



Date of Council Meeting: January 25, 2016

**TOWN OF LEESBURG
TOWN COUNCIL WORK SESSION**

Subject: Annexation

Staff Contact: Susan Berry Hill, Director, Department of Planning and Zoning

Council Action Requested: None. Discussion only.

Staff Recommendation: No recommendation.

Commission Recommendation: None at this time.

Fiscal Impact: None at this time.

Work Plan Impact: Work Plan impacts will depend on Council direction.

Executive Summary: At the October 26, 2015 work session, Council requested a discussion on potential annexation goals. This memorandum provides the following basic information:

- Current Town Plan guidance on goals for annexation including the geographic area;
- Statutory approaches to accomplishing annexation

Background: The Town Plan and the County's Revised General Plan both show a geographic area known as the Joint Land Management Area (JLMA). It is an area outside of, and adjacent to, the Town corporate limits. The JLMA was created as a joint effort between the Town and County to manage growth in a predictable manner. Attachment 1 depicts the existing boundary of the JLMA.

Since the JLMA was jointly planned by the Town and the County, similar land use designation categories have been assigned to each parcel in the JLMA in both the Town Plan and the County's Revised General Plan (RGP). These categories are not identical but very similar.

The Town Council may consider incorporation of individual properties, or groups of properties, within the JLMA. There is no policy direction or guidance in either the Town Plan or the RGP, nor is there any other memorandum of understanding between the two jurisdictions as to if, or when, annexation will occur. It is at the discretion of the Town as to whether any property will be discussed for incorporation.

It is at the Town Council's discretion to extend central water and sewer service to properties in the JLMA. The Town's utility master plan was based on assumptions about service to this area. As such, plant capacity and utility infrastructure was planned accordingly. It should be noted that annexation and utility extension may, and have been, considered independently. For example, utilities were extended to the River Creek subdivision, but incorporation of the

neighborhood was not considered at that time. More recently, central utility extension from the Town to the Crosstrail Property has been agreed to, but incorporation was not pursued concurrently with utility provision.

Statutory approaches to the incorporation of land into the Town include three methods that are allowed by State Code as follows:

- Traditional Annexation (VA Code 15.2-3200);
- Voluntary Settlement of Annexation (VA Code 15.2-3400); and
- Boundary Line Adjustment (VA Code 15.2-3106).

See Attachment 2 for a more complete description of each statutory approach. The Town of Leesburg has used all three approaches in the past. For example, the Town used the voluntary settlement of annexation approach in 1984 to annex 7.17 square miles (4,589 acres), and developed an Annexation Agreement jointly with the County outlining the terms for the County and the Town for the annexation. The Agreement included the Annexation Area Development Policies (AADP's) which addressed land use planning, public utilities, transportation facilities, community facilities, environmental and cultural factors, government facilities, parks and recreation, and housing. This document established the Joint Policy Committee between the Town and the County to jointly review all aspects of public service delivery for the annexation area. Staff notes that even though the AADP's have since terminated according to the terms of the Annexation Agreement, the Joint Policy Committee has evolved into what is now known as the "AADP Committee". It is still on the County and Town committee rosters, and it continues to be composed of County and Town membership from the respective governing bodies. This Committee was used in the 2007-2008 timeframe to discuss annexation topics. At that time, membership was expanded to include representation from the County and Town Planning Commissions. However, it has not been convened since.

Another way to incorporate a parcel, or parcels, is by Corporate Boundary Line Adjustment. This approach has been used to incorporate the property for Heritage High School and Veterans Park.

The statutory approaches noted above and in Attachment 2 explain the formal and legal process to incorporate property into a jurisdiction once a governing body has initiated action to do so. In Leesburg, the process has been informal for a property owner to start a conversation about the possible incorporation of property into the Town. Sometimes, property owners have approached Council members to broach ideas related to potential incorporation into the Town. On other occasions, property owners have started the conversation with staff.

Attachments:

1. Map of Leesburg Joint Land Management Area
2. State Statutory Approaches to Incorporate Land



The Town of Leesburg

OFFICE OF THE TOWN ATTORNEY

To: Kaj Dentler, Town Manager
From: Barbara Notar, Town Attorney
Re: Annexation and Boundary Line Adjustment Options
Date: January 25, 2016

ISSUE: What statutory approaches are available in the State Code for the incorporation of property into the Town of Leesburg?

ANALYSIS: Members of the Town Council have scheduled a work session discussion of annexation goals for the Town. The following provides basic information regarding legal options to bring property into the Town. There are 3 ways to bring property into the Town:

1. Boundary Line Adjustment Agreement (*recommended if County agrees*)
2. Traditional “Involuntary” Annexation
3. Voluntary Settlement of Annexation Agreement

1. Boundary Line Adjustment Agreement (Va. Code 15.2-3106 et seq.)(Used most often by localities)**

1. Town Council and BOS pass resolutions initiating BLA Agreement (“Agreement”)
2. Town and County staff draft Agreement
3. Intention to enter into Agreement advertised at least once a week for 2 successive weeks by both Town and County (no metes and bounds needed)
4. At least one Public Hearing is held by both Town and County prior to Agreement’s adoption
5. Within reasonable time after Agreement is adopted by both jurisdictions, localities jointly petition circuit court to approve Agreement
6. Petition shall include a plat and a metes and bounds description of new boundary line
7. After hearing evidence, court “shall” enter order establishing boundary line if the procedural steps have been met and petition is in good order
8. Single judge hears evidence and no review by the Commission on Local Government (“COLG”) is required.

****However, there may be no “conditions” in a BLA Agreement, in other words, the Agreement cannot contain any language or terms other than the relocation of the boundary lines.**

2. Traditional Annexation/Involuntary Annexation (Va. Code 15.2-3200 et seq. and 15.2-2907)

1. Town creates a metes and bounds of property it seeks to annex
2. Town notifies COLG of its intention to file an annexation lawsuit
3. Town notifies County of its intention to file lawsuit
4. Town may be required by COLG to submit a list of persons providing witness testimony by a certain date
5. COLG holds a public hearing pursuant to advertised notice
6. COLG investigates and analyzes the proposed annexation, then produces a report within 6 months that is admissible as evidence before the Special Court
7. Proposed Annexation Ordinance advertised for 4 successive weeks
8. After holding a Public Hearing, Town adopts an Annexation Ordinance containing a metes and bounds
9. Town serves Annexation Ordinance on County
10. Special Court appointed and conducts an evidentiary hearing. If Town carries burden of proof, the Special Court must grant the annexation if it determines that the annexation is “necessary” and expedient which involves the consideration of:
 - a) the need for urban services in the area proposed to be annexed
 - b) the current relative level of services in the Town and County
 - c) compliance of the respective jurisdictions with state laws and policies
 - d) natural boundaries that may exist between the jurisdictions
 - e) any arbitrary refusal of either jurisdiction to enter into cooperative agreements regarding joint activities that would have benefited the citizens of both political jurisdictions
 - f) the need for a Town to expand its tax base
 - g) the need for a Town to acquire land for industrial or commercial use together with the adverse effect on the county of losing such land area, and
 - h) the adverse impact on agricultural operations

3. Voluntary Settlement of Annexation Agreement (Va. Code 15.2-3231 et seq. and 15.2-2907(E) and (F))

The voluntary settlement process is an alternative to the traditional, involuntary annexation process explained above. 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.

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.

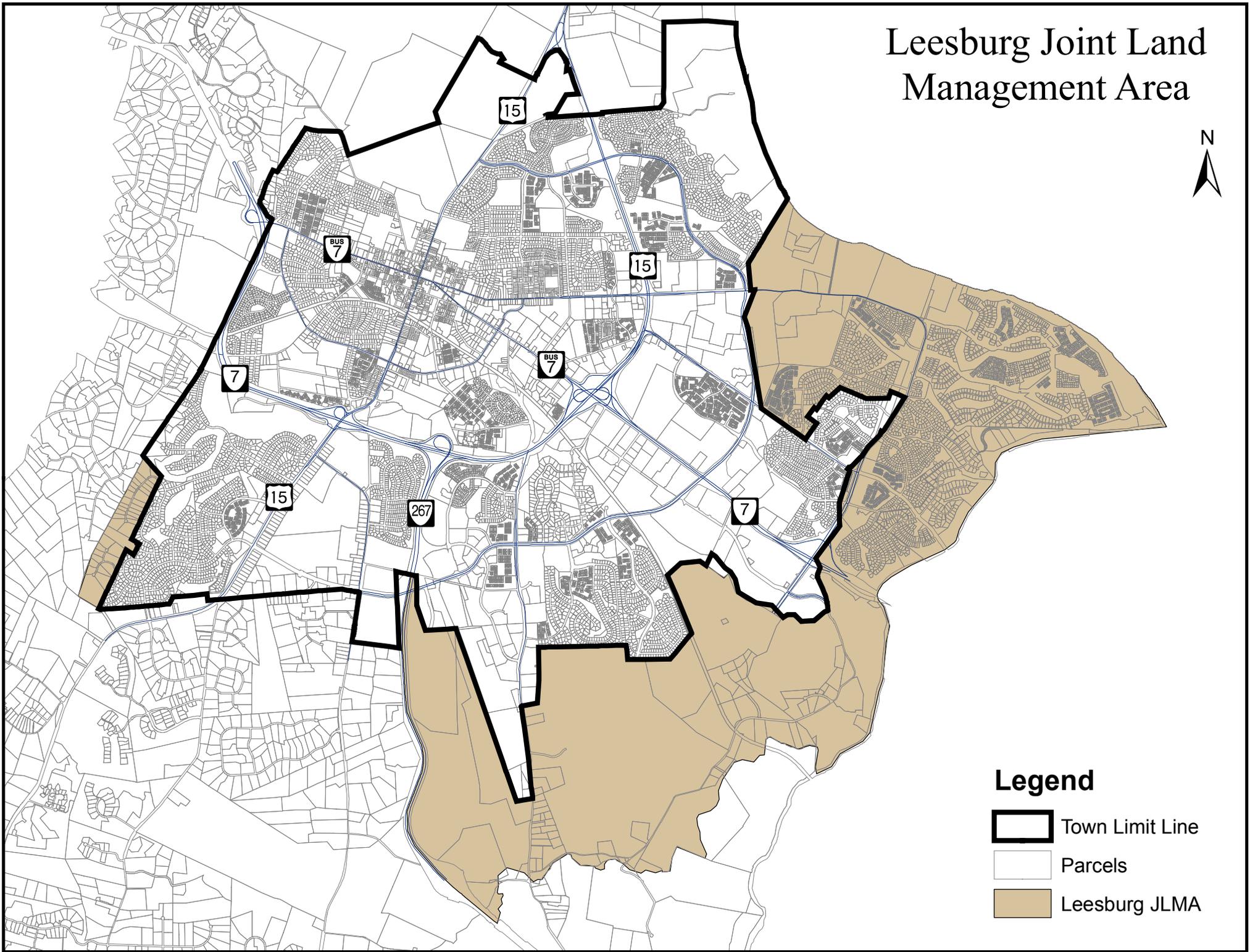
A proposed settlement agreement must be submitted to the COLG for review. The COLG determines whether the proposed settlement is in the best interests of the Commonwealth and issues an advisory report. The localities may then adopt the original and approved agreement or a modified version after required 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 above) are not met, the agreement may be affirmed if as a whole, if 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.

Respectfully submitted,

Barbara Notar

Leesburg Joint Land Management Area



Legend

-  Town Limit Line
-  Parcels
-  Leesburg JLMA