



White River Citizens United
September 22, 2008

Agenda

- Available Options
 - Status Quo
 - Annexation
 - Self-Incorporation
 - Merger/Reorganization
- Considerations for Each Option
 - Timing
 - Necessary Resources
 - Costs
 - Community Effort
 - Community Control

Status Quo

- So long as the conditions for annexation are met, surrounding municipalities can elect to annex all or parts of the unincorporated area.
- Residents opposed to these annexations will have to follow the legal recourses available to them in an effort to prevent the annexations.
- In the event that residents oppose an annexation, significant time, resources, cost and effort may need to be dedicated to a legal battle against the annexation.
- Community control over the process of incorporation would be on a purely reactive basis.

Annexation

- Three types of annexation allowed:
 - Involuntary
 - Partially voluntary – Requested by at least 51% of the owners of land or 75% of the owners of the assessed valuation within the territory to be annexed
 - Fully voluntary – Requested by 100% of the owners of land within the territory to be annexed

Annexation - Process

- The legislative body of a municipality can introduce an ordinance to annex territory that is contiguous to the municipality
 - To be contiguous, at least 1/8 of the boundary of the territory to be annexed must coincide with the boundary of the municipality
 - Ordinance must contain:
 - A description of the boundaries of the territory to be annexed;
 - The approximate number of acres in the territory to be annexed;
 - A description of any special terms and conditions adopted such as postponement of the effective date of annexation or special provisions for the future management and improvement of the annexed territory;
 - A description of any property tax abatements approved.

Annexation - Process

- The legislative body of the annexing municipality must adopt a written fiscal plan which details:
 - The cost estimates of the planned services to be provided to the annexed territory;
 - The methods of financing the planned services;
 - The plan for organization and extension of services;
 - Noncapital planned services (such as police and fire) will be provided to the annexed territory within 1 year of the effective date of the annexation; and
 - Capital planned services (such as street construction and utilities) will be provided to the annexed territory within 3 years of the effective date of the annexation.

Annexation - Process

- After introduction of the annexation ordinance, the legislative body of the annexing municipality shall conduct a public hearing.
- Notice of the public hearing must be published prior to the hearing and must be mailed via certified mail to landowners within the territory to be annexed. The notice must include:
 - Legal description of the territory to be annexed
 - Date, time, location and subject of the public hearing
 - Map of the current municipal boundaries and the proposed municipal boundaries
 - Current zoning classifications of the territory to be annexed and any proposed changes
 - Detailed summary of the fiscal plan and location where the full plan can be obtained
 - Statement that the fiscal plan will be provided after adoption to any landowner who requests a copy
 - Contact information

Annexation - Process

- After the public hearing, the legislative body of the municipality may adopt the annexation ordinance.
- In the absence of a remonstrance, the ordinance takes effect at least 90 days after its publication and filing with appropriate parties.
- When a municipality annexes territory which lies within a fire protection district, the annexation ordinance takes effect the second January 1 that follows the date the ordinance is adopted.
 - The municipality shall:
 - Provide fire protection to that territory beginning on the effective date of the ordinance; and
 - Send written notice to the fire protection district of the date the municipality will begin to provide fire protection services within 10 days of the ordinance adoption
- Annexation may not take effect in the year preceding the next federal decennial census. Annexation would take effect on January 2 of the year in which the federal decennial census is conducted.

Annexation - Process

- Annexation may be appealed by filing with the county circuit or superior court a written remonstrance signed by:
 - At least 65% of the owners of land in the territory to be annexed; or
 - The owners of more than 75% in assessed valuation of the land in the territory to be annexed.
- The remonstrance must be filed within 90 days after publication of the annexation ordinance.
- After determining the remonstrance is sufficient, the court shall set a hearing on the remonstrance within 60 days of the determination.
- The court shall order the proposed annexation to take place if certain requirements concerning the territory to be annexed are met and the municipality has developed and adopted a written fiscal plan.

Annexation - Process

- The court shall order the proposed annexation not to take effect if:
 - Police, fire and street services are adequately furnished by a provider other than the municipality seeking the annexation;
 - The annexation will have a significant financial impact of the residents or owners of land;
 - The annexation is not in the best interest of the owners in the territory proposed to be annexed;
 - One of the following opposes the annexation:
 - At least 65% of the owners of land in the territory proposed to be annexed.
 - The owners of more than 75% in assessed valuation of the land in the territory to be annexed.
- The municipality bears the burden of proof that the annexation is in the best interests of the residents of the territory to be annexed.

Annexation - Process

- Differences if annexation is partially voluntary
 - Owners of land file a petition with the legislative body which is signed by at least:
 - 51% of owners of land in the territory to be annexed; or
 - The owners of 75% of the total assessed valuation of the land to be annexed.
 - Written fiscal plan must be adopted prior to the annexation ordinance.
 - Terms and conditions of annexation are not applicable.
 - If the municipality does not pass an ordinance within 150 days of the filing of the petition, the petitioners may take the proposed annexation to court and allow the court to make the determination of whether or not the proposed annexation should occur.

Annexation - Process

- Differences if fully voluntary
 - Owners of land file a petition with the legislative body which is signed by 100% of landowners of the territory to be annexed.
 - Public hearing may be held not more than 30 days after filing of petition within notice of the hearing being published at least 20 days prior to the hearing.
 - The municipality may adopt the annexation ordinance not earlier than 14 days after the public hearing.
 - If the municipality does not pass an ordinance within 60 days of the filing of the petition, the petitioners may take the proposed annexation to court and allow the court to make the determination of whether or not the proposed annexation should occur.
 - A remonstrance may not be filed.

Annexation - Timing

	Involuntary	Partially Voluntary	Fully Voluntary
Petition		Initiation	Initiation
Introduction of ordinance	Initiation	Not later than 150 days after filing of petition	Not later than 30 days after filing of petition
Fiscal plan	Prior to public hearing	Prior to adoption of ordinance	After the public hearing
Notice of public hearing	At least 60 days prior to hearing	At least 60 days prior to hearing	At least 20 days prior to hearing
Public hearing	Not earlier than 60 days after introduction of ordinance	Not earlier than 60 days after introduction of ordinance	Not later than 30 days after filing of petition
Ordinance adoption	Not earlier than 30 days nor later than 60 days after public hearing	Not earlier than 30 days nor later than 60 days after public hearing	Not earlier than 14 days after public hearing
Remonstrance			Not available
Filing	Within 90 days of publication of ordinance	Within 90 days of publication of ordinance	
Hearing	Within 60 days of determination	Within 60 days of determination	

Annexation – Resources and Cost

- For the territory to be annexed, the resources and costs required to achieve annexation are minimal. In the case of a voluntary annexation, there are some administrative expenses in terms of preparing and filing the petition. For involuntary annexations, there are no necessary expenses for the territory to be annexed.
- However, if residents or landowners in the territory to be annexed are opposed to the annexation, opposing the annexation through the public hearing and potential remonstrance could require significant time and expense.

Annexation – Community Effort and Control

- To allow an involuntary annexation, there is little effort necessary on the part of the residents and landowners of the territory to be annexed. There is also little control over the process.
- To allow a voluntary annexation, the residents and landowners of the territory to be annexed must prepare the annexation petition. After the filing of the petition, little effort is necessary and little control over the process exists.
- In the event the residents and landowners of the territory to be annexed oppose the annexation, significant effort must be expended to oppose the annexation. Even with this effort, the residents and landowners have only minimal control over the final outcome.

Self-Incorporation - Process

- Initiation
 - A written petition signed by 50 owners of land must be filed with the executive of the county. The petition must state that:
 - The territory is used or will be used, in the foreseeable future, for commercial, industrial, residential or similar purposes;
 - The territory is reasonably compact and contiguous;
 - There is enough undeveloped land in the territory to allow for growth; and
 - Incorporation is in the best interests of the citizens of the territory.
 - A survey of the territory signed by a certified surveyor
 - A list of the territory's residents and land owners with mailing address completed not more than 30 days prior to filing
 - A statement of the assessed valuation of the territory certified by the township or county assessor
 - A statement of the services to be provided by the town and the timing of implementation of such services
 - A statement of the cost of such services and the proposed tax rate for the town
 - The name to be given to the proposed town

Self-Incorporation - Process

- County plan commission reviews the petition and shall make its recommendation to approve or disapprove to the county executive at least 10 days prior to the public hearing
- Within 90 days of filing the petition, the county executive shall hold a public hearing. The petitioners must send notice of the hearing by certified mail to:
 - Residents and landowners in the territory;
 - Legislative body of each municipality having any corporate boundary within 3 miles of the proposed town;
 - The executive of any other county in which the proposed town is located; and
 - The executive of the townships in which all or part of the proposed town is located.

Self-Incorporation - Process

- The county executive can dismiss the incorporation petition at any time if it receives a verified petition signed by
 - 51% of the owners of real property in the affected territory; or
 - 75% of the owners of real property in the affected territory based on assessed valuation.
- The county executive must obtain consent from the legislative body of any second or third class city within 3 miles of the boundaries of the proposed town.

Self-Incorporation - Process

- The county executive may approve the petition only if it finds all of the following:
 - The proposed town is used and will be used, in the foreseeable future, for commercial, industrial, residential or similar purposes;
 - The proposed town is compact and contiguous;
 - The proposed town has enough territory to allow for growth;
 - A substantial majority of the property owners have agreed that at least 6 of the following services shall be provided on an adequate basis:
 - Police protection;
 - Fire protection;
 - Street construction, maintenance and lighting;
 - Sanitary sewers;
 - Storm sewers;
 - Health protection;
 - Parks and recreation;
 - School and education;
 - Planning, zoning and subdivision control;
 - At least 1 municipal utility;
 - Stream pollution control or water conservation.

Self-Incorporation - Process

- The county executive may approve the petition only if it finds all of the following (continued):
 - The proposed town could finance these services with a reasonable tax rate; and
 - Incorporation is in the best interest of the territory involved based on:
 - The expected growth and governmental needs of the area surrounding the proposed town;
 - The extent to which another unit could provide essential services more adequately and economically; and
 - The extent to which the proposed town would be willing to enter into cooperative agreements with the largest neighboring municipality, if such agreements have been proposed.

Self-Incorporation - Process

- Assuming the county executive makes all of the above findings, it may adopt an ordinance incorporating the town and establishing election districts.
- Incorporation approved by such ordinance cannot take effect during the year preceding the next federal decennial census. In this case, incorporation would take effect on January 2 of the year in which the federal decennial census is conducted.

Self-Incorporation - Timing

- Initiation – Filing of petition
- 10 days prior to public hearing – Plan Commission review
- Not less than 60 days nor more than 90 days after date of filing of petition – Public hearing
- Prior to approval – County executive obtain consent from affected cities
- After public hearing – Approval/rejection by county executive

Self-Incorporation – Resources and Cost

- Legal Counsel – To guide through the process and ensure filings and notice meet the legal requirements
- Surveyor – To prepare the survey of the proposed town
- Financial Advisor – To prepare an assessment of the assessed valuation of the proposed town, the cost of services to be provided and proposed tax rate
- Administration – To prepare list of residents and landowners within the proposed town, to mail required notices, and to do other tasks as necessary
- Certified mail costs associated with the notice of the public hearing

Self-Incorporation – Community Effort and Control

- Significant effort must go into the preparation of the written petition for incorporation. While this work can be done by a steering committee, the committee will likely require public input and assistance in order to meet all of the requirements of the petition.
- While the petitioners have control over the preparation and filing of the initial petition, the final outcome of the petition is out of their control as the final decision is that of the county executive.

Merger/Reorganization - Authority

- Government Modernization Act of 2006
 - Purpose
 - Enable political subdivisions to operate more efficiently by eliminating statutory restrictions
 - Encourage efficiency by and cooperation between political subdivisions
 - Authority
 - Reorganization of political subdivisions
 - Exercise of governmental functions under a cooperative agreement
 - Transfer of responsibilities between offices

Merger/Reorganization - Process

- Eleven types of reorganization are authorized, including a township and a municipality that is located in any part of the same township
- Reorganization can be accomplished in one of two ways:
 - Consolidation of participating political subdivisions into a new political subdivision
 - Consolidation of one of the participating political subdivision into one of the participating subdivisions
- Timing Considerations
 - A reorganization cannot take effect during the year preceding a federal decennial census. A reorganization approved during this year would take effect on January 2 of the year of the federal decennial census.

Merger/Reorganization - Process

- Initiation
 - Legislative body of a political subdivision may initiate a reorganization by adopting a resolution
 - Voters of a political subdivision may initiate a reorganization by filing a written petition signed by at least 5% of the voters in the political subdivision
 - The legislative body of the political subdivision named shall conduct a public hearing on the proposed reorganization. Within 30 days of the public hearing, the legislative body shall adopt a resolution to decline the reorganization or propose a reorganization.
- Acceptance by other political subdivisions
 - Legislative bodies of the other political subdivisions named in the initial resolution may adopt a resolution which declines to participate in the reorganization or proposes to participate

Merger/Reorganization - Process

- Reorganization Committee
 - Appointment by the executive of the participating political subdivisions
 - Political subdivisions may employ professionals for the reorganization committee
 - Claims of the reorganization committee are paid by the political subdivision with the largest population

Merger/Reorganization - Process

- Reorganization Plan
 - Name and description of the reorganized political subdivision
 - Description of the boundaries of the reorganized political subdivision
 - Description of the taxing areas in which taxes to retire existing obligations will be imposed
 - Description of membership of the legislative body, fiscal body and executive of the reorganized political subdivision; description of the election/appointment districts; and manner in which membership will be elected/appointed
 - Description of the services to be offered by the reorganized political subdivision
 - Disposition of all assets, personnel, agreements, and liabilities of the participating political subdivisions
 - Any other matters deemed necessary or appropriate
- Reorganization plan must be submitted to each reorganizing political subdivision within one year of the adoption of the final resolution proposing reorganization

Merger/Reorganization - Process

- A resolution on the reorganization plan must be read at two meetings of the legislative bodies of all political subdivisions involved in the reorganization and a public hearing must be conducted.
- Not more than 30 days after the public hearing, the legislative bodies must adopt or reject the reorganization plan.
- If any of the legislative bodies reject the plan, the registered voters in that political subdivision may submit a written petition signed by 10% of the voters to the clerk of the circuit court approving the reorganization plan and requesting a public question be held on the reorganization plan.

Merger/Reorganization - Process

- Reorganization plan must be filed with:
 - County recorder
 - Department of Local Government Finance (DLGF)
 - Clerk of the circuit court if election districts are affected
- Public question goes on the ballot on the first regularly scheduled election in all of the precincts of the reorganizing political subdivisions:
 - “Shall _____ (name of political subdivision) and _____ (name of political subdivision) reorganize as a single political subdivision?”
- Public question must be approved by the majority of voters in each reorganizing political subdivision

Merger/Reorganization - Timing

- Initiation – Resolution by legislative body or voter petition
 - If voter petition, the legislative body shall conduct a public hearing and, within 30 days after the public hearing, adopt a resolution agreeing to participate or rejecting the reorganization.
- Adoption of resolution by other legislative bodies – no time limit, allow time for revisions to resolutions
- Not more than 30 days after final adoption of the reorganization resolution – Form reorganization committee
- Within 1 year of the final adoption of the reorganization resolution – Reorganization committee presents plan
- Legislative bodies must read the adoption resolution in two meetings, including a public hearing
- Within 30 days of the public hearing, legislative bodies must adopt/reject the plan or propose modifications
- Within 1 year, 1 month of presentation of initial reorganization plan - Modifications to reorganization plan and presentation of final plan
- Within 1 month of presentation of final reorganization plan – Adoption/rejection of final reorganization plan
- First regularly scheduled election – Public question

Merger/Reorganization – Resources and Cost

- Legal Counsel – To guide through the process and ensure filings and notice meet the legal requirements
- Financial Advisor – To review taxing unit debt and applicability and to assist in the analysis of the cost of services to be provided by the reorganized unit
- Administration – To prepare analysis of the election districts and prepare new districts

Merger/Reorganization – Community Effort and Control

- In order to prepare a reorganization plan which truly embodies the needs of the affected residents and landowners and prepare voters to be able to address the public question, a significant amount of time must be spent on public education and gathering public input.
- While the process of reorganization requires a lot of time and effort, the process also allows for the greatest level of community control over the process through the collaborative nature of the reorganization plan and the opportunity to vote on the public question.

Summary

	Timing	Resources	Cost	Community Effort	Community Control
Status Quo	Low	Low	Low	Low	Low
Annexation - Involuntary	Med	Low	Low	Low	Low
Annexation - Voluntary	Low/ Med	Med	Low	Med	Low
Self-Incorporation	Med	High	High	High	Med
Merger/Reorganization	High	High	High	High	High