

DRAFT MINUTES
Commission on Local Government
Oral Presentations
Town of Herndon – Loudoun County
Voluntary Settlement Agreement
2:00 p.m., July 14, 2014
Herndon Council Chambers Building
765 Lynn Street
Herndon, Virginia 20170

Members Present

John T. Stirrup, Jr., Chairman
Bruce C. Goodson, Vice-Chairman
Cole Hendrix
John G. Kines, Jr.
Victoria L. Hull

Members Absent

Staff Present

Zachary Robbins, Local Government Policy Manager
Edward Lanza, Senior Public Finance Analyst

I. Call to Order

A. Welcome

Chairman Stirrup called the meeting to order at 2:00 p.m. on July 14, 2014 in the Herndon Council Chambers Building in Herndon, Virginia. Mr. Stirrup announced that the Commission is present to review a proposed voluntary settlement agreement between the Town of Herndon and Loudoun County. He further explained that the proposed agreement provides for the immediate annexation to the Town of Herndon of approximately 2.5 acres of territory located in Loudoun County; for the waiver by the Town of certain extraterritorial subdivision regulation rights; for the joint exercise of certain zoning rights; and for other matters.

B. Introduction of Commission Members and Staff

Next, Mr. Stirrup introduced the members of the Commission and provided biographical information on each member and introduced the Commission staff.

II. Commission's Review

Mr. Robbins explained that the Commission on Local Government is directed by law to review proposed annexations and other local boundary change and transition issues – as well as negotiated agreements settling such matters – prior to their presentation to the courts for ultimate disposition. Upon receipt of notice of such proposed action or agreement, the Commission is directed to “hold hearings, make investigations, analyze local needs and make findings of facts and recommendations” regarding the issue to the affected local governments. With respect to a proposed agreement that is negotiated under the authority of Section 15.2-3400 of the Code of Virginia – such as the one proposed here – the Commission is required to report, in writing, its findings and recommendations as to whether the proposed settlement is in the best interest of the Commonwealth.

Mr. Robbins indicated that the oral presentations were advertised by notice published in the Loudoun Times Mirror on Wednesday, June 18, 2014 and again on Wednesday, June 25, 2014 and also in the Fairfax County Times on Friday, June 20, 2014 and Friday, June 27, 2014. In addition, notice of the oral presentations was mailed to the local governments contiguous to, or sharing functions, revenue or tax sources with, the Town and County.

Mr. Robbins stated that the Commission is here today as a result of a joint submission filed by the Town of Herndon and Loudoun County on March 10, 2014 requesting the Commission to review and issue findings on the proposed agreement negotiated by the Town and County. Prior to this meeting, the Commission received:

- Notice by the Town and County of a voluntary settlement agreement;
- A copy of the proposed agreement as well as data and exhibits supporting the agreement;
- Resolutions adopted by the Town Council and County Board of Supervisors requesting the Commission review the agreement, and;

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- Indication that copies of the Notice, the proposed agreement and an index of data and exhibits were mailed to each of the local governments contiguous to or sharing functions, revenue or tax sources with the Town or the County.

He then reviewed the meeting schedule for the Commission's on-site meetings in Herndon, explaining that this morning the Commission toured the affected area and that, at 7:00 p.m. this evening, a public hearing will be held. He added that the Commission's record would remain open on this matter until the close of business on July 28, 2014, and that the Commission would endeavor to render its report to the affected local governments at its September 2014 meeting.

II. Oral Presentations by the Town and County

Mr. Stirrup invited Mr. Carter Glass, attorney for the Town of Herndon, to begin the presentation.

Mr. Glass indicated that the case before the Commission is not like other cases that it has reviewed, noting that the agreement is for a very small piece of land. He also stated that the boundary has been a source of controversy because it divides a Town-owned parcel and because of a debate over several decades over the true boundary Town's western boundary.

Mr. Glass stated that the case is before the Commission because the Town has made two concessions to the County in exchange for the boundary adjustment. These concessions are waivers of the joint exercise of certain statutory powers.

Mr. Glass called Mr. Art Anselene, Herndon Town Manager, as his first witness. Mr. Anselene indicated that the voluntary settlement agreement solves the problem of having Town-owned property split by the Town boundary.

Mr. Anselene indicated that the Town of Herndon lies on the western side of Fairfax County and that it shares a boundary with Loudoun County. He noted that the new boundary would extend the Town's boundary westward to the eastern-most right-of-way of Rock Hill Road. He described the annexation area as being 2.4 acres. He

noted that the Town owns all of this property and that there are not any businesses or residences on the land. He also stated that there is a small portion of Sterling Road that is also included within the boundary adjustment area.

Referencing Exhibit 4 of the joint submission, Mr. Anselene indicated that it represents the public works facilities of the Town in addition to a section of the boundary adjustment area. He noted that the structure bisected by the current Town boundary is the Town's zoning enforcement building. He also confirmed that the boundary also bisects the Town's former recycling site.

Mr. Anselene stated that the Town acquired the public works site in 1985. He confirmed that in 2005, the Town Council approved the use of the parking lot for a temporary day labor site, and indicated that Loudoun County's Board of Supervisors opposed this action. He stated that the portion of the public works site that resides in Loudoun County is zoned R-1, but is used for governmental purposes because of a special exception permit.

Mr. Anselene remarked that while the Town and County were involved in a legal battle over the use of the land for governmental purposes, the Town attorney was charged with determining the official boundary of the Town. He noted that the Town attorney found that the true boundary line was the center of Rock Hill Road, based upon historical records. He also stated that the County attorney issued a contrary opinion and that the boundary should be consistent with that between Loudoun and Fairfax Counties.

Next, Mr. Anselene commented that the 2009 special exception permit from Loudoun County, included conditions requiring additional landscaping on the property and the addition of screening around the recycling containers. He stated that they were also required to submit a site plan to comply with exterior lighting specifications. He confirmed that these compliances worried the Town Council of the degree of administration for the land lying within Loudoun County. He noted that if the Town wished to alter the usage of this land that it would be required to apply for a revision of the special exception permit with the County.

Mr. Anselene testified that both the day labor site and the recycling center are no longer in operation on the public works property. He noted that if the Town had another use for the land that was formerly occupied by the recycling center, it would need to apply for a modification of the special exception permit with the County.

Mr. Anselene remarked that the Town operates the traffic signal at the adjacent intersection of Rock Hill Road and Sterling Road and provides snow removal for the intersection. He added that there would not be an adverse financial impact to the Town or County after annexation of the area. He continued by adding that, according to the agreement, the boundary change is scheduled to take effect on June 30, 2015 at midnight.

Mr. Anselene confirmed that the Town has made concessions to the County in exchange for the boundary adjustment. He stated that the Town has agreed to waive its extraterritorial subdivision rights outside the Town boundary within Loudoun County for a period of 40 years. He also noted that the agreement creates a joint zoning area for uses consisting of a day labor site on the public works complex and throughout the boundary adjustment area. He added that the Town Council does not have any plans to use the public works complex for a day labor site in the future. He also remarked that the agreement includes a provision for non-binding arbitration.

Mr. Anselene concluded his testimony by stating that the voluntary settlement agreement is in the best interests of the residents of the Town. His reason for that is the elimination of the administrative burden related to the property owned by the Town within Loudoun County. He also indicated that by being a part of the County, the Town will have a larger role within Loudoun.

In response to a question from Mr. Robbins, Mr. Anselene and Mr. Glass confirmed that the joint zoning area provision would not have an impact on Fairfax County. Mr. Glass clarified that the joint zoning area provision would apply only to the public works parcel and not anywhere else within the Town. Replying to a question from Mr. Hendrix, Mr. Anselene testified that the 40-year period was negotiated by the Town and the County. Upon receiving a question from Mr. Kines, Mr. Glass stated that

the agreement does not prohibit the Town from annexing other properties in Loudoun County in the future.

Mr. Glass called Ms. Lisa Merkel, Mayor of the Town of Herndon, as his second witness. Ms. Merkel stated that she has served on the Town Council since 2010. She testified that she believes that the agreement is in the best interests of the Town. She reiterated the laborious process that was required to use the portion of the public works site within Loudoun County for governmental purposes. She also stated that the issue of the location of the Town's true boundary needed to be resolved. She confirmed that the Town Council does not have any plans to use the public works complex as a day labor site.

Ms. Merkel remarked that it would be beneficial for the Town to be a part of the County so that they can develop together. She added that there are two redevelopment proposals for properties to the west of Rock Hill Road. She also stated that as a part of Loudoun County, the Town will have more input into these activities.

Ms. Merkel concluded her testimony by stating that she respectfully requests that the Commission approve the voluntary settlement agreement.

At this time, Mr. Stirrup called upon Ms. Lauri Sigler, assistant attorney for Loudoun County, to begin her presentation. Ms. Sigler began by stating that the resolution to adopt the agreement was unanimously approved by the Board of Supervisors. She noted that the concessions made by the Town in the agreement are very important to the County. She added that the agreement does not pose an adverse financial impact to the County. She concluded by requesting the favorable approval of the agreement by the Commission.

In response to a question from Ms. Hull, Mr. Glass remarked that a moratorium on a day labor site was not seriously considered so that future Boards and Councils would have the option to approve a day labor site.

Mr. Hendrix congratulated the parties for working together on the agreement. Mr. Stirrup appreciated all of the work of the County and Town staffs on the agreement

and recognized the hospitality that the Commission has experienced on this visit. He noted that the Commission's report should be completed in September.

V. Recess

At 2:55 p.m., Mr. Stirrup announced that the Commission will stand in recess until 7:00 p.m. for the public hearing.

John T. Stirrup
Chairman

Zachary L. Robbins
Local Government Policy Manager