

§ 156-93.3. Extension of boundaries.

The boundaries of a drainage district may be extended upon compliance with the requirements and procedures as follows:

- (1) The request for extension shall be made by the board of commissioners of the district, in the form of a petition in the name of the drainage district, to the clerk of the superior court of the county wherein the district was originally organized. The proceeding may be ex parte or adversary.
- (2) The area proposed to be included within the boundaries of the district must be either:
 - a. Located upstream and adjacent to the existing boundary of the district and must have as its only source of drainage either:
 1. The canals of the district; or
 2. Natural or artificial drain ways which empty into or are benefited by the canals of the district; and
 3. Must be within the watershed of the existing district; or
 - b. Adjacent to the existing boundary of the district and have a common outfall with the existing district.
- (3)
 - a. In the event the area meets the requirements of (2)a, it shall only be necessary for the petition to be filed by the board of commissioners of the district.
 - b. In the event the area meets the requirement of (2)b of this section, the owners of fifty percent (50%) or more of the land area which it is proposed to include or forty percent (40%) or more of the resident landowners who will be benefited within such area, must join with and be petitioners with the commissioners of the existing district, asking for the extension of boundaries and inclusion of land within the existing district.

Should the area proposed to be included within the boundary of the enlarged district embrace one or more existing drainage districts, the commissioners of any such district or districts may join in a petition to the court asking for the extension of boundaries of the existing district.

The joinder in the petition by the commissioners of such drainage district in the name of the district shall have the effect of including in the petition all of the land within said existing drainage district to the same extent as if the petition had been signed individually by each landowner of the district. The total acreage in such district or districts shall be included as land in the petition in determining whether or not the requirements under this section have been complied with.
- (4) Upon filing of the petition for extension of the boundaries, the clerk of the superior court shall appoint a board of viewers with the same composition and qualifications as is required by G.S. 156-59. The board of viewers shall examine the area proposed to be included within the boundaries of the district to determine whether or not, in their opinion, it is feasible and equitable to include said area within the boundaries of the district, and report their finding to the court. The report must be made within 30 days after the appointment of said board of viewers. The time for filing said report may be extended by the clerk upon a showing of a meritorious cause for the extension.

- (5) If the board of viewers shall report that the proposed extension of boundary is not feasible or equitable, the petition shall be dismissed and shall not be submitted again until after six months from date of dismissal.
- (6)
 - a. If the board of viewers shall report that the proposed extension of boundary is feasible and equitable, then the clerk of the superior court shall order the board of viewers to make a further and detailed report which shall include a map of the area that is proposed to be annexed which shall show:
 1. Boundaries of the existing district;
 2. Boundaries of the proposed extension;
 3. A general location of each individual tract of land which will be benefited.
 - b. In the event no additional work is proposed, the board of viewers shall report the following:
 1. The allocation of benefits derived from the existing canals, structures or other improvements, between the existing district and the area to be included within the boundaries of the existing district, which shall be a percentage figure and shall be the major factor for the determination of the requirements set forth in the succeeding paragraphs 2 and 3;
 2. The amount of money, if any, which the owners of the land to be included within the district should pay for the use of the canals, structures or other improvements of the district;
 3. The percent of the cost of maintenance and operating expenses which the owners of the land to be included, should pay;
 4. Classification of the additional lands as to benefits derived from the existing canals, structures or other improvements of the district which shall be in accordance with the provisions of G.S. 156-71. The area of the existing district shall not be classified, unless directed by the clerk of the superior court;
 5. The names and addresses of the landowners within the areas proposed to be included insofar as may be determined from the tax records of the county;
 6. Such other information as may be appropriate or as may be directed by the clerk of the superior court.
 - c. In the event additional work is proposed, the report of the board of viewers shall also contain the information required in G.S. 156-93.2, as it applies to the final report of the board of viewers.
- (7) The board of viewers shall file their detailed or final report within 60 days after their appointment. The time for filing of said report may be extended by the clerk upon a showing of meritorious cause for the extension.
- (8) Upon the filing of said report those landowners in the area to be included who are not parties to the proceedings and who do not desire to sign the petition, shall be made parties defendant. Summons shall be served upon the defendants in the manner required for special proceedings. There shall be attached to and served with the summons, in lieu of a copy of the petition or final report, a statement which shall set forth (i) the purpose of the proceedings and (ii) that the report of the board of viewers is on file in the

office of the clerk of the superior court and may be examined by persons interested.

- (9) The attorney for, or the commissioners of, the district shall use due diligence to give notice to every landowner within the area proposed to be included, who has not signed the petition asking for such extension of boundaries and/or the proposed improvements.

The filing of a certificate by the attorney for, or the commissioners of, the district that due diligence has been used to notify each of said defendant landowners shown by the report of the board of viewers, either by personal service or by publication, shall be sufficient showing of compliance with this provision. The certificate shall contain the names of such landowners served personally, the date of service and the names of those served by publication and the date of service by publication.

- (10) Upon filing of said certificate the clerk shall fix a time and place for a hearing upon said report, which date shall be no less than 20 days after filing of said certificate.

- (11) Notice of said hearing shall be given as follows:

a. Posting and publication:

1. Posting at the courthouse door of the county in which the proceeding is pending;
2. Posting at five conspicuous places in the district and in the area to be included;
3. The notice shall be posted at least 20 days prior to the said hearing;
4. Publication in a newspaper with general circulation within the area once a week for three successive weeks;
5. Mailing a copy of the notice to those persons for whom an address is shown in the certificate filed by the attorney for, or commissioners of, the district.

b. Contents:

1. The notice shall state the time and place for the hearing;
2. Describe in general terms the area proposed to be included and work proposed, if any;
3. That the court will consider and adjudicate the report of the board of viewers.

- (12) At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the board of viewers. It shall be the duty of the clerk to carefully review the report of the board of viewers and the objection filed thereto and make such changes as are necessary to render substantial and equal justice to all of the landowners and the existing district.

- (13) The clerk shall, after making adjustments in the report of the board of viewers, if any, determine:

- a. If the area(s) of land sought to be included, or any part thereof, is, or will be, benefited by the canals, structures or other improvements of the district.
- b. If such area(s) should equitably be included within the boundary of the district because of the benefits received or to be received from the district.

- c. If the requirements of the preceding subdivision (3)b, if applicable, are met.

If the clerk shall determine that all of the three preceding requirements are met, he shall direct that the area(s) of land to be included within the boundaries of the district, in accordance with the provisions of the report of the board of viewers, as approved.

- (14) If the clerk shall determine either:
 - a. That no part of the area proposed to be included is or will be benefited by the canals, structures or other improvements of the district and equitably should not be included within the boundaries of the district; or
 - b. That the requirements of the preceding subdivision (3)a or b, whichever is applicable, have not been complied with; he shall dismiss the proceeding.
- (15) Any landowner, party petitioner, or the drainage district may, within 10 days after the entry of an order or judgment by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. The procedures for taking appeal under Article 27A of Chapter 1 of the General Statutes apply, except as provided otherwise by this Subchapter. All of the terms and provisions of G.S. 156-75 apply to the appeal.
- (16) The duties and powers of the board of commissioners as to those lands included within the district by the current proceedings shall be the same as to those in the original proceeding. (1961, c. 614, s. 1; 1965, c. 1143, s. 4; 1969, c. 192, s. 3; cc. 440, 1002; 1999-216, s. 22.)