

STAFF REPORT

TO: Mayor and Council

Date: January 8, 2008

FROM: Robert W. Oast, Jr., City Attorney

SUBJECT: Incorporation of Leicester



Summary Statement: Consideration of a resolution addressing the incorporation of the Town of Leicester.

Review and Analysis: Back in June of 2007, Council heard a presentation from residents of the Leicester area regarding their effort to incorporate. Following that presentation and some discussion by Council, there was a motion made to approve Leicester's incorporation request. That motion failed for lack of a second. Copies of the Staff Report and relevant portions of the minutes of that June 26 meeting where that previous consideration occurred are attached. Under "Legal and Process Issues," the Staff Report explains why the City of Asheville is being requested to consider this matter.

Since the June meeting, Leicester representatives have continued to discuss this matter. Attached to this Staff Report is a proposed resolution that has been revised to include language expressing the City's concern regarding urban service delivery, and a proposed charter provision restricting Leicester's ability to annex.

Staff is advised that the boundaries for the proposed new town still include substantially all of the existing Leicester township, but have been adjusted slightly to exclude a portion of the City's ETJ that is in the Leicester township. However, no map was available at the time this report was finalized.

Pros:

- Would allow for Leicester to have a degree of self government

Cons:

- Size of area
- Proximity to Asheville
- Financial impact

Recommendation: Hear the presentation from representatives of Leicester, and make an appropriate motion with respect to the proposed resolution. Other possible actions could include a continuation of this item to receive more information.

Attachment:

- 1) Resolution
- 2) Staff Report and a portion of the Minutes of June 26, 2007 City Council meeting.

RESOLUTION NO. 08-

RESOLUTION REGARDING PROPOSED INCORPORATION OF THE TOWN OF LEICESTER

WHEREAS, pursuant to Article 20 of Chapter 120 of the North Carolina General Statutes, a petition has been submitted to the Joint Legislative Commission on Municipal Incorporation (herein "Commission") for the incorporation of the Town of Leicester in Buncombe County; and

WHEREAS, the proposed town of Leicester is within five miles of the City of Asheville, which has a population of over 50,000, and therefore qualifies for notification of the proposed incorporation pursuant to N.C.G.S. 120-164(c)(3), and qualifies to express its approval of the proposed incorporation pursuant to N.C.G.S. 20-166(b)(3); and

WHEREAS, the Commission has determined that the petition submitted by Leicester satisfies the initial criteria for submission, set out in N.C.G.S. 120-163 and 120-164, and has directed that the petition be evaluated as to additional statutory criteria, and has requested that the City of Asheville, as a qualifying municipality, express its position as to approval of the proposed incorporation;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

1. The City of Asheville approves the incorporation effort of the Township of Leicester, but expresses the following concern:

That the size of the area proposed for incorporation will present practical difficulties in delivering urban services.
2. The proposed Town of Leicester will include in its Charter that it will not involuntarily annex any area outside its town boundaries.
3. The City Attorney is directed to transmit a certified copy of this resolution to the Commission.

Read, approved and adopted this 8th day of January, 2008.

City Clerk

Mayor

Approved as to form:

City Attorney

STAFF REPORT

TO: Mayor Bellamy and City Council

Date: 6/26/07

FROM: Robert W. Oast, Jr., City Attorney
Scott Shuford, Planning and Development Director

SUBJECT: Leicester Incorporation

Summary Statement: The consideration of a resolution addressing the incorporation of the Town of Leicester.

Review and Analysis: Citizens in the Leicester area of Buncombe County have petitioned the State Legislature to incorporate approximately 67.6 square miles of property containing about 16,800 residents and traversed by Highway 63, northwest of Asheville. The area proposed for incorporation constitutes the entire township of Leicester, as it currently exists (see attached Map 1). By contrast, the City of Asheville has an incorporated area of approximately 44 square miles and a population of 73,000 residents. The approximate respective densities are 250 (Leicester) and 1700 (Asheville) persons per square mile.

According to the petition filed with the State, the Town proposes a tax rate of .05 cents per \$100 valuation, which is the minimum required by statute. This is in addition to the fire district tax (10-12 cents, depending on district) that is already assessed. This additional tax is anticipated to generate approximately \$200,000 in revenue. Four services are proposed to be provided by the Town:

- Fire protection through a contract with the rural fire districts that currently serve the area (there are four such districts).
- Police protection through a contract with the county sheriff department (2 additional deputies).
- A street lighting program.
- Planning services (continuation of Buncombe County zoning).

Under the proposed Charter of the Town of Leicester, a five-member Town Council will be created and will operate under the council-manager form of government.

Legal and Process Issues: Under the North Carolina Constitution, municipal incorporation requires an act of the legislature. Petitions for incorporation are filed with the Joint Legislative Commission on Municipal Incorporation. Upon receiving the petition, the Commission undertakes a "Phase 1" review, which is simply to determine the sufficiency of the petition, which must contain certain information. There follows a "Phase 2" review, which focuses on whether the area meets the criteria for incorporation (density, degree of development; but a lower threshold than for annexation), and whether the services promised can actually be delivered.

During this process, the incorporating municipality must notify all other cities in the county or counties wherein it is located, and must notify any city of 50,000 or more that is within 5 miles ("proximity test"). In the case of Leicester, Asheville is within 5 miles and has been notified. Under the law, if a petition is insufficient (Phase 1), it may not be processed; if the criteria are not met (Phase 2), the Commission must make a "negative recommendation" to the General Assembly. Similarly, if there is a city that meets the proximity test that does not express its approval of the proposed incorporation (part of Phase 2), the Commission may not make a positive recommendation. In the event of a negative recommendation, the Commission may hold a public hearing and may, in certain circumstances, require a referendum (presumably of the affected area). Even if the Commission makes a negative recommendation, the legislature may still incorporate. However, if there is a city of 50,000 or more within 5 miles, incorporation requires a three-fifths vote of the General Assembly, whether or not that city approves of the proposed incorporation.

Residents of the proposed area of incorporation for Leicester have submitted their petition and satisfied the basic Phase 1 requirements. The Legislative Commission is waiting on Asheville to express its position on this incorporation before moving forward with the incorporation process.

Staff Comments:

A. Purposes of incorporation. The most obvious comment about this incorporation effort is that it appears to be primarily a "defensive" one, initiated to stop possible annexation by Asheville and the Town of Woodfin, rather than to create an urban area of enhanced public services. This is apparent from the proposed list of services which, with the exception of street lighting, are merely continuation of existing County and rural fire district services. Also, the density of the area exhibits much more of a rural character than is appropriate for the urban recognition that comes with being a town.

B. Conflicts with Asheville and other municipalities. Due to significant topographic and service delivery issues, the City of Asheville's annexations in this area have been slower than they have been in the south and west. A small portion of the proposed Town of Leicester overlaps with the City's ETJ and with the area included in the City's resolution of consideration for annexation. Also of concern is that part of the proposed Town of Leicester would overlap part of the area that is of interest to the Town of Woodfin, and has been the subject of our annexation agreement discussions with Woodfin officials. (See attached Map 2.) Finally, Council should bear in mind that this incorporation would create a "town" that would be the sixth largest in N.C. in terms of land area (see the attached table), but only the 49th largest in population. The recent incorporation of Mills River also created a large town (the second largest in WNC in area) but it is only 1/3 the area of the proposed Town of Leicester; Mills River has approximately 6,150 residents (about 280 persons per square mile). Another fact of interest, the proposed size of the Town of Leicester is roughly the same as our nation's capital (Washington, DC is about 68 square miles). Leicester's population is about 2.8% of DC's 581,500.

C. Service delivery issues. Even with the addition of 2 deputies, it is difficult to see how the proposed Town of Leicester could enjoy an enhanced level of service from incorporation over what it already has; the services it proposes to provide are primarily continuations of current arrangements. The sheer size of the proposed town represents a considerable obstacle to efficient and effective delivery of municipal services.

D. Planning and zoning issues. The Town of Leicester would remain subject to Buncombe County zoning. Under the recently-adopted Buncombe County zoning ordinance, the majority of the area is zoned OU (Open Use). The uses permitted in this classification are, as its title indicates, essentially unlimited, except for a few prohibited uses. There is a cluster of more specifically zoned property in the extreme southeastern corner of the area, where it begins to take on a more urban character. From a land use planning perspective, it would appear to make more sense for the incorporation to be concentrated in a much smaller area, generally centering on the Highway 63 and Alexander Road / Old Newfound Road intersections. This location exhibits a more "urban" development pattern than the remainder of the proposed area of incorporation; it is already known and accepted as the "town center" of Leicester. The incorporation of this area would allow the "town center" of Leicester to be established now and perhaps expanded at a later date, while also allowing a more comprehensive planning program to be developed that would address the concerns of Asheville (and potentially Woodfin) about the scale of the proposed incorporation and the ultimate land use pattern. Additionally, such an approach would allow the Town of Woodfin to be consulted about the desired land use pattern and service delivery on its border with the Town of Leicester in much the same way as has occurred during the Asheville's negotiations with Woodfin regarding the proposed annexation agreement.

E. Financial Impact: The financial impact to the City of Asheville would be a loss of \$20,000 in sales tax revenue.

Recommendation: For the reasons noted above, staff does not recommend adoption of the attached resolution, but could support a resolution for incorporation of a smaller area.

Attachments:

- 1) Map 1
- 2) Map 2
- 3) Population/Land Area Table
- 4) Resolution