further demonstrated that Rolesville was indeed a community for allotment purposes. It is an incorporated community, the second oldest in the county, with its own governing body, police department, fire department, elementary school, and Chamber of Commerce. WHLQ also demonstrated that the town has numerous local businesses and churches. Finally, WHLQ demonstrated that its 70 dbu signal would cover less than 20% of the Raleigh Urbanized Area.

In Reply Comments, WKIX attempted a “reverse” *Tuck* analysis.¹ The cases suggest that the application of a *Tuck* analysis is a “go-no-go” situation. In short, if the 70 dbu contour covers 50% or more of the Urbanized Area, a *Tuck* analysis is required. On the other hand, if the 70 dbu contour does not cover 50% of the Urbanized Area, the Commission and its staff will not pay heed to a *Tuck* analysis, since it is clearly a waste of the Commission’s time and resources. Most recently, in *Harrodsburg and Keene, Kentucky*, DA 02-1652, released July 19, 2002, it was noted that “the law is well settled on this subject. Under the policy set forth in our *Report and Order* in MM Docket No. 91.25 (Headland, Alabama and Chatahoochee, Florida) an analysis using the factors in *Tuck* is not required [where the city is not part of the Urbanized Area and the proposed facility would not provide a city grade signal to 50% or more of the Urbanized Area]” (footnote omitted). See also *Rose Hill, Trenton, Aurora, and Ocracoke, North Carolina*, 11 FCC Rcd. 21223 (1996) (“we find there is no need to consider whether Trenton should be credited with all of the services licensed to communities within the Jacksonville Urbanized Area since we have confirmed that Channel 284C2 at Trenton will not provide 50% or more of the Urbanized Area with a 70 dbu signal” (11 FCC Rcd. at 21230). If a

¹ *Faye and Richard Tuck*, 3 FCC Rcd. 5374 (1988)

Tuck analysis is not required by the petitioner, neither should it be accepted from an opponent.

Aside from the acceptability, *vel non*, of the reverse analysis, WKIX cannot decide whether Rolesville should be classified as interdependent with Raleigh or with Wake Forest. For example, WKIX points out that Sprint lists Rolesville subscribers in its Wake Forest directory while BellSouth lists them in its Raleigh directory. WKIX also notes that Rolesville not only receives the Raleigh newspaper, but another published in Garner and *The Wake Weekly* published in Wake Forest.

Even other portions of the WKIX Reply Comments fail to establish interdependence. While a large number of Rolesville workers may work outside of the Town, WKIX cannot establish that they work in Raleigh, or even in the Urbanized Area. While Rolesville presently has no local newspaper of its own, the WHLQ proposal will provide the Town with its own local “voice” to cover news and matters of interest to Rolesville.

While it is true that Rolesville has some fast food and other businesses that are associated with national chains, WKIX overlooks the fact that they are owned and operated by local franchisees, as they are in hundreds of communities throughout the country.

Some of the local governmental services are provided by Wake County, as they are to Wake Forest and Raleigh itself. Note that the water and sewage is provided by the City of Raleigh pursuant to contract after merger of the two systems.

Each April, Rolesville holds its Recreation Day to kick off the baseball/softball season. A Christmas Parade is sponsored by the Chamber of Commerce each year. A

privately-sponsored Independence Day celebration, with fireworks, is also held in Rolesville.

Contrary to claims that Rolesville and Raleigh are nearly contiguous, Exhibit 1 hereto is a map published in the February 24, 2002 newspaper, based upon information provided by the North Carolina Department of Transportation. It shows that Rolesville will still be outside even the Outer Loop of the new beltway around Raleigh.

The U.S. Postal Service believes Rolesville to be separate, having assigned it Zip Code 27571.

One of the more important factors in determining whether a community is interdependent with another is the perception of its residents.² Civic and business leaders of Rolesville believe their community to be independent of Raleigh, and want it to stay that way. They acknowledge that Rolesville will continue to grow, but they do not intend to be swallowed up by Raleigh or by Wake Forest. Exhibit 2 hereto is a letter from the Rolesville Town Manager providing the statutory basis on which Rolesville claims independence, as well as copies of annexation agreements with both Raleigh and Wake Forest, which establish that Rolesville has as much right to annex property as the other two communities, i.e., to maintain its own independence.

Exhibit 3 hereto is another letter from the Town Manager outlining the factors which make Rolesville independent from the other communities and even from Wake County itself.

Attached as Exhibit 3 hereto are statements from a number of other community leaders, including the following:

² *Harrodsburg and Keene, Kentucky, supra.*

Scott Reece, Manager of Central Carolina Bank in Rolesville and Treasurer of the Chamber of Commerce. There are 52 members of the Chamber; the Town of Rolesville has about 30 retail establishments, including local franchises of national chains; there is a manufacturing plant employing more than 30 persons; a local radio station is needed.

Nancy Kelly, Mayor of Rolesville and a 14 year member of the Town Council. The High School is known as Wake Forest-Rolesville High School (not Raleigh); a new park is being built in Rolesville; the boundaries of Rolesville and Raleigh are separated by 7 to 8 miles; a new business park is under construction; a new oil processing business is soon opening.

Herbert Eddins, Owner and Operator of the Rolesville Flea Market which has been in operation for 30 years; the Town of Rolesville should remain independent.

Rodney Privette, Fire Chief of the Rolesville Fire Department. Rolesville should remain independent of Raleigh; Rolesville has been independent since the early 1800's.

Mary Privette, owner of Privette Insurance Agency. The Town of Rolesville has always remained independent of Raleigh, and always should.

Patricia P. Peoples, owner of Side Street Antiques and Interiors. Rolesville is a separate community from Raleigh.

J. Marshall Neathery, Pastor of Rolesville Baptist Church. Rolesville is a separate entity, and should be able to keep it that way.

Lenwood V. Long, Senior Pastor, New Bethel Baptist Church of Rolesville, Inc. Rolesville should continue its independent status from the City of Raleigh.

Caroly Bartolon, part owner of Wake Monument Co., Inc. Rolesville will always be independent of Raleigh.

Carolyn C. Diehl, owner and operator of Pine-Glo Products, Inc., a world wide company employing 55 people in Rolesville. Rolesville is a separate community from Raleigh; the company moved from Raleigh to Rolesville in 1985.

If the perceptions of the residents mean anything, the above should be more than sufficient to dispel any notion that Rolesville is but an adjunct of Raleigh.

While WKIX may write off Rolesville as deserving of only eight words by the Greater Raleigh Convention and Visitors Bureau,³ the much larger Wake Forest merits

³ See Reply Comments, page 17, and Exhibit 18 thereto.

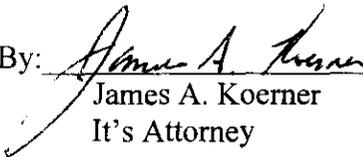
only sixteen words. Fuquay-Varina, smaller than Wake Forest even, is allotted all of 41 words. Size obviously has nothing to do with the description.

It is clear that Rolesville is a community for allotment purposes, that Rolesville is not part of the Raleigh Urbanized Area, that Rolesville is deserving of a station of its own, and that WHLQ is ready, willing and able to be that station.

Accordingly, it is respectfully requested that the Counterproposal be granted and that Channel 273A be re-allotted from Louisburg to Rolesville, and the WHLQ license be modified accordingly.

Respectfully submitted,

FRANKLIN BROADCASTING CO., INC.

By: 
James A. Koerner
It's Attorney

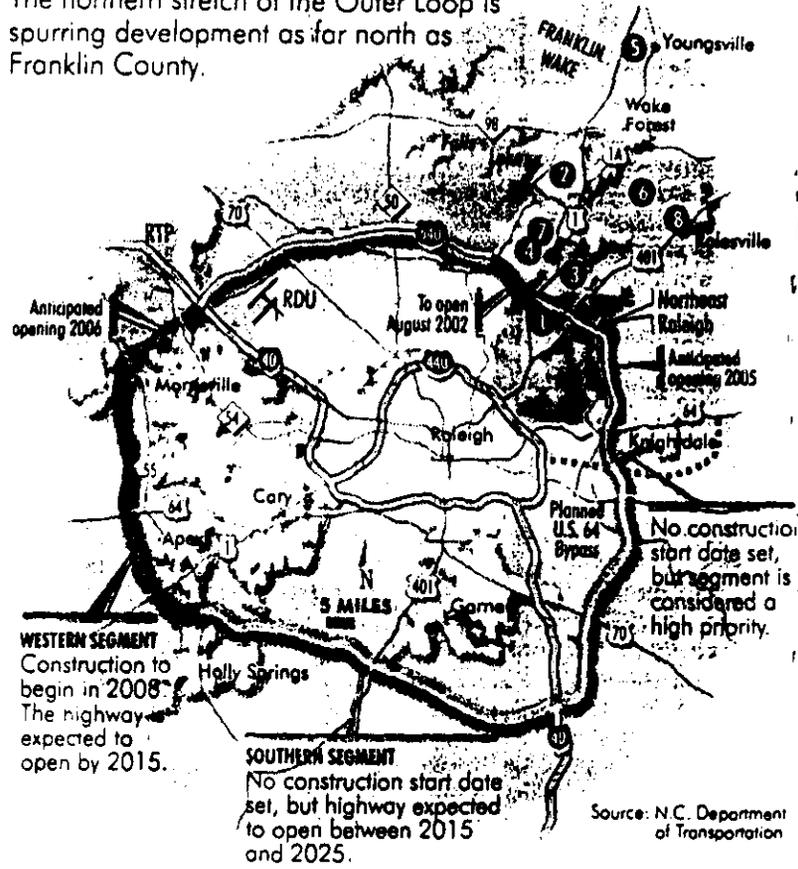
August 6, 2002

KOERNER & OLENDER, P.C.
5809 Nicholson Lane
Suite 124
North Bethesda, MD 20852
(301) 468-3336

EXHIBIT 1

Long arm of the loop

The northern stretch of the Outer Loop is spurring development as far north as Franklin County.



- ① Triangle Town Center
- ② Wakefield Plantation - 3,500 homes
- ③ Riverside - 880 homes
- ④ Falls River - 950 homes
- ⑤ Flextronics
- ⑥ Heritage Wake Forest - 2,200 homes
- ⑦ Bedford at Falls River - 1,750 homes
- ⑧ Stratford Village/Villages of Rolesville - 775 homes

SHYAM PATEL / The News & Observer

EXHIBIT 2

Town of Rolesville

First incorporated 1837

P.O. Box 250 • 200 East Young St. • Rolesville, NC 27571

Phone (919) 556-3506 Fax (919) 556-6852

Mr. Charles M. Evans, Jr.
Franklin Broadcasting Co., Inc.
P.O. Box 463
Louisburg, NC 27549

Dear Mr. Evans:

This letter is to confirm that the Town of Rolesville is an independent municipal corporate entity as defined in Chapter 160A, North Carolina General Statutes. As a separate corporate entity, the Town of Rolesville has the power and authority to levy property and other taxes and fees on its citizens and property owners. Other municipalities (cities and towns) have neither the power nor authority to levy taxes on Rolesville residents and property owners.

For your information, I am enclosing copies of the Town Charter, adopted by the Government of North Carolina, and annexation agreements that we have concluded with the bordering municipalities of Raleigh and Wake Forest.

Sincerely,



Donald A. Dubay
Town Manager

hundred and forty-one, and maturing sixty (60) days after date of issue.
Now, therefore,

The General Assembly of North Carolina do enact:

Bond anticipation notes and renewals, validated.

SECTION 1. That the bond anticipation notes of the Town of Whiteville described in the foregoing preamble and all renewals and extensions of such notes, be and the same are hereby validated and confirmed.

Proceedings for issuance of bonds for constructing sidewalk improvements, validated.

SEC. 2. That all acts and proceedings, including election proceedings, heretofore taken in connection with the issuance of the fifteen thousand dollars (\$15,000.00) bonds described in the foregoing preambles, being the bonds in anticipation of the sale of which the notes referred to in Section one above were issued, be and the same are hereby validated and confirmed, and that when the said bonds shall have been sold, delivered and paid for in accordance with the provisions of the Municipal Finance Act, one thousand nine hundred and twenty-one, as amended, and the Local Government Act, as amended, they will constitute valid and binding obligations of said Town of Whiteville, and that, as required by the Municipal Finance Act, one thousand nine hundred and twenty-one, as amended, the governing body of said town shall annually levy and collect an ad valorem tax upon all the taxable property in the town sufficient to pay the principal and interest of said bonds as such principal and interest become due.

Bonds declared valid obligations, Town of Whiteville.

Ad valorem tax levy, directed.

Conflicting laws repealed.

SEC. 3. That all laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

SEC. 4. That this Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 28th day of February, 1941.

H. B. No. 234 CHAPTER 84

AN ACT TO INCORPORATE THE TOWN OF ROLESVILLE, IN WAKE COUNTY.

The General Assembly of North Carolina do enact:

Town of Rolesville, incorporated.

SECTION 1. That the Town of Rolesville, in Wake County, be, and the same is hereby incorporated under the name and style of "Rolesville" and as such shall have all the rights, powers and privileges conferred upon cities and towns by Chapter fifty-six of the Consolidated Statutes of North Carolina and the amendments thereto relating to Municipal Corporations.

Rights, powers and privileges.

Corporate limits defined.

SEC. 2. That the corporate limits of said town shall be one-half (1/2) mile in every direction from the center of the crossing of Highway Number fifty-nine (59) and temporary Highway Number ninety-one (91) in Rolesville.

Government by Mayor and Commissioners

SEC. 3. That the administration and government of said Town of Rolesville shall be vested in a Mayor and a Board of five Com-

TRUE COPY
H. Slubay 5/22/02
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missioners, and such other officers as may be provided for in the
Municipal Corporation Act of North Carolina.

Sec. 4. That R. S. Williams be and he hereby is appointed
Mayor, and G. J. Robertson, C. D. Matheny, L. F. Weathers, R. M.
Broughton and W. C. Roberts be and they are hereby appointed
Commissioners for said Town of Rolesville who may, after duly
organizing, elect a police officer for said Town of Rolesville, and
such other officials as may be necessary and provided for in the
Municipal Corporation Act.

Mayor and
Commissioners
appointed.

Election of
other officers.

Sec. 5. That the police officer, herein provided for, shall have
full power and authority, upon proper warrant, to make arrest for
violation of law anywhere within the boundaries of Wake Forest
Township.

Powers of
police officer.

Sec. 6. That the Mayor and the Commissioners herein provided
for shall serve until Tuesday after the first Monday in May, one
thousand nine hundred and forty-three, at which time and
biennially thereafter the officers of the said Town of Rolesville
shall be elected.

Terms of
Mayor and
Commissioners.

Election of
Town officers.

Sec. 7. That this Act shall be in full force and effect from and
after its ratification.

In the General Assembly read three times and ratified, this the
28th day of February, 1941.

H. B. No. 248 CHAPTER 85
AN ACT TO PROHIBIT THE SALE OF WINE AND BEER ON

The General Assembly of North Carolina do enact:

SECTION 1. That it shall be unlawful for any person or
corporation to sell or offer for sale in Montgomery County any
wine or beer between the hours of six o'clock on Saturday nights
and twelve o'clock, midnight, on Sunday nights.

Sale of wine or
beer on Sunday,
prohibited,
Montgomery
County.

Sec. 2. That any person violating the provisions of this Act
shall be guilty of a misdemeanor, and upon conviction thereof,
shall be fined not more than one hundred dollars (\$100.00) or imprisoned
for not more than thirty days.

Violation
made
misdemeanor.

Sec. 3. That all laws and clauses of laws in conflict with this
Act are hereby repealed.

Conflicting laws
repealed.

Sec. 4. That this Act shall be in full force and effect from and
after its ratification.

In the General Assembly read three times and ratified, this the
28th day of February, 1941.

SECTION 1. THAT THE TOWN OF BENTON HEIGHTS BE DISPOSITION OF THE TOWN OF BENTON HEIGHTS FOR THE PURPOSES.

Carolina do enact:
That all the area now embraced by the Town of Benton Heights as shown on the map of the Town of Benton Heights, and all the property therein, be and the same shall be included in the City of Monroe.

That the Mayor and the members of the Town of Benton Heights at the time of the passage of this Act shall vote for the annexation of the Town of Benton Heights to the City of Monroe.

That all accounts receivable, tax sale proceeds, and all other assets of whatsoever kind of the Town of Benton Heights be and the same shall be transferred and assigned to the City of Monroe.

That all the records and other official papers of the Town of Benton Heights be and the same shall be deposited by the Mayor and the members of the Town of Benton Heights in the City of Monroe to be used for the following purposes:

That all outstanding indebtedness and all other liabilities of the Town of Benton Heights be and the same shall be paid on or before January first, next, out of the funds of the Town of Benton Heights.

That the said fund after the payment thereof be used for paying any current indebtedness, maintaining, and/or extending any improvements within the area incorporated limits of the Town of Benton Heights for any and all obligations of the Town of Benton Heights out of the full faith and credit of the

That on the effective date of this Act, all records and other official papers of the Town of Benton Heights shall be immediately transferred to the City Clerk of the City of Monroe.

Records to be transferred

That on the effective date of this Act, all provisions of the charter and ordinances of the City of Monroe shall become effective in the area formerly constituted within the boundaries of Benton Heights; and Chapter two hundred and eighty-seven of the Private Laws of one thousand nine hundred and thirteen and all amendments thereto, and all ordinances of the Town of Benton Heights, are hereby repealed as of the effective day of this Act.

Monroe ordinances to extend to new area.

That before the provisions of this Act shall go into effect the question of annexation and repeal of the charter of Benton Heights shall be submitted to the qualified voters of the Town of Benton Heights at a general election to be held on the eighth day of May, one thousand nine hundred and forty-five; that at such election the voters who favor the annexation herein provided for shall vote a ballot on which shall be printed the words "for annexation"; and those opposed shall vote a ballot on which shall be printed the words "against annexation." If a majority of the votes cast shall be for annexation, then this Act and all the provisions thereof shall be in full force and effect from and after the first day of May, one thousand nine hundred and forty-five; if a majority of said votes cast shall be against annexation then the provisions of this Act shall be null and void and of no effect.

Referendum to pass on this Act.

That all laws and clauses of laws in conflict with this Act are hereby repealed.

Conflicting laws repealed.

That this Act shall be in full force and effect from and after the date of its ratification.

Ratification

H. B. 672 CHAPTER 598 AN ACT TO AMEND CHAPTER EIGHTY-FOUR OF THE PRIVATE LAWS OF ONE THOUSAND NINE HUNDRED FORTY-ONE RELATING TO THE CHARTER OF THE TOWN OF ROLESVILLE.

The General Assembly of North Carolina do enact:
SECTION 1. That Section two of Chapter eighty-four of Private Laws of one thousand nine hundred forty-one be amended by striking out all of said Section two and inserting in lieu thereof the following:

Amending Charter of Rolesville.

Corporate limits.

That the corporate limits of said town shall be defined as follows:

The boundary lines shall be the intersection of Highway Number fifty-nine (Raleigh to Louisburg) and the Wake Forest-Wendell Highway in the center of the Town of Rolesville.

The Northeast corner of the town boundary is North fifty degrees East two thousand six hundred and forty feet (one half mile) from the reference point (center of town). This reference line follows Highway Number fifty-nine for about one thousand and two hundred feet until the highway curves to the right. Said Northeast corner is designated by a marker and three chopped pines as pointers.

The Northern boundary of the Town of Rolesville proceeds from this Northeast corner North eighty-five degrees West three thousand seven hundred thirty-three and one tenths feet to a stake with gum and oak pointers, crossing the Wake Forest Road at two thousand feet at right angles and on to the Northwest corner of the town limits.

The Western boundary proceeds from this Northwest corner crossing a branch at about one hundred and twenty feet, South five degrees West three thousand seven hundred thirty-three and one tenths feet centering a high rock at one thousand four hundred and fifty-three feet crossing Rolesville-Forestville Road at two thousand five hundred and sixty-seven feet and crossing Highway Number fifty-nine at three thousand six hundred and forty feet and coming to a marker in Mr. C. C. Merritt's yard Southwest corner of town limits; said Southwest corner being one half mile from reference point in center of town.

The Southern boundary proceeds from this Southwest corner in Merritt's yard through his dwelling, across the Southern edge of Rolesville High School lot and on toward the colored church, South eighty-five degrees East three thousand seven hundred thirty-three and one tenths feet to a marker, the Southeast corner of the town boundary.

The Eastern boundary proceeds from this Southeast corner North five degrees East three thousand seven hundred thirty-three and one tenths feet to the beginning and containing about three hundred and twenty acres. Magnetic bearings used February, one thousand nine hundred and forty-five.

Conflicting laws repealed.

SEC. 2. That all laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

SEC. 3. That this Act shall be in full force and effect from and after its ratification.

Ratified this the 14th day of March, 1945.

H. B. 676

AN ACT TO
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rewritten to read as follows:

"If no near relative or other voter of the voter's choice is present at the voting place, the voter entitled to assistance may request and obtain aid from the clerk, one of the judges or one of the assistants appointed pursuant to G.S. 163-42, at the voter's choice. Under no circumstances shall any other official be assigned to assist a voter who qualifies for assistance under this section, who was not specified by the voter."

Sec. 2. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 10th day of

H. B. 605 CHAPTER 346

AN ACT TO AMEND THE CHARTER OF THE TOWN OF ROLESVILLE TO PROVIDE FOR THE ELECTION OF THE MAYOR AND BOARD OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. Section 6 of Chapter 84, Public-Local Laws of 1941, is hereby rewritten to read as follows:

"Sec. 6. The election for municipal offices in the Town of Rolesville shall be nonpartisan and decided by simple plurality and shall be held on Tuesday after the first Monday in November beginning in 1977. In the municipal election held in 1977, the three candidates for the office of commissioner receiving the highest number of votes shall be elected for a term of four years, and the two candidates receiving the next highest number of votes shall be elected for a term of two years. Thereafter, as the terms of each commissioner expire, his successor shall be elected for a term of four years.

In the 1977 municipal election, the mayor shall be elected for a term of two years. Thereafter the mayor shall be elected for a term of four years.

Except as otherwise provided herein, the municipal elections shall be held and conducted in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes relating to municipal elections."

Sec. 2. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 10th day of May, 1977.

H. B. 794 CHAPTER 347

AN ACT TO AMEND THE GENERAL STATUTES RELATIVE TO THE ISSUANCE OF PISTOL PERMITS SHALL BE ISSUED BY THE SHERIFF OR A DESIGNATED DEPUTY AND THAT A FEE TO BE SET BY THE BOARD OF COUNTY COMMISSIONERS SHALL BE CHARGED FOR EACH PERMIT.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, in Sampson and Caswell Counties the issuance of pistol permits required by G.S. 14-402 and G.S. 14-409.1 shall be issued by the sheriff or any deputy sheriff designated by the sheriff.

University by increasing the amount authorized for the Expansion of ... hundred dollars (\$1,095,800) to one million three hundred eighty thousand seven hundred dollars (\$1,389,700) and as it relates to ... University of North Carolina at Greensboro by increasing the amount authorized for Student Recreation Facilities from seven million nine hundred eighty-eight thousand dollars (\$7,988,000) to ten million four hundred twenty-eight thousand nine hundred dollars (\$10,428,900), on a wholly self-liquidating basis.

Sec. 2. Section 2 of Chapter 806 of the 1987 Session Laws under the institutional subheading as indicated, and affecting only the projects listed in this act, is amended to read as follows:

- 1. Appalachian State University
- Expansion of Fine Arts House \$ 1,389,700
- 4. The University of North Carolina at Greensboro
 - b. Student Recreation Facilities 10,428,900

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1988.

CHAPTER 996

AN ACT TO ALLOW THE TOWN OF ROLESVILLE TO IMPOSE IMPACT FEES.

The General Assembly of North Carolina enacts:

Section 1. Impact Fees Authorized. (a) The Town Board of Commissioners may provide by ordinance for a system of impact fees to be paid by developers to help defray the costs to the Town of constructing certain capital improvements, the need for which is created in substantial part by the new development that takes place within the town and its extraterritorial planning area.

(b) For purposes of this act, the term capital improvements includes capital improvements to public streets, bridges, sidewalks, greenways, water treatment facilities, wastewater treatment facilities, bikeways, on and off street surface water drainage ditches, pipes, culverts, other drainage facilities, public schools, and public recreation facilities.

(c) An Ordinance adopted under this act may be made applicable to all development that occurs within the town and its extraterritorial planning area, as established by local act or pursuant to the procedures set forth in G.S. 160A-360.

(d) The Town may, with the approval of the Wake County Board of Commissioners, construct capital improvements outside the

Town limits but within the Town's extraterritorial planning area.

Sec. 2. Amount of Fees. In establishing the amount of any impact fee, the Town shall endeavor to approach the objective of having every development contribute to a capital improvements fund an amount of revenue that bears a reasonable relationship to that development's fair share of the costs of the capital improvements that are needed in part because of that development. In fulfilling this objective, the Town Board of Commissioners shall, among other steps and actions:

- (1) Estimate the total cost of improvements by category (e.g., streets, water, sewer, etc.) that will be needed to provide in a reasonable manner for the public health, safety and welfare of persons residing within the Town and its extraterritorial planning area during a reasonable planning period not to exceed 20 years. The Council may divide the Town and its extraterritorial area into two or more districts and estimate the costs of needed improvements within each district. These estimates shall be periodically reviewed and updated, and the planning period used may be changed from time to time.
- (2) Establish a percentage of the total costs of each category of improvement that, in keeping with the objective set forth above, should fairly be borne by those paying the impact fee.
- (3) Establish a formula that fairly and objectively apportions the total costs that are to be borne by those paying impact fees among various types of developments. By way of illustration without limitation:
 - a. In the case of street improvements, the impact fee may be related to the number of trips per day generated by different types of uses according to recognized estimates;
 - b. In the case of drainage improvements, the impact fee may be related to the size of a development, the amount of impervious surface the development has, or other factors that bear upon the degree to which a development contributes to the need for drainage improvements made at public expense.

Sec. 3. Capital Improvements Reserve Funds; Expenditures.

- (a) Impact fees received by the Town shall be deposited in a capital improvements reserve fund or funds established under Chapter 159 of the General Statutes, Article 3, Part 2. Such funds may be expended only on the type of capital improvements for which such impact fees were established, and then only in accordance with the provisions of subsection (b) of this section.

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(b) In order to ensure that impact fees paid by a particular development are expended on capital improvements that benefit that development, the Town may establish for each category of capital improvement for which it collects an impact fee at least two geographical districts or zones, and impact fees generated by developments within those districts or zones must be spent on improvements that are located within or that benefit property located within those districts or zones.

Sec. 4. Credits for Improvements. An ordinance adopted under this act shall make provision for credits against required fees when a developer installs improvements of a type that generally would be paid for by the Town out of a capital reserve account funded by impact fees. The ordinance may spell out the circumstances under which a developer will be allowed to install such improvements and receive such credits.

Sec. 5. Appeals Procedure. An ordinance adopted under this Article may provide that any person aggrieved by a decision regarding an impact fee may appeal to the Rolesville Board of Adjustment. If the ordinance establishes an appeal procedure, it shall spell out the time within which the appeal must be taken to the Board of Adjustment, the possible grounds for an appeal and the board's authority in the matter, whether the fee must be paid prior to resolution of the appeal, and other procedural or substantive matters related to appeals. Any decision by the Board of Adjustment shall be subject to review by the superior court by proceedings in the nature of *certiorari* in the same manner as is provided in G.S. 160A-388(e).

Sec. 6. Payment of Impact Fees. An ordinance adopted under this act shall spell out when in the process of development approval and construction impact fees shall be paid and by whom. By way of illustration without limitation, the ordinance may provide that an applicant for a building permit shall submit the impact fee along with the permit application and that building permits shall not be issued until the impact fee has been paid.

Sec. 7. Refunds. If this act or any ordinance adopted thereunder is declared to be unconstitutional or otherwise invalid, then any impact fees collected shall be refunded thereunder to the person paying them together with interest at the same rate paid by the Secretary of Revenue on refunds for tax overpayments.

Sec. 8. Limitations on Actions. (a) Any action contesting the validity of an ordinance adopted under this act must be commenced not later than nine months after the effective date of such ordinance.

(b) Any action seeking to recover an impact fee must be commenced not later than nine months after the impact fee is paid.

Sec. 9. Supplemental Power. The powers conferred in this act

shall be supplementary to all other powers and procedures authorized by any other general or local law. Assessments, charges, fees, or rates authorized by any other general or local law are not affected by this act.

Sec. 10. This act applies to the Town of Rolesville only.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1988.

S.B. 1597

CHAPTER 997

AN ACT TO INCREASE THE PENALTY FOR UNAUTHORIZED PARKING IN A HANDICAPPED PARKING SPACE IN THE CITY OF JACKSONVILLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-37.6(f)(1) reads as rewritten:

"(1) A violation of G.S. 20-37.6(e)(1), (2) or (3) is an infraction which carries a penalty of ~~twenty-five dollars (\$25.00)~~ five dollars (\$50.00) and whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found to be parked in a properly designated handicapped parking space in violation of the provisions of this section, it shall be *prima facie* evidence in any court in the State of North Carolina that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the Division of Motor Vehicles. No evidence tendered or presented under this authorization shall be admissible or competent in any respect in any court or tribunal except in cases concerned solely with a violation of this section."

Sec. 2. This act applies only to the City of Jacksonville.

Sec. 3. This act shall become effective October 1, 1988.

In the General Assembly read three times and ratified this the 28th day of June, 1988.

S.B. 1615

CHAPTER 998

AN ACT TO AUTHORIZE THE CITY OF RALEIGH TO LEVY A MOTOR VEHICLE TAX NOT TO EXCEED TEN DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-97(a) is amended by deleting "not more than five dollars (\$5.00) per year", and substituting: "not more than ten dollars (\$10.00) per year or part thereof".

(Raleigh) - Ordinance No. (1991) 833
(Rolesville) - Ordinance No. 91-01

An ordinance establishing an annexation agreement between the City of Raleigh, North Carolina and the Town of Rolesville, North Carolina.

WHEREAS, N.C.G.S. Chapter 160A Article 4A Part 6 authorizes cities to enter into binding agreements in order to enhance orderly planning by such cities as well as residents and property owners in areas adjacent to such cities; and

WHEREAS, both governing bodies seek to have planned development for their respective areas that carries out mutually agreed upon plans such as the Harris Creek Interceptor Sewer Agreement; and

WHEREAS, both Raleigh and Rolesville desire to foster good intergovernmental relations; and

WHEREAS, this ordinance has been adopted following a public hearing notice as requested by law.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Raleigh, North Carolina and the Town Council of the Town of Rolesville, North Carolina:

Section 1: That the area referenced as Exhibit A which describes a portion of Wake County, is subject to annexation by the City of Raleigh and no portion of the area referenced as Exhibit A is subject to annexation by the Town of Rolesville during the term of this agreement.

Section 2. That the area referenced as Exhibit B which describes a portion of Wake County, is subject to annexation by the Town of Rolesville and no portion of the area referenced as Exhibit B is subject to annexation by the City of Raleigh during the term of this agreement.

Section 3. That each participating municipality which proposes any annexation in the area subject to this agreement, must give written notice to the other municipality of the annexation at least 60 days before the adoption of any annexation ordinance. The notice shall be in compliance with G.S. 160A-58.25(b) and shall be sent by mail to the Town Clerk of Rolesville or the City Manager of Raleigh. Either City may waive the time period for receiving notice by giving a written waiver to the other party.

Section 4. That the area described in Exhibit A is agreed to be a water and sewer service area of Raleigh and the area described in Exhibit B is agreed to be a water and sewer service area of Rolesville in accordance with the terms of the Haris Creek Interceptor Sewer Agreement.

Section 5. That this ordinance shall become effective immediately following its adoption by both governing bodies.

Section 6. That this ordinance may not be modified or amended without a subsequent agreement entered into by both participating Cities pursuant to G.S. 160A-58.24(d). All modifications and amendments to this agreement shall be approved by ordinance and adopted after public hearings by both municipalities.

Section 7. That this agreement may be terminated at any time by either the mutual consent of both Cities if done in accordance with Section 5 above or by either city in the manner prescribed by G.S. 160A-58.24(f). This agreement shall be effective until such termination occurs or 20 years, whichever comes first.

Section 8. That this ordinance shall not be binding beyond three miles of the primary corporate limits of the City of Raleigh or one mile of the primary corporate limits of the Town of Rolesville, without the prior consent of the Wake County Board of Commissioners. However, an area shown on Exhibits A & B, even without the consent of Wake County Board of Commissioners, shall become subject to the agreement if subsequent annexation(s) brings it within three miles for Raleigh and one mile for Rolesville. Such annexation is subject to the notification requirements as stated in Section 3.

Adopted by the City of Raleigh: August 6, 1991

Adopted by the Town of Rolesville: 8-5-91

Effective: See Section 5 above.

Date 8-6-91

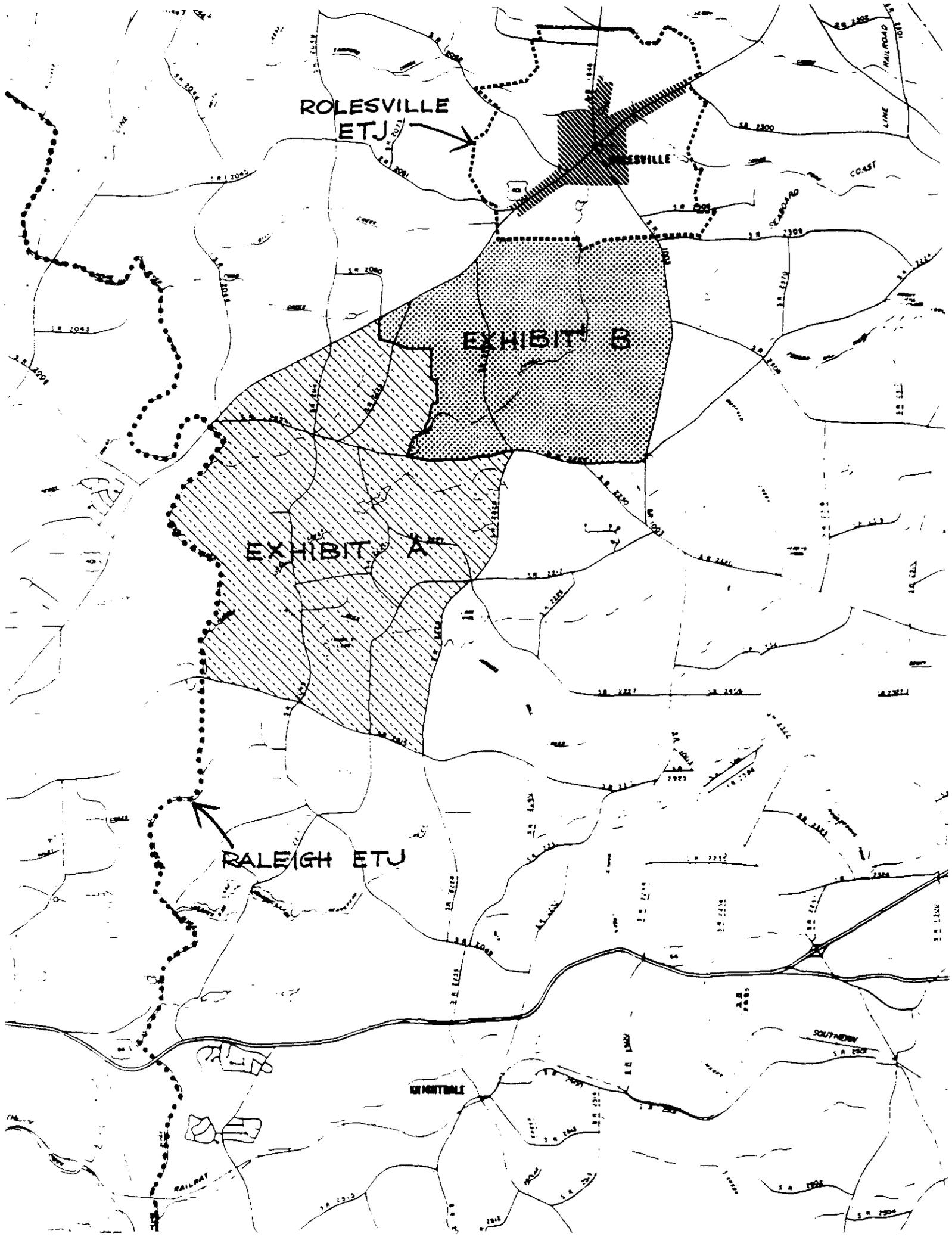
Distribution: City Council
City Manager
City Attorney
Public Utilities

EXHIBIT A

Beginning at the Neuse River Bridge and following the center line of U.S. 401 North to its intersection with (S.R.-2050 Lillie Liles Road), then southwest along the western property line of Wake County Tax Parcel 7 on Map 309, then eastward along the southern boundary of that parcel to the center line of (S.R. 2225) Louisbury Road, then south along the centerline of S.R. 2225 to a point west of the northern property line of parcel 64 on Map 309, thence eastward along the northern property line of parcels 64 and 65, Map 309, then along the eastern property line on parcel 65, Map 309, then south along the eastern property line of Map 331, parcel 1, then to a point at the southeastern corner of Map 331, parcel 1, then east to a point that is the northeast corner of Map 331, parcel 156, then south along the eastern property lines of Map 331, parcels 156 and 153, then west along the southern property line to a point at the northeast corner of Map 331, parcel 123, then along the eastern property line of Map 331, parcel 123 to a point in the center of the lake named Watkins Pond or the center of the Creek if no large amount of water exists at that point, then along the middle of Watkins Pond or the Creek to the middle of the spillway just north of Mitchell Mill Road (S.R. 2224) thence along the creek to the centerline of Mitchell Mill Road. Then east along the centerline of Mitchell Mill Road to the intersection of (S.R. 2929) R.C. Watkins Road or Peebles Road, then south along the centerline of R.C. Watkins Road or Peebles Road (S.R. 2929) and along the centerline of Crews Road (S.R. 2228) to the intersection with Buffaloe Road, then west along the centerline of Buffaloe Road to the Neuse River Bridge, then north along the Neuse River to the Neuse River Bridge at U.S. 401 North returning to the place at the beginning of Exhibit A.

EXHIBIT B

Beginning at the centerline of U.S. 401 north at the intersection of Lillie Liles Road (S.R. 2050), then southward along the western property line of Wake County Tax parcel number 7 on Map 309, then eastward along the southern boundary of that parcel to the centerline of (S.R. 2225) Louisbury Road, then south along the centerline of S.R. 2225 to a point west of the northern property line of parcel 64 on Map 309, thence eastward along the northern property line of parcels 64 and 65, Map 309, thence along the eastern property line on parcel 65, Map 309, thence south along the eastern property line of Map 331, parcel 1, thence to a point at the southeastern corner of Map 331, parcel 1, then east to a point that is the northeast corner of Map 331, parcel 156, then south along the eastern property lines of Map 331, parcels 156 and 153, then west along the southern property line to a point at the northeast corner of Map 331, parcel 123, then along the eastern property line of Map 331, parcel 123 to a point in the center of the lake named Watkins Pond or the center of the Creek if no large amount of water exists at that point, then along the middle of Watkins Pond or the Creek to the middle of the spillway just north of Mitchell Mill Road (S.R. 2224) thence along the Creek to the centerline of Mitchell Mill Road, then east along the centerline of Mitchell Mill Road to the intersection of Rolesville Road (S.R. 1003), then north along Rolesville Road to the current Rolesville Extraterritorial Jurisdiction (ETJ), then west along the current Rolesville ETJ to a point that intersects the centerline of U.S. 401, then along U.S. 401 to the intersection of Lillie Liles Road returning to the place at the beginning of Exhibit B.



ORDINANCE #2001-05

ORDINANCE ESTABLISHING AN ANNEXATION AGREEMENT
BETWEEN THE TOWN OF ROLESVILLE, NORTH CAROLINA AND
THE TOWN OF WAKE FOREST, NORTH CAROLINA

WHEREAS, N.C.G.S. Chapter 160A-58.21 authorizes cities to enter into agreements in order to enhance orderly planning by such cities as well as residents and property owners in areas adjacent to such cities; and

WHEREAS, both governing bodies seek to have planned development for their respective areas that carries out mutually agreed upon plans for such important public facilities as parks and open space, sewer and water services, major transportation routes including the US-1 corridor and the protection of the Neuse River Corridor; and

WHEREAS, the governing bodies and their staffs have engaged in a process of mutual dialogue over the past several months that has lead to a better understanding of the needs and goals of each community; and,

WHEREAS, both Rolesville and Wake Forest desire to foster good intergovernmental relations; and

WHEREAS, this ordinance has been adopted following a public hearing and notice as required by law.

NOW, THEREFORE, BE IT ORDAINED by the respective Boards of Commissioners of the Town of Rolesville and the Town of Wake Forest, North Carolina:

Section 1. That the area east and south of a line described in Section 5 herein below, which describes a portion of Wake County, is subject to annexation by the Town of Rolesville and no portion of said area is subject to annexation by the Town of Rolesville during the term of this agreement.

Section 2. That the area west and north of said line described in Section 5 herein below, which describes a portion of Wake County, is subject to annexation by the Town of Wake Forest and no portion of said area is subject to annexation by the Town of Rolesville during the term of this agreement.

Section 3. That each participating municipality which proposes any annexation within one thousand (1,000) feet of the mutual jurisdiction line described in Section 5 herein below must give written notice to the other municipality of the annexation at least sixty (60) days before the

ORDINANCE #2001-05

ORDINANCE ESTABLISHING AN ANNEXATION AGREEMENT
BETWEEN THE TOWN OF ROLESVILLE, NORTH CAROLINA AND
THE TOWN OF WAKE FOREST, NORTH CAROLINA

adoption of any annexation ordinance. The notice shall be in compliance with G.S. 160A-58.24(a)(5) and shall be sent by mail to the Town Manager of Rolesville or the Town Manager of Wake Forest. Either town may waive the time period for receiving notice by giving a written waiver to the other party.

Section 4. That the area described in Section 1 is mutually agreed upon to be a water and sewer service area of Rolesville. The area described in Section 2 is mutually agreed upon to be a water and sewer service area of Wake Forest in accordance with the terms of appropriate sewer and water agreements.

Section 5. That the Town of Rolesville agrees not to annex or extend urban services to the area west and north of the line and the Town of Wake Forest agrees not to annex or extend urban services to any area east and south of said line as will be more particularly described by the parties and attached as an Exhibit to this agreement after the execution of this agreement.

Section 6. That both municipalities agree not to annex into the extraterritorial zoning jurisdiction (ETJ) or urban services (USA) area of the other.

Section 7. That each participating municipality agrees to the placement of utility metering points in accordance with existing water and/or sewer service agreements and with said agreements as they may be amended in the future for those areas described in Sections 1 and 2 hereinabove.

Section 8. That both municipalities agree to cooperate in the expansion of employment opportunities in the area covered by this agreement. Further, it is agreed that the governing bodies actively participate in joint planning efforts for land use, transportation, scenic resources employing similar development standards; to provide appropriate entryways into each jurisdiction; to encourage the orderly development and the efficient delivery of urban services that maintain and enhance property values in each jurisdiction; to jointly explore and secure new sources of water supply and water resources; and to promote and protect recreational, historical and cultural opportunities including the Neuse River Corridor and its tributaries and other areas identified as historically or naturally significant.

Section 9. That both governing bodies direct the administrative staffs of each jurisdiction to mutually exchange information, review and report to their respective boards, on a timely basis, the contents of any zoning request, subdivision or site plan for land referred to by this ordinance within 1,000 feet of the mutual jurisdiction line described in Section 5 above.

ORDINANCE #2001-05

ORDINANCE ESTABLISHING AN ANNEXATION AGREEMENT
BETWEEN THE TOWN OF ROLESVILLE, NORTH CAROLINA AND
THE TOWN OF WAKE FOREST, NORTH CAROLINA

Section 10. That both municipalities will coordinate the logical and efficient provision of other municipal services in the area as it urbanizes and work with Wake County and other agencies such as the volunteer fire departments, volunteer rescue and emergency management services, and providers of solid waste services to assure the orderly transition of these services to the municipalities as their boundaries expand.

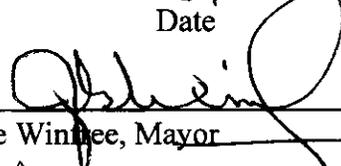
Section 11. That this ordinance shall become effective immediately following its adoption by both governing bodies.

Section 12. That this ordinance may not be modified or amended without a subsequent agreement entered into by both participating towns pursuant to N.C.G.S. 160A-581.24(d). All modifications and amendments to this agreement shall be approved by ordinance and adopted after public hearings by both municipalities.

Section 13. That this agreement may be terminated at any time by either the mutual consent of both towns if done in accordance with procedures outlined in Section 3 relating to annexation above or by either town in the manner prescribed by N.C.G.S. 160A-58.24(f). This agreement shall be effective until such termination occurs or twenty (20) years, whichever comes first.

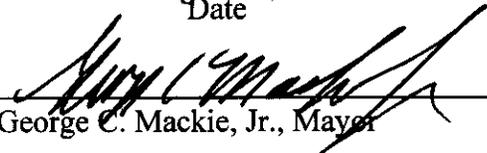
Adopted by the Town of Rolesville

MARCH 5, 2001
Date


Joe Winfree, Mayor

Adopted by the Town of Wake Forest

February 20, 2001
Date


George C. Mackie, Jr., Mayor

Effective: See Section 11. Above. Date: _____

