



Date of Regular Session: July 9, 2012

**TOWN OF LEESBURG  
TOWN COUNCIL WORK SESSION**

**Subject:** Annexation Discussion

**Staff Contact:** John Wells, Town Manager

**Background:** One of the Town Council's key projects for 2012 was to restart the annexation discussions with the Loudoun County Board of Supervisors. At the joint meeting with the Board earlier in the year, it was determined that meetings could begin after the adoption of the County Budget. Prior to that anticipated meeting, the Town Council asked to have a Work Session briefing on Annexation.

To help restart the discussion since the last joint Annexation Area Development Plan (AADP) meeting was several years ago, this agenda item provides:

- Background information on the process of annexation based on current law. (Attachment 1)
- The last series of Council actions on annexation and minutes from previous meetings of the AADP Committee. (Attachment 2)
- There has been Council discussion since the AADP meetings about potentially changing the annexation area to study/review. Potential areas are reflected in a series of maps based on Council comments. (Attachment 3)

Staff has not approached the County yet on potential meeting dates.

## Memorandum

TO: Council

FROM: Jeanette A. Irby, Town Attorney

DATE: July 3, 2012

RE: Annexation procedures

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**ISSUE:** What are the procedures and estimated timeline for Town-initiated annexation?

**ANALYSIS:**

Section I summarizes the process and legal standard of individual annexation. Section II gives an estimated timeline for individual annexation. Section III summarizes the alternative process of a voluntary settlement agreement that results in an annexation.

**I. Brief Overview of Process and Legal Standard**

1. **Notify Commission on Local Government and contiguous local governments.** A town must notify the Commission on Local Government (Commission) of the proposed annexation. Va. Code Ann. § 15.2-2907. The notice must include the metes and bounds of the proposed annexation area and pertinent information about the population, public services, and land uses in both the county and the town, but the town may submit as much supporting material as it deems appropriate. Va. Code Ann. § 15.2-2907. Please note that the metes and bounds description of the proposed annexation line is sufficient if it refers to readily understandable monuments (i.e. railroad rights-of-way and public roads) so that a non-engineer can follow the line with reasonable certainty. In other words, a surveyor's compass direction and distance description is not required. A town proposing annexation must also notify all local governments located within; contiguous to; or sharing functions, revenue, or tax sources with it. Va. Code Ann. § 15.2-3204.
2. **Commission report.** The Commission holds hearings, does investigations, analyzes local needs, and makes factual findings and recommendations about the proposed annexation. This report must be rendered within six months, unless the parties agree to an extension, but the Commission may unilaterally extend the deadline for 60 days or seek a court order for an additional extension of up to 90 days. Va. Code Ann. § 15.2-2907.
3. **Annexation ordinance.** Following the Commission's report but before petitioning the court, a town must adopt an annexation ordinance that contains a metes and bounds description of the area sought to be annexed, existing land use information, and a statement of the terms and conditions upon which the annexation is proposed. The

annexation ordinance and a notice must be published once a week for four successive weeks. Va. Code Ann. § 15.2-3202.

4. **Serve the annexation ordinance on the county.** The annexation ordinance and the notice must be served on the appropriate county officials. Va. Code Ann. § 15.2-3204.
5. **Petition the circuit court.** The town must then petition the circuit court of the county for the annexation of the adjacent county territory which is sought. A three-judge court is then selected from a special 15-judge panel seated specifically to hear boundary change matters. Va. Code Ann. § 15.2-3202.
  - a. **Stay of annexation proceedings.** Note that the annexation proceedings can be stayed if a notice to negotiate is filed with the Commission. This stays the annexation proceeding while settlement negotiations between the county and town proceed. Va. Code Ann. § 15.2-2907.
6. **Evidentiary hearing.** The annexation court conducts an evidentiary hearing and may direct any state agency and/or the Commission to present evidence. Va. Code Ann. § 15.2-2907.
  - a. **Legal standard for annexation.** *A court will grant a petition for annexation if it finds that the annexation is necessary and expedient.* No single factor controls, but to make this determination, the following must be considered:
    - i. The best interests of the people of the county and town,
    - ii. Services to be rendered,
    - iii. Needs of the people of the area proposed to be annexed,
    - iv. The best interests of the people in the remaining portion of the county, and
    - v. The best interests of the Commonwealth in promoting strong and viable units of government.
  - vi. **Statutory factors when considering the best interests of citizens.** When the best interests of all citizens are being considered, a court is statutorily required to consider at least the following factors:
    - a. Need for urban services in the area proposed for annexation, level of services provided in the county and town, and the ability of the county or town to provide services in the area sought to be annexed, including but not limited to the following:
      - i. Sewage treatment,
      - ii. Water,
      - iii. Solid waste collection and disposal,
      - iv. Public planning,
      - v. Subdivision regulation and zoning,
      - vi. Crime prevention and detection,
      - vii. Fire prevention and protection,

- viii. Public recreational facilities,
  - ix. Library facilities,
  - x. Curbs, gutters, sidewalks, and storm drains,
  - xi. Street lighting,
  - xii. Snow removal, and
  - xiii. Street maintenance;
- b. Current relative level of services provided by the county and town;
  - c. County's and town's efforts to comply with applicable State policies with respect to environmental protection, public planning, education, public transportation, housing, or other State service policies promulgated by the general assembly;
  - d. Community of interest which may exist between the petitioner, territory sought to be annexed, and its citizens; and the community of interest that exists between such area and its citizens and the county. "Community of interest" may include, but not be limited to the following:
    - i. Consideration of natural neighborhoods,
    - ii. Natural and man-made boundaries, and/or
    - iii. Similarity of needs of the people of the annexing area and the area sought to be annexed;
  - e. Any arbitrary prior refusal by the governing body of the petitioner or county whose territory is sought to be annexed to enter into cooperative agreements providing for joint activities which would have benefited citizens of both political subdivisions;
  - f. The need for the town seeking to annex to expand its tax resources, including its real estate and personal property tax base;
  - g. The need for the town seeking to annex to obtain land for industrial or commercial use, together with the adverse effect on a county of the loss of areas suitable and developable for industrial or commercial uses;
  - h. The adverse effect of the loss of the tax resources and public facilities on the county's ability to provide service to the people in the remaining portion of the county; and
  - i. The adverse impact on agricultural operations in the area proposed for annexation.

b. **Limits to annexation.** Before granting an annexation, a court must be satisfied that the town has substantially complied with the conditions of the last preceding annexation. Also, no annexation is allowed if the area remaining in the county after annexation (1) would be less than 60 square miles, excluding property owned by the United States or (2) would be insufficient in area, population, or

sources of revenue to adequately support county government and schools. Va. Code Ann. § 15.2-2907.

7. **Written opinion.** The court must render a written opinion, but it is not required to prepare an exhaustive analysis of the statutory factors considered. Va. Code Ann. § 15.2-2907.
  - a. **Terms and conditions of annexation.** Va. Code Ann. § 15.2-3211. The court ordering annexation is required to enter an order setting forth what it deems fair and reasonable terms and conditions. Specifically, the court has the statutory power to order several different types of terms and conditions as part of the annexation order, as follows:
    - i. The court has the power to require the town to assume a just proportion of any existing county (or district therein) debt, but court decisions have made it highly unlikely that a court would order such a term as town taxpayers contribute to the repayment of county debt.
    - ii. The court has the power to require the town to pay a sum that the court determines to compensate the county for any public improvement which becomes the property of the town by the annexation.
      - a. Or instead, the court may provide that any such improvement shall remain the property of the county, or that the county and town will make joint use thereof under conditions that the court proscribes with consent of the governing bodies affected.
    - iii. The court has the power to require the town to pay any common carrier of passengers by motor bus for business injury caused by the annexation.
    - iv. The court has the power to protect agricultural operations in the annexed area, including the rights provided for in Virginia's Right to Farm Act.
8. **Special election.** If an annexation is awarded and the town population increases by more than 5%, there must be an election for members of the town council. This election must be held on the first Tuesday in May following the effective date of annexation. Va. Code Ann. § 24.2-312.
  - a. **Federal Voting Rights Act.** Federal preclearance under the Voting Rights Act is required. If preclearance is not obtained, then the voters within the annexed areas are barred from participating in the municipal election. 42 U.S.C. §§ 1973-1973aa-6.
9. **Town can reject a court's annexation order.** A town can reject an annexation order, with court approval, if it adopts the ordinance requesting this action within 21 days after entry of the annexation order; within 21 days after denial of a petition for appeal; or within 21 days after entry of the mandate in an appeal that has been granted, but the town must pay the costs of the proceeding, including the county's attorneys' fees. Va. Code Ann. § 15.2-3213.

10. **Effective date of annexation order.** The effective date for an annexation order is midnight on December 31 of the year in which it is issued or of the following year. On the joint motion of the parties, the court may direct that the annexation be effective at midnight of any other date. Va. Code Ann. § 24.2-312; *see also* Va. Code Ann. § 15.2-3209.
11. **Annexation order exists for 10 years.** An annexation order exists for ten years from its effective date. Also, generally, a town may not seek to annex territory of a county within ten years after the effective date of the annexation or final order denying an annexation, unless the parties mutually agree to do so. Va. Code Ann. § 15.2-3227.

## **II. Estimated Timeline**

The timeline depends on whether the County cooperates and whether there are intervenors who oppose the annexation. If the annexation is friendly, then the process can be expected to last 13 to 18 months, with the preparation of the initial Commission filing expected to take three to four months; the Commission review expected to last six to eight months; the institution of the court proceeding expected to last one to two months; and the appointment of the special court and court hearing expected to take three to four months.

However, if the County or landowners strongly fight the annexation effort, the process can take at least twice as long.

## **III. Annexation Resulting from a Voluntary Settlement Agreement**

The voluntary settlement process is an alternative to the traditional annexation process outlined above, and a voluntary settlement has greater flexibility in terms of which provisions can be included in a settlement of annexation issue, a more lenient legal standard, and no express provision for intervention by third parties. Va. Code Ann. § 15.2-3400.

Settlement agreements involving annexation issues may include the following:

1. Fiscal, land use, zoning, and subdivision and infrastructure arrangements.
2. Revenue and economic growth sharing. However, if an agreement obligates a county to make payments of tax revenues in future years, the arrangement must first be approved by the qualified voters of the county at a special referendum election to satisfy the debt limitation requirements in the Virginia Constitution.
3. Dedication of all or any portion of tax revenues to a revenue and economic growth sharing account.
4. Provisions for the acceptance on each other's behalf of proffers.
5. Boundary line adjustments.
6. Acquisition of real property and buildings.
7. Joint exercise or delegation of powers.
8. Modification or waiver of specific annexation, transition, or immunity rights as determined by the local governing body, so long as there is no conflict with the Virginia Constitution.

9. Subsequent court review by a three-judge court, instituted pursuant to provisions contained in the agreement.
10. Other provisions that the parties deem in their best interests.

A proposed settlement agreement must be submitted to the Commission for review. The Commission determines whether the proposed settlement is in the best interests of the Commonwealth and issues an advisory report. Then the localities may adopt the original agreement or a modified version after required public notification and hearing.

After the agreement is adopted, the localities must petition a three-judge court for an order establishing the rights of the parties as set forth in the agreement. Regarding the legal standard, the court must affirm unless it finds either (a) that the agreement is contrary to the best interests of the Commonwealth, including the State's interest in promoting the orderly growth and continued viability of local governments, or (b) that the agreement is not in the best interests of each of the parties. Note that even if the specific requirements for individual annexation (outlined in Section I above) are not necessarily met, the agreement may be affirmed if as a whole, it is in the best interest of the State and each locality. The court may affirm or deny the agreement in its entirety but may not amend or alter the terms or conditions without express approval from each party. A court order affirming an agreement is binding on future local governing bodies as well.

The Town of  
**Leesburg,  
Virginia**

ATTACHMENT 2

PRESENTED May 8, 2007

RESOLUTION NO. 2007-87

ADOPTED May 8, 2007

A RESOLUTION: ENDORSING A MAP OF ANNEXATION AND JLMA EXPANSION  
TO BE PRESENTED TO THE AADP COMMITTEE

WHEREAS, the Town has been an active participant in the AADP Committee with the  
County; and

WHEREAS, the Town and County have previously agreed on a LAMP planning area and these  
jurisdictions are within that area; and

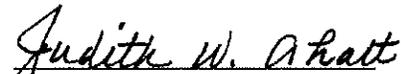
WHEREAS, for the limited purpose of pursuing a new AADP agreement and without  
relinquishing any rights under the existing AADP agreement, the Town resolves as follows:

THEREFORE, RESOLVED by the Council of the Town of Leesburg in Virginia that Town  
Council endorses the map titled "AADP Committee Proposed Annexation/JLMA Expansion as  
Endorsed by Town Council," dated May 8, 2007 (Attachment 1).

PASSED this 8<sup>th</sup> of May 2007.

  
Kristen C. Umstattd, Mayor  
Town of Leesburg

ATTEST:

  
Clerk of Council

R07: Edorsed AADP Map

The Town of  
**Leesburg,**  
Virginia

PRESENTED October 10, 2007

RESOLUTION NO. 2007-143

ADOPTED October 10, 2007

A RESOLUTION: AUTHORIZING THE COUNCIL'S REPRESENTATIVES TO THE AADP COMMITTEE AND TOWN STAFF TO WORK WITH REPRESENTATIVES OF LOUDOUN COUNTY AND LOUDOUN COUNTY STAFF TO BEGIN THE PROCESS OF PREPARING DOCUMENTS NECESSARY FOR A VOLUNTARY ANNEXATION AGREEMENT FOR THE "PRIMARY ANNEXATION AREA" WITHIN THE LEESBURG JOINT PLANNING AREA.

WHEREAS, the 2005 Town Plan and the 2001 Revised General Plan call for the Town and the County to work together to jointly plan land development adjacent to the Town; and

WHEREAS, the Annexation Area Development Policies (AADP) established through the 1982 Leesburg Area Management Plan (LAMP) establishes provisions for a joint committee of the Town and County to review and discuss changes within the JLMA; and

WHEREAS, the AADP committee met in September of 2006 to begin discussions of joint planning; and

WHEREAS, the AADP convened on September 18, October 2, and October 23, 2006, and again on January 11, March 8, April 12, May 10, July 12, and September 27, 2007; and

WHEREAS, the Town Council of Leesburg met on October 11, 2006 to discuss and accept the recommendation of the AADP joint committee to establish the Leesburg Joint Planning Area for the purpose of joint planning; and

WHEREAS, the Loudoun County Board of Supervisors met on October 17, 2006 to discuss and accept the recommendation of the AADP joint committee to establish the Leesburg Joint Planning Area for the purpose of joint planning; and

A RESOLUTION: AUTHORIZING THE COUNCIL'S REPRESENTATIVES TO THE AADP COMMITTEE AND TOWN STAFF TO WORK WITH REPRESENTATIVES OF LOUDOUN COUNTY AND LOUDOUN COUNTY STAFF, TO BEGIN THE PROCESS OF PREPARING DOCUMENTS NECESSARY FOR A VOLUNTARY ANNEXATION AGREEMENT FOR THE "PRIMARY ANNEXATION AREA" WITHIN THE LEESBURG JOINT PLANNING AREA.

WHEREAS, the AADP joint committee has discussed annexation of areas within the Leesburg Joint Planning Area; and

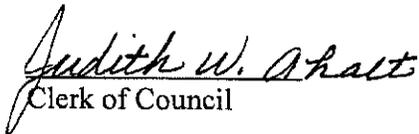
WHEREAS, on May 8, 2007, Town Council adopted Resolution 2007-87 (Attachment 1), identifying a portion of the Leesburg Joint Planning Area as the Town's "primary annexation area," generally between Rt. 7 East and Dulles Greenway and between the Town boundary and Sycolin and Goose creeks;

THEREFORE, RESOLVED that the Council of the Town of Leesburg in Virginia authorizes the Town Council's representatives to the AADP Committee and Town staff to work with representatives of Loudoun County and Loudoun County staff, to begin the process of preparing the documents necessary for a voluntary annexation agreement for the "primary annexation area" (as shown on Attachment 2).

PASSED this 10<sup>th</sup> day of October 2007.

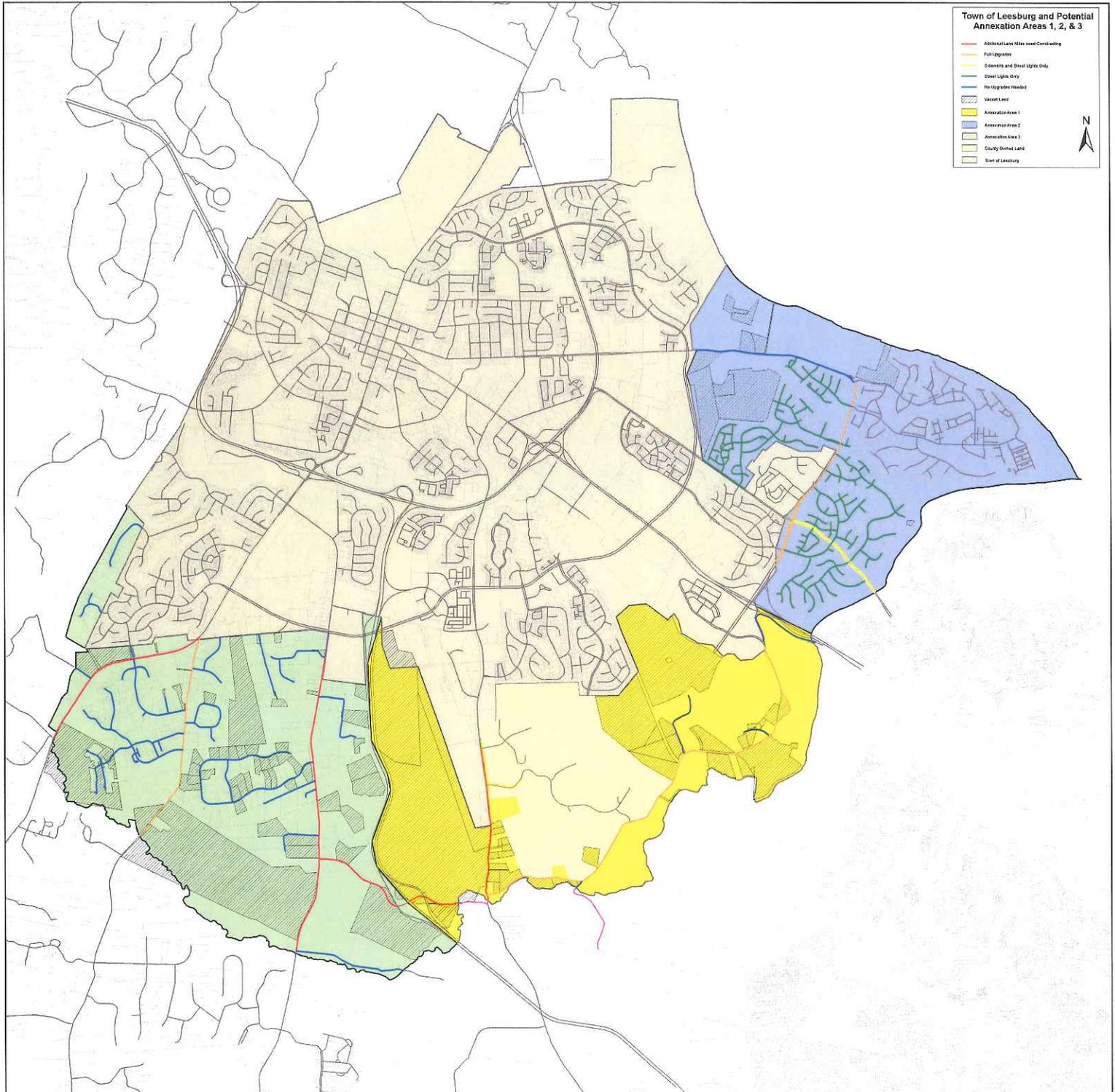
  
Kristen C. Umstatt, Mayor  
Town of Leesburg

ATTEST:

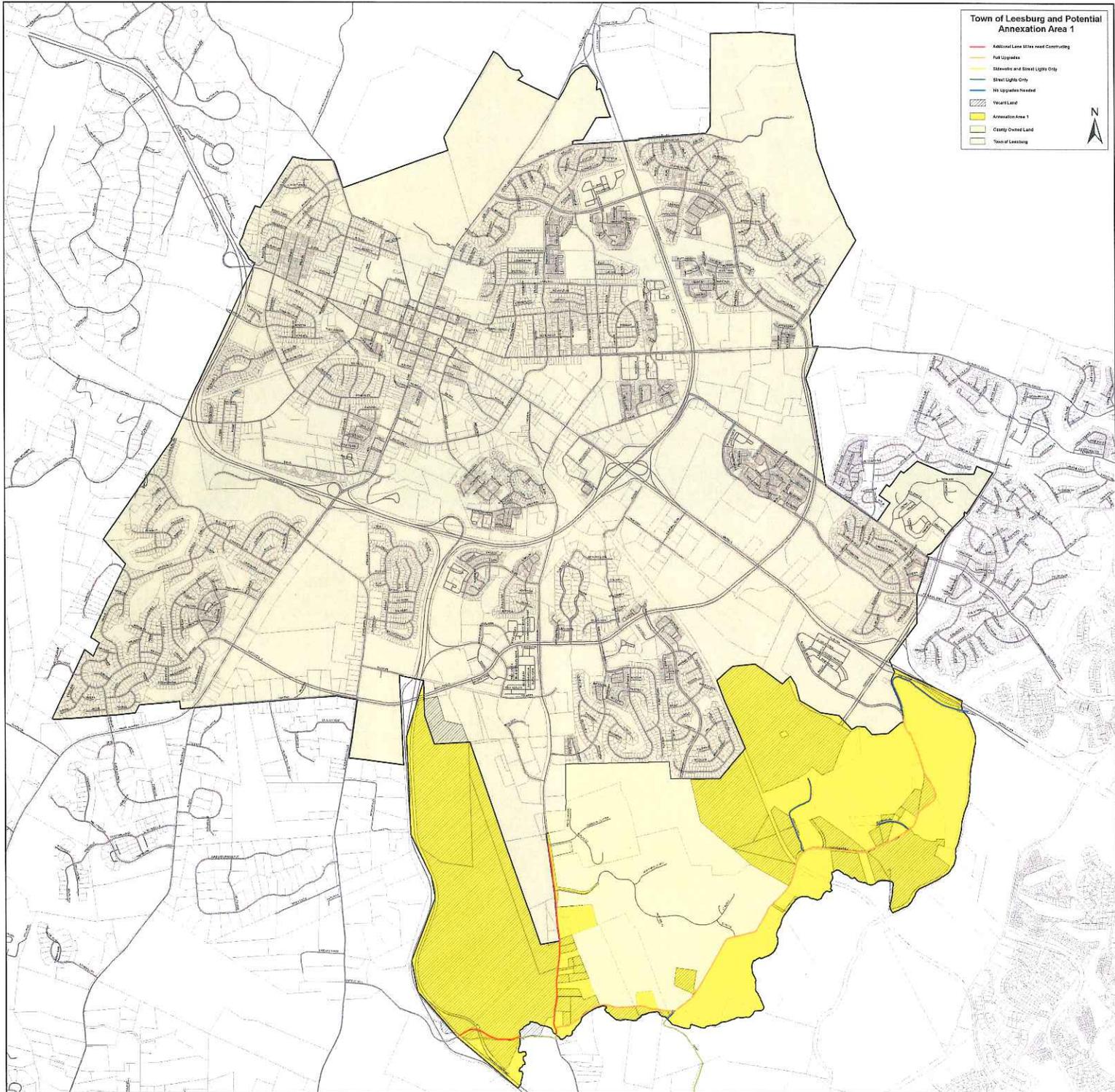
  
Clerk of Council

R07: Authorization for Voluntary Annex 2

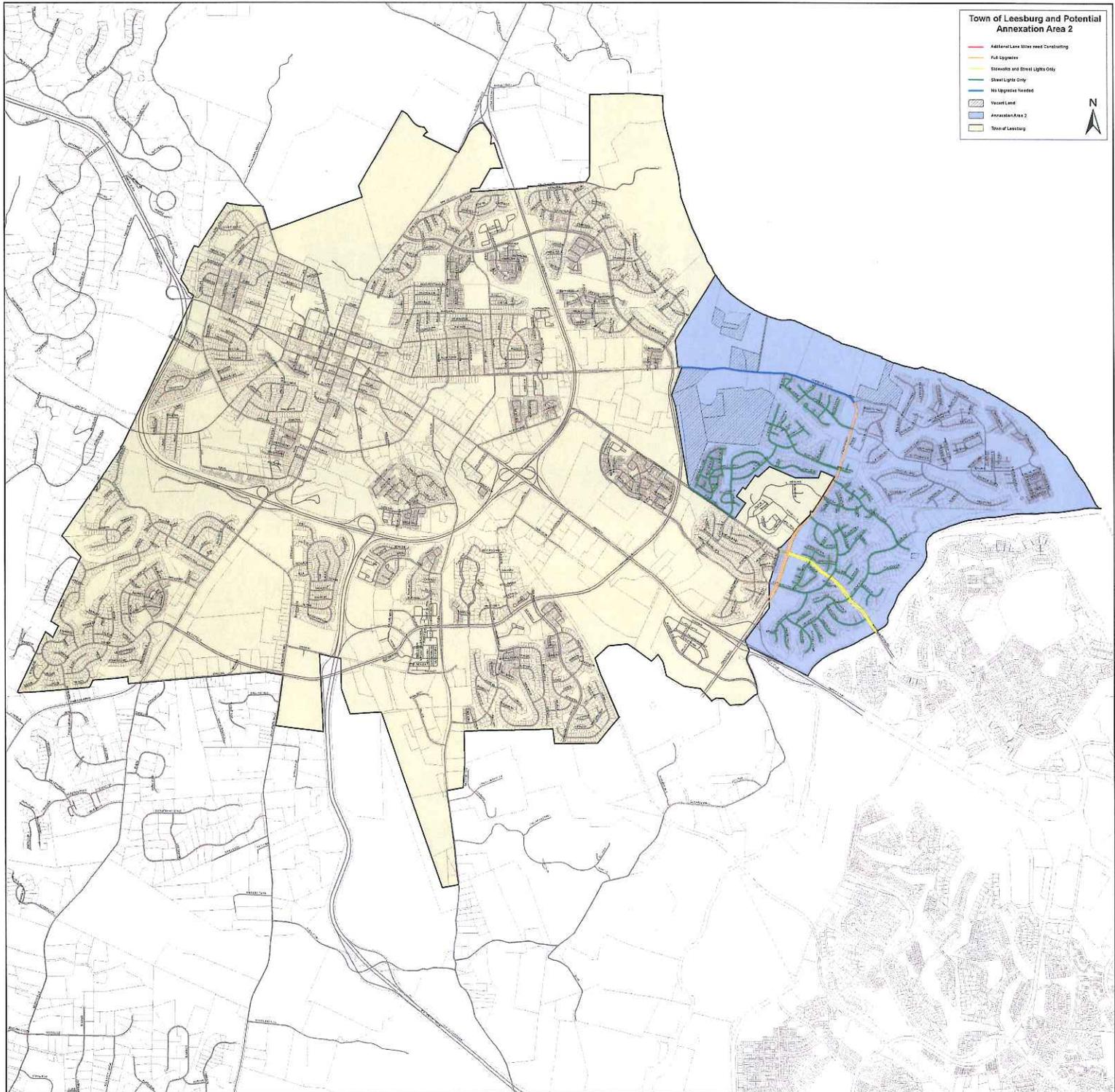
# TOWN ANNEX AREA (ALL) – ATTACHMENT 3



# TOWN ANNEX AREA 1 – ATTACHMENT 3



# TOWN ANNEX AREA 2 – ATTACHMENT 3



# TOWN ANNEX AREA 1 & 2 – ATTACHMENT 3

