



Glenn Youngkin  
Governor

Caren Merrick  
Secretary of  
Commerce and Trade

# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Bryan W. Horn  
Director

TO: Members of the Commission on Local Government  
FROM: DHCD Staff  
DATE: December 29, 2023  
SUBJECT: Draft Agenda and January Regular Meeting Materials

Dear Commissioners:

We are looking forward to our first meeting of 2024! **Please note the time change.** The January meeting will be at 2:00 p.m. on January 5, 2024, in person at the Virginia Housing Center.

Please find enclosed the following:

1. Draft agenda for the January Regular Meeting of the Commission;
2. Draft Minutes from the November 3, 2023 Regular Meeting of the Commission;
3. Articles of interest to the Commission;
4. A proposed Administrative Case Management Order submitted by the Town of Leesburg, along with the accompanying proposed motion and letter to staff;
5. A Notice of Attempt to Negotiate under § 15.2-2907(E) and Response to the Town's motion for an Administrative Case Management Order, submitted by the County, along with accompanying proposed order and letter to staff;
6. The Town of Leesburg's Response to the County's Notice Pursuant to § 15.2-2907(E), along with the accompanying letter to staff;
7. Notice of Town of Washington and County of Rappahannock of a proposed Voluntary Settlement Agreement with accompanying exhibits;
8. Proposed review schedule for the Town of Washington and County of Rappahannock Voluntary Settlement Agreement;
9. Memo from staff on proposed draft text of 1VAC-50-20;
10. Proposed draft text of 1VAC-50-20;
11. The State Agency Guide to Standard Regulatory Process;
12. HB1671 (2023);

If you have any questions or require additional information, please feel free to contact me at 804-310-7151 or [legrand.northcutt@dhcd.virginia.gov](mailto:legrand.northcutt@dhcd.virginia.gov)

We hope you have a wonderful and restful holiday season and look forward to seeing you on January 5th!





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## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

### **AGENDA**

Commission on Local Government  
Regular Meeting: January 5th, 2024, 2:00 p.m.  
Virginia Housing Center, Henrico II  
4224 Cox Road  
Glen Allen, VA 23060  
Virtual via Microsoft Teams

### **FOR VIRTUAL ATTENDANCE**

Microsoft Teams meeting  
Click [here](#) to join the meeting  
Meeting ID: 228 337 766 445  
Passcode: raoxb  
Or call in (audio only)

[+1 434-230-0065](tel:+14342300065),,526026502# United States, Lynchburg  
Phone Conference ID: 526 026 502#

1. Occupancy for the meeting space is limited, so the Commission encourages members of the public to observe the meeting through the Microsoft Teams link provided above. Please contact LeGrand Northcutt ([legrand.northcutt@dhcd.virginia.gov](mailto:legrand.northcutt@dhcd.virginia.gov)) for information on how to connect to the meeting using this method.
2. Members of the public viewing the meeting through the Microsoft Teams option are required to mute themselves during the meeting unless called upon by the Commission Chair to speak. The CLG reserves the right to remove from its virtual meetings anyone who does not abide by these rules.
3. Access to meeting materials for members of the public is available on the corresponding meeting page of the [Virginia Regulatory Town Hall website](#) and on [Commonwealth Calendar](#).

- I. **Call to order** (Chair)
- II. **Election of 2024 Officers** (Chair)
  - a. Nomination of Vice-chair
    - i. Commission deliberation and action
  - b. Nomination and election of Chair
    - i. Commission deliberation and action



- III. **Administration**
  - a. Approval of the draft agenda (Chair)
  - b. Approval of minutes of the regular meeting on November 3, 2023 (Chair)
  - c. Public comment period (Chair)
  - d. Staff's report (Mr. Northcutt)
  
- IV. **Presentation of commemorative resolutions** (Staff/Chair)
  - a. Former Commissioner Rosemary Mahan
  - b. Former Commissioner Dr. Stephanie Davis
  - c. Former Policy and Legislation Office Director Kristen Dahlman
  
- V. **Cases before the Commission**
  - a. Loudoun/Leesburg Annexation
    - i. Notification of mediation
      - 1. Presentation and responses (Parties)
      - 2. Commission deliberation and action (Chair)
    - ii. Administrative Case Management Order
      - 1. Presentation and responses (Parties)
      - 2. Commission deliberation and action (Chair)
  - b. Rappahannock/Washington VSA
    - i. Case introduction (Parties)
    - ii. Presentation of proposed review schedule (Mr. Northcutt)
    - iii. Commission deliberation and action (Chair)
  
- VI. **Regulatory items**
  - a. Update on periodic reviews (Mr. Northcutt)
    - i. 1 VAC 50-20: Organization and Regulations of Procedure
    - ii. 1 VAC 50-11: Public Participation Guidelines
  - b. Regulatory reduction
    - i. Staff presentation of timeline (Mr. Northcutt)
    - ii. Discussion of draft text for 1 VAC 50-20: Organization and Regulations of Procedure
      - 1. Commission deliberation (Chair)
  
- VII. **FY22 Fiscal Stress Report**
  - a. Staff presentation (Ms. Wheaton)
  
- VIII. **HB1671 (2023) – Residential Land Development and Construction Fees**
  - a. Staff presentation (Mr. Sawyer)
  - b. Commission deliberation and action (Chair)
  
- IX. **2024 General Assembly Session**
  - a. Staff presentation (Staff)



- X. **Commission workgroups**
  - a. Fiscal stress report work group (Mr. Northcutt)
  - b. Virginia Code Commission work group (Ms. Linderman)
  
- XI. **2024 Schedule of regular meetings** (Staff)
  
- XII. **Other business** (Chair)
  
- XIII. **Adjournment** (Chair)





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## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

### Commission on Local Government

November 3, 2023

11:00 A.M.

### All - Virtual Public Meeting

#### Members Present

Ceasor T. Johnson, D.Min, Chair  
Edwin S. Rosado, Vice Chair  
Diane M. Linderman, PE  
Robert W. Lauterberg  
Call to Order

#### Members Absent

None

The Commission on Local Government (CLG) Chair, Ceasor Johnson, called the meeting to order at 11:00 a.m.

Ms. Grace Wheaton, Senior Policy Analyst at the Virginia Department of Housing and Community Development (DHCD) initiated a roll call vote. Ms. Wheaton informed Chair Johnson that a quorum of Commissioners was present virtually.

#### Administration

The draft agenda was adopted unanimously on a motion by Commissioner Rosado and a second by Commissioner Lauterberg.

The minutes from the September 8th, 2023 regular meeting were adopted unanimously following a motion by Commissioner Linderman and a second by Commissioner Lauterberg.

Chair Johnson opened the floor for the public comment period.

There were no public comments, and the Chair closed the public comment period.

#### Staff Report and Updates

Ms. Wheaton gave an update on articles of interest to the Commission that were distributed in the meeting packet. The articles noted the emerging land use issues related to solar farms in southside Virginia, provided information on the state's recently passed amended



biennium budget, updated the Commission on recent and upcoming cases, and noted Amazon's selection of Virginia Beach for additional investment in the state.

Cases before the  
Commission

Loudoun County and the  
Town of Leesburg

Ms. Wheaton informed the Commission that they had received the Town of Leesburg's reply to the County's filings by the Friday, October 13<sup>th</sup> deadline set in the Commission's approved review schedule. She then informed them of the upcoming steps for the Commission, and staff's intent to provide additional information before the scheduled oral arguments and public hearing in March.

Cases before the  
Commission

Draft Report on the  
Economic Growth Sharing  
Agreement between Henry  
County and the City of  
Martinsville

Staff presented the Draft Report on the Economic Growth Sharing Agreements between Henry County and the City of Martinsville to the Commission and discussed what the next steps are after the report is adopted.

The Commission's findings of fact indicate that the Growth Sharing Agreements would be beneficial for the short- and long - term economic interest of the localities, stakeholders, and the citizens in the area covered by the Agreements. The report details these findings and provides a summary of the Agreements provisions.

Commissioner Lauterberg moved the adoption of the Draft Report as presented, seconded by Commissioner Linderman. The motion passed unanimously.

Regulatory Items

Periodic Review

Ms. Wheaton summarized the Commission's prior actions related to its Periodic Review and Regulatory Reduction efforts, and the actions the Commission would take during its meeting to advance these items following the timeline the Commission discussed in its September Regular Meeting.

Ms. Wheaton presented the findings of the Commission's Periodic Review of 1VAC50-20, which indicated that the Commission should retain its current regulations based on those findings.

Commissioner Rosado made a motion for the approval of the Findings of the Commission's Periodic Review of Chapter 20 (TH-07) which contains the recommendation to retain its regulations based on those findings. The motion was seconded by Commissioner Linderman. The findings were approved unanimously by the Commission.



Ms. Wheaton then presented the Periodic Review of 1VAC50-10.

Commissioner Linderman made a motion to approve the initiation of the Commission's Periodic Review of Chapter 10 by publishing a notice of period review of 1VAC-50-10 in the Virginia Register. The motion was seconded by Commissioner Rosado. The motion was approved unanimously by the Commission.

Regulatory Items

Ms. Wheaton presented the Notice of Intended Regulatory Action (NOIRA) for 1VAC50-20. Ms. Wheaton explained that this action was required in order for the Commission to proceed with its regulatory reduction efforts in accordance with Governor Youngkin's EO-19 and would notify the public of the Commission's effort to initiate regulatory reduction of the Chapter.

Regulatory Reduction

A motion was made by Commissioner Lauterberg and seconded by Commissioner Linderman for the approval of the NOIRA of 1VAC50-20. The motion passed unanimously.

Regulatory Items

Ms. Wheaton presented staff's proposed changes to 1VAC50-20 sections 540 through 670. Following discussion, the Commission provided no additional suggestions for changes to any of staff's proposed changes to Chapter 20 (1VAC50-20).

Regulatory Discussion

2023 Cash Proffer Survey and Report

Mr. Chase Sawyer, Senior Policy Analyst at DHCD, presented the results of the 2023 Cash Proffer Survey and accompanying report to the Commission.

The Commissioners discussed the expenditure patterns and purpose of cash proffers in the Commonwealth.

Commissioner Linderman moved to adopt the report with a second by Commissioner Lauterberg. The motion passed unanimously.

Reports on Commission Workgroups

Staff and Commissioner Linderman informed the Commission that there were no updates from the Commission's participation in the Virginia Code Commission Workgroup.



## Regular Meeting Schedule

Staff presented the proposed schedule of regular meetings for 2024. All meetings are scheduled to begin at 11:00 a.m., either virtually or in person at the Virginia Housing Center.

- January 5th
- March 1st (virtual)
- May 3rd
- July 12th
- September 6th
- November 1st (virtual)

Commissioner Rosado moved to adopt the proposed meeting schedule with a second by Commissioner Linderman. The motion passed unanimously.

## Other Business

Ms. Wheaton presented the commemorating resolutions for Commissioner Davis and former Policy and Legislative Director Kristen Dahlman. She noted the intent to invite the recipients and Commissioner Mahan to the January 2024 regular meeting to present the resolutions to them.

Commissioner Linderman moved to adopt the resolutions with a second by Commissioner Rosado. The motion passed unanimously.

Staff noted the Commission will elect its chair and vice chair at the January meeting.

## Adjournment

Commissioner Rosado moved to adjourn with a second by Commissioner Linderman. The motion passed unanimously.





## Loudoun Supervisors Approve 10-Acre Data Center Project

Loudoun Now  
Dec 20, 2023



A vicinity map of the 10-acre Aligned Energy data center project along Relocation Drive in Sterling, County of Loudoun

The Board of Supervisors last week approved a rezoning to permit the expansion of a Sterling data center.

The board rezoned 10 acres of residential land to PD-OP (Office Park) to permit a 95,000-square-foot addition to a 306,000-square-foot Aligned Energy data center along Relocation Drive. The property is surrounded by industrial uses with electrical substations nearby.

Amid a growing community debate about the location and scale of Loudoun's data center development, Supervisor Tony Buffington (R-Blue Ridge) notes, "This is a perfect place for a data center."

The applications were approved on a 7-1-1 vote Dec. 13, with Supervisor Juli Briskman (D-Algonkian) opposed and Supervisor Sylvia Glass (D-Broad Run) absent.



[https://www.newsontheneck.com/news/kilmarnock-presents-plan-to-double-the-town/article\\_4c369774-8ede-11ee-a6c9-57503e69fc83.html](https://www.newsontheneck.com/news/kilmarnock-presents-plan-to-double-the-town/article_4c369774-8ede-11ee-a6c9-57503e69fc83.html)

FEATURED

## Kilmarnock Presents Plan to Double the Town

Michelle Smith  
Nov 29, 2023

1 of 2

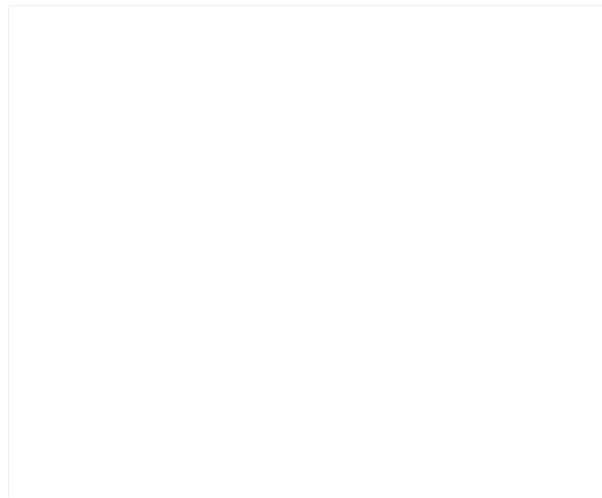




Kilmarnock's ambition isn't just expansion, the Town wants to double its size, pushing further toward Irvington and White Stone, Susan Cockrell explained to Lancaster Supervisors at their November 16 board meeting.

Cockrell, Kilmarnock's town manager, presented a two-part pitch to the Supervisors, emphasizing that, although related, the issues she outlined are two separate projects.

One project, as reported last week, involves expanding the Town's utility services, at least to the Wilson Road neighborhood, which is a cluster of homes on the backside of the Compass Entertainment Center. But hopefully, with County funding, that expansion could extend to Greentown, Cockrell explained.



The second project is "a mutual boundary line adjustment." Currently, the Town's footprint stops at Harris Road but Kilmarnock wants to expand into the territory the County has deemed its growth zone. As Supervisor Bill Lee put it, the Town is proposing to add "everything on the west side of Mary Ball Road, between Harris Road and Old Salem Road.

The proposed expansion of approximately 2100 acres would be effectively doubling the size of the Town, which is currently about 2,200 acres, according to Cockrell.

“Our request, as a first place to start some conversation, would be to incorporate where we currently are through Hills Quarters and the Compass Entertainment Center through Wilson Rd. and bring down the boundary to Old Salem Rd, said Cockrell.

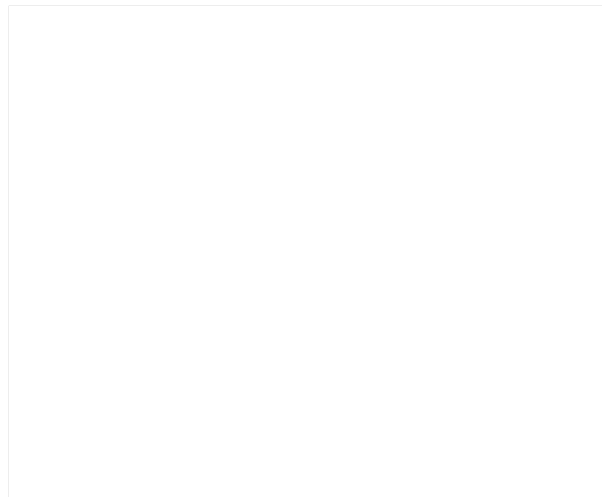
She added that Kilmarnock viewed Old Salem Rd. as a clean cutoff location within the growth zone, and it could enable the Town to serve Old Salem Rd. “particularly with utilities in the future.”

Lancaster County administrator Don Gill noted that the Town doesn’t need any boundary line adjustment to expand its utility service into the growth zone because that’s already allowed.

However, Cockrell’s presentation noted that one of the benefits of a boundary line adjustment is utility users in places such as the Wilson Rd. neighborhood would get in-town rates. Currently, the out of town rate is 150% higher.

Changing the boundaries would also shift law enforcement coverage of the area from the County to the Town.

For property owners, it would mean more taxes. Real estate taxes would be due to both the County and the Town.



Both Cockrell and Kilmarnock Mayor, Shawn Donahue, told they Supervisors they weren’t looking for an immediate answer. Instead, the request, at this point, is for the County to agree to a form two subcommittee with the Town, one for each project.

“This is a major project for our community and it’s going to take some time to think through this. This is not a quick decision. And we’re not asking for that,” the Mayor told the Supervisors.

But the last time a boundary line adjustment was done was 27 years ago, and it’s time to start talking about the future, he said. “We all know we’ve got tremendous growth going on in this community... We’re not talking about today’s problems. We’re talking about 20 years from now. How do we want the boundaries, and the Town, and the water, and the sewer to move forward?”

As this was more of an information session, the Board of Supervisors didn’t take any action or discuss any.

## Leesburg Annexation Bid Proposed for Mediation

Norman K. Styer

Dec 19, 2023



The Board of Supervisors on Tuesday authorized the county administrator and county attorney to pursue mediation in the Town of Leesburg’s contested annexation petition under review by the state Commission on Local Government.

The action provides both sides with the opportunity to find agreement on the annexation prior to the start of formal hearings by the commission in March.

In an email sent to the board by Mayor Kelly Burk prior to the vote, she wrote that the town was willing to entertain mediation talks but would not delay the scheduled commission hearings.

County Attorney Leo Rogers said talks between county and town representatives before a third-party mediator could begin as early as the second week in January.

The town is seeking to annex 402 acres of the Compass Creek development, a retail and commercial center that includes a 323-acre Microsoft data center campus. The land borders the town's southern boundary and is within the county-designated Joint Land Management Area.

The town filed its adverse annexation petition with the state after extensive negotiations with the county failed to develop an agreement.

Both sides have filed hundreds of pages of arguments and exhibits with the commission.

The town's case centers on decades-long county planning policies that delineated a growth area around Leesburg where the town would provide public utilities and eventually incorporate land within the service area. The town argues that the town invested in its utility system based on that concept, that property owners within the targeted annexation area would benefit from other municipal services, and that the town needs land for economic development opportunities.

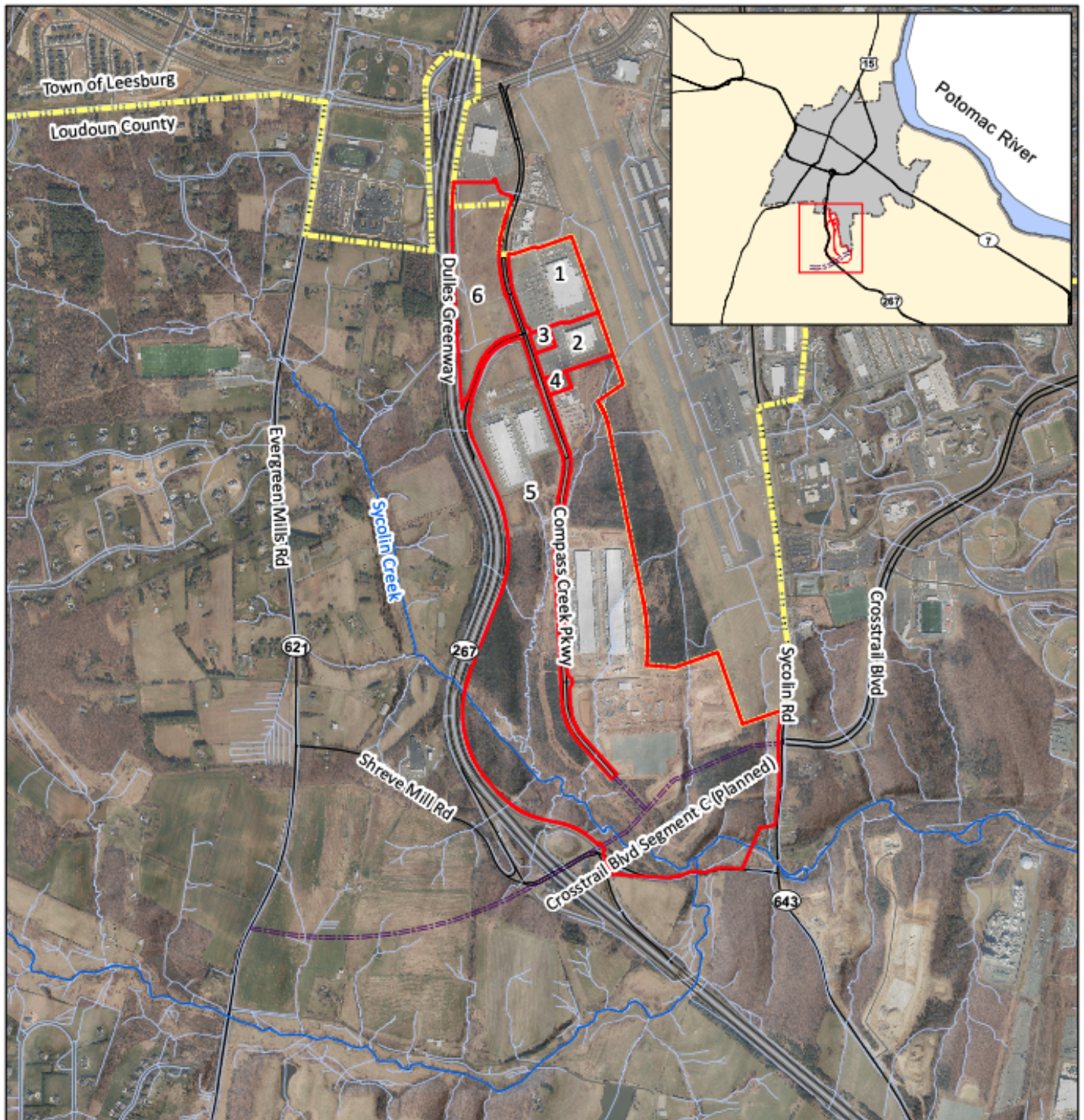
The county, in its filings, denied that there was a commitment to support annexation of the utility service area and characterized the town's expansion efforts as seeking to impose "additional and burdensome municipal taxes" on the property owners without providing "any meaningful benefit" to them. The town has not demonstrated the need for additional tax revenue or additional land for commercial or industrial development, the filing stated.





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SCHEDULE AN APPOINTMENT



An exhibit from Loudoun County's filing in response to the Town of Leesburg's annexation petition shows the existing town boundary in yellow and the proposed annexation area in red.

County of Loudoun

The Town Council was briefed on the proposal for mediation during a closed session on Dec. 11. Town Attorney Christopher Spera said the town was willing to engage in facilitated negotiations and looked forward to reopening a dialogue with the county but would oppose any effort to delay the commission's review of its petition.

While approving mediation, supervisors did not vote on other elements included in the material prepared for the board to consider during its Dec. 19 meeting, including the potential to request a stay in the commission's proceedings following the mitigation and to appoint two supervisors to attend the mediation sessions.

Under state law, the Commission on Local Government may, with the agreement of the parties, appoint an independent mediator. Offers and statements made during the mitigation talks are prohibited from being used in the litigation of the case before the commission.

Barring a successful mediation, the Commission on Local Government is scheduled to convene in Leesburg starting March 5 for four days of public hearings and oral arguments on the request. Under the published schedule, a commission report is due by May 3.

**MORE INFORMATION**

[Leesburg Council Plans State Petition to Annex Compass Creek, Microsoft Land](#)

[Loudoun County Board Halts Compass Creek Talks with Leesburg](#)

[Leesburg Annexation Costs Top \\$500K](#)

[Leesburg v. Loudoun County: Compass Creek Annexation Battle Advances](#)

[Leesburg Annexation Battle Moves Toward March Hearing](#)

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**Norman K. Styer**

# Rappahannock Times

## Essex/K&Q Boundary Line Issue Resolved

*October 11, 2023*

BY G.C. ROSE

A long-standing dispute regarding a boundary line separating Essex and King and Queen counties was resolved last week.

The Essex County Board of Supervisors unanimously voted to approve an agreement with King and Queen County that defines the boundary near Elevon Road (state Route 635) and Mount Landing Road (state Route 627). The issue integrates approximately 1.71 acres into Essex County.

About two years ago Abdul and Angela Islam were informed by the local voter registration office that their property along Mount Landing Road is actually in King and Queen and they would have to vote in that county. The Islams have been paying taxes to Essex County.

The Islams appeared before the Essex Supervisors about the issue last year.

“We are concerned that we will have to vote in King and Queen County and why?,” Abdul Islam told the supervisors in 2022. “We’ve paid taxes, our children have gone to school in Essex County and we’ve enjoyed it. We were blind sided last year when we were told about this.... I don’t want to vote in King and Queen County, I want to vote in Essex County.”

Mrs. Islam noted that her property is deeded in Essex County.

At that time she said she spoke with a King and Queen official about the matter.

“She said they don’t have a dog in this fight. They could care less, but they were not going to pay for it,” she remarked. “If I have to put my property in King and Queen County how do I know that my property’s value will not fall?”

During a public hearing on the matter conducted by the supervisors on October 2, only Essex County Commissioner of the Revenue Thomas Blackwell addressed the Board.

He noted the issue the Muslims faced.

“We started the process to get this rectified and I appreciate the Essex Board of Supervisors and the Board in King and Queen working together to get this resolved,” Blackwell stated. “I want to thank you for your efforts, especially the efforts of our county administrator.”

“This has been going on long enough,” At-Large Supervisor Edwin “Bud” Smith said just prior to the vote.

The agreement specifically states: “The new boundary line between the counties would run along the current boundary dividing the eastern edge of King and Queen and the western edge of Essex running south along Elevon Road (S.R. 635), continuing onto Mount Landing Road (S.R. 627) where such roads intersect, and then westward to integrate the parcel of property with an address of 13217 Mount Landing Road consisting of approximately 1.17 acres into Essex County, and then continuing again south on Mount Landing Road and thereafter follow the current boundary line.”

## Related Stories by The Rappahannock Times

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### Right up to the Line

Last week’s Essex Board of Supervisors work session featured a contentious moment between County Administrator Michael Lombardo and North Election...

### Essex Talks Car Tax Relief

The Essex County Board of Supervisors spent the bulk of its November 15 work session reviewing potential ways to provide...

### Essex Reassessment RFP OK’d

At the urging of outgoing Commissioner of the Revenue Thomas Blackwell, the Essex County Board of Supervisors voted 4-1 last...

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[https://www.loudountimes.com/0local-or-not/1local/developers-activists-weigh-in-on-zoning-ordinance-rewrite/article\\_23d39836-94a6-11ee-9852-b33254206d78.html](https://www.loudountimes.com/0local-or-not/1local/developers-activists-weigh-in-on-zoning-ordinance-rewrite/article_23d39836-94a6-11ee-9852-b33254206d78.html)

## Developers, activists weigh in on zoning ordinance rewrite

By JESS KIRBY [jkirby@loudountimes.com](mailto:jkirby@loudountimes.com)

Dec 6, 2023

1 of 4



Kim Hart, of Good Works

At a public hearing Dec. 13, the Board of Supervisors is scheduled to take its final vote on whether to approve the new Loudoun County Zoning Ordinance. Last overhauled in 2003, the zoning ordinance is one of the county's most consequential pieces of legislation and has been years in the making.

The 671-page draft outlines in great detail what property owners can and can't do with their land. For example, it specifies what uses of land and buildings are permitted where, what design standards are required, and what natural and environmental resources should be considered.

The Times-Mirror spoke with several representatives from the business community and land use activist groups to discuss key aspects of the draft ahead of the public hearing.

Michael Capretti, a housing developer and at-large member of the Zoning Ordinance Committee, Rey Cheatham Banks, head of public policy and government affairs at the data center company Equinix, and Matthew Lawrence, who represents the Northern Virginia Building Industry Association on the Zoning Ordinance Committee, declined to comment.

**Modifiability** Throughout the ZOR process, which began in 2019 after county supervisors approved a new comprehensive plan, county staffers and business industry stakeholders have repeatedly clashed on the issue of "modifiability." Business industry representatives have argued that the draft is too prescriptive and doesn't provide the board with enough options to modify specific provisions of the ordinance on an application-by-application basis.

At the heart of the conflict was disagreement about how the ordinance should be structured. While staff structured the draft to specify what is modifiable, business industry stakeholders argued that the ZOR should start with everything being modifiable and then specify what isn't. County staffers said at an Oct. 4 discussion on modifiability that restructuring the ZOR that way would require a massive overhaul of the draft's language, which would be very difficult to complete within the board's timeline for the ZOR.

Up until the ZOR passed the Planning Commission over the summer and reached the Board of Supervisors, industry organizations had submitted "hundreds of comments" on the ZOR, according to Bill Junda, the president of Gordon who represents the National Association for Industrial and Office Parks on the Zoning Ordinance Committee. "Those comments were largely not being considered or responded to or implemented at all," he said.

But he said that changed over the past few months, when Chair Phyllis Randall, D-At Large, and Supervisor Mike Turner, D-Ashburn, brought staff, supervisors and stakeholders together for discussions.



“Honestly, the ordinance is still way too prescriptive,” Junda said. “But we worked through several work sessions with staff and the board and kind of found some middle ground on opening up some additional modifiability or flexibility in the ordinance that at least makes it palatable now.”

“Staff, to their credit, really worked with us and added in a lot more flexibility to modify those things,” he added.

Junda also said that stakeholders and staff were also able to compromise on the issue of legal nonconformities.

“When a zoning ordinance gets adopted, a property that was developed under a prior ordinance may have been designed and constructed on different standards,” he said. “Maybe that’s different setbacks, maybe it’s different landscaping requirements or parking requirements. So, when a new ordinance gets adopted with different parameters, technically you become legally non-conforming if you don’t meet all the new ordinance requirements.”

What was especially concerning, Junda said, was the draft’s casualty reconstruction language, which governs what a property owner can rebuild after a casualty, such as a natural disaster or fire, if the property is nonconforming.

The draft initially “narrowed the scope to the point where even arson wasn’t included,” Junda said. “And so a property could be burned to the ground and not be able to be rebuilt if it was legally nonconforming.” But after working with staff and County Attorney Leo Rogers, Junda said they were able to change the language. It’s now “very similar” to the current ordinance and is “acceptable to the development industry,” he said.

Related to the modifiability discussion is the Planned Unit Development zoning district, a new, unmapped district that can be used anywhere except the Rural Policy Area.

“The PUD district allows for an innovative, fully customizable proposal provided it implements the place type where the property is located,” according to the county’s website. It’s designed to allow developers to create proposals from scratch and has sometimes been referred to as a “get-out-of-jail-free card.”

Kim Hart, an affordable housing developer and general partner of Good Works, said the PUD is an important option. But early on, he said, it was cited as “the solution to everything.”

“If we’d gone forward with the ordinance as it existed in September, we would have had all PUDs and very little of anything else,” he said. “And it would have been a free-for-all because, how do you apply standards if a PUD is basically designed from scratch, right?”

Now that the draft is “much more workable,” Hart said, “I don’t think it’ll be used as much because we’ve got a better ordinance.”

Junda said that there’s uncertainty about how the PUD will work.

“I think that the PUD sounds interesting in theory, that you kind of get to make up your own rules, which that sounds great,” he said. “But I think in reality, we all know that both the industry side and the staff side are both going to try and compare that PUD request to the closest possible zoning district anyway. And then, how are you going to get evaluated when you go through your staff reviews and your Planning Commission review and your board review? I just think that it’s going to be so open ended that we’re going to end up in this never-ending period of trying to prove that a project in the PUD is viable and it’s consistent with the Comprehensive Plan.”

**Grandfathering**The ZOR also includes a “grandfathering” clause that would allow any pending development applications to be evaluated under the current Revised 1993 Zoning Ordinance, which was passed in 2003.

The provision would apply to all applications “that have been officially accepted for review in accordance with applicable county ordinances and policies” before the new ordinance is adopted, the county’s website says, as long as the applicant is “diligently pursu[ing] approval” and doesn’t make certain modifications to the application.

According to a staff report for the Dec. 13 public hearing, “upon approval, grandfathered applications will be treated for purposes of the New Zoning Ordinance as if they had been approved prior to the effective date of the new ordinance.”

Gem Bingol, a senior land use field representative with the Piedmont Environmental Council, said that the grandfathering resolution means that grandfathered applications will not have to comply with the natural resource protections in the ZOR.

“It’s extending the number of applications that are treated under the old rules, not the new rules,” she said.

But Tony Howard, president and CEO of the Loudoun Chamber of Commerce, said that the board made the right decision on grandfathering. He said it wouldn't be fair for the county to require ongoing applications to suddenly comply with "a whole new set of rules. That small business or big business or farmer would see a lot of money and time go down the drain."

The grandfathering resolution, he said, puts a "logical milestone in place" for when applications have to start complying with the new ordinance.

**Data centers**The draft ordinance would also change where data centers are permitted by right. Under the current ordinance, data centers are considered a by-right use in the Planned Development-Office Park and Planned Development-Research and Development Park zoning districts.

Now, though the ZOR adds data centers as a by-right use in the Mineral Resources-Heavy Industry zoning district, it also requires a special exception application for data centers in Office Park and PD-RDP zoning districts. Special exception applications require board approval, and this move reflects the goal of some supervisors to get more control over where data centers can be located.

"This act alone should decrease the number of data centers near residential neighborhoods," Chair Phyllis Randall, D-At Large, told the Times-Mirror in an email. "... I will be very, very unlikely to support a data center in an office park because office parks are normally close to residential neighborhoods."

Howard and Josh Levi, president of the Data Center Coalition, co-wrote a letter to the Board of Supervisors Oct. 30 expressing concern about the Office Park special exception requirement.

If adopted with the ZOR, the provision "will render a significant number of existing data centers legally non-conforming uses," the letter said. "As such, these facilities will be unable to expand up to what today stands as their maximum allowable [floor area ratio] without a Special Exception. This extra layer of legislative approval not only adds time but a level of uncertainty to the process, making it more difficult to add square footage to these facilities when the need arises."

The letter adds that there are "very few OP-zoned parcels adjacent to residential uses, and those that are would be more than covered by the proposed regulations as amended to date."

The board has made it clear that they do not want data centers near residential areas, the letter said. “As such, we would hope that would be balanced by encouraging them in locations as identified by the General Plan (which still highlights data centers as a targeted industry in Chapter 5-Economic Development), and this motion appears to have the opposite effect. Given that a sizeable amount of OP-zoned land is already developed with or approved for data center uses, there seems little need for this additional later of review and approval to protect the data centers located in office parks from themselves.”

The letter also said the motion was approved on Oct. 23 “with no public notice (beyond the publication of the supplemental motion packet just days prior to the meeting) and without significant discussion with industry.” It asks supervisors to discuss the motion with the data center industry.

Levi declined an interview but sent a written statement to the Times-Mirror.

“We understand and appreciate the stated desire of the Board to mitigate the impact of data center development on adjacent residential uses and align the Zoning Ordinance with the 2019 General Plan,” the statement said. “Over the course of the Board’s deliberations the past several months, industry provided a number of recommendations and alternatives seeking to advance design standards and setbacks from residential uses that would provide much needed flexibility while adequately mitigating the effects of data center development.”

**Affordable housing**The draft ordinance includes an entire chapter on affordable housing, which has been one of the board’s goals, culminating in 2021 with the adoption of the Unmet Housing Needs Strategic Plan.

The draft increases the number of affordable units required for new developments while providing more flexibility and incentives for building affordable housing. Depending on the type of units, the ZOR would require developers to set aside 10 or 15% of units as below-market.

Hart said that the Unmet Housing Needs Strategic Plan “set a very high goal for the number of units to be built. It’s going to be hard to get there.” To reach that goal, he said, the ordinance needs to provide more incentives for creating affordable housing.

“A zoning ordinance, if you want to get there, should have both carrots and sticks,” Hart said. “At the moment, the ordinance has some big sticks, you know, you have to provide a certain percentage of affordable units. Well, that’ll produce some units, but I don’t think it’s going to produce enough to get to the goals of the strategic plan. There needs to be more carrots.”

He suggested that applicants should get expedited review of their applications if they provide more affordable housing than is required. It currently takes 18 to 24 months to get through the rezoning process, he said.

“That’s a lot of time and a lot of money for developers,” Hart said. “If you would give them a faster path through that process, like you get for the data centers, in exchange for affordable housing, I think that would be a big carrot.”

## Environmental protections

The ZOR includes a chapter on natural environmental resources that will enact some stronger protections than in the current ordinance, environmental activists say.

“No active recreation — in other words, ball fields — are now permitted in the major floodplain,” which is an important protection, Bingol said. “In addition to that, there’s better protection for steep slopes and ridges and more buffers around water resources, so springs and wetlands, in the Mountain Overlay District, which is important because those are recharging areas for groundwater.”

The draft ordinance also offers better protections for historical resources, Bingol said.

“There is an incentive that gives [developers] extra credit — in other words, a weighted credit — for preserving things that we want to preserve. So historic resources, mature forests — if there’s a sensitive habitat, those things will all get higher weighting,” she said.

Tia Earman, the president of the Loudoun County Farm Bureau who also works as a senior land use field representative for the Piedmont Environmental Council, said that the ZOR includes important protections for the Mountainside Overlay District and for floodplains.

“The economy of western Loudoun is largely dependent on the rural backdrop and on the setting out here, the viewshed, which obviously those ridge tops are so important for,” she said. “... For the floodplain countywide, a lot of good work was accomplished on that as well, just limiting the amount that we are encroaching upon the floodplain and impacting it.”

But what’s not yet complete is the Prime Agricultural Soil and Cluster Subdivision zoning ordinance amendment. Maura Walsh-Copeland, who represents the Loudoun County Preservation and Conservation Organization on the Zoning Ordinance Committee, said that the amendment has been in the works for four years and was supposed to be passed alongside the ZOR.

Earman estimated that about 11,000 additional houses will be built in western Loudoun in cluster subdivisions over the next decade. The amendment seeks to rework the process so that protecting prime agricultural soils is prioritized when building cluster subdivisions.

“The current cluster subdivision has a different pecking order of who gets to use the land first,” Walsh-Copeland said. “And first is that houses can go wherever they want. That’s in the current. In the revised, the priority is first you designate where the agricultural soils are, and then you figure out where the houses go. So the danger is, not having it in the proper sequences we will still end up with possibly more applications that continue to permit houses first, farming second.”

The amendment is expected to be complete in spring of 2024, according to the Department of Planning and Zoning work plan. The Planning Commission will be reviewing it at a Dec. 14 meeting.

Additionally, Walsh-Copeland and Bingol said that the draft ordinance does not place enough restrictions on some uses of land in western Loudoun or on data centers.

“Those two projects started 10 years ago — data centers and a bunch of rural uses 10 years ago — by zoning ordinance amendments that made them by right, with no real consideration or protections when they were in proximity to residential,” Walsh-Copeland said. “And I think that that’s what ZOR has now identified is that 10 years later and all the public input, it’s time to put some of those commonsense setbacks, landscaping, road access, all that stuff, in for the protection of citizens.”

**Looking ahead** Looking ahead to future zoning ordinance amendments, Walsh-Copeland urged staff and the Planning Commission not to start from scratch. Her consulting firm, Walsh-Copeland Consulting, has compiled a summary of requests and priorities that were not addressed in the ZOR.

“They should not dump. They should not start from scratch, because that would be completely unnecessary staff, time and cost. They have thousands of comments already documented online,” she said.

Overall, Junda said the ZOR is “less business-friendly” than the current zoning ordinance, which is likely to have negative consequences for the development industry.

“There were certain things that were done with the ZOR to reorganize it so you don’t have to look at multiple places to find an answer, but they also layered in just way more regulation and way more criteria to follow,” Junda said. “So it is most certainly going to be harder to implement, more costly for developers to adhere to all the new rules.”

“Development industry wants a reliable and consistent outcome,” he continued. “They want to know, like, ‘What are the expectations and what is it going to take me to get to the finish line?’ And when you start introducing all these new risks, that really dampens economic development.”

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**Jess Kirby**

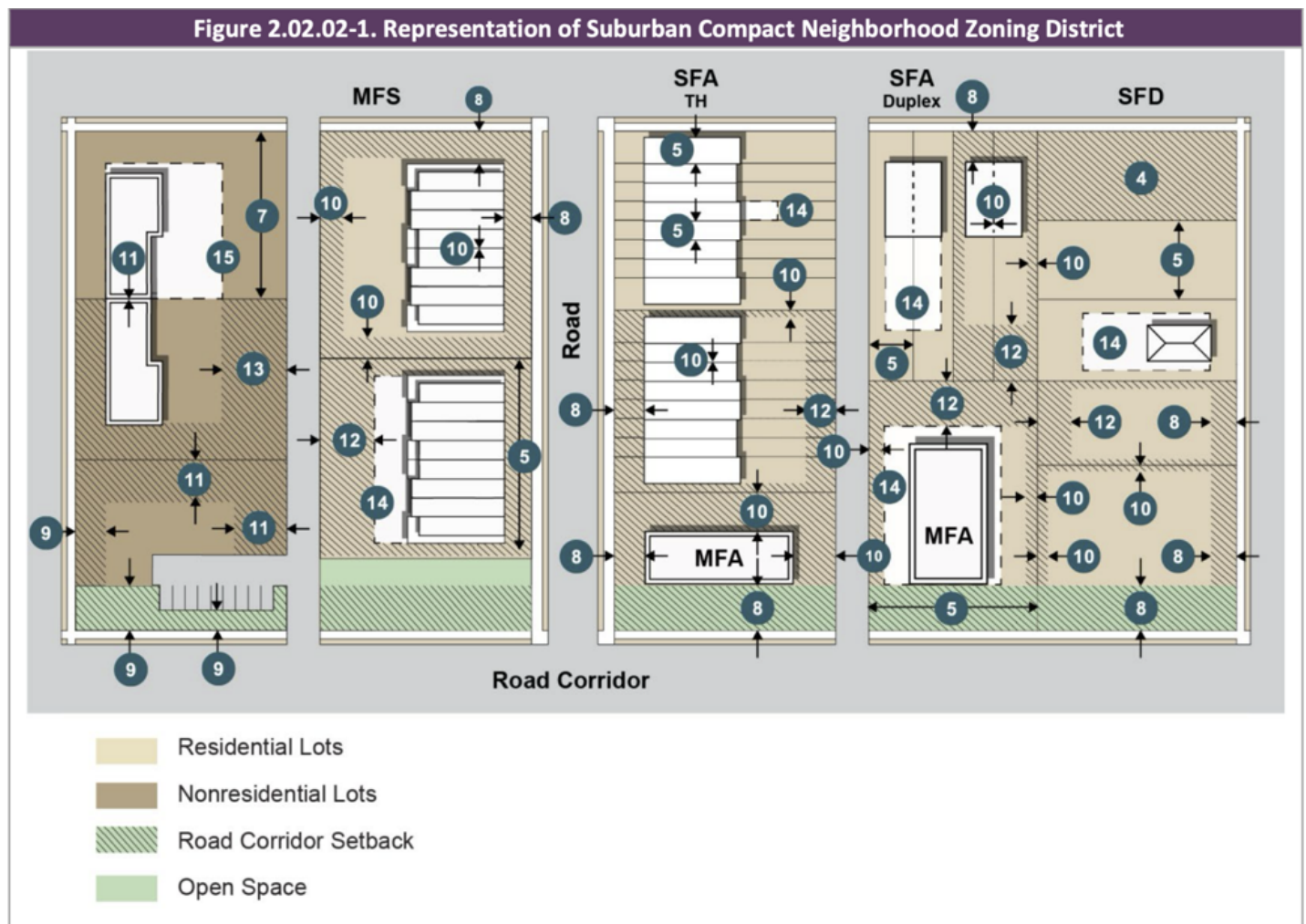
Reporter

ALERT

## ‘Crowning achievement’: County passes new zoning ordinance

By JESS KIRBY [jkirby@loudountimes.com](mailto:jkirby@loudountimes.com)

Dec 13, 2023



A graphic from the new Loudoun County Zoning Ordinance shows the general layout envisioned for the Suburban Compact Neighborhood zoning district.

Loudoun County

For the first time in 20 years, the Loudoun County Board of Supervisors has overhauled the county's zoning ordinance. After listening to comments from dozens of speakers at a Dec. 13 public hearing, the board adopted the complex body of regulations that specifies in great detail what property owners can and can't do with their land.



The vote was 8-0-1 to pass the 671-page ordinance. Supervisor Sylvia Glass, D-Broad Run, was absent.

The zoning ordinance rewrite process began in 2019 after supervisors approved a new comprehensive plan. In those four years, the drafts of the ordinance were reviewed in 40 Zoning Ordinance Committee meetings and 25 Planning Commission work sessions, Deputy Director of Planning and Zoning Judi Birkitt said. In September and October, the board made more than 150 motions directing staff to revise the draft, she added.

While board members agreed that there are needed amendments, they thanked stakeholders, Planning Commissioners and county staff for their work on the ZOR.

Chair Phyllis Randall, D-At Large, called the ZOR a “crowning achievement” of the current board and all those involved in the process. She noted that the final version has support from both the Piedmont Environmental Council and the Loudoun Chamber of Commerce, two organizations with often competing interests.



Board of Supervisors Chair Phyllis Randall, D-At Large, speaks at a Dec. 5 business meeting.

Times-Mirror/Coy Ferrell

“Mostly, though, I want to thank the staff,” Randall said. She commended their “depth of knowledge, the patience, the willingness to stick it out.”

“Your achievement is just astounding,” Turner said of county staffers.

Supervisor Kristen Umstatt, D-Leesburg, said she has some outstanding concerns and emphasized the need for amendments, but she decided to vote “aye” after hearing business industry representatives encourage the board to adopt the draft.

“This imperfect document ... I think is the best we’re going to get right now,” she said.

Supervisor Juli Briskman, D-Algonkian, said the proposed amendments to restrict data center development are “critical” and should be prioritized.

Several supervisors thanked Randall for spearheading the effort to pass the ZOR before the end of the year as some were calling for the vote to be pushed to the next term.

“As I've known for many years now, when you set your mind to something, it happens,” Supervisor Koran Saines, D-Sterling, said of Randall.

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**Jess Kirby**

Reporter



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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

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**

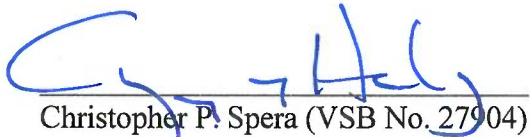
Upon motion, the time limits and prohibitions contained in this Order may be waived or modified by leave of the Commission or its Chair for good cause shown.

ENTERED this \_\_\_\_ day of \_\_\_\_\_, 2024

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

WE ASK FOR THIS:



Christopher P. Spera (VSB No. 27904)  
Jessica J. Arena (VSB No. 87642)  
Town Attorney  
Town of Leesburg  
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bowman@gentrylocke.com

*Counsel for the Town of Leesburg, Virginia*

SEEN:

---

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*Counsel for the County of Loudoun, Virginia*



**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

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

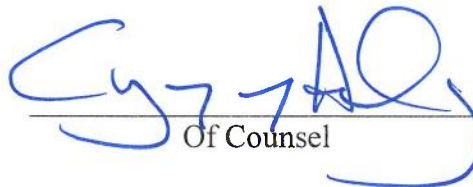
**CERTIFICATE OF SERVICE**

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:

Leo P. Rogers (VSB No. 28906)  
Nicholas Lawrence (VSB No. 76964)  
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*Counsel for the County of Loudoun, Virginia*

  
\_\_\_\_\_  
Of Counsel



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Fax: (804) 783-7291

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 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 21<sup>st</sup> day of December, 2023.

**COUNTY OF LOUDOUN, VIRGINIA**

By: 

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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:

Christopher P. Spera (VSB No. 27904)  
Jessica J. Arena (VSB No. 87642)  
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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.

### **Town of Leesburg**

Kaj H. Dentler  
Town Manager  
25 West Market Street  
Leesburg, Virginia 20176  
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Kelly Burk  
Mayor  
25 West Market Street  
Leesburg, Virginia 20176  
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Town Attorney and Counsel (per certificate of service)

### **Clarke County**

Chris Boies  
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Berryville, Virginia 22611  
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Email: cboies@clarkecounty.gov

David Weiss  
Board of Supervisors, Chair  
P.O. Box 349  
Berryville, Virginia 22611  
Telephone: 540.955.2151

### **Fairfax County**

Bryan Hill  
County Executive  
12000 Government Center Parkway  
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Telephone: 703.324.3151  
Email: bryan.hill@fairfaxcounty.gov

Jeffrey C. McKay  
Board of Supervisors, Chairman  
12000 Government Center Parkway  
Fairfax, Virginia 22035  
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Elizabeth D. Teare  
County Attorney  
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**Prince William County**

Elijah Johnson  
Acting County Executive  
1 County Complex Court  
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Ann B. Wheeler  
Board of Supervisors, Chair-at-Large  
1 County Complex Court  
Prince William, Virginia 22192  
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Email: chair@pwcgo.org

Michelle R. Robl  
County Attorney  
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**Fauquier County**

Janelle Downes  
County Administrator  
10 Hotel Street, Suite 204  
Warrenton, Virginia 20186  
Telephone: 540.422.8001

Christopher T. Butler  
Board of Supervisors, Chairman  
10 Hotel Street, Suite 208  
Warrenton, Virginia 20186

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Email: BOS@fauquiercounty.gov

Tracy A. Gallehr  
County Attorney  
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**Town of Hamilton**

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Maureen Gilmore  
Town Attorney  
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**Town of Hillsboro**

Roger Vance  
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Town Attorney  
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Hillsboro, VA 20132  
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**Town of Lovettsville**

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Nathaniel O. Fontaine  
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Shelby Caputo  
Town Attorney  
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**Town of Middleburg**

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Martin R. Crim  
Town Attorney  
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Middleburg, VA 20117  
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**Town of Round Hill**

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23 Main Street  
Round Hill, VA 20141  
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Scott Ramsey  
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Maureen Gilmore  
Town Attorney  
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Round Hill, VA 20141  
Telephone: 540.338.7878

**Town of Purcellville**

David A. Mekarski  
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221 South Nursery Avenue  
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Kwasi Fraser  
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**Town of Herndon**

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Sheila A. Olem  
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Lesa J. Yeatts  
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**Frederick County, Maryland**

Jessica Fitzwater  
County Executive  
12 East Church Street



Frederick, Maryland 21701  
Telephone: 301.600.1028  
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Brad Young  
County Council, President  
12 East Church Street  
Frederick, Maryland 21701  
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County Attorney  
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**Washington County, Maryland**

Michelle A. Gordon  
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Hagerstown, Maryland 21740  
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100 West Washington Street, Room 1101  
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County Attorney  
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**Montgomery County, Maryland**

Marc Elrich  
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Andrew Friedson  
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Rockville, Maryland 20850

Telephone: 240.777.7828

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County Attorney

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Rockville, Maryland 20850

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**Jefferson County, West Virginia**

Steve Stolipher

County Commission, President

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Matthew Harvey

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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

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**GENTRY LOCKE**  
Attorneys

Gregory J. Haley  
haley@gentrylocke.com  
P: (540) 983-9368  
F: (540) 983-9400

December 29, 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 Response to the County of Loudoun's Notice Pursuant to Va.  
Code § 15.2-2907(E)

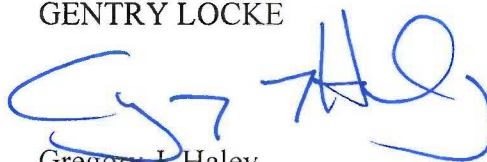
Dear LeGrand:

We have enclosed the Town of Leesburg Response to the County of Loudoun's Notice Pursuant to Va. Code § 15.2-2907(E). As always, we appreciate the Commission's and the Commission staff's attention to these matters. Please let us know if you need anything further from Leesburg.

We expect to attend the Commission's January 5, 2024 meeting.

Very truly yours,

GENTRY LOCKE



Gregory J. Haley

GJH:as  
Enclosure

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

10 Franklin Road SE, Suite 900 Roanoke, VA 24011 • PO Box 40013 Roanoke, VA 24022-0013  
Toll Free: 866.983.0866

**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 RESPONSE TO  
THE COUNTY OF LOUDOUN'S NOTICE PURSUANT  
TO VIRGINIA CODE § 15.2-2907(E)**

The Town of Leesburg, Virginia ("Leesburg"), by counsel, submits this Response to the County of Loudoun's ("Loudoun") Notice of Its Desire to Negotiate an Agreement, dated December 21, 2023, under Virginia Code § 15.2-2907(E) (the "Notice").

**INTRODUCTION**

As discussed below, Leesburg supports mediation as a means to try to resolve this annexation proceeding. The Town will participate in the mediation in a good faith attempt to reach an agreement. Leesburg is working with Loudoun County to finalize the scheduling of the mediation for January 9 or 10, 2024.

The Commission on Local Government (the "Commission"), however, should deny Loudoun County's request to delay the Commission hearing scheduled for March 4-8, 2024. The provision for a "stay" in Virginia Code § 15.2-2907(E) applies only to a "suit" pending "in a court"; the stay provision does not apply to an administrative proceeding pending before the Commission. The reporting deadline for the Commission stated in Code § 15.2-2907(A) is mandatory; the Commission does not have the discretion to ignore the deadline stated in § 15.2-2907(A).

In addition, the Commission should enter the Administrative Case Management proposed by Leesburg, with any appropriate revisions. The Administrative Case Management Order will allow the orderly conduct of the Commission's hearing proceedings in March 2024.

### **SUMMARY OF PROCEEDINGS**

Leesburg initiated the annexation of the Compass Creek Annexation Area by its September 28, 2022 Notice to the Commission. This annexation will be an annexation by a town. After the annexation, the Compass Creek Annexation Area will continue to be part of Loudoun County. The annexation will have no material adverse effect on the County. Leesburg provides water and sewer services, and the primary street access, to the Compass Creek area. The annexation will be consistent with long-standing provisions of both the Leesburg and Loudoun County comprehensive plan documents. Significant property owners in Compass Creek have consented to the annexation. No property owner has objected. Loudoun County's opposition to this annexation is inconsistent with decades of planning and implementation as stated in the County's comprehensive plan documents. This matter has been pending before the Commission since September 2022. The Commission has scheduled a hearing on the annexation for March 4-8, 2024. Loudoun County now seeks to delay the scheduled hearing. The Commission should deny the County's request.

### **LEESBURG RESPONSE**

1. Leesburg supports efforts to resolve the pending annexation by mediation. Leesburg has cooperated with the County on planning this mediation—including selecting the mediator (Honorable Jan L. Brodie, Retired), agreeing to share the mediation costs, and logistics. The mediation is planned for January 9 or 10, 2024. However, the March 2024 hearing on the Town's Annexation Notice should not be further delayed.



2. The controlling statute is Virginia Code § 15.2-2907(A). This statute provides that the Commission shall render its findings within six months of receiving an annexation notice. Section § 15.2-2907(A) authorizes the Commission to extend the period for filing its report, on its own motion, by no more than sixty days. The statute then provides: “No further extension thereafter of the time for filing shall be made by the Commission without the agreement of the parties.” Based on the controlling provisions of § 15.2-2907(A), the Commission cannot extend the time for filing its report without the agreement of both Loudoun County and Leesburg.

3. Virginia Code § 15.2-2907(E) **does not** have the meaning the County argues—**there is no automatic stay of proceedings before the Commission on Local Government** (the “Commission”). Code § 15.2-2907(E) only applies to stay a “suit”—*i.e.*, a “suit in any court of this Commonwealth.” The present administrative proceedings before the Commission are not a “suit” pending in a court. Therefore, the stay provision does not apply.

4. The County asks the Commission to “honor” the stay provision in Code § 15.2-2907(E). This request is inconsistent with the plain meaning of the statute. The County also suggests that the Commission should disregard the Commission’s deadline for reporting stated in § 15.2-2907(A). The Commission should not heed the County’s suggestion to ignore the deadline stated in § 15.2-2907(A).

5. The County’s concerns about costs and time are overstated. The mediation will begin within the next two weeks. Neither the parties nor the Commission will spend significant effort preparing for the March 2024 hearing during the intervening period. A pending trial or hearing date is the best motivation for litigants to resolve their differences and reach an agreed settlement.

6. There is no reason to postpone the March 2024 hearing. The Commission should deny the County's requested delay of the hearing.

### **PROCEDURAL HISTORY**

7. The Town has been accommodating to the County from the outset of these proceedings. In the initial scheduling conference with Commission in November 2022, the Town agreed to extend the six month timeline in response to the County request for more time than the standard timeline allowed.

8. This is not the first time the parties have been down the road of settlement negotiations and delayed Commission proceedings. The parties have engaged in settlement negotiations concerning the present annexation issues on-and-off for nearly five years—since late 2018.

9. The content of those past settlement negotiations are confidential, and would not be admissible as evidence in a court proceeding. It is inappropriate for the County to disclose the content of those negotiations in public filings. That said, the Town believed the parties were close to reaching an agreement on these issues several times, only to have the negotiations fail.

10. The most recent settlement negotiations occurred earlier in 2023. As the Commission is aware, on April 27, 2023, the parties sent a joint letter to the Commission concerning negotiations. The parties agreed to postpone the County's response date to allow for continued negotiations. In the April 27, 2023 letter, the Town and the County expressly and jointly consented to an appropriate extension of the Commission's reporting deadline. The Commission approved the joint request at its May 5, 2023 meeting.

11. Those negotiations failed. While the County's new filing attempts to fault the Town for the failure of past negotiations (*see* County Not. ¶ 9), the County's statements are incorrect.

When the parties seemed close to reaching agreement, the County backtracked and added additional demands. These additional demands caused the negotiations to fail.

12. There are no “remaining issues” to be resolved in future negotiations. (*Contra* County Not. ¶ 9.) The past negotiations failed. There is no pending offer to resolve this annexation. The situation has changed since the June/July 2023 negotiations. The Town will participate in good faith in an attempt to reach a settlement agreement, but any and all terms must be approved by a vote of the Town Council.

### GOVERNING LAW

13. Virginia Code § 15.2-2907(A) states:

No locality or person shall file any action any court in Virginia to annex territory...without first notifying the Commission....Upon receipt of the notice the Commission shall hold hearings, make investigations, analyze local needs and make findings of facts and recommendations...Such findings shall be rendered within six months after the Commission receives notice from the locality intending to file court action, provided that the Commission on its own motion may extend the period for filing its report by no more than sixty days. **No further extension thereafter of time for filing shall be made by the Commission without the agreement of the parties.**

(Emphasis added).

14. Virginia Code § 15.2-2907(E) states:

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, may notify the Commission on Local Government that it desires to attempt to negotiate an agreement with one or more adjacent localities relative to annexation or partial immunity under the direction of the Commission. . . . ***All 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.

(Emphasis added).

15. The Commission must construe § 15.2-2907(E) according to Virginia’s rules of statutory construction. Statutes must be construed according to the plain meaning of the words used by the General Assembly. *Hawkins v. Town of South Hill*, 301 Va. 416, 425 (2022). It is presumed “the legislature chose, with care, the words it used when it enacted the relevant statute.” *Barr v. Town & Country Properties, Inc.*, 240 Va. 292, 295 (1990). The Commission cannot add or subtract from the words used in the statute. *See Appalachian Power Co. v. State Corp. Comm’n*, 284 Va. 695, 706 (2012) (“Rules of statutory construction prohibit adding language to or deleting language from a statute.”). Rather, it is “bound by the plain meaning of th[e] language” used. *Woods v. Mendez*, 265 Va. 68, 74-75 (2003).

16. When construing a statute, the Supreme Court of Virginia directs that when a term is used multiple times in the same statute, “the same meaning” must be given “in each instance unless there is a clear indication the General Assembly intended a different meaning.” *Eberhardt v. Fairfax Cnty. Emples. Ret. Sys. Bd. of Tr.*, 283 Va. 190, 195 (2012); *cf. Bd. of Supervisors v. Marshall*, 215 Va. 756, 761-62 (1975) (“[W]here a word is used in different sections of a statute and its meaning is clear in all but one instance, the same meaning will be attributed to it elsewhere unless there be something in the context which clearly indicates that the Legislature intended some other and different meaning.”).

#### ANALYSIS

17. Virginia Code § 15.2-2907(E) allows a locality to notify the Commission of its desire to attempt to negotiate an annexation agreement. This notice may occur before or after the filing of any annexation “suit in any court of this Commonwealth.” If the notice is filed with the Commission after the filing of a suit, in a court, then Subsection E operates to stay the pending suit in a court while negotiations are in progress.

18. The County attempts to shoehorn the Commission’s administrative proceedings into this stay provision. This is improper. The Commission’s administrative proceedings are not a “suit” pending in a court. Therefore, the Commission’s administrative proceedings are not stayed during the pendency of settlement negotiations.

19. This plain and commonsense interpretation of Code § 15.2-2907(E) is consistent with two rules of statutory construction: (A) the plain meaning, dictionary definition of the term “suit” applies to litigation pending in a court; and (B) the General Assembly used the term “suit” to refer to litigation “in a court of this Commonwealth.” For these reasons, as discussed below, the Commission should deny the County’s requested stay of these proceedings.

**A) The dictionary definition of “suit” is litigation pending before a court.**

20. The text of § 15.2-2907(E) makes clear that the stay provision only applies to “suits for either annexation or partial immunity.” Subsection E does not define the term “suit.”

21. In the absence of a statutory definition, Virginia courts use dictionary definitions to determine plain meaning. *See, e.g., Cornell v. Benedict*, 301 Va. 342, 350-51 (2022) (adopting Black’s Law Dictionary definition); *Hawkins v. Town of South Hill*, 301 Va. 416, 431 (2022) (adopting Webster’s Dictionary as the “plain meaning”). The Supreme Court of Virginia regularly refers to Black’s Law Dictionary, Ballantine’s Law Dictionary, and Webster’s Dictionary—Virginia courts have referred to these common dictionary sources over 500 times when engaging in statutory construction.<sup>1</sup>

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<sup>1</sup> By contrast, the County relies on *Garner’s Dictionary of Legal Usage*. This uncommon secondary source is not available on regularly used legal search platforms such as LexisNexis and WestLaw. The Supreme Court of Virginia has only consulted *Garner’s Dictionary of Legal Usage* once, and in dicta. *See Day v. MCC Acquisition, LC*, 299 Va. 199, 214 (2020). The County may have selected this rarely-used dictionary because **every** commonly used dictionary (Black’s Law Dictionary, Ballantine’s Legal Dictionary, and Webster’s Dictionary) does not support its argument.

22. Black's Law Dictionary (9<sup>th</sup> ed.) defines "suit" as "[a]ny proceeding by a party or parties against another **in a court of law.**" (Emphasis added). Similarly, Ballantine's Law Dictionary (3<sup>rd</sup> ed.) defines "suit" as "an action," and "[a]ny proceeding **in a court of justice** by which a person pursues therein that remedy which the law affords him." (Emphasis added). Merriam-Webster's Online Dictionary defines "suit" as "an action or process **in a court** for the recovery of a right or claim." (Emphasis added).<sup>2</sup>

23. Therefore, the plain meaning of "suit" is litigation pending in a court.

**B) Virginia Code § 15.2-2907(E) is clear that a "suit" is litigation "in any court of this Commonwealth."**

24. The plain meaning, dictionary definition of "suit" is confirmed by how the General Assembly uses the term in § 15.2-2907(E). Code § 15.2-2907(E) uses the term "suit" three times. The first sentence uses the term "suit" to refer to a "suit in any court of this Commonwealth." This usage makes clear that the term "suit" is an action pending **in a court**.

25. The Commission must apply this same meaning to each instance of the term "suit" in Code § 15.2-2907(E), absent a "clear indication the General Assembly intended a different meaning." *Eberhardt*, 283 Va. at 195. There is no such "clear indication"—with respect to a stay, the General Assembly did not specially define the term "suit" or in any way indicate that it was to be afforded a meaning different from its use elsewhere in the same statute. Stated differently, the General Assembly used the term "suit" in the same manner throughout Code § 15.2-2907(E). That common usage is a "suit in any court of this Commonwealth." The Commission must apply same meaning to each instance of the term "suit." *See Eberhardt*, 283 Va. at 195.

**C) The plain meaning of Code § 15.2-2907(E) only stays a "suit" in court.**

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<sup>2</sup> <https://www.merriam-webster.com/dictionary/suit>

26. Applying this plain meaning of the term “suit,” Code § 15.2-2907(E) only operates to stay a court action—*i.e.*, the circuit court litigation before a three judge panel—if that “suit” is pending at the time a locality gives notice to the Commission of its desire to enter into settlement negotiations.

27. This matter is an administrative proceeding pending before the Commission. It is not a “suit;” there is no circuit court litigation. Accordingly, Code § 15.2-2907(E) does not stay the present proceeding.

**D) The County’s arguments misstate the law and violate the rules of statutory construction.**

28. The Commission should reject the County’s argument that the statutory term “suit” includes the present administrative proceeding for three additional reasons: (1) the County’s construction is inconsistent with Code § 15.2-2907(F), and renders this subsection entirely superfluous; (2) Code § 15.2-2908 **does not** define “suit;” and (3) the Commission’s Regulation implementing Code § 15.2-2907(E) does not provide for a stay of this administrative proceeding.

29. *First*, the County’s argument ignores Code § 15.2-2907(F), which states: “A locality may proceed simultaneously under subsections A and E of this section.” Thus, Subsection F states that the localities may proceed with administrative proceedings before the Commission under Subsection A **at the same time** as settlement negotiations under Subsection E. This is a direct provision that settlement negotiations under § 15.2-2907(E) do not stay the Commission’s administrative proceedings under Code § 15.2-2907(A).

30. The County’s argument—that Subsection E stays administrative proceedings before the Commission—would create internal conflict between Subsections E and F. It would be impossible for the Commission’s administrative proceeding to both be stayed (under Subsection

E) and proceed simultaneously (under Subsection F). Under the County’s construction, Subsection E cannot coexist with Subsection F.

31. Virginia law disfavors statutory constructions which create such conflict. As even the County recognizes (County Not. ¶ 17), the Supreme Court of Virginia instructs that a statutes should be “harmonized, if at all possible, to give effect to both” provisions. *Lawlor v. Commonwealth*, 285 Va. 187, 236 (2013) (quoting *Conger v. Barrett*, 280 Va. 627, 630-631 (2010)); see also *Waller v. Commonwealth*, 278 Va. 731, 737 (2009) (holding statutes “should be so construed, if reasonably possible, so as to allow both to stand and to give force and effect to each”). But, the County’s proffered construction creates an irreconcilable conflict between Subsections E and F. It, therefore, violates this “cardinal rule of statutory construction.” *Rowland v. Town Council of Warrenton*, 298 Va. 703, 716 (2020).

32. On the other hand, Leesburg’s construction of Subsection E harmonizes the entirety of Virginia Code § 15.2-2907 such that there is no conflict between the subsections. By applying the plain, commonsense meaning of “suit” (*i.e.*, only a court proceeding), Subsection E would operate to stay only an annexation suit in circuit court—not administrative proceedings before the Commission—and Subsection F would still have its full effect by allowing parties to proceed “simultaneously” with administrative proceedings and settlement negotiations. The Town’s construction is, therefore, consistent with the canon of statutory construction to “harmonize[], if at all possible, to give effect to both” provisions. *Lawlor*, 285 Va. at 236.

33. The County’s argument misstates Code § 15.2-2908. Contrary to the County’s suggestion, this statute **does not** define “when an annexation ‘suit’ is instituted.” (County Not. ¶ 16.) Instead, Virginia Code § 15.2-2908 states, in its entirety: “**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.” (Emphasis added). By its plain terms, Code § 15.2-2908 only defines when an administrative proceeding before the Commission begins. It has nothing to do with the definition of “suit” under Code § 15.2-2907(E). Virginia Code § 15.2-2908 does not use the term “suit”.

34. Next, the County suggests that the Commission’s Regulations, specifically 1 Va. Admin. Code § 50-20-650, include a stay provision. (County Not., at 1.) **That is incorrect.** The Commission’s mediation regulation, 1 Va. Admin. Code § 50-20-650, details its procedures for mediation under Code § 15.2-2907(E). However, this regulation **does not** include a stay of administrative proceedings. *See* 1 Va. Admin. Code § 50-20-650. The absence of any procedures establishes that a stay under Code § 15.2-2907(E) does not apply to the Commission’s administrative proceedings.

35. For these additional reasons, the Commission should deny the County’s requested stay of these proceedings.

**E) The County misstates the Town’s position.**

36. The County attacks a straw man argument. Contrary to the argument in Loudoun’s Notice, the Town has **not** taken the position that “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.” (County Not. ¶ 22.) The Town’s position has nothing to do with the sixty day discretionary extension under Code § 15.2-2907(A). The Town’s position is simple: there is no automatic stay of administrative proceedings before the Commission pursuant to Code § 15.2-2907(E).

37. This is not an absurd result; it is the statutory framework enacted by the General Assembly. Under Code § 15.2-2907(A), the General Assembly authorized “the Commission on its

own motion may extend the period for filing its report by no more than sixty days.” However, any further extension of the deadline—whether for settlement negotiations or otherwise—requires the agreement of **both parties**. *See* Va. Code Ann. § 15.2-2907(A) (“No further extension thereafter of the time for filing shall be made by the Commission **without the agreement of the parties.**”) (emphasis added). Indeed, that is exactly what Leesburg and Loudoun have done previously to allow additional settlement negotiations earlier this year.

38. As stated above, the Town supports renewed settlement negotiations. The Town has cooperated with the County on sharing mediation costs and logistics. The Town and the County have agreed to employ the assistance of a private mediator. The mediation is scheduled for January 9 or 10, 2024.

39. The Town does not understand why the County wishes to delay this proceeding for a mediation that will occur shortly. The localities have been negotiating on-and-off since late 2018. The Town and the County have been close to an agreement several times, only for the negotiations to fail. Given this history, the Town has limited expectations for this mediation.

40. One hallmark of prior negotiations, however, was delay. For example, after the filing of the Town’s Notice, the County’s Response was delayed by seven months to allow additional negotiations. Now, two months before the March 2024 administrative hearing, the County again seeks to unilaterally delay the Commission’s proceedings for additional settlement negotiations. While the Town stands ready to negotiate in good faith, it opposes any additional delay.

41. For these additional reasons, the Commission should reject the County’s request to stay the hearing scheduled for March, 2024.

**F) The Commission does not have the power to disregard its statutory deadline.**

42. The County next suggests that the Commission ignore the statutory deadline for issuing its report under Code § 15.2-2907(A). The Commission does not have the discretion to decide not to follow Virginia law.

43. In Virginia, the general rule is that “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.**” *Jamborsky v. Baskins*, 247 Va. 506, 511 (1994) (emphasis added); *see also Commonwealth v. Rafferty*, 241 Va. 319, 324 (1991) (holding 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**”) (emphasis added). However, when a statute evidences a “contrary intent” through the use of “prohibitory or limiting language,” then the statutory term “shall” is mandatory. *Jamborsky*, 247 Va. at 511.

44. Here, Code § 15.2-2907(A) contains limiting language. The Commission’s ability to extend the deadline for its report is limited; the Commission cannot extend the deadline “without the agreement of the parties.” Given this limiting language, the term “shall” is mandatory, and the Commission must follow the statutory deadline for issuing its report.

45. The County’s Notice does not address the effect this limiting language. Indeed, the cases the County cites in its notice concern the situation where there is **no** limiting language. *See, e.g., Tran v. Bd. of Zoning Appeals*, 260 Va. 654, 658 (2000) (holding “Code § 15.2-2312 contains no ‘prohibitory or limiting language’”); *Commonwealth v. Wilks*, 260 Va. 194, 200 (2000) (holding “Code § 19.2-386.3(A) contains no prohibitory or limiting language”); *Kidder v. Va. Birth-Related Neurological Injury Compensation Program*, 37 Va. App. 764, 772 (2011) (finding “the absence of evidence that the legislature had a contrary intent”). These cases, therefore, do not apply.

46. Given the limiting language in Virginia Code § 15.2-2907(A) that prohibits the Commission from extending the statutory deadline “without the agreement of the parties,” the term “shall” is mandatory. The Commission cannot decide to not follow the statutory deadline imposed by the General Assembly. For this additional reason, the Commission should deny the County’s requested stay of these proceedings.

47. This annexation will result in significant benefits to Leesburg. The Town has been working on this process since late 2018. Any delay in the Commission’s review will prejudice Leesburg because it will delay the effective date of the annexation.

48. The reporting deadline imposed by Code § 15.2-2907(A) ensures that the Commission’s review is conducted promptly. Section 15.2-2907(A) mandates prompt completion of the Commission’s review; it is not an instrument of delay.

**THE COMMISSION SHOULD ENTER THE  
ADMINISTRATIVE CASE MANAGEMENT ORDER**

49. In its Notice, the County opposed the entry of the Administrative Case Management Order (“ACMO”) stating that it “has concerns regarding the dates in the proposed order, including inconsistencies with uniform procedure and the Rules of the Supreme Court of Virginia.” (County Not. ¶ 38.)

50. This is the first time the Town has heard of these concerns. Leesburg has attempted to meet and confer with Loudoun on several occasions concerning the ACMO, but Loudoun has declined to discuss the issue. For example:

- a. On November 7, 2023, the Town reached out to the County concerning pre-hearing arrangements, and the County suggested the Town prepare a draft ACMO to govern the remainder of the Commission’s administrative proceedings.

- b. On November 10, 2023, the Town provided the County with the draft ACMO, and requested the County's feedback. However, the County did not respond to the Town's draft.
- c. On November 21, 2023, the Town followed up with the County concerning the draft ACMO, and offered to consider any proposed revisions by the County. The County did not respond to the Town's draft.
- d. On December 12, 2023, the Town followed up with the County concerning the draft ACMO. The County did not respond.

51. The Town is happy to consider any revisions to the ACMO proposed by the County. However, to date, the County has declined to discuss the issue, which necessitated the Town's Motion.

52. Turning to the substance of the County's opposition, the Town recognizes that there are differences between the ACMO and the standard Virginia Pretrial Scheduling Order entered in civil court cases. These differences, however, are based on differences between the Commission's administrative procedures and typical court procedures.

53. In an ordinary court case, the parties engage in full discovery with document productions, written interrogatories, depositions, and expert disclosures. The parties have a full opportunity to investigate and understand the opposing side's witnesses, testimony, and arguments. Accounting for this discovery process, the Uniform Pretrial Scheduling Order only requires the exchange of the parties' witness and exhibit list 15 days before trial.

54. Unlike court litigation, the Commission's administrative procedures do not provide for the full discovery process. While the parties' written submissions provide insight into their

respective positions, the parties do not have ability to conduct discovery of the evidence that may be offered at the March 2024 hearing.

55. To address this lack of discovery, and to allow the parties time to better understand the opposing side's witnesses and exhibits, the Town proposed that the parties exchange their witness and exhibit lists 45 days before the March 2024 hearing.

56. Additionally, the Town has proposed provisions that address the unique aspects of the Commission's hearing—the arrangements for the Commission's site visit of the Annexation Area and arrangements for the public hearing.

57. The ACMO is appropriate for the orderly administration of the Commission's March 2024 hearing. The Chair of the Commission has the power to enter the ACMO. *See* 1 Va. Admin Code § 50-20-50(5) (stating the Chair may "make other arrangements the chair deems appropriate and consistent with the requirements of law and this chapter for the conduct of the commission's oral presentations and public hearings."). The Commission should enter the ACMO.

### CONCLUSION

WHEREFORE, the Town of Leesburg, Virginia respectfully requests the Commission note its Response, deny a stay of these proceedings during negotiations between the parties, and grant such further relief the Commission deems just and proper.

Respectfully submitted this 29<sup>th</sup> day of December, 2023.

TOWN OF LEESBURG, VIRGINIA

By:  \_\_\_\_\_  
Of Counsel

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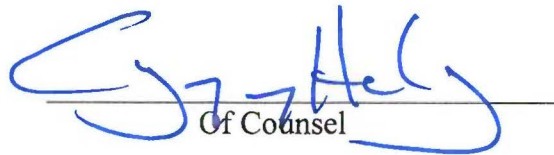
**CERTIFICATE OF SERVICE**

The undersigned counsel certifies that on this 29<sup>th</sup> day of December, 2023, a true copy of the foregoing was sent via Federal Express and E-Mail to counsel for the County of Loudoun, Virginia:

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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:**

**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.**

**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’s<sup>1</sup> 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.

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<sup>1</sup> 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 21<sup>st</sup> December, 2023, and grant such other relief as the Commission deems just and proper.

Respectfully submitted this 3<sup>rd</sup> day of January, 2024.

**COUNTY OF LOUDOUN, VIRGINIA**

By:   
Of Counsel

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*Counsel for the County of Loudoun, Virginia*

**CERTIFICATE OF SERVICE**

The undersigned counsel certifies that on this 3<sup>rd</sup> 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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*Counsel for the Town of Leesburg, Virginia*

By:   
Of Counsel





*The Town of Washington*  
*"The First Washington of Them All"*

POST OFFICE BOX 7, WASHINGTON, VIRGINIA 22747  
540/675-3128

November 20, 2023

The Virginia Commission on Local Government  
c/o Mr. LeGrand Northcutt  
600 East Main Street, Suite 300  
Richmond, Virginia 23219

Dear Mr. Northcutt:

Enclosed you will find a Notice from the Town of Washington, Virginia, and the County of Rappahannock, Virginia, of their intention to petition for the approval of a voluntary settlement agreement between them. I believe that you have been made aware of the ongoing discussions between the two jurisdictions.

The Town is acting as the petitioning party solely for convenience since it is the jurisdiction seeking to alter the Town boundary. We believe that the Notice provides a clear explanation of why this change is requested.

Please let us know what further information or assistance is required.

Sincerely yours,

Joseph J. Whited

Mayor

Town of Washington, Virginia

cc: Ms. Debbie Donehey, Chair of the Rappahannock County Board of Supervisors  
Mr. Garrey Curry, Rappahannock County Administrator  
Mr. Arthur Goff, County Attorney  
Mr. Martin Crim, Washington Town Attorney  
Mr. Charles Akre, Black Kettle, LLC  
Mr. John Foote, Walsh, Colucci, Lubeley & Walsh, PC  
Mr. John Egertson & Ms. Sheila J. Weimer, Culpeper County  
Ms. Janelle Downes & Ms. Tracey A. Gallehr, Fauquier County  
Mr. Jonathon Weakly & Ms. Clarissa T. Berry, Madison County  
Ms. Amity Moler & Mr. Bryan Cave, Page County  
Dr. Edwin C. Daley & Mr. Jason J. Ham, Warren County  
Mr. Russell Gilkison, RSW Regional Jail  
Mr. Evan Vass and Mr. Jason Ham, Shenandoah County

**VIRGINIA:**

**BEFORE THE VIRGINIA COMMISSION ON LOCAL GOVERNMENT**

**RE: AGREEMENT BETWEEN THE TOWN OF )  
WASHINGTON, VIRGINIA, AND THE )  
COUNTY OF RAPPAHANNOCK, VIRGINIA )  
PURSUANT TO THE PROVISIONS )  
OF VA. CODE ANN. § 15.2-3400 )**

**NOTICE OF TOWN OF WASHINGTON, VIRGINIA, AND COUNTY OF  
RAPPAHANNOCK, VIRGINIA, OF THEIR INTENTION TO PETITION FOR THE  
APPROVAL OF A VOLUNTARY SETTLEMENT AGREEMENT BETWEEN THE  
TOWN OF WASHINGTON AND RAPPAHANNOCK COUNTY**

Pursuant to Va. Code Ann. § 15.2-3400, and Virginia Administrative Code 1 VAC 50-20-230, the County of Rappahannock, Virginia (the “**County**”), and the Town of Washington, Virginia (the “**Town**”), by counsel, hereby notify the Commission on Local Government (the “**Commission**”), and all Virginia local governments contiguous to, or sharing any function, revenue or tax source with the County or the Town, of their intention to refer a Boundary Line Adjustment Agreement By and Between the County of Rappahannock, Virginia and the Town of Washington, Virginia (the “**BLA Agreement**”), to the Commission for its review pursuant to law, and ultimately the approval and of a BLA Agreement between them.

In support of this Notice, the Parties state the following:

1. Black Kettle, LLC (“**Black Kettle**”) is the owner of two parcels of land identified as Tax Map #20-18 and #20-18A on the Tax Maps of Rappahannock County. These Parcels consist in total of approximately 9.09848 acres, more or less. Of this acreage 3.29789 acres of Parcel #20-

18, and 1.85196 acres of Parcel #20-18A, more or less, are situated in the Town, and are subject to its jurisdiction (the “Town Property”).<sup>1</sup>

2. Approximately 3.94953 acres of Parcel #20-18A, more or less, of the Black Kettle land are situated in the County and subject to its sole jurisdiction (the “County Property”). These Parcels are depicted on the Boundary Line Adjustment Plat attached as **Exhibit 1**).

3. Black Kettle has obtained Town approval for the first phase of the development of Rush River Commons I (“Phase I” of the “Project”) on the Town Property, and has obtained site plan approval and has commenced construction of that Phase I.

4. Black Kettle has further requested that the Town and County so adjust the boundaries between them as to bring the County Property into the Town’s limits in order that Black Kettle’s further development of the Project may be planned and developed consistently with the approvals for Phase I, pursued according to the Town’s Zoning and Subdivision Ordinances and other development ordinances and processes, and so that the land so adjusted may have access to the Town-provided public utilities that are essential to that development.

5. Following extensive communication between and among Black Kettle, the Town, and the County regarding a potential Boundary Line Adjustment to serve these ends, a proposed Boundary Line Adjustment Agreement was submitted for review and consideration by the jurisdictions on June 5, 2022. The Town and the County undertook review thereof.

6. To initiate the formal consideration of a boundary adjustment, the Town and County each held separate public hearings at which the details of the BLA Agreement were openly discussed upon proper notice thereof.

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<sup>1</sup> Because this Parcel lies within the Town of Washington, it is also subject to County jurisdiction for those purposes recognized under Virginia law.

7. On February 13, 2023, the Town Council unanimously adopted a resolution whereby, among other things, it affirmatively agreed that should the remaining phase of the Project, called Rush River Commons II (“Phase 2”) be developed on the County Property once brought into the Town through a Boundary Line Adjustment, said Property will be zoned commercially, and any development on that County Property will be restricted to by-right commercial uses. **Exhibit 2.**

8. On that same day, the Town Council further unanimously adopted a Resolution that “it will be the policy of the Town of Washington not to accept applications for [boundary line adjustments] from adjoining properties, currently in the County, for a period of 5 years from the conclusion of said agreement, unless the owners of said properties should present reasonable proof that the sewer system on their property is failing or should they wish to construct a single-family home on a property, adjacent to the Town, which has failed a percolation test,” **Exhibit 3.**

9. On March 13, 2023, the Town Council unanimously voted, at a public meeting, to authorize Town staff to take the necessary steps, in coordination with the County, to submit the draft BLA Agreement to the Commission of Local Government, incorporating those changes appearing in the minutes of that meeting. **Exhibit 4.**

10. The Town forwarded that revised BLA Agreement to the County Board of Supervisors for its consideration and at its April 3, 2023, public meeting the Board accepted the proposed BLA Agreement in principle, and authorized that it be submitted to the Commission on Local Government for review. **Exhibit 5.**

11. Counsel for the Town and the County subsequently made minor revisions to the draft BLA Agreement with the concurrence of their clients, and the agreed upon final version thereof, dated April 18, 2023, is enclosed as **Exhibit 6.**

12. Virginia Code Ann. § 15.2-3400(3) provides that if a voluntary settlement agreement is proposed, the governing bodies shall present the proposed settlement to the Commission so that the Commission may report to the governing bodies their findings and recommendations following public hearings as required.

13. Virginia Code Ann. § 15.2-3400 provides that voluntary settlement agreements shall not become effective until the provisions of that section are complied with.

14. 1 VAC 50-20-230 requires that referral of a proposed voluntary settlement agreement to the Commission under the provisions of Virginia Code Ann. § 15.2-3400 be accompanied by resolutions, joint or separate, of the governing bodies of the localities that are the parties to the proposed agreement, requesting that the Commission's review, stating the parties' intention to adopt the agreement, and providing certain information to the Commission.

15. As detailed above, the Town and County have separately approved motions that the parties request that the draft BLA Agreement be submitted to the Commission for its review that are attached hereto as Exhibits.

16. The parties will further submit to the Commission, in consultation with its staff, such materials as are relevant to the requirements of 1 VAC 50-20-610.

17. The Town and the County respectively designated as their principal contacts with the Commission the following individuals, who may be contacted by the Commission or any locality to whom this Notice is sent:

TOWN OF WASHINGTON, VIRGINIA  
Joseph Whited, Mayor  
Town of Washington, Virginia  
P.O. Box 7  
Washington, Virginia 22747  
Phone: (540) 675-3128  
Email: [joe.whited@washingtonva.gov](mailto:joe.whited@washingtonva.gov)


COUNTY OF RAPPAHANNOCK  
Garrey W. Curry, Jr., County Administrator  
County of Rappahannock, Virginia  
P.O. Box 519  
Washington, Virginia 22747-0519  
Phone: (540) 675-5330  
Fax: (540) 675-5331  
Email: [gwc Curry@rappahannockcountyva.gov](mailto:gwc Curry@rappahannockcountyva.gov)

18. Pursuant to the aforesaid provisions the parties have mailed copies of the Notice, resolutions, adopted minutes, and the BLA Agreement, to each Virginia local government contiguous to the County and/or the Town, and each Virginia local government with which the County or Town shares any function, revenue, or tax source. The undersigned certifies, pursuant to 1 VAC 50-20-390(L) that the source of the information provided in this Notice came from publicly available sources. The undersigned further certifies that the material is correct within the knowledge of the submitting party.

WHEREFORE, the County of Rappahannock, Virginia, and the Town of Washington, Virginia, hereby request that the Commission find that the BLA Agreement is in the best interest of the Commonwealth, and of the jurisdictions, and that it recommend the BLA Agreement be affirmed and given full force and effect upon consideration by the Special Court.

Respectfully submitted this 20th day of Nov., 2023.

**TOWN OF WASHINGTON, VIRGINIA**

By:   
Joseph J. Whited  
Mayor  
567 Mt. Salem Avenue, Suite 3  
Washington, Virginia 22747

**RAPPAHANNOCK COUNTY, VIRGINIA**

By: Debbie Donehey

Debbie Donehey

Chair of the Board of Supervisors

P.O. Box 519

3 Library Road

Washington, Virginia 22747

(540) 675-5330 (o)

**LOCAL GOVERNMENTS NOTIFIED**

Pursuant to 1 VAC 50-20-230(C), the parties have mailed copies of the Notice, resolutions, adopted minutes, and the BLA Agreement, to each Virginia local government contiguous with the County and/or the Town, and each Virginia local government with which the County or Town share any function, revenue or tax source.

**CULPEPER COUNTY**

John C. Egertson, County Administrator

Culpeper County, Virginia  
302 North Main Street  
Culpeper, Virginia 22701-2622  
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Fax: (540) 727-3460  
Email:

Sheila J. Weimer, County Attorney

Culpeper County, Virginia  
306 North Main Street, Second Floor  
Culpeper, Virginia 22701-2622  
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Fax: (540) 727-3462  
Email:

**FAUQUIER COUNTY**

Janelle Downes, County Administrator

Fauquier County, Virginia  
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Fax: (540) 422-8022  
Email:

Tracy A. Gallehr, County Attorney

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**MADISON COUNTY**

Jonathon Weakly, County Administrator

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Clarissa T. Berry, Commonwealth's Attorney

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Fax: (540) 948  
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## PAGE COUNTY

Amity Moler, County Administrator

Page County, Virginia  
103 S. Court Street, Suite F  
Luray, Virginia 22835-1262  
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Bryan Cave, Commonwealth's Attorney

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## WARREN COUNTY

Mr. Edwin C. Daley, County Administrator

County of Warren, Virginia  
Front Royal, Virginia 22630-4412  
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## THE RSW REGIONAL JAIL

Russell Gilkison, Superintendent

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## SHENANDOAH COUNTY

Evan Vass, County Administrator

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Jason Ham, County Attorney

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TOWN OF WASHINGTON, VIRGINIA  
RESOLUTION

Resolution Pertaining to the Potential Zoning of the Property Commonly  
Known as Rush River Commons II

WHEARAS, the Rappahannock County Board of Supervisors during its regular meeting on 6 February 2023 did request the Town of Washington consider limitations on the final end-use of the property commonly known as Rush River Commons II if the pending request for the adjustment of the boundary between the Town of Washington and Rappahannock County related to the property known as Rush River Commons is approved. And

WHEARAS, on this 13th day of February 2023 the Town has amended its Zoning Ordinance, creating a Commercial Zone, a zone that places considerable restriction on the use of property so zoned. Including a prohibition on the construction of housing units of any type.

Now, therefore be it resolved, that should the property commonly known as the Rush River Commons II be brought into the Town of Washington through a boundary line adjustment concluded with the County that said property shall be zoned as Commercial and any development on that plot shall be restricted to the uses allowed by right in such a zone.

Adopted by the Town Council of the Town of Washington, Virginia this 13<sup>th</sup> Day of February, 2023.

MOTION: Mayor Whited

DATE: February 13, 2023  
Town Council Meeting

SECOND: Fred Catlin

Votes

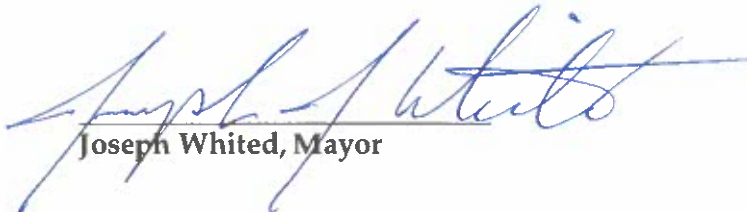
Ayes: Mayor Whited, Drew Beard, Fred Catlin, Jean Goodine, Patrick O’Connell, Brad Schneider, and Gail Swift

Nays: N/A

Absent from Vote: N/A

Absent from Meeting: N/A

BY ORDER OF THE TOWN COUNCIL

  
Joseph Whited, Mayor

Attested:

  
Barbara Batson,  
Town Administrator/Clerk

**TOWN OF WASHINGTON, VIRGINIA  
RESOLUTION**

**Resolution Pertaining to Future Boundary Line Adjustments**

**WHEARAS**, the Rappahannock County Board of Supervisors during its regular meeting on 6 February 2023 did request the Town of Washington consider moratorium on future boundary line adjustments (BLAs) for a period of 10 years from the time the BLA currently under consideration by the Town and the County is adopted. And

**WHEARAS**, it is the position of the Town that it should promote limited growth and infill construction in accordance with both the County’s and the Town’s Comprehensive Plans. And

**WHEARAS**, the Town operates a public water and sewer systems which can provide relief to County residents, adjacent to the Town, who may have failing water or sewer systems and also support the construction of single-family homes on land that might not otherwise support such construction IE property which will not pass a perc test.

**Now, therefore be it resolved**, that should the current BLA agreement under the consideration by the Town and the County be concluded that it will be the policy of the Town of Washington not to accept applications for BLAs from adjoining properties, currently in the County, for a period of 5 years from the conclusion of said agreement. Unless the owners of said properties should present reasonable proof that the sewer system on their property is failing or should they wish to construct a single-family home on a property, adjacent to the Town, which has failed a perc test.

**Adopted by the Town Council of the Town of Washington, Virginia this 13<sup>th</sup> Day of February, 2023.**

**MOTION: Fred Catlin**

**DATE: February 13, 2023  
Town Council Meeting**

**SECOND: Mayor Whited**

Votes

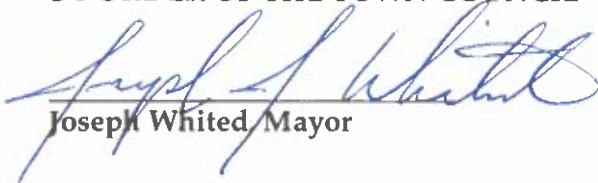
Ayes: Mayor Whited, Drew Beard, Fred Catlin, Jean Goodine, Patrick O’Connell, Brad Schneider, and Gail Swift

Nays: N/A

Absent from Vote: N/A

Absent from Meeting: N/A

**BY ORDER OF THE TOWN COUNCIL**

  
**Joseph Whited, Mayor**

**Attested:**

  
**Barbara Batson,  
Town Administrator/Clerk**

# The Town of Washington

March 13, 2023  
Council Meeting  
Approved Agenda  
7:00 p.m.

- CALL TO ORDER Action
- APPROVAL OF THE AGENDA Action
- MINUTES                      • February 13, 2023 Council meeting minutes Action
- REPORTS                      • Mayor’s Report: Mayor Whited Information  
   • Treasurer’s Report: Gail Swift Information  
   • Town Attorney: Mr. Crim Information  
   • Zoning Administrator: Mr. Gyurisin Information  
   • Public Works Task Force Information  
   • Planning Commission Information  
   • Architectural Review Board Information
- OLD BUSINESS                      a) Boundary Line Adjustment Possible Action
- NEW BUSINESS                      a) Update on Public Works Information  
   b) Economic Development Authority Action
- PUBLIC FORUM
- ADJOURNMENT

NEXT REGULARLY SCHEDULED MEETING OF THE TOWN COUNCIL  
April 10, 2023

# The Town of Washington

"THE FIRST WASHINGTON OF ALL"

March 13, 2023

7:00 p.m.

Draft Minutes

- CALL TO ORDER: Mayor Whited opened the meeting at 7:03 p.m. Council members Drew Beard, Jean Goodine, Brad Schneider, and Gail Swift were present with Fred Catlin and Patrick O'Connell absent. Town Attorney Martin Crim and Town Administrator/Clerk Barbara Batson were present.
- APPROVAL OF THE AGENDA: Mayor Whited made a motion to amend the agenda to add a) boundary line adjustment discussion under old business and Ms. Swift seconded and a roll call vote was taken:

Mr. Beard voted "yes"

Ms. Jean Goodine voted "yes"

Mr. Schneider voted "yes"

Ms. Swift voted "yes"

Mayor Whited voted "yes"

And the motion passed 5-0 with Mr. Catlin and Mr. O'Connell absent.

- MINUTES: Ms. Swift motioned to accept the minutes for February 13, 2023 and Mayor Whited seconded and a roll call vote was taken:

Mr. Beard voted "yes"

Ms. Jean Goodine voted "yes"

Mr. Schneider voted "yes"

Ms. Swift voted "yes"

Mayor Whited voted "yes"

And the motion passed 5-0 with Mr. Catlin and Mr. O'Connell absent.

## REPORTS:

Mayor's Report: there was no report

Treasurer's Report: there was no report.

Town Attorney: Mr. Crim reported that he prepared a formal easement agreement for water and sewer services. He also reported that the trail license agreement between the town and county is ready for execution.

Zoning Administrator: Mr. Steve Gyurisin was absent and submitted a written report.

Public Works Task Force: there was no report

Planning Commission (PC): There was no report.

Architectural Review Board (ARB): Mr. Drew Mitchell reported that the ARB elected officers at their last meeting, Ms. Deb Harris is now the chairperson. He also reported they considered an application for outdoor lighting for Rush River Commons. He felt there was a robust discussion with the community's participation and the application was approved.

- OLD BUSINESS:

- (a) Boundary line adjustment (BLA): Mayor Whited shared that at the last Board of Supervisors (BOS) meeting they asked the town to change the language prohibiting building residential housing on the property to make it more stringent. He recommended that Article 1 paragraph 3: Limitation of Use, be amended as follows:

Pursuant to the resolution adopted by the Town of Washington on February 13, 2023, this parcel shall be zoned Village Commercial, which does not allow for residential construction. The Town will not consider nor approve any rezoning, special use permit, or other legislative action which would allow for residential construction on this parcel without the concurrence of the County Board of Supervisors while this agreement remains in effect.

Mayor Whited asked Mr. Crim if he felt the language in paragraph 3 would be setting a precedent for future BLAs. Mr. Crim shared that according to Virginia State Law the Commission of Local Governments would need to review the agreement and make a report whether the zoning provision, that is binding to future town councils, should be approved. The BLA would then be put before a special three judge court, appointed by the Virginia Supreme Court. This two-step process requires notice to a lot of people. It would set a precedence to this particular parcel; it wouldn't set a precedent regarding future ordinary zoning decisions. Ms. Swift expressed that whatever language is agreed upon, does not set a precedence of future BOS involvement in town zoning matters.

Mr. Schneider expressed his concern that the county would be involved in future town business. Mr. Beard said he understands Mr. Schneider's concerns but thinks this event is only a snapshot of a moment in time and doesn't think we are setting a broad precedent. Mayor Whited expressed he strongly supports the sovereignty of the town and our leeway to act in its best interest. Ms. Goodine asked Mr. Crim what the legal ramifications were if the current language was approved. He replied the proposed language "...with the county's agreement", does provide the town with some flexibility.

Mr. Schneider suggested the following text be stricken from the paragraph: "without the concurrence of the County Board of Supervisors while this agreement remains in effect". He feels this would open the door to the County being able to dictate what happens within the town's boundaries. Ms. Goodine suggested that perhaps some additional language was needed to add a bit more flexibility. Mr. Schneider feels there is no need to negotiate with the county if a parcel is within the town. Mr. Crim reminded council that under the current agreement, if there is no development within 15 years, the agreement terminates. Ms. Swift stated that she wanted wording that emphasizes that restricting the zoning in this BLA only applies to this agreement and not future work and Mr. Schneider concurred. Mayor Whited proposed adding "...this parcel and only...".

Mayor Whited motioned to modify Article 1 paragraph 3 to the following:

Pursuant to the resolution adopted by the Town of Washington on February 13, 2023, this parcel shall be zoned Village Commercial, which does not allow for residential construction. The Town will not consider nor approve any rezoning, special use permit, or other legislative action which would allow for residential construction on this parcel, and only this parcel, without the concurrence of the County Board of Supervisors.

He also moved that the town staff take all steps necessary in coordination with the county staff to submit the draft agreement to the Commission of Local Government once all appropriate edits have been made and Ms. Goodine seconded and a roll call vote was taken:

Mr. Beard voted "yes"

Ms. Jean Goodine voted "yes"

Mr. Schneider voted "yes"

Ms. Swift voted "yes"

Mayor Whited voted "yes"

And the motion passed 5-0 with Mr. Catlin and Mr. O'Connell absent.

- NEW BUSINESS:

- (a) Update on public works: Mayor Whited shared that over the last four years this council has invested over \$800k in improvements on the water and wastewater systems, approximately 120k came from the federal government. He pointed out that the \$45k investment in the new water meter system has already shown a multi-thousand dollar return in savings on water that didn't need to be processed because we were able to catch leaks early and we didn't need to pass along large water bills to residents where leaks weren't caught until meters were read monthly. Mayor Whited thanked Mr. Schneider for his work on this project.

Mr. Schneider shared that the new water meter system runs electronically and allows us to see accounts that are running continuously to identify leaks quickly. The focus of the coming year is the water system. The water system is the lifeblood of the town and if it fails, business in town stops. Identifying a site for a new well and drilling it, is on the list of projects in the coming years. He also shared that the current filtration system is getting old and the fittings are corroding. He'd like to look into upgrading to a new filtration system and will be obtaining quotes. Mr. Schneider also reported that we currently pump water from the well, push it through the filtration system, then the water flows down Harris Hollow into town servicing all the accounts, and when waterflow exceeds demand, it pumps to the water tower. He shared this is not how the system should work. There is a line from the pumphouse to the tower but it apparently had a leak and instead of repairing the leak, a decision was made to run the line down Harris Hollow. He would like to have this part of the system fixed so the water is pumped directly to the tower and then sent through the town as needed. He wants to get the cost to engineer a line and then quotes to install the new line. He will also be looking at the potential to have a system in place that would monitor the water level in the tower. He's hoping to get a transmitter that would use the same wireless network as the water meter system. He will also work with Sean Polster of emergency services to figure out what amount of water should be maintained at all times in the tower for firefighting and public safety purposes.



Mr. Schneider also shared that the control system board at the wastewater treatment plant also needs to be replaced. He is looking into alternate solutions, in addition to using solar energy at the plant. Mayor Whited thanked Mr. Schneider for being such a good shepherd of the town's systems.

- (b) Economic Development Authority: Mayor Whited during his inaugural address challenged TC to think of new ways to incentivize business in town. After subsequent conversations it became clear a focus on restaurants and retail was needed. After talking to colleagues and Mr. Crim it was determined that if we wanted to give rebates to restaurants, or grants to retail or transient lodgings, an economic development authority would need to be created. This would give the town the ability to take appropriated funds and enable this sort of activity. Mayor Whited shared that an economic development authority (EDA) is a common construct across the Commonwealth. The council would provide some general guidelines of things that it would be interested in considering. A seven-member board would be appointed, which would include three members of council, the chairs of the ARB and PC, and then two members from the rest of the community. He shared that he would be asking TC to consider setting aside \$10,000 at the next budget work session to fund the EDA

**PUBLIC FORUM**: Mayor Whited opened the public forum at 7:47 p.m.

Mr. Jim Abdo thanked the council for its work for and care of the community. He expressed that zoning is the biggest challenge in bringing new business to town. He feels that needing special use permits versus having a by-right use, makes doing anything new in town challenging. Mr. Abdo expressed that he didn't need a grant, he just needed people to get out of the way. He feels that if the zoning ordinance had a clear path, you would see people come into town. He suggested the council consider putting money aside for the town attorney and zoning administrator to revamp the zoning ordinance. He also shared that he feels that Mr. Gyuris is extremely knowledgeable about zoning and that Mr. Crim will provide a fresh perspective. He also thinks that the ARB is in place to ensure any work done will match the historical integrity of the town.

Ms. Swift shared that updating the zoning ordinance is reflected in the draft budget currently being consider for next year. Mayor Whited said there is a new team leading the town and that all businesses have its commitment to increase the vitality of our town.

Mayor Whited closed the public forum at 7:58 p.m.

**ADJOURNMENT**: Mr. Whited made a motion to adjourn the meeting at 7:58 p.m. and Mr. Schneider seconded and a roll call vote was taken:

Mr. Beard voted "yes"

Ms. Jean Goodine voted "yes"

Mr. Schneider voted "yes"

Ms. Swift voted "yes"

Mayor Whited voted "yes"

And the motion passed 5-0 with Mr. Catlin and Mr. O'Connell absent.

THE NEXT REGULAR MEETING OF THE TOWN COUNCIL IS  
April 10, 2022.

Barbara Batson, Administrator/Town Clerk

Attachments:

Zoning Administrator's report  
Draft Boundary Line Adjustment

**AT THE REGULAR MEETING OF THE RAPPAHANNOCK COUNTY BOARD OF SUPERVISORS HELD ON MONDAY, APRIL 3, 2023 AT 2:00 P.M. AND 7:00 P.M. AT THE RAPPAHANNOCK COUNTY COURTHOUSE, 250 GAY ST., WASHINGTON, VIRGINIA.**

**CALL TO ORDER**

Chair Donehey called the meeting to order at 2:00 p.m.

**Board Members present:** Debbie P. Donehey, Chair; Keir A. Whitson, Vice Chair; Van C. Carney; Ronald L. Frazier; Christine Smith. **Others present:** Garrey W. Curry, Jr., County Administrator; Bonnie L. Jewell, Assistant County Administrator.

**PLEDGE OF ALLEGIANCE**

Chair Donehey led attendees in the Pledge of Allegiance.

**MOMENT OF SILENCE**

Chair Donehey requested that attendees observe a moment of silence.

**ADOPTION OF AGENDA**

Chair Donehey introduced the agenda for approval. Mr. Carney moved to adopt the agenda as presented and Mr. Whitson seconded. Mr. Frazier asked why the Board had not received an update from legal counsel regarding current litigation noting that the Flint Hill case goes to trial on April 21 and this would be the last opportunity to speak prior to the trial. Mr. Curry stated he heard back from legal counsel on Friday, who apologized for not being in the office earlier in the week when the agenda was released. Mr. Curry stated all the documents for the case had been filed and no action was needed by the Board at this point. Mr. Frazier questioned how the attorney could file anything on behalf of the Board when they had not met with the Board. Mr. Whitson stated that he had not had contact with the attorney and stated that it was his position that the Board hired attorneys to provide representation in matters of litigation and that he did not believe he was qualified to provide legal input to the attorney. Mr. Frazier asked if any person sitting at the Board table had contact with the attorney and Mr. Curry stated that he and Mr. Goff had contact, but did not provide legal direction. Mr. Curry explained that this case had to do with parsing the language of the Virginia Code and did not, at this point, involve a discovery process that might require subjective decisions. He said that he would be happy to relay Board questions/directions to the attorney.

Mr. Whitson questioned what the current discussion had to do with adopting the agenda and Mr. Frazier stated that before the meeting he requested an agenda item regarding the Flint Hill legal matter, but it was not on the agenda that was presented. Mr. Curry stated that Mr. Frazier requested a closed meeting item about the topic, but that was not possible without legal counsel present. Following further discussion Chair Donehey moved to amend the motion on the floor (to adopt the agenda as presented) to alter it to approve the agenda with the addition of an item to discuss the Flint Hill Volunteer Fire Company legal matter as the last old business item during the day session. Mr. Frazier seconded the motion to amend the original motion. Chair Donehey called for a voice vote to amend the motion, which carried.

Aye: Donehey, Whitson, Carney, Frazier, Smith  
Nay:  
Abstain:

The original motion by Mr. Carney and seconded by Mr. Whitson, having been amended, was then presented for a vote by Chair Donehey, which carried. The agenda was adopted with the addition of "Company 4 Legal Discussion" as an addendum item.

Aye: Donehey, Whitson, Carney, Frazier, Smith  
Nay:  
Abstain:

**PRESENTATIONS**

**SCHOOL REPORT**

Dr. Grimsley presented the school report, which included an update of school activities, athletic achievements, and student accolades. She stated that the school hosted a workshop, "Hidden in Plain Sight" that was coordinated by the Rappahannock County Sheriff's Office, Culpeper Police Department, and Virginia Department of Health. She stated that the workshop focused on the dangers of fentanyl and other substances. She concluded by thanking the sheriff's office for their prompt response last week during a shelter-in-place incident, which after the fact was determined there was no threat. She then thanked the Board and welcomed comments and questions. Mr. Whitson recognized the coach of the year accolades received by the Jeff Atkins, coach of the state champion girls' basketball team, Mr. Carney thanked Dr. Grimsley for attending all budget work sessions, and Chair Donehey thanked RCPS for hosting the hidden in plain sight presentation.

**COMPANY 4 MONTHLY REPORT TO THE BOARD AND COMMUNITY (PRESENTATION ONLY)**

Chief Jarrell thanked the Board for the opportunity to present a revitalization plan to them as was required by the January 26, 2023 resolution of the Board. He stated that the revitalization plan was constructed to track thirteen categories that were defined by the referenced resolution. Chief Jarrell reviewed the revitalization plan and offered to answer questions. Mr. Whitson asked about the previous request to station ALS1400 at company 4 and Chief Jarrell stated that request was overcome by the quick permitting of ambulance 1404 under the county's EMS license. Mr. Whitson noted the high call volume over the weekend and asked for the company's roll in those calls. Chief Jarrell stated that there were several downed trees and power lines that resulted in live wires on the ground. He further noted there was a structure fire caused by a generator located too close to a structure. Chair Donehey stated that there were 75 total dispatched calls over the weekend including 17 fire & rescue calls and 58 law enforcement calls. She stated that the calls consisted of accidents, falls, chest pains, seizures, and fires. Mr. Frazier asked if the members of company worked together to develop the revitalization plan. Chief Jarrell stated that due to the consent order the company was unable to hold membership meetings so work on the plan was conducted by communicating through email. The Board thanked Chief Jarrell and company 4 for their valuable service to the community.

**PUBLIC COMMENT**

Chair Donehey requested speakers to limit their comments to three minutes and then opened the public comment period.

The Director of Social Services, Gail Crooks, informed the Board that April was child abuse prevention month and that social services had several activities planned. She stated that they partnered with RCPS for a coloring and T-shirt design contest for which entries and the winning entries would be displayed at SperryFest. She stated that during the month of April pinwheels would be placed at various locations throughout the county and then relocated to a pinwheel garden consisting of 450 – 500 pinwheels at SperryFest. She concluded by stating that during FY2022 there were over 100 children involved in child abuse & neglect cases.

John Beardsley of the Wakefield District stated that as could be seen by the number of citizens who were in attendance, that the Flint Hill community cares deeply for having an effective and well organized fire & rescue service. He stated that in spite of some of the regrettable side effects he hoped the Board would press on with the process.

Shelia Gresinger of the Hampton District commended those individuals who were working hard to keep the Flint Hill fire & rescue services going. She particularly expressed thanks for the good work over the past weekend when downed wires on her farm could have been much worse.

Monica Worth of the Wakefield District stated that she was a past-president and past-treasurer of Company 4. She thanked the previous volunteers and the new individuals for carrying it into the future.

Jennifer Alexander of the Wakefield District stated most people have volunteered for something and having done so, they know that it often requires very thick skin. She relayed her experience volunteering with the Red Cross at a shelter, which was stressful as disagreements occurred between individuals.

There being no other citizens wishing to speak, Chair Donehey closed the public comment

period.

**CONSENT AGENDA**

Chair Donehey introduced the consent agenda for approval. Mr. Whitson moved to adopt the consent agenda as presented; Mr. Carney seconded and the motion carried.

Aye: Donehey, Whitson, Carney, Frazier, Smith

Nay:

Abstain:

**MINUTES FOR ADOPTION**

By adoption of the consent agenda the Board approved the minutes of the January 26, 2023 special called meeting, February 6, 2023 regular Board meeting, and the February 14, 2023 joint Board and School Board budget work session.

**ACCOUNTS PAYABLE**

By adoption of the consent agenda the Board approved the accounts payable check runs for March 15, 2023 in the amount of \$252,004.65; March 23, 2023 in the amount of \$3,140.14; and April 3, 2023 in the amount of \$313,536.88.

**SUPPLEMENTAL APPROPRIATIONS**

By adoption of the consent agenda the following supplemental appropriations were approved:

- \$1,250: 100-4-04303-3004000-0000 – Aileen – Repairs & Maintenance
- \$3,577.38: 100-4-01301-5402000-0000 – Electoral Board – Ballots & Election Expenses
- \$7,000.00: Sperryville’s Portion of Staffing Salaries – EMS Salaries

**POLICY 310 AMENDMENT (CORRECTION)**

By adoption of the consent agenda, an amended Policy 310 was approved as follows:

Rappahannock County Board of Supervisors Policies & Procedures			
<u>Policy Name:</u>	Payment of Invoices	<u>Approved:</u>	April 3, 2023 (3 <sup>rd</sup> amendment)
<u>Policy Number:</u>	310	<u>Author:</u>	Curry
<u>Associated:</u>	Budget and Finance Policies		

**PURPOSE:**

To provide for the prompt payment of invoices with complete transparency.

**POLICY:**

Department/Budget Managers shall ensure the prompt payment of invoices consistent with the requirements of the Code of Virginia, Section 2.2-4352.

The Board of Supervisors enacted this policy by resolution at the December 3, 2018 meeting with direction to the County Administrator to transcribe the resolution to “policy form” and for that policy to be numbered 310 and be titled “Payment of Invoices.” The Board subsequently authorized amended the policy by resolution on June 6, 2022 and through the same resolution authorized future updates to the policy to be made by motion. The most recent amendment date of this policy by motion was made by the Board on April 3, 2023.

**PROCEDURE:**

To carry out the intent of the policy:

- Budget holders shall promptly confirm invoices are in proper form and for amounts agreed to and reflective of goods or services received. Budget holders shall further confirm that payments are within the amounts appropriated therefore.
- Budget holders shall promptly code each original invoice with the county budget expenditure general ledger number and transmit each invoice to the County Administration indicating it is acceptable for payment and within funds appropriated therefore. In cases when an original invoice is not available, a copy together with an explanation of why the original is not available shall be submitted.
- County Administration staff shall promptly enter each invoice into the county's computerized accounting system making them ready for payment.
- Invoices coded and entered into the accounts payable system will be used to generate checks that will be presented to the Board of Supervisors for review and approval at their regular meeting each month.
- Invoices or classes of invoices (such as utility payments) deemed necessary for payment prior to the Board's next regular meeting may be paid by check mid-month only when recommended by the County Administrator and approved by the Chairperson of the Board of Supervisors. County Administration will keep a listing of vendors for which the County Administrator recommends and Chairperson of the Board of Supervisors approves mid-month payment (**FORM A**). Budget holders shall use **FORM B** to request a vendor or specific invoice be authorized for mid-month payment.
- Rappahannock County is not required to pay sales tax and therefore purchases made by employees for the benefit of the County is not recommended and should only occur in an emergency situation. Employees should get prior approval before making such purchases and shall use **FORM C** for reimbursement. Purchases should be made in accordance with the Rappahannock County purchasing policy.
- The check register for all mid-month payments shall be presented to the public and the Board of Supervisors at their regular monthly meeting together with the listing of vendors for which mid-month payment is approved to ensure complete payment transparency.

Enc. **FORM A:** Tracking List of Vendors Approved for Mid-Month Payment  
**FORM B:** Vendor/Invoice Mid-Month Authorization Form  
**FORM C:** Employee Reimbursement Request Form (non-travel)

**AWARD PROFESSIONAL ACCOUNTING & RELATED CONSULTING SERVICES AGREEMENT**

By adoption of the consent agenda, the Board awarded professional accounting & related consulting services to MKE, PLLC for an estimated fee range of \$27,500 - \$30,000 and authorized the County Administrator to execute necessary documents.

**RESOLUTION OF APPRECIATION AND COMMENDATION FOR JACKIE ESTES UPON COMPLETION OF SERVICE TO THE PSC**

By adoption of the consent agenda, the Board approved the resolution of appreciation and commendation for Jackie Estes upon completion of service to the public safety committee. Chair Donehey read and presented the resolution of appreciation and commendation for Jackie Estes following the consent agenda item.

**RESOLUTION OF APPRECIATION FOR RAPPAHANNOCK COUNTY PUBLIC SAFETY COMMITTEE MEMBER, JACKIE ESTES**

**WHEREAS**, Jackie Estes served the citizens of Rappahannock County for over fifteen years as a member of the Public Safety Committee, serving as the citizen representative; and

**WHEREAS**, during his tenure on the Public Safety Committee, he was dedicated to the betterment of law enforcement and the fire and rescue programs of Rappahannock County; and

**WHEREAS**, he sacrificed countless hours as a volunteer Firefighter/Emergency Medical Technician for the protection of the citizens of Rappahannock County; and

**WHEREAS**, his consistent advocacy to the Board of Supervisors for the welfare of the public safety community has earned him the admiration of citizens and fellow firefighter and rescue personnel; and

**WHEREAS**, the members of the Rappahannock County Board of Supervisors will always consider Mr. Estes a respected friend.

**NOW, THEREFORE, BE IT RESOLVED**, that the Rappahannock County Board of Supervisors extend its sincerest thanks to Jackie Estes for his service on the Public Safety Committee and in other local public safety positions, and wishes him all of the best in future endeavors.

**BE IT FURTHER RESOLVED**, that this resolution be spread across the minutes of the Rappahannock County Board of Supervisors for all citizens to reflect upon the service and accomplishments of this dedicated public servant.

**RECESS AND RECONVENE**

Chair Donehey declared a brief recess at 2:42 p.m. and reconvened at 2:48 p.m.

**APPOINTMENTS**

**RAPPAHANNOCK COUNTY WATER AND SEWER AUTHORITY (RWSA) VACANCY DUE TO RESIGNATION**

Mr. Whitson stated that there were two qualified applicants and moved to appoint William Lloyd as citizen representative to the RCWSA to serve the remaining portion of a term that expires on July 31, 2024, and Mr. Carney seconded. Ms. Smith stated that she felt that the representative serving should have a connection to the water and sewer system, noting that Mr. Siler had such a connection. She stated that Mr. Siler had previously applied and that the authority members indicated that he would make a good addition. Mr. Frazier raised concern over Mr. Lloyd's interaction with others on social media and stated that the Board should consider that. Mr. Whitson noted that there were already appointees on the authority that had ties to the water & sewer system and that it was important for those who serve in appointed positions do so with a calm demeanor when interacting with the community. Chair Donehey asked if any of the applicants had grant writing experience and both applicants who were in attendance responded that they did not. Chair Donehey then called for a voice vote, which carried.

Aye: Donehey, Whitson, Carney

Nay: Frazier, Smith

Abstain:

**OLD BUSINESS**

**COMPANY 4 MONTHLY REPORT TO THE BOARD AND COMMUNITY**

This item was placed on the agenda in case Board action was necessary following Chief Jarrell's presentation earlier in the meeting. No action was taken.

**TOWN BOUNDARY LINE CHANGE REQUEST**

Ms. Smith stated that she was recusing herself from the agenda item because a family member had business with the town of Washington. Ms. Smith left the Board table and the meeting room during discussion.

Mr. Curry stated that this item had been discussed several times and that during past Board meetings the Board discussed several items that were tangential to the town boundary line adjustment itself. He stated that the Town Council passed a series of resolutions in February including one that agreed to restrict the zoning of the parcel to be taken into the town such that it remains commercial without the potential for residential development. He said that the Board welcomed that resolution, but in the previous regular meeting identified that the commitment could be reversed by the town at any time and that the Board required the provision to be included in the Boundary Line Agreement. Based on this, the Town Council agreed to include the zoning restriction as part of the Boundary Line Agreement. Town attorney Crim informed staff that by incorporating zoning restrictions within the agreement, the agreement would have to be developed

under the authority granted by Virginia Code Chapter 34 of Title 15.2 (Voluntary Settlement of Annexation, Transition or Immunity Issue) rather than Chapter 31 (Settling Boundaries between localities). Mr. Curry stated that the Chapter 34 process required the mutually agreed upon proposed voluntary agreement to be sent to the Commission on Local Government, which body would conduct a hearing to determine if the change is in the best interest of the Commonwealth. He said that the commission would then provide a written report of findings and recommendations. He stated that following receipt of the Commission on Local Government's report, both governing bodies would have to adopt an ordinance accepting the changed boundary (thus requiring advertised public hearings). He stated that the next step in the process to move toward that eventuality was to settle on agreement language that was acceptable to the town and the county. He said that the latest draft was provided with the meeting materials, which was in final form except for changing references from Chapter 31 to Chapter 34 and cleaning up references to exhibits and plats. He informed the Board that Mr. Crim indicated that the Commission process could take 6-months.

Mr. Whitson moved to accept the terms of the proposed boundary line settlement agreement in principle and authorize the agreement to be submitted to the Commission on Local Government for review; Mr. Carney seconded and the motion carried.

Aye: Donehey, Whitson, Carney, Frazier  
 Nay:  
 Abstain: Smith

Ms. Smith returned to the meeting room and resumed participation in the Board meeting.

**RESTRICT ISSUANCE OF LAND DISTURBANCE AND BUILDING PERMITS DUE TO DELINQUENT TAXES**

Mr. Curry stated that the county treasurer requested the Board to consider leveraging state law as it relates to the types of permits that may be withheld in circumstances when taxes are delinquent. He stated he spoke with the county attorney and they agreed that the best way to proceed would be to add a single paragraph to Rappahannock County Code, Chapter 151, Article XVI, § 151-94, Violations and penalties. He stated that a draft ordinance amendment was prepared to that end and was provided with the meeting materials. He stated that to modify county code, the Board would have to advertise and schedule a public hearing regarding the ordinance amendment.

Ms. Smith moved to authorize staff to place a notice in the local newspaper advertising a public hearing to consider amending § 151-94 of the Rappahannock County Code to incorporate permitting restrictions in cases where taxes are delinquent as shown in the provided draft; Mr. Whitson seconded and the motion carried.

Aye: Donehey, Carney, Frazier, Smith, Whitson  
 Nay:  
 Abstain:

**VIRGINIA TOURISM CORPORATION (VTC) GRANT MATCH OPPORTUNITY**

Mr. Curry stated that during a previous meeting Ms. Smith indicated that when she lived in another locality, those who requested funding for restricted tourism dollars were required to follow a precise application process. He stated that the county did not have a defined process prompting he and the county attorney to review Virginia Code § 58.1-3819, Transient occupancy tax, which states that prior to spending restricted tax revenue dedicated to tourism the county must consult with a local tourism industry organization or where one does not exist, hold a public hearing. He stated that since it was unclear whether Businesses of Rappahannock fit the role of a "tourism industry organization," it was recommended by the county attorney that a public hearing take place. He said that the annual budget public hearing takes care of most of the restricted funding, but a portion of funding that is left unallocated at the time of budget adoption would require another public hearing prior to its allocation. He stated that the Board may want to develop an application process in order to have consistency and to be able to make informed decisions. He stated he reached out to the Virginia Institute of Government seeking examples from other localities for such processes, but that unfortunately nothing valuable was received.

Referring to the grant match requests, Ms. Smith stated that the county submitted letters of support and said that she had conflicting feelings over the county's ensuing obligation. Mr. Curry



stated that while the county did submit letters of support for several local VTC grant applications, those letters did not promise financial support. Ms. Smith asked how the Board felt about putting money into events, noting that the Board previously did such with the Farm Tour but decided to only fund them until they were able to fund themselves. She stated she felt that she could support the two requestors (SperryFest and Farm Tour) through other means, such as security but was hesitant about setting a precedent of granting money to an event. She stated that by doing so it may become difficult in the future as the Board would then have to pick and choose which events should receive local funding. Mr. Curry stated that the funds were restricted and if the Board was not inclined to provide funds for events, then the Board would need to determine what type of use would be appropriate for the FY2024 budget. Mr. Carney agreed that the Board should have a clear process for the restricted tourism funds. Ms. Smith stated that the Planning Commission was developing language that would require certain applicants to have fire & rescue on site, which might have associated cost and be a potential use of the restricted funding. Following continued discussion regarding various ways to invest the restricted funds, the Board requested staff to add the topic to the June regular meeting for further discussion.

#### **CLASSIFICATION AND COMPENSATION STUDY UPDATE**

Ms. Jewell informed the Board that Baker Tilly sent an updated pay scale in mid-March and that the next step was for staff to work with department heads to match employees with the updated job descriptions. She stated that work would resume immediately following the FY2024 budget development process.

#### **POLE MOUNTED SPEED DISPLAY SIGNS**

Mr. Curry stated that he had been in contact with RadarSigns, the company from which he previously received purchase quotes, who informed him that as of April 1 they would be affiliated with the national purchasing cooperative "BuyBoard." He stated that if the county was to join the cooperative, it would streamline purchasing for the PMSD devices and other goods. He requested the Board's authorization to execute the provided agreement to join BuyBoard, following review by the county attorney. He stated he was still working on the required VDOT land use permits for the signs.

Mr. Carney moved to authorize the county administrator to execute the national purchasing cooperative interlocal participation agreement with BuyBoard for which RadarSigns will be a vendor starting April 1, 2023 following review and approval from the County Attorney; Ms. Smith seconded and the motion carried.

Aye: Donehey, Carney, Frazier, Smith, Whitson

Nay:

Abstain:

#### **ADDENDUM ITEM – COMPANY 4 LEGAL DISCUSSION**

Mr. Frazier voiced concern over the VACorp assigned attorney submitting filings on behalf of the Board without speaking with the Board. Mr. Curry stated if it was the will of the Board, he would request legal counsel to meet with the Board. Ms. Smith agreed with Mr. Frazier and Chair Donehey stated that the case was specific to the interpretation of Virginia Code and she was unsure what the Board would need to discuss. Mr. Frazier stated he did not have a copy of the court filings made by the Board's legal counsel, to which Mr. Curry stated he believed he had forwarded that to the Board. Ms. Smith asked if there was time during the budget hearing on April 17 to meet with counsel in a closed meeting. Mr. Curry stated that the April 17, 2023 meeting was scheduled to take place at RCES and he would have to find an appropriate room. Mr. Whitson stated he was hesitant to enter a closed session regarding a filing that was already a public document. Ms. Smith stated that legal matters were allowed to be discussed in a closed meeting in order to discuss strategy and to not jeopardize the case. Mr. Curry asked Board members if they would like him to read the pertinent code section, and they requested that he read it: § 2.2-3711 A.7 "*Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.*" Mr. Curry requested a motion to clarify the will of the Board.

Mr. Frazier moved instruct staff to contact legal counsel and arrange a consultation either in person or electronically on April 17, 2023; Ms. Smith seconded and the motion failed due to not receiving a unanimous vote that was required because it was an addendum item.

Aye: Donehey, Frazier, Smith  
 Nay: Carney, Whitson  
 Abstain:

## **NEW BUSINESS**

### **VDOT SECONDARY SIX YEAR PLAN, PRELIMINARY DISCUSSION**

Mr. Curry introduced the preliminary VDOT secondary six-year plan (SSYP) through which the Board would be empowered to allocate funding for secondary road improvements. He stated that last year the Board adopted a project priority list of secondary roads needing hard-surfacing and that that each successive year, the plan was advanced one year in the six-year planning period necessitating the allocation of funds to the “new” sixth year.

He stated that the priority list adopted last year included; two sections of Keyser Run Road, Whorton Hollow Road, Pullens Bluff Road, and Turkey Ridge Road. He said that there was approximately \$562,934 available to allocate to another project. Mr. Curry reviewed a list of roads that were eligible for the hard-surfacing program and stated that he prepared a draft public hearing notice that listed the following hard-surfacing projects as potential additions to the SSYP:

- SR 615, Turkey Ridge Road, 0.8 mile section from 0.8 mile from the Culpeper line to 1.6 miles from the Culpeper line, at the bridge
- SR 631, Mill Hill Road

Ms. Smith stated she received feedback requesting that Sycamore Ridge Road be included in the SSYP and requested it be advertised for the upcoming SSYP public hearing. Mr. Whitson stated that Long Mountain Road did not meet the requirements for the rural rustic program, but requested VDOT to consider maintenance activities for the portion of the road extending from Rock Mills Road and heading east. Mr. Curry stated that the public hearing for the SSYP would be held during the May 1 regular Board meeting and requested formal direction from the Board regarding the road sections that should be identified in the public hearing notice.

Ms. Smith moved to authorize the content of the VDOT secondary six-year plan public hearing notice as presented to include all projects on the priority list that are not yet complete and the two potential additions identified on the draft notice prepared by staff along with the addition of Sycamore Ridge Road, Mr. Carney seconded and the motion carried.

Aye: Donehey, Carney, Frazier, Smith, Whitson  
 Nay:  
 Abstain:

### **SCHOOL BUILDING BI-DIRECTIONAL AMPLIFIER (BDA) SYSTEMS**

Mr. Curry stated that during the table top study with the schools, they discussed the fact that portable radios on the public safety radio system did not have acceptable coverage within the two schools because the heavy construction buildings were too far away from the transmitter receiver sites located in Culpeper County and Fauquier County. He stated that staff contacted L3Harris to obtain quotes to provide and install Bi-Directional Amplifier (BDA) systems. He stated that this would be a one-time use of funds, which would cost \$48,389.34 for RCES and \$53,358.96 for RCHS for a total of \$101,748.30. Mr. Frazier stated he thought the radios that were purchased worked with the WIFI, to which Mr. Curry stated that the L3Harris radios did, but if anything changed with the WIFI system (SSID or password), then the radios would have to be reprogrammed. He further noted that he was unsure whether the new Motorola radios would work with WIFI. He stated he did not believe it was a public safety grade to rely on a WIFI connection and that the BDA system was P25 compliant and would work with any P25 radio. Ms. Smith requested that this item be included on future agendas in order to stay updated.

Mr. Carney moved to appropriate \$102,000 from the general fund balance to a new capital improvement fund budget for school BDA's and award the work to SSC; Mr. Whitson seconded and the motion carried.

Aye: Donehey, Carney, Frazier, Smith, Whitson  
Nay:  
Abstain:

**SAFER GRANT – RECRUITMENT AND RETENTION**

Mr. Curry stated that the county received a SAFER grant from the Federal Emergency Management Agency (FEMA) in the amount of \$561,617.02 over four years. He stated that staff was requesting authorization to accept the award, which action must occur by April 23, 2023.

Ms. Smith moved to authorize the county administrator to accept the SAFER grant award as outlined in the provided award letter; Mr. Carney seconded and the motion carried.

Aye: Donehey, Carney, Frazier, Smith, Whitson  
Nay:  
Abstain:

**INFORMATION, REPORTS, AND CORRESPONDENCE**

**BOARD COMMITTEE REPORTS**

Board members provided reports for the committees to which they were assigned. No action was taken by the Board.

**TREASURER’S REPORT**

Mr. Curry stated that everything was still on track as forecasted and that the Treasurer’s monthly report was enclosed in the meeting packet with no other discussion of the topic made by the Board.

**UPDATE ON COUNTY ADMINISTRATOR ACTIVITIES**

Mr. Curry informed the Board that the well at the Aileen property had experienced some issues requiring a new pump installed at depth. He stated that he sent a letter to DEQ regarding the county’s responsibility as related to the Aileen site and the voluntary remediation program (VRP) that the county entered when it owned the parcel. DEQ representatives responded that they concurred that the County had no further obligation and that the obligation for the terms of the VRP were conveyed to the current owners with the sale of the property. He also stated that the county received the required amended DEQ solid waste permit to change the leachate pond at the closed landfill to a tank system and that LaBella was working on bid documents. The county administrator’s mid-month report and monthly report were enclosed in the meeting packet with no other discussion of the topic made by the Board.

**BUILDING PERMIT REPORT**

The building permit monthly report was enclosed in the meeting packet with no discussion of the topic made by the Board.

**ZONING ADMINISTRATOR REPORT**

The zoning administrator monthly report was enclosed in the meeting packet with no discussion of the topic made by the Board.

**EMERGENCY SERVICES COORDINATOR REPORT**

The emergency services coordinator monthly report was enclosed in the meeting packet with no discussion of the topic made by the Board.

**VDOT MONTHLY REPORT**

The VDOT monthly report was enclosed in the meeting packet with no discussion of the topic made by the Board.

**MATTERS PRESENTED BY THE BOARD**

Ms. Smith informed the Board of upcoming fire & rescue fund raising events and noted that SperryFest was approaching. Mr. Whitson requested the county recognize the contributions made by Medge Carter who was soon retiring from the Health Department. He further requested that a list of AED locations for the public be provided so that the public may be mindful of their locations in case of an emergency. He then asked if staff could see if localities had the authority to impose a limit on the number of short-term rentals approved to operate in the community. Chair Donehey stated she had citizens requesting that the exterior lights at the now closed Truist bank be dimmed. She then commended the "Hidden in Plain Sight" presentation and requested that the May or June Board meeting have a similar presentation. She then asked if the county could do anything about dangerous structures, to which Mr. Curry stated that the county did have an ordinance that speaks to unsafe structures and he could report on the process in a future meeting.

**RECESS**

At 4:33p.m., the Chair declared a recess until 7:00 p.m.

**RECONVENE IN OPEN MEETING**

Chair Donehey reconvened in open meeting at 7:00 p.m.

**PUBLIC HEARING – SE#23-01-01, GLEN FARM LLC, MORE THAN ONE DWELLING PER TRACT OR PARCEL, TM#55-1**

Ms. Somers stated that Glen Farm LLC. requested a special exception for a second dwelling on the property located at 461 Quaintance Road in Woodville. She stated that the property was 577-acres and was zoned conservation and agriculture. She stated that the proposed second dwelling was already under construction as a pool house and that the initial plans included four bedrooms and a bathroom, but no kitchen (making it a legal guest house). She stated that the applicant would like to add a kitchen to the building, which would make it another dwelling unit. She stated the proposed second dwelling was intended to be used solely as a guesthouse for family and visitors. She stated that VDOT commented that they had no objections to the request and that the Health Department stated that they would approve the four-bedroom dwelling for 600-gallons per day. She stated that the pool house structure shared a well with the original structure and that there were no objections by the Health Department. She stated that the planning commission held a public hearing on February 15, 2023, following which they recommended approval with no conditions by a vote of 7-0.

Chair Donehey opened the public hearing.

Property owner, Bruce Wardinski of the Piedmont District stated that the original building constructed approximately ten years ago had one bedroom. He said that the new building for which this permit regards has four bedrooms for his family to use when they visit. He stated that construction of the new building had been a long process that began prior to the pandemic. He stressed that the second dwelling would only be for personal guests.

There being no other citizens wishing to speak, Chair Donehey closed the public hearing.

Ms. Smith stated that the planning commission had no concerns, noting that it met all the requirements and that there were no concerns made by the public.

Ms. Smith moved to approve SE#23-01-01 without conditions; Mr. Whitson seconded and the motion carried.

Aye: Donehey, Carney, Frazier, Smith, Whitson  
Nay:  
Abstain:

**PUBLIC COMMENT**

Chair Donehey opened the public comment period.

John Cappiali of the Hampton District voiced concern that the Board was considering taking away some of the authority of the Board of Zoning Appeals (BZA) and placing it with the

Board of Supervisors. He stated that it appeared that the Board was trying to acquire more power and voiced concern over possible legal consequences over such action. He further raised concerns over the budget work sessions and suggested that public comment be added to the end of the meetings so the public could comment after hearing what was discussed.

Ron Makela of the Jackson District and Chairman of the BZA requested details as to the issues the Board had with the BZA that would lead to the proposed change. He further voiced support for increasing the number of members sitting on the BZA from five to seven and noted that the BZA was required by the state to serve as an independent body. He stated that taking away special use permits from the BZA would deprive the public of an independent review.

There being no other citizens wishing to speak, Chair Donehey closed the public comment period.

## **NEW BUSINESS**

### **ZONING ORDINANCE AMENDMENT REVIEW – REASSIGN SUP TO SE**

Mr. Curry stated that the Board recently discussed modifying the Rappahannock County Code to reassign special use permits (SUP) such that they would become special exceptions (SE). He stated that a draft ordinance amendment had been prepared and reviewed with the county attorney. Mr. Whitson noted that the zoning ordinance references special use permits in various sections and asked if the zoning ordinance would be cleaned up to eliminate those references. Mr. Curry stated that the proposed change simply reassigns those uses now designated to be considered by SUP to be considered by SE and retains within the ordinance reference to SUPs in general. He said the broader zoning ordinance amendments would remove all reference to the SUP process. Mr. Frazier suggested that perhaps a statement in the definition section about the change would be helpful, to which Mr. Curry stated that the wording was so interconnected he felt that the SUP process needed to be retained, just that no uses would be assigned to that process. Mr. Carney stated that he was in favor of the amendment noting that many of the requests for special use permits significantly changed the allowable land use, therefore making it more of a legislative decision, which he stated he felt should be tied to elected officials who are held accountable by the public. Mr. Curry stated that a draft ordinance amendment was provided with the meeting materials and he sought Board Direction to place necessary notices for a joint planning commission-Board public hearing to be held at the Board's regular May meeting.

Ms. Smith moved to authorize staff to advertise a joint public hearing for May 1, 2023 to amend Rappahannock County Code as shown in the provided ordinance amendment to reassign SUPs to SEs; Mr. Carney seconded and the motion carried.

Aye: Donehey, Carney, Frazier, Smith, Whitson

Nay:

Abstain:

### **BOARD OF ZONING APPEALS – NUMBER OF MEMBERS**

Mr. Curry stated that during a previous meeting, Ms. Smith noted that Virginia Code § 15.2-2308 permits the BZA to have five or seven members. He stated that the Rappahannock County Code § 170-140 states that the BZA in Rappahannock County has five members, and that if the Board desired to change the number of members, the local code would have to be amended. He stated that if the Board was so inclined, staff would review the ordinance in detail to identify all necessary changes and present a defined ordinance amendment document at the next meeting. Ms. Smith stated she felt it was a good idea to expand the number of BZA members from five to seven, to which Mr. Whitson voiced concern that with the reduced responsibilities, it would not be an improvement upon efficiency and that he was not in favor. Mr. Frazier stated the county no longer had local judges who were familiar with the community and voiced concern that there were some individuals who were campaigning for appointment by the court. He stated that he was in favor of the Board submitting recommendations to the court for appointees and of increasing the number of BZA members. Ms. Smith stated that BZA consisted of a Chair, Vice-Chair, FOIA officer, secretary, and a representative to the planning commission. She stated that by enlarging the body it would provide an opportunity to fill those positions with individuals who may have more experience. She further requested staff to keep the Board updated about additional land use training opportunities.

Ms. Smith moved to direct staff to analyze the county code to determine sections that must be amended to change the BZA membership from five members to seven; Mr. Frazier seconded and the motion carried.

Aye: Donehey, Carney, Frazier, Smith  
Nay: Whitson  
Abstain:

**BERKLEY GROUP – ZONING ORDINANCE UPDATE**

Mr. Curry stated that the planning commission reviewed the proposed scope of work by the Berkley Group for phase 1 of the zoning ordinance rewrite, which mainly focused on the objective/procedural portions of the update. He stated that he felt the proposal met the objective of the planning commission, but that body deferred action until their next meeting. He stated that if the Board was inclined to proactively award Berkley Group work order #5 contingent on planning commission approval, the planning commission could take action during their April meeting and the work could begin as early as May. Following a brief discussion Mr. Carney stated he wanted to make the zoning ordinance user friendly, which he thought this effort would do and Ms. Smith agreed.

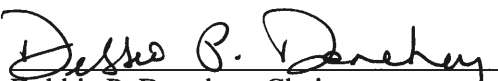
Mr. Carney moved to award work order # 5 to the Berkley Group for phase 1 of the zoning ordinance rewrite, contingent on scope approval by the planning commission; Mr. Whitson seconded and the motion carried.

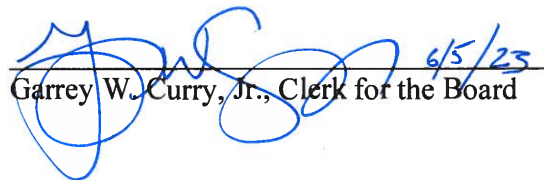
Aye: Donehey, Carney, Frazier, Smith, Whitson  
Nay:  
Abstain:

**ADJOURNMENT**

Mr. Carney moved to adjourn the meeting at 7:50 p.m.; Mr. Whitson seconded, and the motion carried.

Aye: Donehey, Carney, Frazier, Smith, Whitson  
Nay:  
Abstain:

  
Debbie P. Donehey, Chair

  
Garrey W. Curry, Jr., Clerk for the Board

**BOUNDARY LINE ADJUSTMENT AGREEMENT  
BY AND BETWEEN THE COUNTY OF RAPPAHANNOCK, VIRGINIA AND  
THE TOWN OF WASHINGTON, VIRGINIA**

This Boundary Line Adjustment Agreement ("Agreement"), dated as of \_\_\_\_\_, 2023, is made by and between **The Board of Supervisors of Rappahannock County, Virginia**, a political subdivision of the Commonwealth of Virginia (the "County"), and **The Town of Washington, Virginia**, a political subdivision of the Commonwealth of Virginia (the "Town"). The County and the Town are herein each a "Party" and collectively, the "Parties."

**RECITALS**

**R-1.** The Parties have been approached by Black Kettle LLC ("Black Kettle"), owner of certain property comprising 5.8005 acres, more or less, of which 3.9523 acres, more or less, are situated solely in the County and subject to its jurisdiction, and 1.8482 acres, more or less, are situated in the Town and subject to its jurisdiction, (Tax Map parcel TM#20-18 as shown on the plat attached to this Agreement as Exhibit 1) with a proposal to make productive use of that property ("Rush River Commons"). Black Kettle or a subsequent Developer proposes to construct structures to house community-serving uses and other uses that the Parties find to be in their mutual interests.

**R-2.** The Town and the County have been asked by Black Kettle to consider a Boundary Line Adjustment, which would bring that portion of the Black Kettle Property presently subject to the County's jurisdiction into the Town's boundaries in order that it might process development plans pursuant to a single Zoning and Subdivision Ordinance and development processes, and have access to public utilities that are essential to the development of the Rush River Commons Property.

**R-3.** The Parties have agreed to give due consideration to this request and directed their counsel and other members of staff to discuss a potential Boundary Line Adjustment Agreement and Boundary Line Adjustment with representatives of each jurisdiction and Black Kettle. Town and County representatives have presented each governing body this proposed Agreement for that purpose, utilizing the process for voluntary settlements among local governments under Virginia Code § 15.2-3400 so as to incorporate zoning arrangements as enforceable provisions of this Agreement. This process requires several steps, namely submission to the Virginia Commission on Local Government, advertisement and holding of public hearings, submission of the proposed Agreement to a special three-judge Court, and final approval by the County Board of Supervisors and Town Council if the Court will only approve the Agreement with modifications; these steps are summarized in recitals R-4, R-5, and R-6.

**R-4.** The Town and the County will by resolution refer this Agreement in draft format to the Virginia Commission on Local Government for hearing and report as required by Virginia Code § 15.2-3400.

## Boundary Line Adjustment Agreement

**R-5.** After receipt of the Commission’s report, the Town and the County will jointly advertise their intention to consider such an Agreement at least once a week for two successive weeks in a newspaper having general circulation in both localities, such notice including a descriptive summary of the proposed Agreement and describing the new boundary, together with a statement that a copy of the Agreement has been on file in the office of the clerk of both the Town Council and the County Board of Supervisors.

**R-6.** The Town Council, after having held a public hearing on the adoption of the Agreement on {{INSERT APPLICABLE DATE}}, and the Board of Supervisors after having held a public hearing on the adoption of the Agreement on {{INSERT APPLICABLE DATE}}, both pursuant to Va. Code Ann. § 15.2-3400, and upon due consideration of the matter, both governing bodies will vote on whether to petition the Circuit Court of Rappahannock County for an order affirming the Agreement by Resolutions identified as {{INSERT NAME}} adopted on those dates, copies of which are attached hereto and incorporated herein by reference as Exhibits {{INSERT EXHIBIT NUMBER}} and {{INSERT EXHIBIT NUMBER}}.

**R-7.** The Parties have caused a certified land surveyor to create a plat together with a metes and bounds description of the new boundary line and copies of which are attached hereto and incorporated herein by reference as Exhibits {{INSERT EXHIBIT NUMBER}} and {{INSERT EXHIBIT NUMBER}}.

NOW, THEREFORE, pursuant to Title 15.2, Subtitle III, Chapter 34, of the Code of Virginia, intending to be legally bound hereby and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby conclusively acknowledged, and subject to Court approval as provided in Virginia Code § 15.2-3400, the Parties do hereby agree as follows:

### **AGREEMENT**

The foregoing Recitals are incorporated herein by reference.

### **DEFINITIONS**

**“Adjusted Property”** means the property adjusted into the Town by virtue of this Agreement and the Order of the Court entered in accordance herewith.

**“Boundary Line Adjustment”** means an alteration in the presently understood and existing boundary between the Town of Washington and Rappahannock County voluntarily, formally, and legally altered by agreement of the two jurisdictions with the approval of the Circuit Court of Rappahannock County as provided by Virginia law.

**“Commission”** means the Virginia Commission on Local Government.



## Boundary Line Adjustment Agreement

“**Court**” means the special three-judge panel of the Circuit Court as provided in Virginia Code § 15.2-3000.

“**Developer**” means any party who undertakes to develop the Adjusted Property in accordance with this Agreement.

“**Effective Date**” means the first day of the month succeeding entry of the Order.

“**Order**” means the unappealable Final Order entered by the Court affirming this Agreement.

“**Owner**” means Black Kettle LLC and its successors and assignees.

## ARTICLE I

### Agreements between the Town and County

#### 1. Boundary Line Adjustment.

The Parties hereby agree that upon the approval of the Court as further provided herein with respect to the presentation of a Petition therefor, the Boundary Line between the Town and the County will be adjusted to the new Boundary as depicted on Exhibit A hereto, that certain Plat of Boundary Line Adjustment dated {{INSERT DATE}}, prepared by Bowman Consulting.

#### 2. Limitations on Lighting.

All lighting constructed by a Developer will be downward directed and will employ cutoff feature to prevent off-site light pollution. Outdoor lighting fixtures will meet the IDA Dark Sky Friendly lighting standards.

#### 3. Limitations on Use.

Pursuant to the resolution adopted by the Town of Washington on February 13, 2023, the Adjusted Property shall be zoned Village Commercial, which does not allow for residential construction. The Town will not consider nor approve any rezoning, special use permit, or other legislative action which would allow for residential construction on the Adjusted Property, and only the Adjusted Property, without the concurrence of the County Board of Supervisors.

## ARTICLE II

### Default

1. Default. In the event of a default under this Agreement, consisting of a failure of either party to perform an obligation or to refrain therefrom as set forth in this Agreement, including an attempted revocation of consent hereto, if a Party

## Boundary Line Adjustment Agreement

has not cured an asserted default within sixty (60) calendar days of receiving written notice of the said default from the non-defaulting Party, the non-defaulting Party will have the right to seek any judicial remedy that may be available to it in law or equity, including the right to specific performance.

2. **Extension of cure periods by the Parties.** In the event of a breach and the appropriate notice thereof by the defaulting Party, the cure period noted above may be extended at the sole discretion of the non-defaulting Party.

3. **Attorneys' fees.** If either Party files a lawsuit, counterclaim, or cross-claim to enforce any provision of this Agreement, the prevailing Party is entitled to all reasonable attorneys' fees, litigation expenses, and court costs.

### ARTICLE III

#### Termination of Agreement in the Event that Development does not Occur

If the Adjusted Property is not developed as contemplated by this Agreement within 15 calendar years from the date of the entry of the Order, then either party may petition the Court to revoke the Boundary Line Adjustment otherwise authorized herein by the filing of an appropriate proceeding pursuant to applicable provisions of Virginia law as they may then exist.

### ARTICLE IV

#### Miscellaneous Terms

1. **Mutual Covenants and Cooperation.** The Parties agree that they will cooperate with each other in processing any documents, applications, or petitions that may be required to effectuate the Boundary Line Adjustment, that consent thereto will not be unreasonably withheld, and that, should there be a third-party challenge to the validity of the Boundary Line Adjustment, they will each use their best good-faith efforts to defend the matter at the trial court and upon appeal. The Parties agree that so long as neither is in breach of this Agreement neither will seek to invalidate this Agreement, or otherwise take a position adverse to the purpose or validity hereof.

2. **Third Party Beneficiaries.** This Agreement is binding on and solely for the benefit of the Parties hereto and their respective successors and permitted assigns, and no other person will have any right, benefit, priority, or interest in, under, or because of the existence of, this Agreement.

3. **Construction.** This Agreement was drafted with input by the Town and the County, and no presumption arising from draftsmanship will exist against either Party.

4. **Counterparts; Electronic Signatures.** This Agreement can be

executed simultaneously in any number of counterparts, each of which is to be deemed an original, and all of which will constitute but one and the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail/PDF, or other means of electronic transmission, has the same legal effect as delivery of an original signed copy of this Agreement.

5. **Amendment.** This Agreement may be amended, modified or supplemented, in whole or in part, by mutual consent of the County and the Town, subject to review by the Commission and approval by the Court, except for concurrence of the County Board of Supervisors in approval of residential construction as provided in Article I, Section 3 of this Agreement.

6. **Notices.** Any and all notices herein provided for or relating to the transactions herein provided for will be in writing and will be deemed to have been sufficiently given if delivered by hand or mailed, postage prepaid, by first class mail, addressed to:

For notices to the County:

County Administrator  
[if by hand] 3 Library Road  
[if by mail] P.O. Box 519  
Washington, VA. 22747

For notices to the Town:

Town Clerk  
[if by hand] 567 Mt. Salem Ave, Suite 3  
[if by mail] P.O. Box 7  
Washington, Virginia 22747

**ARTICLE V**

**PRESENTATION OF THE PETITION TO THE COMMISSION AND THE COURT.**

1. As soon as practicable after the adoption of the Agreement by both Parties hereto, the County Attorney and the Town Attorney, or their designees, will present this Agreement to the Commission for a hearing and report pursuant to Virginia Code § 15.2-3400 (3).

2. Upon receipt of the Commission report, if the County and Town hold

## Boundary Line Adjustment Agreement

public hearings as provided by law and thereafter pass ordinances to adopt either the original or a modified agreement acceptable to all parties, the County Attorney and the Town Attorney shall Petition the Circuit Court of Rappahannock County for an Order affirming such Agreement. The Petition will set forth the facts required by the Code of Virginia and the regulations of the Commission pertaining to the desire to relocate or change the boundary line between the localities, this Agreement, and will have attached to it the Plat of Boundary Line Adjustment attached hereto as Exhibit A, and this Agreement, which shall be incorporated into the Court's Order.

3. If this Agreement is not affirmed by the Court, this Agreement shall immediately terminate. However, if the Court proposes amendments or changes to the terms and conditions of this Agreement as a precondition for its approval, this Agreement shall not terminate if the County and Town mutually agree to accept the recommended amendments or changes.

4. Upon entry of the Order, that Order will be entered in the land records of the Circuit Court of Rappahannock County and indexed in the names of both the Town and the County, and certified copies of the Order will be provided to the Mayor of the Town and the Chairman of the Board of Supervisors.

5. The Town shall bear the costs of preparing all required documents and of recording the necessary plat and metes and bounds description and all other, if any, costs of recording.

6. On its Effective Date, this Agreement shall be binding on future local governing bodies of the County and Town, pursuant to express statutory authority.

*[Signature pages follow]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by the officers whose names appear below as of the Effective Date first set forth above.

**The Board of Supervisors of  
Rappahannock County, Virginia**

By: \_\_\_\_\_

Name:

Title: Chairman of the Board

Approved as to form:

By: \_\_\_\_\_  
County Attorney

DRAFT

**The Town of Washington, Virginia**

By: \_\_\_\_\_

Name:

Title: Mayor

Approved as to form:

By: \_\_\_\_\_  
Town Attorney

DRAFT

**Washington/Rappahannock VSA Proposed Review Schedule—January 5, 2024**

<b>Monday, November 20, 2023 – Notice Received</b>		
<b>Friday, January 5, 2024 – Regular Meeting of the Commission</b>		
<b>Friday March 1, 2024 – Regular Meeting of the Commission</b>		
<b>Friday May 3, 2024 – Regular Meeting of the Commission</b>		
<b>Monday, May 20, 2024 - Oral Presentation and Public Hearing</b>		
Morning	Arrival Potential site visit	Commissioners, staff, and parties
Afternoon	Oral presentations	Town and County
Evening	Public hearing	Commissioners, staff, and public
<b>Tuesday, May 21, 2024—Commission meetings</b>		
Morning	Executive Session	Commissioners and staff
<b>Monday June 3, 2024 -- Potential date to close the record (must be voted on by the Commission)</b>		
<b>Friday, July 12, 2024 - Commission report due (with 60-day extension)</b>		



Glenn Youngkin  
Governor

Caren Merrick  
Secretary of  
Commerce and Trade

# COMMONWEALTH of VIRGINIA

Bryan W. Horn  
Director

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

**TO:** Members of the Commission on Local Government  
**FROM:** DHCD Staff  
**DATE:** December 22, 2023  
**SUBJECT:** Proposed draft text of 1 VAC-50-20: Organization and Regulations of Procedure

Commissioners:

As you consider finalizing changes to the Commission's regulations, staff has compiled the following notes on the draft text of 1VAC-50-20 for your reference. Where applicable, we note any changes made to the draft text presented at the November meeting.

### **In general:**

The significant changes proposed in the draft text accomplish three goals:

1. Reduce and standardize the amount of information included in filings with the Commission to include only name, phone number, and email address. In previous drafts, "title" was left as a requirement for some filings;
2. Reduce the burden and number of notifications that local governments must send to other parties when filing with the Commission;
3. Align the Commission's regulations of access to information with the Department of Housing and Community Development's Freedom of Information Act policies and practices.

### **1VAC50-20-60:**

These changes will standardize the Commission's practices for executive sessions and were not included in previous drafts. None of these changes are required by statute but are instead based on current commission practice as well as relevant rules taken from Virginia Code § 2.2-3712, which governs closed meetings. Given that executive meetings are not the same as closed meetings, Staff would appreciate further feedback on this section if you have any.

### **1VAC50-20-230:**

In general, these notification requirements are being eliminated by the proposed changes when they are not required by statute. However, since issues that are brought through voluntary settlement agreements are similar to or the same as issues brought through §15.2-2907, where notification is required by statute, staff recommends keeping this notification requirement for consistency and the benefit of other localities.





**1VAC50-20-270:**

The notification requirements in this section have been changed to match those in Va Code §15.2-3232 and to establish when additional documents must be filed with the Commission. These changes were not included in previous drafts.

**1VAC50-20-382:**

As with 1VAC50-20-230, these requirements are not required by statute and are generally being eliminated from regulation. However, given the nature of the agreements, staff recommends minor edits (as opposed to complete elimination) since it would be helpful for other localities to be able to weigh in on any agreement that may affect their revenues or taxes.

Sincerely,

Staff



## **Chapter 20. Organization and Regulations of Procedure**

### 1VAC50-20-1. Applicability.

The Commission on Local Government's regulations are promulgated pursuant to the authority of § [15.2-2903](#) of the Code of Virginia and are applicable to the proceedings of the Commission on Local Government. When necessary to fulfill its statutory responsibilities, the commission may grant, upon its own initiative, a waiver or modification of any of the provisions of these regulations, except those required by law, under terms and conditions and to the extent it deems appropriate.

### 1VAC50-20-5. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Chair" means the Chair of the Commission on Local Government.

"Commission" means the Commission on Local Government.

"County" means a county in the Commonwealth of Virginia.

"Local government" means a county, city, or town in the Commonwealth of Virginia.

"Locality" means a county, city, or town in the Commonwealth of Virginia.

"Municipality" means a city or town in the Commonwealth of Virginia.

"Party" means local governments, voters, or property owners initiating a proposed annexation, voters of any community requesting that their community be incorporated as a town, voters petitioning for the transition of a city to town status, or a committee appointed by the circuit court to act for and in lieu of a local government to perfect a consolidation agreement.

### 1VAC50-20-10. Principal duties.

The commission is charged with reviewing proposed annexations, other local boundary change issues, petitions for partial immunity, local government transitions, and interlocal agreements and with assisting other interlocal concerns for the purpose of maintaining the Commonwealth's local governments as viable communities in which their citizens can live.

### 1VAC50-20-40. Officers.

The commission shall elect from its membership at its regular January meeting, or as soon thereafter as possible, a chair and a vice chair, who shall serve terms of one year, or until their successors are elected. In the event of a vacancy occurring in the office of chair or vice chair, for any cause, the commission shall fill the same by election for the unexpired term. The chair shall preside at all meetings, presentations, and public hearings held by the commission unless absent. In the absence of the chair, the vice chair shall preside at any meeting or other assembly of the commission and shall exercise all powers and duties of the chair. In the event that the chair and vice chair are absent for a meeting or other assembly of the commission, the remaining members of the commission shall elect a temporary chair who shall exercise all powers and duties of the chair for the duration of the meeting or assembly.

#### 1VAC50-20-50. Powers and duties of chair.

In addition to any other powers or duties placed upon the chair by law, this chapter, or other action of the commission, the chair shall be authorized to:

1. Request one or more members of the commission or its staff to represent the commission before local governing bodies, before state agencies and legislative committees, or before any other entity where the representation of the commission is requested or where the chair deems appropriate;
2. Select or change sites for oral presentations and public hearings;
3. Defer and reschedule issues the chair deems appropriate upon consultation with the commission;
4. Act on behalf of the commission in efforts to resolve disputes between the parties to an issue relative to the production and sharing of data, or with respect to related concerns bearing on the commission's review of an issue; and
5. Establish upon consultation with the parties an equitable distribution of time for public presentations and to make other arrangements the chair deems appropriate and consistent with the requirements of law and this chapter for the conduct of the commission's oral presentations and public hearings.

#### 1VAC50-20-100. Canons of conduct.

The commission shall adopt, and may from time to time amend, Canons of Conduct regarding members' conduct and their relations with parties and their agents. Officials and agents of parties with issues before the commission shall be expected to obtain and review a copy of the Canons of Conduct.

#### 1VAC50-20-110. Staff.

The commission shall have a staff consisting of an executive director, who shall be appointed by the Governor and confirmed by the General Assembly, and other employees as are needed and authorized by law.

#### 1VAC50-20-140. Regular meetings.

The commission shall fix the time and place for holding regular meetings, which shall be held at least once every two months. Changes in the schedule and location of the regular meetings may be made by the commission, but the changes shall be duly announced in the Virginia Register of Regulations published by the Virginia Code Commission and posted on the Virginia Regulatory Town Hall.

#### 1VAC50-20-142. Special meetings.

Special meetings of the commission may be called by any member on such occasions as may be reasonably necessary to carry out the duties of the commission. Except in instances where a special meeting is scheduled at a regular meeting, the chair shall cause to be mailed - including by electronic means - to all members, at least five days in advance of a special meeting, a written notice specifying the time, place, and purpose of the special meeting. Notice of special meetings shall be announced appropriately on the Virginia Regulatory Town Hall and on a calendar maintained by the Commonwealth.

#### 1VAC50-20-150. Minutes of meetings and hearings.

Minutes shall be recorded for each public meeting held by the commission. The minutes shall include a brief summary of comments on major issues under consideration and concise and specific statements of all action taken by the commission. The minutes shall be provided to each commission member for reading and editing prior to approval at a subsequent commission meeting. There need be no actual reading of the minutes at the

meeting, but a vote shall be taken for the formal approval of the minutes as written or amended. Copies of the minutes of public meetings shall be made available to any interested party in accordance with the Department of Housing and Community Development's Virginia Freedom of Information Act policies. ~~at a price sufficient to cover the expense incurred or on the Virginia Regulatory Town Hall and the commission's Internet webpage.~~

#### 1VAC50-20-160. Executive sessions or meetings.

The commission, along with its panels, committees, subcommittees, or its members, and staff, may hold and conduct executive sessions or meetings as may be necessary for mediation and negotiations, for deliberations, or for other appropriate purposes. Executive sessions or meetings may be called without notice and held in any location, in-person or virtually, as allowed by applicable law. Unless otherwise agreed to by the members of the session or meeting, such sessions and meetings shall be governed by the procedures in these regulations.

No action of the Commission taken during an executive session or meeting that would otherwise require a public vote shall be binding unless the Commission takes a vote on such action at a subsequent regular meeting of the Commission.

The Commission may permit nonmembers to attend an executive session or meeting if such persons are deemed necessary by the Commission, if their presence will reasonably aid the Commission in its consideration of a topic that is a subject of the meeting, or as required by law.

Minutes may be taken during executive sessions or meetings but shall not be required. Pursuant to 1VAC50-20-170 and applicable law, such minutes shall be confidential.

#### 1VAC50-20-170. Confidentiality of proceedings and submissions.

All testimony, statements, exhibits, documents, or other evidence submitted to the commission by the parties in conjunction with its legally prescribed public meetings, presentations, or hearings shall be subject to disclosure by the commission under the provisions of the Virginia Freedom of Information Act. All other materials, including the testimony, statements, exhibits, documents, or other evidence submitted to the commission pursuant to executive sessions or meetings, along with other deliberations, negotiations, or mediation which the commission is authorized by law to conduct, shall be treated as confidential and shall not be subject to disclosure by the commission nor by the parties involved in executive proceedings except by agreement of the commission and all parties to the proceedings.

#### 1VAC50-20-180. Notice to commission of proposed action as required by § 15.2-2907 of the Code of Virginia.

~~A. Notice of a proposed action as required by § 15.2-2907 of the Code of Virginia to the commission shall be accompanied by resolution of the governing body of the locality providing the notice evidencing its support of such action. Notice to the commission shall indicate the name, ~~title, address, phone number, and, where available, fax number~~ and email address of the individual who shall serve as designated contact with the commission regarding the issue presented. ~~All notices required to be given the commission under the provisions of § 15.2-2907 of the Code of Virginia shall also indicate the other local governments given notice of the proposed action pursuant to subsection C of this section.~~~~

~~4. Notice of a proposed annexation initiated by voters or property owners shall be accompanied by the original or certified petition signed by 51% of the voters of any territory adjacent to any municipality or 51% of the owners of real estate in number and land area in a designated area. Notice to the commission shall indicate the name, ~~title, address, and phone number, and, where available, fax number~~ and email address of the individual who shall serve as designated contact with the commission regarding the issue presented. ~~All notices required to be given to the commission under the provisions of § 15.2-2907 of the Code of Virginia shall also indicate the~~~~

~~other local governments given notice of the proposed action pursuant to subsection C of this section.~~

~~2. Notice of a petition for the proposed transition of a city to town status that has been referred to the commission pursuant to § [15.2-4102](#) of the Code of Virginia shall indicate the name, title, address, phone number, and, where available, fax number and email address of the individual who shall serve as designated contact with the commission regarding the issue referred. All notices required to be given the commission under the provisions of § [15.2-2907](#) of the Code of Virginia shall also indicate the other local governments given notice of the proposed action pursuant to subsection C of this section.~~

~~3. Notice to the commission by a committee of citizens that has been appointed by the circuit court to act for and in lieu of a governing body to perfect a consolidation agreement pursuant to § [15.2-3531](#) of the Code of Virginia shall indicate the name, title, address, phone number, and, where available, fax number and email address of the individual who shall serve as designated contact with the commission regarding the proposed consolidation. All notices required to be given to the commission under the provisions of § [15.2-2907](#) of the Code of Virginia shall also indicate the other local governments given notice of the proposed action pursuant to subsection C of this section.~~

B. Any party giving notice to the commission of a proposed action pursuant to § [15.2-2907](#) of the Code of Virginia may submit with the notice as much data, exhibits, documents, or other supporting materials as it deems appropriate; however, the submissions should be fully responsive to all relevant elements of the applicable section of Part IV ([1VAC50-20-540](#) et seq.) of this chapter.

C. Any party giving notice to the commission of a proposed action as required by § [15.2-2907](#) of the Code of Virginia shall also give notice to each Virginia local government located within or contiguous to, or sharing functions, revenue, or tax sources with the local government proposing the action. All notices to the local governments shall include ~~an annotated listing of all documents, exhibits, and other material submitted to the commission in support of the proposed action.~~ contact information for the Commission's staff with instructions to contact the Commission or the locality's FOIA Officer, as applicable, for copies of the documents submitted to the Commission.

1. Any voters or property owners giving notice to the commission of a proposed annexation as required by § [15.2-2907](#) of the Code of Virginia shall also give notice to each Virginia local government located within or contiguous to, or sharing functions, revenue, or tax sources with the municipality to which annexation is sought. All notices to the immediately affected local governments shall include copies of all documents, exhibits, and other material submitted to the commission in support of the proposed action, and notice to other localities may include, in lieu of copies of the submissions, ~~an annotated listing of the material.~~ contact information for the Commission's staff with instructions to contact the Commission for copies of the documents submitted to the Commission.

2. Any voters whose petition for the proposed transition of a city to town status that has been referred to the commission pursuant to § [15.2-4102](#) of the Code of Virginia shall also give notice to each Virginia local government located within or contiguous to, or sharing functions, revenue, or tax sources with the city proposed for town status. All notices to the immediately affected local governments shall include copies of all documents, exhibits, and other material submitted to the commission in support of the proposed action, and notice to other localities may include, in lieu of copies of the submissions, ~~an annotated listing of the material.~~ contact information for the Commission's staff with instructions to contact the Commission for copies of the documents submitted to the Commission.

3. A committee of citizens that has been appointed by the circuit court to act for and in lieu of a governing body to perfect a consolidation agreement pursuant to § [15.2-3531](#) of the Code of Virginia shall also give notice to each Virginia local government located within or contiguous to, or sharing functions, revenue, or tax sources with the local governments that are proposed to be consolidated. All notices to the immediately affected local

governments shall include copies of all documents, exhibits, and other material submitted to the commission in support of the proposed action, and notice to other localities may include, in lieu of copies of the submissions, ~~an annotated listing of the material.~~ contact information for the Commission's staff with instructions to contact the Commission for copies of the documents submitted to the Commission.

D. Any local government receiving notice pursuant to subsection C of this section or any other affected party may submit data, exhibits, documents, or other material for commission review and consideration as it deems appropriate. The submissions should, however, be responsive to all relevant elements of the applicable section of Part IV ([1VAC50-20-540](#) et seq.) of this chapter. Any party submitting material to the commission for review pursuant to this section shall also designate an individual as principal contact for the commission and shall furnish the individual's name, title, address, phone number, and, where available, fax number and email address. The submitting party shall notify ~~An annotated listing of all documents, exhibits, or other material submitted to the commission pursuant to this section shall be provided to the party initiating the proceeding before the commission~~ of their submission. Such notification shall include contact information for the Commission's staff with instructions to contact the Commission for copies of the documents submitted to the Commission. The commission may establish a time by which all submissions by respondent parties must be received.

E. Upon its receipt of notice of a proposed action pursuant to subsection A of this section, the commission shall, subsequent to discussion with representatives of the party submitting the notice and other appropriate parties, schedule a review of the proposed action. The commission shall also concurrently extend the services of its office to the parties in an endeavor to promote a negotiated settlement of the issue and, further, may designate, with the agreement of the parties, an independent mediator to assist in the negotiations.

The commission's review of a notice of a proposed annexation as required by § [15.2-2907](#) of the Code of Virginia filed by voters or property owners shall be terminated upon receipt of an ordinance, duly adopted by a majority of the elected members of the governing body of the affected city or town, rejecting the annexation proposed by the notice.

#### 1VAC50-20-230. Referral to commission of proposed voluntary settlement agreements.

~~A. Referral of a proposed voluntary settlement agreement to the commission under the provisions of § [15.2-3400](#) of the Code of Virginia shall be accompanied by resolutions, joint or separate, of the governing bodies of the localities that are parties to the proposed agreement requesting the commission to review the agreement. The resolutions shall also state the intention of the governing bodies to adopt the agreement subsequent to the commission's review and shall indicate the name, title, address, phone number, and, where available, fax number and email address of the individual who shall serve as each locality's principal contact with the commission during the period of its review. Referrals to the commission pursuant to § [15.2-3400](#) of the Code of Virginia shall also be accompanied by a listing of local governments receiving notice of the referral under subsection C of this section.~~

B. Any party referring a proposed voluntary settlement agreement to the commission for review pursuant to § [15.2-3400](#) of the Code of Virginia may submit with the proposed agreement as much data, exhibits, documents, or other supporting materials as deemed appropriate; however, the submissions should be fully responsive to all relevant elements of [1VAC50-20-610](#).

C. Whenever a proposed voluntary settlement agreement is referred to the commission for review pursuant to subsection A of this section, the parties to the proposed agreement shall concurrently give notice of the referral to each Virginia local government with which any of the parties is contiguous, or with which any of the parties shares any function, revenue, or tax source. All such notices of referral shall be accompanied by contact information for the Commission's staff with instructions to contact the Commission for copies of the documents submitted to the Commission ~~a copy of the proposed voluntary settlement agreement, or a~~

~~descriptive summary thereof, and an annotated listing of all documents, exhibits, and other materials submitted to the commission in support of the proposed agreement.~~

~~D. Any local government receiving notice of referral pursuant to subsection C of this section, or any other party, may submit data, exhibits, documents, or other supporting materials relevant to the commission's review as it deems appropriate; however, the submissions should be responsive to all relevant elements of [1VAC50-20-610](#). Any party submitting materials to the commission pursuant to this chapter shall also designate an individual who shall serve as principal contact with the commission during the period of its review and shall furnish the individual's ~~title, address, name, phone number, and, where available, fax number~~ and email address. The commission may establish a time by which all submissions by respondent parties must be received. Any party submitting materials to the commission pursuant to this chapter shall also notify the parties to the voluntary settlement agreement of their submission. Such notification shall include contact information for the Commission's staff with instructions to contact the Commission for copies of the documents submitted to the Commission. ~~provide an annotated listing of the material to the parties to the proposed voluntary settlement agreement.~~~~

1VAC50-20-270. Referral to commission of proposed town-county agreement defining annexation rights.

A. Referral to the commission of a proposed town-county agreement defining annexation rights pursuant to § [15.2-3231](#) of the Code of Virginia shall be accompanied by resolutions, joint or separate, of the governing bodies of the town and county requesting the commission to review the agreement. The resolutions shall also state the intention of the governing bodies to adopt the agreement subsequent to the commission's review and shall indicate the name, ~~title, address, phone number, and, where available, fax number~~ and email address of the individual who shall serve as each locality's principal contact with the commission during the period of its review. ~~Referrals to the commission pursuant to § [15.2-3231](#) of the Code of Virginia shall also be accompanied by a listing of local governments receiving notice of such referral under subsection C of this section.~~

B. Any affidavit made pursuant to Code of Virginia §15.2-3232B shall be filed with the Commission within 5 business days of execution.

C. Any notice given under Code of Virginia §15.2-3232B shall include contact information for the Commission's staff with instructions to contact the Commission for copies of the documents submitted to the Commission.

D. Any party referring a proposed agreement to the commission for review pursuant to § [15.2-3231](#) of the Code of Virginia may submit with the proposed agreement as much data, exhibits, documents, or other supporting materials as deemed appropriate; however, submissions should be fully responsive to all relevant elements of [1VAC50-20-560](#).

~~Whenever a proposed agreement is referred to the commission for review pursuant to subsection A of this section, the parties to the proposed agreement shall concurrently give notice of the referral to each Virginia local government with which either party is contiguous or with which either party shares any function, revenue, or tax source. All notices of referral shall be accompanied by a copy of the proposed agreement, or a descriptive summary thereof, and an annotated listing of all documents, exhibits, and other materials submitted to the commission in support of the proposed agreement.~~

E. Any ~~person or~~ local government receiving notice of referral pursuant to subsection C of this section, ~~or any other party,~~ may submit data, exhibits, documents, or other supporting materials relevant to the commission's review as they deem appropriate; however, the submissions should be responsive to all relevant elements of [1VAC50-20-560](#). Any party submitting materials to the commission pursuant to this chapter shall also designate an individual who shall serve as principal contact with the commission during the period of its review and shall

furnish the individual's ~~title, name, address,~~ phone number, and, where available, ~~fax number~~ and email address. The commission may establish a time by which all submissions by respondent parties must be received. Any party submitting materials to the commission pursuant to this chapter shall also notify the parties to the agreement defining annexation rights of their submission. Such notification shall include contact information for the Commission's staff with instructions to contact the Commission for copies of the documents submitted to the Commission. ~~provide an annotated listing of the material to the parties to the proposed agreement.~~

1VAC50-20-310. Referral to commission of town petition for order establishing annexation rights.

A. Any town unable to reach an agreement with its county as to future annexation rights may, pursuant to § [15.2-3234](#) of the Code of Virginia, adopt an ordinance petitioning the commission for an order establishing its rights to annex territory in such county. The petition to the commission shall include the terms of a proposed order establishing the town's annexation rights and shall indicate the name, ~~title,~~ address, phone number, and, where available, ~~fax number~~ and email address of the individual who shall serve as the town's principal contact with the commission. Petitions to the commission pursuant to § [15.2-3234](#) of the Code of Virginia shall also be accompanied by a copy of the ordinance ~~and by a listing of all local governments being served or receiving notice of the town's petition pursuant to subsection C of this section.~~

B. Any town petitioning the commission under the authority of § [15.2-3234](#) of the Code of Virginia may submit with the petition as much data, exhibits, documents, or other supporting materials as deemed appropriate; however, the submissions should be fully responsive to all relevant elements of [1VAC50-20-616](#).

C. Any town petitioning for an order establishing its annexation rights under the authority of § [15.2-3234](#) of the Code of Virginia shall serve a copy of the petition and ordinance on the Commonwealth's attorney, or the county attorney if there be one, and on the chairman of the board of supervisors of the county whose territory would be affected by the town's proposed annexation order. ~~The town shall also give notice of its petition to all other towns located within the affected county and to each Virginia local government adjoining such county. The service in the county and the notice to other localities shall be accompanied by an annotated listing of all materials submitted to the commission pursuant to subsection B of this section.~~ shall include contact information for the Commission's staff.

D. A county served with a copy of a town's petition pursuant to subsection C of this section shall file its response to such petition with the commission within 60 days after receipt of the service. Any other party ~~receiving notice pursuant to subsection C of this section, with an interest in the proceedings~~ may also submit materials to the commission for consideration with respect to the town's petition ~~within 60 days of their receipt of the notice.~~ The commission may establish a time by which all submissions by respondent parties must be received so long as the time is no earlier than the County's response date. Responses and submissions to the commission pursuant to this chapter may include data, exhibits, documents, or other materials as the submitting party deems appropriate; however, such responses and submissions should be responsive to all relevant elements of [1VAC50-20-616](#). Any party submitting materials to the commission for review pursuant to this chapter shall also designate an individual who shall serve as principal contact with the commission and shall furnish the individual's ~~title, address,~~ name, phone number, and, where available, ~~fax number~~ and email address. Any party submitting materials to the commission pursuant to this chapter shall also ~~provide an annotated listing of the material to the town petitioning the commission.~~ notify the Town that they have submitted materials to the Commission.

1VAC50-20-350. Referral to commission of boundary line adjustment.

A. Whenever a court refers a proposed boundary line adjustment to the commission pursuant to § [15.2-3109](#) of the Code of Virginia, the localities proposing the boundary line adjustment shall, upon receipt of notification of the referral, provide the commission with a copy of their petition to the court and shall designate an individual



for each locality who shall serve as principal contact with the commission and shall furnish the individual's name, title, address, phone number, and, where available, fax number and email address. Referrals to the commission pursuant to § 15.2-3109 of the Code of Virginia shall also be accompanied by a listing of local governments receiving notice of the referral under subsection C of this section.

B. The two localities proposing a boundary line adjustment pursuant to § 15.2-3109 of the Code of Virginia may, jointly or independently, submit to the commission with their petition as much data, exhibits, documents, or other supporting materials as they deem appropriate; however, such submissions should be fully responsive to all relevant elements of 1VAC50-20-600.

~~C. Whenever a proposed boundary line adjustment is referred to the commission for review pursuant to § 15.2-3109 of the Code of Virginia, the localities proposing the adjustment shall concurrently give notice of the proposed adjustment as well as notice of the referral of the issue to the commission to each Virginia local government with which either party is contiguous and to any other Virginia local government deemed by the localities proposing the adjustment to be potentially affected by the proposed adjustment. The notice shall include a copy of the petition requesting the boundary line adjustment, or an informative summary thereof, and an annotated listing of all documents, exhibits, and other materials submitted to the commission for review pursuant to subsection B of this section.~~

D. Any person or local government receiving notice of a proposed boundary line adjustment pursuant to subsection C of this section, or any other party, may submit data, exhibits, documents, or other supporting materials relevant to the commission's review as they deem appropriate; however, such submissions should be responsive to all relevant elements of 1VAC50-20-600. Any party submitting materials to the commission pursuant to this chapter shall also designate an individual who shall serve as principal contact with the commission during the period of its review and shall furnish the individual's name, title, address, phone number, and, where available, fax number and email address. The commission may establish a time by which all submissions by respondent parties must be received. Any party submitting materials to the commission pursuant to this chapter shall also notify provide an annotated listing of the materials to the localities proposing the boundary line adjustment. the localities proposing the boundary line adjustment that they have submitted evidence to the Commission.

#### 1VAC50-20-382. Referral to commission of proposed economic growth-sharing agreements.

A. Referral of a proposed economic growth-sharing agreement to the commission under the provisions of § 15.2-1301 of the Code of Virginia shall be accompanied by resolution, joint or separate, of the governing bodies of the localities that are parties to the proposed agreement requesting the commission to review the agreement. The resolutions shall also state the intention of the governing bodies to adopt the agreement subsequent to the commission's review and shall indicate the name, title, address, phone number, and, where available, fax number and email address of the individual who shall serve as each locality's principal contact with the commission during the period of its review. Referrals to the commission pursuant to § 15.2-1301 of the Code of Virginia shall also be accompanied by a listing of local governments receiving notice of the referral under subsection C of this section.

B. Any party referring a proposed economic growth-sharing agreement to the commission for review pursuant to § 15.2-1301 of the Code of Virginia may submit with the proposed agreement as much data, exhibits, documents, or other supporting materials as deemed appropriate; however, the submissions should be fully responsive to all relevant elements of 1VAC50-20-612.

C. Whenever a proposed economic growth-sharing agreement is referred to the commission for review pursuant to subsection A of this section, the parties to the proposed agreement shall concurrently give notice of the referral to each Virginia local government with which any of the parties is contiguous, or with which any of the parties shares any function, revenue, or tax source. All notices of referral shall be accompanied by a copy of the

~~proposed agreement, or a descriptive summary thereof, and an annotated listing of all documents, exhibits, and other materials submitted to the commission in support of the proposed agreement. shall include contact information for the Commission's staff with instructions to contact the Commission for copies of the documents submitted to the Commission.~~

D. Any local government receiving notice of referral pursuant to subsection C of this section, or any other party, may submit data, exhibits, documents, or other supporting materials relevant to the commission's review as it deems appropriate; however, the submissions should be responsive to all relevant elements of [1VAC50-20-612](#). Any party submitting materials to the commission pursuant to this chapter shall also designate an individual who shall serve as principal contact with the commission during the period of its review, and shall furnish the individual's ~~title, name, address,~~ phone number, ~~and, where available, fax number~~ and email address. Any party submitting materials to the commission pursuant to this chapter shall ~~also provide an annotated listing of the material to the parties to the proposed agreement.~~ notify the parties to the economic growth sharing agreement that they have submitted materials to the Commission. The Commission may establish a time by which all submissions by respondent parties must be received.

#### 1VAC50-20-384. Determination of continued eligibility for city status.

A. The commission shall review each decennial census of population released by the United States Bureau of the Census to determine whether any city has failed to meet the criteria for city status established by Article VII, Section 1 of the Constitution of Virginia. In any instance where the census indicates that a city may not meet the constitutional criteria, the commission shall conduct an investigation of the city's population, assets, liabilities, rights, and obligations and shall certify its findings to the governing body of such city.

B. In the conduct of its investigation, the commission shall request the assistance of the city in the provision of relevant data and information. The city may submit as much data, exhibits, documents, or other material as it deems appropriate; however, the submissions should be responsive to all relevant elements of [1VAC50-20-614](#).

#### 1VAC50-20-390. General provisions applicable to mandatory commission reviews.

A. Any local government or other party appearing before the commission relative to any mandatory review may be represented by counsel.

B. The commission shall generally schedule for consideration issues in the order in which received; however, the commission reserves the right to consider issues in other sequence where it deems appropriate. Where notices are received of related or competitive actions affecting the same localities, the commission may, where appropriate, consider the issues and render the reports or a consolidated report concurrently.

C. Subsequent to its receipt of an issue for a mandatory review the commission or its staff shall meet, or otherwise converse, with representatives of the principally affected parties for purposes of establishing a schedule for its review of the issue. The schedule shall include dates (i) for the submission of responsive materials from affected jurisdictions, (ii) for tours of affected areas and oral presentations if any are desired by the commission, (iii) for a public hearing, and (iv) for the issuance of the commission's report, as well as other dates the commission deems appropriate.

D. The commission may continue or defer its proceedings with respect to an issue at any time it deems appropriate; however, no continuance or deferral shall result in an extension of the commission's reporting deadline beyond any time limit imposed by law, except by agreement of the parties or in accordance with other statutory procedures. The commission shall also accept requests for continuances or deferrals from any party at any time during its proceedings but shall not grant or deny any such requests until all parties have had an opportunity to comment on the requests. In any instance where the commission grants a continuance or a deferral, the continuance or deferral may be conditioned upon an appropriate extension of the commission's

reporting deadline with respect to the issue under review.

E. The commission may confront the necessity of continuing or deferring its proceedings as a result of statutory requirement or court order. In such instances, the commission shall reschedule its proceedings, upon consultation with the parties, in a manner that permits an expeditious conclusion of its review. The parties should anticipate, however, that the duration of the continuance or stay shall result in a commensurate delay in the issuance of the commission's report.

F. In addition to any meeting, presentation, public hearing, or other gathering of the parties specified by this chapter, the commission may, where it deems necessary for an analysis of material or for a discussion or clarification of the issues before it, schedule other meetings of appropriate parties.

G. No party to a proceeding before the commission for mandatory review shall communicate in any manner with any member of the commission with respect to the merits of the issue under review except as is authorized by this chapter, or as may be otherwise authorized by the commission or its chair.

H. In addition to the submissions authorized by [1VAC50-20-180](#) through [1VAC50-20-384](#), the commission may allow supplemental submissions deemed necessary or appropriate by the commission for the provision of current and complete data. Where supplemental submissions are authorized pursuant to this subsection, copies of all submissions shall be provided by the submitting party to all principal parties. The commission shall endeavor to establish dates for the filing of all supplemental submissions which will allow an opportunity for their review and critical analysis by other affected parties. However, the commission may accept supplemental submissions filed after any established dates if, in the commission's judgment, the submissions assist the commission in the discharge of its statutory responsibilities.

I. Any material submitted to the commission by the parties in conjunction with or relative to any notice filed pursuant to any mandatory review covered by [1VAC50-20-180](#) through [1VAC50-20-384](#), except materials presented in the context of negotiations or mediation of a confidential nature as authorized by law, shall be considered public documents and made available by ~~the submitting party~~ the Commission for review by any other interested party or by the public. Any interested party or member of the public may request copies of any such material from the Commission or its staff. In addition, the Commission shall post all public documents as defined by this section on its website. ~~which shall be provided promptly by the party submitting the material to the commission at a price sufficient to cover the expense incurred.~~

J. Each document, exhibit, or other material submitted to the commission shall bear a title, the date of preparation, a detailed citation of the sources from which all data are obtained, and the name of the entity which submitted the document, exhibit, or other material. All material submitted to the commission by a local government shall be, as nearly as practicable, in the same form as the material would subsequently be submitted to the courts. The commission may refuse to accept for review and consideration any exhibit, document, or other material unless the person preparing it, or a representative of the entity responsible for its submission, shall be willing to appear before the commission for purposes of answering questions concerning the material.

K. Unless otherwise requested, wherever the regulations of the commission call for the projection of data, the projections should be made for a 10-year period. In each instance where projections are given, the method and bases of the projections should be indicated.

L. All data, exhibits, documents, or other material submitted to the commission on the initiative of a party or pursuant to a request from the commission shall be certified by the submitting party (i) as to source and (ii) as to the fact that the material is correct within the knowledge of the submitting party.

M. Any party filing notice or making submissions to the commission shall provide at least eight copies of all submissions, unless the commission agrees that a lesser number would be sufficient for its review and analysis. The commission may make provisions for the electronic filing of submissions, including facsimile.

N. At any time during the course of the commission's review of any issue, the commission's staff may solicit additional data, documents, records, or other materials from the parties as is deemed necessary for proper analysis of any issue. Where such materials are solicited from a party, the commission's staff, where practicable, shall make the request in writing, with copies of the request being provided to other principal parties. Copies of all materials submitted to the commission pursuant to this chapter shall concurrently be provided to each principal party or shall be made available to the parties in a manner acceptable to the commission. ~~The commission shall be given written notification by the submitting party of each principal party provided a copy of the material or of arrangements proposed for making the material available to the principal parties.~~

O. The commission shall not be limited in its analysis of any issue to the materials submitted by the parties but shall undertake independent research as it deems appropriate in order to assure a full and complete investigation of each issue.

P. The commission shall request all parties to cooperate fully in the development and timely sharing of data relative to the issue under review. The commission considers the cooperation among parties vital to the discharge of its responsibilities.

Q. The commission may allow the parties to correct the data, exhibits, documents, or other material submitted to the commission prior to the date established for the closing of the record pursuant to [1VAC50-20-640](#) B. Where corrections are authorized pursuant to this chapter, copies of all corrections shall be provided by the submitting party to all principal parties. If, in the commission's judgment, the corrections are of a substantive nature as to significantly alter the scope or character of the issue under review, the commission may delay its proceedings for an appropriate amount of time to provide an opportunity for other parties to respond to the corrected data, exhibits, documents, or other material.

R. Following the receipt of a notice, the commission may request the party initiating the proposed action to prepare and file testimony in support of the proposed action. The testimony of the party initiating the proposed action may refer to all data, exhibits, documents, or other material previously submitted to the commission or filed with the testimony. In all proceedings in which the initiating party files testimony, the affected party shall be permitted and may be requested by the commission to file, on or before a date established by the commission, testimony in response to the proposed action. The testimony of the affected party may refer to all data, exhibits, documents, or other material previously submitted to the commission or filed with the testimony. Any affected party who chooses not to file testimony by the date established by the commission may not thereafter present testimony except by permission of the commission, but may otherwise fully participate in the proceeding and engage only in cross-examination of the testimony of other parties. Failure to comply with the directions of the commission, without good cause shown, may result in rejection of the testimony by the commission. The commission may permit the parties to correct or supplement any prepared testimony before or during the oral presentations as called for in [1VAC50-20-620](#). Eight copies of prepared testimony shall be filed unless otherwise specified by the commission.

#### 1VAC50-20-540. Annexation.

In developing its findings of fact and recommendations with respect to a proposed annexation, the commission shall consider the relevant information, data, and factors listed in this section. Any city or town filing notice with the commission that it proposes to annex territory shall submit with the notice data and other evidence responsive to each element listed in this section that it deems relevant to the proposed annexation. Any voters or property owners filing notice pursuant to § [15.2-2907](#) of the Code of Virginia with the commission seeking annexation to a municipality shall submit with the notice data and other evidence responsive to each element listed in this section that they deem relevant to the proposed annexation, except that subdivision 1 of this section is required to be included in the notice filed with the commission.

1. A written metes and bounds description of the boundaries of the area proposed for annexation having, as a minimum, sufficient certainty to enable a layman to identify the proposed new boundary. The description may make reference to readily identifiable monuments such as public roads, rivers, streams, railroad rights of way, and similar discernible physical features.
2. A map showing (i) the boundaries of the area proposed for annexation and their geographic relationship to existing political boundaries; (ii) identifiable unincorporated communities; (iii) major streets, highways, schools, and other major public facilities; (iv) significant geographic features, including mountains and bodies of water; (v) existing uses of the land, including residential, commercial, industrial, and agricultural; and (vi) information deemed relevant as to the possible future use of the property within the area sought for annexation.
3. A land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in the municipality, the county, and the area proposed for annexation.
4. The past, the estimated current, and the projected population of the municipality, the county affected by the proposed annexation, and the area of the county proposed for annexation.
5. The past, the estimated current, and the projected future number of public school students enrolled in the public schools and the number of school-age children living in the municipality, the county affected by the proposed annexation, and the area of the county proposed for annexation.
6. The assessed property values, by major classification, and if appropriate, the ratios of assessed values to true values for real property, personal property, machinery and tools, merchants' capital, and public service corporation property for the current year and the preceding 10 years for the municipality and the county affected by the proposed annexation, and similar data for the current year for the area of the county proposed for annexation.
7. The current local property and nonproperty tax rates and the tax rates for the preceding 10 years, applicable within the municipality, the county affected by the proposed annexation, and the area of the county proposed for annexation.
8. The estimated current local revenue collections and intergovernmental aid, the collections and aid for the previous 10 years, and projections of the collections and aid (including tax receipts from real property, personal property, machinery and tools, merchants' capital, business and professional license, consumer utility, and sales taxes) within the municipality, and the county affected by the proposed annexation, and similar data for the past year for the area of the county proposed for annexation.
9. The amount of long-term indebtedness and the purposes for which all long-term debt has been incurred by the municipality and the county affected by the proposed annexation.
10. The need in the area proposed for annexation for urban services, including those listed in this subdivision, the level of services provided by the municipality and by the county affected by the proposed annexation, and the ability of the municipality and the county to provide the services in the area proposed for annexation:
  - a. Sewage treatment;
  - b. Water;
  - c. Solid waste collection and disposal;
  - d. Public planning;
  - e. Subdivision regulation and zoning;

- f. Crime prevention and detection;
- g. Fire prevention and protection;
- h. Public recreational facilities;
- i. Library facilities;
- j. Curbs, gutters, and sidewalks;
- k. Storm drains;
- l. Street lighting;
- m. Snow removal;
- n. Street maintenance;
- o. Schools;
- p. Housing; and
- q. Public transportation.

11. Efforts made by the municipality and the county affected by the proposed annexation to comply with applicable state policies with respect to environmental protection, public planning, education, public transportation, housing, and other state service policies promulgated by the General Assembly.

12. The community of interest which (i) may exist between the municipality and the area proposed for annexation and its citizens and (ii) may exist between that area and its citizens and the rest of the county; the term "community of interest" may include consideration of natural neighborhoods, natural and manmade boundaries, the similarity of service needs, and economic and social bonds.

13. Any arbitrary prior refusal to cooperate by the governing body of the municipality or of the county affected by the proposed annexation, if such has occurred, to enter into cooperative agreements providing for joint activities that would have benefited citizens of both localities.

14. The need for the municipality to expand its tax resources, including its real estate and personal property tax base.

15. The need of the municipality to obtain land for industrial, commercial, and residential development.

16. The adverse effect on the county affected by the proposed annexation resulting from the loss of areas suitable and developable for industrial, commercial, or residential use.

17. The adverse effect on the county of the loss of tax resources and public facilities necessary to provide services to those persons in the remaining areas of the county after the proposed annexation.

18. The adverse impact of the proposed annexation on agricultural operations located in the area proposed for annexation.

19. The terms and conditions upon which the municipality proposes to annex, its plans for the improvement of the annexed territory during the 10-year period following annexation, including the extension of public utilities and other services, and the means by which the municipality shall finance the improvements and extension of services.

20. Data pertinent to a determination of the appropriate financial settlement between the municipality and the affected county as required by § [15.2-3211](#) of the Code of Virginia and other applicable provisions of the Code of Virginia.

21. The commission's staff shall endeavor to assist parties contemplating or involved in annexation proceedings by identifying additional data elements considered by the commission to be relevant in the disposition of annexation issues.

1VAC50-20-550. Partial county immunity.

In developing its findings of fact and recommendations with respect to a proposed petition for partial immunity, the commission shall consider the relevant information, data, and factors listed in this section. Any county filing notice with the commission that it proposes to seek immunity for a portion of its territory shall submit with the notice data and other evidence responsive to each element listed in this section that it deems relevant to the proposed petition for partial immunity.

1. A written metes and bounds description of the area for which immunity is sought having, as a minimum, sufficient certainty to enable a layman to identify the proposed immunity areas. The description may make reference to readily identifiable monuments such as public roads, rivers, streams, railroad rights of way, and similar discernible physical features.
2. A map or maps showing: (i) the boundaries of the area proposed for immunity and their geographic relationship to existing political boundaries; (ii) identifiable unincorporated communities; (iii) major streets, highways, schools, and other major public facilities; (iv) significant geographic features, including mountains and bodies of water; (v) existing uses of the land, including residential, commercial, industrial, and agricultural; and (vi) information deemed relevant as to the possible future use of the property within the area for which immunity is sought.
3. A land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in the county, the affected city, and the area proposed for immunity.
4. The estimated current and projected population and population density of the areas for which immunity is sought.
5. The urban services, including but not limited to those listed below, provided in the area for which immunity is sought and the type and level of services in relation to those furnished by the city from which immunity is sought:
  - a. Sewage treatment;
  - b. Water;
  - c. Solid waste collection and disposal;
  - d. Public planning;
  - e. Subdivision regulation and zoning;
  - f. Crime prevention and detection;
  - g. Fire prevention and protection;
  - h. Public recreational facilities;

- i. Library facilities;
  - j. Curbs, gutters, sidewalks;
  - k. Storm drains;
  - l. Street lighting;
  - m. Snow removal;
  - n. Street maintenance;
  - o. Schools;
  - p. Housing; and
  - q. Public transportation.
6. Efforts made by the county to comply with applicable state policies with respect to environmental protection, public planning, education, public transportation, housing, and other state service policies promulgated by the General Assembly.
7. The community of interest that: (i) may exist between the area for which immunity is sought and the remainder of the county; (ii) the community of interest which may exist between that area and the city from which immunity is sought; and (iii) the relative strength of the community of interests.
8. Any instance in which either the county or the affected city has arbitrarily refused to cooperate in the joint provision of services.
9. Whether the proposed grant of immunity would substantially foreclose a city of 100,000 population or less from expanding its boundaries by annexation.
10. The commission's staff shall endeavor to assist localities contemplating or involved in partial immunity proceedings by identifying the additional data elements considered by the commission to be relevant in the disposition of partial immunity issues.

1VAC50-20-560. Town-county agreements defining annexation rights.

In developing its findings of fact and recommendations with respect to a proposed town-county annexation agreement, the commission shall consider the relevant information, data, and factors listed in this section. Any town or county presenting proposed annexation agreements to the commission under the provisions of § [15.2-3231](#) of the Code of Virginia shall submit with the proposed agreement data and other evidence responsive to each element listed in this section that it deems relevant.

- 1. A written metes and bounds description of those areas of the county made eligible for annexation under the proposed agreement having as a minimum, sufficient certainty to enable a layman to identify those areas. The description may make reference to readily identifiable monuments such as public roads, rivers, streams, railroad rights of way, and similar discernible physical features.
- 2. A map showing (i) the boundaries of the various areas eligible for annexation under the proposed agreement and their relationship to existing political boundaries; (ii) identifiable unincorporated communities; (iii) major streets, highways, schools, and other major public facilities; (iv) significant geographic features, including mountains and bodies of water; (v) existing uses of the land, including residential, commercial, industrial, and agricultural; and (vi) information deemed relevant as to the possible future use of the property in the areas



affected by the proposed agreement.

3. A land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in the town, the county, and the areas of the county affected by the agreement.
4. The past, the estimated current, and the projected population of the town, the county, and those areas of the county affected by the proposed agreement.
5. The past, the estimated current, and the projected number of public school students enrolled in the public schools and the number of school-age children living in the town, the county, and those areas of the county affected by the proposed agreement.
6. The assessed property values, by major classification and, if appropriate, the ratios of assessed values to true values for real property, personal property, machinery and tools, merchants' capital, and public service corporation property for the current and preceding 10 years for the town, and the county, and similar data for the current year in those areas of the county affected by the proposed agreement.
7. The need of the municipality to expand its tax resources, including its real estate and personal property tax base.
8. The need of the municipality to obtain land for industrial, commercial, and residential development.
9. The current and prospective need for additional urban services in the areas of its county subject to annexation under the agreement.
10. Plans for the immediate and future improvement of areas annexed under the terms of the agreement, including the extension of public utilities and other services.
11. The commission's staff shall endeavor to assist localities contemplating or involved in town-county agreements defining annexation rights by identifying additional data elements considered by the commission to be relevant in the disposition of the issues.

1VAC50-20-570. Town incorporation.

In developing its findings of fact and recommendations with respect to a proposed town incorporation, the commission shall consider the relevant information, data, and factors listed in this section. Parties filing notice with the commission that they propose to have a community incorporated as a town, or whose petition for incorporation has been referred to the commission by the court pursuant to § [15.2-3601](#) of the Code of Virginia, shall submit with such notice or subsequent to the court referral data and other evidence responsive to each element listed in this section that they deem relevant to the proposed incorporation.

1. A petition signed by not fewer than 100 duly qualified voters residing within the boundaries of the proposed town supporting the proposed incorporation.
2. A written metes and bounds description of the area proposed for incorporation as a town having, as a minimum, sufficient certainty to enable a layman to identify the proposed town boundary. The description may make reference to readily identifiable monuments such as public roads, rivers, streams, railroad rights of way, and similar discernible physical features.
3. A map showing (i) the boundaries of the proposed town and their relationship to existing political boundaries; (ii) identifiable unincorporated communities; (iii) major streets, highways, schools, and other major public facilities; (iv) significant geographic features, including mountains and bodies of water; and (v) existing uses of the land, including residential, commercial, industrial, and agricultural.

4. A land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in the area proposed for incorporation.
5. The past, the estimated current, and the projected population of the area proposed for incorporation and the county within which the town would be situated.
6. Information indicating (i) why the proposed incorporation is desired and in the interest of the inhabitants; (ii) how the general good of the community is served by the incorporation; and (iii) why the services needed within the proposed town cannot be provided by the establishment of a sanitary district, through the extension of existing county services, or by other arrangements provided by law.
7. The commission shall endeavor to assist communities contemplating or involved in proposed town incorporations by identifying additional data elements considered by the commission to be relevant in the disposition of incorporation issues.

1VAC50-20-580. Town-city transitions.

In developing its findings of fact and recommendations with respect to a proposed town to city transition, the commission shall consider the relevant information, data, and factors listed in this section. Any town filing notice with the commission that it proposes to become a city shall submit with the notice data and other evidence responsive to each element listed in this section that it deems relevant to the proposed transition.

1. A written metes and bounds description of the boundaries of the proposed city having, as a minimum, sufficient certainty to enable a layman to identify the proposed city boundary. The description may make reference to readily identifiable monuments such as public roads, rivers, streams, railroad rights of way, and similar discernible physical features.
2. A map or maps showing: (i) the boundaries of the proposed city and their geographic relationship to existing political boundaries; (ii) identifiable unincorporated communities; (iii) major streets, highways, schools, and other major public facilities; (iv) significant geographic features, including mountains and bodies of water; (v) existing uses of the land, including residential, commercial, industrial, and agricultural; and (vi) information deemed relevant as to the possible future use of the property within the proposed city.
3. A land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in the proposed city.
4. The past, the estimated current, and the projected population of the proposed city and the county affected by the proposed transition.
5. The past, the estimated current, and the projected future number of public school students enrolled in the public schools and the number of school-age children living in the proposed city and the county affected by the proposed transition.
6. The assessed values, by major classification and, if appropriate, the ratios of assessed values to true values for real property, personal property, machinery and tools, merchants' capital, and public service corporation property for the current year and the preceding 10 years for the county and within the proposed city.
7. The current local property and nonproperty tax rates, and the tax rates for the preceding 10 years, applicable within the county and the proposed city.
8. The estimated current local revenue collections and intergovernmental aid, the collections and aid for the previous 10 years, and projections of the collections and aid, including tax receipts from real property, personal property, machinery and tools, merchants' capital, business and professional license, consumer utility and sales

taxes, within the county and the proposed city.

9. The amount of long-term indebtedness and the purposes for which that long-term debt has been incurred by the municipality and the county affected by the proposed transition.
10. The current type and level of urban services provided by the town, the additional services to be provided and the additional costs to be borne by the proposed city, and the means by which the proposed city shall finance the additional services and costs.
11. The fiscal capacity of the town to function as an independent city and to provide appropriate urban services.
12. The effect and impact of the proposed transition on the ability of the county to meet the service needs of its remaining population and the means by which any substantial impairment of the county's ability to meet those needs shall be offset.
13. The effect of the proposed transition on compliance with and the promotion of applicable state policies with respect to environmental protection, public planning, education, public transportation, housing, and other state service policies declared by the General Assembly.
14. Data pertinent to a determination of the appropriate financial settlement as required by § [15.2-3829](#) and other applicable provisions of the Code of Virginia.
15. The commission's staff shall endeavor to assist localities contemplating or involved in town-city transition proceedings by identifying additional data elements considered by the commission to be relevant in disposition of town to city transition issues.

1VAC50-20-590. County-city transitions.

In developing its findings of fact and recommendations with respect to a proposed county to city transition, the commission shall consider the relevant information, data, and factors listed in this section. Any county filing notice with the commission that it proposes to become a city shall submit with the notice data and other evidence responsive to each element listed in this section that it deems relevant to the proposed transition.

1. A map showing (i) the location of all towns situated within the county; (ii) all adjoining and adjacent localities; (iii) identifiable unincorporated communities within the county; (iv) the population density of the various areas of the county; (v) the areas of the county served by urban services; (vi) major streets, highways, schools, and other major public facilities; (vii) significant geographic features, including mountains and bodies of water; (viii) existing uses of the land, including residential, commercial, industrial, and agricultural; and (ix) information deemed relevant as to the possible future use of the property within the county.
2. A land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in the county.
3. The past, the estimated current, and the projected future population of the county, each town within the county, and of the major densely populated unincorporated communities within the county.
4. The past, the estimated current, and the projected future number of public school students enrolled in the public schools and the number of school-age children living in the county and in each town within the county.
5. The assessed values, by major classification and if appropriate, the ratios of assessed values to true values for real property, personal property, machinery and tools, merchants' capital, and public service corporation property for the current year and the preceding 10 years for the county and each town within the county.
6. The current local property and nonproperty tax rates, and the tax rates for the preceding 10 years, within the

county and all towns within the county.

7. The estimated current local revenue collections and intergovernmental aid, the collections and aid for the previous 10 years, and projections of the collections and aid (including tax receipts from real property, personal property, machinery and tools, merchants' capital, business and professional license, consumer utility, and sales taxes) within the county and within each town within the county.
8. The amount of long-term indebtedness of the county and each town within the county and the amount and purpose for which that debt has been incurred.
9. Data regarding (i) the urban-type services presently provided by the county; (ii) the level of those services; (iii) the areas of the county served by those services; (iv) the additional services to be provided and the additional cost to be borne by the proposed city; and (v) the means by which the proposed city shall finance the additional services and costs.
10. The fiscal capacity of the county to function as an independent city and to provide appropriate services.
11. The impact of the proposed transition on compliance with and the promotion of applicable state policies with respect to environmental protection, public planning, education, public transportation, housing, and other state service policies declared by the General Assembly.
12. The commission's staff shall endeavor to assist localities contemplating or involved in proposed county-city transitions by identifying additional data elements considered by the commission to be relevant in the disposition of county to city transition issues.

1VAC50-20-600. Boundary line adjustment.

In developing its findings of fact and recommendations with respect to a proposed boundary line adjustment, the commission shall consider the relevant information, data, and factors listed in this section. The localities petitioning for a boundary line adjustment under the provisions of § [15.2-3109](#) of the Code of Virginia shall, separately or jointly, at the time they initiate such petition to the court, submit to the commission data and other evidence responsive to each element listed in this section that is relevant to the boundary line adjustment.

1. A written metes and bounds description of the precise segment of the boundary for which an adjustment is sought having, as a minimum, sufficient certainty to enable a layman to identify the boundary segment in question. The description may make reference to readily identifiable monuments such as public roads, rivers, streams, railroad rights of way, and similar discernible physical features.
2. A map or maps showing: (i) the precise segment of the boundary that the parties agree should be adjusted; (ii) identifiable unincorporated communities; (iii) major streets, highways, schools, and other major public facilities; (iv) significant geographic features, including mountains and bodies of water; (v) existing uses of the land, including residential, commercial, industrial, and agricultural; and (vi) information deemed relevant as to the possible future use of the land.
3. The estimated past, the estimated current, and the projected future population and population density of all areas adjacent to the segment of the boundary proposed for adjustment and of other areas possibly affected by the proposed boundary line adjustment.
4. A land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in all areas adjacent to the segment of the boundary proposed for adjustment and in other areas possibly affected by the proposed boundary line adjustment.
5. The past, the estimated current, and the projected future number of public school students enrolled in the public schools and the number of school-age children living in all areas adjacent to the segment of the boundary

proposed for adjustment and in other areas possibly affected by the proposed boundary line adjustment.

6. The assessed and true real property values, by major classification of those areas adjacent to the segment of the boundary proposed for adjustment and of any other area possibly affected by the proposed adjustment and other fiscal data relative to the issue.

7. Maps indicating the principal alternative boundary line adjustments which have been considered by the parties and a brief statement as to how each alternative adjustment would promote the effective and efficient provision of public services.

8. Information as to why the proposed boundary line adjustment is sought by the parties.

9. The commission's staff shall endeavor to assist localities contemplating or involved in proposed boundary line adjustments by identifying additional data elements considered by the commission to be relevant in the disposition of boundary line adjustment issues.

#### 1VAC50-20-601. City-town transitions.

In developing its findings of fact and recommendations with respect to a proposed transition of a city to town status, the commission shall consider the relevant information, data, and factors listed in this section. Any city filing notice with the commission that it proposes to become a town or any petition for the transition of a city to town status that has been referred to the commission by the court pursuant to § 15.2-4104 of the Code of Virginia should be accompanied by data and other evidence responsive to each element listed in this section that is relevant to the proposed transition.

1. Map or maps showing (i) the boundaries of the city proposed for transition and their geographic relationship to other political boundaries; (ii) identifiable unincorporated communities; (iii) major streets, highways, schools, and other major public facilities; (iv) significant geographic features, including mountains and bodies of water; (v) existing uses of the land within the city, including residential, commercial, industrial, and agricultural; and (vi) information deemed relevant as to the possible future use of the land within the city.

2. The past, the estimated current, and the projected future population and population of the city and the county affected by the proposed transition, and the estimated density of the city and the affected county.

3. A land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in the city and the county affected by the proposed transition.

4. The past, the estimated current, and a five-year projection of the future number of public school students enrolled in the public schools and the number of school-age children living in the city and the county affected by the proposed transition.

5. The assessed values, by major classification for real property, personal property, machinery and tools, merchants' capital, and public service corporation property for the current year and the preceding 10 years for the city and for the county affected by the proposed transition.

6. The current local property and nonproperty tax rates, and the rates for the preceding 10 years, applicable within the city and the county affected by the proposed transition.

7. The estimated current local revenue collections (including receipts from real property, personal property, machinery and tools, consumer utility, sales taxes, etc., and receipts from nontax sources) and intergovernmental aid, and the collections and aid for the preceding 10 years, for the city and the county affected by the proposed transition.

8. The identification of those services performed by the city that are proposed for assumption by the county as a result of the proposed transition, the number of customers or recipients of each service within the city that would be served by the county subsequent to the transition, and the aggregate annual cost to the county for the provision of services within the city.
9. The identification of those services that would be provided by the town subsequent to the proposed reversion, the number of recipients of each service within the municipality, and the aggregate annual cost to the proposed town for the provision of services.
10. The identification of those city-owned facilities that are proposed for transfer to the county, the identification of those that would be retained by the proposed town, and the current fair market value and the outstanding city debt attributable to each facility.
11. The current outstanding debt of the city, the applicable portion of debt stated as a percentage of the city's constitutional debt limit, and the current schedule for the retirement of all municipal debt.
12. The identification of that portion of the city's indebtedness that is proposed for transfer to the county and the purposes for which the debt has been incurred.
13. Estimates of the annual amount of tax and nontax revenues to be collected by the county within the municipality subsequent to the proposed transition.
14. Estimates of the annual additional amount of intergovernmental aid to be received by the county as a result of the proposed transition.
15. An estimate of the net aggregate fiscal impact of the proposed transition on the county during the initial year subsequent to the transition and during each of the ensuing five years.
16. An estimate of the adjustment required in the county's real property tax rate, assuming that the net aggregate fiscal impact on the county resulting from the transition is addressed solely by an adjustment in the rate.
17. An estimate of the net aggregate fiscal impact of the proposed transition on the city during the initial year subsequent to the transition and during each of the ensuing five years.
18. An estimate of the adjustment required in the municipality's real property tax rate, assuming that the net aggregate fiscal impact on the city resulting from the transition is addressed solely by an adjustment in the rate.
19. The effect of the proposed transition on compliance with and the promotion of applicable state policies with respect to environmental protection, public planning, education, public transportation, housing, and other state service policies declared by the General Assembly.
20. Specification of the terms and conditions that should be established by the court to balance the equities between the city and the county; protect the best interests of the affected localities, their residents, and the Commonwealth; and ensure an orderly transition of the city to town status.
21. The commission's staff shall endeavor to assist the parties involved in proceedings for the transition of a city to town status by identifying additional data elements considered by the commission to be relevant in the disposition of city to town transition issues.

1VAC50-20-605. County-city consolidations.

In developing its findings of fact and recommendations with respect to a proposed consolidation of a county and a city that would establish an independent city, the commission shall consider the relevant information, data, and factors listed in this section. Local governments filing notice proposing the consolidation of a city and a

county to establish an independent city, or any committee of citizens that has been appointed by the circuit court to act for and in lieu of a governing body to perfect a consolidation agreement pursuant to § [15.2-3531](#) of the Code of Virginia shall, separately or jointly, submit to the commission data and other evidence responsive to each element listed in this section that they deem relevant to the proposed consolidation.

1. Copy of the consolidation agreement.
2. A map showing (i) the location of all municipalities situated within the proposed consolidated city; (ii) all adjoining and adjacent localities; (iii) identifiable unincorporated communities within the proposed consolidated city; (iv) major streets, highways, schools, and other major public facilities; (v) significant geographic features, including mountains and bodies of water; (vi) existing uses of the land, including residential, commercial, industrial, and agricultural; and (vii) information deemed relevant as to the possible future use of the property within the proposed consolidated city and as to its future viability.
3. The past, the estimated current, and the projected population of each locality proposing to consolidate.
4. The population density of the proposed consolidated city based on the most recent United States decennial census or as estimated by the Weldon Cooper Center for Public Service at the University of Virginia.
5. A land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in the proposed consolidated city.
6. The estimated current and a five-year projection of the future number of public school students enrolled in the public schools in each locality proposing to consolidate and the number of school-age children living in the proposed consolidated city.
7. The assessed values, by major classification for real property, personal property, machinery and tools, merchants' capital, and public service corporation property for the current year and the preceding 10 years for the county and the city proposing to consolidate and the proposed consolidated city.
8. The estimated local property and nonproperty tax rates that will be applicable within the proposed consolidated city.
9. The estimated local revenue collections including tax receipts from real property, personal property, machinery and tools, merchants' capital, business and professional license, consumer utility, and sales taxes and intergovernmental aid, such collections and aid for the preceding 10 years, and projections of the collections and aid within each of the localities proposing to consolidate.
10. The amount of long-term indebtedness of each of the localities proposing to consolidate and the amount and purpose for which that debt has been incurred.
11. Data regarding (i) the urban-type services presently provided by each of the localities proposing to consolidate, (ii) the level of those services to be provided in the proposed consolidated city, (iii) the additional services to be provided and the additional cost to be borne by the proposed consolidated city, and (iv) the means by which the proposed consolidated city shall finance the additional services and costs.
12. The fiscal capacity of the proposed consolidated city to function as an independent city and to provide appropriate services.
13. The impact of the proposed consolidation on compliance with and the promotion of applicable state policies with respect to environmental protection, public planning, education, public transportation, housing, and other state service policies declared by the General Assembly.

14. The impact of the proposed consolidation on the interest of the Commonwealth in promoting strong and viable units of government in the area.

15. The commission's staff shall endeavor to assist the parties involved in proceedings for the consolidation of a county and a city that would establish an independent city by identifying additional data elements considered by the commission to be relevant in the disposition of city-county consolidation issues.

1VAC50-20-610. Voluntary settlement agreements.

In developing its findings of fact and recommendations with respect to a proposed agreement developed under the authority of § [15.2-3400](#) of the Code of Virginia, the commission shall consider the relevant information, data, and factors listed in this section. Local governments submitting a proposed agreement for review shall, separately or jointly, submit to the commission data and other evidence responsive to each element listed in this section that they deem relevant to the proposed voluntary settlement agreement.

1. If the agreement proposes a municipal boundary expansion, submissions should include data and evidence responsive to the relevant provisions of [1VAC50-20-540](#).
2. If the agreement proposes the immunization of areas of a county from annexation or the incorporation of new cities, submissions should include data and evidence responsive to the relevant provisions of [1VAC50-20-550](#).
3. If the agreement proposes the incorporation of a town, submissions should include data and evidence responsive to the relevant provisions of [1VAC50-20-570](#).
4. If the agreement proposes the transition of a town to city status, submissions should include data and evidence responsive to the relevant provisions of [1VAC50-20-580](#).
5. If the agreement proposes the transition of a county to city status, submissions should include data and evidence responsive to the relevant provisions of [1VAC50-20-590](#).
6. If the agreement proposes the transition of a city to town status, submissions should include data and evidence responsive to the relevant provisions of [1VAC50-20-601](#).
7. If the agreement proposes a revenue-sharing plan or similar arrangement by which jurisdictions will share the tax or revenue sources of an area, submissions should include:
  - a. A description of the plan;
  - b. Calculations indicating for each locality the projected future contributions to the plan for the next five-year period;
  - c. Each locality's projected net annual receipts or net annual contributions to the plan for the next five-year period;
  - d. Each locality's annual expenditures for the past five years and its projected annual expenditures for the next five years by general operating, school, and debt service categories;
  - e. Each locality's real estate and public service corporation property assessed values for the past five years and projected for the next five-year period;
  - f. Each locality's annual revenue for the past five years and projected for the next five-year period (exclusive of receipts from or payments to the economic growth sharing plan) by source and type;



- g. Each locality's anticipated major capital needs for the next five-year period; and
  - h. Other information indicating the general equity of the proposed plan for each participating locality.
8. The commission's staff shall endeavor to assist localities contemplating or involved in the development of voluntary settlement agreements under the authority of § [15.2-3400](#) of the Code of Virginia by identifying additional data elements considered by the commission to be relevant to the commission's review of such agreements.

1VAC50-20-612. Voluntary economic growth-sharing agreements.

In developing its findings of fact and recommendations with respect to a proposed voluntary economic growth-sharing agreement developed under the authority of § [15.2-1301](#) of the Code of Virginia, the commission shall consider the relevant information, data, and factors listed in this section. Local governments submitting such a proposed agreement for review shall, separately or jointly, submit to the commission data and other evidence responsive to each element listed in this section that they deem relevant to the proposed agreement.

1. A copy of the proposed agreement and a description of the economic growth-sharing plan.
2. A description of the financial investment or other contributions which each participating locality will make to the project(s) envisaged under the agreement.
3. Projections of each participating locality's net annual receipts or net annual contributions to the project(s) specified in the agreement for the next 10-year period, or for a lesser or greater period as deemed appropriate.
4. A description of any dedication or restriction on the use of funds generated by the project(s) specified in the agreement for the participating localities.
5. Calculations indicating the estimated impact of the project(s) proposed in the agreement on the annual operating expenditures of each participating jurisdiction for the next 10-year period, or for a lesser or greater period as deemed appropriate.
6. Calculations indicating the estimated impact of the project(s) proposed in the agreement on the current and prospective capital expenditures of each participating jurisdiction over the course of the next 10-year period, or over a lesser or greater period as deemed appropriate.
7. Calculations indicating the estimated impact of the project(s) proposed in the agreement on the debt and annual debt service of each participating jurisdiction over the course of the next ten 10-year period, or over the course of a lesser or greater period as deemed appropriate.
8. Information indicating the general equity of the proposed plan for each participating locality.
9. Other information which would assist the commission in analyzing the "probable effect on the people" in the participating jurisdictions of the proposed agreement.
10. The commission's staff shall endeavor to assist localities contemplating or involved in the development of voluntary economic growth-sharing agreements under the authority of § [15.2-1301](#) of the Code of Virginia by identifying additional data elements considered by the commission to be relevant to the commission's review of such agreements.

1VAC50-20-614. Determination of continued eligibility for city status.

In undertaking its investigation with respect to whether a city continues to meet the requirements for city status as prescribed by Article VII, Section 1 of the Constitution of Virginia, the commission shall consider the

information and data listed in this section. Any city subject to investigation as prescribed by Chapter 40 (§ [15.2-4000](#) et seq.) of Title 15.2 of the Code of Virginia shall be requested to submit information and data responsive to each element listed in this section and any other information and data as the city deems relevant to the continued eligibility for city status.

1. Any official correspondence with the United States Bureau of the Census regarding the accuracy of the most recent United States decennial census of the population of the city under investigation.
2. Any data or other evidence produced by the city under investigation or any other entity bearing on the accuracy of the most recent United States decennial census of the population of the city under investigation.
3. Any data or other evidence produced by the city under investigation or any other entity indicating the current population and projected future population of the city under investigation.
4. Contingent upon the commission's findings with respect to the population of the city under investigation, a listing of all of the city's assets, liabilities, rights, and obligations.
5. The commission's staff shall endeavor to assist the city under investigation by identifying additional data elements considered by the commission to be relevant to the continued eligibility for city status.

1VAC50-20-616. Order defining a town's future annexation rights.

In developing its order defining the future annexation rights of a town pursuant to § [15.2-3234](#) of the Code of Virginia, the commission shall consider the relevant information, data, and factors listed in this section. Any petition referred to the commission requesting an order establishing a town's future annexation rights should be accompanied by data and other evidence responsive to each element listed in this section that the town deems relevant to the issue.

1. Information regarding the inability of the town and the county to reach a voluntary agreement as to the future annexation rights of the town.
2. Terms and conditions of a proposed order establishing the town's future annexation rights.
3. Data and evidence responsive to the relevant provisions of [1VAC50-20-540](#).
4. The commission's staff shall endeavor to assist localities involved in proceedings concerning an order defining a town's future annexation rights by identifying additional data elements considered by the commission to be relevant in the disposition of such issues.

1VAC50-20-620. Oral presentations by parties.

A. In the course of its analysis of any issue the commission may schedule oral presentations for purposes of permitting the parties to amplify their submissions, to critique and to offer comment upon the submissions and evidence offered by other parties, and to respond to questions relative to the issue from the commission. The presentations, if scheduled, shall extend for a period of time as the commission may deem appropriate.

B. If oral presentations are scheduled by the commission, the chair shall select, subsequent to the receipt of recommendations from the parties, an appropriate site for the presentations. Recommendations by the parties regarding the sites should be based upon the adequacy of space for the display and movement of exhibits; the adequacy of seating arrangements for the commission, its staff, representatives of the parties, a court reporter, and the public; the adequacy of security at the site to permit materials to be left unattended during recesses; and the adequacy of the acoustical characteristics of the site to facilitate communications or the availability of a public address system.

C. Local governments or other parties desiring to present exhibits or data requiring special equipment should be prepared to provide such.

D. The commission may, where it deems appropriate, consolidate two or more interlocal issues before it for purpose of oral presentations.

E. The commission shall, within the requirements of law, conduct the oral presentations in the manner it considers best suited for reaching a decision in the best interest of the parties and in the best interest of the Commonwealth.

F. The chair, or other member the commission designated to preside during any oral presentations, may allocate time to the various parties as the chair or presiding member deems appropriate. The allocation of time shall be based upon the needs of the commission to review data, to examine witnesses, and to obtain an understanding of the relevant factors affecting the issue under review.

G. The sequence in which testimony will be received by the commission during any oral presentations shall be established by the chair or presiding member but shall generally be as follows:

1. A brief opening statement by each party, if desired;
2. Presentation by the party initiating the issue before the commission;
3. Presentations by the local governments immediately affected by the action proposed by the initiating party, in an order established by the chair or presiding member;
4. Presentations by other parties, in an order established by the chair or presiding member;
5. Rebuttal where requested by a party and agreed to by the chair or presiding member.

H. The chair or presiding member may, to the extent the chair or presiding member deems appropriate, permit parties to question witnesses regarding submissions, their testimony, or other facts relevant to the issues before the commission. Where a party is represented by counsel, such questioning may be conducted by counsel.

Where the parties have prefiled testimony at the commission's request pursuant to [1VAC50-20-390 R](#), the questioning of individuals whose testimony has been prefiled shall be limited to a cross-examination of such testimony. The commission may accept additional oral testimony from individuals whose testimony has been prefiled during the presentations where good cause is shown. Where additional oral testimony is accepted by the commission, the commission shall provide an opportunity for other parties to respond to the testimony and to cross-examine the individual offering such testimony.

I. The chair or presiding member may, during or at the conclusion of the oral presentations, permit or request oral argument on the issues before the commission.

J. The commission, and its staff, may question any witness or representative of any party during the oral presentations regarding any submission, testimony, or other fact which the commission considers relevant to the issues before it. The chair or presiding member shall endeavor to call for commission questioning in a manner designed to expedite the presentations.

K. The commission may accept depositions from persons unable to attend an oral presentation. Depositions shall only be accepted under conditions deemed acceptable by the commission, including conditions assuring an opportunity for all affected local governments to be present and to examine adequately the witness during the taking of depositions.

L. 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. All material, data, or exhibits proposed for presentation to the commission during the oral presentations ~~and not previously made available to the other parties shall be exchanged or made available to the parties prior to presentation to the commission, subject to the qualifications in subsection M of this section.~~ shall be made available to other parties and the public on the Commission's website whenever possible.

M. The commission 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. The commission may accept additional materials, data, and exhibits during the onsite component of its review upon unanimous consent of the members present. Where late submissions are accepted by the commission, the commission shall provide an opportunity for other parties to respond to the filings.

N. The commission may record by mechanical device, unless other recording arrangements are made by the parties, all testimony given during the oral presentations but shall prepare a transcript of the recording only when deemed appropriate. The commission shall provide, upon request, any party a duplicate copy of the transcript or recording, if made, ~~at a price sufficient to cover the expense incurred.~~ In lieu of recording by the commission, the parties may arrange to provide a court reporter at their expense. Where a court reporter is utilized, the commission shall receive one copy of the transcript.

#### 1VAC50-20-630. Public hearing.

A. In all cases where a public hearing is required by law, the commission shall conduct the public hearing at which any interested person or party may testify. The commission shall generally schedule the public hearing in conjunction with the oral presentations held, if any, with respect to the issue; however, public hearings regarding proposed town incorporations required pursuant to § [15.2-3601](#) of the Code of Virginia shall be held no sooner than 30 days after receipt of the court request for commission review.

B. Prior to holding the public hearing the commission shall publish notice of the pending hearing as required by law.

In addition to the notice of public hearing required by this subsection, a town that is a party to an agreement defining annexation rights negotiated pursuant to § [15.2-3231](#) of the Code of Virginia shall give written notice of the commission's hearing at least 10 days before the hearing to the owners or their agent of each parcel of land included in the area proposed for annexation under the terms of the agreement. One notice sent by first-class mail to the last known address of the owners or their agent as shown on the current county real estate tax assessment books or current county real estate tax assessment records shall be deemed adequate compliance with this requirement, provided that the clerk of the town shall make an affidavit that the mailings have been made and file the affidavit with the commission.

C. The commission shall request the party initiating the issue before it and the other principally affected parties to place on public display in or adjacent to the office of the chief administrative officer of each principally affected local government copies of all materials which are available to them and which have been submitted to the commission for consideration with respect to the issue. The material should be made conveniently available to the public during normal working hours. The commission also encourages the parties to make available to the public other copies of the material ~~at libraries, educational facilities, on their websites or at other public places~~ in order that the public might have ample opportunity to study the material prior to the public hearing. The commission's advertisements published under subsection B of this section shall announce the availability of the material at the offices of the administrators ~~and at other facilities as may be selected by the parties for display purposes.~~

D. The commission shall request the chief administrative officer (or other official) of each jurisdiction principally affected by the issue before the commission to make suitable arrangements in or adjacent to their

offices for the registration of speakers at the public hearing. The commission shall furnish appropriate registration forms for that purpose. The commission's advertisements under subsection B of this section shall advise the public that registration to speak at the public hearing may be accomplished at the offices of the local administrators or, alternatively, through the offices of the commission in Richmond. The commission may also permit speakers to register at the site and at the time of the public hearing and shall request the assistance of the local administrative officers in making suitable arrangements for such registration.

E. The chair or other member of the commission designated to preside over the proceedings shall select the site for the public hearing subsequent to the receipt of recommendations from the parties. Recommendations from the parties should be based upon a site's accessibility to residents of the areas and jurisdictions principally affected, its seating capacity, the adequacy of parking facilities, the availability of a public address system, and seating arrangements permitting the commission to have proper visual contact with the public.

F. The commission shall request the parties to cooperate in the preparation of the site for the public hearing and shall request that a minimum number of maps and exhibits be placed on display at the site in order that persons testifying may identify their residences, property, businesses, or other concerns in relation to the proposed issue.

G. The commission shall request the local jurisdiction within which the site for the public hearing is situated to make appropriate arrangements in order to assure the security and the orderliness of the proceedings.

H. The chair or the presiding member shall determine the sequence of speakers at a public hearing, but the sequence shall ordinarily conform to the sequence of their registration. The chair or presiding member may, however, vary the sequence of speakers in order that persons from all affected jurisdictions and areas, and those representing different perspectives, might have equal opportunity for the timely presentation of their comments.

I. The commission shall endeavor to allow any person or party wishing to speak at a public hearing an opportunity to do so. The chair or presiding member may establish time limits for the presentation of testimony as the chair or presiding member deems appropriate. The chair or presiding member may also rule testimony irrelevant, immaterial, or unduly repetitious. Proponents and opponents of a proposed action are encouraged to designate a chief spokesman for economy of time and for the avoidance of repetitious comment.

J. Any person or party testifying before the commission at the public hearing may extend their remarks in written form for subsequent submission. During the course of the public hearing, the commission shall establish a date by which the extended written comment must be received for consideration.

K. The commission may record by mechanical device, unless other arrangements are made, all testimony given during the public hearing but shall prepare a transcript of the recording only when it deems appropriate. The commission shall provide any person or party with a copy of the transcript or recording, if made, ~~at a price sufficient to cover the expense incurred.~~ The parties may arrange to provide a court reporter, at their expense. Where a court reporter is utilized, the commission shall receive one copy of the transcript.

L. The commission may, where it deems appropriate, consolidate two or more interlocal issues for purposes of a public hearing.

#### 1VAC50-20-640. Conclusion of mandatory reviews.

A. The commission may request or authorize the parties to an issue to submit, at a time established by the commission, a written concluding argument with proposed findings and recommendations.

B. The commission shall not accept for consideration or for inclusion in the record of a case any document, exhibit, or other material submitted after the date established by it for the close of the record. This regulation shall not preclude the commission's acceptance of data or information from any party at any time which has been solicited by the commission or its staff.

~~C. The commission shall prepare an official record of all proceedings before it of such a nature and in such a manner as it deems appropriate.~~

D. The commission shall submit a written report on the issues presented to it in the manner and at such time as provided by law. The reports shall set forth findings of fact and recommendations on both the merits of a proposed action and, where appropriate and feasible, the financial aspects thereof. Copies of reports shall be made available to the parties and to members of the public requesting such. The commission may charge a fee for copies of its reports in ~~an amount sufficient to cover the cost of duplication, shipping, and handling.~~ accordance with the Department of Housing and Community Developments' Freedom of Information Act policies and applicable law.

E. Subsequent to its review of a petition submitted by a town under the authority of § [15.2-3234](#) of the Code of Virginia, and based upon the applicable statutory standards, the commission shall enter an order granting annexation rights to the town. The order may grant the town annexation rights upon the terms proposed by the town in its petition or upon some other basis as the commission deems appropriate and consistent with law. The order shall in no event grant the town the right to annex county territory by ordinance more frequently than once every five years.

#### 1VAC50-20-650. Statutorily invoked mediation in annexation immunity issues.

When any county, city, or town seeks to negotiate an agreement with one or more localities relative to annexation or partial immunity under the authority granted by § [15.2-2907](#) E of the Code of Virginia, it shall notify the commission, and copies of the notice shall be served on all adjacent localities. The notice to the commission shall be accompanied by satisfactory evidence that the governing body of the locality giving notice supports the negotiation. Local governments negotiating under the above referenced provision of law shall keep the commission advised of progress in the negotiations. If, after a hearing, the commission finds that none of the parties is willing to continue to negotiate, or if it finds that three months have elapsed with no substantial progress, it shall declare the negotiations to be terminated. Unless the parties agree otherwise, negotiations shall in any event terminate 12 months from the date notice was first given to the commission of the desire to negotiate. Once the commission has declared negotiations terminated, or upon the expiration of the 12 month negotiating term or any agreed extension thereof, no new notice to negotiate shall be filed by any party. Upon the request of the local governments negotiating under the authority of § [15.2-2907](#) E of the Code of Virginia, the commission, or its designee, may be requested to serve as mediator, and, in addition, the commission's staff and resources shall be available to assist the negotiating local governments. All expenses incurred by the commission and its staff in assisting with negotiations shall be borne by the parties initiating the negotiations unless otherwise agreed.

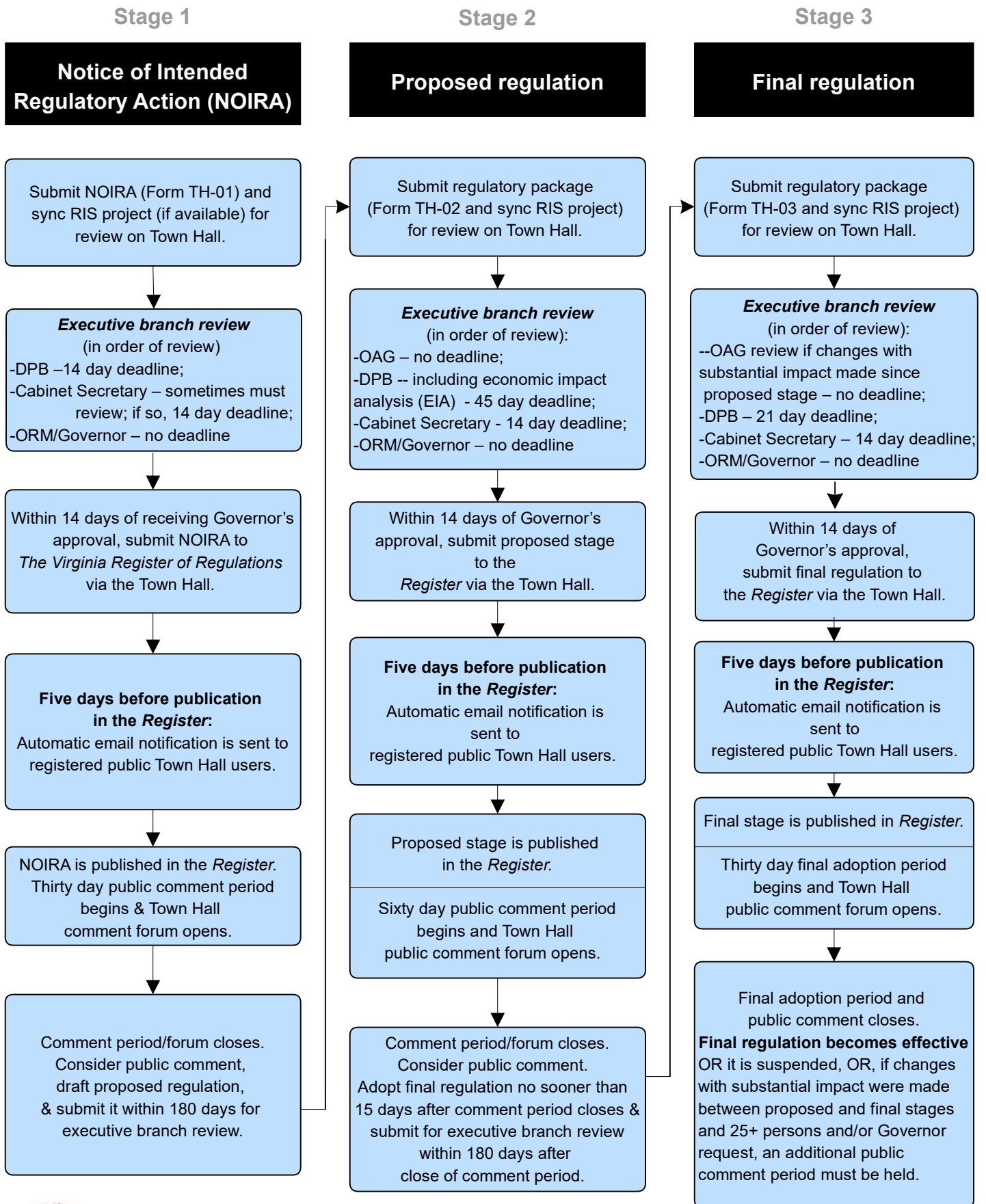
#### 1VAC50-20-660. Mediation of other interlocal issues.

The commission shall, at its discretion, accept for mediation interlocal issues presented to it by mutual agreement of the affected localities. Requests for commission mediation under this section should be made to the commission's offices in Richmond and should be accompanied by satisfactory evidence that the governing bodies of the affected localities agree to the request for mediation assistance. The requests should include a statement indicating the issue for which mediation is sought and any other information as would enable the commission to determine whether its mediation effort would be timely and appropriate. 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. However, if the commission agrees to mediate interlocal issues under this section, the local governments requesting the mediation shall assist the commission by providing data, material, and other information as the commission or the parties deem necessary.

#### 1VAC50-20-670. Requested investigations and analyses.

The commission may, if it deems appropriate and within the capability of its resources, accept requests from local governments for the undertaking of investigations and analyses. Requests for investigations and analyses should be addressed to the commission's offices in Richmond and should include satisfactory evidence that the governing body of the locality initiating the request supports the proposed study. The request should also include a detailed statement of the issue giving rise to the request for the study, a statement of the extent to which the issue is of general interest to local governments in Virginia, a statement concerning the prospective benefits of a study, and other information as would aid the commission in its determination as to whether or not to undertake the requested study. Where the commission agrees to undertake a study under this section, the locality or localities requesting the study shall assist the commission and provide, to the extent possible, the data and material the commission or the parties deem necessary for the study. The commission shall render reports on such studies at such a time and in such a manner as it deems appropriate.

# State Agency Guide to Standard Regulatory Process





# VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

## CHAPTER 438

*An Act to amend the Code of Virginia by adding in Article 1 of Chapter 22 of Title 15.2 a section numbered 15.2-2209.3, relating to residential land development and construction fee transparency; annual report.*

[H 1671]

Approved March 23, 2023

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Article 1 of Chapter 22 of Title 15.2 a section numbered 15.2-2209.3 as follows:**

***§ 15.2-2209.3. Residential land development and construction fee transparency; annual report.***

*Every locality with a population greater than 3,500 shall submit an annual report no later than March 1 of each year to the Department of Housing and Community Development (the Department) containing the total fee revenue collected by the locality over the preceding calendar year in connection with the processing, reviewing, and permitting of applications for residential land development and construction activities, including the total fee revenue attributable to any individual residential developments that were approved, under construction, or completed during the preceding calendar year.*

*The report shall be submitted by the locality in accordance with any guidelines and forms developed by the Department and the Commission on Local Government. The Department shall make the reports available on its website.*