

DRAFT MINUTES
Commission on Local Government
Oral Presentations
Town of Culpeper – Culpeper County
Voluntary Settlement Agreement
2:00 p.m., September 12, 2011
Culpeper County Board of Supervisors Meeting Room
County Administration Building
302 North Main Street
Culpeper, Virginia

Members Present

Cole Hendrix, Vice-Chairman
Harold H. Bannister, Jr.
John G. Kines, Jr.
Kathleen K. Seefeldt

Members Absent

Wanda C. Wingo, Chairman

Staff Present

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

I. Call to Order

A. Welcome

Commission Chairman Wanda C. Wingo was unable to attend the oral presentations; therefore, Vice-Chairman Cole Hendrix called the meeting to order at 2:01 p.m. on September 12, 2011 in the Culpeper County Board of Supervisors Meeting Room in Culpeper, Virginia. Mr. Hendrix explained that the Commission is present to review a proposed voluntary settlement agreement between the Town of Culpeper and Culpeper County. He further explained that the proposed agreement provides for the immediate incorporation of certain territory into the Town of Culpeper and the potential incorporation of additional areas into the Town in the

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future; for the waiver by the Town of certain annexation and city status rights; for the provision of water and sewer capacity to adjacent areas within Culpeper County and for other utility arrangements; for the reduction of certain tax rates; and for other matters.

B. Advertisement

Mr. Hendrix indicated that the public hearing was advertised by notice published in the *Culpeper Star Exponent* on Tuesday, August 23, 2011 and again on August 30. In addition, he stated that notice of the public hearing was mailed to the local governments contiguous to, or sharing functions, revenue, or tax sources with, the Town and County.

C. Introduction of Commission Members and Staff

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

II. Commission's Review

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

Mr. Hendrix explained that, to date, the Commission had received the following documents, which were reviewed by the members and staff: Notice by the Town of Culpeper of a voluntary settlement agreement; a copy of the proposed agreement as well as data and exhibits supporting the agreement; resolutions adopted by the Culpeper Town Council and the

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Culpeper County Board of Supervisors requesting the Commission to review the agreement; and indication that copies of the Notice, the proposed agreement and an index of data and exhibits were mailed to each of the local governments contiguous to or sharing functions, revenue or tax sources with the Town of Culpeper and the County of Culpeper. Mr. Hendrix also stated that, in accordance with the review schedule adopted at their July 11 meeting, the Commission made separate requests for additional information to the Town and the County on August 5, and the Town and County responded to those requests on or before September 2.

Mr. Hendrix also announced that the Commission has agreed to keep its record open for the receipt of additional citizen comment through September 27, 2011 and will close its record as of that date and that the Commission will endeavor to render its report to the affected local governments prior to the end of November 2011.

III. Oral Presentations by the Town and County

Mr. Carter Glass, Counsel for the Town of Culpeper, offered an opening statement in which he described the negotiations that have occurred between the Town and County over the last 15 years or more and that led to the proposed agreement. Mr. Glass explained that the agreement will resolve annexation and utility issues between the Town and County for the indefinite future and includes incentives for the localities to work together. He also indicated that the testimony received at the public hearings held by the Town and County has been overwhelmingly positive. Mr. Glass reiterated that the key question for the Commission's consideration is whether the agreement is in the best interest of the Commonwealth in that it will promote the viability of both localities and will be in the best interests of their residents. Mr. Glass announced that he would be calling three witnesses: Mr. Jeffrey B. "Jeff" Muzzy, recently retired Town of Culpeper Manager; Mr. Christopher D. "Chris" Hively, Town of Culpeper Director of Environmental Services; and Culpeper Mayor Calvin L. "Chip" Coleman.

Mr. Roy B. Thorpe, Jr., Culpeper County Attorney began his opening remarks by introducing the members of the Board of Supervisors who were present: Mr. Tom Underwood, Mr. Steve Walker, Vice Chairman Sue Hansohn, Mr. Larry Aylor, and Chairman William C. Chase, Jr. He stated that the proposed agreement was comprehensive, would end lengthy

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disagreements between the two parties, and that the preparation of the agreement resulted in an improved, cooperative relationship between the Town and County. Finally, Mr. Thorpe requested the Commission's support of the proposed agreement.

Mr. Glass then called Mr. Muzzy for questioning as the Town's first witness.

At Mr. Glass's request, Mr. Muzzy identified members of the Town Council that were present: Mayor Calvin "Chip" Coleman, David B. Lochridge, Robert M. Ryan, and Daniel V. Boring. Mr. Muzzy stated that prior to his retirement after 41 years in local government, he was Town Manager in Culpeper for three years, and that he has since moved his place of residence out of the town limits, into unincorporated Culpeper County.

In response to Mr. Glass's request, Mr. Muzzy oriented the Commission with a map of the town (Exhibit A, included with the Notice of Voluntary Settlement). He observed that much of the area's recent commercial development was concentrated just outside of the town limits, within the initial boundary adjustment area.

Mr. Muzzy stated that upon his arrival in Culpeper, there had been ongoing discussions between the Town and County regarding utilities and boundary adjustments. During those discussions, the Town's desire was to protect the existing tax base and provide an opportunity for future boundary line adjustments. The County's wish was to provide water and sewer in high growth areas. At the time, the County wanted to establish a regional authority to provide those services, but it was also recognized that the Town had an established, efficient utility system. The Town also recognized that most of the vacant property in the Town had been consumed by rapid residential growth, while commercial growth was outside of the Town, and that opportunity for growing the tax base was needed.

Mr. Muzzy said that the negotiation provided the Town with: assurance that it would continue to be the water and sewer provider in the area; opportunities for boundary line adjustments; and elimination of the inequity between in-town businesses and those that have recently located in the high-growth areas outside of the town limits. Mr. Muzzy also stated that the transfer of the DEQ nutrient allocation from the County to Town would provide 1.5 million

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gallons of sewage treatment capacity, which would enable the Town to provide utility services to meet the needs of the Town and the County's planned growth area.

There was discussion in response to questions from Mr. Bannister regarding sufficient utility capacity, and residential demand with current vacancy rates. Mr. Muzzy stated that the capacity will be sufficient for several years, and that additional capacity may be required in the distant future.

Mr. Bannister asked if the annexation were not to occur, whether water and sewer would be provided to residents of the Water and Sewer Service Areas (WSSA) adjacent to the town. Mr. Muzzy responded that currently the Town provides these utilities on a contractual basis with the County. Developers would pay for extension of the lines, with some exceptions that are outlined in the agreement. Mr. Muzzy said that the Town's financial impact from expanding the system should be limited.

Mr. Muzzy then stated that the intent of the initial boundary adjustment areas was to secure properties with existing and proposed commercial development, and that limited residential development is intended to occur in these areas. Mr. Glass then distributed a revision to the table on page 58 of the original submission to the Commission. Mr. Muzzy next provided an overview of the table, which described the financial impacts of the agreement, highlighting the proposed reduction to the BPOL rate, and the addition of a line item for Street Maintenance, which had not been included in the original table, resulting in an estimated net increase to Town revenues of \$481,568.

Mr. Muzzy then discussed transitional zoning provisions for the properties in the initial boundary line adjustment area, and described vacant land that is proposed to be annexed, and the Town's plans to adopt a land-use assessment program.

In response to a question from Ms. Seefeldt, Mr. Muzzy stated that the impact of a land use assessment program would be minimal due to limited agricultural properties in the existing town limits and initial boundary adjustment areas.

Mr. Muzzy then explained proposed limitations on future boundary adjustments regarding agriculturally-zoned properties in the County, and stated that the WSSA originated

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from areas in the County's Comprehensive Plan that were designated for utilities and urban growth, much of which has already been zoned for such use. He then discussed why the County desired the Technology Zone not be subject to annexation.

Next, Mr. Muzzy responded to questions from Mr. Glass regarding the County's ability to adjust its WSSA, and explained the intent and composition of the proposed Joint Planning Advisory Body. In response to a question from Ms. Seefeldt, Mr. Muzzy explained that the specifics of the body have not yet been finalized, and elaborated that the creation of this body could permit the Town to provide some input as to the development of proposed projects within the WSSA. Then, he summarized why he believes the proposed agreement is in the best interest of the Town and the community as a whole.

There was a brief discussion regarding concerns about the interpretation of the agreement by future staff members as turnover occurs, and the equalization of the tax structure between the County and Town.

Mr. Thorpe then began cross-examination of Mr. Muzzy. He pointed out that both County and Town staff drafted the agreement, and have a good understanding of the agreement's intentions.

Mr. Hendrix then called a ten-minute recess.

Upon reconvening, Mr. Thorpe introduced another County Board member that had arrived – Mr. Steve Nixon, and Mr. Glass introduced the Town Attorney, Martin Crim.

Mr. Glass then called on his next witness, Mr. Chris Hively, Town of Culpeper Director of Environmental Services. Mr. Hively described his previous experience with public utilities, and former employment with Culpeper County. Mr. Hively explained that he assisted with the negotiations and boundary adjustment criteria during the development of the proposed agreement.

Mr. Hively then described the eligibility criteria for incorporation of additional territory into the Town under the proposed agreement. He provided descriptions of how the Floor Area Ratio requirement is to be applied for boundary adjustments for commercial properties, and the density requirement is to be used for incorporating residential properties. Mr. Hively then

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explained the application of these requirements using two illustrated examples that were distributed to the Commission.

Mr. Hively provided background information regarding the agreement's provisions to allow the County to modify the boundaries of the WSSA. He reviewed a handout, showing certain parcels in the WSSA that are currently required to connect to public utilities due to their proximity to existing utilities. He explained that these parcels cannot be removed from the WSSA because they are able to be served by existing utilities.

Next, Mr. Hively explained the last page of the handout, demonstrating the agreement's restriction on the County removing areas from the WSSA to create a 'peninsula' which would inhibit the Town's ability to reach other areas of the WSSA.

Mr. Hively explained that the provision of utilities outside of the Town limits is fragmented as to whether they are provided by the County or the Town due to various contractual agreements, which has caused utility operations and planning to be difficult.

Mr. Hively said 330,000 GPD of sewer capacity is already allocated to customers outside of the Town limits, with an additional 350,000 GPD obligated by contractual agreements for yet-to-be built developments outside of the Town. He stated that he believes sufficient capacity will be available. Currently, the Town's wastewater treatment facility has a 6 million GPD capacity, of which 2.8 million is currently used, and the water treatment facility has a 4 million GPD capacity, of which, on average, 2 million is currently used, which will require future expansion.

Mr. Hively then reviewed the utility provisions of the agreement, highlighting the ownership arrangement of the utility lines, termination of "two- and three-party agreements," and the equalization of utility rates between in-town and out-of-town customers. He also explained how the 1.5 MGD allocation obligation was to be tracked through utility connection fees.

There was discussion regarding the affordability of connection fees, and whether existing well and septic users would be obligated to connect to the system.

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Mr. Hively explained how the ownership of utility lines would be transferred upon annexation of WSSA properties and how allocation of the 1.5 MGD allocation would be unchanged. He stated that the Town would be responsible for any required plant expansions; however, acquiring additional raw water sources would require participation from both parties.

Mr. Hively explained provisions requiring extension of Town sewer lines to Eastern View High School, and associated removal of a package plant. He also discussed potential financing of this extension.

Mr. Hively then explained a chart on page 60 of the Notice, describing estimated revenues and expenditures changes due to the incorporation of the initial boundary adjustment areas. The estimate incorporated an anticipated increase in residential customers due to the equalization of utility connection fees and usage rates. Overall, the initial boundary line adjustment would result in an estimated annual net loss of \$35,000 to the utility fund. He then summarized reasons for why he believed the agreement would have a positive effect on the County and Town.

There was discussion between Commission members and Mr. Hively regarding the Town's ability to absorb large numbers of new utility customers, the adequacy of the existing raw water supply, and capital improvement needs. Mr. Hively's response generally was that, under the proposed agreement, the area would be in a better position to address these concerns.

Mr. Lanza asked why the enterprise fund experienced losses between FY2006 and FY2009, and a gain in FY2010. Mr. Hively stated that it was likely due to a \$27 million expansion to the wastewater treatment plant, and associated fund transfers.

Mr. Hively stated that operational efficiencies were eminent with the execution of the agreement, and there was brief discussion regarding the technical aspects of the extension of the sewer line to Eastern View High School.

Mr. Glass then called Mayor Coleman forward for questioning.

Mayor Coleman stated that he was heavily involved in the development of the agreement. He believes that the agreement is in the best interest of the County, Town, and

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region, and has already greatly improved the cooperative atmosphere between the two parties. There was additional discussion regarding the public awareness of and involvement in the agreement, and the area's high foreclosure rates.

Mr. Thorpe called the County's first witness, Board Chairman William Chase, who stated that this is the most comprehensive agreement created between the two parties in his decades of local government experience, that it is in the best interest of the parties, and he requested the Commission's approval. There was discussion regarding support of the agreement from County residents.

Mr. Thorpe then called the County's next witness, Mr. Frank Bossio, who generally agreed that all of the testimony thus far had been accurate. He said that duplication of utility services by the County would have created an unhealthy competition between the two parties, making growth management difficult. He further stated that the agreement allows the Town to expand its utility system, while ensuring that the County will not attempt to create a competitive system. There was additional discussion as to the development of the agreement with respect to the County's planning needs, reasons for not incorporating the Technology Zone, and the sustainability of the agreement over its duration.

Mr. Robbins asked if the loss of previously-pledged cash proffers in the WSSA or initial boundary line adjustment area had been analyzed. Mr. Bossio responded that there was a small impact, but most cash proffers were attached to properties elsewhere in the County.

In response to a question from Ms. Williams, Mr. John Egertson, the County Planning Director said there are county-designated urban development areas both within the Town and within the WSSA.

IV. Closing Remarks

Mr. Glass and Mr. Thorpe both thanked the Commission for their consideration and urged their favorable recommendation to the Special Court.

Mr. Hendrix expressed appreciation for all in attendance and reminded participants that the Commission's record will remain open for receipt of additional comment until September 27, 2011. He also noted that the Commission's staff may request additional data from the

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parties and affected local governments after the record closes. Finally, he stated that the Commission anticipates completion of its report by the end of November 2011.

V. Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 4:55 p.m.

Cole Hendrix

Vice-Chairman

Susan B. Williams

Local Government Policy Manager