

DRAFT MINUTES
Regular Meeting
Commission on Local Government
10:00 a.m., March 10, 2014
The Virginia Housing Center
Henrico Room 3
4224 Cox Road
Glen Allen, Virginia

Members Present

John T. Stirrup, Jr., Chairman
John G. Kines, Jr.
Victoria L. Hull

Members Absent

Bruce C. Goodson, Vice-Chairman
Cole Hendrix

Staff Present

Zack Robbins, Local Government Policy Manager
Ed Lanza, Senior Public Finance Analyst
J. David Conmy, Senior Policy Analyst

Call to Order

Commission Chairman John Stirrup called the meeting to order at 10:11 a.m. on March 10, 2014 in Henrico Room 3 at the Virginia Housing Center in Glen Allen, Virginia.

Ms. Lucy Phillips, Washington County Attorney remotely listened to the meeting via speakerphone.

Mr. Stirrup introduced the newest member of the Commission, Victoria Hull and the Commission's newest staff member, David Conmy. Both provided brief introductory remarks.

I. Administration

a. Approval of Minutes of the Regular Meeting on January 6, 2014

Ms. Hull noted a correction was necessary on page 3, line 2, to replace "2013" with "2014." Mr. Kines made a motion to approve the minutes, as presented and amended by Ms. Hull. Such motion was seconded by Mr. Stirrup, and the Commission unanimously approved 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.

At this time, the Chairman amended the agenda to allow Mr. Carter Glass to provide an overview of two new cases that the Commission would be reviewing.

II. Upcoming Commission Reviews

a. City of Bristol – Washington County Voluntary Settlement Agreement

Mr. Glass provided the background of the proposed City of Bristol – Washington County Voluntary Settlement Agreement. He explained that this case has a long and complex history, beginning with a development incentive that is available to Tennessee municipalities, which is being used by the City of Bristol, Tennessee in order to facilitate the development of a 1.3 million square foot retail complex on Interstate 81 just over the state line. This development is known as The Pinnacle.

He explained that the City of Bristol, Virginia responded to this competitive threat to its tax base in 2012 by successfully convincing the General Assembly to amend the Virginia Public Facilities Act to include a similar incentive for a development of a regional impact (DRI) to be located within its city limits, whereby a certain amount of the state sales tax will be sent back to the locality to pay down the bonds used to finance the development. Bristol, Virginia has since proceeded on the construction of its competing retail project, known as The Falls.

Bristol, Virginia still has concerns with the Virginia Public Facilities Act, because it is not clear when these sales tax revenues are to be remitted to the city, since the project is to be phased in over several years, and a steady stream of tax revenues is needed for the financing of the project. In addition, the City was concerned about the threat of litigation from Washington County.

Washington County also was concerned about the threat of The Pinnacle development on its own tax base, and asked in 2013 to be included in the Public Facilities Act for DRIs in Washington County to be

eligible for the sales tax incentive as well. That effort failed, and the General Assembly suggested that Bristol, Virginia and Washington County work together on a joint solution rather than against each other. The County also was concerned about the loss of its Lowe's Home Improvement Center to Bristol, Virginia at The Falls.

Mr. Glass then reviewed the components of the voluntary settlement agreement, indicating that there is another separate agreement that includes an initial payment and settlement of legal disputes.

In response to a question from Mr. Lanza, Mr. Glass explained that \$25 million in bonds were issued by the City to purchase the property for The Falls, and another \$10 million in bonds were issued for site improvements, and that another \$5 million has been authorized. He also indicated that the City is nearing its legal debt limit; however, the agreement must be entered into in order for those revenue bonds to be transferred from the City to its Industrial Development Authority. Mr. Lanza also indicated that he needed additional financial statements from the City and County for his analysis.

Mr. Kines mentioned that Virginia's sales tax rate is significantly lower than Tennessee's, and asked if that was an incentive for retailers in the region. Mr. Glass responded that the sales tax does have some effect on spending habits in the region, but pointed out that The Pinnacle development has primarily attracted retailers through reduced rental rates.

Further discussion ensued regarding the proposed voluntary settlement agreement.

Mr. Robbins advised the Commission that the City and County had submitted the Notice to the Commission on March 4, 2014. The notice was accompanied by the agreement, supporting data and exhibits, resolutions from the City and County governing bodies requesting the review and designating the appropriate contact persons for each party, and indication that notification had been mailed to other local governments as required by the Commission's regulations.

Next, Mr. Robbins explained the Commission's statutory duty to review such matters, to hold hearings, make investigations, analyze local needs and make findings of facts and recommendations prior to their

presentation to the court for ultimate disposition. He then explained that the standard of review is to determine whether the proposed settlement is in the best interest of the Commonwealth, which by extension includes the best interest of the City, County, and areas proposed for annexation. He also reviewed the statutory advertising requirements for the Commission's public hearing, noting that the Commission is required to render its report within six months from the receipt of the Notice.

Finally, Mr. Robbins confirmed that the Commission's tour, oral presentations, and public hearings would be held in the Bristol area on Monday, May 12, 2014, based on the review schedule that was adopted at the Commission's January meeting.

b. Town of Herndon – Loudoun County Voluntary Settlement Agreement

Next, Mr. Glass presented a proposed voluntary settlement agreement between the Town of Herndon and Loudoun County. He noted that Loudoun County Attorney Jack Roberts was unable to attend, and that he was authorized to speak on behalf of both parties this morning.

Mr. Glass provided an overview of the proposed settlement agreement, pointing out that only 2.5 acres of town-owned land in Loudoun County is intended to be annexed. In 2006, Herndon had proposed using this property for a site for day laborers to find work, and Loudoun County objected to such use. He explained that the Loudoun County – Fairfax County boundary had been adjusted from the west to the east during the 1950s, and it was unclear whether this adjustment also moved the Town's boundary as well, and the day laborer site issue made this questionable boundary an important issue to resolve. The Town is concerned that it must seek zoning approval from Loudoun County for future uses on this property.

Mr. Glass stated that the terms of the agreement also provide limited joint zoning control for 40 years if the Town decides to locate a day laborer site on the property. The agreement also provides for Herndon to waive its extraterritorial subdivision regulation authority as provided by Va. Code § 15.2-2248 for 40 years.

Ms. Hull asked whether Fairfax County had any involvement in this case. Mr. Glass stated that originally the County was approached to see if they wanted its boundary to be adjusted to match with the Town's boundary, but Fairfax County declined.

Mr. Robbins advised the Commission that the Town and County had submitted the Notice to the Commission earlier this morning. The notice was accompanied by the agreement, supporting data and exhibits, resolutions from the City and County governing bodies requesting the review and designating the appropriate contact persons for each party, and indication that notification had been mailed to other local governments as required by the Commission's regulations.

Next, Mr. Robbins explained the Commission's statutory duty to review such matters, to hold hearings, make investigations, analyze local needs and make findings of facts and recommendations prior to their presentation to the court for ultimate disposition. He then explained that the standard of review is to determine whether the proposed settlement is in the best interest of the Commonwealth, which by extension includes the best interest of the Town, County, and areas proposed for annexation. He also reviewed the statutory advertising requirements for the Commission's public hearing, noting that the Commission is required to render its report within six months from the receipt of the Notice, which will be very close – as the Commission's meeting for consideration of this report will likely fall on September 8th.

Finally, Mr. Robbins presented three potential sets of dates for the Commission to consider for its on-site visit to Herndon. Mr. Kines made a motion, which was seconded by Ms. Hull, to adopt the following schedule for the review of the Town of Herndon-Loudoun County voluntary settlement agreement, while reserving the right of the chairman to adjust the schedule if necessary:

Date submitted: March 10, 2014

Request for additional information from CLG staff: Monday, May 5, 2014, by the close of business.

Parties' response to request for additional information / supplemental submissions by parties:

Monday, June 16, 2014

Monday, July 14, 2014 (Herndon, Virginia):

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

Tuesday, July 15, 2014 (Herndon, Virginia):

10:00 AM	Special Commission Meeting
10:30 AM	Regular Commission Meeting

Closing of record: Monday, July 28, 2014, by the close of business.

Commission's draft report: Commission's regular September meeting (currently scheduled for Tuesday, September 8, 2014 at 10:00 a.m. in Glen Allen)

Such motion passed unanimously.

The Chairman returned to the agenda.

I. Administration (continued)

c. Presentation of Financial Statement

Referencing an internally produced financial statement that encompassed expenditures through the end of February 2014, Mr. Robbins stated that fiscal year-to-date expenditures for personnel were 60.5% of the budgeted amount and that expenditures on non-personnel expenses were 31%. He also stated that, to date, overall expenditures have amounted to 52.9% of the total budget for the current fiscal year. He noted that due to vacancies during this fiscal year, the Commission's personnel expenses are \$60,000 lower than this time last year.

d. Policy Manager's Report

Mr. Robbins stated that the Vola Lawson Animal Shelter sent an acknowledgement of the Commission members' contribution of \$100.00 in former commissioner Vola Lawson's memory.

Mr. Robbins then reviewed other local government issues from around the state, which were included in the news articles that were distributed to the Commission, specifically:

- A boundary line adjustment between the Town of Front Royal and Warren County, that was unrelated to the voluntary settlement agreement recently reviewed by the Commission.
- Recent actions taken by the Town of Clarksville and Bedford County that were integral to the voluntary settlement agreements that the Commission had previously reviewed.
- The potential merger of Covington and Allegheny County's school divisions.
- The budget amendment proposed by the Senate to provide \$1.6 million for Chesterfield County Schools to operate Petersburg City Schools.

Next, Mr. Robbins advised the Commission that Executive Order 2 was signed by Governor McAuliffe immediately following the inauguration. He advised that the order is applicable to commissioners, and requested the members to carefully review the document. Mr. Robbins also noted that the State and Local Conflicts of Interest Act was amended by the General Assembly and should be awaiting the Governor's signature, and asked whether the members would like the Attorney General's office to conduct in-person training at the next Commission meeting to be held in Richmond, which would be in September, to which the commissioners agreed.

Mr. Robbins stated that in early February, Commission staff attended VACo & VML's Legislative Day Luncheon, that he attended the VAPDC Winter Conference, and he also provided a presentation on local government collaboration and cooperation to VACo's County Board Chair Institute.

Mr. Robbins stated that he had received a few calls from citizens in the Marion area who were concerned about the proposed voluntary settlement agreement. There was discussion regarding logistics for the Commission's upcoming visit to Bristol and Marion. Mr. Robbins also encouraged members to visit Heartwood in Abingdon, which serves as a "jumping off point" for visitors to Southwest

Virginia. The Department of Housing and Community Development was a major partner in the development of the facility.

There was discussion regarding the six-month deadline by which the Marion – Smyth County voluntary settlement agreement report must be adopted, and whether the Commission should exercise its right to extend the reporting deadline on its own motion as provided by Va. Code § 15.2-2907(A) because it is anticipated that the Commission's meeting in July will be held a few days after the six month deadline. Mr. Robbins advised the Commission that he would try to get the Town and County to request an extension instead, as the Commission should reserve its additional time in case it is needed.

Chairman Stirrup called a five minute recess.

Reconvening, Mr. Stirrup requested the staff to provide its update on the 2014 General Assembly session.

III. 2014 General Assembly Session

Mr. Lanza explained that of the eight bills analyzed for local fiscal impact, four were passed with amendments. He also indicated that two of those four bills were identical. He also stated that the remaining four bills did not advance beyond their respective committees.

Mr. Robbins then discussed the proposed 2014-2016 budget, which the General Assembly did not pass before adjournment sine die, and a special session will be convened on March 24th to complete the work on the budget. He stated that the main items that the Commission staff tracked in the budget were: (1) \$70,000 cuts in Planning District Commission funding, which were removed from the House version of the budget; (2) \$35,000 in one-time funding for the Commission staff to build a web portal to assist in collecting fiscal impact data, which was included in both the House and Senate budgets; and (3) \$30,000 which was suggested by the Fiscal Impact Review Task Force to allow the Commission to hire support staff during session to assist with fiscal impact reviews, which was not included in the introduced budget, nor in any subsequent amendments.

Mr. Robbins then reviewed several of the bills that the staff had been tracking:

- HB 199 would permit the Department of Taxation and the Department of Planning and Budget (DPB) to forward bills to the Commission staff if there is a potential impact. Mr. Lanza added that during this session, DPB forwarded the bills that it believed should be sent to the Commission, to get an idea of how many bills the Commission would be working on after HB 199 takes effect.
- Three bills (HB 653, SB 523, and SB 574) that were recommended by the Task Force for Local Government Mandate Review and the Fiscal Impact Review Task Force that would have reinstated the requirement for legislators to file local fiscal impact bills by the first day of session did not pass.
- There were five bills (HB 594, HB 1011, HB 1080, SB 163, and SB 407) introduced that would extend the Task Force for Local Government Mandate Review beyond their current sunset date of June 30, 2014. Of those bills, only HB 1011 passed, which would extend the task force to June 30, 2018, despite proposals in some of the other bills that would have added businesspeople and General Assembly members to the panel. HB 1011 is awaiting the Governor's signature.
- HB 652 will require notification of proposed boundary line adjustments to be sent to affected property owners, but does not require similar notification for voluntary settlement agreements or contested annexations.
- HB 210 will require the Martinsville City Council to consider its quorum to be its full membership whenever it votes on a proposal to revert to town status. Originally, this bill required a referendum in Henry County on the Martinsville reversion issue. There was concern that a quorum on the Council consists of only three of the five council members, therefore with absences, the reversion issues could have been decided on by only two council members. Despite this legislation, the reversion issue was tabled by the Martinsville City Council a few months ago.
- SB 312 would extend the moratorium on the granting of city-initiated annexations, new city charters, and county immunity from annexation. Prior versions of this bill also included provisions that would have created exceptions to allow Leesburg to seek city status, and to allow Loudoun County to seek immunity from Leesburg seeking such status.

- HB 177 extends the authority of localities to cut overgrown grass and weeds on certain properties and charge the costs to the owner. As of this year, over fifty localities had individually requested such permission from the General Assembly.
- HB 1084 and SB 578 would require local governments to pay attorneys fees when an aggrieved party sues over land use matters and it is found that the locality acted in violation of the state or federal constitutions.
- HB 268 and SB 51 restricts local government's authority to regulate certain accessory agricultural activities on agriculturally zoned property, and SB 430 would require localities to permit 'farm breweries' by-right in agricultural districts.

IV. Task Force for Local Government Mandate Review

Mr. Robbins stated that the Task Force for Local Government Mandate Review met on February 19, 2014, and is currently scheduled to meet on May 14, 2014, although that date will need to be rescheduled because it conflicts with the Commission's visit to southwest Virginia.

V. Assessment of State and Federal Mandates on Local Governments

Mr. Conmy indicated that per Executive Order 58 (2007), the Commission on Local Government staff is tasked with coordinating an assessment of federal and state mandates that have been in effect for a minimum of two years. This includes newly identified mandates and mandates that have been altered so significantly from their original form that they are now considered new mandates. Utilizing the staff maintained database on federal and state mandates, Commission on Local Government staff identified a total of 20 mandates that are due for an assessment for FY 14-15. As the first step in this process, Mr. Conmy reached out to each responsible State agency to request their preferred dates for conducting their assessments. The Virginia Municipal League (VML) and Virginia Association of Counties (VACo) were also asked if they had any additional mandates to add to the schedule; no additional mandate assessments were requested. Mr. Conmy directed the commissioners to the attached schedule in their packets and indicated that upon Commission approval of the schedule, Commission on Local Government Staff would forward the schedule to the Secretary of Commerce and Trade and the Governor for approval. Ms. Hull made a motion, which was seconded by Mr. Kines, to approve the assessment schedule. Such motion was unanimously adopted.

VI. Commending Resolution for Mr. Harold H. Bannister, Jr.

Next, the Commission considered Mr. Bannister's commending resolution that was distributed to the members prior to the meeting. Mr. Kines remarked that he and Mr. Bannister served concurrently for most of each other's time on the Commission, and that Mr. Bannister was an effective and thorough commissioner and moved for approval of the draft resolution. Such motion was seconded by Mr. Stirrup and was unanimously adopted.

Mr. Robbins stated that when the Commission visits Herndon in July he will try to arrange for Mr. Bannister to attend the Commission's meeting for the presentation of his resolution. Mr. Robbins added that the Commission still has to present Ms. Wingo's resolution to her, which may be convenient for Ms. Wingo when the Commission meets in Marion.

VII. Schedule of Regular Meetings

Mr. Lanza noted that the Commission's regular meeting date in July would be on July 15, not July 14, due to the case review in Herndon.

VIII. Adjournment

There being no further business, the Commission adjourned at 12:25 p.m.