

VIRGINIA:

BEFORE THE COMMISSION ON LOCAL GOVERNMENT

In the matter of the Notice by the TOWN OF LEESBURG, VIRGINIA, a municipal corporation of the Commonwealth of Virginia, of its intention to petition for the annexation of territory within THE COUNTY OF LOUDON, a political subdivision of the Commonwealth of Virginia, pursuant to Chapter 32 of Title 15.2 of the Code of Virginia (1950), as amended.

ADMINISTRATIVE CASE MANAGEMENT ORDER

I. Hearing Schedule

This matter is set for hearing on March 5-8, 2024, at the Leesburg Town Hall, Council Chamber, located at 25 W. Market Street, 2nd Floor, Leesburg, Virginia, 20176. The Commission has established the following hearing schedule:

Tuesday, March 5, 2024

3:00-6:00 PM Arrival and Site Visit

Wednesday, March 6, 2024

9:00-12:00 PM Town Argument

12:00-2:00 PM Break (Lunch)

2:00-5:00 PM Town Argument

Thursday, March 7, 2024

9:00-12:00 PM County Argument

12:00-2:00 PM Break (Lunch)

2:00-5:00 PM County Argument

5:00-7:00 PM Break (Dinner)

7:00 PM – TBD Public Hearing

Friday, March 8, 2024

8:30-9:30 AM Town Rebuttal

9:30-10:30 AM County Surrebuttal, if necessary

10:30-11:00 AM Break

11:00-12:00 PM Town Closing

12:00-1:00 PM County Closing

2:00 PM – TBD Commission Executive Session

II. Stipulations

The parties are encouraged to enter into stipulations to streamline the presentation of evidence and argument at the hearing. Counsel for the parties shall meet and confer on or before Monday, January 15, 2024 concerning such stipulations, including, but not limited to: governing the authenticity, foundation, and admissibility of documents or other evidence, and the preparation of a set of agreed exhibits the parties are likely to use at the hearing. Any agreement and stipulations will be without prejudice to either party's ability to identify additional documents or exhibits 30 days prior to the hearing, as set forth herein.

III. Exhibit and Witness List

Counsel for the parties must exchange on or before January 19, 2024, a list specifically identifying each exhibit to be introduced at the hearing, copies of any exhibits not previously supplied to the opposing party, and a list of witnesses, along with subjects of each witnesses' proposed testimony, separately identifying those the party expects to present and those it may call if the need arises. The lists of exhibits and witnesses must be filed with the Commission simultaneously therewith, but the exhibits should not then be filed. Any exhibit or witness not so identified and filed will not be received at the hearing, except in rebuttal or for impeachment or unless the admission of such exhibit or testimony of the witness would cause no surprise or prejudice to the opposing party and the failure to list the exhibit or witness was through inadvertence. Any objections to exhibits or witnesses must state the legal reasons therefor except on relevancy grounds, and must be filed with the Commission and a copy delivered to opposing counsel by February 16, 2024 or the objections will be deemed waived absent leave of the Commission for good cause shown.

IV. Prehearing Conferences

When requested by any party or upon its own motion, the Commission or the Commission's Chair may order a prehearing conference wherein motions, settlement discussions or other pretrial matters which may aid in the disposition of this matter can be considered.

V. Site Visit Arrangements

The Commission will hold a site visit on Tuesday, March 5, 2024 beginning at 3:00 P.M., departing from the Leesburg Town Hall, located at 25 W. Market Street, 2nd Floor, Leesburg, Virginia 20176. The Town is responsible for arranging transportation of the Commission and all counsel and representatives of the parties. Counsel for the parties shall confer and agree on a proposed route and agenda for the site visit.

VI. Public Hearing Arrangements

The Commission has set this matter for public bearing as set for the above. The public hearing will be held at the Leesburg Town Hall, Council Chamber located at 25 W. Market Street, 2nd Floor, Leesburg, Virginia 20176. The Town is responsible for arranging appropriate security for the public hearing.

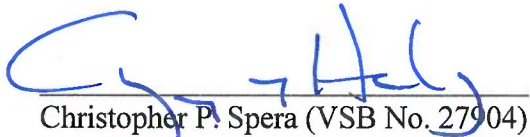
VII. Waiver or Modification of Terms of Order

Upon motion, the time limits and prohibitions contained in this Order may be waived or modified by leave of the Commission or its Chair for good cause shown.

ENTERED this ____ day of _____, 2024

Ceasor T. Johnson, D.Min., Chair.

WE ASK FOR THIS:



Christopher P. Spera (VSB No. 27904)
Jessica J. Arena (VSB No. 87642)
Town Attorney
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Leesburg, Virginia 20176
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Counsel for the Town of Leesburg, Virginia

SEEN:

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Nicholas Lawrence (VSB No. 76964)
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Counsel for the County of Loudoun, Virginia



GENTRY LOCKE
Attorneys

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December 20, 2023

By FedEx and E-Mail (LeGrand.Northcutt@dhcd.virginia.gov)

W. LeGrand Northcutt, J.D.
Senior Policy Analyst
Virginia Department of Housing and Community Development
Commission on Local Government
600 East Main Street, Suite 300
Richmond, VA 23219

Re: Town of Leesburg/Loudoun County Annexation/Town of Leesburg Motion for
Entry of An Administrative Case Management Order

Dear LeGrand:

We have enclosed the Town of Leesburg's Motion for the Entry of an Administrative Case Management Order. We ask that the Commission consider the proposed Order at the January 5, 2024 meeting.

Please let us know if the Town can provide anything further with respect to this request.

Very truly yours,

GENTRY LOCKE

Gregory J. Haley

GJH:as
Enclosures

cc: Leo P. Rogers
Nicholas Lawrence
Andrew R. McRoberts
Maxwell C. Hlavin
Christopher P. Spera



Andrew R. McRoberts
Attorney

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December 21, 2023

By UPS Overnight and E-Mail

W. LeGrand Northcutt, J.D.
Senior Policy Analyst
Virginia Department of Housing and Community Development
Commission on Local Government
600 East Main Street, Suite 300
Richmond, Virginia 23219

Re: Town of Leesburg/Loudoun County Annexation/Loudoun County Notice of Desire to Attempt to Negotiate an Agreement, Request to Honor Automatic Stay Pursuant to Virginia Code § 15.2-2907(E) and Response to Town of Leesburg Motion for Entry of Administrative Case Management Order

Dear LeGrand:

We have enclosed Loudoun County's Notice of Its Desire to Attempt to Negotiate an Agreement, which includes within it a Request to Honor the Automatic Statutory Stay Pursuant to Virginia Code § 15.2-2907(E), as well as a Response to the Town of Leesburg's Motion for Entry of Administrative Case Management Order.

Please do not hesitate to inform us if the County can provide you or the Commission with anything that will assist you in processing this Notice.

Sincerely,

SANDS ANDERSON PC

Andrew R. McRoberts

Enclosures

cc: Christopher P. Spera
Jessica J. Arena
Gregory J. Haley
Kathleen L. Wright
Andrew M. Bowman
Leo P. Rogers
Nicholas Lawrence

VIRGINIA:

BEFORE THE COMMISSION ON LOCAL GOVERNMENT

In the matter of the Notice by the TOWN OF LEESBURG, VIRGINIA, a municipal corporation of the Commonwealth of Virginia, of its intention to petition for the annexation of territory within THE COUNTY OF LOUDON, a political subdivision of the Commonwealth of Virginia, pursuant to Chapter 32 of Title 15.2 of the Code of Virginia (1950), as amended.

**TOWN OF LEESBURG MOTION FOR ENTRY OF ADMINISTRATIVE
CASE MANAGEMENT ORDER**

The Town of Leesburg, by counsel, pursuant to the Commission on Local Government Regulations of Procedure, 1VAC50-20-180(E)(schedule for review); 1VAC50-20-390(C) (schedule for review); and 1VAC50-20-620(L) and (M) (exchange and presentation of materials), requests that the Commission enter an Administrative Case Management Order to govern these proceedings.


1. The Administrative Case Management Order will allow the orderly preparation for and administration of the Commission's hearing and related proceedings scheduled for March 5-March 8, 2024.

2. The proposed Administrative Case Management Order provides for the hearing schedule, the development of stipulations, the exchange of exhibit and witness lists, prehearing conferences, site visit arrangements, public hearing arrangements, and for the waiver or modification of the order. A copy of the proposed Administrative Case Management Order is attached.

3. The Town has provided the proposed Administrative Case Management Order to Loudoun County for review and comment.

WHEREFORE, the Town of Leesburg moves the Commission on Local Government to enter the attached Administrative Case Management Order, with any appropriate revisions as determined by the Commission.

TOWN OF LEESBURG

By: 
By Counsel

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Jessica J. Arena (VSB No. 87642)
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bowman@gentrylocke.com

Counsel for the Town of Leesburg, Virginia

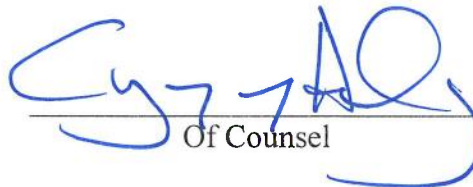
CERTIFICATE OF SERVICE

The undersigned counsel certifies that on this 20 day of December, 2023, a true copy of the foregoing was sent via FedEx and E-Mail to counsel for the County of Loudoun, Virginia:

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Counsel for the County of Loudoun, Virginia



Of Counsel



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January 3, 2024

By UPS Overnight and E-Mail

W. LeGrand Northcutt, J.D.
Senior Policy Analyst
Virginia Department of Housing and Community Development
Commission on Local Government
600 East Main Street, Suite 300
Richmond, Virginia 23219

Re: The County of Loudoun's Reply to the Town of Leesburg's Response to the County's Notice Pursuant to Va. Code § 15.2-2907(E)

Dear LeGrand:

We have enclosed Loudoun County's Reply to the Town of Leesburg's Response to the County's December 21, 2023 Notice, which I'd mentioned to you was forthcoming. Please pass this on the Commission and share with the public as appropriate.

We thank you and other Commission staff for all your efforts, especially as the new legislative session gets underway. As always, please let us know if there is anything the County can do to facilitate the Commission's consideration of these matters.

Very truly yours,

A handwritten signature in blue ink that reads "Andrew R. McRoberts".

Andrew R. McRoberts

Enclosures

cc: Christopher P. Spera
Jessica J. Arena
Gregory J. Haley
Kathleen L. Wright
Andrew M. Bowman
Leo P. Rogers
Nicholas Lawrence

VIRGINIA:

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In the matter of the Notice by the TOWN OF LEESBURG, VIRGINIA, a municipal corporation of the Commonwealth of Virginia, of its intention to petition for the annexation of territory within THE COUNTY OF LOUDOUN, a political subdivision of the Commonwealth of Virginia, pursuant to Chapter 32 of Title 15.2 of the Code of Virginia (1950), as amended.

THE COUNTY OF LOUDOUN’S REPLY TO THE TOWN OF LEESBURG’S RESPONSE TO THE COUNTY’S NOTICE PURSUANT TO VIRGINIA CODE § 15.2-2907(E)

The County of Loudoun, Virginia (the “County”), by counsel, submits this Reply to the Town of Leesburg’s (the “Town”) Response to the County’s Notice of Its Desire to Negotiate an Agreement pursuant to Virginia Code § 15.2-2907(E) (the “Response”).

The County’s Construction is Consistent with the Plain Meaning of “Suit”

1. Regarding ¶¶ 3, 17–27 of the Response, the County replies that “[i]t is the duty of the Court to read legislative enactments to give meaning to all the words used. [A tribunal] cannot read them ‘to render any words meaningless.’” *Northampton Cnty. Bd. of Zoning Appeals v. Eastern Shore Dev. Corp.*, 277 Va. 198, 202 (2009) (citations omitted).
2. “Every part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary.” *City of Richmond v. Virginia Elec. & Power Co.*, 292 Va. 70, 75 (2016). If the word “suit” as used in Virginia Code § 15.2-2907(E) only refers to proceedings “pending in a court”—as the Town argues—then the words “in any court of this Commonwealth” are rendered meaningless.

3. Contrary to the Town’s statutory reading, Virginia Code §§ 15.2-2907 and -2908 use the terms “action” and “suit” interchangeably, designating proceedings brought in “a court” by using appropriate modifiers.
 - a. For example, subsection (A) commands that “[n]o locality or person shall file any action *in any court in Virginia* to annex territory . . . without first notifying the Commission.” Virginia Code § 15.2-2907(A) (emphasis added).
 - b. The General Assembly directs the Commission to render its annexation findings “within six months after the Commission receives notice from the locality intending to file *court action*.” Virginia Code § 15.2-2907(A) (emphasis added).
 - c. In subsection (E), localities are informed that “[n]otwithstanding any other provision of law, any locality, either prior or subsequent to the filing of any annexation or partial immunity suit *in any court of this Commonwealth* in which it is one of the parties, may notify the Commission on Local Government that it desires to attempt to negotiate an agreement.” Virginia Code § 15.2-2907(E) (emphasis added).
 - d. Virginia Code § 15.2-2908, by contrast, *does not mention court*, but states expressly that an “action” may also constitute a “proceeding to which the Commission on Local Government has jurisdiction,” and that such action “shall be deemed to have been instituted upon the initial notice to the Commission required by subsection (A).”
4. From this pattern of usage, it emerges that when the General Assembly wants to refer specifically to an *action or suit filed in a court*, “it knows how to do so.” *See Kalergis v. Commissioner of Highways*, 294 Va. 260, 267 (2017).

5. The General Assembly uses no such modifier regarding the statutory stay in subsection (E), simply writing that “[a]ll suits for either annexation or partial immunity by or against any locality involved in such negotiations shall be stayed while the negotiations are in progress.” Virginia Code § 15.2-2907(E) (emphasis added). Of course, “all” means “all.” See *Tvardek v. Powhatan Village Homeowners Ass’n, Inc.*, 291 Va. 269, 277 (2016) (“The one canon of construction that precedes all others is that ‘[courts] presume that the legislature says what it means and means what it says.’”).
6. Thus, the General Assembly’s use of the terms “all suits” in Virginia Code § 15.2-2907(E), without using a modifier of “court,” indicates it intended to stay ALL proceedings, suits, or actions, whether filed in or out of a court of law. See *Kalergis*, 294 Va. at 267.

The County’s Use of Garner’s Dictionary of Legal Usage is Appropriate

7. Contrary to the Town’s insinuations in ¶ 21 n.1, the County elected the definition of “suit” used in Bryan A. Garner’s¹ Dictionary of Legal Usage out of a desire to give meaning to all the words in Virginia Code §§ 15.2-2907 and -2908, including the modifiers specifying certain suits and actions as “court actions” and “suits in court.” Using the County’s interpretation, that both “suit” and “action,” unmodified, indicate proceedings filed either in court or in the Commission, gives the modifiers designating actions as “court actions” and suits as “suits in court” full meaning and effect pursuant to proper statutory construction. See *VEPCO*, 292 Va. at 75.

¹ Bryan A. Garner is also the executive editor of Black’s Law Dictionary, which the Town insists the County should have preferred.

8. Appellate courts in Virginia cite Garner’s Dictionary of Legal Usage on many occasions, and so, despite the Town’s misleading claims to the contrary, it is a perfectly acceptable source to cite. *See Day v. MCC Acquisition, LLC*, 299 Va. 199, 214 (2020); *Bratton Estate of Slone v. Selective Ins. Co. of Am.*, 290 Va. 314, 334 (2015) (Kelsey, J., dissenting); *Bland Henderson v. Commonwealth*, 77 Va. App. 250, 259 (2023); *Montgomery v. Commonwealth*, 75 Va. App. 182, 195 (2023); *Hammer v. Commonwealth*, 74 Va. App. 225, 236 (2022); *Worsham v. Worsham*, 74 Va. App. 151, 178 n.9 (2022); *Johnson v. Commonwealth*, No. 1215-15-1, 2016 WL 6693910, at *3 n.5 (Va. App. Ct. Nov. 15, 2016).
9. For these reasons, the plain meaning of “suit” in subsection (E) is not limited to a suit filed in court, and the automatic statutory stay applies to suits filed in the Commission.
The Town’s Statutory Construction Imagines Internal Conflicts That Do Not Exist
10. Concerning ¶¶ 28–32 of the Town’s Response, the County asserts that the Town’s argument that the County’s statutory construction “renders [Virginia Code § 15.2-2907(F)] entirely superfluous” is wrong and a misreading of that subsection.
11. The Town incorrectly states in ¶ 29 of its Response that subsection (F) says that “localities may proceed with administrative proceedings before the Commission under Subsection A at the same time as settlement negotiations under Subsection E.” Subsection (F) permits a locality to “proceed simultaneously under subsections A and E of this section [15.2-2907].”
12. The General Assembly thereby allows a locality – in this case, the Town – to notice its intent to annex territory in the Commission while simultaneously noticing its desire to attempt to negotiate a settlement. Subsection (F) would thus have permitted the Town to

include a notice of its intent to negotiate an agreement, under subsection (E), along with its subsection (A) notice.

13. Subsection (F) comes to preempt, *inter alia*, any assertion that a locality must notice a desire to attempt negotiations before noticing an intent to annex territory. Localities may otherwise have thought that negotiations must be noticed before notice of intent to annex under subsection (A) because of the large costs associated with noticing annexation. *See* 1 Va. Admin. Code § 50-20-660 (“Where the requests for mediation are presented to the commission prior to the submission of formal notice of pending action as required by § 15.2-2907 of the Code of Virginia, the requests need not be accompanied by any of the statistical data or material required under Part IV (1VAC50-20-540 et seq.) of this chapter.”).
14. The Town’s argument that subsection (F) instead must mean that the automatic stay in subsection (E) only applies to “suits in court”—despite the fact that the statute expressly applies it to “all suits”—ignores the fact that subsection (E) states at the outset that “[n]otwithstanding any other provision of law, *any locality*” which is party to an annexation action—in court or in the Commission—“may notify the Commission on Local Government that it desires to attempt to negotiate an agreement.” Subsection (F) defines the Town’s right to simultaneously act under subsections (A) and (E). It does not operate to strip the County of its rights under subsection (E) to notice a desire to negotiate and to stay proceedings for at least three months in a good-faith attempt to do so.
15. For these reasons, the County’s statutory interpretation does not produce internal conflict between subsections (E) and (F) as argued by the Town.

Annexation Actions Commence Upon Notice Under Subsection (A), and the Commission Has Not Exercised its Regulatory Authority to Limit the Effect of the Statutory Stay to Court Proceedings

16. As to ¶ 33 of the Response, the County replies that it has already demonstrated above that in chapter 29 of Title 15.2, the General Assembly uses the terms “action” and “suit” interchangeably and delineates which uses of those terms refer only to actions or suits filed in court by using appropriate modifiers. *Compare* Virginia Code §§ 15.2-2907(A) (“No locality or person shall file any action *in any court in Virginia* to annex territory”) (“No *court action* may be filed until the Commission has made its findings of facts.”), *and* 15.2-2907(E) (“Notwithstanding any other provision of law, any locality, either prior or subsequent to the filing of any annexation or partial immunity suit *in any court of this Commonwealth* in which it is one of the parties.”), *with* -2907(E) (“*All suits* for either annexation or partial immunity by or against any locality involved in such actions shall be stayed while the negotiations are in progress.”) (“Immediately upon such finding and declaration by the Commission . . . any stay *of a pending suit for annexation* or partial immunity entered under this section shall automatically terminate”), *and* Virginia Code § 15.2-2908 (“An action or proceeding *to which the Commission on Local Government has jurisdiction* shall be deemed to have been instituted *upon the initial notice to the Commission required by subsection A* of § 15.2-2907.”).

17. The significance of the jurisdictional statement in Section -2908, *inter alia*, is as follows: Because “[a]n action to which the Commission on Local Government has jurisdiction shall be deemed to have been instituted” upon notice under subsection (A), it is included among the “pending suits for annexation” that must be stayed upon notice by “any

locality” under subsection (E). The General Assembly’s use of modifiers using the word “court” to designate actions and suits filed *in court* confirms the County’s interpretation, as demonstrated *supra*.

18. The County replies to ¶ 34 of the Town’s Response by noting that nothing in 1 Va. Admin. Code § 50-20-650 introduces leniency regarding the statutory stay in subsection (E). This negates any argument that the Commission’s regulations establish that the statutory stay in subsection (E) “does not apply to the Commission’s administrative proceedings.”
19. In fact, the regulations do not even mention the stay mandated in subsection (E). The rules and regulations as presently adopted by the Commission are thus not “more permissive” than those of the General Assembly in this instance. *See Allfirst Trust Co., N.A. v. County of Loudoun*, 268 Va. 428, 434 (2004) (holding that Commission’s authority under Code § 15.2-2903(1) “to make regulations, including rules of procedure for the conducting of hearings” gives the Commission authority to adopt regulations and procedural rules more lenient than those that apply to annexation courts).
20. It is debatable whether the Commission has the authority to adopt a regulation stating that the statutory stay in subsection (E) does not apply to administrative proceedings before the Commission. That the Commission has not done so to date is not debatable.
21. Therefore, because the Commission has not used its regulatory power to limit the effects of the stay in subsection (E) to proceedings before an annexation court, the plain meaning of subsection (E) applies the stay to *all annexation suits* against a party to negotiations, even if filed in the Commission.

The Commission is Not Disregarding Its Deadline; It is Respecting a Statutory Stay

22. Replying to ¶¶ 42–48 of the Response, the County reiterates that the statutory stay in subsection (E) applies to the Commission’s administrative proceedings according to the plain meaning of the relevant statutes. Additionally, the Town’s argument that subsection (A) contains “limiting language” that renders the Commission incapable of missing an otherwise applicable reporting deadline is completely without merit.
23. According to the Supreme Court of Virginia, “prohibitory or limiting language” that may convert a “shall” command from merely directory in nature to mandatory, must be language that provides a “**specific, exclusive remedy for**” violating the command in question. *Rickman v. Commonwealth*, 294 Va. 531, 540 (2017). Subsection (A) contains no such language.
24. In contrast to subsection (A), examples of such “prohibitory or limiting language” which provides for a “specific, exclusive remedy” include the following:
- a. As a first example, the Speedy Trial Act was found to have limiting language where it provided that an accused “be forever discharged from prosecution for an offense” if a trial for the accused takes place beyond certain time limits. *Id.* at 537.
 - b. Another example can be found in Virginia Code § 15.2-2285(B), which states that “[n]o zoning ordinance shall be amended or reenacted unless the governing body has referred the proposed amendment or reenactment to the local planning commission for its recommendations.” The statute then includes a specific, exclusive remedy for violation of this directive, namely, that “[f]ailure of the commission to report 100 days after the first meeting of the commission after the

proposed amendment or reenactment has been referred to the commission, or such shorter period as may be prescribed by the governing body, *shall be deemed approval*, unless the proposed amendment or reenactment has been withdrawn by the applicant prior to the expiration of the time period.” Virginia Code § 15.2-2285(B) (emphasis added).

- c. At the state level, under Virginia Code § 58.1-1823, the Department of Taxation has three months to act on a tax reassessment and refund request. The statute outlines a specific, exclusive remedy for failure to act within that timeframe, to wit, “the failure of the Department to act thereon within three months *shall*, as to matters first raised by the amended return, *be deemed an assessment for the purpose of enabling the taxpayer to pursue the remedies allowed under this chapter.*” Virginia Code § 58.1-1823 (emphasis added).
- d. Similarly, in an administrative appeal from a local mobile property or business tax assessment, “[t]he commissioner of the revenue or other assessing official shall undertake a full review of the taxpayer’s claims and issue a written determination to the taxpayer setting forth the facts and arguments in support of his decision within 90 days after such appeal is filed.” Virginia Code § 58.1-3983.1(B)(5). The statute then provides a specific, exclusive remedy for the assessing official’s failure to adhere to the 90-day deadline, to wit, “[a]ny taxpayer whose administrative appeal to the commissioner of the revenue or other assessing official pursuant to this subsection has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days’

written notice . . . elect to treat the application as denied[.]” Virginia Code § 58.1-3983.1(B)(6).

- e. Contrast this specific remedy to an untimely response with the statutory deadline in administrative appeals before the Tax Commissioner which, like subsection (A) of § 15.2-2907, contains no specific, exclusive remedy that would constitute limiting language. The statute directs that “[t]he Tax Commissioner shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer’s appeal, unless the taxpayer and the commissioner of the revenue are notified that a longer period will be required.” Virginia Code § 58.1-3983.1(D)(3). Then, “[s]uch longer period of time shall not exceed 60 days, and the Tax Commissioner shall notify the affected parties of the reason necessitating the longer period of time.” *Id.* The statute contains no specific remedy for a determination that, for whatever reason, is rendered after that deadline.
- f. The Tax Commissioner has regularly issued determinations after the statutory deadline. *Accord* Re: Appeal of Final Local Determination, PD 22-29, 2022 WL 1530894 (Va. Dept. Tax. Feb. 15, 2022) (deciding appeal from 2018 tax assessment); PD 21-147, 2021 WL 6808359 (Va. Dept. Tax. Nov. 23, 2021) (deciding appeal from 2016–2019 tax assessments). Determinations of the Tax Commissioner issued after the statutory deadline are valid and have full effect because the absence of a specific statutory remedy renders the deadline directory, not jurisdictional.
- g. Like the Tax Commissioner and his statutory deadlines, no exclusive remedy appears in Virginia Code § 15.2-2907(A) regarding the Commission’s deadlines,

rendering the “shall” statements therein directory in nature, **and not mandatory upon the Commission.**

25. Where, as here, the statute contains no limiting language prescribing an exclusive remedy, “the Courts are bound to devise the proper remedy.” *Rickman*, 294 Va. at 538 (quoting *Coleman v. M’Murdo*, 26 Va. 51, 82 (1827) (opinion of Green, J.)). Under this proper framework, subsection (A) contains no limiting language making it mandatory upon the Commission because it does not provide a “specific, exclusive remedy” for instances where, as here, a statutory stay applies and a postponement is in the best interests of the parties, the Commission, and the Commonwealth.
26. Subsection (E) clearly grants the County a right to attempt to negotiate a settlement and contemplates a period of at least three months for the parties to conduct those negotiations. The Commonwealth is interested in negotiated settlements between localities, as evidenced by the provisions of subsection (E) and the voluntary settlement agreement provisions in Virginia Code § 15.2-3400.
27. Once again, the County asserts that subsection (E) provides an automatic statutory stay of these annexation proceedings. Alternatively, however, in the absence of an exclusive remedy, the Commission should in its discretion allow at least three months from the filing of the County’s Notice of its Desire to Negotiate an Agreement for the parties to negotiate, under direction of the Commission. Giving the parties a chance to negotiate a settlement without simultaneously participating in adversarial hearing preparations, and the staff a break when most needed during the General Assembly session, is in the best interests of all.

*The Commission Should Deny Entry of the Town's Administrative Case Management Order
(the "ACMO")*

28. Concerning ¶¶ 52–57 of the Response, for the reasons stated above, entry of the ACMO is inappropriate in light of the statutory stay in subsection (E), and is not in the best interests of the parties, the Commission and the Commonwealth.
29. Additionally, the proposed ACMO is inappropriate because the exceedingly early submission and disclosure dates contained therein are not consistent with the regulations governing formal Commission reviews.
30. The regulations themselves are clear and do not require such early disclosures.
31. For example, “[t]he commission [merely] requires that all materials, data, and exhibits be presented to it and made available to other parties in advance of the commencement of the onsite component of the commission’s review.” 1 Va. Admin. Code § 50-20-620(M).
32. Moreover, the regulations merely state that “the parties or their counsel shall be expected to confer in advance of the time and date set for presentations in order to inform one another of their prospective witnesses and the order of their anticipated appearance.” 1 Va. Admin. Code § 50-20-620(L).
33. Of course, “discovery” has never been a part of the Commission’s administrative procedures or its regulations.
34. Thus, the regulations make clear that a “lack of discovery” is no excuse for disclosure deadlines far in advance of those found in other proceedings before public bodies servicing a judicial function. The Commission announced in its regulations that parties may submit exhibits up until the onsite component of the Commission’s review and never mentions an exhibit list at all. The Commission’s regulatory deadlines evince an intent by

the authors of the regulation to establish permissive disclosure deadlines for the parties to actions pending before the Commission.

35. Therefore, the Commission should reject the ACMO on its own terms because of the stay, good public policy, and its inconsistency with the Commission's own regulatory framework. The County will be glad to work with the Town on a mutually agreed-upon scheduling order if and when it becomes necessary.

36. That said, the County believes that any disclosure deadline found in any ACMO that would eventually be entered by the Commission should adhere, as closely as possible, to the "commencement of the onsite component of the commission's review" date identified in the Commission's regulations as the deadline for submission of material, data, and exhibits. The County would consider and be willing to discuss at the proper time disclosure dates closer to the ones contained in the Virginia Supreme Court's form preliminary scheduling order.

Entry of the ACMO Is Not Conducive to Successful Negotiations

37. Entry of the ACMO will negatively impact the likelihood of successful negotiations because, according to its announced timetable, witness and exhibit lists will be due mere days after the first scheduled mediation session, on January 10, 2024. This will require the parties to engage simultaneously in settlement negotiation and adversarial litigation preparation to accommodate an artificial schedule of the Town's design, creating duplicative costs for taxpayers that may prove unnecessary if negotiations succeed.

38. Immediate institution of the statutory stay found in subsection (E) will provide an opportunity for negotiations to run their course, consistent with the broad public policy

interest in localities settling their disagreements voluntarily, and avoiding unnecessary expenditure of public dollars and public employees' time.

WHEREFORE, the County of Loudoun, Virginia respectfully requests that the Commission take notice of its Reply, deny the Town's motion for entry of its ACMO, stay these proceedings during negotiations between the parties, grant the relief requested by the County in its Notice of 21st December, 2023, and grant such other relief as the Commission deems just and proper.

Respectfully submitted this 3rd day of January, 2024.

COUNTY OF LOUDOUN, VIRGINIA

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Counsel for the County of Loudoun, Virginia

CERTIFICATE OF SERVICE

The undersigned counsel certifies that on this 3rd day of January, 2024, a true copy of the foregoing was sent via UPS Overnight and e-mail to counsel for the Town of Leesburg, Virginia:

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By: Andrew R. McRobert
Of Counsel

VIRGINIA:

BEFORE THE COMMISSION ON LOCAL GOVERNMENT

In the matter of the Notice by the TOWN OF LEESBURG, VIRGINIA, a municipal corporation of the Commonwealth of Virginia, of its intention to petition for the annexation of territory within THE COUNTY OF LOUDOUN, a political subdivision of the Commonwealth of Virginia, pursuant to Chapter 32 of Title 15.2 of the Code of Virginia (1950), as amended.

**NOTICE BY THE COUNTY OF LOUDOUN OF ITS
DESIRE TO ATTEMPT TO NEGOTIATE AN AGREEMENT,
REQUEST TO HONOR AUTOMATIC STAY
PURSUANT TO VIRGINIA CODE § 15.2-2907(E), AND
RESPONSE TO TOWN OF LEESBURG’S MOTION FOR
ENTRY OF ADMINISTRATIVE CASE MANAGEMENT
ORDER**

COMES NOW the County of Loudoun, Virginia (“Loudoun” or the “County”) before the Commission on Local Government (the “Commission”) and, pursuant to Virginia Code § 15.2-2907(E) and 1 Virginia Administrative Code § 50-20-650, provides notice to the Commission of its desire to attempt to negotiate an agreement relative to annexation with the Town of Leesburg (the “Town”) under the direction of the Commission, and that the parties have agreed to submit this matter to mediation before the Hon. Jan L. Brodie (Ret.). The mediation is currently anticipated to begin the second week of January, 2024.

Further, the County comes, pursuant to Virginia Code § 15.2-2907(E) and 1 Virginia Administrative Code 50-20-650, to request that the Commission honor the automatic statutory stay provided therein and/or to stay the matter itself as permitted by law, and to advise the Commission of the progress that has been made by the parties toward reaching a settlement, to wit:

Planned Mediation

1. In the months before December 2023, the parties engaged in substantive discussions on various issues related to the pending annexation proceeding, and other relevant intergovernmental issues.
2. On December 5, 2023, the County, by counsel, proposed to the Town that the parties participate in a mediated negotiation under the direction of the Commission. This proposal was discussed again on December 6, 2023, and the respective counsel for the parties agreed to consult with their governing bodies to confirm support for the mediation process.
3. On December 12, 2023, following the December 11, 2023, meeting of the Town Council, counsel for the Town confirmed the Council's support for the mediated negotiations proposed by the County.
4. At its meeting on December 19, 2023, the Loudoun County Board of Supervisors adopted a motion by a recorded affirmative unanimous vote of its members, which specifically authorized the County Attorney and County Administrator to commence the mediated negotiations noticed herein.
5. The County is providing a copy of this notice to all adjacent localities pursuant to Virginia Code § 15.2-2907(E). The localities so notified are set forth in **Appendix A**.
6. The most desirable outcome for the County, the Town, and the Commonwealth in this annexation proceeding is to achieve a mediated resolution, and the County's goal for the negotiations noticed herein is to achieve a voluntary settlement agreement pursuant to Virginia Code § 15.2-3400(1) & (2).

7. To foster a spirit of cooperation, the County and the Town have agreed on the mediator and, pursuant to Virginia Code § 15.2-2907(E), to share equally the costs of these mediated negotiations, including expenses incurred by the Commission or its staff in support of the mediated negotiations.
8. The County intends that any voluntary settlement agreement shall include such “fiscal arrangements, land use arrangements . . . arrangements for infrastructure, revenue and economic growth sharing . . . boundary line adjustments . . . as well as the modification or waiver of specific annexation, transition or immunity rights” as are necessary to resolve all outstanding differences between the parties in this annexation action.
9. The County and the Town have previously reached substantial agreement on the financial terms of a settlement, including, *inter alia*, tax revenue incentives for the Town, and, for the County, assurances that County residents connected to Town utilities will no longer pay higher “out-of-town” rates for those utilities than do Town residents. The most significant remaining issues to be discussed in the negotiations are the Town’s insistence that it retain the ability to petition for city status and to file for adversarial annexation in the future, and the County’s insistence that neither city status for the Town, nor adversarial annexation proceedings, are in the best interests of the Town, County, or Commonwealth. The County believes that mediation under the direction of the Commission is best suited to resolve these remaining issues.
10. Pursuant to Virginia Code § 15.2-3400(3), any voluntary settlement agreement agreed upon by the parties must be presented to the Commission for a hearing, whereupon the Commission will issue a written advisory report as to whether the voluntary settlement agreement is in the best interest of the Commonwealth.

The Town's Proposed Case Management Order and the County's Requested Relief

11. Oral presentations by the parties and a public hearing on this adversarial annexation are currently scheduled for March 4–8, 2024, concluding with the Commission's regular Quarterly Meeting on March 8. The Town has filed a proposed scheduling order utilizing that date, which the County responds to below. However, pursuant to Virginia Code § 15.2-2907(E), this notice effects an immediate stay of proceedings related to the action, to last until both parties terminate negotiations or until the Commission declares that three months have passed without progress in negotiations at a public hearing.
12. The County wants to give this agreed mediation the greatest chance to succeed and believes the automatic stay will make the mediation more likely to be successful, save the Commission, its staff, and the parties the time and expense of simultaneously preparing for an adversarial proceeding, the costs of which are ultimately borne by the taxpayers. The County understands that the Town takes a different position on this statutorily invoked mediation and automatic stay, and so includes here, for the Commission's benefit, a more detailed explanation of the statutory framework surrounding this notice and stay.
13. Denying the Town's motion and proposed order at this time, and granting the County's requested relief is proper because (1) a harmonious reading of Virginia Code § 15.2-2907(A) and (E) provides that an automatic stay of adversarial annexation proceedings is triggered upon notice of desire to negotiate by any party to an annexation action; and (2) allowing the parties to conduct negotiations without adversarial proceedings looming will conserve public resources, is good public policy, aligns with

the legislative intent of subsection (E), and benefits the interests of the parties and their constituents, the Commission, and the Commonwealth; and (3) the Commission's report filing schedule is directory, not mandatory.

Automatic Stay under Virginia Code § 15.2-2907(E)

14. The County requests that the Commission honor and comply with the automatic statutory stay of Virginia Code § 15.2-2907(E).
15. The discretionary power vested in the Commission to extend the report filing date under Virginia Code § 15.2-2907(A) must not be confused with the statutory stay of annexation proceedings codified in Virginia Code § 15.2-2907(E). Subsection (E) vests either party with the statutory right to “notify the Commission on Local Government that it desires an attempt to negotiate an agreement.” Importantly for the Commission here, the statute further orders that “[a]ll suits for either annexation or partial immunity by or against any locality involved in such negotiations shall be stayed while the negotiations are in progress.” This statutory stay is not discretionary to the Commission, but rather functions automatically as a matter of law.
16. Although subsection (E) uses the word “suit,” Virginia Code § 15.2-2908 removes any ambiguity attending when an annexation “suit” is “instituted,” by stating expressly that such action or proceeding “shall be deemed to have been instituted upon the initial notice to the Commission required by subsection A of § 15.2-2907.” This interpretation is consonant with the legal definition of “suit,” which “refers to an ongoing dispute at any stage, from the initial filing to the ultimate resolution.” Bryan A. Garner, *Garner's Dictionary of Legal Usage* 862–63 (3d ed. 2011). Thus, the Commission's discretionary extension in subsection (A) is not related to the automatic stay of the

proceeding in subsection (E). In fact, subsection (A) grants the Commission the discretion, with consent of all parties, to appoint its own independent mediator, or to act as mediator itself without consent of the parties. This procedure is separate from the party-initiated negotiations outlined in subsection (E).

Harmonizing Code § 15.2-2907(A) & (E)

17. Public bodies interpreting Virginia statutes “have a duty, whenever possible, to interpret the several parts of a statute as a consistent and harmonious whole so as to effectuate the legislative goal.” *Oraee v. Breeding*, 270 Va. 488, 498 (2005) (internal quotation marks omitted). “A statute should be read and considered as a whole, and the language of a statute should be examined in its entirety to determine the intent of the General Assembly from the words contained in the statute.” *Id.* “In doing so, the various parts of the statute should be harmonized so that, if practicable, each is given a sensible and intelligent effect.” *Id.* These principles must be used in applying Virginia Code § 15.2-2907.
18. Subsections (A) and (E) simply operate on different timetables, with subsection (A) contemplating a 60-day extension, at the discretion of the Commission, as the stated filing date for the Commission’s report.
19. Contrast this with subsection (E), which only grants the Commission authority to terminate negotiations if no substantial progress is made after three months from the notice of desire to mediate. Nothing could be more damaging to cooperative mediation than to have the Commission conduct an adversarial hearing in the middle of those negotiations. The intended purpose of the mediation stay is to focus the efforts of the parties on settlement. An interpretation that mandates concurrent adversarial and

mediation processes would not only be disruptive to a collaborative negotiation process—possibly catastrophically so—but would also require both localities to commit significant public dollars and staff resources in a wasteful exercise. Clearly the legislative intent and public policy goals counsel for the Commission to give negotiations a chance under its direction — at least three months’ time unless earlier terminated by the parties.

20. Not only does this proper reading of the statute harmonize subsections (A) and (E), it also better fits the plain meaning of “extension” and “stay,” which are different procedural mechanisms. An “extension” refers to “[a] period of additional time to take an action, make a decision, accept an offer, or complete a task.” Black’s Law Dictionary (11th ed. 2019). A “stay,” however, is “an order to suspend all or part of a judicial proceeding or a judgment resulting from that proceeding.” Black’s Law Dictionary (11th ed. 2019). A stay “temporarily suspend[s] the source of authority to act,” and in so doing “suspends judicial alteration of the status quo.” *National Assoc. for Advancement of Colored People (Hanover Cnty. Chapter) v. Commonwealth ex rel. Va. State Water Control Bd.*, 74 Va. App. 702, 713 (2022) (internal quotation marks omitted). An extension merely pushes back a filing deadline (which itself is directory and not mandatory as discussed below).

The Town’s Statutory Interpretation Leads to Absurd Results

21. The Town’s position also leads to absurd, illogical results. “When interpreting statutes, courts ‘ascertain and give effect to the intention of the legislature.’” *Emmanuel Worship Cntr. v. City of Petersburg*, 300 Va. 393, 405 (2022). “[S]tatutes are to be construed so as to avoid an absurd result.” *Eastlack v. Commonwealth*, 282

- Va. 120, 126 (2011). “A statute’s plain language leads to ‘absurd results’ when it produces illogical or anomalous results.” *Emmanuel Worship Cntr.*, 300 Va. at 405.
22. Under the Town’s theory, once the Commission exhausts its one-time, 60-day discretionary extension, the parties lose the ability to request negotiations and effect a stay of proceedings that are part of the “action” or “suit.” This, despite the fact that subsection (E) provides expressly that “[n]otwithstanding any other provision of law, any locality” may notice mediation before the Commission. Subsection (E) provides that the parties will have at least three months to negotiate before the Commission may declare negotiations terminated.
23. It would be absurd and violate the rules of statutory construction to interpret the Commission’s discretionary authority to extend its own filing deadline by 60 days in subsection (A) to operate as a negation of each locality’s right to notice mediation and effect an automatic stay of proceedings, which subsection (E) contemplates lasting a minimum of three months, and, *in extremis*, perhaps up to a year from the date of this notice. 1 Va. Admin. Code 50-20-650.
24. Thus, the harmonious interpretation of subsections (A) and (E) supports the Commission’s recognition of the statutory stay.

Good Public Policy Supports the Commission Honoring the Automatic Stay

25. It is recognized in the Commonwealth that “[a]nnexation proceedings are typically complex, protracted and expensive to the governing bodies involved, imposing a heavy fiscal burden upon taxpayers.” *Allfirst Trust Co., N.A. v. County of Loudoun*, 268 Va. 428, 433 (2004). Proceedings before the Commission, while addressing the issue of complexity, “necessarily add[] to [annexation’s] expense.” *Id.* at 434. The legislative

intent behind party-initiated mediation is clearly to help mitigate the expense to the taxpayer and achieve amicable results between localities. Forcing parties to engage in, and possibly conclude, an adversarial proceeding while such mediation is ongoing is contrary to this legislative intent.

26. This automatic stay gives the parties a chance to negotiate a voluntary resolution under the Commission's direction and with the assistance of a mediator, which the parties have agreed would best serve the interests of the County, the Town, the Commission, and the Commonwealth. Three months is the minimum amount of time for negotiations contemplated by subsection (E) and 1 VAC 50-20-650. Honoring that timeframe is good public policy that will conserve public dollars and human resources.
27. The parties have agreed to begin mediation during the second week of January, 2024 and the County intends to continue the mediated negotiations into subsequent months if progress is being made on boundary adjustment or other inter-jurisdictional issues.
28. The County believes that the parties would benefit from Commission involvement in the mediation, perhaps as part of the March 8 agenda if a final resolution is not reached before then. The County recognizes that the Commission and its staff will be busy in the upcoming General Assembly session, and not likely available until March.
29. To the extent the Commission is not directly involved as the talks progress, the parties will keep the Commission advised of the progress being made in the mediated negotiations. To this end, the County proposes that the Commission direct that the mediator submit reports to the Commission to satisfy this requirement.

The Commission's Report Deadline is Not Mandatory

30. It is correct that Virginia Code § 15.2-2907(A) states that the Commission, in its discretion, “may extend the period for filing its report by no more than sixty days.” The next sentence is presumably the legal basis for the Town’s position, to wit, that “[n]o further extension thereafter of the time for filing shall be made by the Commission without the agreement of the parties.” The County acknowledges that the Commission has already surpassed the period identified in Virginia Code § 15.2-2907(A) by agreement of the parties.
31. Importantly, the Commission’s deadline for filing a report is directory and not mandatory. Thus, the Commission has the power to delay issuance of its report without concurrence of all parties.
32. The Courts have held that similar statutory deadlines for government officials and bodies are not legally binding if the official or body chooses to allow more time to complete its duties. *See Tran v. Bd. of Zoning Appeals*, 260 Va. 654, 657–58 (2000) (statutory 90-day period in which BZA “shall” schedule hearing on appeal “is directory but not mandatory”); *Commonwealth v. Wilks*, 260 Va. 194, 199 (2000) (“The use of ‘shall,’ in a statute requiring action by a public official, is directory and not mandatory unless the statute manifests a contrary intent.”) (Commonwealth’s Attorney filing required within 21 days); *Commonwealth v. Rafferty*, 241 Va. 319, 324, 402 S.E.2d 17, 20 (1991) (quoting *Nelms v. Vaughan*, 84 Va. 696, 699–700 (1888)) (“A statute directing the mode of proceeding by public officers is to be deemed directory, and a precise compliance is not to be deemed essential to the validity of the proceedings, unless so declared by statute.”) (use of word “shall” in

statute did not render magistrate’s attachment of certificate of refusal of blood or breath alcohol test “essential to the validity” of the proceeding); *Kidder v. Virginia Birth-Related Neurological Injury Compensation Program*, 37 Va. App. 764, 772 (2002) (“The thirty-day response period set out in Code § 38.2-5003(D)” for the Program is directory, even though the statute used the word “shall”); *Wells v. Commonwealth*, No. 0318-10-2, 2011 WL 3276194, at *3 (Va. Ct. App. Aug. 2, 2011) (under Code § 40.1-6(2), Commissioner of the Department of Labor and Industry “*shall cause to be prosecuted* all violations of law relating to employers or business establishments before any court of competent jurisdiction” but statute “is directory and not mandatory” and so failure to do so creates no rights).

33. The County is requesting the Commission to grant the relief it requests and allow the parties to mediate without the added expense and pressure of preparing for an adversarial hearing. Even if there were not a statutory stay in effect, the Commission has the power to grant this relief, notwithstanding the Town’s opposition, due to its consistency with the Commission’s purpose and good public policy.

Response to Town’s Motion for Entry of Administrative Case Management Order

34. Procedurally, if the Commission honors the statutory stay in Virginia Code § 15.2-2907(E) or otherwise stays the matter, entry of the Town’s case management order would be inappropriate (indeed, barred). *See National Assoc. for Advancement of Colored People (Hanover Cnty. Chapter)*, 74 Va. App. at 713. Therefore, the Commission should deny the Town’s motion for entry of its proposed order.
35. Entry of the proposed order would force both localities to simultaneously prepare for mediated negotiations and adversarial proceedings. Both localities will incur

- unnecessary, burdensome financial and human-resources costs that mediated negotiations are designed to avoid.
36. Pursuant to Virginia Code § 15.2-2907(E) and 1 Va. Admin. Code 50-20-650, a hearing before the Commission is necessary to either confirm a voluntary settlement agreement between the parties or to determine that three months have passed with no progress on a negotiated settlement.
37. The Town's proposed order does not provide a date, time, or location for the three-month hearing mandated in subsection (E) and 1 Va. Admin. Code 50-20-650. Any case management order should include a scheduled hearing, at least three months from the date of this notice, for the Commission to check the status of negotiations and either schedule a hearing to approve a voluntary settlement agreement, approve continued mediated negotiations, or terminate negotiations, lift the statutory stay, and schedule an adversarial hearing.
38. Substantively, the County has concerns regarding the dates in the proposed order, including inconsistencies with uniform procedure and the Rules of the Supreme Court of Virginia, which the parties previously discussed should govern any proposed schedule in this action.
39. Moreover, if the mediation were unsuccessful and such an order were entered in the future, the County suggests that the order reference deadlines a certain number of days before the first day of the then-planned adversarial hearing rather than dates certain, so that if the hearing were continued again for any reason (including agreement of the parties), another order would not be required. This is also consistent with the Virginia Supreme Court's form scheduling order.

WHEREFORE, the County respectfully requests that the Commission grant the following relief and enter an order providing for the following:

1. Take notice of the County's desire to attempt to negotiate an agreement with the Town of Leesburg relative to annexation utilizing mediation under the direction of the Commission; and
2. Honor the statutory stay of proceedings in this action to allow for mediation under Virginia Code § 15.2-2907(E) or otherwise grant the County's request for a stay; and
3. Stay the adversarial annexation action, currently scheduled for March 4-8 2024, and the Commission's report deadline, to allow the mediated negotiations noticed herein a chance to succeed; and
4. Take notice of the mediated negotiations outlined herein, currently planned to begin the second week in January 2024; and
5. Participate in the mediation between the parties conducted pursuant to Virginia Code § 15.2-2907(E), as appropriate, either directly or by designation of a Commissioner or other designee, and receive a post-mediation report or reports from the mediator should a voluntary settlement agreement not be reached by the parties; and
6. Deny the Town of Leesburg's Motion for Entry of Administrative Case Management Order; and
7. Schedule a mediation session and status hearing as part of the agenda for the Commission's regular meeting in March 2024, at which time the Commission may have the opportunity to approve the voluntary agreement of the Town and County and dismiss the annexation proceeding as resolved, engage in a mediation session should the parties be unsuccessful in reaching a final mediated settlement prior to that date,

receive an update on the progress of mediated negotiations relative to annexation, or set a future public hearing to potentially terminate the automatic stay if there is demonstrated futility of the mediation proceedings; and

8. Approve such other relief as may be consistent with the foregoing.

A draft order is provided for the accomplishment of the foregoing.

Respectfully submitted this 21st day of December, 2023.

COUNTY OF LOUDOUN, VIRGINIA

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Counsel for the County of Loudoun, Virginia

CERTIFICATE OF SERVICE

The undersigned counsel certifies that on this 21st day of December, 2023, a true copy of the foregoing was sent via UPS Overnight and e-mail to counsel for the Town of Leesburg, Virginia:

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Counsel for the Town of Leesburg, Virginia



Of Counsel

APPENDIX A: LOCALITIES NOTIFIED

Pursuant to Virginia Code § 15.2-2907(E) and 1 Va. Admin. Code § 50-20-650, the following localities that are adjacent to and/or included within the County of Loudoun have been provided with a copy of this notice.

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VIRGINIA:

BEFORE THE COMMISSION ON LOCAL GOVERNMENT

In the matter of the Notice by the TOWN OF LEESBURG, VIRGINIA, a municipal corporation of the Commonwealth of Virginia, of its intention to petition for the annexation of territory within THE COUNTY OF LOUDOUN, a political subdivision of the Commonwealth of Virginia, pursuant to Chapter 32 of Title 15.2 of the Code of Virginia (1950), as amended.

ORDER

This matter came before the Commission upon Loudoun County’s Notice of Its Desire to Negotiate an Agreement, Request to Honor Automatic Stay Pursuant to Virginia Code § 15.2-2907(E), and Response to Town of Leesburg’s Motion for Entry of Administrative Case Management Order (the “Notice”). The Commission has reviewed the Notice and has determined that the legal and factual bases set out in the Notice establish just grounds for the relief granted herein.

The Commission therefore finds that: (1) the County has a statutory right to notice mediation and an automatic stay pursuant to Virginia Code § 15.2-2907(E), or in the alternative, the Commission may grant the County’s request for a stay of proceedings in the best interests of the Commonwealth and the parties; (2) such stay shall remain in place until both parties agree to terminate negotiations, the Commission finds that three months have passed with no progress made at a public hearing, or twelve months pass from the date of the Notice; (3) by operation of the stay, it is inappropriate for the Commission to enter any orders, including case management orders, in an annexation action by or against a party involved in these negotiations; (4) the adversarial annexation hearing currently scheduled for March 4–8, 2024, falls within the three-month period

encompassing the statutory stay; and (5) the County has requested Commission involvement in the noticed negotiations.

WHEREFORE, IT IS HEREBY ORDERED THAT:

1. Notice be taken of the County's desire to negotiate an agreement with the Town of Leesburg relative to annexation utilizing mediation, under the direction of the Commission; and
2. The statutory stay of proceedings in Virginia Code § 15.2-2907(E) shall take immediate effect, and/or all actions relative to the Town of Leesburg's proposed annexation are hereby stayed pending the Commission's determination of the status of negotiations; and
3. Notice be taken that mediation is scheduled between the parties, to be facilitated by an agreed mediator and that such negotiations are anticipated to take place during the second week in January, 2024; and
4. The Town of Leesburg's Motion for Entry of Administrative Case Management Order be DENIED at this time; and
5. In lieu of adversarial annexation proceedings, a status hearing and potential mediation session shall be set as part of the agenda for the Commission's regular meeting in March 2024, at which time the Commission may have the opportunity to approve the voluntary agreement of the Town and County and dismiss the annexation proceeding as resolved, engage in a mediation session should the parties be unsuccessful in reaching a final mediated settlement prior to that date, receive an update on the progress of mediated negotiations relative to annexation, and/or set a future public hearing to potentially terminate the automatic stay if there is demonstrated futility of the mediation proceedings.

Let the Commission staff circulate copies of this Order to counsel for the parties and to all localities listed in Appendix A of the Notice.

ENTERED this ____ day of _____, 2024
