

**DRAFT MINUTES**  
**Regular Meeting**  
**Commission on Local Government**  
**10:00 a.m., November 19, 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 10:04 a.m. on November 19, 2012 in Henrico Room 3 at the Virginia Housing Center in Glen Allen, Virginia.

**I. Administration**

**A. Approval of Minutes of September 27, 2012 Meeting**

Mr. Stirrup called members' attention to an error in the first full sentence on Page 9 of the draft minutes and suggested that the first "51% of" in the sentence should be deleted. Mr. Stirrup then made a motion that, with that amendment, the minutes of the Commission's regular meeting held on September 27, 2012 be approved. Such motion was seconded by Mrs. Wingo, and the Commission approved the minutes with the amendment.

## **Minutes**

### **Regular Meeting**

**10:00 a.m., November 19, 2012**

**Page 2**

#### **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 October 2012**

Referencing an internally produced financial statement that encompassed expenditures through the end of October 2012, Ms. Williams stated that expenditures for personnel for the first third of the fiscal year were 37.4% of the total budget and that expenditures on non-personnel were 21.6%. She also stated that, to date, expenditures have amounted to 35.1% of the total budget.

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

##### **1. Potential Issues**

Ms. Williams provided a brief update concerning potential interlocal issues, including a possible boundary line adjustment or voluntary settlement agreement involving the Town of Appomattox and Appomattox County as well as the potential reversion of the City of Martinsville to town status. Next, Ms. Williams reported that Commission staff provided additional technical assistance to the Town of Port Royal regarding a potential boundary line adjustment by agreement with Caroline County.

##### **2. Planning District Commissions (PDCs)**

Ms. Williams reported that she prepared DHCD's biennial report to the Governor and the General Assembly on PDCs and that it was submitted on October 2. Ms Williams also

## **Minutes**

### **Regular Meeting**

**10:00 a.m., November 19, 2012**

**Page 3**

provided an update on the review of planning district boundaries, which is currently underway. She noted that DHCD is required to review the boundaries after every decennial census. Ms. Williams indicated that she sent out a request for comments on October 25 to interested parties. Specifically, she explained that the request was sent to all county administrators and county boards of supervisors chairs and vice-chairs; city managers, city mayors and council presidents; PDC executive directors; the Virginia Association of Counties (VACO); the Virginia Municipal League (VML); the Virginia Association of Planning District Commissions (VAPDC); and a number of state agency heads who regularly work with PDCs. Ms. Williams explained that the comment period opened on October 25 and will close on December 19, 2012.

### **3. Staff Activities**

Ms. Williams highlighted various staff activities that have taken place since the Commission's regular meeting on September 27. Ms. Williams indicated that staff participated in meetings of the Governor's Task Force for Local Mandate Review held on October 18 in Richmond and November 14 in Williamsburg. Ms. Williams reported that she recently responded to a request for information from the Joint Legislative Audit and Review Commission (JLARC) staff as part of their Review of Incentives for Regional Collaboration on Local Government Functions. She added that the briefing on the JLARC report is scheduled for December 10, 2012 and that she and Mr. Lanza plan to attend the briefing. Ms. Williams stated that Mr. Robbins gathered the necessary information and created and delivered a presentation

**Minutes**

**Regular Meeting**

**10:00 a.m., November 19, 2012**

**Page 4**

on cash proffer collections by certain localities to the Housing and Environmental Standards Workgroup of the Virginia Housing Commission on November 1.

Ms. Williams then reminded the members to complete the mandatory Conflicts of Interest Act training by December 31, 2012.

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

Ms. Williams stated that the Commission received a joint request, dated October 11, 2012, from the Town and County for a third delay in Commission proceedings, which will require action by the Commission. She further indicated that a copy of the proposed voluntary settlement agreement negotiated by the Town and County was provided to the Commission and distributed previously by email and today in hardcopy to the members. Ms. Williams stated that the Commission has not yet received the exhibits and materials that must accompany the proposed agreement or the required resolutions from the local governing bodies.

Ms. Williams then distributed a proposed review schedule to the members and the representatives of the parties in attendance. She explained that the parties requested that the Commission's on-site meetings in Clarksville be delayed until January. Ms. Williams asked the Commission to consider holding its on-site meetings in Clarksville in late January to accommodate staff's General Assembly Session duties with respect to drafting fiscal impact statements and legislative action summaries. She also reminded members that they would need to hold a regular meeting in January.

**Minutes**

**Regular Meeting**

**10:00 a.m., November 19, 2012**

**Page 5**

Ms. Williams indicated that the Commission, its staff and the public will need an opportunity to review the materials and exhibits in support of the agreement and suggested that the Commission establish a deadline of no later than the close of business on Friday, December 14, 2012 for the parties to provide these materials as well as the resolutions adopted by their governing bodies. She added that the proposed agreement, the supporting materials and the resolutions must be made available for public inspection in the town manager and county administrator's offices – as well as the Commission's offices – prior to the on-site meetings. She also indicated that the Commission may need to request additional information from the parties. Ms. Williams suggested that the parties' responses to any such request from the Commission as well as any supplemental submissions by the parties should be received at least two weeks prior to the on-site meetings in Clarksville.

Ms. Williams noted that the proposed review schedule did not include a date for the Commission's report. She explained that whether a draft report can be prepared in time for consideration at the Commission's March 21, 2013 regular meeting depends on the adequacy of the materials filed in support of the proposed agreement. Specifically, Ms. Williams indicated that it would depend on whether the materials submitted address what is required by the Commission's regulations; whether the information is updated to reflect the most current data available and whether it is tailored to the proposed voluntary settlement agreement, as opposed to the original annexation action.

**Minutes**  
**Regular Meeting**  
**10:00 a.m., November 19, 2012**  
**Page 6**

Ms. Williams then explained that, if the Commission approves the parties' third request for a delay, the Commission's reporting deadline would be moved out until March 8, 2013. She stated that, beyond that, the Commission could extend the reporting deadline for up to an additional 60 days on its own motion, which would extend the deadline to May 7, 2013. Ms. Williams acknowledged the desire of the parties for the agreement to become effective on July 1, 2013 and the tight timeframe that presents because the agreement must still be reviewed by a special court after the Commission completes its review.

Next, Mr. Hendrix recognized the representatives of the parties who were in attendance at the meeting – Mr. Andrew McRoberts, counsel for the Town of Clarksville, and Mr. Wayne Carter, the county administrator for Mecklenburg County – and invited them to make remarks. Mr. McRoberts provided an overview of the provisions contained in the proposed agreement as well as the process by which an agreement was reached. He also indicated that the parties would endeavor to file their submission within the next two weeks and that it would be as complete as possible. Mr. McRoberts further indicated that the Town Council recently adopted a resolution in support of the agreement. Mr. Carter then briefly addressed the proposed agreement and process and indicated that the County Board of Supervisors adopted a resolution in support of the agreement, which he would immediately provide to the Commission.

**Minutes**

**Regular Meeting**

**10:00 a.m., November 19, 2012**

**Page 7**

At the conclusion of the remarks by the parties, Mr. Banister made a motion that the parties' joint request for a third delay in the Commission's proceedings be approved. Such motion was seconded by Mr. Kines and approved unanimously by the Commission.

Next, the Commission considered the proposed review schedule. Ms. Williams asked the parties whether they still felt that three hours would be an adequate amount of time allotted to their oral presentations, and both parties indicated that it would. On a motion from Mr. Kines, which was seconded by Mrs. Wingo, the Commission adopted the following revised review schedule for the proposed Town of Clarksville-Mecklenburg County voluntary settlement agreement:

**Deadline for receipt of all materials/exhibits in support of the proposed voluntary settlement agreement and the resolutions approved by the governing bodies, as required by regulation and statute:** Friday, December 14, 2012 by the close of business.

**Deadline for parties' responses to requests for additional information / supplemental submissions by parties:** Monday, January 14, 2013 by the close of business.

**Monday, January 28, 2013 (Clarksville, Virginia):**

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

**Tuesday, January 29, 2013 (Clarksville, Virginia):**

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

**Closing of record:** Monday, February 11, 2013 at the close of business.

**Commission's draft report:** Date to be determined at Commission's regular meeting on January 29, 2013.

**Minutes**

**Regular Meeting**

**10:00 a.m., November 19, 2012**

**Page 8**

**III. Front Royal Limited Partnership – Town of Front Royal – Warren County Annexation Issue**

Ms. Williams called attention to the Tentative Review Schedule adopted at the Commission's September 27, 2012 regular meeting, which established a deadline of December 20, 2012 for the receipt of the Town's and County's responses to the Petitioner's annexation notice and provided for on-site meetings in Front Royal on March 20-22, 2013.

Ms. Williams indicated that, since the September meeting, Commission staff provided copies to all three parties of the relevant materials that could be located from three previous citizen-initiated cases that were filed with the Commission.

Ms. Williams noted that, at the last meeting, the Commission authorized the Chairman to designate an independent mediator should the parties request mediation. She indicated that, thus far, the Commission has not received such a request. Ms. Williams stated that, since the last meeting, the Commission received a supplemental submission from FRLP, which was included in the members' agenda packages.

Ms. Williams explained that Mr. Vazzana, FRLP's designated contact person, and Mr. Blair Mitchell, the attorney for Warren County, would not be in attendance at the meeting today but that both of them had been in recent contact with her. Ms. Williams indicated that Mr. Doug Napier, town attorney, was present to represent the Town of Front Royal. Ms. Williams also stated that, in an email, Mr. Mitchell indicated that, while the Warren County Board of Supervisors has not taken a position on the annexation proposed by FRLP, discussion at a recent meeting seemed to indicate that the Board would likely support whatever position



the Town takes regarding the issue. Ms. Williams further stated that Mr. Vazzana indicated in a recent email that he has attended work sessions of both the council and the board regarding the proposed annexation.

Mr. Hendrix then invited Mr. Napier to come forward and make remarks on behalf of the town. Mr. Napier described some of the issues under consideration by the Town, including extending the town's electrical service to the proposed annexation area as well as the building of a road to the area. Mr. Napier also indicated that the town may request mediation assistance from the Commission. He further indicated that the town council adopted a resolution to conduct discussions and negotiations with Warren County and FRLP to develop a mutually agreeable agreement to boundary adjust the 604 acres requested by FRLP into the town limits. Mr. Napier then provided a copy of the resolution to the Commission. Mr. Hendrix thanked Mr. Napier for his remarks and asked that the parties keep the Commission informed of their progress in negotiations.

**IV. 2012 Cash Proffer Survey and Report**

Mr. Robbins presented the draft 2012 Report on Proffered Cash Revenue and Expenditures by Virginia Cities, Counties and Towns. He said that surveys were sent to 162 localities in July, with a deadline for response by September 30, and that a 100% response rate was achieved upon completing follow-up emails and phone calls. He then reviewed the results of the survey, which are summarized in Appendix D of the report. Mr. Robbins reported that, for FY2012, 38 localities (23% of those eligible) reported cash proffer activity in the form of

## **Minutes**

### **Regular Meeting**

**10:00 a.m., November 19, 2012**

**Page 10**

collections, pledges or expenditures, which represents a decrease of two localities from FY2011. He further reported that total cash proffer collections for FY2012 were \$60.8 million – up 68.5% from the previous fiscal year, and that reported expenditures for FY2012 were \$44.4 million – up 58.3% from FY2011. Of the funds expended in FY2012, Mr. Robbins indicated that 30.0% was spent on libraries, 23.6% on transportation, and 21.9% for schools.

Next, Mr. Robbins explained that, as a result of staff's research for the Virginia Housing Commission, an Appendix E was added to the report this year, which summarizes the statewide cash proffer activity from the report's inception in FY2000. Also in conjunction with the additional research performed at the request of the Housing Commission, Mr. Robbins explained that eight jurisdictions with high cash proffer activity were sent supplemental survey questions, requesting: (1) proffer revenues and expenditures for each year since FY2000, (2) FY2012 end-of-year cash proffer balances, and (3) copies of adopted cash proffer policies. The jurisdictions receiving the supplemental survey questions were the Counties of Chesterfield, Fairfax, Frederick, Hanover, James City, Loudoun, Prince William, and Spotsylvania. Mr. Robbins explained that these eight localities were responsible for about 87% of the cash proffer activity statewide.

Mr. Robbins stated that overall staff's research found that all but two of the localities (i.e., Fairfax and Loudoun Counties) tended to spend down cash proffer revenues soon after they were collected. He added that the cash proffer statutes were amended in 2005 to require localities to begin spending cash proffer revenues for their proffered purpose within seven

years of the collection of all funds associated with a single zoning case. Mr. Robbins explained that staff will be performing additional research for the Housing Commission to study the effect of cash proffers on housing affordability.

On a motion from Mr. Bannister, which was seconded by Mr. Stirrup, the Commission unanimously approved the 2012 Report on Proffered Cash Revenue and Expenditures by Virginia Cities, Counties and Towns.

**V. Periodic Review of Commission Regulation**

Ms. Williams explained that Va. Code § 2.2-4017 requires each Governor to mandate – through an Executive Order – a procedure for the periodic review of executive branch state agency regulations. She stated that Governor McDonnell issued Executive Order (EO) 14 in 2010 that governs the development and review of regulations proposed by state agencies and also provides for the periodic review of existing regulations. She indicated that the EO requires that each existing regulation be reviewed at least once every four years unless exempted by the Governor.

Ms. Williams noted that the Commission has two active chapters in the Virginia Administrative Code: the Public Participation Guidelines (i.e., Chapter 11), which became effective in September 2008 and the Organization and Regulations of Procedure (i.e., Chapter 20), which were last reviewed in September 2006.

She explained that the Commission would need to conduct a periodic review of Chapter 20, a copy of which was included in the members' agenda packages along with a copy of the EO

## **Minutes**

### **Regular Meeting**

**10:00 a.m., November 19, 2012**

**Page 12**

and some information from Town Hall regarding the review process. Ms. Williams further stated that, prior to the start date of the periodic review, the Commission would be required to post a notice on Town Hall. She added that the EO requires that the Commission provide for a minimum of 21 days of public comment starting on the posted date for the review and that the Commission post a completed periodic review report on Town Hall no later than 60 days after the close of the public comment period. Ms. Williams also stated that the Commission can choose to retain; amend or terminate specific sections of the regulation based on the public comment received.

Ms. Williams then presented two alternative periodic review schedules. Taking into consideration upcoming workload issues and their meeting and case review schedules, the Commission unanimously adopted the following periodic review schedule on motion made by Mr. Banister and seconded by Mr. Kines:

- Publication of the periodic review of Chapter 20 in the December 31, 2012 issue of the Register of Regulations
- Close public comment period on January 24, 2013
- Review public comments at the Commission's regular meeting on January 29, 2013 in Clarksville
- Take action at the January 29, 2013 Commission meeting or, if necessary, at the regular meeting scheduled for March 21, 2013 in Front Royal
- Complete periodic review report and publish it by March 25, 2012

Ms. Williams noted that the periodic review is different from the Governor's regulatory reform initiative, which has recently been publicized. She explained that the Governor directed regulatory agencies to conduct a comprehensive review of regulations currently in place and

## **Minutes**

### **Regular Meeting**

**10:00 a.m., November 19, 2012**

**Page 13**

repeal regulations that are unnecessary or no longer in use, reduce unnecessary regulatory burdens on individuals, businesses and other regulated groups and identify statutes that require unnecessary or overly burdensome regulations. Ms. Williams indicated that the Governor also launched RegReform.Virginia.Gov, a web portal for citizens to submit their ideas for regulatory reform. She stated that the Governor's press release and information about the new web portal were included in the members' agenda packages.

#### **VI. Fiscal Stress Report for 2010/2011**

Mr. Lanza reminded the Commission of changes to the fiscal stress index that were approved in January 2012. First, he mentioned that the 2011 index will use the most recently published median household income data from the U.S. Census Bureau. Next, he stated that average fiscal stress, as well as average component rankings, will have a score of 100 in the next index. Mr. Lanza stated that most data has already been incorporated into the 2011 index. He indicated that he is still awaiting the release of median household income data from the U.S. Census Bureau, but he expects it in the coming weeks. He noted that he is also awaiting revenue sharing data from Isle of Wight County. Mr. Lanza stated that he intends to begin writing the report in December and will be ready to present it to the Commission in January. Mr. Bannister asked if it would be simple to convert more than five years of data to the new index scale. Mr. Lanza indicated that he believes that it is possible but that he would have to research the request. He also stated that the decision to use five years of data in the 2010 index was an aesthetic choice in order to limit the size of the report.

**Minutes**

**Regular Meeting**

**10:00 a.m., November 19, 2012**

**Page 14**

**VII. Governor's Task Force for Local Mandate Review**

Ms. Williams announced that, on November 12, Task Force Member Shaun Kenney updated attendees at the Virginia Association of Counties (VACo's) annual conference on the work of the Mandates Task Force. She then stated that the Task Force met on October 18 in Richmond and again on November 14 in Williamsburg.

Ms. Williams explained that Commission staff will be working with staff in Chairman Herrity's office over the next two weeks to draft the Task Force's report to the Governor, which will include recommendations for legislation as well as funding requests. She stated that staff sent out a request for input on items identified by the Task Force for potential legislation or funding and that the deadline for providing comment is December 3. She indicated that December 3 is also the date by which all requests for drafts of legislation to be prefiled are due to the Division of Legislative Services and that staff would be working with the Governor's Policy office on this aspect of the process. Ms. Williams said that the Task Force will consider the draft report and recommendations at their next meeting, which is scheduled to take place on December 13 in Richmond.

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

Ms. Williams proposed the following tentative 2013 regular meeting schedule, which was unanimously approved by the Commission on a motion by Mr. Stirrup that was seconded by Mr. Kines:

**Minutes**

**Regular Meeting**

**10:00 a.m., November 19, 2012**

**Page 15**

Tuesday, January 29 at 10:30 a.m. in Clarksville

Thursday, March 21 at 9:00 a.m. in Front Royal

Monday, May 6 at 10:00 a.m.

Monday, July 8 at 10:00 a.m.

Monday, September 9 at 10:00 a.m.

Monday, November 18 at 10:00 a.m.

**IX. Adjournment**

There being no further business to come before the Commission, the meeting was adjourned at 11:46 a.m.

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Cole Hendrix  
Chairman

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Susan B. Williams  
Local Government Policy Manager