

DRAFT MINUTES
Regular Meeting
Commission on Local Government
10:00 a.m., July 9, 2012
The Virginia Housing Center
Henrico Room 3
4224 Cox Road
Glen Allen, Virginia

Members Present

Cole Hendrix, Chairman
John G. Kines, Jr., Vice-Chairman
Wanda C. Wingo,
Harold H. Bannister, Jr.
John T. Stirrup, Jr.

Members Absent

Staff Present

Susan Williams, Local Government Policy Manager
Zack Robbins, Senior Policy Analyst
Ed Lanza, Senior Public Finance Analyst

Call to Order

Commission Chairman Cole Hendrix called the meeting to order at 10:01 a.m. on July 9, 2012 in Henrico Room 3 at the Virginia Housing Center in Glen Allen, Virginia.

I. Administration

A. Approval of Minutes of May 14 and 15, 2012 Meetings

Mr. Kines made a motion that the minutes of the following meetings, which took place in the City of Bedford, be approved: the Oral Presentations and the Public Hearing held on May 14, 2012. Such motion was seconded by Mrs. Wingo, and the Commission approved both sets of minutes without amendment. Next, Mrs. Wingo made a motion, which was seconded by Mr. Stirrup, that the minutes of the Commission's regular meeting of May 15, 2012 be approved,

and the Commission approved the minutes without amendment. Mr. Bannister arrived at the meeting subsequent to the approval of the three sets of minutes; therefore, he did not vote on their approval.

B. Public Comment Period

The Chairman opened the floor to receive comments from the public. No person appeared to testify before the Commission during the public comment period.

C. Presentation of Financial Statement for June 2012

Referencing an internally produced financial statement that encompassed expenditures through the end of June 2012, Ms. Williams stated that the financial report covered all of Fiscal Year 2012. She reported that \$35,851 in budgeted funds remained unexpended at the end of the fiscal year. She stated that the unexpended funds were utilized by the Department of Housing and Community Development (DHCD) for other purposes.

D. Local Government Policy Manager's Report

1. Potential Issues

Ms. Williams provided a brief update concerning potential interlocal issues, including a possible annexation action involving the Town of Abingdon and Washington County.

2. State Budget

Ms. Williams reported that the Appropriation Act for the biennium which began on July 1, 2012 was adopted by the General Assembly in Special Session on May 14. She stated that the bill has now been re-enrolled and printed. Ms. Williams reported that there were no items in the biennial budget that will have a direct impact on the Commission. She further indicated

that the Planning District Commissions (PDCs) received the same amount of funding in each year of the biennium (i.e., for FY 2013 and FY 2014) as they received in FY 2012.

3. JLARC

Ms. Williams informed the members of a Review of Incentives for Regional Collaboration on Local Government Functions that is being conducted by the Joint Legislative Audit and Review Commission (JLARC) pursuant to HJR 570, which was approved in 2011. Ms. Williams stated that JLARC has scheduled a briefing on the study for December 2012 and is currently in the research phase of its work. She explained that research activities by JLARC will include conducting interviews with PDCs as well as local government officials and state agencies. She added that JLARC will be making a presentation at the VAPDC Summer Conference later in July. Ms. Williams then described the study issues thus far identified by JLARC:

- What has contributed to the success of existing regional collaboration approaches?
- What opportunities exist for increased regional collaboration that could reduce State costs?
- What impacts could greater regional collaboration have on the State and localities?
- How could the State incentivize greater regional collaboration?

4. Planning District Commissions (PDCs)

Ms. Williams stated that she will be attending the VAPDC Summer Conference on July 26-28 in Virginia Beach. In addition, she indicated that the request for PDCs' annual reports will go out this week. She reminded members that, once a PDC submits its annual report to DHCD, a contract is executed and the first quarterly payment is made. She stated that PDCs will have

until September 1 to submit their annual reports and that she will have until September 30 to prepare the biennial report to the Governor and General Assembly on PDCs.

Ms. Williams also indicated that she will be directing the upcoming review of planning district boundaries that is required by law. She stated that *Code of Virginia* requires DHCD to review the boundaries of the planning districts following every decennial census.

5. Staff Activities

Ms. Williams highlighted various staff activities that have taken place since the Commission's regular meeting on May 15, including participation in the PlanVirginia/CPEAV Legal Seminar that was held in Staunton on May 31 as well as the Governor's Task Force for Local Government Mandate Review, which met in Lynchburg on June 7. She also reported that the agency's new website was launched on July 3 and expressed her appreciation to Mr. Robbins for his hard work on the Commission's webpage, which resulted in a dramatic improvement to the organization and usability of the page.

6. Other

Ms. Williams reported that Mrs. Seefeldt was not available to attend today's meeting to receive the resolution adopted by the Commission commending her service and that the resolution was mailed to her. Ms. Williams said that Mrs. Seefeldt asked her to convey her appreciation for the resolution and to extend her greetings and best wishes to the members.

E. Conflict of Interest Act (COIA) Training by December 31, 2012

Ms. Williams reminded members that the *Code of Virginia* requires members of boards, councils and commissions to complete Conflict of Interest Act (COIA) training every two years.

She explained that the training is available on-line and that members will soon be receiving log-in information from Ms. Johnson. She indicated that members must complete the training by December 31.

II. City of Bedford – County of Bedford Proposed Voluntary Settlement Agreement

Ms. Williams, Mr. Robbins and Mr. Lanza presented the draft report. Ms. Williams began by highlighting the various sections contained in the report. Ms. Williams explained that, with respect to a proposed agreement such as this one negotiated under the authority of Va. Code §15.2-3400, the Commission is required to determine “whether the proposed settlement is in the best interest of the Commonwealth.”

Mr. Robbins then provided an in-depth analysis of the interests of the City, the County and the proposed boundary adjustment areas as well as the Commonwealth. Next, Mr. Lanza reviewed financial data prepared by the City’s consultant. He then provided a detailed analysis of the public finance profiles for the City and County as well as information relative to their fiscal stress. Finally, Ms. Williams stated that, based on the Commission’s deliberations on May 15, 2012 and for the reasons set forth in the draft report, the Commission finds that the agreement is in the best interests of the Commonwealth and recommends approval of the agreement by the special court. She then presented the following draft findings and recommendations and concluding comment to the members for their consideration:

FINDINGS AND RECOMMENDATIONS

In the preceding sections of this report, the Commission has reviewed a proposed voluntary settlement agreement negotiated by the City of Bedford and Bedford County addressing the interests of the two jurisdictions. Based upon that review, we find that the agreement

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promotes the viability of both local governments and is consistent with the best interests of the Commonwealth. Accordingly, we recommend the court's approval of the agreement. While finding the agreement to be in the best interest of the two jurisdictions and the State, there are two issues which we are obliged to address.

First, while the Commission recognizes that the Utility Consolidation Agreement that is contemplated in the proposed voluntary settlement agreement will not be finalized by the July 1, 2012 date stated in the proposed agreement, the Commission strongly encourages the City of Bedford and Bedford County to develop and execute the utility consolidation agreement without delay and, accordingly, to amend the voluntary settlement agreement to provide for a reasonable but short new deadline for definite action.

The Commission believes that the utility consolidation agreement is critical not only to the efficient provision of water and sewer services to residents, businesses and industries located in both jurisdictions but also to the success of long-term planning efforts relating to the development that will occur in the future in both jurisdictions. The Commission commends the City and County for recognizing the importance of taking into consideration the long-term interconnectivity needs of the entire county in the "Principles Governing the Creation of the Bedford Regional Utility Authority," which have been agreed to by both parties and included as Exhibit 7 to the proposed voluntary settlement agreement. However, the Commission observes that, while necessary to the consolidation of the two utility systems, such interconnection may encourage development outside of the areas designated for growth, and the governing bodies may wish to expand the stated principles in order to address the balance between interconnectivity needs and interconnectivity policies that could unintentionally encourage sprawling development.

Next, Section 9.2 of the proposed voluntary agreement provides in part that "[s]ubsequent to the effective date of this Agreement, the boundaries of the Town may be adjusted to incorporate all or any portions of the Phase II Boundary Adjustment Areas that are contiguous to the existing Town boundary, if each non-contiguous area designated by the Town for a boundary adjustment consists of parcels of land that have an average size of three acres or less based on recorded subdivision plats or deeds. An example of a boundary adjustment that would meet such requirements is described on the attached Exhibit 13."

Exhibit 13 provides that "[a]n area in the Phase II Boundary Adjustment Areas designated for a boundary adjustment by the Town would be eligible for incorporation prior to the automatic boundary adjustment occurring ten years after the Phase I Boundary Adjustment, if it is contiguous to the existing Town boundary and if it consists of parcels of land that have an average size of three acres or less based on subdivision plats or deeds recorded after the effective date of Town status."

The Commission understands – based on supplemental information that was requested by the Commission and provided by the City of Bedford – that Section 9.2 of the agreement “is intended to permit the new Town to incorporate portions of the Phase II territory if they meet the density requirement, but only if such designated areas are physically adjacent to, or touching, the existing Town boundaries. However, Section 9.2 contains other language related to the determination of whether the areas designated for a boundary adjustment have parcels of land with an average size of three acres or less. If multiple areas are designated for a boundary adjustment, and *if those areas are physically separated from each other*, then each separate area must satisfy the three-acre density requirement.”

The Commission is concerned that the reference to each “*non-contiguous*” area in Section 9.2 of the proposed agreement as written and without the benefit of the supplemental explanation provided by the City may cause confusion in the interpretation of the requirement that an area designated for a boundary adjustment must be contiguous to the existing Town boundaries. Therefore, the Commission suggests that the language in Section 9.2 of the agreement be amended to clarify that, while all areas designated for a boundary adjustment must be contiguous to the existing Town boundaries, when multiple areas are designated that are contiguous to the Town but are not contiguous to each other, the density requirement will apply to each area.

In addition, Exhibit 13 also provides an example of an area designated by the Town that would satisfy the criteria for a Phase II boundary adjustment. The last sentence in the example states that “[h]ence, the designated area satisfies the eligibility criteria, because 75 acres meet the lot size requirement and 25 acres meet to public utility requirement.” The City has acknowledged that this criterion is outdated and not part of the proposed agreement that was submitted to the Commission for review. Accordingly, the Commission recommends that this language be amended for accuracy and in order to avoid undue confusion among the public.

CONCLUDING COMMENT

The Commission on Local Government acknowledges the considerable effort devoted by officials of the City of Bedford and Bedford County to negotiate the agreement before us. The agreement reflects a notable commitment by the leadership of both jurisdictions to address in a collaborative fashion the concerns of their localities and the needs of their residents. We commend the officials of the two jurisdictions for their public leadership, for the interlocal agreement which they have negotiated, and for putting the needs of their citizens ahead of personal and political gain.

A brief discussion ensued during which Mr. Bannister requested that the report be amended to include an additional appendix containing the Commission's 2010 Fiscal Stress Tables. Ms. Williams asked that Commission staff be permitted the leeway to correct any typographical or non-substantive grammatical errors that may be discovered. The Commission then voted unanimously to adopt the report as amended to include the 2012 Fiscal Stress Tables as an additional appendix. Ms. Williams explained that the final report would be provided to the parties as well as the Supreme Court of Virginia and that it would be posted on the Commission's webpage [at <http://www.dhcd.virginia.gov/images/clg/BEDFORD-REPORT-July-2012.pdf>].

III. Town of Clarksville – County of Mecklenburg Annexation Action

Ms. Williams directed members' attention to a series of handouts in which the Town of Clarksville corrects information previously submitted to the Commission regarding the size of one of the proposed annexation areas. She explained that, in its original submission, the Town inadvertently sought to annex approximately 14 acres that are already located within the Town limits.

Ms. Williams reported that mediation with Dr. Richman – the independent mediator designated by Mr. Hendrix on behalf of the Commission – will begin this morning between the Town and Mecklenburg County. She further indicated that Dr. Richman will first meet separately with the County Board of Supervisors and Town Council in executive session. In

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addition, the negotiating teams designated by the Town and the County are scheduled to meet on July 12, 18 and 19.

Ms. Williams reminded members that Mecklenburg County's response to the Town's submission is due on Wednesday, July 18 by the close of business.

Ms. Williams reiterated that, at the Commission's regular meeting on May 15, both the Town and the County agreed that the time period for filing the Commission's report be extended by sixty days from September 9, 2012 until November 8, 2012. She reminded members that the Commission may, on its own motion, further extend its report deadline by up to an additional sixty days and that the Commission may also further extend its report deadline with the agreement of the parties. She stated that, at present, the Commission is scheduled to hold regular meetings on September 26 at 9:00 AM in Clarksville and on November 19 and January 7, 2012 at 10:00 AM in the Richmond area. Ms. Williams asked members to consider designating a "back up" date, time and location for the September 26 meeting in the event that mediation is fruitful and the parties request that the Commission's on-site meetings in Clarksville be delayed. After a brief discussion, the Commission kept the date of September 26 but changed the time to 10:00 AM and the location to the Virginia Housing Center (VHC) in Glen Allen, provided that space is available.¹

¹ Note: Due to the unavailability of meeting space at the Virginia Housing Center (VHC) on Wednesday, September 26, 2012, the Commission's "back up" date has been changed to **Thursday, September 27, 2012 at 10:00 AM at the VHC.**

IV. Annual Report on Municipal Boundary Change Actions

Mr. Robbins presented the 2011 report on Municipal Boundary Change Actions. He noted that there were five boundary change actions identified as occurring during 2011, two of which were the result of Voluntary Settlement Agreements and the remaining three of which were “friendly” boundary line adjustments by agreement.

On a motion by Mr. Bannister, which was seconded by Mrs. Wingo, the Commission unanimously approved the report without amendment.

V. Governor’s Task Force for Local Government Mandate Review

Ms. Williams stated that the Governor’s Mandates Task Force last met on June 7 in Lynchburg and that a bill signing ceremony with the Governor immediately followed the meeting. She reported that their next meeting is scheduled for Monday, July 30 at the VHC.

Ms. Williams said that, based on direction provided to Commission staff at the June 7 meeting, it appears the focus of the Task Force’s July 30 meeting will be the mandates recommended for further study in their First Interim Report to the Governor. Ms. Williams indicated that Commission staff was asked to contact each state agency that is responsible for administering a mandate that was identified for further study as well as the local government(s) that asked the Task Force to recommend it for elimination. Ms. Williams indicated that staff was also asked to contact Delegate Landes about his bill (introduced in prior General Assembly sessions) that would eliminate the mandate that local governments advertise certain actions in a newspaper of general jurisdiction.

VI. Scheduling of Regular Meetings

The members reiterated that they will hold regular meetings on September 26 at 9:00 AM in Clarksville [or, in the alternative, on September 27 at 10:00 AM the Virginia Housing Center (VHC)]; November 19 at 10:00 AM at the VHC (if available); and January 7, 2012 at 10:00 AM at the VHC (if available).

Next, in response to feedback from members during the Commission's special meeting held on May 15, 2012 in Bedford, Ms. Williams asked the Commission for guidance with respect to future special meetings held in conjunction with on-site case reviews. "Special" Commission meetings are closed meetings during which members deliberate on issues which are subject to the Commission's review; formulate findings and recommendations that impact issues negotiated by the parties; and provide direction to staff regarding the preparation of the draft report on a particular review. Ms. Williams explained the Commission's long-standing position that such deliberations fall outside the purview of the Freedom of Information Act because they are not meetings specifically required by law and added that the meetings are narrow in scope to address only the findings and recommendations that the Commission will adopt in their report. A majority of the members voted to continue to hold closed "special" meetings for the specific purposes stated. Mr. Kines abstained from the voting.

VII. Adjournment

There being no further business to come before the Commission, on a motion by Mr. Bannister, which was seconded by Mr. Kines, the meeting was adjourned at 11:32 a.m.

Cole Hendrix
Chairman

Susan B. Williams
Local Government Policy Manager