

Spring 2021

The Battle of Brandy Creek: How One Black Community Fought Annexation, Tax Revaluation, and Displacement

Mark Dorosin

Follow this and additional works at: <https://scholarcommons.sc.edu/sclr>



Part of the [Law Commons](#)

Recommended Citation

Mark Dorosin, The Battle of Brandy Creek: How One Black Community Fought Annexation, Tax Revaluation, and Displacement, 72 S. C. L. REV. 817 (2021).

This Article is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in South Carolina Law Review by an authorized editor of Scholar Commons. For more information, please contact digres@mailbox.sc.edu.

**THE BATTLE OF BRANDY CREEK: HOW ONE BLACK COMMUNITY
FOUGHT ANNEXATION, TAX REVALUATION, AND DISPLACEMENT**

Mark Dorosin

I. INTRODUCTION..... 817

II. THE PLAN TO REDEVELOP AND DISPLACE 819

 A. *The Proposal*..... 819

 B. *Legislative Annexation*..... 820

 C. *One Sale, and the Community Is Cut in Half*..... 823

 D. *The 2007 Tax Reassessment*..... 825

III. THE COMMUNITY FIGHTS BACK 829

 A. *Deannexation* 830

 B. *Reassessment* 834

 C. *Property Tax Refunds* 837

IV. ANNEXATION, TAXATION, AND THE INSTITUTIONALIZED
 EXCLUSION OF BLACK COMMUNITIES 840

V. CONCLUSION 844

I. INTRODUCTION

The Brandy Creek community is a working class, Black neighborhood located just east of I-95, south of Weldon, North Carolina.¹ In 2005, this rural neighborhood and its surrounding land were legislatively annexed into the city of Roanoke Rapids as part of a planned economic development project.² The decision to pursue legislative annexation allowed city officials to bypass the statutory notice and municipal service requirements of a city-initiated, involuntary annexation.³ Residents were never informed of Roanoke Rapids’ intent to annex the community and had no opportunity to voice their opinions

1. Bob Geary, *Residents Sue over Jacked-Up Property Values*, INDY WEEK (Sept. 19, 2012, 4:00 AM), <https://indyweek.com/news/northcarolina/residents-sue-jacked-up-property-values/> [https://perma.cc/R67T-4L59].

2. *Id.*

3. See Frayda Bluestein, *Satellite Area Boundaries Are Corporate Limits, But Not for Purposes of Contiguous Annexation or ETJ*, COATES’ CANONS: NC LOC. GOV. L. (Dec. 14, 2017), <https://canons.sog.unc.edu/satellite-area-boundaries-corporate-limits-not-purposes-contiguous-annexation-etj/> [https://perma.cc/8MCL-ED5U].

on the issue to town officials.⁴ In fact, the community first learned of the annexation several days after it occurred.⁵ As one resident said, “We went to bed in Weldon one night and woke up the next day in Roanoke Rapids.”⁶

The city proceeded with the implementation of its planned redevelopment, which included rezoning all residential properties to commercial, without regard for the residents living there.⁷ When community members first raised concerns about preserving their neighborhood and quality of life, the city responded that the residents would see huge profits when selling their now commercially zoned property to developers.⁸ That residents might want to stay in their homes or preserve their neighborhood was never considered by city or county officials.⁹

Within a few years, the redevelopment plan was a failure; the only property owner who cashed in was the neighborhood’s largest (and absentee) landlord, and the sale of her property resulted in almost half of the community’s residents being evicted.¹⁰ Meanwhile, annexation brought significantly new city property taxes for residents—a financial burden for many families. Residents began paying these taxes despite lacking many of the basic public services provided to other residents of the city (particularly sewer, paved roads, and regular police patrols).¹¹

In addition to the imposition of city property taxes, an additional tax burden was imposed on the community. Because of the countywide property tax revaluation, the neighborhood was reassessed pursuant to its new commercial zoning designation.¹² As a result, property valuations and taxes in the Brandy Creek neighborhood rose an average of over 800% and as high as 1,400%, an intense hardship that further devastated the community.¹³

4. See Lance Martin, *Brandy Creek Residents Want First-Class City Citizenship*, ROANOKE RAPIDS DAILY HERALD, Sept. 1, 2008.

5. *Id.*

6. *Id.*

7. Plaintiffs’ Motion for Summary Judgment at 5, *Gary v. Halifax Cnty.*, 12 CVS 981 (Halifax Cnty., N.C. Super. Ct., Sept. 10, 2013).

8. Lance Martin, *City Officials Promise to Make Improvements to Brandy Creek*, ROANOKE RAPIDS DAILY HERALD, Jan. 16, 2006.

9. See Philip D. Brown, *Annexed Roanoke Rapids Residents Voice Frustration*, ROANOKE RAPIDS DAILY HERALD, Apr. 28, 2005.

10. See Deed from Anne Edwards to Rock River Falls, LLC, Halifax Cnty. Reg. of Deeds, bk. 2144, at 36–37 (July 28, 2006); Geary, *supra* note 1.

11. Plaintiffs’ Motion for Summary Judgment, *supra* note 7, at 3; Geary, *supra* note 1.

12. Plaintiffs’ Motion for Summary Judgment, *supra* note 7, at 5.

13. Geary, *supra* note 1. For the rest of Halifax County, the average increase in tax valuation was approximately 20%. See Complaint at 8, *Gary v. Halifax Cnty.*, 12 CVS 981 (Halifax Cnty., N.C. Super. Ct., Aug. 24, 2012); Halifax County’s Answer and Motion to Dismiss, *Gary*, 12 CVS 981.

Residents struggled to make these inflated payments; many had their wages garnished to pay the taxes, and several were unable to stay in their homes.¹⁴

But residents refused to be pushed out. They were determined to fight against racial discrimination and for what remained of their neighborhood. Together, residents organized first to demand municipal services and then to demand deannexation, tax equity, and ultimately refunds for the illegally inflated property taxes they were forced to pay.¹⁵ Against the backdrop of the city's ill-conceived and costly redevelopment plan, the plight of Brandy Creek stands out as an example of the disparate impacts of ostensibly "race-neutral" tax policies on Black communities.

This Article explores the experience of the Brandy Creek community as a case study of how property taxes, tax policy, and annexation (or the refusal to annex) has been manipulated by local governments to control, displace, and exclude African-American neighborhoods and to maintain and entrench the continuing legacy of residential segregation and discrimination based on race and place. Part II focuses on the city's plan to redevelop the area and the related displacement of the Brandy Creek community. Part III examines how the community organized to resist those efforts. And Part IV looks at some of the broader legal issues related property taxes, annexation, and residential racial exclusion.

II. THE PLAN TO REDEVELOP AND DISPLACE

A. *The Proposal*

In 2005, the City of Roanoke Rapids in rural Halifax County, North Carolina, announced plans for a music venue intended to be the anchor feature in its proposed Carolina Crossroads Music and Entertainment District (Carolina Crossroads) which, when fully developed along I-95 in that low-wealth county, would include additional theaters, music venues, a waterpark, hotels, retail shops, restaurants, and an outdoor amphitheater.¹⁶ The project was modeled after the successful tourism and entertainment district in Branson, Missouri.¹⁷

Developed by the city in coordination with regional and state economic development organizations, Carolina Crossroads was expected to bring \$129

14. See, e.g., Affidavit of Catherine Hale, Plaintiffs' Motion for Summary Judgment Exhibit 6, *Gary*, 12 CVS 981.

15. *Geary*, *supra* note 1; see Plaintiffs' Motion for Summary Judgment, *supra* note 7, at 2.

16. Adam C. Parker, *Still as Moonlight: Why Tax Increment Financing Stalled in North Carolina*, 91 N.C. L. REV. 661, 697 (2013).

17. See, e.g., BRANSON.COM, <https://www.branson.com/> [<https://perma.cc/5JWJ-TX6H>].

million in private investment and directly create over 2,500 jobs.¹⁸ The city recruited Randy Parton, the brother of superstar Dolly Parton, to headline and manage the theater,¹⁹ and both siblings attended a groundbreaking ceremony for the project in November of 2005.²⁰ Roanoke Rapids issued \$21.5 million in bonds to build the theater and launch Carolina Crossroads, confident this initial public investment would spur additional private development and fully realize the comprehensive redevelopment plan.²¹

Having committed to build the future Randy Parton Theatre and launch this extraordinary project, the city faced two immediate challenges. First, Carolina Crossroads was planned for 123 acres along the east side of the I-95—land that was not part of the city at the time and had never been included in the city’s long-range growth or development plans.²² City leaders anticipated this issue however, and had already put plans in place to secure the area’s annexation.²³ But they had not considered the second issue they would soon confront: the residents of the Black, working-class Brandy Creek neighborhood, which sat right in the middle of the proposed development, did not intend to see their community displaced and would be willing to fight to preserve it.

B. Legislative Annexation

The plan to develop Carolina Crossroads and use tax-increment financing to fund it depended on the city annexing the property south and east of (and not adjacent to) its existing boundaries. This presented an immediate legal challenge.

18. Don Carrington, *No Celebration for Randy Parton Theatre’s 10th Anniversary*, CAROLINA J. (July 26, 2017), <https://www.carolinajournal.com/news-article/no-celebration-for-randy-parton-theaters-10th-birthday/#:~:text=No%20celebration%20for%20Randy%20Parton%20Theatre%E2%80%99s%2010th%20anniversary,for%20the%20theater%20that%20would%20bear%20Randy's%20name> [https://perma.cc/85YV-6A2Z].

19. *Id.* The implied promise was that Randy Parton would be able to replicate the success of Dolly Parton’s Tennessee “Dollywood” entertainment district. *See* DOLLYWOOD, <https://www.dollywood.com/> [https://perma.cc/77KP-SKW7].

20. Don Carrington, *Randy Parton Theatre Still Haunts Roanoke Rapids*, CAROLINA J. (Oct. 31, 2011), <https://www.carolinajournal.com/news-article/randy-parton-theatre-still-haunts-roanoke-rapids/> [https://perma.cc/6AGL-DV2B].

21. *See* Parker, *supra* note 16, at 697–98.

22. *Id.* at 697. The land was actually closer to the adjoining town of Weldon and within that town’s extra-territorial jurisdiction. *See* Martin, *supra* note 4. As such, the property proposed for Carolina Crossroads was statutorily ineligible to be annexed by Roanoke Rapids. *See* N.C. GEN. STAT. ANN. § 160A-58.1(b)(2) (West 2020) (“No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city . . .”).

23. *See* Martin, *supra* note 4.

At the time, North Carolina law allowed a city to unilaterally initiate and pursue annexation of land—even against the wishes of impacted property owners—but only if the area to be annexed met certain statutory requirements.²⁴ Among these was a provision that the annexed area be contiguous with existing city boundaries, and Brandy Creek—south of the city and across an interstate highway—was not.²⁵ State law also permitted the annexation of “satellite” areas that did not touch the municipal boundaries, but only if all (that is, 100%) of the impacted property owners voluntarily petitioned the city for annexation.²⁶

With no statutory option available to incorporate Brandy Creek and the rest of the planned Carolina Crossroads property into the city, Roanoke Rapids’ only option was to directly ask the state legislature to adjust the municipality’s boundaries. Under the North Carolina Constitution, the legislature retains power to annex property into cities and towns by local legislative acts.²⁷ Importantly, when the legislature annexes territory into a municipality, it is not bound by the statutory standards or procedures imposed on cities that undertake annexations on their own accord.²⁸ For example, legislative annexation does not require that an area meet any density or development requirements, that a public hearing be held, that any notice be given to affected residents, or that municipal services be provided to annexed areas within a specific time.²⁹

On March 1, 2005, House Bill 466 was introduced.³⁰ It passed unanimously in both the house and the senate and was ratified six weeks later, on April 19, 2005.³¹ The first sentence of the Bill made plain its express intent and operation: “The corporate limits of the City of Roanoke Rapids are extended to include the following described territory”³² The remainder of the Bill was a deed-level description of the properties in the entertainment district subject to annexation, including all of Brandy Creek.³³

24. § 160A-36 (repealed 2011).

25. § 160A-36(b)(1)–(b)(2).

26. § 160A-58.1.

27. N.C. CONST. art. VII, § 1 (“The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.”).

28. See Martin, *supra* note 4.

29. See Bluestein, *supra* note 3.

30. H.R. 466, 2005 Gen. Assemb., 2005 Sess. (N.C. 2005); *House Bill 466*, N.C. GEN. ASSEMBLY, <https://www.ncleg.gov/BillLookUp/2005/h446> [<https://perma.cc/AVL7-2RNF>].

31. *House Bill 466*, *supra* note 30.

32. H.R. 466, 2005 Gen. Assemb., 2005 Sess. (N.C. 2005).

33. *Id.*

The residents of Brandy Creek were not given advanced notice or otherwise informed of the city's decision to seek legislative annexation.³⁴ Drewery Beale, then mayor of Roanoke Rapids, later admitted that the city did not seek input from the community.³⁵ Defending the city's decision to bypass the community and pursue annexation through the legislature, Mayor Beale explained: "We approached [the legislators] and told them what we thought was going to happen and how much the land was going to be worth."³⁶ Greg Lawson, Roanoke Rapids' Chief of Police at the time, recalled: "I was told one morning and advised that the subdivision area along Wallace Forks had been annexed in an act of the General Assembly. . . . I was challenged to go out there and meet with those folks and tell them they were now in the city limits."³⁷

Chief Lawson's knock on their doors was the first time Brandy Creek residents learned of the annexation. As one resident later said, "We went to bed in Weldon, and we woke up in Roanoke Rapids."³⁸ Legislative annexation deprived residents of notice and an opportunity to be heard before being incorporated into the city. Had residents been given that opportunity, they would have also learned that the city had zoned their residential neighborhood "Commercial district B-4," which, according to the city's zoning ordinance, was "designed to accommodate the widest range of commercial activities."³⁹ As a final surprise to the community, upon annexation, residents were responsible for municipal property taxes in addition to the county property taxes that they were already paying.⁴⁰

Brandy Creek residents immediately attended a city council meeting to express their frustration, particularly with the manner in which their neighborhood was annexed: "We're not happy . . . because we were not informed After it all happened, people came around knocking on our doors and leaving notes. We're landowners and we need to have more notification than that."⁴¹ Although Mayor Beale tried to assure residents that the city would soon bring municipal services to them, his statements were greeted with skepticism given the planned entertainment district.⁴² It was clear to residents that the continued viability of their neighborhood—much less any

34. Martin, *supra* note 4.

35. Roger Bell, *City Council Talks of De-Annexation Near Carolina Crossroads*, ROANOKE RAPIDS DAILY HERALD, June 3, 2010.

36. *Id.*

37. *Id.*

38. Geary, *supra* note 1.

39. ROANOKE RAPIDS, N.C., LAND USE ORDINANCE art. IX, § 151-136(e) (2017).

40. N.C. GEN. STAT. ANN. § 160A-58.10 (West 2020). At the time, the *ad valorem* property tax rate in the city was \$0.499 per \$100 valuation. N.C. DEP'T OF REVENUE'S POL'Y ANALYSIS & STAT. DIV., STATISTICAL ABSTRACT OF NORTH CAROLINA TAXES 148 (2006).

41. Brown, *supra* note 9.

42. *See id.*

improved services for Brandy Creek—was inconsistent with the city’s redevelopment proposal. One resident, whose property was located in the center of the proposed district, expected the community would be gone within a year: “[T]here’ll be buildings of all sides of us. I’m not gonna live here with no Fun World or entertainment park or whatever they’re planning.”⁴³ And despite Mayor Beale’s suggestion that Roanoke Rapids would accommodate the community, town leaders hinted at the promise of big payouts if residents sold their properties and moved away: “All they’re telling us is we’re gonna be rich[.]”⁴⁴

C. One Sale, and the Community Is Cut in Half

In the year following annexation, residents advocated for the enhancements that their municipal taxes were supposed to be supporting, including road improvements, street lighting, and access to public sewer.⁴⁵ While some new services were provided, residents complained those changes were minimal and insufficient.⁴⁶ Street lighting was inadequate, and roads remained in such bad shape that school buses refused to enter the neighborhood.⁴⁷ In response, the city assured residents their concerns would be taken seriously.⁴⁸ It was clear, however, that the city had no real interest in improving the residential community. Mayor Beale made plain the city’s expectation that these residents would leave, stating that developers would come forward with purchase offers “they [couldn’t] turn down.”⁴⁹

Mayor Beale’s prediction came to partial fruition in July of 2006. In a single transaction with the largest (absentee) landlord in the neighborhood, Rock River Falls, LLC—a speculative real estate development company—purchased thirty-two mostly contiguous lots in Brandy Creek for approximately \$2,875,000, an average of \$89,844 per parcel.⁵⁰ This price was far in excess of the parcels’ combined tax values,⁵¹ and a year later, the price would be used to justify drastic property tax increases in the Brandy Creek community.

But the Rock River purchase had a much more immediate and devastating effect on the community. Almost all of the purchased parcels were occupied

43. *Id.*

44. *Id.*

45. Martin, *supra* note 8.

46. See Martin, *supra* note 4.

47. Martin, *supra* note 8.

48. See *id.*

49. *Id.*

50. Deed from Anne Edwards to Rock River Falls, LLC, *supra* note 10.

51. See Geary, *supra* note 1.

by renters—most living in manufactured housing.⁵² Following the purchase, the renters were all evicted, eliminating nearly half of Brandy Creek’s population.⁵³ In the wake of residents being driven out, each parcel was cleared, leaving several remaining homes isolated and cutoff from neighbors. Reflecting on the decimation of their neighborhood, residents lamented that “[a]bout half of the people that lived in the neighborhood left,” “[l]ots of people had to move away[,]” and “[w]e used to have kids, but now we have no kids.”⁵⁴

Figure 1a. Brandy Creek Before the Rock River Purchase⁵⁵

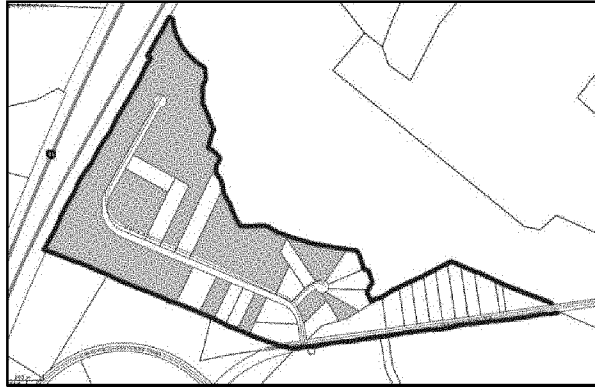


52. *Id.*

53. *See id.*; Affidavit of Jocelyn Robinson, Plaintiffs’ Motion for Summary Judgment Exhibit 14, *Gary v. Halifax Cnty.*, 12 CVS 981 (Halifax Cnty., N.C. Super. Ct., Sept. 10, 2013).

54. Affidavit of Jocelyn Robinson, *supra* note 53; Affidavit of Shirley Gary, Plaintiffs’ Motion for Summary Judgment Exhibit 5, *Gary*, 12 CVS 981; Affidavit of Danielle Adkins, Plaintiffs’ Motion for Summary Judgment Exhibit 2, *Gary*, 12 CVS 981.

55. Figure 1a was created by using GIS data from the Halifax County Register of Deeds and the Halifax County Tax Office.

Figure 1b. Brandy Creek After the Rock River Purchase⁵⁶

D. The 2007 Tax Reassessment

North Carolina law requires counties to complete a comprehensive countywide property tax reappraisal every eight years.⁵⁷ Pursuant to that law, Halifax County was scheduled to complete its octennial reassessment in 2007.⁵⁸ In conducting the mandatory reassessment, county tax officials are required to ensure:

All property, real and personal, shall as far as practicable be appraised or valued at its true value in money. When used in this Subchapter, the words “true value” shall be interpreted as meaning market value, that is, the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used.⁵⁹

The 2007 reassessment process began in 2003 and continued through 2006, during which Halifax County tax assessors inspected properties in the county and collected information to calculate a new assessed value for each parcel.⁶⁰ Then, in December 2006, the county mailed letters to property

56. Figure 1b was created by using GIS data from the Halifax County Register of Deeds and the Halifax County Tax Office. The light gray shading within this figure represents the Rock River purchase.

57. N.C. GEN. STAT. ANN. § 105-286(a) (West 2020).

58. *See id.*

59. § 105-283.

60. *See id.*; Plaintiffs’ Motion for Summary Judgment, *supra* note 7, at 3.

owners notifying them of the new tax values set to become effective on January 1, 2007.⁶¹

Prior to the 2007 reassessment, most properties in Brandy Creek were valued at less than \$10,000. Following the 2007 reassessment, as Table 1 demonstrates, property values in the community increased an average of 807%. By comparison, property values in other areas of the county and in neighborhoods immediately adjacent to Brandy Creek only increased 19%–34%.⁶²

Table 1. Brandy Creek Property Valuation Changes⁶³

Resident Name	2006	2007	Percent Increase
Pamela Arrington	\$8,480	\$72,370	753%
Shirley Gary 1	\$9,320	\$92,070	888%
Shirley Gary 2	\$6,830	\$62,110	809%
Catherine Hale	\$8,120	\$41,870	416%
Ruth Hampton	\$9,020	\$75,610	738%
Calvin Handsome	\$8,260	\$85,040	930%
Mary Handsome	\$8,600	\$73,600	756%
Kathy Harris-Ahmed	\$8,210	\$69,390	745%
Joyce Harrison	\$8,840	\$74,530	743%
Jocelyn Robinson	\$16,930	\$78,270	362%
Veronica Walker	\$8,370	\$86,120	929%
Louise and Stephanie Williams	\$11,000	\$84,930	672%
Ilene Belcher	\$8,510	\$71,610	741%
Herbert and Antoinette Cheatham	\$8,050	\$68,220	747%
Vernon and Joyce Hockaday 1	\$5,250	\$81,400	1,450%
Vernon and Joyce Hockaday 2	\$5,340	\$82,590	1,447%
Lewis and Fannie Kee	\$9,680	\$79,560	722%
Carlton Patterson	\$8,210	\$69,390	745%
Richer and Mildred Patterson	\$8,280	\$69,910	744%

61. Deposition of Charles Graham, Plaintiffs' Motion for Summary Judgment Exhibit 38, *Gary v. Halifax Cnty.*, 12 CVS 981 (Halifax Cnty., N.C. Super. Ct., Sept. 10, 2013); *see* § 105-285.

62. *Id.*

63. The data in Table 1 is based on a review of public tax records, available through the Halifax County Tax Office. This data was also provided by the County in discovery in *Gary*, 12 CVS 981.

Because the amount of property tax paid by a homeowner is the product of multiplying the assessed value by the annual property tax rate set by the local taxing authority, the 2007 reassessment caused substantial increases in residents' property tax bills, both for their county and city property taxes—the latter of which they were subject to because of the 2005 annexation.⁶⁴ For example, Veronica Walker paid \$72.40 in county taxes and \$52.22 in city taxes in 2006; as a result of the new, hyperinflated property value, she owed \$585.62 in county taxes and \$537.39 in city taxes—a total increase of almost \$1,000.⁶⁵

These tax increases had a devastating impact on the residents of Brandy Creek, many of whom were elderly and living on a fixed income.⁶⁶ Several testified about the substantial economic burden, as well as the county's aggressive tax collection efforts, in their sworn affidavits.⁶⁷ Catherine Hale "received a letter from the county threatening collections and wage garnishment . . . [Her] account was frozen by the county for the taxes owed."⁶⁸ Similarly, Mary Handsome stated:

I had to cut back on food, health insurance, medicine, and doctor visits to pay the bill. I focused on nothing but saving [her] house and paying the taxes . . . I got three letters from the County asking me to pay, and one letter . . . saying my home would be foreclosed and threatening to take money from my bank account.⁶⁹

Kathy Harris' bank account was seized when she "sent a check and they got the account number off [her] check. They took about \$700 from [her] checking account. The bank charged [her] another \$150 fee."⁷⁰ Carlton Patterson, an employee with the Halifax County school system for nearly thirty years, had his paychecks garnished "around \$127.53 on a monthly basis until [he] was able to pay [his] property taxes in full . . . and was charged interest every month . . ."⁷¹ Lewis Kee "could not afford the property taxes, so at 70 years old [he] had to go back to work cutting lawns. [He] cut lawns

64. See § 105-286; Brown, *supra* note 9.

65. This data was collected by the author pursuant to his representation of the plaintiffs in *Gary*, 12 CVS 981.

66. Bell, *supra* note 35.

67. See, e.g., Affidavit of Mary Handsome, Plaintiffs' Motion for Summary Judgment Exhibit 7, *Gary*, 12 CVS 981; Affidavit of Carlton Patterson, Plaintiffs' Motion for Summary Judgment Exhibit 12, *Gary*, 12 CVS 981; Affidavit of Catherine Hale, *supra* note 14.

68. Affidavit of Catherine Hale, *supra* note 14, at 1.

69. Affidavit of Mary Handsome, *supra* note 67, at 1.

70. Affidavit of Kathy Dell Harris, Plaintiffs' Motion for Summary Judgment Exhibit 8, *Gary*, 12 CVS 981.

71. Affidavit of Carlton Patterson, *supra* note 67, at 1.

for family and friends for two years when [he] was 70 and 71 years old. [His] wife had to go back to work as well.”⁷²

Fearing foreclosure, some residents took out personal loans to pay their taxes. Veronica Walker, a working single mother testified in 2013 that “[a]s a result of the 2007 increase, [she was] still paying on a debt owed by the loan [she] had to take out to pay [her] property taxes in 2008.”⁷³ Joyce Harrison, a single parent raising five kids, said in 2013, “I’m currently paying back a loan now that I took out in 2006 or 2007”⁷⁴

Astronomical tax increases severely threatened the continued viability of the Brandy Creek community, but they were not the only adverse impact that harmed the residents’ quality of life and pressured them to leave. Despite the annexation, Roanoke Rapids made only minimal improvements to the community; roads remained unpaved and poorly maintained, and only one streetlight was added to the neighborhood.⁷⁵ There were also new harms stemming from the loss of half of the neighborhood following the Rock River purchase. While Rock River quickly evicted residents and removed houses on the purchased properties, it failed to regularly maintain vacant lots that had become overgrown and, in some cases, home to vermin and snakes.⁷⁶ As remaining residents struggled to maintain their properties and homes, adjoining parcels became dangerous and unsightly.⁷⁷ As one resident explained, “we used to have a good neighborhood Whoever owns the lots, they don’t come and cut them down anymore and not the critters are running rampant. It’s a health hazard because it’s unsafe.”⁷⁸

Facing increased financial pressures, the removal of over half the homes in the neighborhood, looming development of the planned entertainment district, and Mayor Beale’s suggestion that developers would be interested in purchasing their properties, several residents listed their homes for sale using the 2007 valuation as their asking price.⁷⁹ But by this time, numerous concerns

72. Affidavit of Lewis McKinley Kee, Plaintiffs’ Motion for Summary Judgment Exhibit 11, Gary, 12 CVS 981.

73. Affidavit of Veronica Walker, Plaintiffs’ Motion for Summary Judgment Exhibit 15, Gary, 12 CVS 981.

74. Affidavit of Joyce Harrison, Plaintiffs’ Motion for Summary Judgment Exhibit 9, Gary, 12 CVS 981.

75. Affidavit of Mildred Patterson, Plaintiffs’ Motion for Summary Judgment Exhibit 14, Gary, 12 CVS 981.

76. See Lance Martin, *Brandy Creek, County Settle for \$42K*, RRSPIN.COM (Dec. 11, 2013), <https://rrspin.com/archives/item/5886-brandy-creek-county-settle-for-42k.html> [<https://perma.cc/8A4B-XZZ5>].

77. See Affidavit of Joyce Harrison, *supra* note 74.

78. *Id.*

79. Many of the residents hired Halifax County Commissioner Vernon Bryant, a real estate agent, to sell their properties. See *infra* Section III.C. Because of his role in this

about the viability of Carolina Crossroads had emerged—including allegations of financial and legal improprieties—which made the likelihood of full development increasingly remote, and no resident even received an offer.⁸⁰ Nevertheless, officials in Roanoke Rapids continued to hold out hope for new commercial development and declined to provide additional municipal services or resources to Brandy Creek.⁸¹ Committed to preserving what remained of their neighborhood and convinced they were being mistreated and ignored by officials because theirs was a Black community, residents joined together to resist.

III. THE COMMUNITY FIGHTS BACK

Brandy Creek residents first met with the Roanoke Rapids City Council following their annexation in 2005, and by 2008, they had formed a community organization committed to addressing efforts to displace the neighborhood.⁸² Annexation, lack of services, and an increased tax burden were at the top of the organization's list.⁸³ The organization issued a formal press release announcing its establishment, grievances, and goals, particularly noting that, although residents were taxpayers of Roanoke Rapids, they had “only a few sparse street lights but no public water, no road maintenance and no public sewer.”⁸⁴ This last issue particularly frustrated the community because, despite sewer lines being installed immediately adjacent to the neighborhood to serve new commercial development, “service was not supplied or even offered to the residents.”⁸⁵ The organization also publicly

unsuccessful process, Bryant attempted to recuse himself when the residents petitioned the county for property tax refunds. *See infra* Section III.C; Lance Martin, *County Denies Brandy Creek Refunds*, RRSPI.COM (Jan. 24, 2012), <https://www.rrspin.com/archives/item/2656-county-denies-brandy-creek-refunds.html> [<https://perma.cc/3243-RVXE>].

80. The Randy Parton Theater was built in 2007 and designed to be the anchor tenant of the entertainment district. *See* David Zucchini, *At Randy Parton Theatre, Show Goes on Without “Star,”* L.A. TIMES (Dec. 17, 2007), <https://www.latimes.com/news/la-na-parton17dec17-story.html> (last visited Feb. 13, 2021). But quickly falling revenues, questionable payments by Parton (including for trips to Las Vegas and New York and direct payments to family members), and allegations of public drunkenness led the city to fire Parton as the theater manager and cancel his management contract. *See id.* There were also allegations of misrepresentation and insider dealing when it was revealed that the Chief Executive Officer for the state-funded economic development agency that helped conceptualize the district was a partial owner of Parton's management company. *See id.*; *see also* Don Carrington, *Randy Parton Theatre Still Haunts Roanoke Rapids*, CAROLINA J. (Oct. 31, 2011), <https://www.carolinajournal.com/news-article/andy-parton-theatre-still-haunts-roanoke-rapids/> [<https://perma.cc/8S32-RXKM>].

81. *See* Martin, *supra* note 8.

82. *See* Martin, *supra* note 4.

83. *See id.*

84. *Id.*

85. *Id.*

noted: “For the already put upon African-American communities, the hundreds of dollars increase in taxes is not only a financial hardship, but also a travesty, as they do not receive the benefits their city tax dollars should supply.”⁸⁶

When developing its advocacy strategy, the community abandoned its efforts to force the city’s provision of municipal services, concluding services would never come because city leaders continued to promote the development of Carolina Crossroads.⁸⁷ Instead, recognizing that the key to preserving the community was relieving the extraordinary economic pressures on its residents, the organization set three primary goals: deannexation from Roanoke Rapids, reassessment of inflated property tax valuations, and refunds for taxes paid based on those improper values.⁸⁸

A. Deannexation

While North Carolina statutes provide a variety of methods by which a municipality can annex property, there is no statutory means for a city or town to remove properties from city limits.⁸⁹ The only way Brandy Creek could be deannexed from Roanoke Rapids was, ironically, the same way it had been annexed: by local act of the legislature.⁹⁰

Securing a bill to deannex the community would require significant political engagement. In North Carolina, bills that apply only to local governments (like the deannexation of specific properties in a city) are not subject to the same requirements or processes as generally applicable legislation.⁹¹ Most importantly, such bills are typically approved by the legislature by “courtesy” of the body, provided all the legislators from the jurisdiction support the measure and it is “non-controversial”—usually meaning it has the support of the impacted local governments.⁹²

These requirements presented two immediate challenges for the community. The first was securing support of the state legislative delegation. Fortunately, Brandy Creek had already reached out to its legislators and had

86. *Id.*

87. See Bell, *supra* note 35.

88. See Peter Hull Gilbert, *Brandy Creek Residents Sue for Refund of Taxes*, UNIV. N.C. SCH. L. CTR. C.R. (Aug. 24, 2012, 3:57 PM), <http://blogs.law.unc.edu/civilrights/2012/08/24/brandy-creek-residents-sue-for-refund-of-taxes/> [<https://perma.cc/NRC5-34LD>].

89. See Bluestein, *supra* note 3.

90. *Id.*

91. Local bills, for example, are not subject to the same biennial subject matter restrictions and are not subject to veto by the governor. See Frayda Bluestein, *What Is a Local Act?*, COATES’ CANONS: NC LOC. GOV. L. (Apr. 6, 2010), <https://canons.sog.unc.edu/what-is-a-local-act/> [<https://perma.cc/6FFA-LMX5>]; N.C. CONST. art. II, § 22(6).

92. Bluestein, *supra* note 91.

a powerful advocate in Representative Angela Bryant.⁹³ But it would also need the endorsements of Senator Ed Jones and newly elected Representative Glen Bradley (a conservative Republican).⁹⁴ This, in turn, presented the second challenge: up to that point, the city council had ignored the residents' repeated pleas for assistance.⁹⁵

In early 2010, residents began asking the city council to adopt a resolution in support of deannexation, with the goal of having a bill passed in that year's legislative session.⁹⁶ Although the issue of race and discriminatory treatment had been at the forefront of the community's organization and public outreach efforts, acting on the advice of Representative Bryant, residents instead stressed the economic hardships experienced as a result of the annexation and 2007 revaluation.⁹⁷ The community pointed out that the property tax revenue from Brandy Creek represented only 0.12% of the city's general budget and that eliminating the city tax would result in an average yearly savings of \$332.90 for each family in the community.⁹⁸

93. See generally *North Carolina Sen. Bryant Not Seeking Re-Election This Year*, ASSOCIATED PRESS (Feb. 12, 2018), <https://apnews.com/article/2526276019694e2e99cef7778860f563> [<https://perma.cc/YDJ6-MFHD>] (discussing Representative Bryant's "vocal" advocacy); Mark Dorosi, *Center Argues for Refunds of Illegally Collected Property Taxes in Halifax County*, UNIV. N.C. SCH. L. CTR. C.R. (Jan. 6, 2012, 10:21 AM), <http://blogs.law.unc.edu/civilrights/2012/01/06/center-argues-for-refunds-of-illegally-collected-property-taxes-in-halifax-county/> [<https://perma.cc/QWY6-PXLY>] (discussing Representative Bryant's support of the Bill to deannex Brandy Creek).

94. See generally Bluestein, *supra* note 91 (discussing the need to have all local representatives approve a local bill for passage in the legislature); Dorosi, *supra* note 93 (stating that all three local representatives supported the Bill to deannex Brandy Creek).

95. See, e.g., Lance Martin, *Brandy Creek De-Annexation Resolution Dies*, RRSPI.COM (Mar. 9, 2011), <https://www.rrspin.com/archives/item/1666-brandy-creek-de-annexation-resolution-dies.html> [<https://perma.cc/CYU3-7BU9>].

96. See Bell, *supra* note 35.

97. *Id.* Issues of racial segregation and discrimination were prominent in Roanoke Rapids. In 2010, the city was over 30% Black, but there was only one Black member of the city council (the first Black council member was not elected until 1992, following a voting rights lawsuit). See Lance Martin, *Council Remembers Mullen*, RRSPI.COM (Apr. 13, 2011), <https://www.rrspin.com/archives/item/1799-council-remembers-mullen.html> [<https://perma.cc/9J3L-HASP>]. Additionally, the predominantly white Roanoke Rapids Graded School District was often a target of Black residents, as gerrymandered district boundaries excluded many Black neighborhoods in the city and included many white neighborhoods beyond city limits. See THE UNC CTR. FOR C.R., *UNLESS OUR CHILDREN BEGIN TO LEARN TOGETHER: THE STATE OF EDUCATION IN HALIFAX COUNTY* 4 (2011).

98. Memorandum from Peter Gilbert, UNC Ctr. for C.R., to Emery G. Doughtie, Mayor of Roanoke Rapids, and Paul Sabiston, City Manager for Roanoke Rapids (Feb. 7, 2011) (on file with the *South Carolina Law Review*). The community also highlighted that, in its presentation of the original Bill, the legislature and city mischaracterized the incorporation of Brandy Creek as a "voluntary annexation," implying the residents requested and agreed to becoming part of the city. *Id.*

Efforts to secure necessary support from the city council took time but were making progress by mid-2010. At that time, there were only two members remaining on the council who were on the board in 2005; several new members had been elected specifically in response to dissatisfaction with the Carolina Crossroads development, which included the mistreatment of Brandy Creek.⁹⁹ Former Roanoke Rapids Police Chief Greg Lawson held a seat on the council at the time, and recounting his experience following the annexation, Lawson told his colleagues: “I was challenged to go out there and meet with those folks and tell them they were now in the city limits . . . [t]hey were very upset they hadn’t know about it.”¹⁰⁰ Other council members shared Lawson’s concerns. Emery Doughtie, who replaced Drewery Beale as mayor, claimed “[t]hose people weren’t treated right” and reaffirmed that the city originally thought the residents would just leave.¹⁰¹ Ed Liverman, who defended the annexation in 2005, noted “if the theater would have had immediate success, things would probably appear quite differently.”¹⁰²

The growing consensus in support of deannexation came too late for the 2010 legislative session.¹⁰³ Undaunted by the prospect of another year of exorbitant city taxes, Brandy Creek residents continued to advocate with their legislators and the city council to introduce a deannexation bill in early 2011.¹⁰⁴ At the council’s work session on March 2, 2011, however, City Manager Paul Sabiston and City Attorney Gilbert Chichester raised questions about the status of the roads in Brandy Creek.¹⁰⁵ They claimed the city would be stuck maintaining the roads with potential legal liability even after the residential parcels were deannexed.¹⁰⁶ They recommended these issues be further analyzed before the council considered the deannexation resolution.¹⁰⁷

A week later, at the regular council meeting, Sabiston urged the council *not* to proceed with the deannexation resolution.¹⁰⁸ In opposing the resolution, he cited planning practices that warn municipalities against creating “donut

99. Bell, *supra* note 35.

100. *Id.*

101. *Id.*

102. *Id.*

103. The 2010 legislative session began on May 12, 2010, and adjourned on July 9, 2010. *When Is the General Assembly in Session?*, N.C. GEN. ASSEMBLY, <https://www.ncleg.gov/Help/Topic/35> [<https://perma.cc/652Z-CUPW>].

104. See Dorosin, *supra* note 93.

105. See Memorandum from Peter Gilbert, *supra* note 98.

106. See *id.*

107. Lance Martin, *City Could Be Stuck with Brandy Creek Road*, RRSPIN.COM (Mar. 2, 2011), <https://www.rrspin.com/archives/item/1645-city-could-be-stuck-with-brandy-creek-road.html> [<https://perma.cc/UW4P-Q7M9>].

108. Minutes from Roanoke Rapids City Council Meeting (Mar. 8, 2011) (on file with the *South Carolina Law Review*).

holes” of unincorporated areas within city limits.¹⁰⁹ More troubling and without a trace of irony, Sabiston asserted that deannexation in this case, where residents to be excluded from city limits are Black, “is a form of discrimination.”¹¹⁰ Despite this negative recommendation, council member Carl Ferebee—the only African-American on the board—moved to pass the resolution.¹¹¹ However, no one seconded the motion and the matter died.¹¹²

Disappointed but determined, residents maintained public pressure and pushed for the council to reconsider supporting deannexation at its next meeting.¹¹³ The idea also continued to gain public support, with local media chastising the council’s failure to act in March.¹¹⁴ Although not on the scheduled agenda for the council’s April 12 meeting, Lawson brought forward the resolution anyway, and this time it passed 4–1.¹¹⁵ Sabiston tendered his resignation that same night.¹¹⁶

Despite House Bill 367 being introduced by Representatives Bryant and Bradley on March 15, 2011, legislators made clear to the community that the Bill would not progress until the city signed off.¹¹⁷ With the support of the council finally secured, the legislation moved forward quickly, and the deannexation bill was ratified on June 16.¹¹⁸ Effective June 30, 2011—a little over six years from annexation—Brandy Creek was no longer part of the city of Roanoke Rapids, and residents were no longer subject to city property

109. *Id.*

110. *Id.* In addition to inverting the actual racial issue impacting the community, Sabiston made a thinly veiled attack at the lawyers representing Brandy Creek, who had worked with other African-American communities seeking annexation as a remedy for racial segregation and discrimination in access to public services. See *About the Project*, UNC CTR. FOR C.R., <http://www.uncinclusionproject.org/about/> [<https://perma.cc/MY23-9AXP>].

111. Lance Martin, *supra* note 95.

112. *Id.*

113. See Minutes from Roanoke Rapids City Council Meeting (Apr. 12, 2011) (on file with the *South Carolina Law Review*).

114. Lance Martin, *Irony*, RRSPI.COM (Mar. 2, 2011), <https://www.rrspin.com/archives/item/1649-irony.html> [<https://perma.cc/BMQ6-ZMQQ>] (“The Brandy Creek matter is another piece of shrapnel that hit the taxpayers of Roanoke Rapids in the city’s theater and Carolina Crossroads dealings. It is another piece of shrapnel that particularly for some three or four years hit the citizens of Brandy Creek even harder.”).

115. Lance Martin, *Council Reverses Brandy Creek Decision*, RRSPI.COM (Apr. 13, 2011), <https://www.rrspin.com/archives/item/1798-council-reverses-brandy-creek-decision.html> [<https://perma.cc/TEW3-BVLJ>] (noting that Ed Liverman cast the only dissenting vote).

116. Lance Martin, *Sabiston Resigns*, RRSPI.COM (Apr. 13, 2011), <https://www.rrspin.com/archives/item/1797-sabiston-resigns.html> [<https://perma.cc/84AV-FBQQ>].

117. See *House Bill 367* (–S313), N.C. GEN. ASSEMBLY, <https://www.ncleg.gov/BillLookup/2011/h367> [<https://perma.cc/C7UC-9LH6>]. A parallel Bill (S 313) was introduced in the senate on March 9. *Senate Bill 313* (–H367), N.C. GEN. ASSEMBLY, <https://www.ncleg.gov/BillLookup/2011/S313> [<https://perma.cc/3AWA-BB3R>].

118. See *House Bill 367* (–S313), *supra* note 117.

taxes.¹¹⁹ Two years of dedicated civic engagement by residents, along with the support of civil rights lawyers, brought Brandy Creek its first victory in economically stabilizing the neighborhood.

B. Reassessment

While the community was advocating for deannexation, residents also began working on the second front in the struggle to save their community—the inflated 2006 property tax assessments.¹²⁰ Most residents would not be able to retain their homes without relief before the next scheduled revaluation in 2014.

North Carolina law provides that property values assigned during a mandatory countywide revaluation cannot be changed until the next regularly scheduled comprehensive review.¹²¹ There are limited exceptions to this prohibition, including clerical error, physical changes to the property, misapplication of established appraisal standards, and changes to the legally permitted use of the property.¹²² The law also expressly states, however, that the assessor may *not* adjust the tax valuation because of “[i]nflation, deflation, or other economic changes affecting the county in general[.]”¹²³ Additionally, any changes made are not retroactive but apply only from the date of the revised valuation.¹²⁴

Because city officials claimed Brady Creek’s real problem was Carolina Crossroads’ failed development (i.e., “economic changes affecting the county in general”), the community strategy for seeking review of the 2006 valuation focused on the tax assessor’s application of the county’s appraisal standards.¹²⁵ Analyzing publicly available tax data and records, it became clear that the tax office exclusively relied on the anomalous Rock River purchase as a “comparable sale” to set the values for the rest of Brandy Creek.¹²⁶ More specifically, it appeared (and the tax assessor later admitted)

119. H. 367, 2011–2012 Gen. Assemb., Reg. Sess. (N.C. 2011).

120. As previously noted, the amount of property taxes any resident owes is calculated by multiplying the annual tax rate set by the municipality in which the property is located—here the city, county, and special school district tax rates—by the assessed value of the property established by the county tax assessor. See discussion *supra* Section II.D. The tax rate is the same for all properties within a jurisdiction. See discussion *supra* Section II.D. The difference in taxes owed reflects the varying values assigned to individual parcels. See discussion *supra* Section II.D.

121. N.C. GEN. STAT. ANN. § 105-287(b) (West 2020).

122. § 105-287(a).

123. § 105-287(b)(2).

124. § 105-287(c).

125. § 105-287(a)(2), (b)(2).

126. North Carolina law requires property be assessed at its “true value,” defined as:

the county took the Rock River purchase price and divided it by the thirty-two parcels included in the sale to reach an average price of just under \$90,000 per parcel and then used that figure as the basis for the 2007 valuation of Brandy Creek properties.¹²⁷

Notably, in January 2010—when the community began advocating for deannexation—a small group of Brandy Creek residents sent letters to Charles Graham, the county tax assessor, requesting reassessment of their properties. These letters specifically asserted that the Rock River purchase was not a legitimately “comparable” sale and the tax department’s reliance on it was therefore improper.¹²⁸ Residents pointed out that the company paid a substantial premium because it was able to purchase thirty-two contiguous parcels in one transaction, and as a result, the per parcel price did not reflect the actual market value of properties in the area.¹²⁹ They also pointed out that, within a year of its purchase, Rock River sold two of its thirty-two parcels for noticeably decreased prices (\$17,500 and \$12,500), which were more consistent with the 2006 assessed property value for each parcel.¹³⁰ These

[M]arket value, that is, the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used.

§ 105-283. Thus, many tax assessors, including those in Halifax County, rely on a comparative sales analysis. *But see* C. Shane Lynch, *Explaining the Property Reappraisal Process*, RRSPI.COM (Jan. 8, 2020), <https://www.rrspin.com/opinion/2165-explaining-the-property-reappraisal-process.html> [<https://perma.cc/9ZYJ-9MVM>] (stating that Halifax County uses all three approaches to determine property values during appraisal depending on the type of property). This requires researching actual, recent sales of properties substantially similar to the property being valued. *E.g.*, Shea Riggsbee Denning, *A Citizens’ Guide to the Revaluation and Assessment of Property by North Carolina Counties*, PROP. TAX BULL., Mar. 2008, at 1, 6. *See generally* *Real and Personal Property Appraisal*, N.C. DEP’T OF REVENUE & UNC SCH. OF GOV., <https://files.nc.gov/ncdor/documents/manuals/3-1appraisal.pdf> [<https://perma.cc/LME6-HH4F>].

127. *See* Deposition of Charles Graham, *supra* note 61, at 40.

128. *See* Documents Related to Shirley Gary, Plaintiffs’ Motion for Summary Judgment Exhibit 24, Gary v. Halifax Cnty., 12 CVS 981 (Halifax Cnty., N.C. Super. Ct., Sept. 10, 2013); Documents Related to Catherine Hale, Plaintiffs’ Motion for Summary Judgment Exhibit 25, Gary, 12 CVS 981; Documents Related to Vernon and Joyce Hockaday, Plaintiffs’ Motion for Summary Judgment Exhibit 31, Gary, 12 CVS 981; Documents Related to Carlton Patterson, Plaintiffs’ Motion for Summary Judgment Exhibit 33, Gary, 12 CVS 981.

129. *See* Documents Related to Shirley Gary, *supra* note 128; Documents Related to Catherine Hale, *supra* note 128; Documents Related to Vernon and Joyce Hockaday, *supra* note 128; Documents Related to Vernon and Joyce Hockaday, *supra* note 128.

130. Documents Related to Shirley Gary, *supra* note 128; Documents Related to Catherine Hale, *supra* note 128; Documents Related to Carlton Patterson, *supra* note 128.

sales, they argued, further evidenced that the 2007 purchase was not representative of the “true value” for other properties in the neighborhood.¹³¹

Unlike the city council’s long delays during deannexation efforts, the tax assessor responded quickly. In mid-March, just two months after submitting their request for reassessment, the residents received notice that their properties had been reviewed and the assessed value was substantially reduced.¹³² Even more significantly, the tax office revised the assessments of not only the residents that had made written requests for reconsideration but also for the rest of the properties in Brandy Creek.¹³³

The tax assessor’s letter did not specify the statutory basis or justification for the revision.¹³⁴ During his deposition in subsequent litigation, however, the tax assessor testified that, unlike in 2006, his office did not consider the Rock River purchase but instead considered the 2007 reassessed values for residential properties adjacent to Brandy Creek.¹³⁵ He also stated that, while the commercial zoning of the neighborhood was a factor in 2006, the parcels were recognized as residential in 2010 because—as the residents well understood—“regardless of the commercial zoning on Brandy Creek, those lots could not be sold for high values commercial property.”¹³⁶

Table 2. Brandy Creek Revised Valuations¹³⁷

Resident Name	2007 Reassessment	2010 Revision
Pamela Arrington	\$72,370	\$12,720
Shirley Gary 1	\$92,070	\$13,690
Shirley Gary 2	\$62,110	\$11,440
Catherine Hale	\$41,870	\$12,720
Ruth Hampton	\$75,610	\$13,290
Calvin Handsome	\$85,040	\$12,900

131. Documents Related to Shirley Gary, *supra* note 128; Documents Related to Catherine Hale, *supra* note 128; Documents Related to Carlton Patterson, *supra* note 128.

132. Documents Related to Shirley Gary, *supra* note 128; Documents Related to Catherine Hale, *supra* note 128; Documents Related to Vernon and Joyce Hockaday, *supra* note 128; Documents Related to Carlton Patterson, *supra* note 128.

133. *See infra* Table 2.

134. Documents Related to Shirley Gary, *supra* note 128; Documents Related to Catherine Hale, *supra* note 128; Documents Related to Vernon and Joyce Hockaday, *supra* note 128; Documents Related to Carlton Patterson, *supra* note 128.

135. *See* Deposition of Charles Graham, *supra* note 61, at 37.

136. *Id.* at 49.

137. The data in Table 2 is based on review of public tax records, available through the Halifax County Tax Office. This data was also provided by the County in discovery in *Gary v. Halifax Cnty.*, 12 CVS 981 (Halifax Cnty., N.C. Super. Ct., Sept. 10, 2013). The 2010 revised values were more consistent with the 2006 valuations of the rest of the county.

Table 2. Brandy Creek Revised Valuations¹³⁷

Mary Handsome	\$73,600	\$12,930
Kathy Harris-Ahmed	\$69,390	\$12,650
Joyce Harrison	\$74,530	\$13,100
Jocelyn Robinson	\$78,270	\$13,750
Veronica Walker	\$86,120	\$13,050
Louise and Stephanie Williams	\$84,930	\$12,890
Ilene Belcher	\$71,610	\$13,020
Herbert and Antoinette Cheatham	\$68,220	\$12,460
Vernon and Joyce Hockaday 1	\$81,400	\$12,400
Vernon and Joyce Hockaday 2	\$82,590	\$12,560
Lewis and Fannie Kee	\$79,560	\$13,980
Carlton and Patricia Patterson	\$69,390	\$12,650
Richer and Mildred Patterson	\$69,910	\$12,740

These revised assessments were a critical victory for Brandy Creek that, combined with the deannexation from Roanoke Rapids, would effectively restore the *status quo ante*. However, the 2010 values were only effective prospectively;¹³⁸ residents were still responsible for hyperinflated property tax bills issued from 2007 to 2010 and still subject to a range of measures available for the county to collect those bills, including wage garnishment, liens, and foreclosure.¹³⁹ Rather than accept these risks and burdens, the community was determined to go on the offensive—initiating legal action to secure refunds for those taxes, arguing they were illegal and improperly assessed and collected.¹⁴⁰

C. Property Tax Refunds

North Carolina law allows property taxes to be refunded only in certain limited circumstances: for “a tax imposed through clerical error; an illegal tax; [or] a tax levied for an illegal purpose.”¹⁴¹ The controlling statute also establishes the process a resident must follow to seek a property tax refund:

If a tax has been paid, the taxpayer, at any time within five years after said tax first became due or within six months from the date of

138. N.C. GEN. STAT. ANN. § 105-287(c) (West 2020).
139. §§ 105-355, 105-366 to 105-369, 105-374 to 105-375.
140. See Geary, *supra* note 1.
141. § 105-381(a)(1).

payment of such tax, whichever is the later date, may make a demand for a refund of the tax paid by submitting to the governing body of the taxing unit a written statement of his defense and a request for refund thereof.¹⁴²

Following receipt of a request for refund, the governing body has ninety days to respond to the taxpayer.¹⁴³ If the request is denied or no response is provided, “the taxpayer may bring a civil action against the taxing unit for the amount claimed.”¹⁴⁴

In November 2011, Brandy Creek residents requested refunds from Halifax County, the city of Roanoke Rapids, and the Weldon city school district for property taxes collected in 2007, 2008, and 2009 (the years of the improperly inflated assessment).¹⁴⁵ All three entities denied the requests.¹⁴⁶ Pursuant to their statutory rights, on August 24, 2012, the residents filed a lawsuit seeking a refund of what they claimed were illegally collected property taxes.¹⁴⁷

In making their argument, residents relied on North Carolina precedent, which established that improper assessments could result in illegal taxes and were therefore actionable under North Carolina General Statute § 105-381: “North Carolina law provides two avenues by which a taxpayer may seek relief from an unjust property tax assessment: administrative review followed by judicial review in the Court of Appeals, and direct judicial review in Superior or District Court.”¹⁴⁸ Residents specifically argued the 2007 reassessment illegally violated the statutory requirements that (1) the tax

142. § 105-381(a)(3).

143. § 105-381(b).

144. § 105-381(b)–(c)(2).

145. Complaint, *supra* note 13, at 12. Refund requests were sent to the school district because, in Halifax County, a supplemental school property tax is levied on residents of the Weldon city school district, which includes Brandy Creek. *See* § 115C-500. Both the school district and Roanoke Rapids were dismissed from the case following a stipulation by the county that it would be responsible for refunding any taxes collected or received by Roanoke Rapids and Weldon City Schools in the event of a settlement or finding that the county was liable. *See* Partial Settlement and Release of Claims §§ 3–8, Plaintiffs’ Motion for Summary Judgment Exhibit 1, Gary, 12 CVS 981.

146. Martin, *supra* note 79; Lance Martin, *Council Turns Down Refund, Hears RRT Church Pitch*, RRSPI.COM (Feb. 15, 2012), <https://rrspin.com/archives/item/2721-council-turns-down-refund-hears-rrt-church-pitch.html> [<https://perma.cc/HTK4-N4SK>] [hereinafter *Council Turns Down Refund*].

147. *See* Geary, *supra* note 1; Complaint, *supra* note 13, at 1.

148. Johnston v. Gaston Cnty., 323 S.E.2d 381, 382 (N.C. Ct. App. 1984), *cert. denied*, 329 S.E.2d 392 (N.C.1985); *see also* Villages at Red Bridge v. Weisner, 704 S.E.2d 925, 928 (N.C. Ct. App. 2011) (holding the taxpayer could have either followed the procedure for administrative review with the county’s Board of Equalization and Review or paid the taxes and filed a claim pursuant to § 105-381).

assessor evaluate “each tract, parcel, or lot separately listed” based on that parcel’s specific advantage and disadvantages;¹⁴⁹ (2) taxes be assessed through a uniform process;¹⁵⁰ and (3) property be appraised or valued according to its “true value in money” (market value).¹⁵¹

Following extensive discovery, the residents moved for summary judgment.¹⁵² Their argument was founded on admissions by the county tax assessor and his staff that, in determining the assessments for Brandy Creek, they had taken the total Rock River purchase price and “simply averaged the price per lot”¹⁵³ Tellingly, a real estate appraiser working with the office during the 2007 revaluation admitted that the county actually completed the assessment of properties in Brandy Creek *before* the Rock River purchase, that those initially assigned values were consistent with the 2010 assessed values (and the rest of the county values in the 2006 reassessment), and that he revised the values upward after the Rock River deal closed.¹⁵⁴

Evidence also showed that the tax assessor relied on his own general understanding of the potential development of Carolina Crossroads and additional municipal infrastructure in valuing the properties even though neither had occurred at the time of reassessment.¹⁵⁵ Relying on speculation for future improvements was in direct violation of the county’s established policy for reassessment, which required the county appraisers “follow development rather than anticipate it” and base values “on actual data as opposed to speculative or potential benefits which may or may not occur.”¹⁵⁶ The residents also showed that the county had inappropriately used a mash-up of residential and commercial metrics (confusing the current use of the property and the city’s revised zoning designation).¹⁵⁷ Finally, the residents

149. § 105-317.

150. § 105-284(a).

151. § 105-283. In addition to a statutory claim pursuant to § 105-381, residents also asserted a common law claim of unjust enrichment and an equal protection claim under the state constitution. Complaint, *supra* note 13, at 1. Although the community consistently raised the issue of race discrimination throughout its years of advocacy, the substantial evidentiary burden of proving the 2006 tax values were based on intentional discrimination made such a claim impractical. *See generally* Martin, *supra* note 4. Instead, the equal protection claim was based on the argument that the 2007 valuation created an improper distinction between taxpayers who own the same class of property. Complaint, *supra* note 13, at 14.

152. *See* Plaintiffs’ Motion for Summary Judgment, *supra* note 7, at 1.

153. Deposition of Charles Graham, *supra* note 61, at 40.

154. *See* Deposition of Stephen Porter at 111, Plaintiffs’ Motion for Summary Judgment Exhibit 42, Gary v. Halifax Cnty., 12 CVS 981 (Halifax Cnty. Super. Ct. June 12, 2013).

155. *See* Deposition of Charles Graham, *supra* note 61, at 53–54.

156. HALIFAX CNTY., N.C., 2007 SCHEDULE OF VALUES 4 (2007). *See generally In re Parker*, No. COA07-635 (N.C. Ct. App. July 15, 2008) (ruling that the Halifax County Schedule of Values, Standards, and Rules was sufficiently detailed to comply with the statutory requirements).

157. *See* Deposition of Charles Graham, *supra* note 61, at 34, 91–92.

argued that the 2010 revision to their property values was an admission by the County that the 2007 reassessment was illegal (because of the statutory prohibition on interim changes to assessed values based on economic conditions).¹⁵⁸

The County also moved for summary judgment, arguing that the only remedy available to residents who were unhappy with the 2007 reassessment was an administrative appeal to the County Board of Equalization and Review and, if unsatisfied with the outcome, to the State Property Tax Commission.¹⁵⁹ Because the residents failed to exhaust this remedy, the County claimed they were now improperly trying to recast the assessment dispute as an illegal tax.¹⁶⁰

The court denied both motions for summary judgment and ordered the parties to engage in mediation before proceeding to trial.¹⁶¹ Despite its insistence that the residents had no legitimate claims and following a day-long settlement conference in November of 2013, the County agreed to pay more than \$42,000 to the Brandy Creek property owners.¹⁶²

IV. ANNEXATION, TAXATION, AND THE INSTITUTIONALIZED EXCLUSION OF BLACK COMMUNITIES

While unique in some respects, Brandy Creek's fight against displacement by the city and county illustrates how taxation, land use and economic development planning, and access to basic public services entrench the legacy of residential racial segregation in American communities. In Brandy Creek, these elements were imposed on the community to force its removal; in other contexts, they are denied to Black communities that are striving to address ongoing racial disparities.

The history of public policies that institutionalize residential racial exclusion—including zoning, racially restrictive covenants, redlining, steering, and gerrymandering—has been well-documented.¹⁶³ The role of annexation and municipal taxation—either used aggressively, as was the case in Brandy Creek, or more restrictively to limit access to critical resources or political power—reflects the current and purportedly “race-neutral” manipulation of public policy that effectively ensures the continuing

158. See text accompanying *supra* note 122.

159. See N.C. GEN. STAT. ANN. § 105-290(b), -322(g)(2) (West 2020).

160. See § 105-322(a); Plaintiffs' Motion for Summary Judgment, *supra* note 7, at 6.

161. Order Denying Summary Judgment, *Gary v. Halifax Cnty.*, 12 CVS 981 (Halifax Cnty., N.C. Super. Ct., Oct. 29, 2013); Order for Mediated Settlement Conference in Superior Court and Trial Calendar Notice, *Gary*, 12 CVS 981.

162. Martin, *supra* note 76.

163. See generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (Liverwright 2017).

separation and underdevelopment, or alternatively the gentrification and displacement, of Black communities.

Annexation and taxation are the interlocking pillars of what has been called underbounding: the drawing of municipal boundaries to exclude a neighborhood that would otherwise be part of the town given its location, density, and history.¹⁶⁴ Annexation of a community brings literal (and symbolic) inclusion into the larger body politic, but it also brings tangible resources that are vital to a neighborhood's health, safety, quality of life, and economic viability. These include water, sewer, and stormwater infrastructure; police and fire protection; streetlights, sidewalks, and road maintenance; trash pickup; housing code enforcement; and, often most significantly, the right to participate in municipal elections.¹⁶⁵

Although North Carolina law requires that an area meet certain minimal development thresholds for annexation,¹⁶⁶ it does not require the area bring in sufficient property tax revenues to offset the costs of municipal services.¹⁶⁷ But because cities must provide identical services to a newly annexed territory, the limited property tax values of racially excluded neighborhoods are often proffered to justify the refusal to annex those communities.¹⁶⁸ The tax issue can also be effectively used by city officials to undercut support of annexation by emphasizing the tax increases residents face if their communities become included in the town while simultaneously downplaying the value of the municipal services resulting from inclusion.

Missing from this simplistic cost-benefit analysis is the role that lack of access to services plays in the economic underdevelopment and consequent lower property values of excluded neighborhoods. Communities that are denied access to basic water and sewer infrastructure or paved and well-maintained roads are unable to attract private commercial or economic development or even public facilities, like schools and parks. Although

164. See PETER GILBERT, *THE STATE OF EXCLUSION* 14–16 (2013), <http://www.uncinclusionproject.org/documents/stateofexclusion.pdf> [https://perma.cc/DW9L-HTC6]; see also Daniel T. Lichter, *Municipal Underbounding: Annexation and Racial Exclusion in Small Southern Towns*, 72 *RURAL SOCIO.* 47 (2007).

165. Ben Marsh et al., *Institutionalization of Racial Inequality in Local Political Geographies*, 31 *URB. GEOGRAPHY* 691, 691 (2010).

166. N.C. GEN. STAT. ANN. § 160A-58.54(a)(4) (West 2020).

167. The law does, however, require the city to complete a “showing how the proposed annexation will affect the municipality’s finances and services, including municipal revenue change estimates.” § 160A-58.53(5). Although not determinative, this information often becomes the basis for racially disparate municipal decision-making. See, e.g., Rebekah Cowell, *The Waste Land*, *INDYWEEK* (Feb. 16, 2011), <https://indyweek.com/news/waste-land/> [https://perma.cc/FF6J-YAMY].

168. See Frayda Bluestein, *City Obligations for Providing Services to Annexed Areas*, COATES’ CANONS: NC LOCAL GOVERNMENT L. (Jan. 30, 2020), <https://canons.sog.unc.edu/city-obligations-for-providing-services-to-annexed-areas/> [https://perma.cc/2559-5VUR].

municipal police departments may be much closer, police protection of excluded communities is often provided by remote county sheriff's offices, leaving residents and property vulnerable to criminal victimization (a risk made worse by the lack of streetlights). Further, a lack of housing code enforcement leads many properties—and especially those owned by absentee landowners—to become dilapidated or abandoned.¹⁶⁹

These impacts combine to repress residential property values. But if cities are permitted to rely exclusively on a cost-benefit analysis in making annexation and inclusion decisions, those decisions will always favor including wealthier areas with the least need for additional resources or services and will always reject lower wealth, racially segregated communities. This inequity is compounded by the fundamental lack of political power of excluded residents who, by virtue of their exclusion, are unable to hold elected officials politically accountable for maintaining their exclusion.¹⁷⁰

The paradigm of residential racial exclusion was not unfamiliar in Halifax County or Roanoke Rapids. Lincoln Heights is an excluded low-wealth, Black community immediately adjacent to the western boundary of the city.¹⁷¹ For decades, the neighborhood hosted the city's landfills and other waste disposal facilities, and in 2011, it planned to put a new waste transfer station in the densely populated residential community.¹⁷² Although residents opposed the plan, they had no power to hold the city council politically accountable because the neighborhood was outside of city limits. And despite years advocating for annexation, the city refused to include the large Black neighborhood even though it was as densely populated as any area in Roanoke Rapids and was part of the city's extra-territorial jurisdiction—a planning designation designed for municipal growth through annexation.¹⁷³

Unsurprisingly, tax issues were the city's proffered justification for refusing to include the community. Citing a 2001 report that annexation would only produce \$161,000 in tax revenue but would cost the city more than twice that amount to provide basic public services, one council member claimed the

169. See Marsh, *supra* note 165, at 691.

170. *Id.* at 695; GILBERT, *supra* note 164, at 6. Without the ability to attract positive economic development or to hold local officials accountable, these communities often become the target for the placement of hazardous and unwanted land uses, like landfills, prisons, or polluting industries. GILBERT, *supra* note 164, at 17–20.

171. Cowell, *supra* note 167.

172. *Id.*

173. *Id.*; David Owens, *Extraterritorial Jurisdiction for Planning and Regulation*, UNC SCH. OF GOV. (May 2014), <https://www.sog.unc.edu/resources/legal-summaries/extraterritorial-jurisdiction-planning-and-development-regulation> [<https://perma.cc/E5H8-TK4Z>]. Lincoln Heights was part of Roanoke Rapids' extra-territorial jurisdiction for thirty-one years; the city ultimately removed it partly to blunt the demands for annexation. Cowell, *supra* note 167.

inclusion “would cost too much money.”¹⁷⁴ Never publicly discussed, however, was the city’s own responsibility—like using the neighborhood to dump its garbage for seventy years—for systematically depressing the community’s property values. Like Brandy Creek, Lincoln Heights lacked streetlights, had many unpaved roads, and was plagued by abandoned and dilapidated properties.¹⁷⁵ The community continues to face these challenges, and the city’s refusal to reconsider annexation or invest in efforts to address its role in the systemic underdevelopment of the area further exacerbates the impacts of exclusion.¹⁷⁶

While Brandy Creek is an example of a community that actually was included—at least formally—the challenges that residents faced reflect the broader issues related to residential racial exclusion. Prior to annexation, the community had no political power or leverage with the city of Roanoke Rapids, which entirely ignored the residents as it pursued annexation through the state legislature. After annexation and the concomitant addition of municipal taxes, Brandy Creek’s first priority was to advocate for the full range of services to which its residents were entitled, including streetlights, road maintenance, police and fire protection, and public sewer.¹⁷⁷ It quickly became clear that Roanoke Rapids was planning for the residents to leave and it had no intention of providing those services.¹⁷⁸ When pushed by residents to bring more resources, city officials lamented the costs of serving the low wealth community; when the community then sought deannexation, the minimal tax revenues were highlighted by the council to justify removal.¹⁷⁹ It was unusual that Brandy Creek was an excluded community annexed against its will and then charged illegally inflated taxes for services the city never intended to provide; the plan was for the residents to sell their homes and move away. It was not unusual, however, that the city repeatedly ignored the needs and interests of a working-class Black community in favor of a public policy that uniquely disadvantaged that community.

174. See text accompanying *supra* note 170. The city was also pressured by the neighborhood’s largest landlord not to annex the area because of the potential tax increase on his rental properties. Cowell, *supra* note 167.

175. See Cowell, *supra* note 167; Martin, *supra* note 4.

176. As a result of the community’s public advocacy on racial exclusion—boosted in part by contemporaneous, similar advocacy in Brandy Creek—the city ultimately decided not to locate the waste transfer station in Lincoln Heights. See Cowell, *supra* note 167.

177. Brown, *supra* note 9.

178. Bell, *supra* note 35. It is worth noting that the city and county’s annexation and taxation strategy could have also been used to displace residents through gentrification. That is, if residential uses were part of the city’s redevelopment plan and it provided the range of required municipal services, Brandy Creek residents would likely have been unable to afford the taxes and forced to sell their properties to make way for new, more affluent residents.

179. Martin, *supra* note 95.

Although a discrimination claim was not part of the litigation ultimately initiated by Brandy Creek, the issue of race predominated discussions regarding the community and its treatment by Roanoke Rapids.¹⁸⁰ Residents were adamant that a white community would not have been treated the same way, noting that predominantly white neighborhoods also adjacent to Carolina Crossroads had not been subject to similarly elevated tax assessments.¹⁸¹ The issue was further highlighted when the city manager advised the council against endorsing deannexation and attempted to characterize *that* action as discriminatory.¹⁸² He specifically noted that, in addition to general city planning concerns, “[t]he fact that the residents are primarily minority only further complicates the results. . . . Many believe that eliminating minority populated districts from extended city services, particularly in a doughnut hole manner is a form of discrimination.”¹⁸³ No one was fooled by this inversion of the racial realities at work, and the local media excoriated the manager and city council in response.¹⁸⁴

V. CONCLUSION

The triumph of Brandy Creek was the result of dedicated community advocacy, civic engagement, and litigation. These efforts were aided in no small part by the broader community’s frustration and anger with the city over the failed economic development plan. However, the neighborhood’s success came at a high price—over half of its residents were driven out of Brandy Creek, and the eight-year struggle imposed enormous economic and physical costs on the residents that remained. Nevertheless, most are still in their homes today.

While all case studies are unique, the details are still useful to highlight certain patterns and commonalities. Brandy Creek was a Black community whose actual interests, needs, and priorities were ignored by public officials. The economic development plans those officials adopted were designed to remove the neighborhood, not to help its residents share in promised benefits of those plans. More disturbingly, city leaders assumed the residents would be happy to simply get paid and move elsewhere.

180. The decision not to pursue an equal protection claim was based, in part, on the near-insurmountable burden of having to prove intentional discrimination in any of the policy or administrative decisions by the city or county. *See, e.g.,* *Washington v. Davis*, 426 U.S. 229 (1976).

181. *See Council Turns Down Refund*, *supra* note 146.

182. Lance Martin, *We Hope That Doughnut Tastes Good*, RRSPIN.COM (Mar. 9, 2011), <https://rrspin.com/archives/item/1670-we-hope-that-doughnut-tastes-good.html> [<https://perma.cc/EM3M-2ZH6>].

183. *Id.*

184. *Id.*

The city and county's treatment of Brandy Creek and the multiple and interconnected challenges residents faced because of the laws governing annexation and taxation highlight how such purportedly "race-neutral" policies are manipulated to adversely and disproportionately impact Black communities. This case study contains all of the elements of local government decision-making that, under the guise of economic growth, in fact entrenches institutionalized discrimination by race and place. Brandy Creek's experience ultimately demonstrates how tax policies in particular—because of their seemingly equal application—can effectively reinforce the segregation, exclusion, and ultimate displacement of Black communities.