Annexation

Level the Playing Field

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Introduction

Annexation is a widely used tool to expand municipal boundaries and provide city services where they are not otherwise available. The tool is a powerful one that allows natural city growth and, when done in cooperation with county officials, can lead to healthy economic progress in a community. However, the annexation power is abused when it is exercised primarily to increase city revenues and when those impacted by an annexation decision are ignored – be they county officials, representatives of surrounding jurisdictions or city and unincorporated residents. Annexation abuse is creating a significant intergovernmental crisis in Georgia and action must be taken at the state level to restore a fair, responsible annexation policy.

State law is woefully inadequate in providing sufficient checks and balances to ensure annexation decisions are made in the best interests of Georgia citizens. Annexing cities are able to ignore the law without repercussion and with potentially far-reaching consequences. The Georgia courts have contributed to the problem, ruling that "the General Assembly intended that a liberal policy apply" to questions of annexation in favor of cities[1]. This interpretation limits the relief that counties and affected residents are able to receive before the courts in annexation disputes.

The Association County Commissioners of Georgia (ACCG) presents this report to inform policymakers about annexation abuse and its impacts on Georgia citizens. The following are four major concerns of county commissioners:

- The dispute resolution process is ineffective;
- Comprehensive county planning is compromised;
- Efficient service delivery is undermined; and
- Deannexation law disrespects property rights.

Annexation Rates

Georgia cities annexed more than 100,000 acres from 2000 to 2006[2]. Some municipalities more than doubled in size, while one grew 669 percent.

Top 15 Fastest Expanding Cities, 2000-2005

CITY	ACRES 2000	ACRES 2005	ACRES INCREASE	PERCENT INCREASE	COUNTY
Talking Rock	123	944	821	**669.00**	Pickens
Locust Grove	1398	3806	2408	**172.26**	Henry
Clermont	617	1425	808	**130.83**	Hall
Flowery Branch	1605	3080	1475	**91.89**	Hall
Dawsonville	1238	2224	986	**79.68**	Dawson
Guyton	767	1373	606	**78.94**	Effingham
Eton	268	472	204	**76.03**	Murray
Holly Springs	2088	3452	1364	**65.30**	Cherokee
Homerville	1410	2196	786	**55.73**	Clinch
Fargo	1105	1688	583	**52.75**	Clinch
Braselton	4640	7056	2416	**52.07**	Jackson
McDonough	5018	7570	2552	**50.86**	Henry
Cecil	520	784	263	**50.57**	Cook
Jasper	2111	3151	1040	**49.28**	Pickens
Baconton	821	1196	374	**45.57**	Mitchell

Source: Georgia Department of Community Affairs Analysis of Annexations (2006)

[1] H-B Properties v. City of Roswell (247 Ga. App. 851); Fayette Co. v. Kenneth Steele (268 Ga. App. 13)
[2] Georgia Department of Community Affairs Annexation Database, accessed 12/18/06

Federal Voting Rights Act Violations

Evidence shows that Georgia cities have disregarded federal law when annexing land. Under Section 5 of the Federal Voting Rights Act, any jurisdiction in Georgia that amends its election practices or procedures must receive clearance from the United States Attorney General before those changes can be recognized in an election, which includes changes caused by annexation.

Municipalities are required by federal law to submit a request for preclearance for each annexation, at the time of annexation, to the United States Department of Justice (US DOJ) and by state law, O.C.G.A. §36-36-3(f), to provide a copy of the request to the Georgia Department of Community Affairs (DCA).

An ACCG review of DCA records and US DOJ Notices of Section 5 Activity[3] since 2000 reveals dozens of cities have not consistently conformed to the requirements of the Voting Rights Act, which can raise questions about the validity of any election held between an annexation and approval from the United States Attorney General.

State Reporting Requirement Violations

Georgia cities are also not consistently complying with minimal state reporting standards. O.C.G.A. §36-36-3(a)(3) requires cities to submit a letter to DCA indicating the municipality will participate in the next United States Bureau of the Census Boundary and Annexation Survey and provide updated information and maps. A review of DCA records since 2002 shows scores of municipalities have not complied with this statute[4].

A lack of compliance does not invalidate an annexation according to O.C.G.A. §36-36-3(c)(3), which states, "Compliance with the requirements of this code section shall be construed to be merely ancillary to and not an integral part of the annexation procedure…"

Further, there are no repercussions for not following state reporting requirements. The one state agency, DCA, charged with monitoring annexations in the state has no enforcement power to ensure annexations are proceeding in a legal manner. A review of the department's annexation records reveals a number of unfulfilled requests for additional information from municipalities.

The lack of compliance with minimum state and federal reporting requirements is a sign of bigger problems at the local level. Constant boundary changes and inconsistent observance of annexation law creates challenges in maintaining accurate maps for service delivery and elections purposes.

Election Tossed Because of Illegal Annexation

A mayor in Gordon County lost reelection by two votes in 2003. He challenged the election results in court, alleging one voter's property was illegally annexed into the city. The judge agreed and threw out the election results. The mayor subsequently won reelection.

[3] A copy of the complete Georgia Department of Community Affairs annexation database (12/18/06) was obtained and reviewed. Annexations noted as missing a copy of the preclearance request were then cross-checked with the US DOJ Notices of Section 5 Activity at http://www.usdoj.gov/crt/voting/notices/noticepg.html.

[4] A copy of the complete Georgia Department of Community Affairs annexation database was obtained on 12/18/06. This statement is based on a review of annexation records noted as missing a copy of the required Census letter from 2002 to the present.

Checks and Balances Missing at the Local Level

Just as the state has no ability to enforce proper annexation procedures, county governments similarly possess no ability to serve as a check and balance to annexation abuse. The dispute resolution process, O.C.G.A. §36-36-11, enacted in 2004 to resolve conflicts between counties and cities is generally meaningless. There are a number of problems with the statute.

First, it is nonbinding and there are no repercussions if municipalities do not follow the law and do not cooperate in the dispute resolution process. Second, a land use change is the only reason a county can object to a proposed annexation. There is no basis provided in the law for objecting due to service delivery conflicts, negative fiscal impacts, or other legitimate concerns. Municipalities can presently undermine even the simple land use safeguard by annexing land at densities or categories equivalent to county zoning. This prevents the county from being able to show a substantial change in intensity or allowable use, which prevents the filing of a legitimate objection. Cities may subsequently rezone the annexed land to higher densities or a different land use after the annexation process is complete. Even though counties can object for up to one year, the objection process remains futile and achieving a meaningful change after an annexation is more unlikely than before.

In addition, the timeline provided for reviewing and responding to annexation requests is impractical. County governments have seven (7) calendar days to review a proposed annexation and notify a municipality of an intention to object. This does not allow time to adequately review and respond to proposals. However, municipalities routinely reject county objections if they are not received within this unreasonably short timeframe.

Dacula Utterly Ignores Gwinnett County Objection

In November 2006, the City of Dacula annexed over 20 acres in Gwinnett County and tripled the allowable density on the land. The city ignored wholesale the county's objections to the annexation and refused to enter into the dispute resolution process at all. The Gwinnett County Commission ultimately chose not to file an injunction because even if Dacula was compelled to follow the dispute resolution process, it is likely the city would ignore any recommendations.

Social Circle Annexes Despite Independent Objections

The City of Social Circle annexed 1,100 acres in adjoining Newton County in late 2006 despite the objections of the Regional Development Center, a Citizen Review Panel, and the county commission. Newton County has filed suit to stop the annexation. However, the city is so confident of its future success in court that it has already erected city limits signs at the disputed boundaries.

Municipalities also do not have the power to prevent annexation abuse by other cities. Cities are increasingly fighting one another in a stiff competition for land. The cities are usually targeting highly profitable property that is near highways or commercial centers.

Cities Are Fighting Cities

Fort Valley is suing Byron in Peach County over property along I-75, land 11 miles from downtown Fort Valley.

Braselton is suing Hoschton in Jackson County for annexing a 124-acre development near Maddox Rd and SR 124.

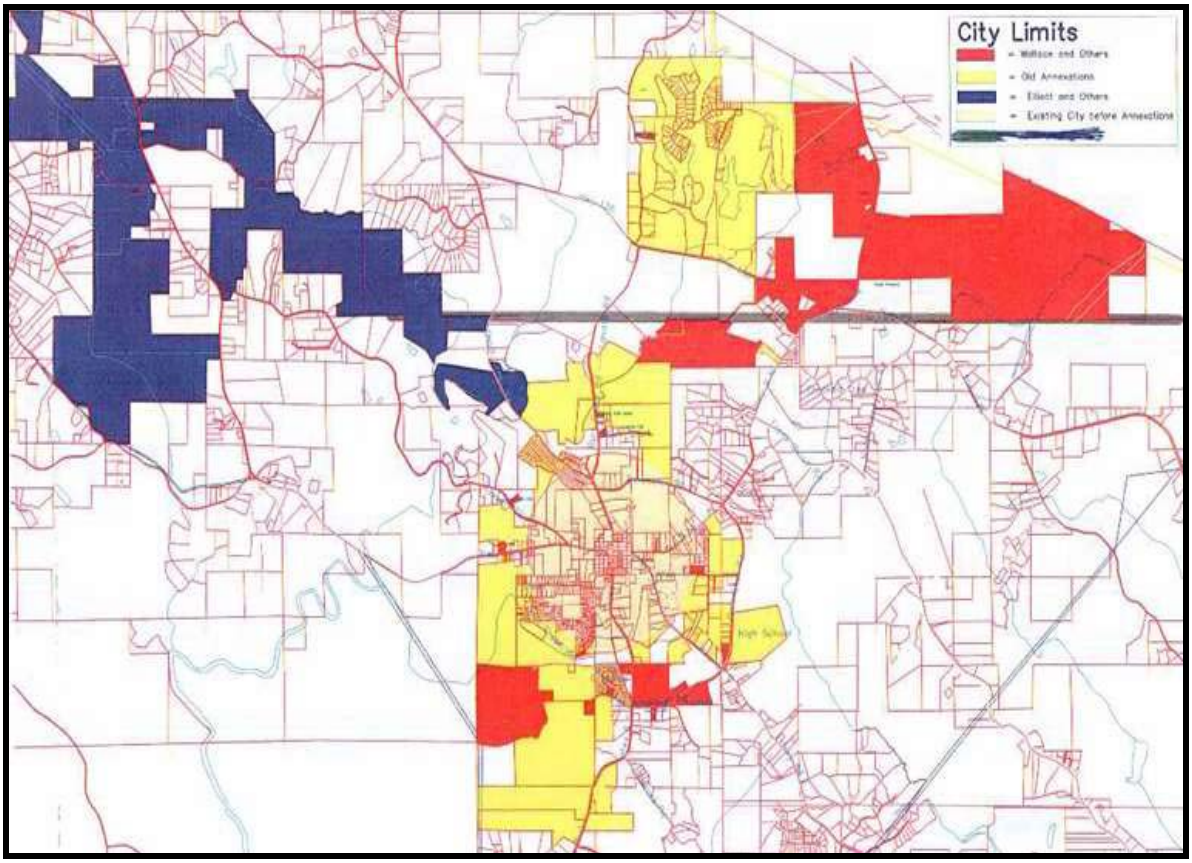
Fort Oglethorpe sued Ringgold in Catoosa County in 2005 for annexing into its growth plan area along Battlefield Parkway.

Comprehensive Plans Compromised

Georgia law does not require cities and counties to work together when making annexation decisions or decisions regarding the disposition of annexed property. Therefore, annexations can unilaterally undermine county comprehensive plans that were created with public input and the support of unincorporated residents. Unincorporated residents are often marginalized in annexation proceedings because they are not city residents and cannot vote in city elections. Despite the impact a city annexation and land use change may have on their property or quality of life, city officials are unaccountable to them. County commissioners are powerless in the law to do anything to help their unincorporated constituents in these situations.

City of Dawsonville (Dawson County), 2006

Despite nonstop objections from Dawson County and both unincorporated and city residents, the City of Dawsonville annexed to three times its size since 2000. The majority of that growth occurred in the last two years. The city has rezoned annexed land in some cases to more than five times its original density. Dawson County estimates a $49 million impact, including uncollected impact fees, increased road maintenance costs and new costs to the county school system.



Land use decisions, as well as countywide economic development, environmental and transportation plans made by county commissioners to protect residents or plan for smart growth are all endangered by current annexation law. County commissioners are responsible for governing the entire county, while municipal officials may focus only on their individual city's needs. These differing priorities among county and city elected officials can cause significant conflicts.

Emerson Annexes Land to Reverse County Landfill Decision

The City of Emerson in Bartow County granted permission for a regional landfill within its city limits after the county turned the applicant away due to public opposition. To skirt state law requiring cities to obtain county permission if a proposed regional landfill is within ½ mile of the unincorporated boundary, the city began annexing property – including the county sewer treatment plant – to acquire a ½ mile buffer. The landfill annexation effort was only defeated after the City of Cartersville annexed land needed by Emerson.

Cities Can Focus Only on City Interests

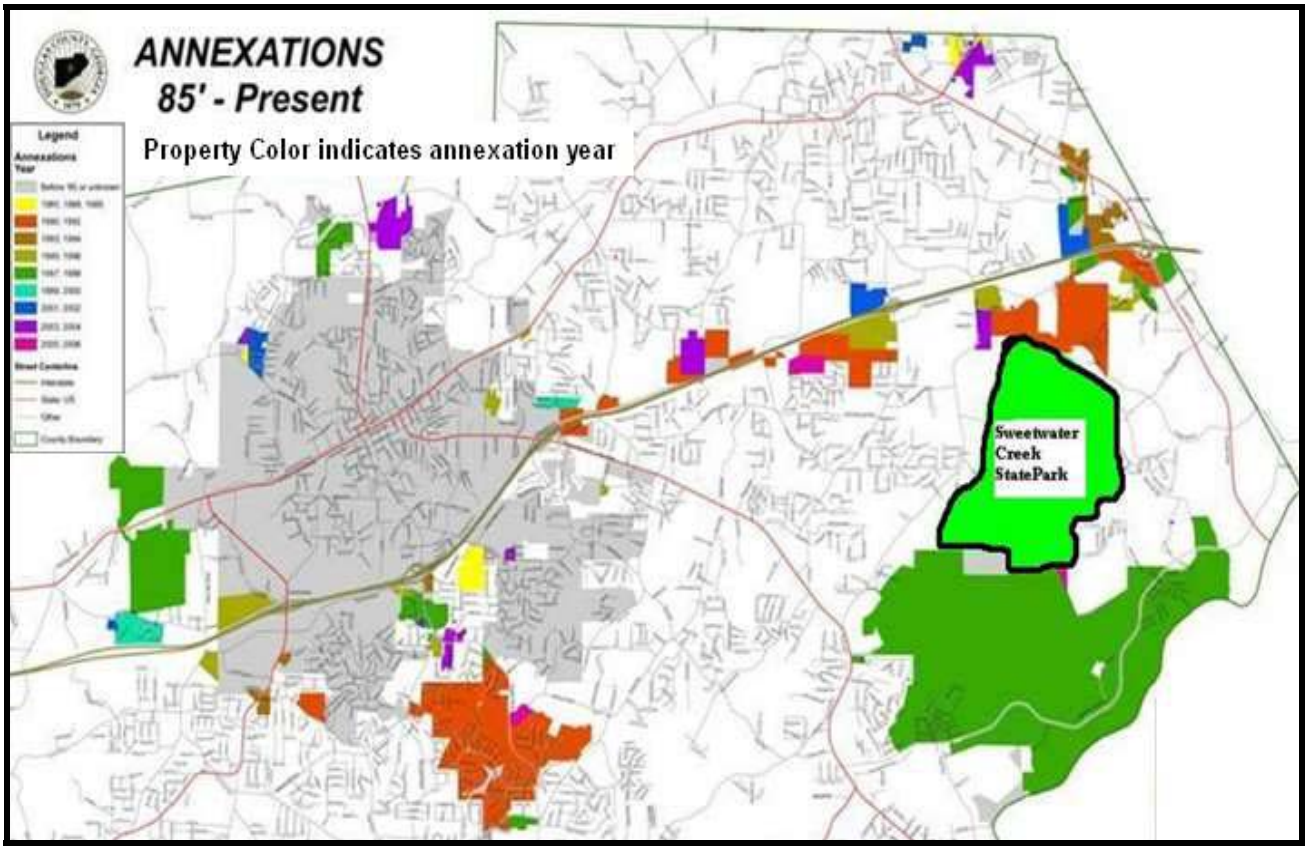
In Cherokee County, the City of Ball Ground annexed land in 2006 along I-575 and rezoned it for a residential and commercial mixed-use development. The county determined the land along I-575 should be preserved for industrial and commercial prospects since much of the remaining county land is developed or unsuitable for that use. County commissioners are responsible for the economic development of the entire county, while municipal officials may focus only on their city's needs.

Illogical City Boundaries Fostered

Current annexation law promotes the creation of illogical city boundaries that contribute to service delivery inefficiencies and land use conflicts. Public land – without the permission of the public body overseeing that land – can be used to meet contiguity requirements originally enacted to foster natural city growth rather than awkward and irregular extensions of municipal boundaries.

City of Douglasville (Douglas County), 2006

The City of Douglasville skipped Sweetwater Creek State Park (in bright green below) to annex land along Riverside Parkway in Douglas County. The map illustrates the challenge the city has in providing public safety services to an area that is so far from its core. The county still supplements city police services to ensure residents receive adequate protection.



Unincorporated Residents Isolated

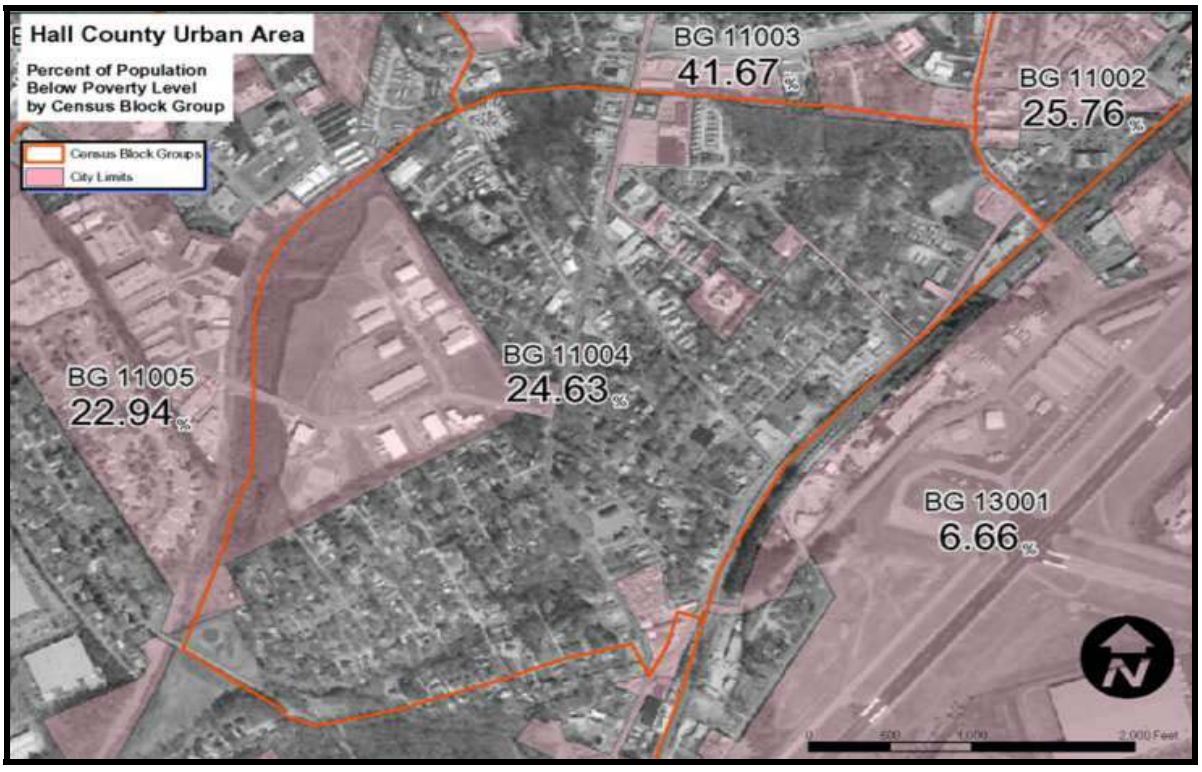
Unincorporated islands remain a problem for counties despite O.C.G.A. §36-36-4, which prohibits the creation of any new unincorporated islands. Existing islands – or new islands created because of liberal interpretation of the law – interfere with the efficient and effective delivery of county services. Boundary confusion is a leading hindrance to public safety and road maintenance services, in particular. Municipalities usually leave unincorporated islands because they consist of residential properties that are not likely to bring in much tax revenue and city officials may not want additional residents voting in city elections.

Cobb County Municipalities have 88 Unincorporated Islands

There are 88 unincorporated islands in Cobb County's six municipalities. These islands lead to inefficient delivery of road maintenance services, delayed response times in emergencies and inconsistent land use planning.

City of Gainesville (Hall County), 2006

In Hall County, the City of Gainesville has more than 50 unincorporated islands. The islands primarily consist of residential, high poverty areas (24% and above – see the black and white part of the photo below) that demand high levels of coordinated government service. The City of Gainesville continues to expand its boundaries and cherry-pick high tax producing commercial and industrial properties (see the shaded pink areas).

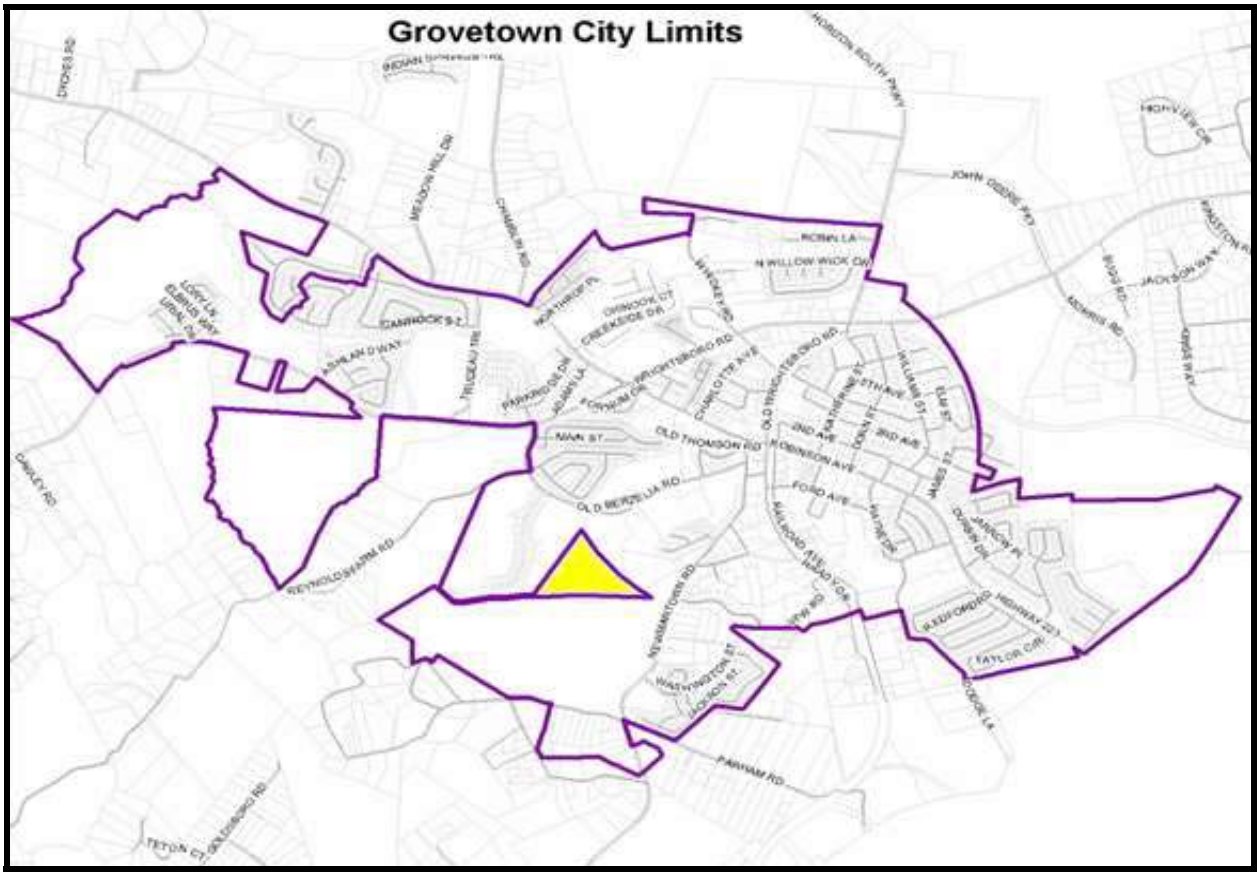


The courts have ruled that leaving a ten (10) foot strip of unincorporated land connecting an isolated, unincorporated area with the rest of the county is legal and does not constitute the creation of an unincorporated island as prohibited in O.C.G.A. §36-36-4.[5] The reality is inconsistent with this court decree.

[5] Fayette County v. Kenneth Steele (268 Ga. App. 13)

City of Grovetown (Columbia County)

The City of Grovetown in Columbia County annexed the Ben Brush property on the Southern end of town in September 2005. To avoid the creation of an unincorporated island, the city left a ten foot strip of unincorporated land from the island to the remaining county. The island is highlighted in yellow below. The purple line to the west of the island represents the thin strip of unincorporated land.



Services Not Delivered

Cost effective service delivery is undermined not just by illogical municipal boundaries. Current law allows cities to annex land and not provide services to the annexed territory. County governments often find themselves providing or supplementing city services to ensure county residents receive essential local government services. Every resident is a county resident, regardless of whether they live in a city or in the unincorporated part of a county.

City of Jasper Annexes Land 7 Miles from Downtown

In Pickens County, the City of Jasper annexed land seven miles from its downtown along SR 108 and SR 515 about two years ago. The city agreed at the time to build a police station and a fire station but has yet to do so. The county continues to respond to the annexed area. Even if the property owners wanted to return to the unincorporated county because of not receiving promised city services, Georgia municipalities have an absolute veto authority over an owner's deannexation wishes.

County Schools Impacted

There are 21 cities with independent school systems in Georgia. When one of these cities annexes property, unless other arrangements have been made, the property taxes levied by the school board shift from supporting the county school system to supporting the city school system. This can cause problems when commercial and industrial properties are annexed, but not residential properties. It leads to a transfer of taxes but not a transfer of students. The legislature passed a law to delay the loss of school tax revenue due to annexations for one year after the effective date of the annexation. However, the real financial impact is still felt – just a year later.

Island Annexations in Whitfield County Cause Loss of $83,000

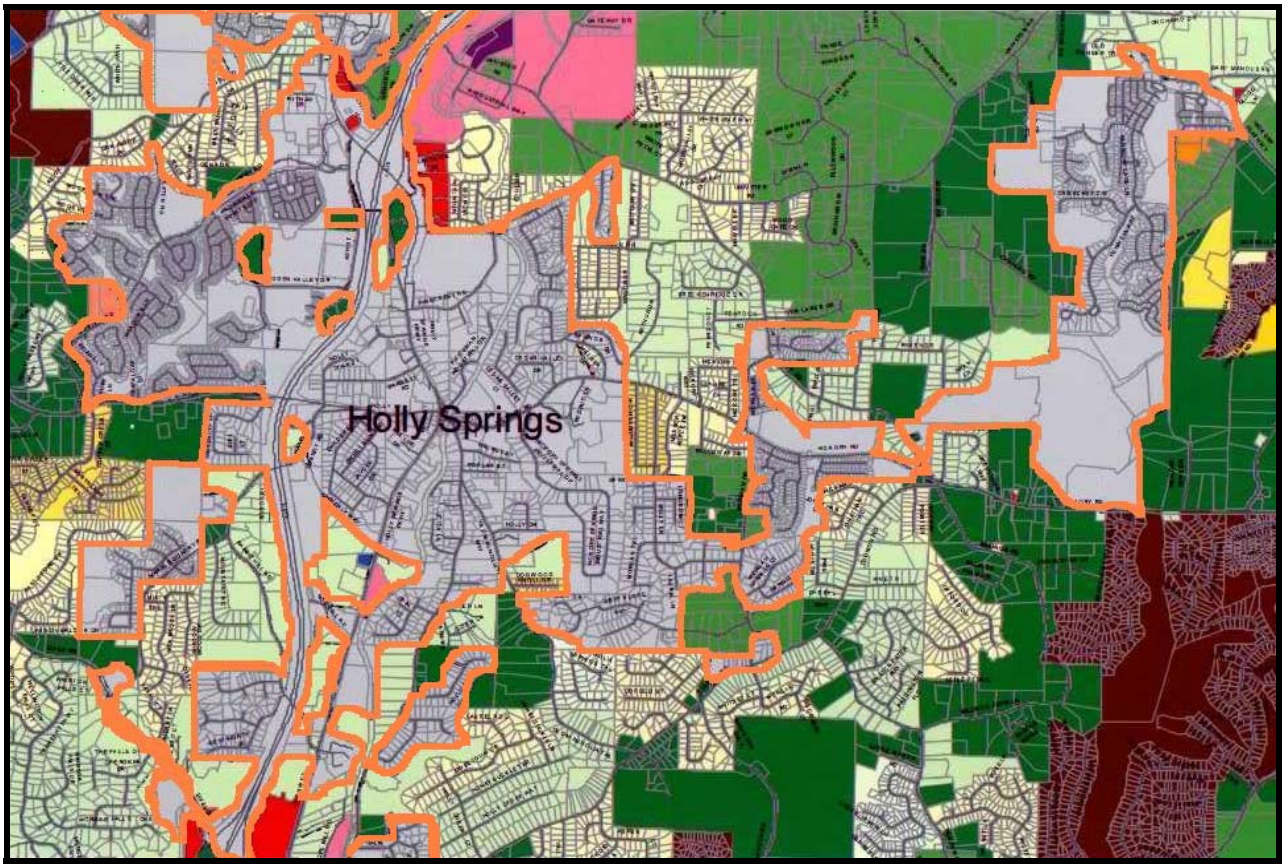
In 2006, the City of Dalton annexed almost 80 unincorporated islands, all of which were commercial and industrial properties. Not a single residential island was annexed. The resulting effect: while the county school system did not lose students and the city school system did not gain students because of the annexations, the county school system still **lost $83,000** in revenues.

Property Rights Disrespected

Current deannexation law in Georgia gives municipalities veto power when a property owner requests to deannex land from a city into the unincorporated area of a county. This veto power is inconsistent with Georgia annexation law, which recognizes the property rights of landowners and allows a property owner to petition a city for annexation without the county government's approval.

City of Holly Springs, Cherokee County (2006)

The City of Holly Springs in Cherokee County expanded 65% between 2000 and 2005. Note the unincorporated islands and unnatural growth pattern of the city.



Conclusion

Current state law does not provide adequate safeguards to protect Georgia residents from annexation abuse. There are no checks and balances in place at the state or local level to ensure annexation decisions are performed in a fair, lawful manner and made in the best interest of the citizens of Georgia.

A stronger legal framework is needed to require counties and cities work together, not just in resolving disputes about proposed annexations but when making land use decisions on annexed land that impacts both unincorporated and city residents. The lack of good faith used in resolving disputes between local governments is demonstrated by municipalities ignoring county objections to annexations and the recommendations of mediators and citizen review panels. Loopholes in laws that foster the inefficient delivery of local government services should be closed and the creation of awkward, unnatural extensions of city boundaries limited. Finally, annexation and deannexation laws should be made consistent to truly ensure property rights are respected in the law.

County commissioners are recommending a number of reforms to the state's annexation laws to level the playing field and establish a fair, responsible annexation policy in Georgia. These include the following:

Make the Dispute Resolution Effective

- Establish state policy to prevent annexations for revenue generating purposes only;
- Ensure no annexations occur at the expense of county school system students;
- Require a city to enter into binding arbitration if a county objects to a proposed annexation and negotiations fail;
- Establish a reasonable time table for a county to evaluate and respond to contested annexations;

Protect County Comprehensive Planning

- Require counties and cities to work together and make land use decisions jointly on annexed land for a period of five years following annexation;

Promote Efficient Service Delivery

- Require a service plan and fiscal impact analysis to be prepared for every proposed annexation;
- Require services be provided, either by intergovernmental agreement or directly, at the effective date of the annexation;
- Require permission of the owner (i.e. the state or county) before public land can be annexed or counted in the contiguity requirements;
- Require cities to annex all unincorporated islands if requested by the county governing authority, unless a majority of property owners object;
- Establish a uniform effective date for all annexations;
- Require more accurate mapping of proposed annexations and strict adherence to reporting requirements; and

Respect Property Rights of All

- Make the process for annexation and deannexation the same. Revoke cities' absolute veto power over deannexation requests.