

**DRAFT MINUTES**  
**Regular Meeting**  
**Commission on Local Government**  
**10:00 a.m., May 6, 2013**  
**The Virginia Housing Center**  
**Henrico Room 2**  
**4224 Cox Road**  
**Glen Allen, Virginia**

**Members Present**

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

**Members Absent**

Bruce C. Goodson

**Staff Present**

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

**\*Mrs. Wanda C. Wingo's term on the Commission expired on December 31, 2012; however, pursuant to Va. Code Section 15.2-2902, Mrs. Wingo continues to serve as a temporary member of the Commission for the limited purpose of participating in the final reports on the Commission's review of the proposed Town of Clarksville – Mecklenburg County voluntary settlement agreement and the Front Royal Limited Partnership – Town of Front Royal – Warren County citizen-initiated annexation action. Both of these are matters currently pending before the Commission, which Mrs. Wingo fully participated in prior to the expiration of her term. Mrs. Wingo abstained from voting on any matter coming before the Commission at this meeting that did not involve one of these two matters.**

**Call to Order**

Commission Chairman John Kines called the meeting to order at 10:03 a.m. on May 6, 2013 in Henrico Room 2 at the Virginia Housing Center in Glen Allen, Virginia.

**I. Administration**

**A. Approval of Minutes of the April 12, 2013 Regular Meeting**

Mr. Hendrix made a motion that the minutes of the Commission's regular meeting held on April 12, 2013 be approved. Such motion was seconded by Mr. Bannister, and the Commission approved the minutes without amendment. Mrs. Wingo abstained from voting on the minutes.

**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 April 2013**

Referencing an internally produced financial statement that encompassed expenditures through the end of April 2013, Ms. Williams stated that fiscal year-to-date expenditures for personnel were 84.4% of the total budget and that expenditures on non-personnel were 76.3%. She also stated that, to date, expenditures have amounted to 83.6% of the total budget for the current fiscal year.

**D. Local Government Policy Manager's Report**

With the permission of the Chairman and the Commission, Ms. Williams deferred her policy manager's report until later in the meeting.

**II. Town of Clarksville – County of Mecklenburg Annexation Action**

Ms. Williams began by distributing a handout that she described as depicting suggested changes to some text in the draft advisory report based on correspondence that the Commission received from the Department of Conservation and Recreation (DCR) on May 2,

2013. Ms. Williams further explained that staff is also proposing to include DCR's letter as an additional appendix to the advisory report.

Ms. Williams then provided a brief overview of the proceedings of the Commission with respect to its review of the voluntary settlement agreement proposed by the Town of Clarksville and Mecklenburg County. Ms. Williams stated that, in this instance, the Commission was required to review a voluntary settlement agreement, which provides for (1) the annexation to the Town of Clarksville of approximately 722.5 acres of territory located in Mecklenburg County; (2) sharing by the Town and the County of certain tax revenue generated and which will be generated from areas located adjacent to the new Town boundaries that are planned for commercial and/or industrial projects; (3) certain utility issues; (4) waiver of future annexation rights by the Town for a period of 10 years; and other matters.

Ms. Williams explained that a proper analysis of the proposed agreement, as mandated by statute, required consideration of the ramifications of these provisions of the proposed agreement with respect to the current and future viability of the two jurisdictions. She further stated that the Commission is charged with reviewing proposed interlocal settlements negotiated under the authority of Section 15.2-3400 of the Code of Virginia to determine whether such settlements are "in the best interest of the Commonwealth." She then reminded members that the Commission has long held that the Commonwealth's interest in interlocal agreements is fundamentally the preservation and promotion of the general viability of the affected localities. Ms. Williams then called on Mr. Lanza and Mr. Robbins to present the

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various sections of the draft advisory report for which they were responsible.

Mr. Lanza opened by discussing the fiscal assets of the Town of Clarksville. First, he noted that Town taxable real estate values, exclusive of public service corporations (PSCs), increased from \$75 million to \$148 million from 2002 to 2011, or an increase of 97.45%. This compared to 146.20% for Mecklenburg County over the same period. Next, Mr. Lanza stated that Town local source revenues increased from \$781,900 to \$1.1 million from 2002 to 2011, which equaled a 40.8% increase. This compared to 38.5% for Mecklenburg County over the same period. Next, Mr. Lanza noted that the Town's real estate tax rate of \$0.26 per \$100 is lowest of all towns in Mecklenburg County and that the Town needs to rely on commercial activity to fund a significant portion of general fund expenditures. He explained that the Town is experiencing a downward trend in meals and lodging tax receipts. These receipts represented approximately 31.5% of local taxes in FY 2009 and were the single largest local source of revenue for the Town as recently as FY 2008. That percentage dropped to 28.5% in FY 2011. Mr. Lanza stated that these changes seem to indicate that a new focus on tourism is necessary. Finally, he noted that the annexation areas will increase assessed property values of the Town by about 25%.

Mr. Lanza continued with a discussion of the Town's public service liabilities. He stated that the Town's added public service responsibilities will increase general fund expenditures by approximately \$60,000 as a result of the agreement. The net effect of annexation to the general fund will be a gain of approximately \$120,000. Mr. Lanza also identified that lower

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water and sewer rates will reduce revenues by approximately \$45,000 per year to the enterprise fund. Next, he noted that the enterprise fund is already receiving general fund transfers to fund operations and received \$60,000 in FY 2011. The Town has not indicated how it will address this problem.

Next, Mr. Lanza explained that the Town has proffered to waive water and sewer connection fees to existing structures adjacent to existing water and sewer lines. The upper bound of the cost to the Town is approximately \$50,000. Additionally, Mr. Lanza stated that the Town has also offered to extend water and sewer lines to existing structures if it has been demonstrated that an individual well or septic system has failed and cannot be replaced in a cost effective manner. According to an engineering study, extensions of lines in Areas A and C would cost a combined \$1.5 million. Mr. Lanza also said that the Town is at risk of this obligation for an indefinite period of time. He added that the Town has not indicated how it intends to fund these extensions. He further explained that there is also no plan in place for funding the estimated \$2.9 million of necessary improvements identified within the current Town water and sewer system. Finally, Mr. Lanza noted that solid waste collection in the northern portion of Area C could be a problem and the use of pickup trucks for garbage collection could be an inefficient use of Town resources.

Mr. Lanza followed with a discussion of the interests of Mecklenburg County. He stated that the provisions of the agreement will result in a revenue loss of approximately \$19,000 or 0.05% of the County's 2012 general fund revenues. He said that the County would also

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experience minimal savings associated with fewer public service responsibilities. Mr. Lanza explained that the adversarial annexation action with the Town will be resolved via the voluntary settlement agreement. Next, he indicated that the County can market lower in-town utility rates for Kinderton Technology Park. He added that the Kinderton Technology Park, Lakeside Commerce Park, and HP/EDS facility would remain in the unincorporated area of the County. Mr. Lanza also indicated that a fiscally stable Town is beneficial to the County. With that in mind, he cautioned the Commission regarding the status of the Town's enterprise fund. He noted that the Town's enterprise fund stands to lose revenue under this agreement. In addition, he stated that the Town might also need to issue debt to fund future water and sewer extensions. Finally, he indicated that further fiscal hardship of the Town would be detrimental to the County.

Mr. Lanza concluded his presentation with a discussion of the Town's financial performance from FY 2007 through FY 2011. He opened by stating that the Town's 2012 Comprehensive Annual Financial Report (CAFR) was not available during the Commission's review of the voluntary settlement agreement. He noted that the Town has been showing an increasing capacity to meet its short term needs. Additionally, Mr. Lanza stated that the Town is showing an increasing ability to handle financial hardship within the general fund. Next, Mr. Lanza stated that general fund surpluses are being diminished by annual transfers to the enterprise fund. In addition, he indicated that after accounting for interest expenses on long-term debt, the Town's enterprise fund has experienced a loss every year since FY 2008. Mr.

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Lanza stated that these losses are being offset with general fund transfers and unrestricted net assets. He said that this practice is not sustainable in the long run. He also indicated that revenue losses to the enterprise fund could put stress on the general fund if larger transfers are required for water and sewer operating expenses in the future. Finally, Mr. Lanza explained that Town capital assets are more than 50% depreciated, which could lead to capital improvement expenses in the near future.

Next, Mr. Robbins reviewed the need for land for development as it relates to the interests of the Town of Clarksville, noting that minimal industrial land is available within the existing town limits.

Mr. Robbins then reviewed the interests of the area proposed for immediate annexation, pointing out that a community of interest exists with the annexation area and the Town and that a need for urban services may increase in the future, as the County's comprehensive plan encourages directing growth and economic activity in and around Mecklenburg's towns. With respect to individual services, Mr. Robbins reviewed the impact of the agreement's terms on water and sewer service, the impact of the annexation on subdivision review, concerns about the Town's future land use plan lacking a map, and concerns about zoning classifications for annexed properties under Clarksville's existing ordinance. He then summarized the concerns regarding considerations, noting that the Town should be able to absorb any growth that occurs in the annexed area. Mr. Robbins reiterated staff's concerns about the fiscal ability of the Town to extend utilities as promised in the agreement.

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Next, Mr. Robbins addressed the interests of the areas proposed for future annexation, which consists of Occoneechee State Park and land owned by the Clarksville Economic Development Authority (EDA). Mr. Robbins stated that the Department of Conservation and Recreation (DCR) had provided a letter to staff (dated April 26, 2013 and revised May 2, 2013) outlining DCR's issues surrounding the potential annexation of the park property. He also reviewed subsequent changes to the draft report, which were shown on a handout that was distributed by Ms. Williams at the beginning of the presentation. Specifically, DCR is concerned that nothing submitted by the Town reflected the ownership arrangement of the park – it is actually owned by the US Army Corps of Engineers and leased to the state. In addition, DCR noted that, due to the ownership arrangement, the Town should be made aware that access to the EDA property cannot be provided through the park.

Mr. Robbins then reviewed the interests of the Commonwealth, which, as Ms. Williams previously stated, the Commission has traditionally interpreted as the preservation and promotion of the viability of affected local governments.

Next, Mr. Robbins reviewed the three recommendations included in the draft report, and one additional recommendation that was included on the handout of changes that was previously distributed. First, Mr. Robbins explained that the report recommends that the Town and County begin utilizing a capital improvements plan, and for the Town to begin including a capital fund in its annual budget to plan for future expenses. He emphasized that this is critical in order for the Town to fulfill the terms of the agreement with respect to utility line



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extensions. Second, Mr. Robbins explained that certain properties in the northern part of Area C should be excluded from the annexation at this time because the Town does not have the financial capacity to absorb the cost of extending utilities to those residents. Third, he stated that the Town should incorporate a land use plan map into its comprehensive plan so property owners in the annexed area, as well as the Town, can anticipate the potential future land uses of their property. Lastly, Mr. Robbins reviewed the additional recommendation, which resulted from the comments provided by DCR. This recommendation was for the Town to not exercise its annexation option of the state park and Clarksville EDA property until such time that the loss of enterprise fund revenue caused by the annexation of the state park can be readily absorbed.

A discussion ensued among the members during which Mr. Bannister made a motion that a map depicting the part of Area C being recommended for exclusion from the annexation be added as an appendix to the report and that, as recommended by staff, a copy of the letter from DCR be included as an appendix. Such motion was seconded by Mrs. Wingo and unanimously adopted by the Commission. Mr. Hendrix abstained from voting because he was unable to participate in the Clarksville on-site hearings due to illness.

Next, Mrs. Wingo made a motion that the Commission adopt the report incorporating the amendments described by staff and with the additional appendices. Mr. Stirrup seconded this motion, which was unanimously approved by the Commission. Again, Mr. Hendrix abstained from voting on the report.

**III. City of Falls Church – Fairfax County Voluntary Settlement Agreement**

**a. Preliminary Staff Comment**

Ms. Williams reported that a joint Notice; resolutions approved by the Falls Church City Council and the Fairfax County Board of Supervisors; a proposed voluntary settlement agreement; and a listing of local governments notified was filed with the Commission on May 2, 2013. She further indicated that materials and exhibits supporting the proposed agreement are forthcoming. She stated that, today, the Commission needs to establish a tentative review schedule and called members' attention to a proposed schedule that was included in their meeting materials and handed out to representatives of the parties in attendance. Ms. Williams then indicated that representatives of both the City and County were present to make initial comments regarding the proposed agreement and to participate in the scheduling of the review.

**b. Comments by Representatives of the Parties**

Mr. Kines invited Mr. John Foster, City Attorney for the City of Falls Church, and Mr. Pat Taves, an attorney also representing the City, to come forward and make preliminary remarks regarding the proposed agreement and the review. Mr. Foster explained that the proposed agreement concerns about 42 acres of land that is currently located in Fairfax County and is owned almost exclusively either by the City of Falls Church or the City school board. He explained that there are no residential properties involved with this proposed boundary adjustment. He further stated that it is part of a resolution to a years-long dispute between the

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County and the City over the operation of the City's water system. He indicated that the City will sell its water system under a separate agreement to the Fairfax County Water Authority. Mr. Foster stated that the materials that have been submitted and will be submitted to the Commission for review will show that the proposed agreement is in the best interests of the Commonwealth as well as the two localities. He further explained that there will be a referendum – which is required by the City's charter – in November at which time the citizens will vote to authorize the City's sale of its water system. He indicated that it would be helpful if the Commission could conduct its on-site hearings over the summer and issue its advisory report prior to November.

Mr. Stirrup asked what is located on the property now, and Mr. Foster responded that the George Mason High School and Mary Ellen Henderson Middle School campuses are located there. Mr. Taves added that the property is located right next to the Virginia Tech/University of Virginia campus in Northern Virginia. Mr. Foster indicated that the City's property yard is also located there. Referring to a map that was included with the proposed agreement and previously distributed to the members, Mr. Taves pointed out a small parcel on which a parking lot is located. He stated that this parcel is not owned by the City or the school board but was necessarily included in order to make the proposed boundary adjustment area contiguous with the City. Mr. Kines inquired as to the ownership of this parcel, and Mr. Taves responded that it is owned by a shopping center.

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Mr. Kines then called on Ms. Cynthia Tianti, Deputy Fairfax County Attorney, and Ms. Cynthia Bailey, Senior Assistant County Attorney, to address the Commission. Ms. Tianti reiterated the intention that the approval of the proposed voluntary settlement agreement, along with the referendum and the sale of the City water system, will resolve matters that have been a matter of controversy between the two jurisdictions for quite some time. By way of background, Ms. Tianti explained that the citizens of Fairfax County who are served by the City's water system would complain to the County that their rates were significantly higher than those charged by the Fairfax County Water Authority. She explained that the Fairfax County Water Authority is actually an independent political subdivision of the Commonwealth of Virginia, and, while it is the entity purchasing the City's water system, the Authority is a separate legal entity from Fairfax County. She further stated that the resolution of the litigation between the three parties is culminating in the proposed voluntary settlement agreement and the sale of the water system.

Ms. Tianti indicated that she believes the proposed agreement is somewhat unique in that it does not involve any residential properties, and the area is already owned by the City. In addition, she stressed the benefit to the City of having its high school and its middle school actually located within the City's boundaries. She explained that there was not room for that before, which is why the City purchased land in Fairfax County to build the schools many years ago. For these reasons, Ms. Tianti believes that the boundary adjustment will help to solidify the sale of the water system in the view of City voters. She added that, not only will County

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residents' water rates be lowered under this deal, the rates paid by City residents will also decrease, and the rates will remain uniform in the City and the County in the future.

Ms. Tianti stated that all of the area of concern is already served by urban services. She said that, after the boundary adjustment, the 42 acres in question will be served by City services but that the County is already providing those same services now.

Ms. Tianti pointed out that, pursuant to an agreement between the City and County tax assessors' offices, the small sliver of land on which a parking lot is located is not currently taxed by Fairfax County even though it is currently located in the County. She further explained that the parking lot serves a grocery store that is located in the City, and the property owner pays its taxes to Falls Church because a majority of the parcel is located in the City. Mr. Foster added that, for this reason, the proposed agreement will have no impact on the collection of tax revenues.

Mr. Bannister inquired as to the current zoning of the property proposed for annexation, and Mr. Foster responded that he believes that it is currently zoned single family residential by the County. Mr. Foster indicated that the City will review the zoning classification once the land is brought into its limits but that the reality is that the City will continue to operate its schools on the property. Ms. Tianti indicated that there is a provision in the proposed agreement that 70% of the school sites must be used for school purposes for the next 50 years.

Mr. Stirrup inquired as to whether either of the two schools located in the area proposed for annexation serve as polling places. Mr. Foster responded that he does not believe so but that he will address that issue in the City's submission to the Commission.

Ms. Tianti indicated that the dates proposed in the preliminary review schedule under consideration by the Commission are acceptable to both parties. She indicated, however, that the metes and bounds description of the property proposed for annexation will not be ready until after the proposed May 22 deadline for receipt of materials and exhibits in support of the agreement.

**Commission Deliberation and Action**

A brief discussion ensued during which the parties confirmed their belief that the proposed schedule allots adequate time for oral presentations and that a metes and bounds description could be provided by June 26, 2013. On a motion by Mr. Hendrix, which was seconded by Mr. Bannister, the Commission adopted the following preliminary review schedule for the proposed City of Falls Church – Fairfax County voluntary settlement agreement:

**Deadline for receipt of all materials/exhibits in support of the proposed voluntary settlement agreement, as required by regulation and statute:** Wednesday, May 22, 2013, by the close of business.

**Deadline for parties' responses to requests for additional information / supplemental submissions (including metes and bounds description) by parties:** Wednesday, June 26, 2013, by the close of business.

**Monday, July 8, 2013 (Falls Church, Virginia):**

10:30 AM	Tour of affected area
2:00 PM – 5:00 PM	Oral presentations
7:00 PM	Public hearing

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**Tuesday, July 9, 2013 (Falls Church, Virginia):**

10:00 AM Special Commission Meeting

10:30 AM Regular Commission Meeting

**Closing of record:** Monday, July 22, 2013, by the close of business.

**Commission's draft report:** Commission's regular September meeting (currently scheduled for Tuesday, September 10, 2013 at 9:00 a.m. in Front Royal)

**IV. Local Government Policy Manager's Report**

**a. Potential Issues**

Ms. Williams explained that there were no updates on potential issues since those provided at the April 12 regular meeting, with two exceptions: (1) the receipt of the proposed City of Falls Church – Fairfax County voluntary settlement agreement for review and (2) an email from the attorney representing the Petitioner in the Front Royal Limited Partnership (Petitioner) – Town of Front Royal – Warren County citizen-initiated annexation action. Ms. Williams indicated that the email from the Petitioner arrived after the close of business on the Friday prior to this Monday morning meeting and included several attached documents, which she has not had the opportunity to review.

**b. Staff Activities**

Ms. Williams stated that staff activities since the last meeting had primarily revolved around the preparation of the draft advisory report on the Town of Clarksville-Mecklenburg County agreement. She added that staff participated in a two-day DHCD retreat on May 1 and 2 in Virginia Beach.

**c. Special Announcement**

Ms. Williams then announced that she would be leaving the Commission and DHCD to accept the position of director of policy at the Virginia Department of Education. Ms. Williams expressed her appreciation for the opportunity to work with the Commission for more than six years, and she said that it had been her great pleasure to do so. Mr. Kines and the other members expressed their appreciation for the work Ms. Williams has done for the Commission as well as their regret that she will be leaving, and they wished her well in her new endeavor. Mr. Kines asked that a resolution be prepared commending Ms. Williams for her years of service to the Commission, and Mr. Robbins agreed to undertake the task.

**V. 2012 Cash Proffer Survey**

Mr. Robbins distributed the “2013 Survey of Cash Proffer Revenues and Expenditures” survey instrument to the Commission. He explained that, as part of the Commission’s statutory duties, every year in July the survey is mailed to all cities, counties and towns that are eligible to accept cash proffers. He stated that the survey instrument was identical to last year’s, except that one item was added this year, asking localities to submit their cash proffer policies. He explained that this request was made to assist with the work of the Housing and Environmental Standards Workgroup of the Virginia Housing Commission as it studies the cash proffer system.

On a motion by Mr. Bannister, which was seconded by Mr. Hendrix, the Commission unanimously adopted the draft survey instrument.



**VI. Staff Updates on 2013 Studies/Task Forces**

**a. Governor's Task Force for Local Government Mandate Review**

Mr. Robbins advised the Commission that the upcoming meeting of the Task Force for Local Government Mandate Review, scheduled for May 16th, has been postponed until a date in late June. The Task Force intended for that meeting to be an intergovernmental roundtable between local and state education leaders, and they determined that it should be moved to late June in order to coordinate with the Board of Education meeting date, which is scheduled for June 27th.

**b. Local Fiscal Impact Analysis Task Force**

Mr. Lanza reported to the Commission that the first meeting of the task force for fiscal impact review has been scheduled for May 24, 2013 beginning at 10:00 am at the Virginia Housing Center. He indicated that David Blount of the Thomas Jefferson Planning District Commission will be giving a presentation to explain the concerns underlying the budget language requiring the study. Mr. Lanza also indicated that he will make a presentation about the current fiscal impact statement process and offer a review of practices used by other states.

**c. Town-County Powers Task Force**

Ms. Williams reported that a list of local government attorneys has been proposed to participate on the Town-County Powers Task Force. She indicated that the list includes four town attorneys and four county attorneys. Ms. Williams explained that, while she has received informal communication regarding the designation of these attorneys, she is awaiting a letter

from the president of Local Government Attorneys, Inc. (LGA) formally designating them. Ms. Williams added that it is also anticipated that the general counsel to the Virginia Municipal League (VML) as well as the general counsel to the Virginia Association of Counties (VACo) will participate on the task force. Ms. Williams stated that, after her departure from the agency, Mr. Robbins will serve as the staff supporting this task force and that an initial meeting date will be established as soon as possible.

**VII. Commending Resolution for Mrs. Wingo**

Ms. Williams referenced a resolution, distributed to the members prior to the meeting, which commends Mrs. Wingo for her dedicated service to the Commission. On a motion by Mr. Hendrix, which was seconded by Mr. Bannister, the Commission adopted the resolution.

**VIII. Scheduling of Regular Meetings in 2013**

Ms. Williams confirmed the following tentative 2013 regular meeting schedule, which was previously approved by the Commission:

Tuesday, July 9 at 10:30 a.m. in Falls Church/Fairfax County  
Tuesday, September 10 at 9:00 a.m. in Front Royal/Warren County  
Monday, November 18 at 10:00 a.m. (location to be determined)

**IX. Adjournment**

There being no further business to come before the Commission, the meeting was adjourned at 11:45 a.m.

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John G. Kines, Jr.  
Chairman

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Name:  
Title: