

May 5, 2009

Bill Saffo, Mayor

102 N. 3rd Street

Wilmington, NC 28402

Sent via email: bill.saffo@wilmingtonnc.gov

CC: Wilmington City Council, New Hanover County Commission, Senator Julia Boseman, Rep. Carolyn Justice, Rep. Daniel McComas, Katherine Parker, ACLU-NC Legal Foundation, and Jason Kay, Senior Staff Attorney, NCICL

Re: Involuntary Annexation of Monkey Junction

Dear Mayor Saffo,

I am writing to strongly urge you and the members of the Wilmington city council to vote against annexing the residents of Monkey Junction. At a minimum, I encourage you to start the annexation process over given the many serious and material flaws associated with the city's compliance with the state's annexation statute. In addition, there also are potential constitutional violations that occurred on April 7, 2009, the date of the public hearing.

Misinformation about Water and Sewer

On April 8, 2009, I contacted (by email) Tom Pollard, Wilmington's city attorney about concerns that I had about the annexation process. I inquired why the city's annexation web page featured a frequently asked question (FAQ) document for residents of Monkey Junction that stated:

"How long will it take to get water and sewer service?"

Installation of water and sewer lines will occur in two phases. First, the major water and sewer lines that all other smaller lines feed into must be constructed. Then, the smaller hookups to individual residences and businesses will occur. The city plans to have both phases completed within two years of the effective date of the annexation; however, by state law only the first phase must be completed within two years of the effective date of annexation." [Emphasis added].

I explained to Mr. Pollard that this was an incorrect statement. Under § 160A-47, property owners that request water and sewer within five days after the public hearing must receive water and sewer lines to their properties (i.e. both phases must be complete). Monkey Junction residents only had a short window of time to request water and sewer and were being provided information that was incorrect. This faulty information likely influenced many individuals' decisions to request (or not request) water and sewer.

On April 9, 2009, Mr. Pollard responded to some of my questions, and he explained that the FAQ document would be revised (apparently, he agreed with my assessment of the law). Unfortunately, this was far from adequate to rectify the impact of the materially inaccurate information especially since Monkey Junction residents only had until April 15, 2009 to request the water and sewer.

Actual Costs for Water and Sewer was not Provided

I also pointed out to Mr. Pollard the problems in identifying the complete costs that would have to be incurred by Monkey Junction residents that requested water and sewer service. Mr. Pollard directed me to page E-5 of the city's annexation plan for further guidance. The cost information was not even contained in the public notice, but in the massive annexation plan.

On E-5, water and sewer connection fees are listed, but they are 2007 figures. The plan states that the connection fees are still yet to be determined. The document also provides an example of other additional costs, however it does so without providing a means for a resident to calculate what the costs would be for them. As the plan states, the costs "will vary based upon the size of the meter and sewer service connection."

These additional costs are far from nominal. They include the meter installation fee, sewer impact fee, sewer tap fee, water impact fee, and the water tap fee. The example of these costs listed in the plan would total \$8,479. Once added to the 2007 connection fees, the total costs would be \$10,674.

I repeatedly asked Mr. Pollard whether there was actual cost data and not just old data and estimates. Tony Caudle (Deputy City Manager), Malissa Talbert, and Rebecca Blue were copied on these emails.

The information was never provided. If the city itself was incapable of knowing the actual costs, it was impossible for a Monkey Junction resident (or anyone) to determine the costs. This information was critical in determining whether to make a water and sewer request.

Public Hearing: Constitutional Implications and Violating the Annexation Statute

On April 7, 2009, the city of Wilmington held a public hearing on the Monkey Junction annexation. Many individuals (possibly hundreds) were denied access to the public hearing because allegedly the second floor meeting room was too crowded.

The individuals that wanted to enter the public hearing were peacefully assembled on the first floor of the building. All of a sudden, police officers and what appeared to be city officials forced all of the people to leave the building. They claimed that the first floor was not owned by the city.

As it turned out, this was a lie (Mr. Pollard did explain in his April 9, 2009 email to me that the city owns the entire building). These citizens left the building as instructed and some protested outside the building. Some eventually were able to get into the hearing. However, many of them likely went home after being informed they could not attend the hearing and had to leave the building. Not once did city officials warn the individuals that removal was a possibility (for example, there was no request to remain quiet or else face being removed).

The city should have held the public hearing in another location—it was clear well before the hearing that the second floor room would be too small. However, despite this poor planning, there still were many other options for Wilmington. Among other things, the city could have provided a sign-up sheet and individuals could have been brought up one at a time if they sought to make a comment at the public hearing. The city could have brought up individuals as other people left the hearing. The city chose to ignore these simple alternatives and deny fellow citizens a chance to speak at the hearing.

There certainly could be constitutional implications for these actions, and possibly even personal liability for violating individual rights under color of state law. There needs to be a full-scale investigation to determine the specific city officials who directed the police and others to lie to the citizens, kick them out of the building, and deny them a chance to speak at the hearing.

Also, these actions clearly violated the annexation statute. Under § 160A-49(d), at a public hearing, "all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard." [Emphasis added]

I again strongly urge you to vote against this annexation tonight for many of the reasons that were so articulately communicated at the April 7, 2009 public hearing. In addition, as I have pointed out in this letter, the annexation process was fatally flawed. The substantive rights of Monkey Junction residents were materially prejudiced by the city's actions.

Very truly yours,

Daren Bakst, J.D., LL.M.*

Legal and Regulatory Analyst

***Licensed to practice law in Florida and Pennsylvania, but not North Carolina.**