

**REPORT ON THE
CARUSO ODIN, LLC – TOWN OF CULPEPER – COUNTY OF CULPEPER
CITIZEN-INITIATED ANNEXATION ACTION**



**Commission on Local Government
Commonwealth of Virginia**

July 2019

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Commission on Local Government (CLG)***

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Appendix A: Commission on Local Government, Report on the Town of Culpeper – County of Culpeper Voluntary Settlement Agreement, November 2011.

Appendix B: Caruso Odin Application for Rezoning, Preliminary Rezoning Comments from Culpeper County, Culpeper County Planning Commission Minutes, and Caruso Odin’s Response to Rezoning Comments

REPORT ON THE CARUSO ODIN, LLC - TOWN OF CULPEPER- COUNTY OF CULPEPER CITIZEN-INITIATED ANNEXATION ACTION

PROCEEDINGS OF THE COMMISSION

On December 3, 2018, the Commission on Local Government received notice from Caruso Odin, LLC, pursuant to Section 15.2-3203(A) of the Code of Virginia, of their intent to petition for the annexation of 120.62 acres of territory located in Culpeper County into the Town of Culpeper.¹ In accordance with statutory requirements, the petitioners gave notice of the proposed annexation action to Culpeper County, the Town of Culpeper, and 11 other potentially affected local governments.²

On January 7, 2019, the Commission met with representatives of the parties for the purposes of making preliminary arrangements for its formal review of the proposed annexation. At that time, pursuant to its authority under Section 15.2-2907 of the Code of Virginia, the Commission voted to offer mediation assistance to the parties to resolve the matter; however, the offer was declined because of legal concerns.³

Adhering to the schedule adopted during its January 7th meeting, on May 8, 2019, the Commission toured relevant sections of the Town of Culpeper and Culpeper County and met in the Town to receive oral testimony from Caruso Odin, LLC and the County in relation to the petition.⁴ That evening, the Commission held a public hearing, advertised in accordance with Section 15.2-2907(B) of the Code of Virginia, for the purpose of receiving citizen comment. The public hearing was attended by approximately 25 persons and five individuals testified. In order to permit receipt of additional public

¹ Notice of Property Owner Pursuant to §§15.2-2907(A) and 15.2-3203(A) of the Code of Virginia of Their Intent to Petition for the Annexation of Their Property in Culpeper County to the Town of Culpeper (hereinafter cited as “Property Owner’s Notice”). The subject property is identified as Tax Map No. 41-94 in Culpeper County.

² Sec 15.2-2907, Code of Virginia. The Property Owner’s Notice provided by Caruso Odin did not include notification to additional localities “located within or contiguous to, or sharing functions, revenue, or tax sources with the local government” affected by the proposed action. Upon Commission staff request, Caruso Odin shared a copy of the original notice with all member localities of the Rappahannock-Rapidan Regional Commission.

³ At the Commission’s regularly scheduled meeting on January 7, 2019, the Commission voted to offer complementary mediation assistance to the parties so that they may attempt to resolve the issue. Such offer was formally made by Commission staff in a letter to the three parties dated January 17, 2019. On January 29, 2019, Commission staff were informed by the counsel for Caruso Odin that the offer for mediation assistance was not accepted by the parties because of the Town’s inability to participate in citizen-initiated annexation proceedings pursuant to Section 5.2 of the 2012 Voluntary Settlement Agreement. Commission staff suggested to counsel for Caruso Odin that the Joint Advisory Planning Body created pursuant to Article XIII of the 2012 Voluntary Settlement Agreement could serve as a potential alternative vehicle for the parties to resolve the dispute, but this offer was also turned down by the parties because of the same legal concerns pursuant to Section 5.2 of the VSA. Consequently, the Town of Culpeper did not participate in any of the Commission’s proceedings with the exception of providing information and documents to the Commission (through the County) in response to Commission questions.

⁴ In order to accommodate Commission staff responsibilities of the 2019 General Assembly Session, the Commission voted to extend its reporting deadline by 60 days.

comment, the Commission agreed to keep its record open for written submissions through May 23, 2019. The Commission received written comment from four individuals.⁵

SCOPE OF REVIEW

The Commission on Local Government is directed by law to review proposed annexations and 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. Upon receipt of notice of such a proposed action or agreement, the Commission is directed to “hold hearings, make investigations, analyze local needs” and to submit a report containing findings of fact and recommendations regarding the issue to the affected local governments.⁶ The Commission’s report on each proposed action must be based upon, as required by Section 15.2-2907 (B) of the Code of Virginia, “the criteria and standards established by law” for consideration in such action.

The criteria and standards prescribed for consideration in annexation issues are set forth in Chapter 32 of Title 15.2 of the Code of Virginia, principally in Section 15.2- 3209. That statute directs the reviewing court, and thus the Commission, to determine “the necessity for and expediency of annexation.” As a guide in determining such “necessity and expediency,” Section 15.2-3209 requires the reviewing entity to consider “the best interests of the people of the county and the city or town, services to be rendered and needs of the people of the area proposed to be annexed, the best interests of the people in the remaining portion of the county, and the best interests of the Commonwealth in promoting strong and viable units of government.” This statute also specifies a number of fiscal concerns, public service functions, community of interest factors, and State policies for evaluation in considering the best interests of the parties and the State.

The analysis and recommendations which follow in this report are based upon the Commission’s collective experience in local government administration and operation. The Commission leaves questions of law for appropriate resolution elsewhere. The Commission trusts that this report will be of assistance to the parties, the court, the citizens of the area, and the Commonwealth generally.

GENERAL CHARACTERISTICS OF THE TOWN, COUNTY, AND AFFECTED AREA

Town of Culpeper

The Town of Culpeper was established in 1759 by the Virginia House of Burgesses as the Town of Fairfax, but in 1870, the General Assembly changed the name to Culpeper.⁷ The Town is served by

⁵ One of these individuals submitted supplemental, written comment after also testifying before the Commission during the public hearing on May 8, 2019.

⁶ Section 15.2-2907(A), Code of Virginia.

⁷ “Culpeper History: Pre-Colonial History and The American Revolution,” Visit Culpeper, accessed April 4, 2019, <https://visitculpeperva.com/info-contact/culpeper-history.aspx>.

rail and four U.S. Highway routes and is the center of commerce and government in Culpeper County.⁸ The Town covers approximately 7.31 square miles, and the last time an annexation or boundary line adjustment occurred was in 2012 when the Town gained an additional 0.48 square miles as part of a Voluntary Settlement Agreement with Culpeper County.⁹

The Town of Culpeper's population increased from 16,379 to 18,413 persons, or by 12%, between 2010 and 2017.¹⁰ According to the Weldon Cooper population projections, the Town has a projected population growth of 28.82% between 2020 and 2040.¹¹ Based on its land area of 7.31 square miles and the 2017 population, the Town has a population density of 2,518.88 persons per square mile.

The population of the Town is younger and less wealthy than the State as a whole. As of 2017, the median age of Town residents was 32.9 years, compared with 38.0 for Virginia as a whole, and the percentage of the population that was age 65 or older was 12.0%, compared to 14.2% for Virginia.¹² With regard to income, the Census estimated that, in 2017, the Town's per capita income was \$25,808, which is 71.2% of the statistic for the Commonwealth as a whole (\$36,268).¹³ Conversely, unemployment in the Town (3.0%) is lower than the statewide average of 3.3%.¹⁴

Approximately 1,092 acres of the Town is undeveloped, and 54.12% (591 acres) of that amount is known to be constrained by floodplains and other developmentally constrained features.¹⁵ Of the remaining 501 acres of undeveloped land free of development constraints, approximately 354 acres comprise parcels of 5 acres or greater in size, with 267 acres as active or inactive agricultural farmland.¹⁶ This closely matches figures reported in the Town's Comprehensive Plan, which indicates that only 6.5% of the land area (269 acres) is undeveloped and can be considered for development.¹⁷ Additionally, based on the Comprehensive Plan data, 39.4% of the land area is devoted to residential uses, 14.5% to

⁸ Town of Culpeper, Town of Culpeper Comprehensive Plan (hereinafter cited as "Town Comprehensive Plan"), February 13, 2018, p. 77.

⁹ Commission on Local Government, Report on the Town of Culpeper – County of Culpeper Voluntary Settlement Agreement, November 2011 (hereinafter cited as "2012 VSA"). Boundary line adjustment was effective June 30, 2012. A copy of the Commission's Report on the 2012 VSA has been attached to this report as Appendix A.

¹⁰ United States Census Bureau, Census 2010 and 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018 Population Estimates.

¹¹ University of Virginia Weldon Cooper Center, Demographics Research Group. (2017). Virginia Population Projections. Retrieved from <https://demographics.coopercenter.org/virginia-population-projections>

¹² U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

¹³ Ibid.

¹⁴ Town of Culpeper, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2018.

¹⁵ Bobbi Jo Alexis, email attachment sent to Commission staff, April 25, 2019. The attachment contains responses to Commission staff's initial request for additional information (hereinafter referred to as the "Initial County Response to Staff Questions on Behalf of Town"). The Town and County both expressed concerns that Town responses could be interpreted as the Town inadvertently and unintentionally injecting position or advocacy in responding to questions, so all responses by the County on behalf of the Town were coordinated with the County to identify, share, and resolve any concerns in advance of such responses being submitted.

¹⁶ Initial County Response to Staff Questions on Behalf of Town. The Town claims that some of these totals are based on staff observations, and that there are approximately 87 undeveloped acres that have approved site plans for development.

¹⁷ Town Comprehensive Plan, pg. 53

commercial and institutional enterprises, 7.1% to industrial activity, 13% to public or semi-public uses and 11.8% to public rights-of-way.¹⁸

County of Culpeper

Culpeper County was established in 1749 from territory that was previously part of Orange County.¹⁹ Between 2010 and 2018, the County's population increased from 46,689 to 51,282, or by 9.8%.²⁰ On the basis of the 2018 population and an area of 383 square miles, the County has a population density of 133.9 persons per square mile.

With respect to the characteristics of its population, Culpeper County is demographically older and less affluent than the State as a whole; but, when compared to the Town, the County's residents are older and more affluent. The 2017 median age of County residents was 38.8 years, slightly more than the statewide median age (38.0) and much higher than the Town.²¹ Moreover, the percentage of its populace age 65 and over was 14.6%, which is higher than the rate for the State (14.2%) overall and Town.²² Regarding income, the 2017-estimated per capita income was \$29,979, or 82.7% of the comparable figure for the entire State (\$36,268) and Town.²³ In addition, unemployment in the County decreased to 3.0% in FY2018, which is the same rate for the Town and lower than the state average of 3.3% and national rate of 4.2%.²⁴

With regard to the nature of its economy, employment data indicate that, between 2009 and 2018, the number of nonagricultural wage and salary employment positions in the County increased from 14,499 to 15,949, or by 10.0%.²⁵ Between 2012 and 2017, the market value of agricultural products produced in the jurisdiction increased from \$42.7 million to \$48.5 million, an increase of over 13%.²⁶ The strength of Culpeper County's agricultural economy is further reflected by the 2015 Comprehensive Plan, which estimates that approximately 59.7% of the County's land area is comprised of agricultural and forestal land uses.²⁷

¹⁸ Town Comprehensive Plan, pg. 53.

¹⁹ Salmon, Emily J. and Edward D.C. Campbell Jr., The Hornbook of Virginia History, 4th ed. (Richmond: Library of Virginia, 1994), p. 163.

²⁰ University of Virginia Weldon Cooper Center, Demographics Research Group. (2019). Virginia Population Estimates. Retrieved from <https://demographics.coopercenter.org/virginia-population-estimates>

²¹ U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

²² Ibid.

²³ Ibid.

²⁴ County of Culpeper, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2018.

²⁵ U.S. Department of Labor, Quarterly Census of Employment and Wages; 2009 and 2018 (Online database), <https://data.bls.gov>

²⁶ United States Department of Agriculture, Census of Agriculture, 2012 and 2017 (Online database), <https://www.nass.usda.gov>

²⁷ County of Culpeper, County of Culpeper Comprehensive Plan (hereinafter cited as "County Comprehensive Plan."), September 1, 2015, p. 11-1.

Area Proposed for Annexation

The proposed annexation would incorporate into the Town of Culpeper an area consisting of approximately 120.62 acres located adjacent to the northeastern quadrant of the Town along Nalles Mill Road and immediately south of the Norfolk Southern rail line. The site is currently owned by the citizen, Caruso Odin, LLC, and contains a population of zero persons.²⁸ Based on data provided by Culpeper County, the site's most recent assessed value is \$523,400, but the site is part of the County's land use valuation program, which has a lower value of \$69,300.²⁹ Currently, the area is used for occasional agricultural purposes. While presently not urbanized, Caruso Odin, LLC, has a proposed development for the site consisting of 301 residential units.³⁰ The area is part of the Future Boundary Adjustment Area (FBAA) in the 2012 Voluntary Settlement Agreement between the Town and County.³¹

PUBLIC FINANCE PROFILES

The following is an examination of various indicators as they relate to the public finance profiles of the Town of Culpeper and Culpeper County. These measures are used to examine the overall fiscal health of each locality and can be used to assist with determining the relative abilities of the two localities to meet the service needs of the area proposed for annexation and any potential fiscal threat the proposed annexation may pose to either entity.

Population

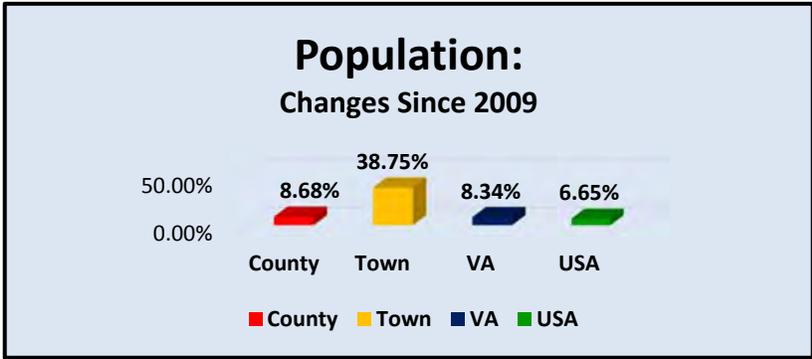
Changes in population can directly affect a locality's revenues, such as property tax collections, and cost of services. Population levels indirectly relate to such issues as employment, income, and property values. An increasing population is generally considered positive as long as the locality is prepared to take on the added service responsibilities. With respect to population, the biggest indicator of fiscal hardship is a dramatic change. If the population increases or decreases rapidly, then it may be difficult for the locality to react to the sudden change.

²⁸ Property Owner's Notice. Based on the Notice, the property was purchased by Caruso Odin, LLC in 2005.

²⁹ Bobbi Jo Alexis, email attachment sent to Commission staff, April 25, 2019. The attachment contains responses to Commission staff's initial request for additional information (hereinafter referred to as the "Initial County Response to Staff Questions").

³⁰ Caruso Odin submitted an application on October 13, 2015, seeking to rezone the property from Rural Agriculture (RA) to a modified R-3 cluster development called The Arbors at Culpeper. Such development would consist of 301 residential units (266 Village Lots and 35 Townhouses). At this time, neither the County Planning Commission nor the County Board of Supervisors have taken official action on the application. A copy of the site plan, application, staff report, and other relevant information have been included in Appendix B of this report.

³¹ 2012 VSA. Such agreement includes provisions allowing the Town of Culpeper to annex future areas identified in Future Boundary Adjustment Area beginning in 2022 based on certain density and development criteria mutually agreed to between the Town and County.

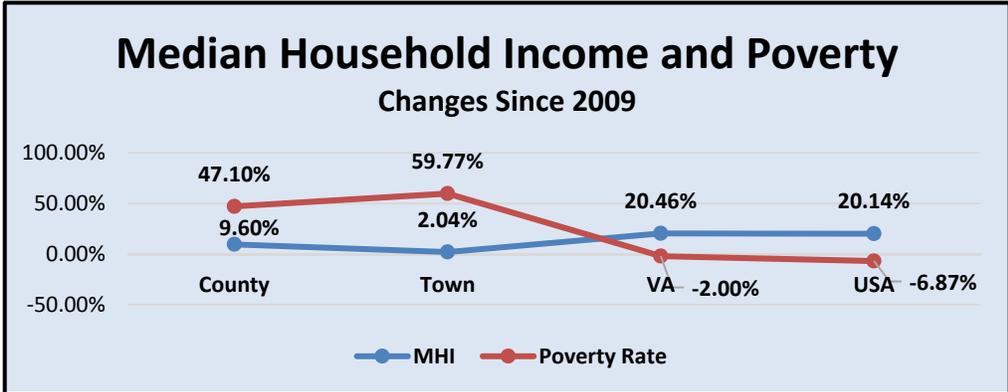


As seen in this chart, the Town of Culpeper’s population growth (38.75%) significantly outpaced Culpeper County’s population growth (8.68%) since 2009.³² Both jurisdictions also experienced population growth rates greater than the growth rates of the state and nation, but

the Town’s growth was also significantly higher, while County growth was much closer to the state growth. When controlling for the Town’s population, however, the County has experienced little to no population growth since 2009.³³

Median Household Income and Poverty

Median Household Income (MHI) is one measure of a community’s standard of living, and the economic health of a given area or population. Generally, the higher the MHI, the more property taxes, sales taxes, income taxes, and business taxes that a locality can generate. A higher MHI may mean a lower dependency on governmental services. A decline in MHI could result in losses to consumer purchasing power and therefore affect businesses, especially the retail sector, but there is potential for other ripple effects throughout the local economy. Similarly, another indicator, poverty, can affect the economic prosperity of a community and affect the need for government services and associated resources.



Since 2009, the County’s MHI growth (9.60%) outpaced the Town (2.04%); however, both figures fall below the rate for the Commonwealth

(20.46%) and nation (20.14%).³⁴ The poverty levels for both the County and Town are deteriorating and moving opposite from the state and nation. Both the state (-2.00%) and national (-6.87%) poverty rates

³² U.S. Census Bureau, 2005-2009 American Community Survey 5-Year Estimate; U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimate
³³ Ibid. The Town of Culpeper is a component unit and political subdivision within Culpeper County, so the County’s population includes the Town. When excluding Town population from Culpeper County, the County has almost no population growth since 2009.
³⁴ U.S. Census Bureau, 2005-2009 American Community Survey 5-Year Estimate; U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimate

have declined (improved); whereas, both Culpeper County (47.10%) and the Town of Culpeper (59.77%) have seen a significant increase in their poverty rates.³⁵ These factors could affect the local economy and tax bases in the near future.

Unemployment

The unemployment rate is a key way to measure the state of the economy. An increasing trend in the unemployment rate means the economy is in poor shape. Since 2009, the County, Town, State, and nation have seen significant declines in their unemployment rates, but the County's unemployment rate drop (-72.26%) outpaced the declining rates of the Town (-50.00%), State (-55.22%), and nation (-58.06%).³⁶ While the Town experienced the lowest drop comparatively, its declining unemployment rate indicates a growing tax base.



Real Property Value

Real property value is an important indicator because general property taxes account for approximately 35% and 10% of the County's and Town's operating revenues, respectively.³⁷ Higher aggregate property values generate greater property tax revenue, but the County's real property value is still recovering and remains below the 2009 assessed value.³⁸ Conversely, the Town of Culpeper appears to have recovered from the loss in value of its real property and has experienced modest growth of 0.23%.³⁹ As property values continue to increase and reach or exceed pre-recession levels, the County and Town have begun to decrease their real property tax rates, but these rates have yet to reach their pre-recession levels.⁴⁰

³⁵ U.S. Census Bureau, 2005-2009 American Community Survey 5-Year Estimate; U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimate

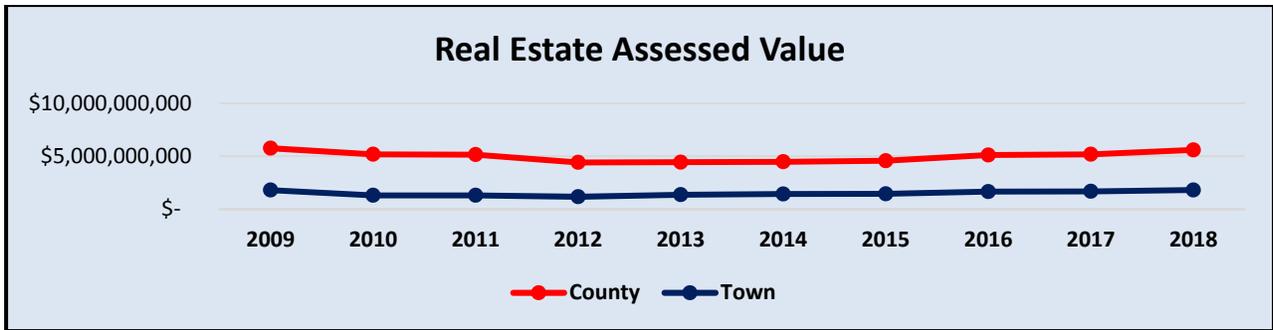
³⁶ Ibid.

³⁷ Virginia Auditor of Public Accounts, Local Government Comparative Reports, 2009 – 2017. Retrieved from http://apa.virginia.gov/APA_Reports/LG_ComparativeReports.aspx (hereinafter referred to as "Local Government Comparative Reports").

³⁸ Virginia Auditor of Public Accounts, County of Culpeper Comprehensive Annual Financial Report (CAFR) – 2009-2018, (hereinafter referred to as "County CAFRs"). (Table for Assessed Value of Taxable Property), 2009 Value - \$5,747,238,496 and 2018 Value - \$5,585,154,697.

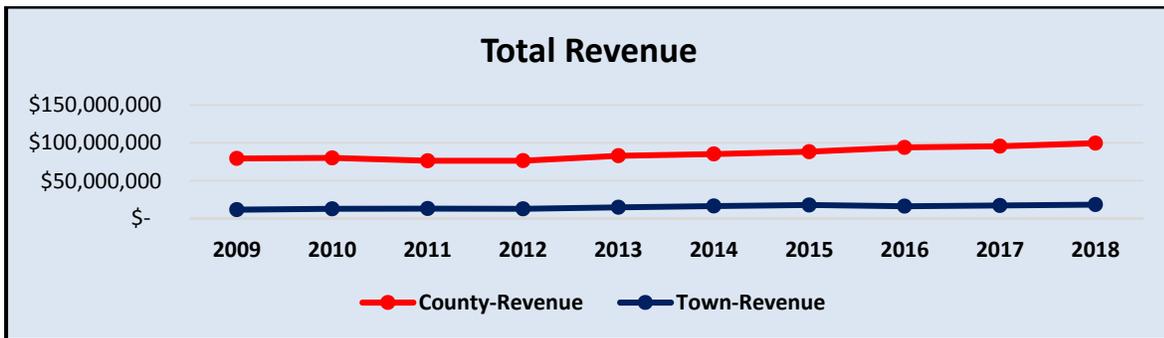
³⁹ Virginia Auditor of Public Accounts, Town of Culpeper Comprehensive Annual Financial Report (CAFR) – 2009-2018, (hereinafter referred to as "Town CAFRs"). (Table for Assessed Value and Actual Value of All Property), 2009 Value - \$1,785,785,500 and 2018 Value - \$1,789,850,200.

⁴⁰ Property Owner's Notice. County Rates per \$100 of assessed value: 2008 - \$0.61 and 2018 \$0.67, Town Rates per \$100 of assessed value: 2008 - \$0.09 and 2018 - \$0.1



Revenue

Revenue determines the capacity of a locality to provide services. Important issues to consider with respect to revenue are economic growth, diversity, reliability, flexibility, and administration. Revenue should be diversified by source so as not to be overly dependent on residential, commercial, or industrial land uses, or external funding sources such as Federal grants or discretionary State aid. Since 2009, both the County and Town’s dependence on real estate revenue declined by 18.23%, and 18.20% respectively.⁴¹ Culpeper County’s dependence on revenue from Public Service Corporations (PSC), and sales & use tax increased significantly by 14.97% and 22.03%, respectively.⁴² While the Town’s dependence on revenue from personal property and sales & use tax also increased significantly by 15.48% and 15.43%, respectively.⁴³



Real Estate Tax Revenue

Real estate tax revenue includes both current and delinquent real property tax revenue levied by the local government. Real estate tax revenue represents both Culpeper County and the Town of Culpeper’s largest revenue source.⁴⁴ A decline or diminished growth rate in real estate property tax revenue may indicate a number of potential problems in the locality’s revenue structure.

The County’s real estate tax revenue has seen steady growth over the ten-year period. Even though the County’s current real estate assessed value is below the 2009 assessed value, the revenue

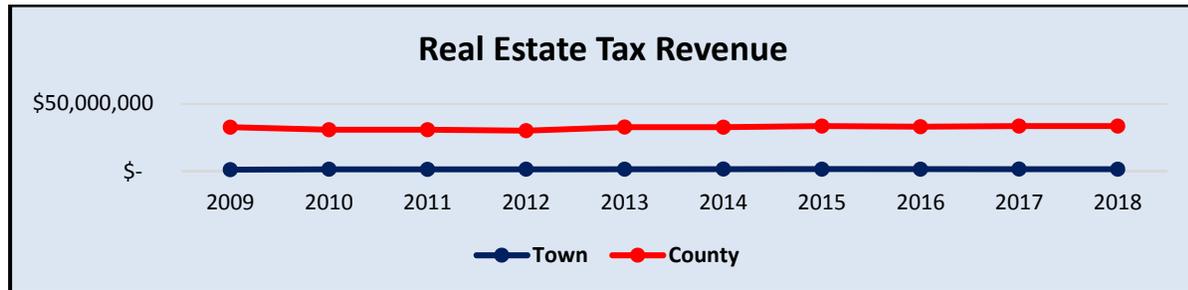
⁴¹ Local Government Comparative Reports.

⁴² County CAFRs.

⁴³ Town CAFRs.

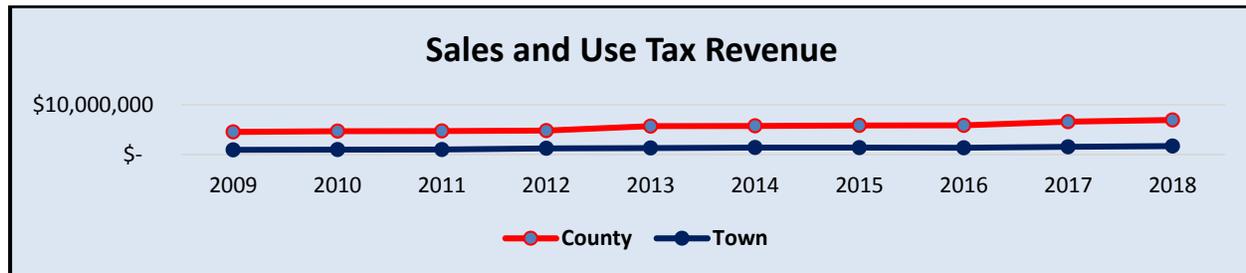
⁴⁴ Local Government Comparative Reports.

growth of 2.52% is due to higher levies compared to 2009.⁴⁵ The Town has also seen steady real estate tax revenue growth since the real estate assessed value is growing. Since 2009, Town's real estate assessed value increased by 0.2%, while their real estate tax revenue increased by 27.2%.⁴⁶ The growth in revenue is significantly higher than the real estate assessed value growth because higher levies were assessed than in 2009.⁴⁷



Sales & Use Tax Revenue

Sales & use tax represents one of the major revenue sources for the County and Town. Sales & use tax revenue has shown sustainable growth in the last 10 years. The growth of revenue from this source was 53.00% for the County and 79.4% for the Town.⁴⁸ The dependency of the County and Town on this revenue source also increased by 22.03%, and 15.43%, respectively.⁴⁹



Operating Position

Operating position refers to the locality's ability to balance its budget on a current basis, maintain reserves for emergencies, and maintain sufficient cash to pay its bills on a timely basis. This is measured in the following ways: (1) growth in revenues vs. growth in expenditures, (2) fund balance, (3) current liabilities, and (4) liquidity.

During a typical year, a locality will usually generate either an operating surplus (when revenues exceed expenditures) or an operating deficit (when expenditures exceed revenues). An operating surplus or deficit may be created intentionally as a result of a conscious policy decision, or may be created unintentionally because it is difficult to precisely forecast revenues and expenditures. When

⁴⁵ County CAFRs.

⁴⁶ Town CAFRs.

⁴⁷ Ibid.

⁴⁸ Local Government Comparative Reports.

⁴⁹ Ibid.

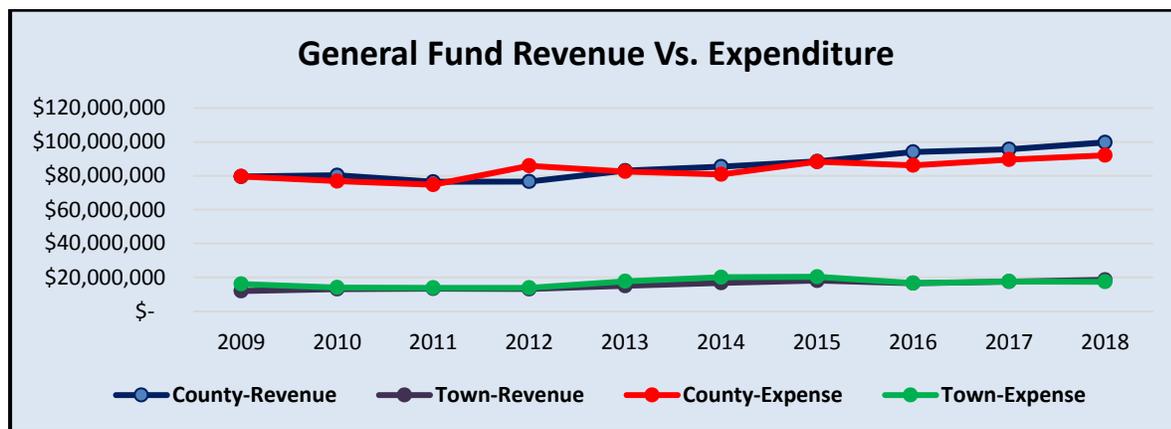
deficits occur, they are usually funded from accumulated fund balances. When surpluses occur, they are usually dedicated to building fund balances, paying down current debt, avoiding future debt, or to funding future years' operations.

Sufficient cash, or liquidity, refers to the flow of cash in and out of the locality's treasury. The locality receives many of its revenues at infrequent intervals during the year. It is to the locality's advantage to have excess liquidity or cash reserves as security in the event of an unexpected delay in receipt of revenues, an unexpected decline or loss of a revenue source, or an unanticipated need to make a large expenditure.

Growth in Revenue vs. Growth in Expenditures

Revenue vs. expenditure is the most basic measure of a locality's operating position. A locality's financial well-being can be gauged by looking at how much money was spent compared with the amount that was brought in. If more money is spent than is brought in, then the locality will have to make adjustments in order to maintain operations. If the expenditures are outpacing revenue too quickly then the locality will have to cut costs or decrease the level of services. The level of fund balances allows for a cushion in times when revenues do not meet projections. If expenditures outpace revenue long enough to bring fund balances down, then the ability to pay short term liabilities will be diminished.

The County's expenditures outpaced revenue in 2012.⁵⁰ During the years when revenues were higher than expenditures, the County was able to increase the fund balances. These fund balances allowed the County to continue to operate even when more money was spent than was coming in. The Town's unrestricted fund balance started to decline significantly in 2011 and then began to recover in 2013.⁵¹ However, it took until 2018 for the Town's revenue to outpace expenditures.⁵²



Fund Balance: All Funds

The level of unrestricted fund balances may determine the locality's ability to withstand

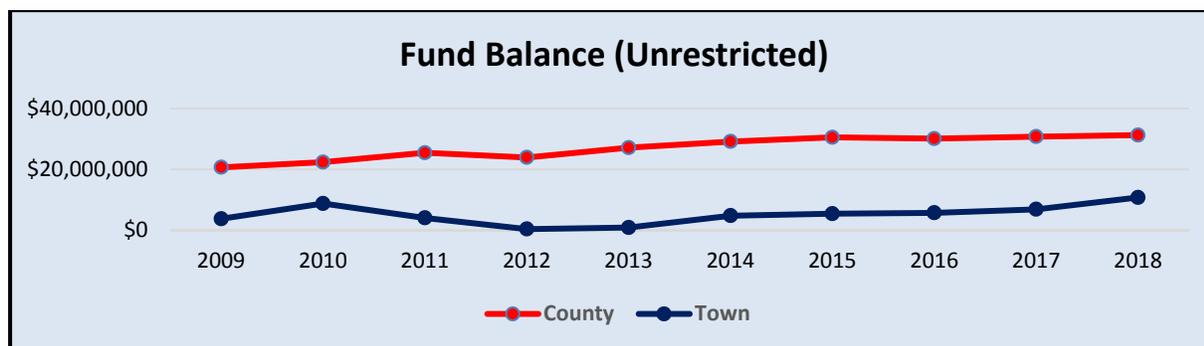
⁵⁰ County CAFRs.

⁵¹ Town CAFRs.

⁵² Ibid.

unexpected financial emergencies that may result from natural disasters, revenue shortfalls, unexpected maintenance costs, or steep rises in inflation. Fund balances may also determine the government’s ability to manage monthly cash flows or accumulate funds for large-scale purchases without having to borrow.

Over the ten-year period the County’s unrestricted fund balance as a percentage of operating revenue was between 25.93% and 34.48%.⁵³ The unrestricted fund balance dropped in 2012 from \$25.4M to \$23.8M, and started regaining from 2013.⁵⁴ The unrestricted fund balances growth since 2009 was 51.49%.⁵⁵ The County’s unrestricted fund balance is adequate and can cover over 4 months operating expenditures, which is well above the Government Finance Officers Association (GFOA) recommended fund balance (GFOA recommends the fund balance should at least cover two months of general funds operating expenditures). Over the same ten-year period, the Town’s unrestricted fund balance as a percentage of operating revenue was between 2.41% and 57.76%.⁵⁶ The unrestricted fund balance dropped in 2012 from \$4.0M to \$0.3M, and started regaining from 2013.⁵⁷ The unrestricted fund balance’s growth since 2009 was 86.28%.⁵⁸ The Town’s unrestricted fund balance is adequate and can cover over 7 months of the Town’s operating expenditures.⁵⁹



Current Liabilities

Current liabilities are defined as the sum of all liabilities due at the end of the fiscal year. These liabilities represent current annual portions of long-term debt and accrued compensated absences as well as all accounts payable and other accrued liabilities. An increasing amount of debt outstanding at the end of successive years can indicate liquidity problems, deficit spending, or both. Current liabilities are measured as a percentage of net operating revenues.

The County’s current liabilities as a percentage of operating revenue have declined by 62.3% since 2009.⁶⁰ That means the County is managing its debt efficiently and would not face any liquidity

⁵³ County CAFRs.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Town CAFRs.

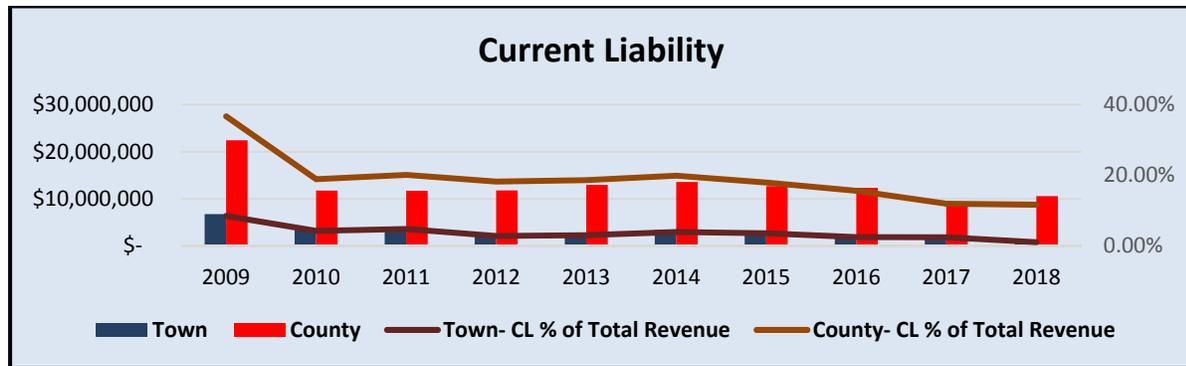
⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ County CAFRs.

problems. Since 2009, the County’s long-term debt also declined by 5%.⁶¹ During the same period, the Town’s current liabilities as a percentage of operating revenue also declined by 89.8%.⁶² That means the Town is also managing its debt efficiently and would not face any liquidity problems. The Town’s long-term debt increased by 185% for the same period.⁶³



Liquidity

A measure of a local government’s short-run financial condition is its cash position. Cash position includes cash on hand and in the bank, as well as other assets that can be easily converted to cash, such as short-term investments. The level of this type of cash is referred to as liquidity. Liquidity measures the government’s ability to pay its short-term obligations. Low or declining liquidity can indicate that the government has overextended itself in the long term.

Since 2009, the County’s liquidity reflects an upward trend, and both the current ratio and cash ratio are improving significantly.⁶⁴ The current ratio increased by 190%, whereas the cash/quick ratio increased by 213.2%.⁶⁵ A ratio of 1 would mean the County will have enough cash on hand to cover current liabilities. The County’s 2018 current ratio (current assets divided by current Liabilities) is 4.33 and the cash/quick ratio (cash/quick assets divided by current liabilities) is 3.25.⁶⁶ During the same period of time, the Town’s liquidity also reflects an upward trend, and both the current ratio and cash ratio are improving significantly. The Town’s current ratio increased by 954.6%, and cash/quick ratio increased by 906.5%.⁶⁷ In 2018, the Town’s current ratio was 15.85, and the cash/quick ratio was 7.51.⁶⁸

⁶¹ County CAFRs.

⁶² Town CAFRs.

⁶³ Ibid.

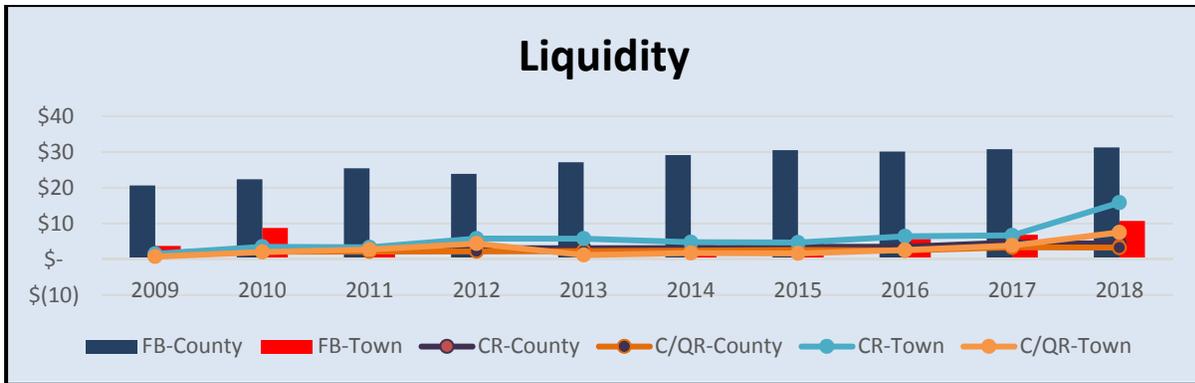
⁶⁴ County CAFRs.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Town CAFRs.

⁶⁸ Ibid.



Debt Structure

Debt structure is important because debt is an explicit expenditure obligation that must be satisfied when due. Debt can be an effective tool to finance capital improvements and to smooth out short-term revenue flows; however, its misuse can cause serious financial problems. Even a temporary inability to repay debt can result in loss of credit rating, increased borrowing costs, and loss of autonomy to State and other regulatory bodies.

When a locality issues debt for capital projects, it must ensure that aggregate outstanding debt does not exceed the community's ability to pay debt service as measured by the property value or by the revenue generated by the locality. Under the most favorable circumstances, the debt should meet numerous factors. It should be proportionate in size and growth to the locality's tax base. It should not extend past the useful life of the facilities that it finances, nor should it be used to balance the operating budget of the locality. Furthermore, repayment schedules for such debt should not put excessive burdens on operating expenditures and should not be so high as to jeopardize the locality's credit rating.

Long-Term Debt and Debt Service

Long Term Debt

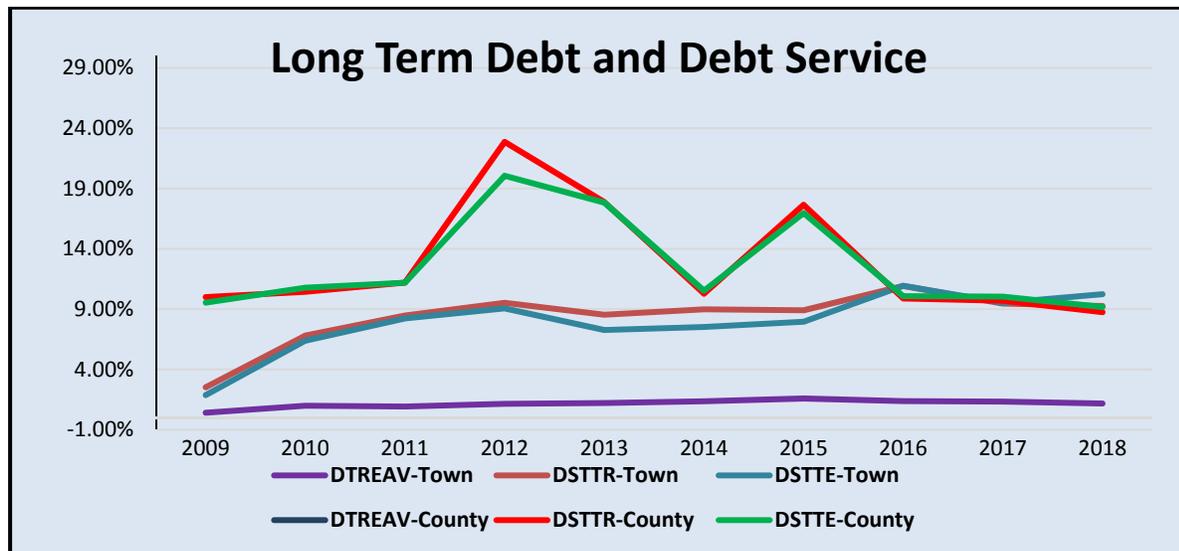
A government's ability to repay its debt is determined by comparing net direct long-term debt to assessed valuation. An increase of net direct debt as a percentage of assessed property valuation can indicate diminishing ability to repay debt obligation. If long-term debt were to exceed a local government's resources for paying the debt, the government may have difficulty obtaining additional capital funds, may have to pay a higher rate of interest for them, and may have difficulty repaying existing debt.

Debt Service

Debt service is defined as the amount of principal and interest that the County must pay each year on long-term debt plus the interest it must pay on direct short-term debt. As the debt service increases, it adds to the locality's obligations and reduces the locality's expenditure flexibility. Debt service can be a major part of the locality's fixed costs and its increase may indicate excessive debt and fiscal strain. When debt service reaches 20% of operating revenue, it is considered a potential problem. Debt service at 10% of operating revenue or less is considered acceptable.

Since 2009, County’s net direct debt as a percentage of assessed valuation has declined by 2.2%.⁶⁹ Also, the County’s debt service payment is below 9% of its operating revenue, and below 10% of its operating expenditure.⁷⁰ Since 2009, debt service to total operating revenues declined by 12.58%, and debt service to total operating expenditure declined by 3.76%.⁷¹

During the same period, the Town’s net direct debt as a percentage of assessed valuation has increased by 184.4%.⁷² The Town’s debt service payment is 9.26% of its operating revenue, and 10.26% of its operating expenditure.⁷³ Since 2009, the Town’s debt service to total operating revenue increased by 267.40%, and debt service to total operating expenditure increased by 447.15%.⁷⁴



STANDARDS FOR REVIEW

As a previous section of this report has noted, the Code of Virginia directs this Commission, and ultimately the court, to consider in each annexation issue the necessity for and expediency of such annexation petition. Included within that standard, the Commission and special court are directed to consider (1) the best interests of the municipality and county, (2) services to be rendered and needs of the people of the area proposed for annexation, (3) best interests of the people in the remaining portion of the County, and (4) the best interests of the Commonwealth in promoting strong and viable units of local government.⁷⁵ The annexation statutes prescribe a series of factors for consideration in such evaluation, and the following sections of this report constitute the Commission’s analysis of these various considerations.

⁶⁹ County CAFRs.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Town CAFRs.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Section 15.2-3209, Code of Virginia.

Need of the Town to Expand Tax Resources

Based on the fiscal analysis presented in the Public Finance Profiles section of this report, the Town of Culpeper remains a vigorous and economically viable municipality, but there is evidence to suggest that the Town would benefit from increasing its tax base. The data reveals that between 2009 and 2018 the total assessed value of taxable property in the Town rose by 1.7%.⁷⁶ During the same span of years, the total assessed value of taxable property in the County increased by 4.8%.⁷⁷ As of 2018, the per capita true value of the total taxable property in the Town (\$109,846) was less than that in Culpeper County (\$130,562).⁷⁸ Since 2009, the per capita assessed value of total taxable property for Culpeper County declined by 3.6%, while it declined by 26.7% for the Town.⁷⁹

The Town's MHI growth (2.04%) is less than the County's MHI growth (9.60%), which may indicate less purchasing power of the Town's population compared to County. The Town's long-term debt increased by 185%, while the County's long-term debt declined by 5%. Per capita long-term debt for the Town has also increased by 105%, but declined for the County by 12.55%. The Town's debt to asset, debt service to total revenue, debt service to total expenditures, and debt service increased by 66.00%, 267.00%, 447.00%, and 473.10%, but declined for the County by 1.00%, 12.6%, 3.80%, and increased by 4.30%, respectively. Therefore, any addition of developed, taxable property in the Town's corporate limit could improve the Town's per capita debt burden and debt capacity.

Further, the data also reveal that Town taxpayers bear a substantially higher local tax burden, whether measured on a per capita basis or as a percentage of resident MHI, than do those in the County. Based on all of the evidence cited above, the Commission finds that the Town may have a need to expand its tax resources. However, the Commission would like to note the general nature of how expansion of certain types of tax resources can provide a net gain in tax revenue for localities, while others can yield a net loss in tax revenue for localities.⁸⁰ Depending on how the Town's tax resources were to expand with future development in annexed areas, the Town may or may not realize a net gain in tax resources.

Need of the Town for Land for Development

As indicated previously, there are approximately 1,092 acres of undeveloped land located in the Town, but over half of that total (591 acres) is developmentally constrained.⁸¹ Some of remaining vacant property free of major environmental constraint is affected in its development potential by other appropriate factors such as parcel size, proximity to transportation arteries, adjacent development, and

⁷⁶ Town CAFRs.

⁷⁷ County CAFRs.

⁷⁸ Town CAFRs. County CAFRs.

⁷⁹ Ibid.

⁸⁰ In a general sense, commercial and industrial development can yield a net gain in revenue for localities, while other developments such as residential can yield a net loss in revenue for localities because service costs may outweigh the additional revenue received at the local level. Overall, such factors would need to be evaluated on a case-by-case basis.

⁸¹ Initial County Response to Staff Questions on Behalf of Town.

zoning restrictions. While the Commission recognizes that environmental factors, land ownership patterns, and locational concerns are not absolute barriers to the development of land, they do render sites less attractive to potential developers and may, indeed, constitute major impediments to development. In controlling for size alone, of the remaining undeveloped and developmentally suitable land, 237 acres (40.1%) are parcels less than 5 acres in size.⁸²

While the future development proposal sought by Caruso Odin is residential in nature, previous Commission reports on this matter have included an examination of vacant land organized by generic land use categories, including residential land use. The Commission notes, however, that Section 15.2-3209 of the Code of Virginia requires an examination of “the need for the city or town seeking to annex to obtain land for industrial or commercial use.” In keeping with precedent of past reports, the Commission has elected to examine residential land needs for purposes of this report in addition to industrial and commercial uses.

Accordingly, when filtering the information on undeveloped and developmentally suitable sites based on industrial land use type, approximately 57.4 acres are on properties zoned for industrial use.⁸³ This could reasonably be presumed to represent one way of analyzing Culpeper’s potential for future industrial growth. Conversely, approximately 740.78 acres of the County of Culpeper – excluding those acreages located within the Town – are zoned for industrial use.⁸⁴ Moreover, there are three sites representing a total of 364.95 acres that are promoted by VEDP within the County, but none of these sites are within the Town of Culpeper.⁸⁵ Overall, the evidence suggests that there could be a need for the Town for additional land for industrial development.

When examining this information for the need for commercial land, the data reveals that there are approximately 11.4 acres of land zoned for commercial purposes in the Town of Culpeper that are free from development constraints.⁸⁶ The County, on the other hand, contains approximately 190.32 acres of large tract, undeveloped, commercially zoned land.⁸⁷ Approximately 313 permits were issued for commercial developments in the Town between 2008 and 2017, while 292 permits were issues for the County.⁸⁸ While it appears the Town and County share similar commercial development trends, the evidence suggests there could be a need for additional land for commercial development for the Town.

⁸² Initial County Response on Behalf of Town. The Town claims that some of these totals are based on staff observations, and that there are approximately 87 undeveloped acres that have approved site plans for development.

⁸³ Bobbi Jo Alexis, email sent to Commission staff, June 7, 2019. The email contains responses to Commission staff’s second round of request for additional information (hereinafter referred to as the “Second County Response on Behalf of Town”).

⁸⁴ Bobbi Jo Alexis, email sent to Commission staff, June 7, 2019. The email contains responses to Commission staff’s second round of request for additional information (hereinafter referred to as the “Second County Response”).

⁸⁵ Email from Lindsay Barker, Virginia Economic Development Partnership. The three sites are Wingspread Industrial Site, Crown Jewell, and Crown Jewell 2.

⁸⁶ Second County Response on Behalf of Town.

⁸⁷ Second County Response.

⁸⁸ Second County Response on Behalf of Town. Second County Response.

Finally, when examining the need for land for future residential development, the data reveal that there are approximately 285.2 acres of undeveloped land zoned for residential uses in the Town free from development constraints.⁸⁹ For the County, this figure exceeds 4,000 acres.⁹⁰ Furthermore, between 2008 and 2017 the Town issued approximately 642 permits for residential development.⁹¹ This rate of residential growth is slightly lower in the County, which issued 534 permits during that same period.⁹²

Caruso Odin has also offered information pertaining to the projected population growth for the Town and County that suggests there will be additional demand for residential growth in both localities through 2040. Based on projections provided by the Weldon Cooper Center, the Town and County are projected to experience population growth at rates higher than the statewide rate for 2020, 2030, and 2040.⁹³ Furthermore, Caruso Odin has provided evidence from the County's Comprehensive Plan that suggests there will be a need for over 10,000 new housing units (a 57% increase above existing figures) in the County between 2015 and 2040, which includes the Town.⁹⁴ The Town's Comprehensive Plan also contains more goals that are specific as they relate to affordable housing and increased household sizes, and Caruso Odin has claimed that their proposed development would help address this need of the Town through alternative housing options, which also include units with features to accommodate a variety of age demographics. When considering this preliminary analysis of land available for residential development, the evidence suggests that there may be insufficient land within the Town to accommodate this demand.

As a counter to Caruso Odin's claims, the County has suggested that the Town has adequate land available for future residential development. Accordingly, they have offered that there are about 900 approved lots within three developments near the property that are undeveloped or underdeveloped.⁹⁵ The County argues that given the large volume of remaining, unbuilt lots, the Town's need for land for future development – including that of a residential nature – is premature. However, as indicated by Caruso Odin, these developments are outside of the Town limits; and, therefore, may not entirely represent the Town's availability of land for residential development.⁹⁶

⁸⁹ Second County Response on Behalf of Town.

⁹⁰ Second County Response.

⁹¹ Initial County Response to Staff Questions on Behalf of Town.

⁹² Initial County Response to Staff Questions, Appendix H.

⁹³ Property Owner's Notice. Between 2020 and 2030, the projected rates for the Town, County, and State are 14.41%, 18.34%, and 9.17%, respectively. Between 2030 and 2040, the projected rates for the Town, County, and State are 12.59%, 13.81%, and 6.85%, respectively.

⁹⁴ Ibid. The County also has indicated that consideration of the needs of the Town of Culpeper is part of the estimated and projected figures included in its analysis, but that the Town also has its own unique housing goals separate from the County in the Town's Comprehensive Plan.

⁹⁵ Testimony of Sam McLearen, Planning Director and Zoning Administrator for Culpeper County, Oral Presentations, May 8, 2019.

⁹⁶ Property Owner's Proposed Findings of Fact and Recommendations, June 7, 2019. In their Proposed Findings of Fact and Recommendations, Caruso Odin has pointed out that the three cited subdivisions are on the Town-County border, and in one case one mile from the Town limits.

While this number would appear to depict a significant development pipeline of pending new units, Caruso Odin, has offered countering evidence that reduces the total number of unbuilt lots significantly (by over 90%) because of a moratorium between the Town and one of the developments that contains approximately 780 unbuilt lots.⁹⁷ In support of this claim, Caruso Odin has also submitted evidence of the Moratorium Agreement between the Town and developer. Under this agreement, the developer advised the Town that it does not intend to develop the remainder of the property for the foreseeable future.⁹⁸ Furthermore, development on the site is halted until the developer or its successor provides the Town with sufficient performance bonds, escrow, and surety related to public improvements and erosion and sediment control on the site.⁹⁹

In response to this claim, the County claims the developer would be able to proceed with building the rest of its approved development when the erosion and sediment control bond is re-posted and that, consequently, such development should be factored as land available for residential development for the Town because the moratorium does not negate the development entirely.¹⁰⁰ Furthermore, the County argues that the very nature of an agreement that would halt or pause such a significantly large development would contradict the claim that there is a significant and immediate need for additional housing units by the Town.¹⁰¹

In review of the facts and claims made relative to this factor, the Commission observes that there may be a need for the Town for land for future development, but there are factors that either reduce or negate this need, overall. First, the standards for review direct the special court and this Commission to examine commercial and industrial needs, and the Commission agrees that there is such a need, but such need is not met by the development proposed by Caruso Odin. Second, while the standards are silent on examining the need for land for residential development, and in light of past Commission reports and the residential nature of Caruso Odin's proposed development, the Commission feels obliged to consider this matter. In this case, the Commission agrees that there could be a reasonable need for the Town for additional land for residential development; however, the Town has some degree of control over some of their build-out and therefore is in a position to meet this need for the foreseeable future with existing residentially zoned land. Finally, the Town and County have entered into an agreement through the 2012 Voluntary Settlement Agreement that permits the Town to incorporate additional territory within specified areas of the County that satisfy certain eligibility criteria.¹⁰² It is possible that such incorporations could then provide the Town with additional developed land.

⁹⁷ Testimony of Mr. John Foote, counsel for the Property Owner, Oral Presentations, May 8, 2019. Caruso Odin also provided additional evidence confirming such moratorium in a letter from Ms. Sarah Mernin, counsel for the Property Owner, on May 22, 2019. Of the 1,012 units proposed, only 220 have been built and the remaining 792 lots are subject to a moratorium

⁹⁸ Letter from Sarah Mernin. May 22, 2019, Exhibit A, Moratorium Agreement between Three Flags/Culpeper, LLC, Three Flags Investment II, L.C., and the Town of Culpeper.

⁹⁹ Ibid.

¹⁰⁰ County's Proposed Findings of Fact and Recommendations. June 7, 2019.

¹⁰¹ Ibid.

¹⁰² 2012 VSA. Article III.

Impact on the County

Overall, from a tax base and service delivery perspective, the impact of the proposed annexation on Culpeper County would be minimal. The site is presently undeveloped and not identified for commercial or industrial development in the County's Comprehensive Plan.¹⁰³ Therefore, annexation of the site would not deprive the County of any significant future economic development prospects. Moreover, the County would still have jurisdiction regarding the collection of real estate and personal property taxes to the proposed annexation area, so the County would not lose any significant revenues but would instead fiscally share in the benefit of the site's future development with the Town. Finally, there are no existing County facilities within the area proposed for annexation, and the Town assumption of some service delivery to the site could reduce County responsibilities in some ways.

Urban Service Considerations

Water and Sewer Service

The Town of Culpeper's water treatment plant, which uses Lake Pelham as its raw water source, can receive and treat 4.0 MGD.¹⁰⁴ The Town also has access to six groundwater connection wells with a total capacity of 2.0 MGD.¹⁰⁵ Two of these groundwater connection wells and an accompanying treatment facility are located on the Caruso Odin site, and the land for such was provided by the property owner.¹⁰⁶ There are approximately 95 miles of water lines contained in the Town and an additional 11 miles located in Culpeper County.¹⁰⁷ In 2018, the water system consumed an average of 2.1 MGD, or about one third of its 6.0 MGD capacity.¹⁰⁸ The Town also owns and operates a sewage collection system with a capacity of 6 MGD and average annual daily flow for 2018 of 3.6 MGD.¹⁰⁹ This system is approximately 88 miles in length in the Town limits with an additional 10 miles serving areas of Culpeper County.¹¹⁰

The County's recently approved Water and Sewer Master Plan Update addresses the need for water and sewer distribution to support anticipated growth in the County, but the County does not provide water and sewer service to the Caruso Odin site.¹¹¹ Instead, the Caruso Odin site is part of an area designated by the Town and County for Town-operated service under the governance of a 2012 Voluntary Settlement Agreement.¹¹² This agreement makes the Town the exclusive provider in a Water

¹⁰³ While a mixed use designation could include commercial uses and even some light industrial types of uses, the intensity of these factors in mixed use developments is normally much lower.

¹⁰⁴ Initial County Response to Staff Questions on Behalf of Town.

¹⁰⁵ Ibid.

¹⁰⁶ Property Owner's Notice.

¹⁰⁷ Initial County Response to Staff Questions on Behalf of Town. Initial County Response to Staff Questions.

¹⁰⁸ Initial County Response to Staff Questions on Behalf of Town.

¹⁰⁹ Ibid.

¹¹⁰ Initial County Response to Staff Questions on Behalf of Town. Initial County Response to Staff Questions.

¹¹¹ Initial County Response to Staff Questions.

¹¹² 2012 VSA.

and Sewer Service Area (WSSA) for the duration of the agreement.¹¹³ The agreement also establishes a unified water and sewer rate structure for both in-Town and out-of-Town customers and obligates the Town to permit connections within the WSSA up to 1.5 MG capacities for water and wastewater, each.¹¹⁴

At the present time, there is minimal need for water and sewer services from the Town in the area proposed for annexation. However, future development, such as that proposed by Caruso Odin, will likely depend on this service and may, in fact, be required to connect to such system based upon the County's mandatory connection ordinance.¹¹⁵

While it is clear that the Town is the logical provider for water and sewer services based on the above information, this Commission is of the opinion that it should not be a factor in the evaluation of the level of such service between the Town and County. This matter was settled between the two localities as part of their 2012 Voluntary Settlement Agreement (VSA), which evolved from a prior water and sewer agreement in 2003 that appears to be part of the impetus for the 2012 VSA.¹¹⁶ As part of the 2012 VSA, the County and Town agreed that it was in the best interests of residents of the Town and County to avoid duplication of water and sewer facilities serving the Town and surrounding urban and urbanizing areas of the County.¹¹⁷ Consequently, the County thereby relinquished its authority to provide water and sewer services in a specified Future Boundary Adjustment Area (FBAA) in exchange for conditions from the Town such as a unified water and sewer rate structure to in-Town and out-of-Town customers.¹¹⁸ Therefore, the Commission believes that the settlement of such matters through agreements between localities should then be considered as if both localities have met this need.

Solid Waste Collection and Disposal

The Town of Culpeper provides weekly solid waste collection services to its residents and small businesses, free of charge and disposes of its refuse at Culpeper County's transfer station.¹¹⁹ In addition, seasonal collection of leaves and Christmas trees is provided in residential areas.¹²⁰ Conversely, Culpeper County does not provide any solid waste collection services to its residents and businesses. County residents can dispose of their household waste at County-operated trash collection sites or contract with a private entity for garbage collection.¹²¹

While there is not presently a need for solid waste collection and disposal services to the area proposed for annexation, there could be at some point in the future as the site is developed. The higher

¹¹³ 2012 VSA, Article VI. County sewer customers served by the Greens Corner Wastewater Treatment Plant will not become Town customers until such time as the Town connects those customers to the Town's sewer system via the sewer line extension discussed in Section 10.3 of the Agreement.

¹¹⁴ Ibid.

¹¹⁵ 2012 VSA, Article VI.

¹¹⁶ 2012 VSA, Recitals.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Initial County Response to Staff Questions on Behalf of Town.

¹²⁰ Ibid.

¹²¹ Initial County Response to Staff Questions. The nearest solid waste collection facility provided by the County is at the Laurel Valley Transfer Station, which appears to be about 6.5 miles west of the site.

level of service provided by the Town of Culpeper would more greatly benefit the site. In the Commission's judgment, the provision of a regular, free municipal solid waste collection service does encourage the proper and timely disposal of refuse and adds benefit to the sanitary quality of an area.

Planning, Zoning, and Subdivision Regulation

The Town of Culpeper conducts its public planning efforts with the assistance of a five-member planning commission and guidance of a comprehensive plan that was adopted in 2016 and was recently amended in 2018.¹²² With respect to development controls, the Town has zoning and subdivision ordinances to assist in the management of its physical development and that mandate the installation of curbs, gutters, sidewalks, and streetlights in most circumstances.¹²³ Within the core historic area of the Town, a five-member architectural review board supplements the development standards with historic preservation measures.¹²⁴ The zoning ordinance also contains provisions authorizing the use of conditional zoning, which enables the locality to mitigate the impact of development on public resources and concerns. Voluntary cash proffers are also accepted as part of the conditional zoning process to help offset needs that have been identified in the Town's adopted capital improvements program, which was last updated in June 2018.¹²⁵

The County also utilizes a planning commission and a comprehensive plan to help guide its development.¹²⁶ The County's current comprehensive plan, adopted in 2015, is supplemented by a five-year capital improvements plan that was updated in May 2018.¹²⁷ In addition, the County also utilizes zoning and subdivision ordinances and has authorized conditional zoning.¹²⁸ With respect to development standards, the County has established an architectural review board that is tasked with protecting the aesthetic character of major corridors that lead into the Town.¹²⁹ Within new subdivisions, the county's subdivision ordinance does require sidewalks or other pedestrian facilities in some situations, but otherwise does not mandate installation of other amenities such as curbs and gutters and streetlights.¹³⁰ The County claims that a residential developer, such as Caruso Odin, may voluntarily develop to the more restrictive Town standards.¹³¹ Though the County does not have a formal policy regarding the acceptance of cash proffers, it has historically accepted such payments.¹³²

Following the effective date of the proposed annexation, the area proposed for annexation would be subject to the Town's comprehensive planning and accompanying ordinances. Moreover, the

¹²² Property Owner's Notice.

¹²³ Ibid.

¹²⁴ Town of Culpeper, Code of the Town of Culpeper, Chapter 27, Zoning, Article V, Historic District.

¹²⁵ Initial County Response to Staff Questions on Behalf of Town.

¹²⁶ Property Owner's Notice.

¹²⁷ Initial County Response to Staff Questions.

¹²⁸ County of Culpeper, Code of the County of Culpeper, Appendix A, Zoning Ordinance, Article 29, Conditional Zoning and Appendix B, Subdivision Ordinance.

¹²⁹ Ibid., Appendix A, Zoning Ordinance, Article 30, Entrance Corridor Overlay District and Article 30A, Architectural Review Board.

¹³⁰ Initial County Response to Staff Questions.

¹³¹ Testimony of Bobbi Jo Alexis, Culpeper County Attorney, Oral Presentations, May 8, 2019.

¹³² Commission on Local Government, Report on Proffered Cash Payments and Expenditures By Virginia's Counties, Cities and Towns, FY2017-FY2018.

Town's Code contains provisions for transitional zoning categories for newly annexed areas.¹³³ In the Commission's judgment, both localities have well-functioning systems to support planning and development control within their jurisdictions, but the Town provides a more robust system, especially in terms of its mandatory requirements for the installation of curb and gutter, sidewalks, and other more urbanized amenities within developments. In the event of future development of the Caruso Odin site, the public health, safety, welfare, and convenience of the citizens may be better served by and benefit from the application of the Town's mandatory development control policies. However, the Commission would also like to add that the County does have the power to accept conditions that may meet these higher standards.

Crime Prevention and Detection

In addition to being served by the law enforcement activities of the Culpeper County Sheriff's Office, the Town is also served by a police department. The Town's police department is served by 42 sworn officers, which translates into one sworn officer for every 428 Town residents and approximately six sworn officers for every square mile of Town territory.¹³⁴ Based on 2018 measures, the Town's average response time for their highest priority calls was 1.43 minutes and more routine calls was 9.32 minutes.¹³⁵ As mentioned previously, the County and Town law enforcement agencies cooperate, especially in the event of larger scale calls for service, which will result in the support of the other agency upon request. The two entities also share an E911 Public Safety Communications Center.¹³⁶

The Culpeper County Sheriff's Office, which is headquartered in the Town, has primary law enforcement responsibility for areas outside of the Town limits. The patrol division responds to over 50,000 calls for service every year and patrols approximately 389 square miles.¹³⁷

The Commission has no knowledge of any law enforcement problems within the annexation area. However, it is reasonable to assume that development of the area in addition to its close proximity to the denser Town could create a more significant need for this service. The Commission believes the permanent extension of the Town's law enforcement services into this area could contribute to more immediate and intense public safety services, thereby providing some potential relief to the County Sheriff's Office.

Fire Protection and Rescue Services

Fire protection services are provided by the Culpeper County Volunteer Fire Department, which is jointly supported by the Town and County.¹³⁸ Approximately 400 volunteers contribute service to this

¹³³ Property Owner's Notice. If annexed, the property would automatically be rezoned to a transitional zoning category, Town Agriculture (TA), pursuant to the Town's Code. Evidence provided by the County indicates that this would increase the allowable density of the site from one unit for every three acres to one unit per acre.

¹³⁴ Ibid.

¹³⁵ Initial County Response to Staff Questions on Behalf of Town.

¹³⁶ Initial County Response to Staff Questions.

¹³⁷ Property Owner's Notice. Commission Staff attempted to collect more information on the County Sheriff's Office; however, phone calls and email requests for additional information were unsuccessful after several attempts.

¹³⁸ Initial County Response to Staff Questions.

department.¹³⁹ Based upon their fire suppression capabilities, the County's Volunteer Fire Department is are classified "5/5Y" by the Insurance Services Office (ISO) in terms of their exposure to fire loss.¹⁴⁰ The County's Office of Emergency Services also employs 24 full time employees, including 20 field providers, to provide emergency medical assistance and support to calls for service, including being dispatched to fire calls.¹⁴¹

Because the site is undeveloped, there is not a need for additional fire and emergency services at this time; however, future development of the site will inevitably lead to more calls for service. Since water service is generally available to the area proposed for annexation, future development will benefit from the same level of fire protection as many other areas with similar service do as additional fire hydrants are installed. Furthermore, based on the intensity of any future development, it is also reasonable to assume that there will be more calls for service to the County's Office of Emergency Services.

Public Works

The Town of Culpeper's Public Works Department provides for maintenance of over 150 miles of streets within the Town limits.¹⁴² The Town receives urban roadway maintenance funding from the Virginia Department of Transportation (VDOT). Other Public Works responsibilities include snow removal, street cleaning, grass mowing, and right-of-way maintenance.¹⁴³ Furthermore, the Department is also responsible for the maintenance of approximately 70 miles of sidewalks, all curbs and gutters, and streetlights. In conjunction with these services, and as previously mentioned, the Town currently requires the installation of curbs, gutters, and sidewalks in most new developments.

Culpeper County's street maintenance needs – including street lighting and storm drainage – is provided by VDOT.¹⁴⁴ As previously stated, the County does not require installation of curb and gutter, sidewalks, and other more urbanized right-of-way features as frequently as the Town. Other services such as snow removal and grass mowing are also the responsibility of VDOT.

While the site is presently undeveloped, its future buildout could benefit from application of the Town's policies and procedures for the construction, maintenance, and operation of various public works. Again, while Culpeper County's claims that such public works features could be voluntarily provided by a developer such as Caruso Odin, the Town of Culpeper's policies and procedures are, in the Commission's view, representative of a more established set of minimum standards properly designed to meet the needs of urbanizing areas. Furthermore, if built to certain standards and made a part of the Town, roadways within the proposed development would be eligible for VDOT urban roadway maintenance funds. Such policies and procedures may provide a more comprehensive benefit to the future needs of the area proposed for annexation.

¹³⁹ Initial County Response to Staff Questions.

¹⁴⁰ Ibid. Ratings are on a scale of 1 to 10, with 1 being best. Median and average scores are about a 5.

¹⁴¹ Ibid.

¹⁴² Property Owner's Notice.

¹⁴³ Ibid. The Town provides snow and ice removal to any roads that are not state owned and maintained.

¹⁴⁴ Ibid. the County is part of VDOT's Culpeper District, which serves nine counties.

Public Recreation

The Town's Public Works Department manages four parks, including a park outside Town limits that is owned and operated by the Town, while a master plan is underway for another 32-acre site that will provide additional recreational amenities.¹⁴⁵ Culpeper County offers over 450 acres of additional recreational opportunities within eight different facilities, but some of these sites are presently undeveloped.¹⁴⁶ Culpeper County also offers daycare as part of its recreational programs.¹⁴⁷ Residents of the Town and County may access the recreation facilities of either; and, the County is working on an evaluation of the consolidation of the Town and County park systems.¹⁴⁸

Given the undeveloped nature of the site, there are no recreational needs to be met. However, both entities have made their facilities available to residents of either jurisdiction, so both entities would be able to fulfill recreational needs generated by future development of the site. It should also be noted that the proposed development submitted by Caruso Odin contains several recreational amenities that would be provided to the residents of the proposed development.¹⁴⁹

Library Facilities

Culpeper County provides library services for residents of the Town and County through the Culpeper County Library. The facility houses over 90,000 items and provides references services and community programs.¹⁵⁰ Based on the County's 2015 Comprehensive Plan, the facility is visited by about 4,800 people per week. The facility is open to Town and County residents and, at this time, would be the only locally provided library to serve the area proposed for annexation when it is developed. Therefore, the evidence suggests that Culpeper County is the only entity providing for such service at this time and that the area proposed for annexation may benefit from such service.

Public Transportation

Virginia Regional Transit also operates a trolley system in the Town of Culpeper and Culpeper County.¹⁵¹ Most routes are within the corporate limits of the Town, but there appear to be two stops in the County.¹⁵² While this system is not operated directly by the Town or County, some of the evidence before the Commission indicates that the Town contributes financially to the system's operations.¹⁵³ Furthermore, Caruso Odin has submitted evidence that shows the Town of Culpeper has a Public Transportation Board that advises the Town Council on matters related to public transportation.¹⁵⁴

¹⁴⁵ Town Comprehensive Plan.

¹⁴⁶ County Comprehensive Plan.

¹⁴⁷ County's Proposed Findings of Facts and Recommendations, June 7, 2019. Such services are provided on weekdays, weeknights, and weekends.

¹⁴⁸ Property Owner's Notice.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Initial County Response to Staff Questions on Behalf of Town. Culpeper Trolley Map and Schedule.

¹⁵³ Property Owner's Notice. For Fiscal Year 2019, the Town's budget includes \$129,410 for Virginia Regional Transit.

¹⁵⁴ Ibid.

Based upon the map provided, the trolley does not appear to directly serve the Caruso Odin site, but the trolley's Northern Loop has at least one stop within a reasonable distance of the site.¹⁵⁵ The Caruso Odin site is undeveloped so there are no public transportation service needs at this time; however, if and when the site develops, there could be a need for such services.

Summary of Service Needs

In the preceding sections of this report, the Commission has endeavored to examine the existing and prospective urban service needs of the area petitioned for annexation and the ability of the Town of Culpeper to meet those needs. On the basis of the data cited above, the Commission finds that the area proposed for annexation could benefit from the extension of *some* (emphasis added) of the Town services and policies, however, we agree with the County that the area proposed for annexation does not presently have a need for these services because it is undeveloped.¹⁵⁶ Furthermore, the Commission would like to reiterate that one of the more critical urban services, water and sewer service distribution, has been addressed through a joint agreement between the Town and the County and therefore should not be considered a factor for purposes of this report.

Compliance with Applicable State Policies

Another of the factors prescribed for consideration in annexation issues is the extent to which the affected jurisdictions have made efforts to comply with applicable State policies promulgated by the General Assembly. The Commission believes there are three policy areas of relevance in these annexation issues which merit consideration: Housing, Public Planning, and Environmental Protection. The following sections of this report review those State policies.

Housing

By various statutory provisions the General Assembly has recognized that proper housing for the State's residents is a matter of "grave concern to the Commonwealth."¹⁵⁷ The Commission notes that, consistent with this fundamental State concern, the Town and the County have made notable efforts to attend to this basic need of their residents.

The record discloses that the Town has adopted a fire prevention code.¹⁵⁸ The Town has also adopted the Virginia Maintenance Code for all buildings within its jurisdiction to protect citizens from unsafe structures, eliminate blight, and maintain property values.¹⁵⁹ The Town's Comprehensive Plan also recognizes the housing affordability challenges within the Town and has identified a series of nine strategies to help address this need.¹⁶⁰ The Town has also offered that it is embarking on an affordable housing study and action plan in conjunction with the Rappahannock-Rapidan Regional Commission and

¹⁵⁵ Initial County Response to Staff Questions on Behalf of Town. The Culpeper Trolley makes a stop 15 times on weekdays and seven times on Saturdays at the Walmart on James Madison Highway (U.S. Route 15 Business)

¹⁵⁶ County's Proposed Findings and Recommendations, June 7, 2019.

¹⁵⁷ Section 36-2, Code of Virginia.

¹⁵⁸ Code of the Town of Culpeper, Chapter 8, Fire Prevention and Protection.

¹⁵⁹ Code of the Town of Culpeper, Section 4.3.

¹⁶⁰ Town Comprehensive Plan. Chapter 5, Housing.

the Virginia Housing Development Authority.¹⁶¹ The evidence also suggests that Culpeper County has taken some action to analyze and address the housing needs of its residents. The County's Comprehensive Plan devotes an entire chapter to Housing with assistance provided by the Greater Piedmont Area Association of Realtors and similarly speaks to housing affordability needs in the community.¹⁶²

Public Planning

The Code of Virginia requires localities to establish a planning commission and to adopt a comprehensive plan and subdivision regulations to guide their development.¹⁶³ Consistent with these statutory requirements, the Town of Culpeper and Culpeper County have established planning commissions and have adopted such development control instruments.¹⁶⁴ In addition, each jurisdiction has adopted a zoning ordinance, which enhances its ability to regulate its future development.¹⁶⁵ The Commission believes both the Town and the County have taken the required steps to comply with the State's concern for public planning.

Environmental Protection

Numerous provisions within the Code of Virginia direct cities, counties, and towns to assist with the conservation, protection, and stewardship of the Commonwealth's environmental resources. Such matters include to refuse and garbage collection, stormwater management, erosion and sediment control, floodplains, clean water, clean air, site development standards, and others. The records of the Town and County as it relates to these matters, brings the Commission to the conclusion that they are both adequately meeting these directives, especially as through their existing ordinances and Comprehensive Plans.

Community of Interest

Another of the factors statutorily prescribed for consideration in annexation issues is the strength of the community of interest which joins areas proposed for annexation to the municipality relative to those interests that unites such areas to the remainder of the county. While the undeveloped nature of the area proposed for annexation in this instance removes from consideration many issues generally relevant in an analysis of the community of interest factor, there are facets of interdependence which merit comment in this case.

With respect to the community of interest between the Town of Culpeper and the area proposed for annexation, several considerations should be noted. First, and most apparently, the site is bounded on two sides by the Town of Culpeper and therefore could logically be considered an extension

¹⁶¹ Initial County Response to Staff Questions on Behalf of Town.

¹⁶² County Comprehensive Plan. Chapter 8, Housing.

¹⁶³ Sections 15.2-2210, 15.2-2233, and 15.2-2240, Code of Virginia.

¹⁶⁴ Property Owner's Notice.

¹⁶⁵ Ibid.

of the Town environs. Additionally, the site is part of the Future Boundary Adjustment Area identified in the 2012 VSA.¹⁶⁶

Future development of the site – for which a proposed application has been filed with Culpeper County – will depend on water and sewer services. The owner of the property has already dedicated land for the development of a well site and water treatment facility, so a reasonable connection already exists between the area proposed for annexation and the Town. It should be noted, however, that these connections were made while the Town was already party to an agreement with Culpeper County that contains provisions related to such services, so such arrangement could also be viewed as a collective arrangement between both localities. In addition to water and sewer services, the residential project proposed for the site would require other urban-type services such as law enforcement and public works. The Town would be the logical source for some of those services.

Development of the area proposed for annexation also will create additional economic and social ties between the property and the Town of Culpeper. The Town is a major focal point in the economic life of Culpeper County and serves as the county seat for Culpeper County.¹⁶⁷ Businesses located within the Town of Culpeper provide wholesale and retail services to the general area.¹⁶⁸ Further, Culpeper is the location of certain public facilities (e.g., library, parks, government offices) which may be utilized by prospective residents of the area proposed for annexation.¹⁶⁹ Therefore, it is reasonable to conclude that as the property develops, the residents may utilize the commercial, public, religious, and social facilities within the Town of Culpeper.

Despite these logical communities of interest, this Commission also wishes to call to attention to the important role that the Norfolk Southern rail line has played in relation to the connection of this area to its immediate surroundings. While the Town limits are immediately adjacent to the property and share a boundary line of nearly 2,800 feet along its northern edge with the site, the Norfolk Southern railroad tracks serve as a significant, manmade barrier between the site and the Town.¹⁷⁰ In fact, when viewing aerial photography of the development patterns of the Town relative to the Norfolk Southern rail line, one could reasonably reach the conclusion that the presence of the railroad tracks has had a significant effect on the direction of growth in the Town and its immediate vicinity.¹⁷¹ Furthermore, factors related to the presence of the Norfolk Southern tracks are some of the leading issues as to why

¹⁶⁶ 2012 VSA. Exhibit 1.

¹⁶⁷ Property Owner's Notice.

¹⁶⁸ A variety of storefront spaces are spread along North and South Main Streets in addition to more traditional big box retailers, such as Wal-Mart, along James Madison Highway.

¹⁶⁹ Within the Town there are several parks, the County Library, local government administration offices, the Social Security Administration, courthouses, etc.

¹⁷⁰ Property Owner's Notice. Commission staff utilized measurements provided in the Metes and Bounds description to identify the length of this boundary. Additional refinement of this measurement may be necessary, so this number is provided as an approximation.

¹⁷¹ Google Maps, 2019, Satellite Image View of Culpeper, Virginia. Retrieved from <https://www.google.com/maps>. Based on aerial photography provided by Google Maps, the Commission has observed that there is generally a denser, urbanized development pattern north and west of the Norfolk Southern rail line, while areas to the south and east remain largely undeveloped and more rural.

the County has been unsupportive of Caruso Odin’s development proposals.¹⁷² Caruso Odin has made attempts to address this matter but has so far been unsuccessful with the exception of a potential trail connecting to the Town.¹⁷³ It is also quite possible that the quality and responsiveness of some of the urban-type service needs that may be generated by future development of this site may be hampered by the limited connectivity the site has to the rest of the Town limits – again, a consequence of the presence of the train tracks.

Additionally, while the site is indeed included in the Future Boundary Adjustment Area of the 2012 VSA, that does not guarantee its annexation. The 2012 Agreement establishes that “it is in the best interests of the Town and County to provide for an orderly method for the periodic incorporation of additional areas into the Town of those urban and urbanizing areas that will require public water and sewer facilities and other urban services that can best be provided by the Town.”¹⁷⁴ Presently the site is undeveloped, and the County has raised concerns as to why the site should not be rezoned to accommodate a more urbanized development pattern.¹⁷⁵ Caruso Odin has proffered conditions and provided evidence that would address some of those concerns, particularly as they relate to vehicular traffic on Nalles Mill Road. However, it is fundamentally the County’s decision as to whether or not such a development request should be supported.¹⁷⁶

It is the Commission’s opinion that without the accessibility issues related to the train tracks and narrow bridge traversing those tracks, some of the County’s land use and zoning concerns may not have existed. Therefore, it is quite possible that this petition for annexation might not have been brought before us. However, the County has raised legitimate concerns related to the connectivity of the Caruso Odin site to the rest of the Town, and the Commission agrees that it influences the degree to which there is a connection to a community of interest between the site and the rest of the Town. Therefore, while the Commission is of the opinion that there is a community of interest between the area proposed for annexation and the Town, it is weak and unlikely to strengthen within the foreseeable future until additional improvements are made to provide additional connectivity, which thus far do not appear to be in the near-term.¹⁷⁷

¹⁷² Initial County Response to Staff Questions. Attachment J.

¹⁷³ Testimony of John Foote, Counsel for the Property Owner, and Testimony of Roddy Reyes, PE, Bowman Consulting, Oral Presentations, May 8, 2019.

¹⁷⁴ 2012 VSA, Recitals.

¹⁷⁵ Appendix B.

¹⁷⁶ Testimony of Roddy Reyes, PE, Bowman Consulting, Oral Presentations, May 8, 2019. At the suggestion of the Virginia Department of Transportation (VDOT), Caruso Odin proposed installation of an R-Cut at the intersection of Nalles Mill Road and Route 29 to address traffic concerns. Caruso Odin claims such an improvement would work effectively based on its simulated models.

¹⁷⁷ Testimony of John Egertson, Culpeper County Administrator, Oral Presentations, May 8, 2019. There are no proposed capital improvements to enhance the connection between the site and the Town. The County claims it would rely upon VDOT to make such transportation improvements or otherwise rely upon a developer to address the issues.

Arbitrary Refusal to Cooperate

Another factor prescribed for consideration in annexation cases is the issue of whether a locality has arbitrarily refused to cooperate in the joint provision of public services. The intent of this provision is to promote interlocal cooperation where such can be of mutual benefit to jurisdictions and residents. Having recognized that the Commonwealth's annexation laws have in the past inadvertently impeded interlocal cooperation, the incorporation of this provision into the law in 1979 manifests the legislature's intent to remove such barriers and to give strong impetus to collaboration among units of local government.

In this case, the Commission has no knowledge of any action by either party that it would consider to be an arbitrary refusal to cooperate. Indeed, the Commission notes an extraordinary degree of cooperation between the Town of Culpeper and Culpeper County in the provision of services to their residents. One of the most recent, prime examples of this matter is the 2012 Voluntary Settlement Agreement between the Town and the County that took over a decade for the two localities to successfully negotiate and implement.¹⁷⁸ This agreement provides a vehicle by which water and sewer services, planning, and other matters are coordinated between the Town and the County. Additionally, this Commission observes that the Town and County coordinate and share many other services outside the scope of the 2012 VSA including law enforcement, fire and rescue services, libraries, and parks and recreation.

Impact on Agricultural Operations

In 1999 the General Assembly amended the State's boundary change laws to require consideration of the impact of annexation on agricultural operations in the areas proposed to be incorporated into a municipality.

Culpeper County has claimed that there would be an adverse impact to agricultural operations upon annexation. The County claims that such impact would be the loss of a parcel zoned Rural Area (RA), which is intended for "a transition between prime commercial agriculture, forestal production, open space, and conservation uses within the most rural areas of the County and village centers."¹⁷⁹ Further, such transitions are "designed to protect prime commercial agriculture areas from residential encroachment."¹⁸⁰ Based on the County's Comprehensive Plan, the Commission observes that the Town of Culpeper is viewed as the primary village center for the County.¹⁸¹ Annexation of the site into the Town of Culpeper would immediately increase the permissible developable density of the site to one unit per acre as compared to the existing allowable density of one unit for every three acres.¹⁸²

¹⁷⁸ Testimony of John Egertson, Culpeper County Administrator, Oral Presentations, May 8, 2019.

¹⁷⁹ County's Proposed Findings and Recommendations, June 7, 2019.

¹⁸⁰ Ibid.

¹⁸¹ County Comprehensive Plan, Chapter 13, Village and Convenience Centers.

¹⁸² County's Response to Citizen Notice, March 8, 2019.

The County also claims that impacts from potential future development of the site could also be incompatible with large agricultural vehicles that traverse Nalles Mill Road and other connector roads.¹⁸³ While the Commission has no substantial evidence to verify this claim, testimony during the public hearing by one resident demonstrates that there could be some existing impacts that additional traffic on Nalles Mill Road has had on their agriculturally related activities.¹⁸⁴ It seems reasonable to follow that future development of the site could exacerbate these impacts. Furthermore, the County' claims that the juxtaposition of dense residential development directly across the street from and in the pathway of agricultural use could create incompatibilities between the uses, especially as it relates to certain nuisances.¹⁸⁵

Overall, in the issue currently before this Commission, however, the minimal agricultural operations in the area proposed for annexation to the Town are being conducted on property that will likely experience development in the near future, especially as it relates to its close proximity to the Town and its designation for potential future annexation in the 2012 VSA. It has been quite clear the property owner's intention to develop their property for residential use. Thus, the development plan for the area – if approved – would result in termination of the limited agricultural activities on the site and would give the site an urban character similar to that of the Town of Culpeper. Caruso Odin has offered that, excluding the 120 acres of the site, the County retains significant acreage (over 216,000 acres) dedicated as agricultural land and therefore would not affect County agricultural potential.¹⁸⁶

While the Commission cannot conclude that there will be no impact to agricultural operations in the County, the Commission is of the opinion that this impact would be difficult to determine and may be a reasonable and logical impact given the proximity of the site to the Town and designation within a future boundary adjustment area of the 2012 VSA. While the Commission agrees with the County's claim that there could be incompatibility between land uses as future development may occur, this is a matter more appropriately addressed through the local land use and zoning process.

Interest of the State

As a final standard for review, Section 15.2-3209 of the Code of Virginia directs the court – and by extension, this Commission – to consider “the best interests of the Commonwealth in promoting strong and viable units of government.” In consideration of this matter, the Commission would like to emphasize the unique circumstances involving this case.

First, the Commission is reviewing a citizen-initiated annexation case that would occur while the jurisdictions involved are still party to a VSA that establishes milestones and criteria for future, scheduled annexation rights of the municipality. There appears to be only one other case that has gone

¹⁸³ County's Proposed Findings of Fact and Recommendations. June 7, 2019.

¹⁸⁴ Testimony of Chuck Gyory, Commission on Local Government, Public Hearing, May 8, 2019.

¹⁸⁵ County's Proposed Findings of Fact and Recommendations. June 7, 2019. The County claims that factors such as dust, smell, application of fertilizer, noise, etc. would be incompatible with some other uses, including residential, if they were to develop in the immediate vicinity.

¹⁸⁶ Property Owner's Proposed Findings of Fact and Recommendations. June 6, 2019.

before the Commission in which a citizen-led petition for annexation occurred while the affected local governments were also subject to an existing interlocal agreement settling such annexation matters.¹⁸⁷

Second, this agreement between the Town of Culpeper and Culpeper County acknowledges and re-affirms that voters and property owners retain their right to initiate annexation proceedings pursuant to § 15.2-3203 et seq. of the Code of Virginia.¹⁸⁸ The County claimed that this was included as a component of the agreement for legal reasons.¹⁸⁹

Third, the very same section of the 2012 VSA providing for the rights of citizens to petition for such annexations also prohibits the Town from promoting such annexation proceedings. It explicitly restricts the Town from providing (1) legal assistance, (2) engineering assistance, and (3) financial aid to such voters or property owners, with some detailed exceptions.¹⁹⁰ Consequently, despite the usually well-received customary nature of the Commission's efforts to encourage and offer aid for mediation to settle these and other matters, the Town indicated it could not participate in resolving the dispute without being in violation of the provisions of the VSA governing its abilities in such circumstances.¹⁹¹

Similarly, Article XIII of the 2012 VSA establishes a Joint Advisory Planning Body (JAPB) "to consider Town and County Planning issues." In addition to defining the composition of the JAPB and ensuring its balance, the 2012 agreement states that the JAPB "will consider such planning issues as are referred to the body by either the Council or the Board and shall make advisory recommendations to the governing bodies." The Commission also attempted to direct its mediation efforts through this body, but the offer was also rejected by the Town for the same legal reasons.¹⁹²

Altogether, the convergence of these factors presents this Commission with a case that seems premature. Potential resolution of the matter through the Commission's customary actions to encourage mediation has been inhibited because the Town is now party to annexation proceedings for which it is legally prohibited from taking a position. Furthermore, utilization of the JAPB within the 2012 VSA to address this matter interlocally cannot be exercised because of the same legal reasons.

Consequently, the unique circumstances of this matter necessitate caution as the Commission must balance the interests of a private property owner, the legal commitment of an existing agreement between two parties, and the land use authority of local government. Ultimately, the Commission is of the opinion that balance for these three matters is achieved through *process* (emphasis added). While

¹⁸⁷ Commission on Local Government, City of Bristol-County of Washington Voluntary Settlement Agreement, March 1997. Commission on Local Government, Report on the Leonard L.P., Henard Enterprises, Inc., J.H. Spurgeon, R&J Development Co., LLC, and Crown Point Developments, Inc. - City of Bristol - County of Washington Annexation Action, October 2004.

¹⁸⁸ 2012 VSA. Section 5.2.

¹⁸⁹ Testimony of John Egertson, Culpeper County Administrator, Oral Presentations, May 8, 2019.

¹⁹⁰ 2012 VSA. The agreement further establishes some carve-outs of these prohibitions by allowing the Town to respond to various FOIA requests, whether the Town would oppose the annexation, and filing a statement with the CLG regarding its position but indicating it would not participate in the proceeding.

¹⁹¹ E-mail from Martin Crim, Culpeper Town Attorney, January 23, 2019.

¹⁹² Testimonies of Sarah Mernin, Counsel for the Property Owner, and Bobbi Jo Alexis, Culpeper County Attorney, Oral Presentations, May 8, 2019.

the citizen does have a right to petition for annexation, and while the agreement acknowledges the right for citizens or property owners to *initiate* (emphasis added) such proceedings, that is only an acknowledgment of such right and not an endorsement of annexation, unless and until the Commission and the special courts agree that such annexation request meets the standards of the law.

Some of the Commission’s previous analysis has expressed agreement that the site may meet some of the factors and considerations in support of such an annexation request, but many of these factors are mitigated by other relevant factors. Furthermore, this Commission emphasizes its opinion that – in light of the specific circumstances of this case – the Commonwealth’s interest of promoting strong and viable units of local government is paramount to the other factors for consideration.

Land use authority is explicitly granted to local governments in the Commonwealth. The declaration of legislative intent emphasizes the policy of the Commonwealth “to encourage localities to improve the public health, safety, convenience, and welfare of their citizens and to plan for the future development of communities...” Moreover, every locality in the Commonwealth is directed to create a local planning commission to promote the orderly development of the locality and its environs.¹⁹³ Notwithstanding specific land-use pre-emption matters in the laws of the Commonwealth, the Commission is unaware of any law or opinion that establishes prioritization between annexation law and land use and zoning law.

Therefore, this Commission believes it was still imperative for the citizen to allow for the local land use process to be followed and fully exercised. In this circumstance, the matter was never even publicly heard before the County’s Planning Commission, and there is no official record of the position of the Planning Commission nor the County Board of Supervisors on the matter.¹⁹⁴ Consequently, many of the comments received by the Commission on Local Government during its public hearing were related to the proposed use of the property in addition to the annexation request.¹⁹⁵ Despite the claims of the fate of their development proposal being a foregone conclusion, there are additional, appropriate channels by which this matter could be reviewed to judge on its merits in conformance with the law.¹⁹⁶ The Commission agrees with the County that the 2012 VSA establishes that it is the County’s right – vis-à-vis their land use making authority – to determine the future development pattern of the environs of the Town and County.

Caruso Odin claims that the zoning designation, Rural Agriculture (RA) District, and density criteria established in the 2012 VSA are problematic and could prevent the site from ever being annexed

¹⁹³ Section 15.2-2210, Code of Virginia.

¹⁹⁴ Initial County Response to Staff Questions. The record provided by Culpeper County includes Caruso Odin’s rezoning request; a Planning Staff Report dated April 6, 2017; and three sets of Planning Commission work session minutes that mention the Caruso Odin rezoning request on January 18, 2017, April 12, 2017, and October 11, 2017.

¹⁹⁵ Testimonies of Chuck Gyory, Jacki Kaiser, Rich Kaiser, Steve Walker, and Laura Rodgers, Commission on Local Government, Public Hearing, May 8, 2019. The majority of the comments received by the Commission while its record remained open were related to concerns about traffic that the proposed development could generate.

¹⁹⁶ Section 15.2-2285, Code of Virginia. Decisions made by the local governing body may be appealed to the circuit court within 30 days of the decision of the governing body.

into the Town.¹⁹⁷ They argue that these conditions are what compelled Caruso Odin to proceed with the citizen-initiated annexation proceedings after being unsuccessful with their efforts to pursue a rezoning with the County. Furthermore, they claim that their request was never referred to the Joint Advisory Planning Body, created pursuant to the 2012 VSA.¹⁹⁸ Nevertheless, their initial application for rezoning has never been officially acted upon by the governing body.

The evidence before the Commission indicates that Caruso Odin acquired the property in 2005 with the intention of using it for a residential development.¹⁹⁹ Caruso Odin claims that they delayed pursuing such development because it became financially infeasible until the market recovered from the Great Recession and housing crisis.²⁰⁰ However, such crisis did not begin until several years after the property was acquired. Meanwhile, between 2005, when the property was acquired, and 2012, the Town and County organized and enacted a VSA that was reviewed by this Commission and approved by a special three-judge panel. As part of that process, this Commission was directed to hold hearings, conduct investigations, and make findings of fact as to the best interests of the localities.²⁰¹ Part of that process included a mandatory public hearing on the matter, which afforded Caruso Odin an opportunity to publicly comment on the agreement, including addressing its concerns related to the boundary adjustment criteria that it claims hamper the ability for the site to be annexed into the Town in the future.²⁰² While the Commission cannot predict what the outcome would have been had Caruso Odin commented on the proposed agreement, the Commission would like to observe that there was a process in place for some of these concerns to be shared before the agreement was approved, but that opportunity was not utilized.²⁰³

It does not seem apparent that anyone could have foreseen these circumstances and the apparent potential for conflict between two different sections of the 2012 VSA. Indeed, in the Commission's view, in other circumstances, the JAPB would be one of the most appropriate vehicles to address this situation; and, therefore, this matter would not have been before the Commission. Ironically, it appears that the actions creating the petition for annexation by Caruso Odin have created the very quandary that prohibits the Town – even through the JAPB – from participating. Despite those circumstances, the Commission also agrees with the County that the 2012 VSA could be compromised and undermined if Caruso Odin's request is granted.²⁰⁴

¹⁹⁷ Property Owner's Notice. Specifically, Caruso Odin claims that because of its physical location, zoning, and zoning of surrounding properties, its property may never qualify for annexation in relation to the eligibility criteria in Article III of the 2012 VSA.

¹⁹⁸ Property Owner's Proposed Findings of Fact and Recommendations. June 6, 2019.

¹⁹⁹ Property Owner's Notice.

²⁰⁰ Testimony of Andrew Garrich, Vice President of Land at Caruso Odin, Oral Presentations, May 8, 2019.

²⁰¹ Section 15.2-2907, Code of Virginia.

²⁰² Commission on Local Government, Report on the Town of Culpeper – County of Culpeper Voluntary Settlement Agreement, November 2011. The Commission held a public hearing, advertised in accordance with §15.2-2907 (B) of the Code of Virginia. The public hearing was attended by approximately 30 persons and four individuals testified.

²⁰³ Testimonies of Andrew Garrich, Vice President of Land at Caruso Odin, and John Foote, Counsel for the Property Owner, Oral Presentations, May 8, 2019.

²⁰⁴ County's Proposed Findings of Fact and Recommendations, June 7, 2019.

Altogether, when factoring these circumstances in determining “the necessity for and expediency of annexation” as it relates to the Caruso Odin petition, this Commission does not find the annexation to be expedient in light of the irrelevancy such an action could establish for Culpeper County’s authority regarding land use decision in addition to the threat it could pose to the 2012 VSA. Fundamentally, this Commission is of the opinion that strong and viable units of government are those where critical functions, including land use decision-making, are protected and sustained. Attempts to circumvent such processes, especially when full utilization of such processes was not pursued, are a threat to that strength and viability. Therefore, this Commission is of the opinion that the petition for annexation is not in the best interest of the state in promoting strong and viable units of local government.

FINDINGS AND RECOMMENDATIONS

Overall, the Commission’s review of the various factors before it as it relates to standards for reviewing annexation yield a mixed review. There does appear to be a need in the Town for additional tax resources and for land for development, but these needs may be provided through the existing 2012 VSA. Further, the Town appears to provide some greater levels of service compared to the County, but some of these services should be discounted because of the existing agreement between the Town and County, while those that remain do not carry as much significance for the needs of the site, especially given its undeveloped nature. Both localities appear to comply with various state policies, and there does not appear to be any evidence depicting arbitrary refusals to cooperate between the two entities. There could be some impacts to agricultural operations, but such a scenario would be difficult to quantify and may seem reasonable as it relates to proximity to the Town. However, such proximity to the Town is also heavily influenced by the significant manmade barrier the Norfolk Southern railroad imposes between the site and a significant portion of the Town boundary. While there could be a degree of connectivity between the site and the Town, that connection is somewhat weakened. Finally, and most importantly, the proposed annexation could have a significant impact on the strength and viability of Culpeper County, especially as it relates to its land use and zoning powers, and it could also compromise the existing 2012 VSA between the Town and the County.

For these stated reasons, the Commission on Local Government does not recommend the Caruso Odin site for annexation into the Town of Culpeper. In tandem with this recommendation, the Commission offers the following recommendations.

Utilization of Joint Advisory Planning Body

The Commission recommends that, at the conclusion of all proceedings as they relate to this annexation matter, if Caruso Odin proceeds with the rezoning process and goes before the County Board of Supervisors, the Town and County consider calling upon the Joint Advisory Planning Body to provide assistance and guidance on this matter. This can be done concurrently while Caruso Odin’s application is before the governing body, or it can wait until after its application has been heard, depending on the outcome of such request. Furthermore, in the event other rezoning applications within the designated Future Boundary Adjustment Area appear before the County Board of

Supervisors, the Commission recommends that the Town and County consider additional utilization of the Joint Advisory Planning Body or at the very least make that body aware of such proceedings.

Engagement with VDOT and Norfolk Southern on Nalles Mill Road Issues

While the Commission cannot engage in land use and zoning related matters directly as it relates to reviewing cases such as this one, it seemed apparent that conditions on Nalles Mill Road have declined and may continue to deteriorate. While future road improvements have been identified in the immediate vicinity of the area, more active engagement with the Virginia Department of Transportation may alleviate some of these issues. Furthermore, it will be important for the localities and potentially VDOT to address concerns as they relate to pedestrians crossing the bridge over the Norfolk Southern train tracks. Given the likelihood of the eventual buildout of areas south and east of the Norfolk Southern train tracks, additional pedestrian activity and traffic are likely to increase on a road that may not have sufficient capacity to support such developments.

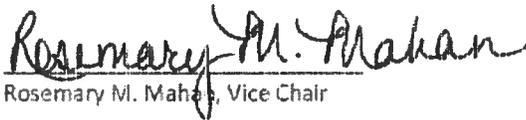
CONCLUDING COMMENT

In the previous sections of this report the Commission has reviewed, based upon the statutorily prescribed criteria, an annexation proposed by one landowner seeking to have their property located in Culpeper County annexed into the Town of Culpeper. As a result of that review, the Commission has recommended that the landowner's request be denied. It is the Commission's hope that the courts will find this report useful for their consideration.

Respectfully submitted,



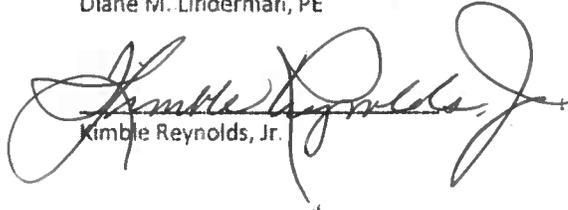
R. Michael Amyx, Chair



Rosemary M. Mahan, Vice Chair



Diane M. Linderman, PE



Kimble Reynolds, Jr.

**REPORT ON THE
TOWN OF CULPEPER – COUNTY OF CULPEPER
VOLUNTARY SETTLEMENT AGREEMENT**



**Commission on Local Government
Commonwealth of Virginia**

November 2011

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REPORT ON THE TOWN OF CULPEPER – COUNTY OF CULPEPER VOLUNTARY SETTLEMENT AGREEMENT

PROCEEDINGS OF THE COMMISSION

On July 11, 2011, the Town of Culpeper and the County of Culpeper submitted to the Commission on Local Government for review a proposed voluntary settlement agreement negotiated by the two jurisdictions under the authority of Section 15.2-3400 of the Code of Virginia.¹ Consistent with the regulations promulgated by the Commission, the submission was accompanied by data and materials supporting the proposed agreement. Further, and in accordance with the Commission’s regulation 1VAC 50-20-230(C), the Town and County gave notice of the proposed agreement to 12 other political subdivisions with which they are contiguous or with which they share functions, revenues, or tax sources.² The proposed agreement contains provisions for (1) an immediate boundary adjustment by which specified territory will be incorporated into the Town; (2) optional boundary adjustments in the future if certain criteria are met; (3) a waiver of the Town’s annexation and city status rights during the term of the agreement, which will be a minimum of 30 years; (4) the provision of water and wastewater services by the Town within a County-designated service area adjacent to the Town’s boundaries; (5) the construction by the Town of a sewer line to serve a County high school; (6) the resolution of related utility issues between the Town and the County; (7) a reduction in the Town’s business, professional, and occupational license tax rates; and (8) the creation of a joint advisory planning body.³

In conjunction with its review of the proposed settlement agreement, on September 12, 2011, the Commission toured relevant sections of the Town of Culpeper and Culpeper County and met in the Town to receive oral testimony from the two jurisdictions in support of the agreement. That evening, the Commission held a public hearing, advertised in accordance with Section 15.2-2907(B) of the Code of Virginia, for the purpose of receiving citizen comment. The public hearing was attended by approximately 30 persons and four individuals testified. In order to permit receipt of additional public comment, the Commission agreed to keep its record open for written submissions through September 27, 2011. The Commission did not receive any additional submissions or comments from the public.

¹ Town of Culpeper and Culpeper County, Notice by the Town of Culpeper and the County of Culpeper of a Voluntary Settlement Agreement (hereinafter cited as the “Joint Notice”), July 11, 2011, which contains the Settlement Agreement and supporting materials.

² Ibid., Tab, “Local Governments Notified.”

³ Voluntary Settlement of Annexation and Utility Issues Between the Town of Culpeper and the County of Culpeper (hereinafter cited as the “Settlement Agreement,” “Agreement” or “proposed agreement”). See Appendix A for the complete text of the Settlement Agreement.

SCOPE OF REVIEW

The Commission on Local Government is directed by law to review proposed annexations and 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. Upon receipt of notice of such a proposed action or agreement, the Commission is directed to “hold hearings, make investigations, analyze local needs” and to submit a report containing findings of fact and recommendations regarding the issue to the affected local governments.⁴ With respect to a proposed agreement negotiated under the authority of Section 15.2-3400 of the Code of Virginia, the Commission is required to determine in its review “whether the proposed settlement is in the best interest of the Commonwealth.”

As we have noted in previous reports, it is evident that the General Assembly encourages local governments to attempt to negotiate settlements of their interlocal concerns. One of the statutory responsibilities of this Commission is to assist local governments in such efforts. In view of this legislative intent, the Commission believes that proposed interlocal agreements, such as that negotiated by the Town of Culpeper and Culpeper County, should be approached with respect and presumption of their compatibility with applicable statutory standards. The Commission notes, however, that the General Assembly has decreed that interlocal agreements negotiated under the authority of Section 15.2-3400 of the Code of Virginia shall be reviewed by this body prior to their final adoption by the local governing bodies. We are obliged to conclude, therefore, that while interlocal agreements are due respect and should be approached with a presumption of their consistency with statutory standards, such respect and presumption cannot be permitted to render our review a *pro forma* endorsement of any proposed settlement. Our responsibility to the Commonwealth and to the affected localities requires more.

GENERAL CHARACTERISTICS OF THE TOWN, THE COUNTY, AND THE AFFECTED AREAS

Town of Culpeper

The Town of Culpeper was established in 1759 by the Virginia House of Burgesses as the Town of Fairfax. In 1870, the General Assembly changed the name to Culpeper.⁵ The Town is served by rail and four U.S. Highway routes and is the center of commerce and government in Culpeper County.⁶ The Town of Culpeper’s population increased from 9,664 to 16,379 persons, or by 69.48%, between 2000 and 2010. Based on its land area of 6.719 square miles and the 2010 population, the Town has a population density of 2,437.71 persons per square mile.

⁴ Section 15.2-2907(A), *Code of Virginia*.

⁵ “Historical Timeline,” Museum of Culpeper History, accessed October 24, 2011, www.culpepermuseum.com/timeline.htm.

⁶ Town of Culpeper, *Town of Culpeper Comprehensive Plan* (hereinafter cited as *Town Comprehensive Plan*), September 14, 2010, p. 91.

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The population of the Town is younger and less wealthy than the State as a whole. As of 2010, the median age of Town residents was 31.9 years, compared with 37.5 for Virginia as a whole, and the percentage of the population that was age 65 or older was 10.0%, compared to 12.2% for Virginia.⁷ With regard to income, the Census estimated that, in 2009, the Town's per capita income was \$24,999, which is 79.1% of the statistic for the Commonwealth as a whole (\$31,606).⁸ In addition, unemployment in the Town increased from 7.4% in FY2009 to 8.0% at the end of FY2010,⁹ which is higher than the statewide average of 7.0%.¹⁰

In terms of the Town's physical development, recent land use data indicate that 30.21% of the land area is devoted to residential uses, 12.77% to commercial enterprise, 6.40% to industrial activity, 17.18% to public or semi-public uses and 10.28% to public rights-of-way. This leaves about 23.16% (1,008 acres) of the Town as undeveloped agricultural land or open space. Of this undeveloped land, 104.45 acres are inhibited by floodplains or steep slopes. Exclusive of this land affected by major environmental constraints, the jurisdiction retains approximately 903.55 acres, or 20.76% of its total land area, in parcels that are vacant and suitable for development.¹¹

County of Culpeper

Culpeper County was established in 1749 from territory that was previously part of Orange County.¹² Between 2000 and 2010, the County's population increased from 34,262 to 46,689, or by 36.27%. On the basis of the 2010 population and an area of 379.23 square miles, the locality has a population density of 123.12 persons per square mile.

With respect to the characteristics of its population, Culpeper County is demographically older and less affluent than the State as a whole, but, when compared to the Town, the County's residents are older and more affluent. The 2010 median age of County residents was 38.2 years, slightly more than the statewide median age (37.5). Moreover, the percentage of its populace age 65 and over was 12.2, which was exactly the same as the rate for the State overall.¹³ Regarding income, the 2009 estimated per capita income was \$26,707, or 84.50% of the comparable figure for the entire State (\$31,606).¹⁴ In addition, unemployment in the County decreased from 8.3% in FY2009 to 8.0% in FY2010, which is comparable to the Town's unemployment rate but higher than the state average of 7.0%.¹⁵

With regard to the nature of its economy, employment data indicate that, between 2000 and 2010, the number of nonagricultural wage and salary employment positions in the County increased from 13,008 to 14,504, or by 11.50%, significantly lower than the 36.27% increase in population experienced in the

⁷ U.S. Department of Commerce, Bureau of the Census, Census 2000, Summary File 1; Census 2010, Summary File 1.

⁸ U.S. Department of Commerce, Bureau of the Census, 2005-2009 American Community Survey.

⁹ Town of Culpeper, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2010, p. 61.

¹⁰ Bureau of Labor Statistics, June 2010 Local Area Unemployment Statistics, Virginia, Statewide.

¹¹ Joint Notice, Tab, "Best Interests of the Parties," pp. 48-50.

¹² Salmon, Emily J. and Edward D.C. Campbell Jr., The Hornbook of Virginia History, 4th ed. (Richmond: Library of Virginia, 1994), p. 163.

¹³ U.S. Department of Commerce, Bureau of the Census, Census 2000, Summary File 1; Census 2010, Summary File 1.

¹⁴ U.S. Department of Commerce, Bureau of the Census, 2005-2009 American Community Survey.

¹⁵ County of Culpeper, Culpeper Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2010, p. 120.

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same period.¹⁶ This disparity indicates that a considerable number of new residents commute outside of the County for employment.

Between 2002 and 2007, the market value of agricultural products produced in the jurisdiction decreased from \$36.7 million to \$27.1 million, a decline of 26%. Despite the population growth and losses in agricultural activity, as of 2007, almost half (45.89%) of the county's land remained occupied by farms.¹⁷

Areas Proposed for Annexation

First Boundary Adjustment

The proposed agreement would incorporate three areas into the Town of Culpeper, referred to as the First Boundary Adjustment Areas (FBAAs), at midnight on June 30 following the entry of the order by the Special Court. These areas consist of a total of 302.2 acres and, as of 2010, contained an estimated population of 239 persons. In addition, based on 2010 assessed values, these areas included \$95.1 million in total assessed real estate and tangible personal property values. The FBAAs contain 0.12% of the County's total land area, 0.51% of its population, and 1.61% of its total 2010 assessed real estate and tangible personal property values. Based on the total area and the 2010 population estimate, the FBAAs have a population density of 506 persons per square mile, or slightly greater than four times that of Culpeper County overall (123.12 persons per square mile).¹⁸

With respect to current development, the FBAAs contain two residential concentrations and a significant commercial area.¹⁹ According to the most recent land use data, approximately 23.5% of the FBAAs are devoted to residential development, 28.7% to commercial and industrial activity, 1.2% to public and semi-public uses and 8.6% to public rights-of-way, leaving 38.0% (114.98 acres) remaining vacant or engaged in agricultural production.²⁰ Similar to vacant property within the current Town limits, some of the undeveloped land in the area proposed for immediate annexation has environmental constraints (e.g., location within the 100-year flood plain, water supply protection areas or steep slopes) which reduce their development potential.²¹ In sum, although the area proposed for immediate annexation contains some vacant land, it also contains established focal points of development with some growth potential.

Future Boundary Adjustments

The proposed agreement would also allow the Town of Culpeper to annex by ordinance additional territory in Culpeper County, within areas designated by the agreement as Future Boundary Adjustment

¹⁶ Virginia Employment Commission, Quarterly Census of Employment and Wages; 2000 and 2010 (Online database), <https://www.vawc.virginia.gov>.

¹⁷ Culpeper County, Culpeper County Comprehensive Plan 2010 (hereinafter cited as County Comprehensive Plan), p. 5-5.

¹⁸ Joint Notice, Tab "Best Interests of the Parties," pp. 15-16.

¹⁹ Ibid., p. 4.

²⁰ Joint Notice, Tab "Best Interests of the Parties," pp. 51-52.

²¹ Carter Glass, IV, Counsel for the Town of Culpeper, email to Commission on Local Government staff, dated September 23, 2011. County staff estimates that only about 14 to 19 acres of the vacant land in the FBAAs are affected by environmental constraints.

Areas (hereinafter referred to as “Future Areas”), subject to certain criteria specified in the agreement.²² Those areas, situated to the north, east and south of the Town’s current corporate limits, contain approximately 4,913 acres of territory and have a 2010 estimated population of 1,651. According to the most recent land use data, 6.26% of the Future Areas are devoted to residential development, 11.10% to commercial enterprise, 11.09% to public, semi-public or miscellaneous uses and 9.15% to public rights-of-way, with 62.4% of the area (3,066 acres) remaining vacant or engaged in agricultural production. According to County staff, minimal areas of the vacant or agricultural property contain environmental constraints to development such as floodplains or steep slopes.²³ Though the Future Areas are largely vacant or agricultural at present, there is some residential and commercial development scattered throughout the areas.

PUBLIC FINANCE PROFILES

Town of Culpeper

Short-Term Financing and Capital Structure

Short-Term Financing. Two methods by which to analyze a locality’s short-term financial health are its current ratio and cash ratio. In FY2010, the Town’s current ratio²⁴ was 4.04, which means they have \$4.04 in short-term assets – such as cash, receivables and inventory – for every \$1.00 in short-term liabilities – such as payables and payroll costs. The Town’s cash ratio²⁵ was 88.5% in FY2010, which indicates a very liquid position because cash and cash equivalents comprise a majority of short-term assets. These two indicators illustrate that the Town can easily meet its short-term obligations.

Unreserved fund balance is an indicator of a locality’s ability to meet unforeseen short-term needs. According to the Town’s fund balance policy, the benchmark for its minimum level of unreserved fund balance is 15% of expenditures, and the optimal level is 40%.²⁶ According to the Town’s FY2010 Comprehensive Annual Financial Report, the unreserved fund balance in the general fund was 34.2% of expenditures.²⁷ While this is short of the optimal level, it still shows that the Town has the funds on hand to meet its short-term obligations.

The Town’s policy also states that the minimum level of unreserved fund balance in the enterprise fund is 100% of operating expenses, with the optimal level at 200%.²⁸ Total unrestricted funds in the Town’s

²² Settlement Agreement, Articles III and IV. The Future Areas are the portions of the County-designated Water and Sewer Service Area (WSSA) that are not within the Technology Zone and were not included in the FBAAs. The WSSA boundaries can be adjusted unilaterally by the County, subject to certain criteria and specific parcels in the Technology Zone can be annexed if not used for technology or industrial uses or if the County takes official action agreeing to such. To be eligible for incorporation as a Future Boundary Adjustment, the property must meet certain density and dimensional requirements set forth in the agreement.

²³ Joint Notice, Tab “Best Interests of the Parties,” pp. 14, 15 and 53 and Glass, email to Commission staff, dated September 23, 2011.

²⁴ The current ratio is computed as current assets divided by current liabilities. It is a measure of short-term liquidity. See Appendix B, Town of Culpeper Supplemental Table 6.

²⁵ The cash ratio is computed as cash and cash equivalents divided by current assets. It shows the percentage of “near-cash” assets among all short-term assets. See Appendix B, Town of Culpeper Supplemental Table 6.

²⁶ Town Response, Fund Balance Policy.

²⁷ Town of Culpeper, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2010, p. 14,16. See Appendix B, Town of Culpeper Supplemental Tables 1-6 for complete analysis.

²⁸ Ibid.

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enterprise fund equal 169.4%²⁹ of operating expenses. While this is in line with Town benchmarks, it should be noted that the electric fund portion of enterprise funds maintains an unrestricted fund balance of just 25.8%,³⁰ which is well short of the minimum. It is also important to highlight that, after dropping to a low of 107.3%³¹ in FY2008, the percentage returned to 166.6%³² in FY2009.

A review of the statements of activities of governmental and enterprise funds paint a slightly different picture. General fund revenues have been exceeded by expenditures in each of the last five fiscal years. These net losses illustrate the Town's need for additional revenues. In addition, operating income of the enterprise fund was negative from FY2006-FY2009 before reversing in FY2010. After recent \$27 million in expenditures out of the wastewater fund, the Town anticipates that costs will be covered by revenues within the next 5 years.³³

Capital Structure. Capital structure illustrates how much debt a locality is using to accumulate its assets. The Town has been using long-term debt as a means of financing the bulk of its major expenditures. Debt has been used to finance the construction of a new police building, purchase of vehicles and equipment, water and wastewater capital projects, public works improvements, light and power improvements, road improvements, and park projects.³⁴ In FY2010, total debt represented 39.2% of total assets; however, long-term debt represented 31.3% of total assets.³⁵ Since 2006, the Town's capital structure has become more leveraged. In FY2006, total debt made up just 22.1% of total assets, but it has increased in every year since.³⁶ While the Town's debt level has increased over the last five years, it still maintains a favorable credit rating.

County of Culpeper

Short-Term Financing and Capital Structure

Short-Term Financing. As stated earlier, the current ratio and cash ratio can help to analyze a locality's short-term financial position. The County's current ratio for FY2010 was 3.22.³⁷ This was a large increase over its FY2009 current ratio, which was 1.67.³⁸ The increase in the current ratio was due to a decrease in the current portion of the County's long-term debt. Meanwhile, their cash ratio in FY2010 was 73.0%.³⁹ These ratios indicate that the County is increasing its ability to meet its short-term obligations.

²⁹ See Appendix B, Town of Culpeper Supplemental Table 6.

³⁰ Town of Culpeper, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2010, p. 18-19. This figure was computed by dividing the unrestricted net asset amount from the Electric Fund (\$2,198,646) by the operating expenses of the Electric Fund (\$8,507,692).

³¹ See Appendix B, Town of Culpeper Supplemental Table 6.

³² Ibid.

³³ Chris Hively, Director of Environmental Services for the Town of Culpeper, email to Commission staff dated September 19, 2011.

³⁴ Town Response, p 5-6.

³⁵ See Appendix B, Town of Culpeper Supplemental Table 1.

³⁶ Ibid.

³⁷ County of Culpeper, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2010, p. 15. See Appendix C, County of Culpeper Supplemental Tables 7 and 12 for complete analysis.

³⁸ County of Culpeper, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2009, p. 15. See Appendix C, County of Culpeper Supplemental Tables 7 and 12 for complete analysis.

³⁹ See Appendix C, County of Culpeper Supplemental Table 12.

The County's undesignated fund balance in FY2010 in the general fund represents 29.1% of the fund's expenses.⁴⁰ This is a decrease from FY2006 when the percentage was 50.6%.⁴¹ The decrease is mainly due to increased educational expenses, which began in FY2008.⁴² Meanwhile, the enterprise fund has experienced operating losses in each of the past five fiscal years.⁴³

Capital Structure. In FY2006, the County's debt-to-assets ratio was 90.3%.⁴⁴ The main reason for this was a negative unrestricted net asset balance, which was due to the issuance of \$61.7 million of school board debt. While nominal debt levels have remained mostly steady since then, increases in net assets decreased the County's debt-to-assets ratio to 48.9% in FY2010.⁴⁵ The increases in net assets are a combination of increased investments in capital assets – mainly in FY2007 and FY2008 – and increases in their unrestricted net assets. As a result, the County's capital structure over the last five years has become significantly less leveraged.

STANDARD FOR REVIEW

As a previous section of this report has noted, the Commission on Local Government 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.” In our judgment, the State's interest in this and other proposed interlocal agreements is fundamentally the preservation and promotion of the general viability of the affected localities. In this instance, the Commission is required to review an interlocal agreement which provides for: (1) an immediate boundary adjustment by which specified territory will be incorporated into the Town; (2) optional boundary adjustments in the future if certain criteria are met; (3) a waiver of the Town's annexation and city status rights during the term of the agreement, which will be a minimum of 30 years; (4) the provision of water and wastewater services by the Town within a County-designated service area adjacent to the Town's boundaries; (5) the construction by the Town of a sewer line to serve a County high school; (6) the resolution of related utility issues between the Town and the County; (7) a reduction in the Town's business, professional, and occupational license tax rates; and (8) the creation of a joint advisory planning body. A proper analysis of the proposed Town of Culpeper-Culpeper County settlement agreement, as mandated by statute, requires consideration of the ramifications of these provisions with respect to the current and future viability of the two jurisdictions.

Interests of the Town of Culpeper

Land for Development

As indicated previously, the Town of Culpeper currently has within its boundaries approximately 1,008 acres of undeveloped land, which constitutes 23.16% of the Towns' total land area. Excluding property

⁴⁰ See Appendix C, County of Culpeper Supplemental Table 12.

⁴¹ *Ibid.*

⁴² See Appendix C, County of Culpeper Supplemental Table 9.

⁴³ See Appendix C, County of Culpeper Supplemental Table 11.

⁴⁴ See Appendix C, County of Culpeper Supplemental Tables 7 and 12.

⁴⁵ *Ibid.*

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situated within the 100-year floodplain and wetlands, the Town has 903.55 acres, or 20.76%, of its total land area vacant and generally amenable to development.⁴⁶

The Town experienced rapid growth during the last decade, consuming large amounts of vacant property. Between 2000 and 2010, the amount of vacant or agricultural land decreased by approximately 938 acres. In other words, 48.20% of the Town's 2000 vacant land inventory was consumed in the ensuing ten years.⁴⁷ During that same period, the population of the Town increased from 9,664 to 16,379, or by 69.48%.

While the incorporation of the FBAs would immediately bring within the Town an additional 114.98 acres of vacant land for possible future development, the provisions within the agreement for future boundary adjustments provide opportunities for the incorporation of additional territory. As stated earlier, there are 3,066 acres of vacant or agricultural land in the Future Areas, which is over three times greater than the amount that is situated within the existing Town's limits. As the agreement is structured, each part of the Future Areas should be developed to a certain density prior to annexation.⁴⁸ While this provision will not substantially increase the amount of available vacant land in the Town, it will secure the Town's ability to extend its boundaries into these areas after significant development occurs. Additionally, the agreement provides for a "Joint Planning Advisory Body," with County and Town representation, which will be responsible for considering planning issues that are referred to it by either jurisdiction and for making advisory recommendations to the governing bodies. While the specific responsibilities of this body have not yet been determined, the planning body could exert influence on how land develops prior to annexation of Future Areas and should benefit other cross-jurisdictional planning efforts and overall intergovernmental relations.⁴⁹ In our judgment, the proposed agreement will provide the Town of Culpeper access to additional land, both developed and undeveloped, and provide better opportunities to coordinate planning for such land's orderly development.

Fiscal Assets and Public Service Liabilities

Fiscal Assets. The Town of Culpeper, which is the major service and employment center in Culpeper County, has experienced growth in its property values comparable to Culpeper County as a whole. Based upon assessment at 100% of fair market value, real property values (exclusive of those of public service corporations) increased in the Town from \$817.7 million in FY2006 to \$1,287.5 million in FY2010, or by 57.46%.⁵⁰ During the same span of years, such values in Culpeper County overall grew from \$3,289.0 million to \$5,169.8 million, or by 57.19%.⁵¹

⁴⁶ Joint Notice, Tab, "Best Interests of the Parties," pp. 48-50. While such factors are not absolute barriers to development, they do constitute major impediments to development.

⁴⁷ Ibid., p.48 and Town of Culpeper, Town Comprehensive Plan, March 12, 2002, p. VIII-5.

⁴⁸ Settlement Agreement, Section 3.4.

⁴⁹ Ibid., Article XIII.

⁵⁰ Town of Culpeper, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2010, p. 55.

⁵¹ County of Culpeper, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2010, p. 112.

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While the Town's real estate values increased on par with those of the County, a recent fiscal concern has been the development of new commercial uses beyond the Town's corporate limits to the northeast along U.S. Route 29.⁵² The proposed agreement will permit the Town to immediately annex this newly developed area as well as two other generally vacant tracts that are intended for commercial use.⁵³

The total FY2010 fair market value of real estate in the three areas proposed for immediate annexation was \$85.9 million, which, upon annexation, will increase the Town's total of such values by 6.67%. At the current rate of \$0.13 (per \$100 of value) levied by the Town on real estate, the FBAs will generate an additional \$111,625 in real estate taxes each year. In addition, the FBAs contain tangible personal property valued at \$9.2 million and machinery and tools valued at \$827,334 in FY2010.⁵⁴ At the Town's current rates of \$1.00 (per \$100 of value) for tangible personal property and \$0.80 (per \$100 of value) for machinery and tools,⁵⁵ the FBAs will generate an additional, \$92,487 in personal property taxes and \$6,619 in machinery and tools taxes annually.

In addition, several restaurants are situated in the Montanus area of the FBAs. These establishments are not currently subject to a local meals tax as part of the unincorporated portion of the County; however, upon annexation, they will be subject to the Town's 5% food and beverage tax, which is estimated to generate \$600,000 each year. The Town also charges a 5% occupancy tax; however, at present, there are no hotels located in the FBAs. Further, to encourage business development, the Town has agreed to reduce its business, professional and occupational license (BPOL) tax rate by 20% during the first year of the agreement, resulting in an estimated loss of \$200,000 in revenues.

In sum, based on FY2010 data and taking into consideration the aforementioned BPOL tax rate reduction, the Town of Culpeper estimates that the incorporation of the FBAs will increase the Town's local-source revenue and state aid by \$1.1 million annually, or by 9.71%.⁵⁶ While it can be assumed that the Town would add to its taxable base if it were to annex additional territory within the Future Areas, an estimate of the net revenues that would be generated cannot be computed at this time.

Public Service Liabilities. While the incorporation of the immediate annexation areas into the Town of Culpeper will provide the Town with additional revenue and the potential for future economic growth, it will concurrently present the municipality with increased public service responsibilities. The proposed agreement will require the Town to extend its general governmental services to the citizens in the areas annexed at the same level as currently provided to those within the municipality. In terms of these additional public service responsibilities, the Town estimates, based on FY2010 figures, that it will be required to expend an additional \$631,395 annually from its general fund. As noted previously, the Town of Culpeper estimates that the incorporation of the FBAs will increase the Town's local-source

⁵² Joint Notice, Tab, "Best Interests of the Parties," p. 45.

⁵³ County Comprehensive Plan, "Future Land Use," Map 11.3 and Joint Notice, Exhibit 1.

⁵⁴ Joint Notice, Tab "Best Interests of the Parties," p. 16.

⁵⁵ Ibid., p. 17.

⁵⁶ Settlement Agreement, Article XII; Joint Notice, p. 58, "Estimated Revenues & Expenditures for First Boundary Adjustment Areas, General Fund," revised September 6, 2011; and Comparative Report of Local Government Revenues and Expenditures for the Fiscal Year Ended June 30, 2010, Commonwealth of Virginia, Auditor of Public Accounts, Exhibit A. According to the State Auditor's report, in FY2010, local source revenue and state aid to the town totaled \$11,461,603.

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revenue and state aid by \$1.1 million annually. When projected expenses are subtracted from projected revenues, the Town estimates a net increase in annual revenues of \$481,568.⁵⁷

With respect to the impact of the proposed annexation on the Town's enterprise fund, several points merit note. First, if the County makes a request pursuant to the agreement, the Town is obligated to construct a sewer line extension to Eastern View High School, which is currently serviced by a package sewer treatment plant operated by the County. The Town estimates that the construction of the new line will cost \$2 million.⁵⁸ As a point of reference, in FY2010, the Town's total capital project expenses equaled \$2,675,162.⁵⁹

Also, the Town would be obligated to provide long-term system improvements to increase water and sewer capacity to specified levels.⁶⁰ In order to assist with these improvements, the County requested that the Virginia Department of Environmental Quality transfer 1.5 million gallons per day (MGD) of the County's nutrient allocation to the Town's wastewater treatment facility, clearing an administrative hurdle to expansion of the sewage treatment plant.⁶¹ In addition, the County has agreed to assist the Town in developing new raw water sources as may be necessary to ensure that 1.5 MGD of water capacity is available for the County-designated Water and Sewer Service Area (WSSA).⁶²

Following the effective date of the agreement, all out-of-town water and sewer customers will be relieved of paying the higher rates and fees imposed by the Town on nonresidents. As a consequence, the Town estimates that the initial annexation will reduce the Town's enterprise fund's annual revenues by approximately \$351,250. In anticipation of the approval of the proposed agreement, the Town increased its utility rates and fees by 5% effective July 1, 2011 in order to offset this loss of revenue.⁶³ Finally, the agreement guarantees the Town exclusive rights to provide water and wastewater services within the WSSA for at least 30 years. As the area develops, revenues should increase for the utility system, which, along with existing reserves, should be sufficient to finance the provision of water and sewer services as required by the agreement.⁶⁴

Interests of the Areas Proposed for Annexation

Community of Interest

One of the factors appropriate for consideration in the analysis of proposed voluntary settlement agreements is the strength of the community of interest that joins the area proposed for annexation to the adjacent municipality. In this instance, the evidence suggests that there exists a significant degree of interdependence between the areas subject to immediate and future annexation to the adjacent municipality.

⁵⁷ Joint Notice, p. 58, "Estimated Revenues & Expenditures for First Boundary Adjustment Areas, General Fund," revised September 6, 2011.

⁵⁸ Settlement Agreement, Section 10.3 and Joint Notice, p.61.

⁵⁹ Town of Culpeper, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2010, p. 16.

⁶⁰ Settlement Agreement, Section 10.1.

⁶¹ Ibid., Section 15.2 and Glass, letter to Commission on Local Government staff (hereinafter cited as "Town Response"), September 1, 2011, p. 8.

⁶² Settlement Agreement, Section 10.2.

⁶³ Joint Notice, Tab "Best Interests of the Parties," p. 60

⁶⁴ Ibid., p. 58 and Settlement Agreement, Sections 7.2 and 11.1.

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First, the Town is the source of public water and sewer services to much of the area, and the County has designated the FBAs and Future Areas as appropriate areas to be served by the Town's water and sewer systems.⁶⁵ Other entities serving the areas proposed for annexation that also serve the existing Town include the volunteer fire department, the County Library and Culpeper County Public Schools. In addition, the Town's police department currently provides assistance to the area through a mutual aid agreement.⁶⁶

Further, the Town of Culpeper is a major focal point of commercial activity serving the area proposed for annexation as well as the overall vicinity. In 2007, 58.45% of the business establishments located within Culpeper County were located within the town limits.⁶⁷

Finally, the immediate annexation area has an urban character and service needs which more closely parallel those of the Town than those of the outlying portions of the County. To some degree this has been intentional through long-range planning efforts by the County to direct growth toward areas where urban services are readily available.⁶⁸ As a result of this planned growth, the development that has occurred in the immediate annexation areas is an extension of development patterns that originate within the Town.

For the reasons cited above, the Commission finds that the area proposed for annexation has a strong relationship with the existing Town of Culpeper, comprising a noteworthy community of interest.

Need For Urban Services

The 0.472 square miles of territory which are immediately subject to annexation by the Town of Culpeper under the terms of the agreement are estimated to contain a population of 239 persons, giving the area, as noted previously, a population density of about 506 persons per square mile. While approximately 38% of the FBAs remain vacant or in agricultural use, the areas also include significant residential and commercial development. With respect to its prospective future development, the current Culpeper County comprehensive plan, which was based upon an in-depth analysis of the County's needs and projected growth, calls for development to occur within the areas proposed for immediate and future annexation.⁶⁹ Thus, as the areas subject to potential incorporation into the Town are anticipated to experience development, they will increasingly need the urban services provided by the Town.

Water and Sewer Service. The Town of Culpeper's water treatment plant, which uses Lake Pelham as its raw water source, can receive and treat 4.0 MGD. In 2010, the water system consumed an average of 2.0 MGD, or about half of its capacity. With respect to its storage facilities, the Town has five storage

⁶⁵ County Comprehensive Plan, p. 11-15 and Joint Notice, Tab "Best Interests of the Parties," pp. 33-37.

⁶⁶ Ibid., p. 63.

⁶⁷ U.S. Department of Commerce, Bureau of the Census, 2007 Economic Census. The Census revealed that, of the 657 business establishments situated in the County as of 2007, 384 were located within the Town limits.

⁶⁸ County Comprehensive Plan, p. 11-15, Maps 11.3 and 11.4. The County's Future Land Use Plan designates much of the County as appropriate for lower density uses, whereas most of the areas intended for more intense uses are adjacent to the Town.

⁶⁹ Ibid.

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tanks which collectively hold 2.54 million gallons of treated water. The distribution system serves 6,490 connections, with 103 of those located within the FBAs and 419 in the Future Areas.⁷⁰

The Town also owns and operates a sewage collection system that serves 6,476 customers, 102 of which are located within the FBAs and 419 of which are situated in the Future Areas.⁷¹ Sewage collected by the Town's system is treated at the Town's wastewater treatment plant, which has a rated capacity of 6.0 MGD. The plant currently treats an average daily flow of 2.8 MGD, or just under half of its capacity.⁷²

Currently, water and sewer service arrangements in the WSSA are complex, with some out-of-town customers served directly by the Town and some served by the County through a wholesale contract with the Town. In addition, the County operates a small sewage treatment plant that provides service to Eastern View High School. Many of the developments outside of the Town are served under contractual agreements that would reserve the option for the County to assume ownership of transmission mains and begin providing retail sewer service.⁷³ This disjointed arrangement of service delivery has made planning for growth and future utility system needs more difficult. The agreement contains several provisions that would improve the delivery of water and sewer services in the areas proposed for annexation.

First, the agreement eliminates the previously described array of fragmented service delivery arrangements by making the Town the exclusive provider of water and sewer service in the WSSA for the duration of the agreement.⁷⁴ Also, the County would retain ownership of its water mains and sewer collectors until such time as that portion of the WSSA is annexed, when ownership of the affected utility lines would transfer to the Town.

Second, the agreement provides for a unified rate and fee structure for both in-Town and out-of-Town water and sewer customers so that out-of-Town customers will no longer pay 50% more than in-Town customers. As a result, the Town estimates that it will initially lose approximately \$310,000 in enterprise revenues.⁷⁵ New tap fees will recover some of these costs; however, the Town could still experience losses to the enterprise fund over time. As mentioned previously, in anticipation of the approval of the proposed agreement, the Town recently increased its utility rates and fees in order to address this potential shortfall.⁷⁶

⁷⁰ Joint Notice, Tab "Best Interests of the Parties," pp. 22, 33 and 34. In addition to the water distribution customers noted, the County provides water to five customers in the proposed annexation areas. Also, the town provides water service to two customers within the Technology Zone, which is not eligible for incorporation unless certain criteria are met.

⁷¹ Ibid., p. 37. The County's wastewater system also serves about four customers located within the FBAs or Future Areas. In addition, the Town's sewer system has two customers located within the Technology Zone.

⁷² Ibid., p. 35.

⁷³ Ibid., p. 7-8.

⁷⁴ Settlement Agreement, Section 6.4. County sewer customers served by the Greens Corner Wastewater Treatment Plant will not become Town customers until such time as the Town connects those customers to the Town's sewer system via the sewer line extension discussed in Section 10.3 of the Agreement.

⁷⁵ Joint Notice, Tab "Best Interests of the Parties," p. 59. The Town estimates losses in the water fund of \$150,000 and losses of \$160,000 in the wastewater fund.

⁷⁶ Joint Notice, Tab "Best Interests of the Parties," p. 60

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Third, the agreement obligates the Town to permit connections to its water and sewer system within the entire WSSA, up to theoretical service capacities of 1.5 MGD for water 1.5 MGD for wastewater.⁷⁷ Though this commitment will require some expansion of the Town's water supply and treatment capacities, it will also ensure that the Future Areas will have sufficient utility service for anticipated growth.

Solid Waste Collection and Disposal. The Town of Culpeper provides weekly solid waste collection services to its residents and small businesses, free of charge. In addition, seasonal collection of leaves and Christmas trees is provided in residential areas. The Town disposes of its refuse at Culpeper County's transfer station, from where it is then hauled to a landfill outside of the County.⁷⁸

Culpeper County does not provide any solid waste collection services to its residents and businesses. County residents can dispose of their household waste at County-operated trash collection sites or contract with a private entity for garbage collection.⁷⁹

Upon annexation, the Town will extend its solid waste collection and disposal services to the annexed area. Residents as well as small businesses in those areas should benefit from the Town's solid waste collection service. The extension of the Town's solid waste collection services to newly-annexed areas will reduce costs for those who currently pay for garbage collection by a private contractor and provide a convenience for residents who currently haul their solid waste to the County's collection sites. The general availability of publicly financed solid waste collection services promotes the use of that service, reduces the incidence of illegal disposal and has a beneficial effect on a community.

Planning, Zoning, and Subdivision Regulation. The Town of Culpeper conducts its public planning efforts with the assistance of a planning commission and guided by a comprehensive plan that was adopted in 2010. With respect to development controls, the Town has zoning and subdivision ordinances to assist in the management of its physical development. Further, the Town's current zoning ordinance was recently updated to provide higher development standards relative to landscaping and signage.⁸⁰ Within the core historic area of the Town, an architectural review board supplements the development standards with historic preservation measures.⁸¹ Subdivision requirements in the Town mandate the installation of curbs and gutters, sidewalks and streetlights in most situations.⁸² The zoning ordinance also contains provisions authorizing the use of conditional zoning, which enables the locality to mitigate the impact of development on public resources and concerns. Voluntary cash proffers are also accepted as part of the conditional zoning process to help offset needs that have been identified in the Town's adopted capital improvements program, which was last updated in 2011.⁸³ At present, the

⁷⁷ *Ibid.*, Sections 6.1 and 6.2.

⁷⁸ *Joint Notice*, Tab "Best Interests of the Parties," p. 41.

⁷⁹ *County Comprehensive Plan*, p. 6B-11.

⁸⁰ *Joint Notice*, Tab "Best Interests of the Parties," p. 40.

⁸¹ Town of Culpeper, *Code of the Town of Culpeper*, Chapter 27, Zoning, Article V, Historic District.

⁸² *Joint Notice*, p. 42.

⁸³ Town of Culpeper, *Code of the Town of Culpeper*, Section 27-381 and Town of Culpeper, *Capital Improvements Plan*, June 8, 2010.

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Town has a staff of five persons to assist in the administration and management of its planning and land development control efforts.⁸⁴

The County also utilizes a planning commission and a comprehensive plan to help guide its development.⁸⁵ The County's current comprehensive plan, adopted in 2010, is supplemented by a five-year capital improvements plan that was updated in 2011.⁸⁶ In addition, the County also utilizes zoning and subdivision ordinances and has authorized conditional zoning.⁸⁷ With respect to development standards, the County has established an architectural review board that is tasked with protecting the aesthetic character of major corridors that lead into the Town.⁸⁸ Within new subdivisions, the county does not have specific requirements for the installation of amenities such as curbs and gutters, sidewalks and streetlights but instead follows the guidelines set forth by the Virginia Department of Transportation.⁸⁹ Though the County does not have a formal policy regarding the acceptance of cash proffers, it has historically accepted such payments.⁹⁰ The County maintains a staff of six persons for the management and implementation of its various planning and development control activities.⁹¹

Following the effective date of an annexation, the Town will extend its comprehensive planning and its other regulatory instruments to the areas annexed. The Town Code contains provisions for transitional zoning categories for newly annexed areas, and the Town has indicated that it has already begun considering appropriate classifications for the immediate annexation area.⁹² Although both the Town and County have made commitments for the planning and control of development within their respective borders, in our judgment, the Town has a more effective set of tools for guiding urban development. The area proposed for annexation will benefit from the application of the Town's development control policies.

Crime Prevention and Detection. Since the law enforcement activities of Virginia's towns supplement those provided by a county Sheriff's office, the proposed annexation by the Town of Culpeper will have the effect of providing additional and more intense law enforcement services in the areas annexed. The Town presently has 41 full-time sworn law enforcement personnel, 25 of whom are assigned patrol responsibility. This staffing level is sufficient to give the Town one patrol officer per 655 residents. In terms of patrol activity, the Town maintains officers on its streets 24-hours per day, with a minimum of three patrol officers on duty at all times. This staffing arrangement provides the Town with patrol coverage of at least one officer for each 2.24 square miles of territory.⁹³ Another measure of the intensity and adequacy of patrol service in a locality is the number of calls for service borne by each law

⁸⁴ Town Response, p. 1.

⁸⁵ Ibid., p. 1-2.

⁸⁶ County of Culpeper, Capital Improvements Program, Fiscal Years 2012-2016, May 3, 2011.

⁸⁷ County of Culpeper, Code of the County of Culpeper, Appendix A, Zoning Ordinance, Article 29, Conditional Zoning and Appendix B, Subdivision Ordinance.

⁸⁸ Ibid., Appendix A, Zoning Ordinance, Article 30, Entrance Corridor Overlay District and Article 30A, Architectural Review Board.

⁸⁹ Roy Thorpe, Culpeper County Attorney, email to Commission on Local Government staff, dated October 19, 2011.

⁹⁰ Culpeper County's Responses to August 5, 2011 Letter from Commission on Local Government (hereinafter cited as the "County Response"), p. 1 and Commission on Local Government, Report on Proffered Cash Payments and Expenditures By Virginia's Counties, Cities and Towns, FY2001-FY2011.

⁹¹ County Response, p. 2.

⁹² Town of Culpeper, Code of the Town of Culpeper, Section 27-30 and Joint Notice, Tab "Best Interest of the Parties," p. 41.

⁹³ Glass, email to Commission on Local Government staff, dated October 19, 2011.

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enforcement position. The data indicate that, during calendar year 2010, each patrol officer in the Town was responsible for an average of 603 calls for service. The average patrol staffing level in the Town and the incidence of activity requiring police response permitted the police department to respond to calls for service in an average of 8.4 minutes.⁹⁴ As mentioned previously, the County and Town law enforcement agencies cooperate with a mutual aid agreement, whereby each agency provides support to the other upon request.

The Culpeper County Sheriff's Office, which is headquartered in the Town, has primary law enforcement responsibility for areas outside of the Town limits.⁹⁵ The Office has 49 full-time employees assigned to law-enforcement, 22 of whom are dedicated to patrol responsibility. Therefore, the County (including the Town) has one patrol deputy for every 2,122 residents, or one for every 17.2 square miles. From August 1, 2010 to July 31, 2011, the Office responded to 39,430 calls for service, or 1,792 per patrol deputy.

The Commission has no knowledge of any law enforcement problems within the annexation area; however, given the concentration of commercial activity within the FBAs, a significant demand for service in this area is likely. In fact, in 2010, the Town responded to 252 calls for service within the FBAs.⁹⁶ Therefore, in order to extend its law enforcement services to the areas proposed for immediate annexation, the Town proposes to add one officer and one civilian position.⁹⁷ In our judgment, the extension of the Town's law enforcement services into this area will benefit its residents and businesses and also provide some relief to the County Sheriff's Office.

Public Works. The proposed annexation will result in the application of the Town's policies and procedures for the construction and maintenance of various public works in the annexed areas. The Town of Culpeper's policies and procedures are, in our view, properly designed to meet the needs of urbanizing areas and should be increasingly beneficial to the residents and businesses incorporated into the Town.

First, the Town of Culpeper will assume responsibility for the construction and maintenance of roads in the annexed area, which includes snow removal, street cleaning and grass mowing and right-of-way maintenance. The ability of the Town to schedule and administer the maintenance of its public thoroughfares, as well as an apparent willingness to appropriate and expend local funds for that purpose, will benefit the area. With respect to the latter point, the data indicate that between FY2008 and FY2010, the Town of Culpeper expended approximately \$1.9 million in local funds to improve and maintain approximately 124.26 lane-miles of public roadway within its corporate boundaries.⁹⁸ The proposed immediate annexation will bring into the Town approximately 9.26 lane-miles of roadway

⁹⁴ Town Response, p 11. During 2010, the Town's police department received 15,064 calls for service.

⁹⁵ Joint Notice, Tab "Best Interest of the Parties," p. 38.

⁹⁶ County Response, p. 8.

⁹⁷ Joint Notice, Tab "Best Interest of the Parties," p. 39.

⁹⁸ "Weldon Cooper Public Highway Survey," Virginia Department of Transportation, Local Assistance Division, accessed October 28, 2011, <http://www.virginiadot.org/business/local-assistance-programs.asp>. Between FY2008 and FY2010, the Town reported \$5,877,128 in expenditures for the upkeep of its streets and highways, and, during the same period, \$3,975,506 in maintenance payments were received from the Commonwealth.

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eligible for State maintenance payments, and the Town has estimated the cost for such maintenance at \$113,230.⁹⁹

Second, as previously mentioned, the Town currently requires the installation of curbs, gutters and sidewalks in most new developments, whereas the County does not. For existing residential areas without these amenities, the Town has a program whereby it will install curb, gutter and sidewalks subject to certain conditions, including a requirement that property owners bear 50% of the cost.¹⁰⁰ While the proposed agreement does not commit the Town to install these facilities as a consequence of annexation, the Town's policies regarding curb, gutter and sidewalks will be beneficial to the area proposed for annexation.

Finally, the Town of Culpeper funds the installation and operation of streetlights at public expense when it is deemed that the lighting is appropriate and necessary. At present, there are approximately 1,416 publicly funded streetlights within the Town's boundaries. The FBAs currently do not have public streetlights; however, the Town has indicated that it will install additional lighting within this area upon annexation.¹⁰¹ Further, the Town requires streetlights to be installed in all new subdivisions, whereas the County does not have a similar policy.¹⁰² In our judgment, the areas proposed for annexation will benefit from the application of the Town's policies and practices regarding the installation and operation of these facilities.

Fire Protection. The Town and adjacent territory – including the areas proposed for immediate and future annexation – are currently served by the Culpeper County Volunteer Fire Department, which is jointly supported by the Town and County.¹⁰³ Based upon the fire suppression capabilities of the department, along with the specifications of the Town's water system, properties located in the existing Town as well as the areas proposed for immediate annexation are classified "5" by the Insurance Services Office (ISO) in terms of their exposure to fire loss.¹⁰⁴

Since water service is generally available to the developed portions of the immediate annexation areas, existing residents will not experience any change in the level of fire protection as a result of annexation; however, areas that are currently undeveloped should benefit from water line extensions as growth occurs, which will improve the fire suppression capabilities as additional fire hydrants are installed.

Summary of Service Needs

In the preceding sections of this report, the Commission has endeavored to examine the existing and prospective urban service needs of the area proposed for annexation and the ability of the Town of Culpeper to meet those needs. On the basis of the data cited above, the Commission finds that the

⁹⁹ Town Response, p.10.

¹⁰⁰ Joint Notice, Tab "Best Interest of the Parties," p. 42.

¹⁰¹ Ibid.

¹⁰² Town of Culpeper, Facilities Standards Manual, Section 6.710 and Thorpe, email to Commission on Local Government staff, dated October 19, 2011.

¹⁰³ Joint Notice, Tab "Best Interest of the Parties," p. 39.

¹⁰⁴ Thorpe, email to Commission on Local Government staff, dated October 20, 2011.

areas proposed for immediate and future annexation will benefit from the extension of Town services and policies as well as the provisions of the agreement. Further, the Town is capable, in our judgment, of meeting the future needs of those areas as they develop.

Interests of the County of Culpeper

The immediate annexation of the FBAs by the Town will have minimal adverse fiscal impact on Culpeper County. Although the annexation of that area will not affect the County's receipts from any of its property taxes, it will reduce its collections from some of its secondary revenue sources.

Local sales and use taxes are distributed among towns and counties based upon school-age population. As a result of the annexation, the County stands to lose a small share of sales and use tax revenues to the Town. The current estimate of school-age children residing within the FBAs is 45,¹⁰⁵ and the County's estimated loss of local sales tax revenue is \$15,000.¹⁰⁶ In addition, the County will lose approximately \$22,000 in bank franchise tax revenue and another \$1,250 in motor vehicle license tax revenue.¹⁰⁷ In total, the County estimates an annual loss in revenue of about \$38,250, which constitutes an amount equal to only 0.07% of the County's budgeted local source general fund revenue collections in FY2012.¹⁰⁸

Moreover, following annexation, the Town will assume responsibility for providing certain municipal services to the annexed area, most notably water and wastewater services but also law enforcement, street maintenance, planning and development control, which should reduce to some degree the demand on the County's staff and resources. In addition, the proposed immediate annexation and future opportunities for annexation will permit the Town to increase its fiscal potential by expanding its tax base, will assure the municipality of land for future development and will, accordingly, expand the Town's ability to serve the general area. In brief, the enhanced fiscal viability of the Town will be a positive factor in strengthening the economy of the general area, with economic benefits accruing to the citizens of Culpeper County generally.

The agreement contains a provision by which the Town waives its right to initiate any annexation proceedings during the term of the agreement, which will be for a minimum of thirty years and may be extended under certain conditions. In addition, the Town waives its right to initiate any proceedings to make a transition from town to city status while the agreement is in effect.¹⁰⁹ This provision assures the County that the Town will remain a constituent element of that jurisdiction for an extended period of time should the General Assembly allow the current moratorium on town-to-city transition to expire.

Under the terms of the agreement, the Town would be the exclusive provider of water and sewer services in the WSSA. The County would be absolved from the responsibilities of operating water and

¹⁰⁵ County Response, p. 5.

¹⁰⁶ Joint Notice, Tab "Best Interests of the Parties," p. 61.

¹⁰⁷ Ibid.

¹⁰⁸ Joint Notice, Tab "Best Interest of the Parties," p. 61 and County of Culpeper, Adopted Annual Fiscal Plan: July 1, 2011-June 30, 2012, p. 28. Local source general fund revenue for FY2012 was projected to be \$54,743,985.

¹⁰⁹ Settlement Agreement, Sections 5.1 and 11.1.

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sewer services in the area as well as providing related capital improvements, except that the County has agreed to assist the Town in developing new raw water sources as may be necessary to ensure that 1.5 MGD of water capacity is available for the WSSA.¹¹⁰

The Department of Environmental Quality, at the County's request, has already transferred a portion of the County's nutrient allocation to the Town, which will assist with future wastewater capacity needs.¹¹¹ The agreement would also allow the County to cease operation of a small wastewater treatment facility that serves a limited number of customers and Eastern View High School because, upon the County's request, the agreement provides that the Town will extend its sewer lines to serve that area, saving the County an estimated \$90,000 in annual operational expenses.¹¹² Finally, the County would retain ownership of all of its utility lines until annexation occurs, which would be beneficial in the event that the County decides to again provide retail service after the completion of the agreement.¹¹³ In our view, these provisions are in the best interest of Culpeper County, as they will ensure that utilities are made available to the County's high growth areas in the most efficient manner by using the Town's established utility resources.

The proposed agreement retains the County's ability to adjust the WSSA's boundaries, subject to certain conditions, allowing the County to continue to plan for appropriate growth at the Town's periphery in addition to influencing the direction in which the Town is able to grow.¹¹⁴ The proposed agreement will restrict the Town from annexing any of the Future Areas until adequate development has occurred, which should prevent the Town from incorporating large rural areas that do not yet need urban services.¹¹⁵ Finally, with respect to economic development interests, the agreement requires the Town to reduce its business, professional, and occupational license taxes and excludes the "Technology Zone," which is intended for high-tech industrial development, from annexation by the Town unless specified criteria are met.¹¹⁶ For these reasons, along with creation of the previously described "Joint Planning Advisory Body," we believe that the agreement will protect the County's land use and economic development concerns.

In sum, the various provisions in the proposed agreement, coupled with the long-term positive impact of the proposed annexation for the general area, are features of the settlement which are, in our judgment, in the best interests of Culpeper County.

Interests of the Commonwealth

The Commission notes that the proposed Town of Culpeper – County of Culpeper agreement is the product of negotiations conducted under a State-established process that encourages the negotiated settlement of interlocal issues. By the establishment of this negotiation process, the State has

¹¹⁰ *Ibid.*, Sections 6.3, 10.1 and 10.2.

¹¹¹ *Town Response*, p. 8.

¹¹² *Settlement Agreement*, Section 10.3 and *Joint Notice*, Tab "Best Interest of the Parties," p. 62.

¹¹³ *Settlement Agreement*, Section 6.5.

¹¹⁴ *Ibid.*, Article IX.

¹¹⁵ *Ibid.*, Sections 3.4, 3.5 and 3.6.

¹¹⁶ *Ibid.*, Article XII and Section 3.2.3.

expressed its desire for local governments to affect a resolution of their interlocal concerns within parameters established by law. This agreement, which constitutes a locally effected reconciliation of the needs and interests of the Town and County, is consistent with the interest of the Commonwealth in the promotion of negotiated settlements.

The principal interest of the State in the resolution of this and all interlocal issues subject to the Commission's review is the preservation and promotion of the viability of the affected local governments. As previous sections of this report have indicated, the provisions in the proposed settlement agreement will afford the Town of Culpeper with an opportunity to extend its boundaries and provide municipal services in areas with high-growth potential, while simultaneously protecting the County's interests. In addition, the agreement provides both jurisdictions with a long term solution to planning and utility needs as the area grows. In sum, the Commission finds that the proposed agreement, negotiated by the governing bodies of the Town and County, is consistent with the interest of the Commonwealth in the promotion and preservation of the viability of Virginia's local governments.

FINDINGS AND RECOMMENDATIONS

In the preceding sections of this report, the Commission has reviewed a proposed voluntary settlement agreement negotiated by the Town of Culpeper and Culpeper County addressing the interests of the two jurisdictions. Based upon that review, we find that the agreement promotes the viability of both local governments and is consistent with the best interests of the Commonwealth. Accordingly, we recommend the court's approval of the agreement. While finding the agreement to be in the best interest of the two jurisdictions and the State, there is a related issue which we are obliged to address.

MINIMUM 30-YEAR ANNEXATION MORATORIUM

The Commission has historically approached provisions for lengthy bans on annexation with reservation. In this instance, the agreement provides for a waiver of annexation and city status rights by the Town during the term of the agreement, which will be for a minimum period of 30 years. The Commission carefully considered the length and indefinite nature of the moratorium on annexation in the context of a complicated, heavily negotiated agreement, which clearly reflects significant compromise by both parties. In resolving its concern, the Commission evaluated, among other factors, the need for the Town to expand its tax base as well as the benefit of replacing the current fragmented provision of utility services with an efficient operation in which the Town acts as the exclusive service provider in the County's Water and Sewer Service Areas. The Commission concludes that, on balance, the lengthy and indefinite moratorium is acceptable under these specific circumstances because the agreement settles major issues facing both jurisdictions and should work to enhance cooperation between them.

APPENDIX A:
Voluntary Settlement Agreement

**VOLUNTARY SETTLEMENT OF ANNEXATION AND
UTILITY ISSUES**

Between

TOWN OF CULPEPER, VIRGINIA

And

COUNTY OF CULPEPER, VIRGINIA

Dated as of May 4, 2011

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2. Metes and Bounds Descriptions of First Boundary Adjustment Areas
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8. Method of Calculating Minimum Width of Future Boundary Adjustment Areas
9. Agreements Obligating the Town to Provide Water and/or Sewer Services within the Water & Sewer Service Area
10. List of Customers Served Pursuant to 2003 Agreement, as Amended, and 2011 Interim Agreement
11. Town's Tap Privilege Fee Assessment Policy

**VOLUNTARY SETTLEMENT OF ANNEXATION AND UTILITY ISSUES
BETWEEN
THE TOWN OF CULPEPER AND THE COUNTY OF CULPEPER**

This Agreement is made and entered into this 4th day of May, 2011, by and between the **TOWN OF CULPEPER, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the "Town"), and the **COUNTY OF CULPEPER, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "County") (together, the "Parties"), pursuant to Title 15.2, Chapter 34 (§ 15.2-3400 et seq.) of the Code of Virginia (1950), as amended (the "Code").

RECITALS

R-1. For many years, the Town and the County have discussed and studied proposals for (i) the joint use of Town water and wastewater treatment plants to provide water and sewer services in an efficient manner to those developing areas surrounding the Town and (ii) the expansion of the Town's boundaries to incorporate certain urban or urbanizing areas in the unincorporated portions of the County.

R-2. On June 3, 2003, the Town and the County entered into a water and sewer agreement (the "2003 Agreement"), by which the Town agreed to sell to the County and the County agreed to purchase from the Town, pursuant to various terms and conditions, water and sewer capacity in the Town's public water and wastewater systems, if the County determined that it desired to acquire such capacity. In 2007, the County paid the Town \$3,300,000 for the purchase of certain capacity, thereby giving the County the right to receive a certain quantity of potable water from the Town's water distribution system for the use of water customers of the County and to deliver a certain quantity of wastewater to the Town's wastewater collection and treatment system that the County collected from wastewater customers of the County.

R-3. On June 18, 2009, the Town and the County entered into an Amendment to the 2003 Agreement, which provided, among other things, for the temporary provision of water and wastewater services by the Town to the County; for good faith negotiations for the creation of a joint water and sewer authority; for adjustment of the Town's boundaries; and for the termination of water and sewer agreements between the Town and the County in the event the negotiations were unsuccessful.

R-4 On May __, 2011, the Town and the County entered into an Interim Agreement ("2011 Interim Agreement"), which provided for the temporary provision of water and wastewater services by the Town to the County during the negotiation and approval process of the Agreement.

R-5. Following extended negotiations, the Parties have determined that it will be in the best interests of the residents of the Town and the County to avoid a duplication of

water and sewer facilities serving the Town and the surrounding urban and urbanizing areas of the County and, instead, to utilize existing water and wastewater treatment facilities to meet the need of all such areas for such utility services.

R-6. To provide for the efficient provision of utility services, the County, by a separate Nutrient Allocation Consolidation Agreement (the "Nutrient Agreement"), has agreed to transfer to the Town its Mountain Run Plant nutrient allocations of 18,273 pounds per year of the nutrient total nitrogen and 1,371 pounds per year of the nutrient total phosphorus, subject to the approval of the Department of Environmental Quality.

R-7. In exchange for the transfer of the nutrient allocation, the Town will make available 1.5 million gallons per day ("MGD") of water capacity and 1.5 MGD of wastewater capacity to the urban and urbanizing areas surrounding the current boundaries of the Town on the basis of rates and terms and conditions that will be the same for all users of the Town's water and sewer systems.

R-8 The Parties have further determined that it is in the best interests of the residents of the Town and the County to provide for an orderly method for the periodic incorporation of additional areas into the Town of those urban and urbanizing areas that will require public water and sewer facilities and other urban services that can best be provided by the Town.

R-9. The Parties are now prepared to enter into a comprehensive settlement that will provide (i) a long-term method of meeting the need for public water and sewer services in the urban and urbanizing areas surrounding the Town and (ii) a simplified procedure for incorporating portions of such areas into the Town to meet its need for an expansion of its tax base.

R-10. The Town and the County have reached this Agreement, pursuant to Title 15.2, Chapter 34 of the Virginia Code, which authorizes agreements providing for boundary line adjustments, waivers of utility rights, and other terms as the parties deem to be in their business.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

ARTICLE I **DEFINITIONS**

The following words, terms and abbreviations as used in this Agreement shall have the defined meanings listed below, unless the context clearly indicates otherwise:

Section 1.1 Town. "Town" shall mean the Town of Culpeper, Virginia.

Section 1.2 Code. "Code" shall mean the Code of Virginia of 1950, as amended.

Section 1.3 Commission. "Commission" shall mean the Commission on Local Government.

Section 1.4 County. "County" shall mean the County of Culpeper, Virginia.

Section 1.5 Special Court. "Special Court" shall mean the special three-judge court appointed by the Supreme Court of Virginia pursuant to Title 15.2, Chapter 30, § 15.2-3000 of the Code.

Section 1.6 Dwelling. "Dwelling" shall mean a building or portion thereof used exclusively for residential purposes, including one-family, two-family and multiple-family dwellings, but not including hotels, motels, boardinghouses, dormitories, tourist cabins, or automobile trailers.

Section 1.7 Dwelling Unit. "Dwelling unit" shall mean one or more rooms in a dwelling designed for independent housekeeping by one family with separate toilets and cooking facilities.

Section 1.8 Section. "Section" refers to parts of this Agreement unless the context indicates that the reference is to parts of the Code.

Section 1.9 Floor Area. "Floor area" shall mean the sum of the total horizontal areas of the several floors of all buildings on a lot, including accessory buildings, measured from the exterior faces of exterior walls or the centerline of walls separating buildings, which dimension is commonly referred to as a building "footprint." It shall include, for example, basements; elevator shafts; stairwells at each story; stairs, closets, thickness of interior walls, columns, or similar features, floor space used for mechanical equipment; finished attic space; interior balconies; and mezzanines. Floor area shall not include parking structures below or above ground, unfinished attic space, open rooftops, or all other areas outside of the exterior walls of the buildings on a lot.

Section 1.10 Parcel of Land. "Parcel of land" or "parcel" shall mean a separate lot, tract, or area of land established by a recorded subdivision plat, a deed, or a condemnation proceeding, or as otherwise permitted by law, to be owned, used, developed, or built upon.

ARTICLE II
FIRST BOUNDARY ADJUSTMENT

Section 2.1 First Boundary Adjustment Areas. The existing boundary line of the Town shall be adjusted (the "First Boundary Adjustment") by incorporating three areas within the unincorporated portions of the County (the "First Boundary Adjustment Areas"), which are depicted in green on the map dated July 27, 2010, attached as Exhibit 1, and which are described by metes and bounds on the attached Exhibit 2. They include the Montanus area with approximately 198 acres lying generally to the northeast of the Town, the S.W.I.F.T. property area with approximately 11.2 acres lying generally to the southeast of the Town, and the Lake Pelham/Clore Farm area with approximately 93 acres lying generally to the southwest of the Town. The First Boundary Adjustment Areas are a portion of the territory that has been designated by the County for public water and wastewater services, as depicted on the map attached as Exhibit 1, and hereafter referred to as the "Water & Sewer Service Area."

Section 2.2 Effective Date of First Boundary Adjustment. The incorporation of the First Boundary Adjustment Areas, as provided in section 2.1, shall be authorized by the Special Court in its final order approving this Agreement and shall not require the initiation of any other legal proceeding. Unless otherwise agreed to by the Parties and ordered by the Special Court, the First Boundary Adjustment Areas shall be effective as of midnight on June 30 following entry of the final order of the Special Court.

Section 2.3 Survey of First Boundary Adjustment Areas. The Town shall prepare a survey plat depicting the First Boundary Adjustment Areas. Following review and approval by the County, the Town shall submit the survey to the Special Court for inclusion in its final order.

Section 2.4 Extension of Municipal Services. Following the effective date of the First Boundary Adjustment provided by Section 2.1 of this Agreement, the Town shall extend its then-existing governmental services to the First Boundary Adjustment Areas on the basis of the same policies and at the same level as such services are then, or may thereafter be, provided to areas within the Town's current corporate limits where like conditions exist. The Town shall also undertake the construction of such capital improvements as the Town Council determines, in its discretion, are needed to serve the First Boundary Adjustment Areas in accordance with then existing policies and at such times as the Town Council deems appropriate.

ARTICLE III
FUTURE BOUNDARY ADJUSTMENTS

Section 3.1 Future Boundary Adjustments. Following the incorporation into the Town of the First Boundary Adjustment Areas, the Town may incorporate additional territory currently lying within the unincorporated portions of the County (“future boundary adjustments”) in accordance with the procedures set forth in Article IV of this Agreement, if such areas satisfy certain eligibility criteria. An area shall be eligible for incorporation by the Town if it is located within the territory described in Section 3.2 and if it meets the requirements specified in Section 3.3 and Section 3.4.

Section 3.2 Areas Available for Future Boundary Adjustments.

Section 3.2.1. One or More Portions of Water & Sewer Service Area. The territory available for one or more future boundary adjustments by the Town during the term of this Agreement shall include those portions of the Water & Sewer Service Area depicted in yellow on the map attached as Exhibit 1 (the “Future Boundary Adjustment Areas”). The Future Boundary Adjustment Areas consist of three areas described by metes and bounds in the attached Exhibit 3. One area with approximately 838 acres lies generally to the north of the Town, a second area with approximately 1,994 acres lies generally to the east of the Town, and a third area with approximately 2,081 acres lies generally to the south of the Town. For each periodic boundary adjustment, the Town may elect to include all or portions of any of the three Future Boundary Adjustment Areas, but each separate portion of the Future Boundary Adjustment Areas shall meet the eligibility requirements specified in Section 3.3 and Section 3.4 of this Agreement.

Section 3.2.2. Modifications to Water & Sewer Service Area. Subsequent to the approval of this Agreement by the Special Court, the County shall have the right unilaterally to expand and/or contract the territory contained within the Water & Sewer Service Area in accordance with procedures and limitations set forth in Article IX of this Agreement. If the County modifies the Water & Sewer Service Area, then any areas added shall automatically become part of the Future Boundary Adjustment Areas eligible for incorporation into the Town, and any areas removed shall automatically be eliminated from the Future Boundary Adjustment Areas and no longer will be eligible for incorporation into the Town. However, no such modifications to the Water & Sewer Service Area shall affect the incorporation of the First Boundary Adjustment Areas pursuant to Article II of this Agreement.

Section 3.2.3. Technology Zone. The area in red on the map attached as Exhibit 1, which is identified as the “Tech Zone” within the Water & Sewer Service Area, shall not be eligible in the future for incorporation into the Town by a boundary adjustment, except as provided herein. The Tech Zone consists of one area containing approximately 408 acres and is described by metes and bounds in the attached Exhibit 4.

(a) County Agreement. All or any portion of the Tech Zone may be incorporated into the Town if the County agrees to such a future boundary adjustment by resolution duly adopted by its board of supervisors. In that case, such portions of the Tech Zone shall constitute part of the Future Boundary Adjustment Areas, and the Town may incorporate any territory identified in such resolution in accordance with the eligibility criteria in Sections 3.3 and 3.4.

(b) Exception for Commercial/Residential Uses. Any parcels of land in the Tech Zone that are developed for commercial or residential uses, rather than technology or industrial uses, shall automatically constitute part of the Future Boundary Adjustment Areas and shall be eligible for incorporation by the Town, based on the eligibility criteria in Sections 3.3 and 3.4, without requiring that the County adopt a resolution or take other official action agreeing to a boundary adjustment of such parcels. For purposes of this exception, "commercial uses" shall mean businesses engaged primarily in the retail sales of goods and services of all kinds. However, restaurants, hotels, and buildings used primarily for office uses shall not qualify as "commercial uses" eligible for the exception provided for in this section. "Residential uses" shall mean any structure used primarily for dwellings for human habitation.

Section 3.3 Eligibility Criteria for Areas to be Incorporated by the Town in the Future – Contiguity and Minimum Width.

Section 3.3.1. Contiguity. To be eligible for incorporation into the Town, each separate portion of the Future Boundary Adjustment Areas that the Town proposes to incorporate within its boundaries shall be contiguous to the then-existing Town boundary line.

Section 3.3.2. Minimum Width. To be eligible for incorporation into the Town, that portion of each separate boundary adjustment area that is contiguous to the existing Town boundary line shall follow along the existing boundary line for at least 500 feet and such boundary adjustment area shall have a minimum width of at least 500 feet throughout the entire length of the boundary adjustment area. However, irregularities in the boundary and parcels of land along the outer edge of the boundary adjustment area may have a width of less than 500 feet. The minimum width of each boundary adjustment area shall be calculated in accordance with the method described in Exhibit 8 attached hereto.

Section 3.4 Eligibility Criteria for Areas to be Incorporated by the Town in the Future – Density of Development. The Parties agree that future boundary adjustments by the Town should be limited to areas that have sufficient density to be considered urban or urbanizing in terms of the nature of development. Accordingly, to be

eligible for a boundary adjustment, each separate portion of one or more of the Future Boundary Adjustment Areas that the Town proposes to incorporate into its corporate limits shall satisfy alternative criteria, the FAR Density Requirement or the Residential Density Requirement (combined, the "Density Eligibility Criteria"), as specified below, which are intended to demonstrate the existence of a minimum level of business and other non-residential development or a minimum level of residential development.

Section 3.4.1. Application of Eligibility Criteria to Single Area. Each separate boundary adjustment area shall be deemed to have satisfied the Density Eligibility Criteria if (i) the area as a whole meets the FAR Density Requirement, (ii) if the area as a whole meets the Residential Density Requirement, or (iii) if any one part or a combination of parts of the area meets the FAR Density Requirement and the other part or a combination of parts of the area meets the Residential Density Requirement.

Section 3.4.2. Application of Eligibility Criteria to Separate Areas. If the Town designates two or more non-contiguous areas to be incorporated into its boundaries, the eligibility requirements shall not be met by combining one or more parts of one area with one or more parts of the other non-contiguous area to satisfy the FAR Density Requirement or the Residential Density Requirement. Instead, each non-contiguous portion of the Future Boundary Adjustment Areas designated by the Town for a boundary adjustment must independently satisfy the eligibility requirements.

Section 3.4.3. Examples of Application of Eligibility Criteria to Single and Separate Areas. Examples of an eligible boundary adjustment area, based in part on compliance with the FAR Density Requirement and in part on compliance with the Residential Density Requirement, is attached as Exhibit 5.

Section 3.5 FAR Density Requirement. A boundary adjustment area, or any portion thereof, for which boundary adjustment eligibility is based on the FAR Density Requirement, must have an average Floor Area Ratio ("FAR") of 10% (0.10) or higher, as of the date the Town gives written notice to the County, as provided in Section 4.2(b), of its intention to adopt an ordinance to incorporate one or more eligible portions of the Future Boundary Adjustment Areas. The FAR for a boundary adjustment area, or any portion thereof, shall be calculated in accordance with the following criteria:

Section 3.5.1. Calculation of FAR -- General. The FAR of a boundary adjustment area, or portion thereof, shall be calculated by dividing the total square footage of the floor area, as defined in Section 1.9, of all buildings in the area, or portion thereof, by the total square footage of the same boundary adjustment area, or portion thereof. The result must equal 10% or higher for the designated area to meet the FAR Density Requirement.

Section 3.5.2. Floor Area of Residential Buildings Excluded. In calculating the total square footage of buildings within a boundary adjustment area, or portion thereof, the square footage of all buildings shall be included except for residential buildings. The square footage of buildings used solely for residential purposes shall be excluded from the FAR calculation. However, where a building is a mixed use structure, such as a building with commercial development on the first floor and residential apartments on the second floor, the square footage of the residential portions of the building shall be included in the FAR calculation.

Section 3.5.3. Public Roads & Rights-of-Way and Lakes Excluded. Where a boundary adjustment area, or portion thereof, includes public roads and associated road rights-of-way, the Town may exclude the square footage of public roads and associated road rights-of-way in calculating the total square footage of the boundary adjustment area, or portion thereof, when determining eligibility for incorporation of such area based on the FAR Density Requirement. The Town may not exclude from the FAR calculation any utility rights-of-way located on private property. If the Town includes a public road within a designated boundary adjustment area, it must include the entire paved portion of the road and the entire road right-of-way. If a boundary adjustment area includes all or any portion of Lake Pelham, Mt. Run Lake, Lake Caynor, Lake Catalpa, Bald's Run Lake, Merrimac Lake, or any other lake owned by the Town in the future, the Town may exclude the acres of land occupied by such lakes, or any portion thereof, when determining eligibility for incorporation of such area based on the FAR Density Requirement.

Section 3.5.4. Qualifying Land Uses and Zoning Districts. While the FAR Density Requirement is intended to measure a minimum level of business and other non-residential development, a boundary adjustment area, or portion thereof, shall be eligible for incorporation into the Town if it has a FAR of 10% or more, notwithstanding the inclusion of parcels of land containing residential development or undeveloped parcels. Such a boundary adjustment area, or portion thereof, that otherwise meets the FAR Density Requirement may contain land devoted to any type of use (for example, commercial, industrial, residential, public, mixed use, agricultural, or vacant) and land that is located within any type of County zoning district, except as noted in Section 3.5.5 and Section 3.5.8, below.

Section 3.5.5. Restrictions on Incorporating Land in A-1 and RA Zoning Districts. The County's zoning ordinance currently contains an Agricultural District ("A-1"), which is for rural low-density uses, and a Rural Area District ("RA"), which is for lands primarily rural in character but where there is a transition to residential development. Both districts permit only very limited commercial, industrial, and other business uses that are traditionally associated with rural areas. The Parties agree that the inclusion of such parcels of land within a boundary adjustment area generally is inappropriate, where the incorporation of such land into the Town is based on the FAR

Density Requirement. Therefore, no parcel of land lying within the County's A-1 or RA zoning districts shall be included in that portion of a future boundary adjustment area that is eligible for incorporation into the Town based on satisfying the FAR Density Requirement, except in the following three circumstances:

(a) Common Boundary. If at least 75% of the boundary of such a parcel adjoins the existing Town boundary and/or the designated boundary adjustment area, then the parcel zoned A-1 or RA may be included as part of the boundary adjustment area.

(b) Open Space Proffer. If such a parcel was proffered as open space land in connection with the conditional zoning by the County of adjoining property, then the parcel zoned A-1 or RA may be included as part of the boundary adjustment area.

(c) Boundary Adjustment Necessity. If the contiguity or minimum width requirements in Section 3.3 and the FAR Density Requirement in this Section 3.4 cannot be satisfied without including one or more parcels, or portions of parcels, zoned A-1 or RA, then the Town may include such a parcel or parcels, or portions of parcels, in a designated boundary adjustment area. If one or more parcels of land zoned A-1 or RA are located within a corridor that would most directly connect the designated boundary adjustment area and the existing Town boundary, then the Town shall be obligated to exclude such parcels of land by drawing the boundary adjustment area to go around such parcels to connect to the Town boundary. However, if the use of such a corridor would result in the designated boundary adjustment area failing to meet the FAR Density Requirement, then the Town may include such parcels zoned A-1 or RA to meet the contiguity and minimum width requirements and the FAR Density Requirement. In the event the Town designates a boundary adjustment area that includes parcels zoned A-1 or RA, pursuant to this exception, it shall include the smallest amount of land zoned A-1 and RA, and to minimize the inclusion of such land, it may split existing parcels of land zoned A-1 or RA. For purposes of applying this exception, the limitations on dividing existing parcels of land, set forth below in Section 3.5.9, shall not be applicable.

Section 3.5.6. A-1 or RA Parcels Included in FAR Calculation. If the Town includes one or more parcels of land zoned A-1 or RA as part of the designated boundary adjustment area, pursuant to one of the exceptions in Section 3.5.5, the square footage of all such A-1 and RA parcels shall be included in the FAR calculation to determine if the area designated for a boundary adjustment meets the FAR Density Requirement.

Section 3.5.7. Adoption of Use Value Assessment. If the Town includes one or more parcels of land zoned A-1 or RA as part of the designated boundary adjustment area, pursuant to one of the exceptions in Section 3.6.5, it shall adopt an ordinance providing for use value assessment and taxation for real estate devoted to agricultural uses, pursuant to Virginia Code Section 58.1-3230 et seq., or any successor provisions.

Section 3.5.8. Amendments to A-1 and RA Zoning Districts. In the event the County changes the name or numbering of its A-1 or RA zoning districts but retains the same text, the limitations in the preceding paragraphs shall continue to apply to the successor zoning districts. In the event the County amends the text for its current A-1 or RA zoning districts or the successor districts to such current zoning districts, the limitations in the preceding paragraphs shall continue to apply to such zoning districts if they permit substantially the same commercial, industrial, and other business uses as the current A-1 and RA zoning districts. However, in the event the County amends the text of its current A-1 or RA zoning districts, or the successor districts to its current A-1 or RA zoning districts, and substantially increases the commercial, industrial, or other business uses authorized in either such district, whether such uses are permitted automatically or by issuance of one or more special or conditional use permits or special exceptions, then the limitations in the preceding paragraphs shall not be applicable to such zoning district or districts, and the Town may include in a designated boundary adjustment area, or portion thereof, parcels of land lying within such zoning districts.

Section 3.5.9. Division of Parcels of Land. In designating a future boundary adjustment area, the Town may split a parcel of land and include only a portion of the divided parcel within the area to be incorporated into the Town. The Town may include such a portion of a parcel in the designated boundary adjustment area if the portion excluded from the designated area is larger than the portion included. Only the portion of the parcel included in the designated area shall be used in the FAR calculation. If the Town splits a parcel of land and the portion included within the designated boundary adjustment area contains development of any type, then the Town shall also include parking areas, storm water facilities, and other appurtenances and accessories directly related to the development, whether such appurtenances and accessories are located on the same parcel of land as the development or on a separate parcel of land.

Section 3.5.10. Example of FAR Calculation. An example of the calculation of the FAR for a boundary adjustment area in accordance with these criteria is attached as Exhibit 6.

Section 3.6 Residential Density Requirement. A boundary adjustment area, or any portion thereof, for which boundary adjustment eligibility is based on the Residential Density Requirement, must have an average residential density of one or more dwelling units per acre, based on existing development or, in limited cases, potential development,

as of the date the Town gives written notice to the County of its intention to adopt an ordinance to incorporate one or more eligible portions of the Future Boundary Adjustment Areas, as provided in Section 4.2(b). The residential density for a boundary adjustment area, or any portion thereof, shall be calculated in accordance with the following criteria:

Section 3.6.1. Calculation of Residential Density -- General. The Residential Density of a boundary adjustment area, or portion thereof, shall be calculated by dividing the total number of existing or potential dwelling units, as defined in Section 1.7, by the total number of acres in the boundary adjustment area, or portion thereof, for which boundary adjustment eligibility is based on the Residential Density Requirement. The result must be a density of 1.0 dwelling units per acre or higher.

Section 3.6.2. Public Roads & Rights-of-Way and Lakes Excluded. Where a boundary adjustment area includes public roads and associated rights-of-way, the Town may exclude the acres of land used for public roads and associated rights-of-way in calculating the total acres within the boundary adjustment area, or portion thereof, when determining eligibility for incorporation of such area based on the Residential Density Requirement. The Town may not exclude from the residential density calculation any utility rights-of-way located on private property. If the Town includes a public road within a designated boundary adjustment area, it must include the entire paved portion of the road and the entire road right-of-way. If a boundary adjustment area includes all or any portion of Lake Pelham, Mt. Run Lake, Lake Caynor, Lake Catalpa, Bald's Run Lake, Merrimac Lake, or any other lake owned by the Town in the future, the Town may exclude the acres of land occupied by such lakes, or any portion thereof, when determining eligibility for incorporation of such area based on the Residential Density Requirement.

Section 3.6.3. Qualifying Land Uses and Zoning Districts. A boundary adjustment area, or portion thereof, based on the Residential Density Requirement shall include, except as otherwise stated herein, only (i) parcels of land having one or more existing dwelling units located within any County zoning district and (ii) vacant land lying within any County zoning district that permits one or more residential uses, by right or by special use permit, including A-1 and RA zoning districts.

Section 3.6.4. Effect on Density Calculation of Parcels in A-1 and RA Zoning Districts. If a boundary adjustment area based on the Residential Density Requirement includes parcels lying within A-1 or RA zoning districts, the parcels in such A-1 or RA zoning districts, taken as a whole, must independently meet the requirement of a density of one or more dwelling units per acre, without regard to the density of the rest of the boundary adjustment area, or portion thereof, that is proposed for incorporation on the basis of the Residential Density Requirement. If such parcels in A-1 or RA zoning districts, taken as a whole, separately fail to meet the Residential Density Requirement,

they must be excluded from the boundary adjustment area, except in the following three circumstances:

(a) Common Boundary. If at least 75% of the boundary of such a parcel adjoins the existing Town boundary and/or the designated boundary adjustment area, then the parcel zoned A-1 or RA may be included as part of the boundary adjustment area based the Residential Density Requirement.

(b) Open Space Proffer. If such a parcel was proffered as open space land in connection with the conditional zoning by the County of adjoining property, then the parcel zoned A-1 or RA may be included as part of the boundary adjustment area based the Residential Density Requirement.

(c) Boundary Adjustment Necessity. If the contiguity or minimum width requirements in Section 3.3 and the Residential Density Requirement in this Section 3.6 cannot be satisfied without including one or more parcels zoned A-1 or RA, then the Town may include such a parcel or parcels in a designated boundary adjustment area based on the Residential Density Requirement. If one or more parcels of land zoned A-1 or RA are located within a corridor that would most directly connect the designated boundary adjustment area and the existing Town boundary, then the Town shall be obligated to exclude such parcels of land by drawing the boundary adjustment area to go around such parcels to connect to the Town boundary. However, if the use of such a corridor would result in the designated boundary adjustment area failing to meet the Residential Density Requirement, then the Town may include such parcels zoned A-1 or RA to meet the contiguity and minimum width requirements and the Residential Density Requirement. In the event the Town designates a boundary adjustment area that includes parcels zoned A-1 or RA, pursuant to this exception, it shall include the smallest amount of land zoned A-1 and RA, and to minimize the inclusion of such land, it may split existing parcels of land zoned A-1 or RA. For purposes of applying this exception, the limitations on dividing existing parcels of land, set forth below in Section 3.6.7, shall not be applicable.

If the Town includes one or more parcels of land zoned A-1 or RA as part of the designated boundary adjustment area, pursuant to one of the exceptions in this Section 3.6.4, the square footage of all such A-1 and RA parcels shall be included in the calculation of the density for the entire boundary adjustment area, or portion thereof, based on the Residential Density Requirement.

Section 3.6.5. Adoption of Use Value Assessment. If the Town includes one or more parcels of land zoned A-1 or RA as part of the designated boundary adjustment area, pursuant to one of the exceptions in Section 3.6.4, it shall adopt an ordinance providing for use value assessment and taxation for real estate devoted to

agricultural uses, pursuant to Virginia Code Section 58.1-3230 et seq., or any successor provisions.

Section 3.6.6. Amendments to A-1 and RA Zoning Districts.

(a) Changes in Names or Numbering of Zoning Districts. In the event the County changes the name or numbering of its A-1 or RA zoning districts but retains the same text, the limitations in Section 3.6.4 shall continue to apply to the successor zoning districts.

(b) Changes in Density of Zoning Districts. In the event the County amends the text for its current A-1 or RA zoning districts or any successor districts, the limitations in Section 3.6.4 shall continue to apply to such zoning districts if the amended text does not authorize an increase in the maximum density currently allowed in such zoning districts, which is one dwelling unit per five acres in the County A-1 zoning district (based on a minimum lot size of five acres) and one dwelling unit per three acres in the County RA zoning district (based on a minimum lot size of three acres). However, if the amended text authorizes a greater density, then the limitations in Section 3.6.4 shall not be applicable to such zoning district. For example, if the County RA zoning district is amended to allow a density of one dwelling unit per two acres (based on a minimum lot size of two acres), then any parcels located in such zoning district may be included in a boundary adjustment area without independently meeting the Residential Density Requirement of one or more dwelling units per acre.

(c) Reduction in Minimum Lot Size in Selected Areas But No Change in Overall Density. The limitations in Section 3.6.4 shall continue to apply to the current A-1 or RA zoning districts or any successor districts if (i) the County does not authorize an increase in the maximum density currently allowed in such zoning districts as a whole, (ii) but allows multiple housing units to be located in designated areas on parcels having less than the minimum lot size otherwise applicable within the zoning district, and (iii) requires that such housing units on smaller lots be surrounded by sufficient undeveloped space to create a residential density that is no greater than the maximum density currently permitted in the zoning district as a whole. However, in any such case, the limitations in Section 3.6.4 shall no longer be applicable to those parcels smaller than the minimum lot size otherwise applicable in such zoning districts. For example, if multiple housing units in a designated portion of the County RA zoning district are located on two-acre lots, which are smaller than the current three-acre minimum lot size, then such two-acre lots may be included in a boundary adjustment area without independently meeting the Residential Density Requirement of one or more dwelling units per acre.

Section 3.6.7. Division of Parcels of Land. In designating a future boundary adjustment area, the Town may split a parcel of land and include only a portion

of the divided parcel within the area to be incorporated into the Town. The Town may include such a portion of a parcel in the designated boundary adjustment area if the portion excluded from the designated area is larger than the portion included. Only the portion of the parcel included in the designated area shall be used in the residential density. If the Town splits a parcel of land and the portion included within the designated boundary adjustment area contains development of any type, then the Town shall also include parking areas, storm water facilities, and other appurtenances and accessories directly related to the development, whether such appurtenances and accessories are located on the same parcel of land as the development or on a separate parcel of land.

Section 3.6.8. Determination of Dwelling Units for Density Calculation.

For each parcel of land having existing residential development within an area designated for a boundary adjustment based on the Residential Density Requirement, the number of existing dwelling units on such parcel shall be used in calculating the residential density. For each parcel of land within the designated area that is vacant, such parcel shall be treated as having no dwelling units when calculating the residential density, except in “qualifying subdivision developments,” where vacant parcels shall be treated as having potential dwelling units that shall be included in the calculation of residential density in addition to those parcels having existing dwelling units.

(a) “Qualifying Subdivision Developments” Defined. A

“qualifying subdivision development” shall mean a residential subdivision, or any section or any phase thereof, as shown on a recorded subdivision plat, where (i) dwelling units have been constructed on 25% of the lots and certificates of occupancy have been issued for each such dwelling unit and where (ii) 25% of the roads (measured by distance) have been graded and provided with at least a gravel surface that provides a drivable roadway.

(b) Potential Dwelling Units. In each such qualifying subdivision development, or any section or any phase thereof, each vacant lot within the development, or section or phase thereof, shall be treated as having one potential dwelling unit for purposes of calculating the residential density without regard to the minimum lot size required by the County zoning ordinance. Hence, each vacant lot shall be deemed to have one potential dwelling unit even if the zoning district regulations permit a greater number of dwelling units on such a parcel or the zoning district regulations require a larger parcel of land for a dwelling unit.

Section 3.6.9. Residential Parcels Surrounding Commercial and Other Non-Residential Parcels. A boundary adjustment area, or portion thereof, which is eligible for incorporation based on the Residential Density Requirement, may include a parcel or parcels of land that does not otherwise qualify for inclusion in such a boundary adjustment area, or portion thereof, if such parcel is entirely surrounded by such an area eligible for incorporation into the Town. For this purpose, a non-qualifying parcel is one

that (i) has existing commercial or other non-residential development, but no structure with dwelling units, or (ii) contains vacant land located in a County zoning district that does not permit any residential uses. In that event, even if such a parcel does not qualify for inclusion in a boundary adjustment area based on the Residential Density Requirement and also fails to meet the FAR Density Requirement, the parcel shall nevertheless be eligible for incorporation into the Town to avoid the creation of an island of unincorporated territory. However, if the Town includes such a non-qualifying parcel within its designated boundary adjustment area, the acreage of any such non-qualifying parcel or parcels shall be included in the residential density calculation to determine whether the designated area is eligible for incorporation into the Town based on the Residential Density Requirement.

Section 3.6.10. Example of Residential Density Calculation. An example of the calculation of the residential density for a boundary adjustment area in accordance with these criteria is attached as Exhibit 7.

ARTICLE IV **PROCEDURE FOR FUTURE TOWN BOUNDARY ADJUSTMENTS**

Section 4.1 Implementation of Future Boundary Adjustments. In accordance with the schedule set forth in Section 4.3, the Town may incorporate one or more eligible portions of the Future Boundary Adjustment Areas by adoption of a boundary adjustment ordinance that shall include (i) a designation of one or more eligible portions of the Future Boundary Adjustment Areas to be incorporated, (ii) a survey plat and metes and bounds description of each designated portion of the Future Boundary Adjustment Areas, (iii) a general statement of the services to be provided within such Future Boundary Adjustment Areas, and (iv) the effective date of the boundary adjustment.

Section 4.2 Preconditions to the Adoption by the Town of Future Boundary Adjustment Ordinances. The Town shall not adopt any ordinance to incorporate any portion of the Future Boundary Adjustment Areas unless and until the following actions have been taken:

Section 4.2.1. Public Hearing. The Town shall hold a public hearing on the proposed boundary adjustment ordinance prior to its adoption. A notice of the Town's intention to hold such a public hearing shall be published once a week for two successive weeks in a newspaper having general circulation in the Town and the County. The notice shall include (i) the date, time, and location of the public hearing, (ii) a general description of the areas designated for incorporation into the Town, and (iii) the proposed effective date of the boundary adjustment. A copy of the proposed ordinance shall be made available for inspection at the office of the Town Clerk of the Town.

Section 4.2.2. Town Notice to County. At least 90 days prior to the adoption of the boundary adjustment ordinance, the Town shall deliver to the County (i) a written notice of its intention to adopt such an ordinance, (ii) an explanation of how each such portion of the Future Boundary Adjustment Areas designated for incorporation into the Town meets the eligibility requirements in Section 3.3 and Section 3.4, as of the date of the Town's notice to the County, and (iii) a copy of the proposed ordinance.

Section 4.2.3. County Notice to Town. Within 60 days after receipt of the Town's notice, the County shall deliver a notice to the Town stating whether it has any objection to the proposed boundary adjustment ordinance based on any portion of the designated Future Boundary Adjustment Areas failing to meet the eligibility requirements in Section 3.3 and Section 3.4 and in Article IV of this Agreement. The County may object to the proposed boundary adjustment solely on the basis of such eligibility requirements, and in the absence of such an objection, the boundary adjustment shall take effect in accordance with the procedures in this Article IV without any further action by the County. In the event the County does not deliver such a notice to the Town within 60 days, the County shall be deemed to have no objection to the proposed boundary adjustment ordinance.

Section 4.2.4. County Objection to Boundary Adjustment. In the event the County objects to the boundary adjustment, the County will deliver a written notice to the Town setting forth in detail the reasons for its contention that the areas designated by the Town do not meet the eligibility requirements for a boundary adjustment.

Section 4.2.5. Resolution of Dispute. Upon receipt of such a notice objecting to the proposed boundary adjustment, the Parties shall undertake negotiations in an effort to resolve the dispute. The Parties may elect to use non-binding arbitration, as provided in Section 14.6, in an effort to reach agreement as to whether the eligibility requirements have been met as to the areas designated by the Town. If the Parties are unable to resolve such a dispute, the Town or the County may initiate a declaratory judgment action with the Special Court appointed to affirm, validate and give full force and effect to this Agreement, or a successor Special Court appointed in accordance with Section 15.2-3000 of the Code, to determine if the proposed boundary adjustment is in accordance with this Agreement. Until such dispute between the Town and the County has been resolved by the Parties or by the Special Court, the Town shall not adopt the proposed boundary adjustment ordinance.

Section 4.3 Timing of Future Boundary Adjustments. Following the effective date of the First Boundary Adjustment, the Town may incorporate one or more eligible portions of the Future Boundary Adjustment Areas in accordance with the following schedule:

Section 4.3.1. Second & Third Boundary Adjustments. No sooner than ten years following the effective date of the First Boundary Adjustment, the Town may incorporate one or more eligible portions of the Future Boundary Adjustment Areas (the “Second Boundary Adjustment”). For example, if the First Boundary Adjustment becomes effective on July 1, 2012, the Second Boundary Adjustment shall become effective no sooner than July 1, 2022, but the Town may elect to make the Second Boundary Adjustment effective at a later date. No sooner than ten years following the effective date of the Second Boundary Adjustment, the Town may incorporate other eligible portions of the Future Boundary Adjustment Areas (the “Third Boundary Adjustment”), but the Town may elect to make the Third Boundary Adjustment effective at a later date.

Section 4.3.2. Final Boundary Adjustment. The Town may incorporate other eligible portions of the Future Boundary Adjustment Areas (the “Final Boundary Adjustment”) no sooner than ten years following the effective date of the Third Boundary Adjustment. However, in the event this Agreement terminates, in accordance with Article XI, sooner than ten years following the effective date of the preceding boundary adjustment (which may be either the First Boundary Adjustment, the Second Boundary Adjustment or the Third Boundary Adjustment), then the Town may make the Final Boundary Adjustment effective on the date of the termination of this Agreement, or at the Town’s option, on any date within one year following the termination of this Agreement. For example, if the Third Boundary Adjustment becomes effective on July 1, 2037, and the Agreement terminates on July 1, 2042, the Town may implement the Final Boundary Adjustment that shall become effective on July 1, 2042, even though that date is sooner than ten years following the effective date of the Third Boundary Adjustment. If the Town elects to make the Final Boundary Adjustment effective within one year following the termination of this Agreement, it may adopt its boundary adjustment ordinance and take the other actions specified in Section 4.2 at any time prior to the effective date of the Final Boundary Adjustment.

Section 4.4 Effective Date of Future Boundary Adjustments. The effective date of any future boundary adjustment that occurs pursuant to Article III and Article IV of this Agreement shall be established in the boundary adjustment ordinance, subject to the limitations in Section 4.3, and shall be no sooner than 30 days after the date of adoption of any boundary adjustment ordinance. After the Town has satisfied the preconditions in Section 4.2, each such future boundary adjustment shall become effective in accordance with the boundary adjustment ordinance without requiring further action by the County, the Commission, or any court.

Section 4.5 Extension of Municipal Services. Following the effective date of each any future boundary adjustment pursuant to Article III and Article IV of this Agreement, the Town shall extend its then-existing governmental services to those portions of the Future Boundary Adjustment Areas incorporated into the Town on the

basis of the same policies and at the same level as such services are then, or may thereafter be, provided to areas within the Town's current corporate limits where like conditions exist. The Town shall also undertake the construction of such capital improvements as the Town Council determines, in its discretion, are needed to serve those portions of the Future Boundary Adjustment Areas incorporated into the Town in accordance with then existing policies, and at such times as the Town Council deems appropriate.

Section 4.6 Certified Copies of Boundary Adjustment Ordinances.

Following the adoption of a boundary adjustment ordinance to incorporate portions of the Future Boundary Adjustment Areas, the Town shall file a certified copy of the ordinance with the Circuit Court of Culpeper County, the Secretary of the Commonwealth, the State Corporation Commission, and the Department of Taxation of the Commonwealth of Virginia.

ARTICLE V
TOWN WAIVER OF ANNEXATION & CITY STATUS RIGHTS

Section 5.1 Waiver of Annexation and City Status Rights. During the term of this Agreement, the Town shall waive and relinquish its right to initiate any annexation proceedings, pursuant to Section 15.2-3202 et seq. of the Code of Virginia, or any successor provisions, except that the Town shall retain its right to initiate such an annexation proceeding that proposes to incorporate only land owned by the Town. During the term of this Agreement, the Town shall also waive and relinquish its right to initiate any proceedings to make a transition from town to city status, pursuant to Section 15.2-3800 et seq. of the Code of Virginia, or any successor provisions.

Section 5.2 Voter and Landowner Annexation Rights. The waiver of rights in Section 5.1 will not be applicable to voters or property owners, who shall retain their right to initiate annexation proceedings pursuant to Section 15.2-3203 et seq. of the Code of Virginia, or any successor provisions. The Town shall not, however, promote an annexation proceeding initiated by voters or property owners. Specifically, it will not provide any legal assistance, engineering assistance, or financial aid to such voters or property owners. However, this limitation shall not prevent the Town from (i) providing information or documents requested by such voters or property owners pursuant to the Virginia Freedom of Information Act, including information as to service policies, comprehensive planning, and zoning regulations applicable to land that is incorporated into the Town, (ii) responding to a request by such voters or property owners as to whether the Town will oppose such a request, or (iii) filing a response with the Commission on Local Government or the annexation court stating that the Town does not oppose such a request but will not participate in the proceeding.

ARTICLE VI
WATER AND SEWER SERVICES -- GENERAL

Section 6.1 Provision of 1.5 MGD of Capacity of Water & Wastewater Services. Pursuant to this Agreement, the Town shall make available potable water to retail water customers located within the Water & Sewer Service Area in the amount of 1.5 MGD of capacity, and it will receive, treat, and dispose of wastewater received from retail sewer customers within the Water & Sewer Service Area in the amount of 1.5 MGD of capacity, pursuant to the terms and conditions stated herein.

Section 6.2 Connections to Town System. Within the Water & Sewer Service Area, the Town shall be obligated to permit any and all users seeking water and/or sewer services to connect to the Town's water and sewer systems, subject to the Town's maximum provision of 1.5 MGD of water capacity and the maximum provision of 1.5 MGD of wastewater capacity. Such users located within or outside the Town's boundaries shall comply with the Town's utility connection policies, as they may be revised from time to time. However, the County's mandatory connection ordinance shall determine whether landowners located within the Water & Sewer Service Area and outside the boundaries of the Town must connect to the Town's water and/or sewer systems. At such time as the Town has provided 1.5 MGD of water and wastewater capacity, it shall have no obligation to permit the connection of additional customers or to grant additional connections to existing customers.

Section 6.3 Retail Service Rights. During the term of this Agreement, the Town will have the exclusive right to provide retail water service to all customers within the Water & Sewer Service Area until such time as the Town has provided 1.5 MGD of water capacity. Likewise, during the term of this Agreement, the Town will have the exclusive right to provide retail wastewater service to all customers within the Water & Sewer Service Area until such time as the Town has provided 1.5 MGD of wastewater capacity. In the event the Town has provided 1.5 MGD of water or wastewater capacity but has not provided 1.5 MGD of capacity for both utility services, then its exclusive right to provide retail service shall continue as to the utility service for which it has not furnished 1.5 MGD. However, the Town shall retain the exclusive right to provide retail water and wastewater services beyond the date or dates it has provided 1.5 MGD of capacity for such utility services in accordance with the terms of any agreement the Town and the County may reach in the future, by which the Town shall agree to furnish additional water and/or wastewater capacity to the Water & Sewer Service Area. At such time as the Town no longer has the exclusive right to provide retail utility service to all customers within the Water & Sewer Service Area, it shall continue to have the exclusive right to serve its then-existing retail customers, as provided in Sections 11.2.1 and 11.2.2 of the Agreement.

Section 6.3.1 Town Customers. All such customers of Town water and wastewater services within the Water & Sewer Service Area shall be customers of the Town, not the County, and shall be billed directly by the Town for initial connection fees, monthly service charges, and any other applicable fees or charges.

Section 6.3.2 No Sale of Water for Resale; No Sale of Capacity. By this Agreement, the Town does not agree to furnish water or wastewater services to the County for resale to County customers in the Water & Sewer Service Area or elsewhere, nor does it agree to sell to the County any capacity or interest in the Town's water or wastewater treatment facilities.

Section 6.4 Transfer of Customers to Town. On the effective date of the Agreement, all existing water and sewer customers of the County served by the Town water or wastewater systems and located within the Water & Sewer Service Area shall be transferred to and shall become customers of the Town. In addition, County customers served by the County's Greens Corner Wastewater Treatment Plant on the effective date of the Agreement, including the Eastern View High School, shall become customers of the Town if the County accepts the Town's offer to construct a new sewer line in accordance with Section 10.3 of the Agreement and at such time as the customers are connected to the Town's wastewater system. Following the effective date of the Agreement, the County shall not connect any new customers located within the Water & Sewer Service Area to the Greens Corner Wastewater Treatment Plant. However, the County may temporarily connect additional customers during the planning, design, permitting, and construction of such a sewer line from its Greens Corner wastewater system to the Town system. Upon the completion of such construction, any such additional customers shall also become customers of the Town.

Section 6.5 Operation of County-Owned Lines. On the effective date of the Agreement, all County-owned utility lines and related facilities that are connected to the Town water or wastewater system shall continue to be owned by the County, but shall be operated and maintained exclusively by the Town. In the event of a boundary adjustment of any portion of the Water & Sewer Service Area, as provided above, the County shall convey to the Town, at no cost, title to all County water and sewer lines and related facilities and easements located within such portions of the Water & Sewer Service Area. The transfer of such facilities shall be made "as is" and without warranty.

Section 6.6 Construction of New Lines. Within all portions of the Water & Sewer Service Area, whether located within or outside the Town, the installation of new lines extending from existing lines to the property of new customers, shall be paid by developers or individual property owners in accordance with the Town's utility extension policies, as they may be revised from time to time. For example,

any wastewater line extension would be subject to the Town's requirement that gravity lines be used, where possible, rather than force mains. In addition, all connections of new lines to the Town's existing lines shall comply with the Town's utility connection policies, as they may be revised from time to time. The installation of related water or sewer facilities shall also be paid by the developers or individual property owners in accordance with the Town's utility extension policies. The installation of such related facilities shall include the enlargement or replacement of existing lines, tanks, or pump stations required to accommodate such new customers connected by a line extension. However, either the Town or the County may elect to pay, or contribute to, the expense of installing extensions of, or making improvements to, the existing systems, but neither the Town nor the County shall have an obligation to pay the expense of such line extensions or the enlargement or replacement of existing facilities to accommodate new customers, except as required below in Article X.

Section 6.7 Review of System Extensions or Improvements. The Town shall have the right to review and to approve or reject the design of all such lines and facilities funded by a developer, an individual property owner, or the County. The Town may deny approval only (i) if such lines and related facilities fail to comply with jointly-approved design standards, (ii) if they will fail to function in compliance with acceptable water quality standards and operating reliability standards, or (iii) if they do not comply with the Town's utility extension or connection policies. No such line extensions or improvements to related facilities shall be constructed until the Town and the County have jointly approved design standards for such lines and facilities. The Town may not deny approval for other reasons, such as disagreement with the location of a proposed development. The Town shall further have the right to inspect and approve or reject the construction of (i) such facilities funded by a developer or an individual property owner before they are dedicated to the County and (ii) such facilities funded by the County before they are connected to the Town's utility systems.

Section 6.8 Town-Funded Improvements. Within the Water & Sewer Service Area, all line extensions, improvement, and related equipment and easements funded by the Town shall be owned, operated, and maintained by the Town.

Section 6.9 Developer or County-Funded Improvements. Within the Water & Sewer Service Area, all line extensions, improvements, and related equipment and easements funded by a developer, an individual property owner, or the County shall be owned by the County, unless the area containing such facilities and easements is incorporated into the Town by a boundary adjustment, in which case they shall be conveyed to the Town. However, all such County-owned facilities shall be operated and maintained solely by the Town.

Section 6.10 Operation of Lines Outside of Water & Sewer Areas. During the term of this Agreement, the Town shall have no obligation to operate or maintain any County water or sewer lines and related facilities located outside the Water & Sewer Service Area. However, upon the request of the County, the Town will undertake good faith negotiations as to the operation and maintenance of any such facilities and/or the transfer of ownership of such facilities to the Town.

Section 6.11 Waiver of County Rights under Certain Agreements. Upon the execution of this Agreement, the County shall thereby relinquish and waive, without any further action, all its rights in certain so-called "3-party" and "2-party" agreements (i) to acquire ownership and control of the water and sewer facilities identified in each agreement and (ii) to provide water and sewer services to the customers served by such facilities. A list of all such agreements is attached as Exhibit 9.

ARTICLE VII

TERMS AND CONDITIONS OF SERVICE FOR RETAIL CUSTOMERS

Section 7.1 Terms & Conditions -- General. All Town customers in the Water & Sewer Service Area shall be entitled to receive service on the basis of the same terms and conditions as the Town's customers currently inside its boundaries.

Section 7.2 Equal Rates, Connection Fees, and Surcharges. The Town shall charge the same rates, connection fees, and other charges to all utility customers of the same class, whether located within the Town boundary or within any portion of the Water & Sewer Service Area. If the Town imposes a surcharge on retail customers who benefit directly from utility system improvements, any such surcharge policy shall be applied in the same fashion to customers within the Town boundary and within those portions of the Water & Sewer Service Area located outside the Town boundary.

Section 7.3 Revisions of Rates. The Town shall retain the discretion to establish and revise, without obtaining the County's consent, the rates, fees, and all other terms and conditions applicable to its water and sewer customers, including those located within the Water & Sewer Service Area.

Section 7.4 Reduction or Cessation of Service. Any reduction or cessation in water or sewer service for emergency conditions, or any denial of new water or sewer connections on the ground of insufficient capacity or other utility-based reasons, will be applied on an equal basis to all customers, whether located within the Town or outside the Town.

ARTICLE VIII
MEASUREMENT OF 1.5 MGD OF CAPACITY

Section 8.1 Calculation of 1.5 MGD. The Town shall be obligated to provide 1.5 MGD of water capacity and 1.5 MGD of wastewater capacity to its retail customers located within the Water & Sewer Service Area. However, the 1.5 MGD of water and wastewater capacity to be made available shall be in addition to, and shall not include, capacity made available to all Town and County customers connected to Town or County water or wastewater facilities within the Water & Sewer Service Area at the time the Agreement is given final approval by the parties following the review by the Commission of the Agreement. A list of all County customers served by the Town water or wastewater facilities pursuant to the 2003 Agreement, as amended, or the 2011 Interim Agreement, is attached hereto as Exhibit 10. The list does not include existing Town customers served within those areas. In addition, the 1.5 MGD of capacity shall not include capacity made available to those Town customers connected after the parties give final approval of the Agreement, where the Town is obligated to provide such service pursuant to so-called “three-party” or “two-party” agreements between the Town and the County and/or third parties. A list of all such agreements is attached as Exhibit 9. Other than customers connected pursuant to such agreements, the calculation of the 1.5 MGD of water and wastewater capacity shall include capacity provided to all new customers connected to water or wastewater facilities within the Water & Sewer Service Area after the Agreement has been given final approval by the Parties, or existing customers who require additional capacity following such approval.

Section 8.2 Water Capacity. The 1.5 MGD of water capacity to be provided by the Town shall not be calculated on the basis of the actual quantity of water delivered to each retail water customer on a daily basis. Instead, such capacity shall be calculated by using the maximum allowable gallons of water to be delivered to a water customer on a monthly basis (“Maximum Allowable Gallons”), as specified for the water meter or meters purchased by each retail water customer in the Water & Sewer Service Area, except those customers excluded as provided in Section 8.1. The Town shall have satisfied its obligation to provide 1.5 MGD of water capacity when the sum of the Maximum Allowable Gallons for the water meters purchased by such retail water customers in the Water & Sewer Service Area equals or exceeds 45,625,000 gallons, which is the equivalent of 1.5 MGD.

Section 8.3 Maximum Allowable Gallons based on Meter Size. The Maximum Allowable Gallons of water capacity for each meter shall be based on the size of the meter as shown in the Town’s Tap Privilege Fee Assessment Policy (“Tap Policy”), which specifies the maximum gallons of water to be delivered per month for each water meter size. Meter sizes currently range in size from 5/8 of an inch to 4 inches. A copy of the Tap Policy is attached hereto as Exhibit 11. Therefore, for example, the Town would supply 1.5 MGD of water capacity if it permitted customers in the Water & Sewer Service Area to connect a total of 304 two-inch water meters and 1 one-inch water meter, based on the

meter sizes provided for in the existing Tap Policy.

Section 8.3.1. Water Taps. Under the Town's Tap Policy, a person may purchase a retail water service tap ("water tap"), which is a right to connect to the Town's water system prior to the purchase and installation of a water meter and the commencement of water service. All such water taps for customers located in the Water & Sewer Service Area will count toward the 1.5 MGD of water capacity, even though a water meter has not been installed and service has not commenced. However, under the Tap Policy, the Town may withdraw a water tap purchased after 24 months if it has not been used. If the Town withdraws such a water tap, the Maximum Allowable Gallons for the meter associated with the tap shall be excluded from the 1.5 MGD of water capacity to be provided by the Town to the Water & Sewer Service Area.

Section 8.3.2. Revisions to Tap Policy. The Town may in its discretion revise or modify its Tap Policy during the term of the Agreement, except that it must retain the six current categories of Maximum Allowable Gallons of water to be delivered to a customer, ranging from 10,000 to 300,000 gallons per month. The Town may, however, change the meter size associated with each such category, because improvements in technology in the future may permit the delivery of greater quantities of water with smaller meters. Notwithstanding any future change in meter sizes, an existing customer shall retain the right to receive the Maximum Allowable Gallons of water authorized for the meter size at the time such water service was initially provided to the customer.

Section 8.3.3. County Purchase of Taps. The County may purchase retail water or wastewater service taps for use at County-owned property, but it may not purchase such taps for use at other parcels of property.

Section 8.4 Wastewater Capacity. While the Town shall make available 1.5 MGD of wastewater capacity within the Water & Sewer Service Area, such capacity shall not be based on the measurement of the actual flows of wastewater from its retail customers within the Water & Sewer Service Area. Instead, the amount of wastewater capacity made available shall be deemed to be equal to the quantity of water capacity provided to or used by such retail customers in the Water & Sewer Service Area, as determined in Section 8.2. Hence, the Town will accept, treat, and dispose of the wastewater from those retail water customers in the Water & Sewer Service Area, who receive or use water as part of the 1.5 MGD of water capacity furnished by the Town pursuant to this Agreement.

Section 8.4.1. Sewer Taps. Under the Town's Tap Policy, a person may purchase a retail wastewater service tap ("sewer tap"), which is a right to connect to the Town's wastewater system prior to the purchase and installation of a service connection and the commencement of wastewater service. All such sewer taps for customers located in the Water & Sewer Service Area will count toward the 1.5 MGD of wastewater capacity, even though a service connection has not been installed and wastewater service has not

commenced. However, under the Tap Policy, the Town may withdraw a sewer tap purchased after 24 months if it has not been used. If the Town withdraws such a sewer tap, the Maximum Allowable Gallons for the meter associated with the tap shall be excluded from the 1.5 MGD of wastewater capacity to be provided by the Town to the Water & Sewer Service Area.

Section 8.4.2. Customers with Wastewater Service Only. Each retail customer in the Water & Sewer Service Area who uses only Town wastewater service must purchase a Town water meter to measure the water flow from a well or other private water source. The Maximum Allowable Gallons of water flow for that meter shall be the assumed wastewater capacity for that customer.

Section 8.5 Impact of Boundary Adjustments on Water & Wastewater Capacity. In the event of the incorporation by the Town of the First Boundary Adjustment Areas or any Future Boundary Adjustment Areas, the water and sewer capacity provided by the Town to such areas shall continue to be counted as part of the total 1.5 MGD of water and sewer capacity to be furnished by the Town to the Water & Sewer Service Area, even though such incorporated areas are located within the Town. However, the incorporation of such areas into the Town shall alter the method of calculating the water and wastewater capacity allocated to such areas for purposes of the Town's obligation to supply 1.5 MGD of capacity, as described below.

Section 8.5.1 Modified Method of Calculating Capacity. For all such areas incorporated into the Town (First Boundary Adjustment or any Future Boundary Adjustments), the Maximum Allowable Gallons provided by the Town on the effective date of the boundary adjustment, as calculated in accordance with Sections 8.1 through 8.5, shall be counted toward the 1.5 MGD of capacity to be provided by the Town, based on water meters and water and sewer taps purchased by customers for such parcels of land prior to the effective date of the boundary adjustment. However, any additional capacity provided to such customers (by larger or additional meters or taps) after the effective date of the boundary adjustment shall not be counted toward the 1.5 MGD of capacity. Likewise, any reduction in the capacity furnished to such parcels (by smaller or fewer meters or taps) after the effective date of the boundary adjustment shall not reduce the capacity counted toward the 1.5 MGD of capacity to be furnished by the Town. For each parcel of land for which no capacity had been provided by the Town as of the effective date of the boundary adjustment (First Boundary Adjustment or any Future Boundary Adjustments), the Town's provision of water or sewer capacity to any such parcel following the effective date of the boundary adjustment shall not be counted toward the 1.5 MGD of capacity to be furnished by the Town.

Section 8.5.2 Example of Calculation of Capacity after Boundary Adjustment. The modified method of calculating water and sewer capacity to an area incorporated into the Town by a boundary adjustment implemented pursuant to this

Agreement can be illustrated by this hypothetical example of the calculation of water capacity. Assume that prior to the effective date of the First Boundary Adjustment, the Maximum Allowable Gallons for water meters and water taps for parcels within the boundary adjustment area total 100,000 gallons per month, as determined in accordance with Section 8.1. Such capacity shall be counted toward the 1.5 MGD of water capacity to be furnished by the Town. However, if a particular customer receiving water service on the effective date of the First Boundary Adjustment increases its capacity of 10,000 gallons per month by purchasing after the effective date of the boundary adjustment a larger meter delivering 200,000 gallons per month, such additional capacity of 190,000 gallons per month shall not be counted toward the 1.5 MGD of capacity to be provided by the Town.

Section 8.6 Annual Reports of Water & Wastewater Capacity. On at least an annual basis, the Town shall make available to the County a report of the water and wastewater capacity provided to retail customers within the Water & Sewer Service Area pursuant to the Agreement, including the capacity provided during the preceding year, the cumulative capacity provided since the inception of the Agreement, and the remainder available for the Water & Sewer Service Area of the total 1.5 MGD.

ARTICLE IX

EXPANSION OR CONTRACTION OF WATER & SEWER SERVICE AREAS

Section 9.1 Expansion of Water & Sewer Service Areas. Following the effective date of this Agreement, the County may unilaterally expand the Water & Sewer Service Area, without the Town's consent, to include any adjacent land where it desires to make public water and wastewater services available pursuant to the terms of this Agreement. All rights and obligations of the Parties with respect to the Water & Sewer Service Areas shall apply to such additional territory.

Section 9.2 Contraction of Water & Sewer Service Areas. Following the effective date of this Agreement, the County may unilaterally remove territory from the Water & Sewer Service Areas, without the Town's consent, and thereby remove land that it no longer desires to designate as a public water and sewer service area, except as follow:

Section 9.2.1. **Parcels Already Served.** The County shall not remove from the Water & Sewer Service Area any parcel that is served by the Town, which shall include (i) those parcels connected to the Town water or sewer system and receiving one or both such services and (ii) parcels for which a "tap privilege" has been purchased from the Town, even if a water meter has not been installed. However, this limitation shall not apply to parcels for which such a tap privilege has expired or has been revoked by the Town in accordance with its tap privilege policies.

Section 9.2.2. Parcels Adjacent to Water & Sewer Lines. The County shall not remove from the Water & Sewer Service Area any parcel located within such distance from an existing water line or existing sewer line so as to be subject to the County's mandatory utility connection ordinance as it may be amended from time to time, subject to a minimum distance of 300 feet along each side of existing lines.

Section 9.2.3. Creation of Islands or Non-Contiguous Areas. The County shall not remove from the Water & Sewer Service Area any parcel that (i) would create an island of land that was not part of the Water & Sewer Service Area, but was surrounded entirely by the Water & Sewer Service Area, or that (ii) would result in a portion of the Water & Sewer Service Area no longer being contiguous to the then-existing Town boundary.

Section 9.2.4. Creation of Peninsula. The County shall not remove from the Water & Sewer Service Area any parcels that would create a peninsula of land lying between the Town and any remaining portions of the Water & Sewer Service Area. A peninsula shall mean a narrow strip of land, which is surrounded on three sides by the Water & Sewer Service Area or the existing Town boundary and which is connected to other unincorporated portions of the County not constituting part of the Water & Sewer Service Area. The Parties acknowledge that such a peninsula cannot be defined with precision, but agree that the purpose of this limitation is to ensure that the Town will not be prevented from incorporating an area located within the Water & Sewer Service Area by the County's action removing certain parcels so as to create peninsula of land that would effectively block the outward extension of the Town's boundary to encompass adjoining land that otherwise would qualify as a boundary adjustment area in accordance with this Agreement.

ARTICLE X

PLANT EXPANSION AND OTHER SYSTEM IMPROVEMENTS

Section 10.1 Expansion of Water & Wastewater Treatment Plant. The Town shall be solely responsible for the planning, funding, and development of such expansions or improvements to its water and wastewater treatment plans as may be required in future years to provide the 1.5 MGD of water and wastewater capacity for the Water & Sewer Service Area.

Section 10.2 Expansion of Raw Water Sources. The Town and the County recognize that the development of new raw water sources as may be required to provide 1.5 MGD of water capacity to the Water & Sewer Service Area will require cooperation in the planning, funding, and development of such raw water sources. Therefore, the Town shall have no obligation pursuant to the Agreement to secure such additional raw water sources, if they are needed in the future to ensure that 1.5 MGD of water capacity is available for the Water & Sewer Service Area. However, the Town and

the County resolve to undertake good faith efforts to cooperate in the planning, funding, and development of any such required raw water sources. Failure to develop adequate raw water sources will affect all customers equally, as provided in Article VII of the Agreement.

Section 10.3 Sewer Line to Eastern View High School. The Town shall offer to build a sewer line to the Eastern View High School that currently is served by the Greens Corner Wastewater Treatment Plant. If the County accepts that offer, the Town shall promptly undertake the planning, design, permitting, and construction of such line and related facilities, the capacity of which shall be determined by the Town in its discretion, except that such capacity shall be sufficient to serve the Eastern View High School. The construction shall be undertaken by the Town at no cost to the County other than the incremental effect of such construction expenses on the Town's retail sewer rates, which will be paid by the County as a retail customer of the Town for any County facilities that are connected to and served by the Town's sewer system. The Town shall own the sewer line constructed to serve the Eastern View High School, and the County may move the Greens Corner Wastewater Treatment Plant to any location outside the Water & Sewer Service Area to serve other needs. Until the Eastern View High School is connected to and served by a Town sewer line, the County shall continue to be responsible for the operation and maintenance of its Treatment Plant and related facilities.

ARTICLE XI

TERM OF AGREEMENT AND POST-TERMINATION RIGHTS

Section 11.1 Minimum Term. This Agreement shall be in effect for a minimum term of 30 years. However, if the Town has not provided 1.5 MGD of water capacity and 1.5 MGD of wastewater capacity to the Water & Sewer Service Area, as calculated in accordance with Article VIII above, then it shall automatically be extended until such time as the Town has provided that quantity of capacity to utility customers located within the Water & Sewer Service Area. However, both parties may jointly decide to terminate the Agreement at the end of 30 years or at any mutually agreed upon date after such 30-year period, but prior to the date upon which the Town has provided that quantity of capacity.

Section 11.2 Post-Termination Rights. Upon the expiration of the 30-year term or such longer term as described above, the rights and obligations of the Town and the County pursuant to this Agreement shall terminate except as provided in Sections 11.2.1, 11.2.2, 11.2.3, and 11.2.4, below:

Section 11.2.1. **Service Rights.** The Town's exclusive right to provide retail service to customers within the Water & Sewer Service Area shall terminate, except as to all then-existing customers of the Town, which the Town shall have the exclusive right to serve indefinitely, unless otherwise agreed to by the Town and the

County. In addition, the Town shall have no right, pursuant to any provision of the Agreement, to provide retail service to any additional customers within the Water & Sewer Service Area. However, by this Section of the Agreement, the Town shall not forfeit or waive any rights under the Code of Virginia or its charter to provide retail service to additional customers within the Water & Sewer Service Area.

Section 11.2.2. Operation of Certain County-Owned Lines. Following the termination of the Agreement, the Town shall have the right to continue to operate and maintain in perpetuity any County-owned water or sewer lines and related facilities that were being used to serve Town customers within the Water & Sewer Service Area prior to the termination of the Agreement.

Section 11.2.3. Provision of Additional Utility Service. The Town shall have no obligation to provide utility service to additional customers within the Water & Sewer Service Area following the termination of the Agreement. Instead, the County shall be solely responsible for providing utility services to any new customers within the Water & Sewer Service Area.

Section 11.2.4. Boundary Adjustment & Annexation Rights. The Town's right to exercise its boundary adjustment rights under this Agreement and its waiver of its right to institute a contested annexation proceeding shall terminate. However, the Final Boundary Adjustment may become effective on the date of termination, or at the Town's option, on any date within one year following the termination of this Agreement, as provided in Section 4.3.2 above.

ARTICLE XII **REDUCTION IN BPOL TAXES**

Section 12.1 Reduction in BPOL Rates. The Town shall reduce its business, professional, and occupational license ("BPOL") tax rate and any BPOL flat fee by 20% for each category of business subject to such tax within the existing Town boundaries and within the First Boundary Adjustment Areas.

Section 12.2 Period of Reduced Rates. Such reduced rate of taxation shall be effective for at least the one tax year immediately following the effective date of the First Boundary Adjustment.

ARTICLE XIII **JOINT ADVISORY PLANNING BODY**

Section 13.1 General. The Town and the County shall create a joint advisory planning body to consider Town and County planning issues.

Section 13.2 Membership of Joint Body. The Town Council shall appoint two members and the County Board of Supervisors shall appoint two members to the body, and those four members shall elect a fifth member.

Section 13.3 Duties of Joint Body. The joint advisory planning body will consider such planning issues as are referred to the body by either the Council or the Board and shall make advisory recommendations to the governing bodies.

ARTICLE XIV
COMMISSION AND SPECIAL COURT APPROVAL

Section 14.1 Commission Review. The Town and the County agree to initiate the steps necessary and required by Title 15.2, Chapter 34 of the Code (in particular § 15.2-3400, paragraphs 3, 4, 5 and 6) and Title 15.2, Chapter 29 of the Code (§ 15.2-2900 *et seq.*) to obtain a review of this Agreement by the Commission.

Section 14.2 Submission to Special Court: Following the issuance of the report of findings and recommendations by the Commission, the Town and the County agree that they will submit this Agreement in its present form to the Special Court for approval, as required by Title 15.2, Chapter 34 of the Code (in particular § 15.2-3400, paragraphs 3, 4, 5 and 6 of the Code), unless both parties agree to any changes recommended by the Commission.

Section 14.3 Termination if Agreement Modified. The Town and County agree that if this Agreement is not affirmed without modification by the Special Court, this Agreement shall immediately terminate. However, the parties may waive termination by mutually agreeing to any recommended modifications.

Section 14.4 Future Governing Bodies. Upon approval by the Special Court, the Agreement will bind future local governing bodies of the localities, pursuant to express statutory authority.

Section 14.5 Enforcement of Agreement. The obligations in this Agreement shall be enforceable in a proceeding initiated by the Town or the County before the Special Court appointed to affirm, validate and give full force and effect to this Agreement or a successor Special Court appointed in accordance with Section 15.2-3000 of the Code.

Section 14.6 Alternative Dispute Resolution. Either party may ask that a dispute arising under this Agreement be submitted to non-binding arbitration prior to the commencement of an enforcement proceeding before a Special Court. If the other party agrees, then within 30 days thereafter, the Town and County shall each choose one arbitrator. Such persons may not be currently employed by or hold an elected or other

official position with either the Town or the County. Those two persons shall choose a third arbitrator within 30 days after the initial selections. The panel of three arbitrators will hear the matter under such procedures and rules as the arbitrators conclude are appropriate. Within 90 days after the third arbitrator is chosen, the panel shall issue their decision in writing with such explanation or detail as the arbitrators conclude is appropriate. In the event the dispute is not resolved by such non-binding arbitration, the Special Court reviewing the matter shall do so *de novo*, without factual or legal deference to the decision of the arbitrators.

ARTICLE XV
MISCELLANEOUS PROVISIONS

Section 15.1 Termination of 2003 Agreement and 2011 Interim Agreement. Upon entry of the order of the Special Court affirming the Agreement and giving it full force and effect, all provisions of the 2003 Agreement, as amended, and of the 2011 Interim Agreement shall terminate and be null and void, including those provisions providing for the refund by the Town to the County of the remaining portion of the \$3,300,000 previously paid by the County for water and sewer capacity that had not already been refunded. It is the Parties' intent that, upon such final approval of the Agreement, the Town shall have no obligation to make any further refund or other payment to the County relating to the County's purchase of water and sewer capacity under the 2003 Agreement, as amended, or the 2011 Interim Agreement.

Section 15.2 Precondition to Implementation of Agreement. This Agreement is conditioned upon, and shall not be implemented unless and until the Virginia Department of Environmental Quality has approved the transfer to the Town of the County's Mountain Run Plant nutrient allocations of 18,273 pounds per year of the nutrient total nitrogen and 1,371 pounds per year of the nutrient total phosphorus, as provided in the Nutrient Agreement entered into by the Town and the County. However, the Town and the County may take action waiving this approval requirement in whole or in part.

Section 15.3 Amendments to Agreement. This Agreement may be amended, modified or supplemented, in whole or in part, by mutual consent of the Town and the County, subject to review by the Commission and approval by a Special Court, except as provided in Section 15.4.

Section 15.4 Modifications to Utility Arrangements. The Town and the County shall have the right to make such modifications to the utility arrangements described above as they deem appropriate without further Commission review or court approval.

Section 15.5 Notices. Any and all notices herein provided for or relating to the transactions herein provided for will be in writing and will be deemed to have been sufficiently given if delivered by hand or mailed, postage prepaid, by first class mail, addressed to:

For notices to the County:
County Administrator
Culpeper County
302 N. Main Street
Culpeper VA 22701

For notices to the Town:
Town Manager
Town of Culpeper
400 S. Main Street
Suite 101
Culpeper, VA 22701

Section 15.6 Counterparts. This Amendment may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 15.7 Effective Date. This Agreement shall be effective upon the date of entry of the order of the Special Court affirming and giving full force and effect to the Agreement. However, in the event the Virginia Department of Environmental Quality has not approved the transfer of nutrient allocations, as provided in Section 15.2, by the date of entry of such Order, this Agreement shall not be effective until and unless (i) the Department of Environmental Quality has granted such approval or (ii) the Town and the County have taken action waiving this requirement.

WITNESS the following signatures and seals.

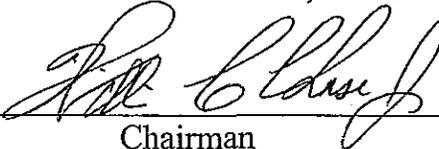
TOWN OF CULPEPER, VIRGINIA

By: 
Mayor

ATTEST:


Clerk

COUNTY OF CULPEPER, VIRGINIA

By: 
Chairman

ATTEST:

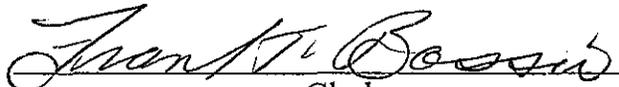
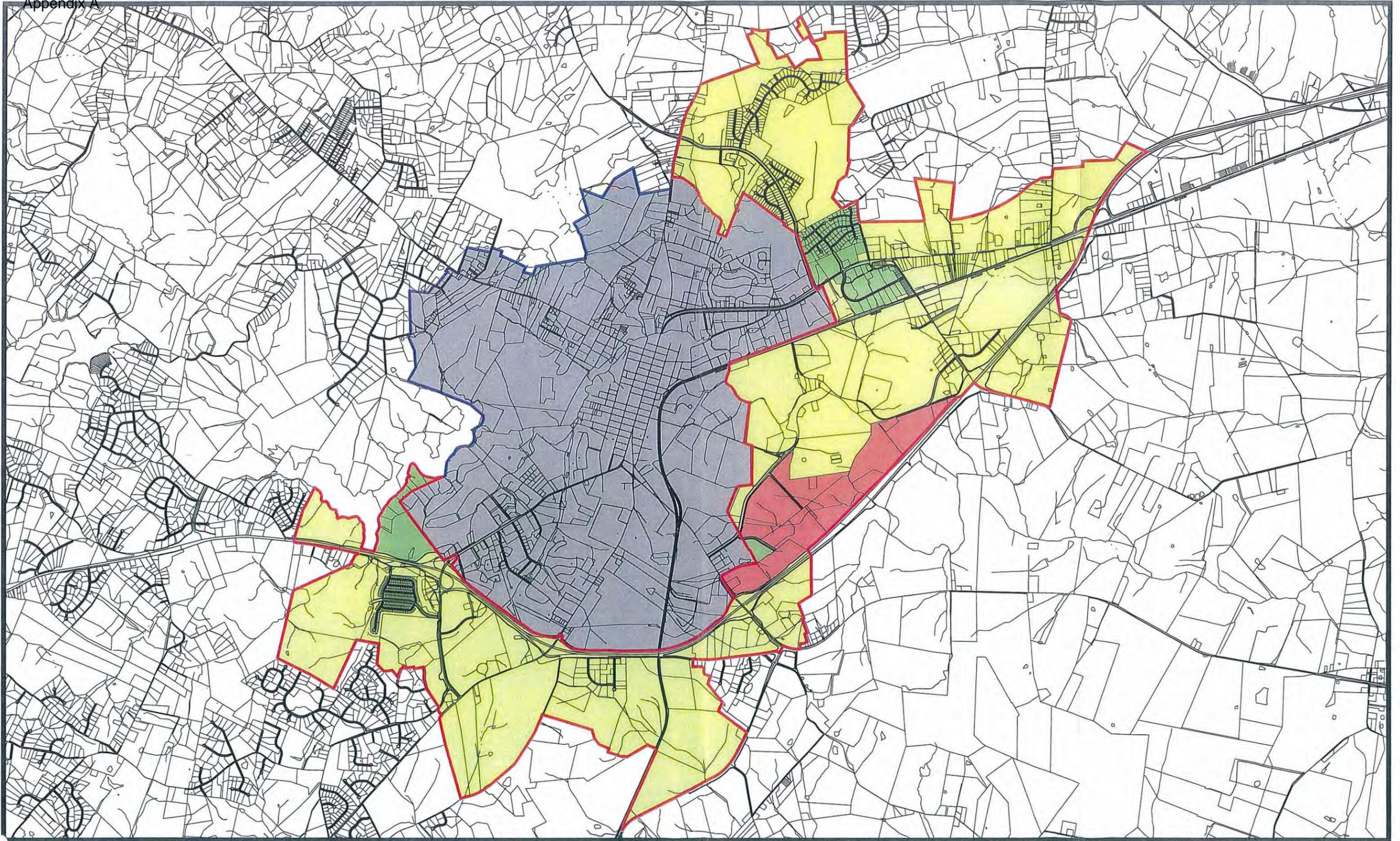

Clerk

Exhibit 1 to Voluntary Settlement

Map depicting the First Boundary Adjustment Areas and Future Boundary Adjustment Areas, dated July 27, 2010



TOTAL WATER & SEWER SERVICE AREA= 8.79 SQ. MILES

WATER & SEWER SERVICE AREAS
Adopted 10-2-07
Revised & Adopted 12-2-08
MAP DRAFT DATE: 7-27-2010

- TECH ZONE AREA-NOT ELIGIBLE FOR BLA
406 ACRES/0.63 SQ. MILES
- INITIAL BLA
0.48 SQ. MILES
- EXISTING WATER & SEWER SERVICE AREA

Exhibit 2 to Voluntary Settlement

Metes and Bounds Descriptions of the First Boundary Adjustment Areas

(1) Montanus Area

Beginning at the northeast corner of parcel # 41G(1)A, a point on the current Town of Culpeper Corporate limits; thence cutting across Ira Hoffman Lane-Route 694 in a easterly direction to the southwest corner of parcel # 41-70B2; thence in a easterly direction with the southern property line of parcel # 41-70B2 to the southeast corner of parcel # 41-70B2; thence in a northerly direction with the east property line of parcel of parcel # 41-70B2 to the northeast corner of parcel # 41-70B2; thence in a northeasterly direction with the southern property lines of parcel #'s 41-57, 69,68 to the northeast property corner of parcel # 41N(1)24, a point in the west right of way line for Bradford Road – Route 666; thence in a southerly direction with the west right of way line for Bradford Road – Route 666 to the southeast corner of parcel # 41-71B; thence in a westerly direction with the southern property line for parcel # 41-71B to the northwest corner to parcel # 41-73; thence in a southerly direction with the western property line of parcel # 41-73 to the southeast corner of parcel # 41-71D, a point in the northern right of way line for Brandy Road-Business Route 15/29; thence in a easterly direction with the northern right of way line of Brandy Road-Business Route 15/29 to the southeast corner of parcel # 41-73; thence cutting across Brandy Road-Business Route 15/29 in a southerly direction to the northeast corner of parcel # 41C(3)1, a point at the southwest corner of the intersection of Brandy Road-Business Route 15/29 and Braggs Corner Road-Route 666; thence with the right of way line of Braggs Corner Road-Route 666 in a southeasterly direction to the southeast corner of parcel # 41C(1)4; thence in a southwesterly direction with the southern property line for parcel # 41C(1)4 to the southwest corner of parcel # 41C(1)4; thence in a northerly direction with the western property line of parcel # 41C(1)4 to the southeast corner of parcel # 41(3)14; thence in a westerly direction with the southern property line for parcels # 41C(3)14 and 41C(3)15 to the southwest corner to parcel # 41C(3)15, a point in the line of parcel # 41(3)16; thence in a southerly direction with the eastern property line of parcel # 41C(3)16 to the southeast corner to parcel # 41C(3)16, a point in the northern right of way line of Southern Railroad; thence in a westerly direction with the southern property lines of parcels # 41C(3)16, 17 18, 19, 20, 21 to the southwest corner of parcel 41C(3)21; thence in a northerly direction with the western property line of parcel # 41C(3)21 to the southeast corner to parcel # 41-76, a point in the right of way line of Montanus Drive-Route 1023; thence in a northerly direction with the right of Montanus Drive-Route 1023 to the southeast corner of parcel # 41C(3)22; thence with the southern and western property line of parcel # 41C(3)22 in a westerly and northerly direction to the northwest corner of parcel # 41C(3)22, a point in the southern right of way line of Brandy Road-Business Route 15/29; thence in a southwesterly direction with the right of way line of Brandy Road-Business Route 15/29 to point where the right of way intersects with the

Town of Culpeper Corporate limits; thence in a northerly direction with the Town of Culpeper Corporate limits to the point of beginning.

(2) S.W.I.F.T. Property

Beginning at a point where the southern right of way line of Technology Drive-Route 790 intersects with the Town of Culpeper Corporate limits, corner to parcel # 51-83F1; thence in a southeasterly direction with the right of way of Technology Drive-Route 790 to the southeast corner to parcel # 51-83F1; thence in a southwesterly direction with the southern property line for parcel # 51-83F1 to the southwest corner of parcel # 51-83F1 a point on the Town of Culpeper Corporate limits; thence in a northerly direction with the Town of Culpeper Corporate limits to the point of beginning.

(3) Lake Pelham / Clore Farm Area

Beginning at a point where the northern right of way line of James Monroe Highway-Route 29 intersects the Town of Culpeper Corporate limits, a corner to parcel #50-1; thence in a southerly and westerly direction with the property line with parcel # 50-1 to the southwest corner of parcel # 50-1, a point on Lake Pelham owned by the Town of Culpeper; thence in a northerly direction with Lake Pelham and the parcel lines of parcels # 50-1, 1C, 1B, 40-48A, 50D1, 49E2, 49E, 49E3, and 50C to a point where the property line intersects with the Town of Culpeper Corporate limits; thence in southwesterly and then southeasterly direction with the Town of Culpeper Corporate limits to the point of beginning.

Exhibit 3 to Voluntary Settlement**Metes and Bounds Descriptions of the Future Boundary Adjustment Areas**

(1) North of Town

Beginning at a point in the east right of way line of Rixeyville Road-Route 229 where it intersects with the Town of Culpeper Corporate limits; thence in a northerly direction with the east right of way line of Rixeyville Road-Route 229 to a point where it intersects with the south right of way line of Ira Hoffman Lane-Route 694; thence cutting across Ira Hoffman Lane-Route 694 in a northerly direction to the northeast corner of the intersection of Rixeyville Road-Route 229 and Ira Hoffman Lane-Route 694; thence in a northerly direction with the east right of way of Rixeyville Road-Route 229 to the northwest property corner of parcel # 31-71C; thence in a northeasterly direction with the northern property lines for parcels # 31-71C, 71, 73A to a corner in the property line of parcel # 31-73A; thence in a northerly direction with the east property line of parcel # 31-73A to the southwest corner of parcel 31-73D; thence with the southern property line of parcel # 73D to the southeast corner of parcel # 31-73D; thence with the east property line of parcel # 31-73D to a point in the southern right of way line of Chestnut Fork Road-Route 685; thence in a easterly direction along the southern right of way line of Chestnut Fork Road-Route 685 to the northeast corner of parcel # 31-73A; thence in a southerly direction with the eastern property line of parcel # 31-73A to the northern property corner of parcel 41M(6)164; thence in a southerly direction with the property of parcel # 41M(6)164 to the northwest property corner of parcel # 41M(6)165; thence in a northerly direction with the northern property line of parcel # 41M(6)165 to a property corner with parcel # 31-73A; thence in a easterly direction with the northern property line of parcel # 31-73A to the southwest property corner of parcel # 31-73M; thence in a northerly direction with the western property line of parcel # 31-73M to a corner in the southern right of way line of Chestnut Fork Road -- Route 685; thence in a northeasterly direction to the corner of parcel # 31-73M; thence in a southerly direction with the property line of parcel # 31-73M to the southwest corner of parcel # 31-73; thence in a easterly and then northerly direction with the property line of parcel # 31-73 to the northeast corner of parcel # 31-73; thence in an easterly direction with the property line of parcel # 31-73R to the southeast corner to parcel # 31-73R; thence in a southerly direction with the property eastern lines of parcels # 31-73M , 31-73A, 41M(6)P, 41M(6)179, 31-105, and 41-57 to the southeast corner of parcel # 41-57; thence in a southwesterly direction with the property line of parcel # 41-57 to the northern corner of parcel # 41-70B2; thence in a southerly direction with the eastern property line of parcel # 41-70B2 to the southeast corner of parcel # 41-70B2; thence in a westerly direction with the southern property line of parcel # 41-70B2 to the southwest corner of parcel # 41-

70B2, a point in the eastern property line of Ira Hoffman Lane – Route 694; thence cutting across Ira Hoffman Lane in a westerly direction to the southern property corner to parcel # 41-70, a point in the Town of Culpeper Corporate limits; thence in a westerly direction with the Town of Culpeper Corporate limits to the point of beginning.

(2) East of Town

Beginning at the northwest corner of parcel # 41-77, a point in the Town of Culpeper Corporate limits and a point in the southern right of way line for Brandy Road – Business Route 15/29; thence in a westerly direction with the right of way line for Brandy Road to the northeast corner of parcel # 41-76; thence with the property line for parcel # 41-76 in a southerly and westerly direction to a point in the right of way line for Montanus Drive – Route 1023; thence in a southerly direction with the right of way line for Montanus Drive to the northeast corner to parcel # 41-76A; thence in a southerly direction to the southeast corner to parcel # 41-76A, a point in the northern right of way line for Southern Railroad; thence with the northern right of way line of Southern Railroad to the southwest corner of parcel # 41C(1)1A; thence in a northerly direction with the western property line of parcel # 41C(1)1A to the northwest corner of parcel # 41C(1)1A; thence in a easterly direction with the northern property of parcel # 41C(1)1A to the northwest corner of parcel # 41C(1)1A; thence in a southerly direction with the eastern property line of parcel # 41C(1)1A to the northwest corner of parcel # 41C(1)3; thence in a easterly direction to the northeast corner of parcel # 41C(1)3 a point in the western right of way line of Braggs Corner Road – Route 666; thence in a northerly direction with the western right of way for Braggs Corner Road to the northeast corner of parcel # 41C(3)1, a point in the southern right of way line of Brandy Road – Business Route 15/29; thence in a northerly direction cutting across Brandy Road to the southeast corner of parcel # 41-73, a point in the northern right of way line of Brandy Road – Business Route 15/29; thence in a westerly direction with the southern property line of parcel # 41-73 to the southwest corner of parcel #41-73; thence in a northerly direction with the western property line of parcel # 41-73 to the northwest corner of parcel # 41-73; thence in a easterly direction with the northern property line of parcel # 41-73 to the northeast corner of parcel # 41-73, a point in the western right of way line of Bradford Road – Route 666; thence in a northerly direction with the western right of way line of Bradford Road to the point of intersection with the right of way for Burgandine Avenue; thence in a easterly direction cutting across the right of way of Bradford Road to a point in the eastern right of way of Bradford Road, a point in the property line of parcel # 41-126; thence in a easterly direction cutting across parcel # 41-126 to a point in western property line of parcel # 42-17, approximately 793 feet north of the southwest property corner; thence with the western property line of parcels # 42-17 and 42-17L in a northerly direction to the

northwest corner of parcel # 42-17L; thence in a easterly direction with the northern property line of parcel # 42-17L to the northeast corner of parcel # 42-17L; thence in a southerly direction with the property lines of parcels # 42-17L and 42-16 to a point in the property line of parcel # 42-16, approximately 155 feet north of the southeast property corner of parcel # 42-16; thence in a northeasterly direction cutting across parcels # 42-15, 42-12, 42-2B and 42-1 to a point in the western right of way line of Inlet Road – Route 665, approximately 2,436 feet north of the intersection with Brandy Road – Business Route 15/29; thence in a easterly direction cutting across the right of way for Inlet Road to the eastern right of way line of Inlet Road; thence in a northerly direction with the eastern right of way line of Inlet Road to the northwest corner of parcel # 42-68; thence in a easterly direction with the northern property line of parcel # 42-68 to a point in the northern right of way line of James Madison Highway – Route 15/29; thence in a southerly direction with the northern right of way line of James Madison Highway to a point where it intersects the right of way line of Brandy Road – Business Route 15/29; thence in a southerly direction cutting across the right of way of Brandy Road to a point in the northern right of way line of James Madison Highway – Route 15/29 and the northeast corner to parcel # 42-59; thence in a southerly direction to the southeast corner to parcel # 42-28C; thence cutting across James Madison Highway in a southeasterly direction to the northeast corner of parcel # 42-28E a point in the western right of way line of Jonas Road – Route 703; thence in a southerly direction with the western right of way line of Jonas Road to a point where it intersects the northern right of way line of Greens Corner Road – Route 666; thence in a westerly direction with the northern right of way line of Greens Corner Road to a point where it intersects the southern right of way line of James Madison Highway – Route 15/29; thence in a southerly direction with the southern right of way line of James Madison Highway to a point in the property line of parcel #42-40A; thence in a northerly direction across the right of way of James Madison Highway to the north property corner of parcel # 41-110; thence in a northerly direction with the eastern property line of parcel # 41-110 to the property corner of parcel # 41-110 a point in the southern right of way line of Nalles Mill Road – Route 667; thence with the southern right of way line of Nalles Mill Road to the property corner between parcels # 41-109 and 41-111; thence in a southerly direction with the western property line of parcel # 41-109 to the northeast property corner of parcel # 41-106; thence in a easterly and northerly direction with the northern property line of parcels 41-106 and 41-106C to a point in the eastern right of way line of McDevitt Drive – Route 799; thence in a southerly direction with the eastern right of way line of McDevitt Drive to where it intersect with the right of way line of Frank Turnage Drive – Route 798; thence cutting across the right of way of Frank Turnage Drive to the northern property corner of parcel # 41-106D, a point in the right of way line of McDevitt Drive – Route 798; thence in a southerly direction with the right of way line for McDevitt Drive to a point where it intersects with the Town of Culpeper Corporate limits;

thence in a northerly direction with the Town of Culpeper Corporate limits to the point of beginning.

(3) South of Town

Beginning at a point in the Town of Culpeper Corporate limits at the northwest corner of the intersection of the right of ways lines for James Madison Highway – Route 15/29 and Germanna Highway – Route 3; thence cutting across the right of way of Germanna Highway to the southwest corner of parcel # 51-83B, a point in the right of way of James Madison Highway – Route 15/29; thence in a northerly direction with the right of way of James Madison Highway to the northeast corner of parcel # 51-83A1; thence in a southerly direction cutting across the right of way for James Madison Highway to the northern property corner of parcel # 51-84M; thence in a southerly direction with the eastern property lines of parcels # 51-84M, 51-84, 51-84P, 51-86 to the southeast property corner of parcel # 51-86, a point in the northern right of way line of Germanna Highway – Route 3; thence in a southerly direction cutting across the right of way of Germanna Highway to a point in the southern right of way line of Germanna Highway – Route 3; thence in a westerly direction with the southern right of way line of Germanna Highway to a point where the right of way intersects with the eastern right of way line of Zachary Taylor Highway – Route 522; thence in a southerly direction along the eastern right of way line of Zachary Taylor Highway for 250 feet; thence cutting across the right of way of Zachary Taylor Highway in a westerly direction to the northeast corner of parcel # 51-18; thence in a westerly direction with the northern property line of parcel # 51-18 to the northwest corner of parcel # 51-18, a point in the northern right of way line of Lovers Lane – Route 686; thence in a westerly direction cutting across the right of way of Lovers Lane – Route 686 to the northwest corner of parcel # 51-19 a point in the southern right of way line of Lovers Lane – Route 686; thence in a westerly direction with the southern right of way line of Lovers Lane to the northeast corner of parcel # 51-21; thence in a southerly direction with the eastern property line of parcel # 51-21 to the southeast corner of parcel # 51-21; thence in a southerly direction with the northern property lines of parcels # 51-23 and 51-23A to the northeast property corner of parcel # 51-23A, a point in the western right of way line of Zachary Taylor Highway – Route 522; thence in a southwesterly direction along the western right of way line of Zachary Taylor Highway to the southwest corner of parcel # 51-24, a point in the eastern right of way line of Southern Railroad; thence in a northerly direction with the western property line of parcel # 51-24 to the northwest corner of parcel # 51-24, a point in the eastern right of way line of Southern Railroad; thence in a westerly direction cutting across the right of way of Southern Railroad to the southeast corner of parcel # 51-22A; thence in a westerly direction with the southern property lines of parcels # 51-22A, 51-22, 50-35D to the southwest corner of parcel # 51-35D, a point in the eastern right of way line of Cedar Run

Church Road – Route 720; thence in a westerly direction cutting across the right of way of Cedar Run Church Road to a point in the western right of way line of Cedar Run Church Road; thence in a southerly direction with the western right of way line of Cedar Run Church Road to the southwest corner of parcel # 50-38E; thence with the western property line in a northerly direction to the northwest corner of parcel # 50-38E, a point in the eastern right of way line of James Madison Highway – Route 15; thence in a northerly direction cutting across the right of way of James Madison Highway to a point in the western right of way line of James Madison Highway; thence in a northerly direction with the western right of way line of James Madison Highway to the southeast property corner to parcel # 50-8A; thence in a northerly direction with the southwestern property line of parcel # 50-8A to the southwest corner of parcel # 50-8A, a point the southern right of way line of Old Orange Road – Route 692; thence in a northerly direction cutting across the right of way of Old Orange Road to a point in the northern right of way line of Old Orange Road – Route 692; thence in a northerly direction to the southwest corner of parcel # 50-8; thence in a northerly direction with the western property line of parcel # 50-8 to the southeast property corner of parcel # 50-7; thence in a westerly and northerly direction with the southern and western property lines of parcel # 50-7 to the southeast corner of parcel # 50W(1)D; thence in a westerly direction with the southern property line of parcel # 50W(1)D to the southeast corner of parcel # 50-4; thence in a westerly direction with the southern property line of parcel # 50-4 to the northeast property corner of parcel # 50-5; thence in a southerly direction with the eastern property line of parcel # 50-5 to the southeast property corner of parcel # 50-5; thence in an easterly direction with the southern property line of parcel # 50-5 to the southwest corner of parcel # 50-5; thence in a northerly direction with the western property lines of parcels # 50-5 and 50-4 to the southern property corner of parcel # 50K(1)1; thence in a northerly direction with the eastern property line of parcel # 50K(1)1 to the northeast corner of parcel # 50K(1)1, a point in the southern right of way line of James Monroe Highway – Route 29; thence in a westerly direction with the southern right of way line of James Monroe Highway to the northwest property corner of parcel # 49-87D1; thence in a northerly direction cutting across the right of way of James Monroe Highway to the southwest corner of parcel # 40-47; thence in a northerly direction with the western property line of parcel # 40-47 to the northwest property corner of parcel # 40-47, a point in the line of Lake Pelham owned by the Town of Culpeper; thence in southeasterly direction with Lake Pelham and the property lines of parcels # 40-47 and 40-47D to the southeast corner of parcel # 40-47D, a point in the northern right of way line of James Monroe Highway – Route 29; thence in a easterly direction with the northern right of way line of James Monroe Highway to a point where it intersects with the Town of Culpeper Corporate limits; thence in a easterly direction with the Town of Culpeper Corporate limits to the point of beginning.

Exhibit 4 to Voluntary Settlement

Metes and Bounds Descriptions of the Tech Zone

Beginning at a point where the southern right of way line of McDevitt Drive-Route 799 intersects with the Town of Culpeper Corporate limits; thence in a northerly direction with the southern right of way line of McDevitt Drive-Route 799 to the northern property corner of parcel # 41-106D; thence cutting across the right of way for Frank Turnage Drive-Route 798 to the southwest property corner of parcel # 41-106; thence in a northerly direction with the right of way of McDevitt Drive-Route 799 to the northwest corner of parcel # 41-106; thence in a easterly direction with the property line of parcel # 41-106 to the property corner of parcel # 41-106; thence in a southerly and easterly direction with the property line of parcel # 41-106 to the northwest corner of parcel # 41-106C; thence in a easterly direction with the northern property line of parcel # 41-106C to the northeast property corner of parcel # 41-106C; thence in a easterly direction with the northern property line for parcel # 41-106 to a point on the property line of parcel # 41-109; thence in a northerly direction with the western property line of parcel # 41-109 to the northwest property corner of parcel # 41-109; thence in a easterly direction along the northern property line of parcel # 41-109 to the northeast corner of parcel # 41-109, a point in the southern right of way line of Nalles Mill Road-Route 667; thence in a easterly direction with the southern right of way line of Nalles Mill Road-Route 667 to the northeast corner of parcel # 41-110; thence in a southerly direction with the east property line of parcel # 41-110 to a corner with the northern right of way of James Madison Highway-Route 15/29; thence in a southwesterly direction with the northern right of way line of James Madison Highway-Route 15/29 and the property line for parcels # 41-110, 109, 107, 106B, 51-83A4, 83A1, 83B to the southwest corner of parcel # 51-83B, a point in the right of way of Germanna Highway-Route 3; thence in a northwesterly direction with the western property line of parcel # 51-83B to the southwest corner of parcel # 51-83; thence in a northwesterly direction with the western property line of parcel # 51-83 to the northwest property corner of parcel # 51-83; thence in a northwesterly direction with the western property line of parcel # 51-83B to the northwest corner of parcel # 51-83B; thence in a northeasterly direction along the Town of Culpeper Corporate limits to the southwest corner of parcel # 51-83A1; thence in a northeasterly direction with the property line of parcel # 51-83A1 to where it meets the southern right of way line of Technology Drive-Route 790; thence in a northwesterly direction with the southern right of way line of Technology Drive-Route 790 to where it intersects the Town of Culpeper Corporate limits; thence in a northerly direction with the Town of Culpeper Corporate limits to the point of beginning.

Exhibit 5 to Voluntary Settlement

Hypothetical Examples of Future Boundary Adjustment
(single area and two non-contiguous areas)

Example 1 – Single Area

The Town proposes to incorporate one boundary adjustment area having 100 acres of land, all portions of which are contiguous to one another. The area designated by the Town also shares a common boundary with the existing Town of 500 feet and has a minimum width of 500 feet throughout the length of the proposed boundary adjustment area. Thus, the entire area meets the contiguity and minimum width requirements.

One end of the area (35 acres) is primarily residential, the center of the area (60 acres) is primarily commercial, and the opposite end of the area (5 acres) is residential. The area as a whole does not meet the FAR Density Requirement or the Residential Density Requirement because the amount of commercial floor space in the area as a whole is insufficient, and the number of existing or potential residential dwelling units in the area as a whole is insufficient.

However, within the total designated area, the 35 acres at one end have a density of two dwelling units (existing and potential) per acre, thereby satisfying the Residential Density Requirement. The 60 acres in the center have a FAR of 20%, thereby meeting the FAR Density Requirement. The remaining 5 acre-parcel lying at the other end has a density of only one-half dwelling unit per acre and has a FAR of 0%, thereby failing to meet either density requirement by itself. However, the 5 acres can be combined with the 35 acres, and that combined area meets the Residential Density Requirement. Or, they can be combined with the 60 acres, and that combined area also meets the FAR Density Requirement. Hence, all 100 acres are eligible for a boundary adjustment.

Example 2 – Two Non-Contiguous Areas

The Town proposes to incorporate the same 100 acres of land, except that the 5-acre parcel is located on the opposite side of the Town. The parcel is contiguous to the Town and has a minimum width of 500 feet throughout the length of the boundary adjustment area. Thus, it meets the contiguity and minimum width requirements.

However, the 5-acre parcel is a separate area that is not contiguous to the area with 95 acres. Such a separate area cannot be combined with another boundary adjustment area to meet the Density Eligibility Criteria. Because the 5-acre parcel by itself fails to meet the FAR Density Requirement and the Residential Density Requirement, it is not eligible to be incorporated into the Town as a future boundary adjustment.

Exhibit 6 to Voluntary Settlement

Hypothetical Example of Future Boundary Adjustment
(FAR qualifying area)

Ten years after the First Boundary Adjustment, the Town proposes to incorporate a boundary adjustment area having 270,000 square feet of land within the Water & Sewer Service Area, based on meeting the FAR Density Requirement. The designated area contains a mixture of business and residential uses and vacant land that lies within a variety of zoning districts. Specifically, it includes these parcels of property:

- • 80,000 square foot parcel with a multi-story office building (12,000 square feet of floor space, based on the combined floor area for each story of the building),
- • 40,000 square foot parcel with a multi-story County public works building (5,000 square feet of floor space),
- • 10,000 square foot parcel with one single family house (3,000 square feet of floor space),
- • 40,000 square foot parcel with a building containing a restaurant on the first floor and apartments on the upper floors (5,000 total square feet of floor space for the restaurant and apartments),
- • 10,000 square feet of vacant land zoned for apartments,
- • 10,000 square feet of vacant land zoned Rural Area (RA), but totally surrounded by the rest of the designated area,
- • 50,000 square feet of vacant land zoned Rural Area (RA) along the edge of the designated area, and
- 30,000 square feet of public roads and rights-of-way.

Thus, the designated area has a total of 270,000 square feet of land, with a total of 25,000 square feet of floor space.

Qualifying land for FAR Density Requirement. The parcels with commercial buildings, the land with a public use (the public works building), the parcel with one house, and the vacant land zoned for apartments are all eligible as part of a FAR qualifying boundary adjustment. However, land zoned RA can not be part of a boundary adjustment area eligible to be incorporated based on the FAR Density Requirement, unless one of three exceptions exists.

Here, the 10,000 square foot parcel is totally surrounded by the rest of the area, and it falls within an exception because more than 75% of its boundary adjoins the boundary adjustment area. It can be included in the designated area. But, the larger 50,000 square foot parcel (assuming it meets none of the three exceptions) must be completely excluded from the designated area.

The designated area also includes 30,000 square feet of public roads and rights-of-ways, which are excluded from the FAR calculation, although they still can be included as part of the designated area. Thus, the square footage of the boundary adjustment area for FAR calculations is 190,000 square feet: 270,000 minus 50,000 (RA parcel) minus 30,000 (roads), equals 190,000. To meet the minimum 10% FAR Density Requirement, the designated area must have at least 19,000 square feet of floor area in the existing buildings (19,000 divided by 190,000 = 0.10).

Qualifying floor area. While parcels with residential development can be included in the designated area, the floor area must be disregarded, so the 3,000 square feet of floor space on the parcel with a single-family house must be excluded from the total floor area. However, the floor area of residential development in a mixed use structure may be included, so the total 5,000 square feet of floor space in the parcel with the restaurant and apartments may be included. Thus, the eligible floor space totals 22,000 square feet (12,000 sq. ft. in the office building, plus 5,000 sq. ft. in the County public works building, plus 5,000 in the restaurant/apartment building, equals 22,000).

FAR calculation. The FAR is 11.6% (22,000 divided by 190,000 equals 0.116), or stated differently, the building floor space represents 11.6% of the boundary adjustment area. That figure exceeds the minimum FAR, and the area designated by the Town is eligible for incorporation into the Town, except for the excluded parcel in the RA zoning district.

Exhibit 7 to Voluntary Settlement

Hypothetical Example of Future Boundary Adjustment
(Residential qualifying area)

The Town proposes to incorporate a boundary adjustment area having 59 acres of land within the Water & Sewer Service Area, based on meeting the Residential Density Requirement. The designated area contains a mixture of residential dwellings and vacant land that lie within a variety of zoning districts, along with a commercial/residential building. Specifically, it includes these parcels of property:

- 18 ½-acre mixed use subdivision (excluding acreage for public roads and rights-of-way) that includes 36 lots of which 9 houses and one 5-unit apartment building have been constructed with the remaining 26 lots being vacant and of the 3000 feet of public roads and rights-of-way, 1000 feet have been roughed in with a gravel surface,
- ½-acre parcel zoned A-1 with 1 house,
- 1-acre parcel with 3 houses in zoning district requiring minimum lot size of 1 acre,
- 1 ½-acre parcel zoned A-1 with 1 house,
- 4 -acre parcel zoned RA with 1 house,
- 10-acre parcel with 1 house in zoning district that permits 5 houses,
- 1-acre parcel with a building containing a restaurant on the first floor and 9 apartments on the upper floors,
- 5-acre parcel with no dwelling units, in zoning district that permits 5 houses,
- ½-acre parcel with no dwelling units, in zoning district that requires minimum lot size of 1 acre,
- 2-acre parcel with no dwelling units, in commercial services (CS) zoning district,
- 10-acre parcel with no dwelling units, in light industrial (LI) zoning district, which is entirely surrounded by the rest of the area,
- 3-acre parcel with no dwelling units, in light industrial (LI) zoning district, at edge of boundary adjustment area, and
- 2-acres of public roads and rights-of-way.

Thus, the boundary adjustment area designated by the Town has a total of 59 acres of land.

Qualifying land. All of the parcels here can be included in a boundary adjustment area that is eligible for incorporation based on the Residential Density Requirement, except two. The 4-acre parcel zoned RA is not eligible since it does not independently meet the density calculation. In contrast, the ½-acre zoned A-1 and the 1 ½-acre zoned A-1 are eligible to be included in the density calculation because, when combined, they

independently meet the density calculation (2 actual dwelling units divided by 2 acres = 1 dwelling units per acre, which satisfies the Residential Density Requirement). There are two vacant parcels lying in the County LI zoning district that does not permit any residential units. In general, a vacant parcel in a zoning district that does not permit any residential units can not be part of a boundary adjustment area based on the Residential Density Requirement. Thus, the 3-acre parcel at the edge of the area must be excluded. However, the 10-acre parcel is completely surrounded by the rest of the boundary adjustment area. It can be incorporated for that reason, but the 10 acres must be included in calculating the residential density. By contrast, the 2-acre vacant parcel in the CS commercial district is eligible because the CS district permits various residential units. And, the 1-acre parcel with a restaurant is eligible because the building also contains residential apartments.

Finally, the designated area also includes 2 acres of public roads and rights-of-ways, which are excluded from the residential density calculation, although they still can be included as part of the designated area. Thus, the size of the area for the residential density calculation is 50 acres: 59 acres minus 4 acres RA property, minus 3 acres LI parcel not surrounded by rest of area, minus 2 acres (roads), equals 50 acres. To meet the minimum 1 unit per acre Residential Density Requirement, the designated area must have at least 50 actual or potential residential units (50 units divided by 50 acres = 1.0 density).

Qualifying residential units. For parcels with one or more existing dwelling units, the actual number of existing units is used for the residential density calculation, regardless of zoning regulations. The 18 ½-acre subdivision meets the criteria of a qualifying subdivision development since there are 9 houses and one 5-unit apartment are constructed on 10 of the 36 lots (10 lots divided by 36 lots = 0.28 or 28% developed, and 1000 feet of developed road divided by 3000 total feet = 0.33 or 33% developed). Therefore, the 18 ½-acre subdivision can be counted as having 40 residential dwelling units (26 potential dwelling units plus 14 existing dwelling units). The 1-acre lot with 3 houses, in a zoning district requiring a 1-acre lot size, is counted as 3 units even though they are non-conforming uses. The 10-acre parcel with 1 house counts as only one dwelling unit, even though the zoning district permits 5 houses. Parcels with no existing dwelling units that are not located within a qualifying subdivision development are each treated as having no potential dwelling unit despite zoning requirements that allow one or more units. Thus, the vacant 5-acre parcel with zoning permitting 5 houses is treated as having no potential dwelling units, as is the vacant ½-acre parcel with zoning requiring a minimum lot size of 1 acre. Thus, the area has 55 existing and potential dwelling units.

Residential Density calculation. The residential density is 1.1 units per acre (55 units divided by 50 acres, equals 1.1). That figure exceeds the minimum residential density of 1 unit per acre, and the area designated by the Town is eligible for incorporation into the Town, except for the excluded 3-acre parcel in the LI zoning district.

Exhibit 8 to Voluntary Settlement

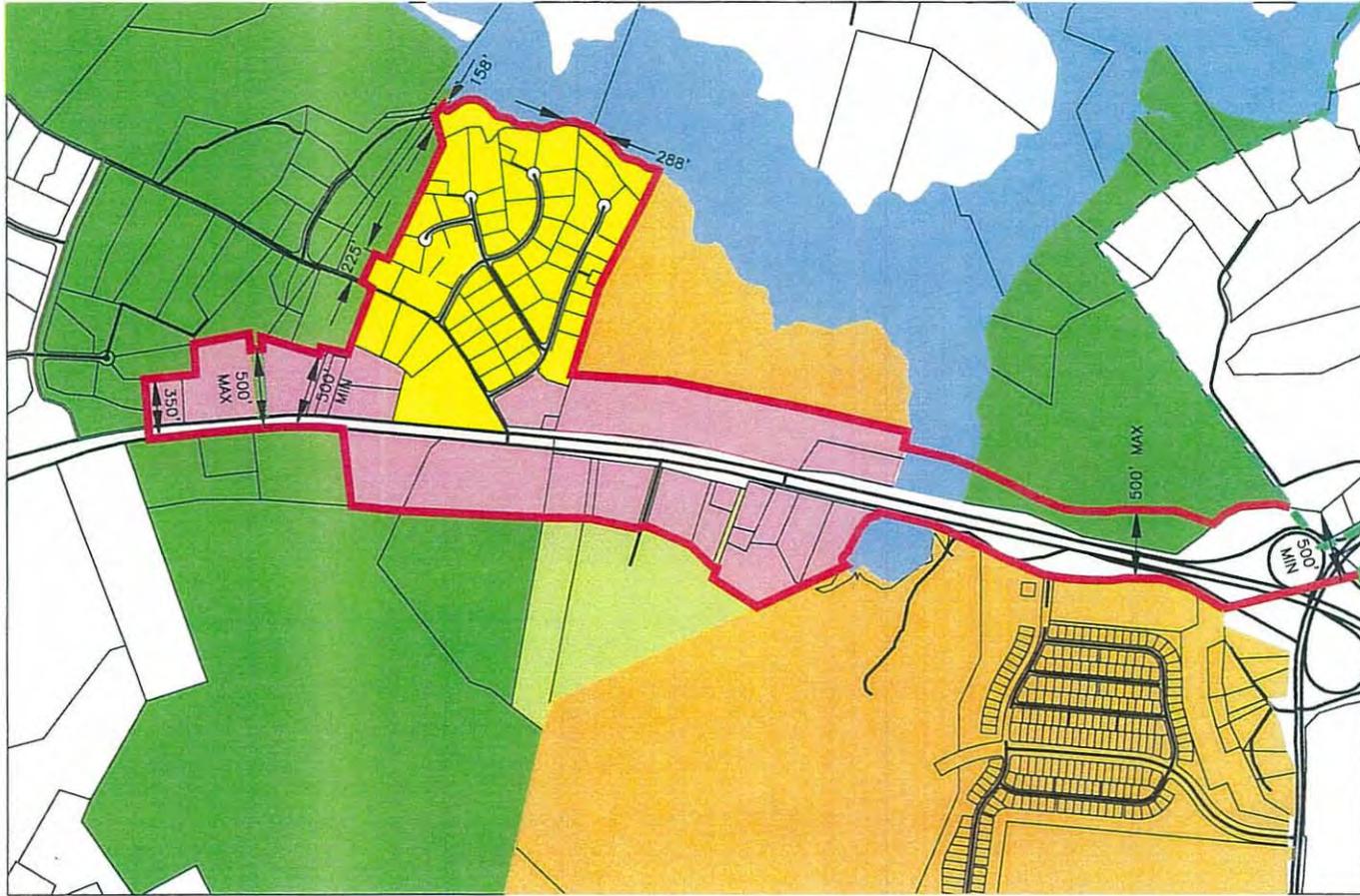
Method of Calculating Minimum Width of Future Boundary Adjustment Areas

To be eligible for incorporation into the Town, that portion of each separate boundary adjustment area that is contiguous to the existing Town boundary line shall follow along the existing boundary line for at least 500 feet, and such boundary adjustment area shall have a minimum width of at least 500 feet throughout the entire length of the boundary adjustment area. The primary intent of this minimum width requirement is to avoid the creation of an extremely narrow corridor running from the existing Town to reach developed areas not immediately adjacent to the Town boundaries.

The width of the designated boundary adjustment area shall be measured at right angles to the length of the designated area.

- Because the designated boundary adjustment area may intersect the existing Town boundary at an angle, the width measurement close to the Town boundary can be made from one side of the designated boundary adjustment area to any point within the Town on a line projected from the other side of the boundary adjustment area, as shown on the drawing attached as part of Exhibit 8, which depicts a hypothetical boundary adjustment area that satisfies the 500-foot width requirement in its entirety.
- Because the designated boundary adjustment area may be irregular in shape, the 500-foot minimum width shall not apply to the parcel or parcels along the perimeter of the boundary adjustment area, as shown on the attached drawing. The measurements shown as 350 feet, 225 feet, 158 feet, and 288 feet are all examples of where the 500-foot minimum width would not apply, although there are other points shown on the drawing where the minimum width requirement would not be applicable.
- The attached drawing also shows two measurements designated as “500’ MAX.” These measurements are shown as maximum widths since the boundary adjustment area would be crossing A-1 zoned property where this Agreement requires that the width of the boundary adjustment area be minimized.
- A 500-foot minimum width measurement is shown on the west side of the drawing to clarify that the width in this area must be at least 500 feet wide as it extends further to the west.

A drawing depicting a sample calculation of the width of a boundary adjustment area is attached.



LEGEND

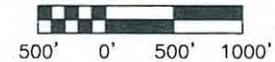
- - - - CORPORATE LIMITS
 - - BLA BOUNDARY
 - ↔ - EXAMPLE DISTANCES
- 500'

EXP ZONING LEGEND

- - A1
- - R1
- - R2
- - R3
- - CS

NOTE: EXAMPLE ONLY - DOES NOT REFLECT ACTUAL ZONING

SCALE BAR



**MINIMUM WIDTH EXAMPLE
TYPICAL BLA CORRIDOR**

DATE: 2/24/11

Exhibit 9 to Voluntary Settlement

**Agreements Obligating the Town to Provide Water and/or Sewer Services within the
Water & Sewer Service Area**

1. Water & Sewer Tap Agreement between the Town of Culpeper and Three Flags Agreement, dated October 10, 2000
2. Water & Sewer Agreement among the County of Culpeper, Virginia, the Town of Culpeper, Virginia and Lowe's Home Centers, Inc., dated June 3, 2003
3. Water & Sewer Agreement among the County of Culpeper, Virginia, the Town of Culpeper, Virginia and Richmond American Homes of Virginia, Inc., dated June 3, 2003
4. Water & Sewer Agreement among the County of Culpeper, Virginia, the Town of Culpeper, Virginia and Angler Broadlands, LLC, dated November 12, 2003
5. Water & Sewer Agreement among the County of Culpeper, Virginia, the Town of Culpeper, Virginia and Petrie Ventures, LLC, dated September 14, 2004
6. Water & Sewer Agreement among the County of Culpeper, Virginia, the Town of Culpeper, Virginia and Paul W. Bates and Donna Andes Bates, dated September 14, 2004
7. Water & Sewer Agreement among the County of Culpeper, Virginia, the Town of Culpeper, Virginia and Cannon Properties, dated July 5, 2005
8. Water & Sewer Agreement among the County of Culpeper, Virginia, the Town of Culpeper, Virginia and Robbins Development Corporation, dated July 12, 2006

Exhibit 10 to Voluntary Settlement**List of Customers Served Pursuant to 2003 Agreement, as Amended,
and 2011 Interim Agreement**

	<u>Service</u>	<u>Size of Water Meter</u>
<u>Prior to 2009 Amendment</u>		
Terremark Data Center A	water/sewer	1.5"
Terremark Guard House	water/sewer	5/8"
Terremark Shipping and Receiving	water/sewer	5/8"
Eastern View High School	Water	3"
Eastern View High School	Water	2"
Eastern View High School	Water	2"
J.K. Patio - Speidel Construction	Water	5/8"
<u>Post 2009 Amendment</u>		
Culpeper Business Center	Sewer	3"
Rapidan Community Service	Sewer	1.5"
Terremark Data Center B	water/sewer	1.5"
Terremark Administration	water/sewer	2"
Rappahannock Electric Cooperative	Water	1.5"
Rappahannock Electric Cooperative	Water	1.5"
Rappahannock Electric Cooperative	Water	1"
Greens Corner WWTP	Water	5/8"
<u>2011 Interim Agreement</u>		

Exhibit 11 to Voluntary Settlement

TAP PRIVILEGE FEE ASSESSMENT POLICY

The tap privilege fee is based upon the single-family unit as equal to one (1) tap.

Water and wastewater tap privilege fees are set by the Town Council.

Administration

This assessment policy will be administered by the Department of Planning and Community Development subject to the conditions as outlined in this policy.

Definitions

Pre-Purchased Tap Privilege – A customer is guaranteed service, once they have paid in full for a Tap Privilege, at the corresponding capacity associated with that Tap Privilege.

Use of a Tap Privilege – A Tap Privilege shall be deemed to have been used once a water meter has been installed for water or lateral connected for sewer. Once used, the customer will be charged based on consumption but in no incidence less than the minimum monthly bill.

Pre-Purchased Tap Privilege

Possession of Pre-Purchased Tap Privilege prior to November 10, 2009

1. Customers in possession of a pre-purchased tap privilege prior to November 10, 2009 will not have a time limit to use the pre-purchased tap privilege.
2. A reimbursement may be requested by the customer as long as the tap privilege has not been used. A 2% administrative fee based on the tap fee paid will be retained to cover a portion of the costs associated with the reimbursement.

Purchased a Tap Privilege after November 10, 2009

1. Customers who purchase a tap privilege after November 10, 2009 shall have 24 months from the date of purchase to use the tap privilege.
2. During the 24 month period, a reimbursement may be requested by the customer as long as the tap privilege has not been used. A 15% administrative fee based on the tap fee paid will be retained to cover the costs associated with the reimbursement.
3. After the 24 month period, the Town shall have the right to withdraw the tap privilege after giving the customer one (1) month notice. A 15% administrative fee based on the tap fee paid will be retained to cover the costs associated with the reimbursement.
4. During the one (1) month notification period, the customer will be allowed to use the tap privilege if they desire.

New Construction

The tap privilege fee will be based upon the water meter size requested or on the projected monthly consumption as compared to the maximum allowable gallons for each meter size, whichever is determined by the Town to be closest to the actual usage subject to the minimum fee being based on meter size. The Town shall have the right to monitor non-residential monthly consumption for a period of one (1) year. Monthly consumption will be reviewed after twelve (12) months of operation. Should the average monthly consumption exceed the maximum allowable

gallons for the particular meter size, the supplemental tap fee will equal the difference between the fee for the initial meter size and the fee for the larger meter size which corresponds to the customer's actual use. All calculations will be made at the tap privilege fees in effect on the date of the bill. Should a business change ownership during these first twelve (12) months of operation, the new business owner and/or property owner will be responsible for the final tap fee adjustment which will be due and payable to the Town within sixty (60) days of written notification to the owner. All users will be assessed one tap for each meter set.*

Tap fees are to be paid in full simultaneous with the issuance of all permits necessary to commence construction. If during construction more meters are required than tap fees were paid, the additional fees must be paid before meters will be installed.

Residential Multi-family Metering

With mass metering such as an apartment building, a 5/8" tap privilege fee will be assessed for each residential unit within the building.

Change of Use / Additions / Alterations

For Changes of Use / Additions / Alterations of an existing building, additional tap fees will be required if the meter size increases or if the projected consumption exceeds the maximum allowable gallons for the existing tap credits. Tap fees will be assessed on the difference between the existing service and the new service requested or if additional meters are requested. If additional tap fees are required, they will be due simultaneous with the issuance of a zoning permit. Twelve (12) month monitoring will be performed as with new construction.

Discount for Existing Dwellings

Existing single-family dwellings with permitted well and/or septic systems may purchase taps at 50% of the prevailing rate.

Tap Credits

Tap credits on existing or demolished buildings will be based on the meter size or on prior taps paid and on record with the Town of Culpeper. There will be no tap credit for buildings demolished before 1968. The burden of proof for prior tap credits will be on the applicant.

Downtown Economic Development Incentive Program

No additional tap fees will be assessed for changes of use of existing buildings or structures within the Community Development Block Grant area. This incentive program applies to existing structures only, applies to all commercial and residential uses allowable under the Town's Zoning Ordinance and expires December 31, 2001.

The utility meters (water, wastewater and electric) must be installed and in service by the expiration date. Following the expiration of this program, tap credits may remain with the property provided there is no change of use. When the existing buildings undergo changes of use, the Town shall reassess the number of taps required using the adopted schedule herein.

Miscellaneous

A time and material charge for installation of water service and sewer service to the property will be paid by the owner.

*A second meter for a single user may be installed next to the existing water meter for water use only. An additional water tap fee will not be charged, however, a charge for all time and materials; to include the meter and meter box, will be made.

WATER & WASTEWATER TAP PRIVILEGE ASSESSMENT FEES

METER SIZE	MAXIMUM ALLOWABLE GALLONS	IN-TOWN FEE		OUT-OF-TOWN FEE	
		WATER	SEWER	WATER	SEWER
FIVE-EIGHTHS (5/8")	10,000	6,500	10,000	9,750	15,000
ONE INCH (1")	25,000	9,434	11,676	18,868	23,352
ONE & ONE HALF (1½")	75,000	12,368	13,352	24,736	26,704
TWO INCH (2")	150,000	18,552	20,028	37,104	40,056
THREE INCH (3")	225,000	30,920	33,380	61,840	66,760
FOUR INCH (4")	300,000	46,380	50,070	92,760	100,140

Rates shall be set by Town Council for meters larger than four inches.

* Previous tap assessment policy fees were based on categories, usage and square footage.

I, _____, the undersigned, have read and understand the Tap Privilege Fee Assessment Policy.

I understand that water consumption for my business will be monitored at 12 months; and that payment of additional tap fees may be necessary per the above referenced policy.

Signature of Business Owner or Authorized Agent

Date

Business Owner or Authorized Agent: _____

Address of New business: _____

Business Mailing Address: _____

City/State/Zip: _____

Business Phone: _____

Cc: Planning Dept. & Applicant

Revisions:

12/13/88, 2/14/95, 1/14/97, 10/14/97, 1/11/2000 (Rescinded 2/2000), 1/15/02, 1/14/03 (Effective 2/15/03), 5/11/04, 7/11/06, 8/9/06, 11/10/09

APPENDIX B:
Town of Culpeper
Supplemental Tables 1-6

Table 1 Appendix A

Town of Culpeper

Government-wide	2010	2009	2008	2007	2006	2010	2009	2008	2007	2006
						Common-Size Statements				
Assets										
Current Assets										
Cash and cash equivalents	\$33,207,523	\$12,383,292	\$8,881,455	\$6,267,320	\$4,117,728	24.9%	9.7%	7.0%	6.5%	4.6%
Cash and cash equivalents, restricted	4,144,464	21,195,408	38,856,631	24,703,368	21,751,938	3.1%	16.6%	30.4%	25.5%	24.2%
Investments		217,196	330,711	317,720	351,930	0.0%	0.2%	0.3%	0.3%	0.4%
Receivables	2,808,633	2,276,922	2,322,669	2,053,503	1,874,851	2.1%	1.8%	1.8%	2.1%	2.1%
Accrued interest receivable	101,267	105,507	106,612	41,970	81,589	0.1%	0.1%	0.1%	0.0%	0.1%
Due from other governmental units	815,105	160,792	169,126	191,672	192,694	0.6%	0.1%	0.1%	0.2%	0.2%
Inventories	1,035,952	956,164	862,672	1,127,404	1,052,406	0.8%	0.7%	0.7%	1.2%	1.2%
Loans receivable				4,442	71,000	0.0%	0.0%	0.0%	0.0%	0.1%
Prepaid expenses	73,652	56,347	66,693	65,260		0.1%	0.0%	0.1%	0.1%	0.0%
Total Current	42,186,596	37,351,628	51,596,569	34,772,659	29,494,136	31.7%	29.2%	40.4%	35.9%	32.8%
Noncurrent Assets										
Deferred expenses	553,296	554,280	560,429	67,285	41,295	0.4%	0.4%	0.4%	0.1%	0.0%
Due from other funds		2,750,000				0.0%	2.2%	0.0%	0.0%	0.0%
Capital assets:										
Nondepreciable	4,155,616	34,711,506	20,113,176	5,063,935	5,380,585	3.1%	27.2%	15.7%	5.2%	6.0%
Depreciable, net	86,276,869	52,440,071	55,515,761	56,952,684	55,057,458	64.8%	41.0%	43.4%	58.8%	61.2%
Total Noncurrent	90,985,781	90,455,857	76,189,366	62,083,904	60,479,338	68.3%	70.8%	59.6%	64.1%	67.2%
Total Assets	133,172,377	127,807,485	127,785,935	96,856,563	89,973,474	100.0%	100.0%	100.0%	100.0%	100.0%
Liabilities										
Current Liabilities										
Accounts payable and accrued liabilities	1,266,749	3,014,534	3,709,125	1,553,585	1,306,817	1.0%	2.4%	2.9%	1.6%	1.5%
Accrued payroll and related liabilities	462,001	504,379	234,867	204,719	190,556	0.3%	0.4%	0.2%	0.2%	0.2%
Accrued interest payable	720,587	625,607	535,659	252,099	158,435	0.5%	0.5%	0.4%	0.3%	0.2%
Unearned revenue		51,353	154,806	127,209	62,375	0.0%	0.0%	0.1%	0.1%	0.1%
Deferred bond revenue		19,833	22,539			0.0%	0.0%	0.0%	0.0%	0.0%
Due to other governmental units	2,999,947	50,969	49,722			2.3%	0.0%	0.0%	0.0%	0.0%
Customer security deposits	968,924	906,708	879,272	803,298	678,706	0.7%	0.7%	0.7%	0.8%	0.8%
Compensated absences - within one year		601,102	595,561	504,528	731,204	0.0%	0.5%	0.5%	0.5%	0.8%
General obligation bonds - within one year	2,527,263	1,358,568	1,366,663	1,439,713	1,461,806	1.9%	1.1%	1.1%	1.5%	1.6%
Other liabilities	1,485,908	1,609,201	1,645,331	1,669,550	1,731,901	1.1%	1.3%	1.3%	1.7%	1.9%
Total Current	10,431,379	8,742,254	9,193,545	6,554,701	6,321,800	7.8%	6.8%	7.2%	6.8%	7.0%
Noncurrent Liabilities										
Due to other funds		2,750,000				0.0%	2.2%	0.0%	0.0%	0.0%
Compensated absences - more than one year		88,060	117,903	258,726		0.0%	0.1%	0.1%	0.3%	0.0%
General obligation bonds - more than one year	41,722,838	37,682,683	38,651,503	15,873,655	13,520,449	31.3%	29.5%	30.2%	16.4%	15.0%
Total Noncurrent	41,722,838	40,520,743	38,769,406	16,132,381	13,520,449	31.3%	31.7%	30.3%	16.7%	15.0%
Total Liabilities	52,154,217	49,262,997	47,962,951	22,687,082	19,842,249	39.2%	38.5%	37.5%	23.4%	22.1%
Net Assets										
Invested in capital assets, net of related debt	49,843,601	45,828,574	35,610,771	41,215,192	45,455,788	37.4%	35.9%	27.9%	42.6%	50.5%
Restricted	592,481	2,470,415	20,634,121	2,709,578		0.4%	1.9%	16.1%	2.8%	0.0%
Unrestricted	30,582,078	30,245,499	23,578,092	30,244,711	24,675,437	23.0%	23.7%	18.5%	31.2%	27.4%
Total Net Assets	81,018,160	78,544,488	79,822,984	74,169,481	70,131,225	60.8%	61.5%	62.5%	76.6%	77.9%
Liabilities and Net Assets	\$133,172,377	\$127,807,485	\$127,785,935	\$96,856,563	\$89,973,474	100.0%	100.0%	100.0%	100.0%	100.0%
Source:										
Town of Culpeper, <u>Comprehensive Annual Financial Report</u> , editions (2006-2010)										

Note: Common-Size Statements allow the reader to analyze the proportion that an individual asset or liability represents as a percentage of total assets.

Town of Culpeper

General Fund	2010	2009	2008	2007	2006	2010	2009	2008	2007	2006
Common-Size Statements										
Assets										
Cash and cash equivalents	\$6,478,824	\$4,847,918	\$4,711,652	\$4,302,668	\$3,895,013	56.8%	52.1%	48.5%	47.6%	63.5%
Cash and cash equivalents, restricted	4,144,464	3,824,315	4,190,691	4,013,073	1,431,506	36.3%	41.1%	43.1%	44.4%	23.3%
Investments			119,363	116,229	159,054	0.0%	0.0%	1.2%	1.3%	2.6%
Receivables	497,974	417,180	460,553	349,139	387,993	4.4%	4.5%	4.7%	3.9%	6.3%
Due from other governmental units	231,334	160,792	169,126	191,675	192,694	2.0%	1.7%	1.7%	2.1%	3.1%
Loans receivable				4,442	71,000	0.0%	0.0%	0.0%	0.0%	1.2%
Prepaid expenses	53,524	56,347	66,693	65,260		0.5%	0.6%	0.7%	0.7%	0.0%
Total Assets	11,406,120	9,306,552	9,718,078	9,042,486	6,137,260	100.0%	100.0%	100.0%	100.0%	100.0%
Liabilities										
Current Liabilities										
Accounts payable and accrued liabilities	354,700	633,623	295,727	193,060	274,254	3.1%	6.8%	3.0%	2.1%	4.5%
Accrued payroll and related liabilities	320,597	420,375	164,187	143,823	126,120	2.8%	4.5%	1.7%	1.6%	2.1%
Deferred bond revenue	292,661	143,608	217,833	173,529	114,933	2.6%	1.5%	2.2%	1.9%	1.9%
Due to other governmental units		50,969	49,722			0.0%	0.5%	0.5%	0.0%	0.0%
Due to other funds		2,750,000	46,760			0.0%	29.5%	0.5%	0.0%	0.0%
Other liabilities	1,485,908	1,609,201	1,645,331	1,669,550	1,731,901	13.0%	17.3%	16.9%	18.5%	28.2%
Total Liabilities	2,453,866	5,607,776	2,419,560	2,179,962	2,247,208	21.5%	60.3%	24.9%	24.1%	36.6%
Net Assets										
Invested in capital assets, net of related debt	237,575					2.1%	0.0%	0.0%	0.0%	0.0%
Restricted	3,933,900		1,415,016			34.5%	0.0%	14.6%	0.0%	0.0%
Unrestricted	4,780,779	3,698,776	5,883,502	6,862,521	3,890,052	41.9%	39.7%	60.5%	75.9%	63.4%
Total Net Assets	8,952,254	3,698,776	7,298,518	6,862,521	3,890,052	78.5%	39.7%	75.1%	75.9%	63.4%
Liabilities and Net Assets	\$11,406,120	\$9,306,552	\$9,718,078	\$9,042,483	\$6,137,260	100.0%	100.0%	100.0%	100.0%	100.0%

Source:

Town of Culpeper, Comprehensive Annual Financial Report, editions (2006-2010)

Note: Common-Size Statements allow the reader to analyze the proportion that an individual asset or liability represents as a percentage of total assets.

General Fund	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>
Revenues					
General property taxes	\$3,054,303	\$2,537,620	\$2,360,641	\$1,840,804	\$1,637,218
Other local taxes	4,684,124	4,632,603	4,915,913	5,285,745	5,380,052
Permits, privilege fees, and regulatory licenses	256,426	178,108	201,372	231,778	757,956
Fines and forfeitures	166,292	158,783	157,226	151,259	175,421
Revenues from use of money and property	245,570	347,169	478,369	405,683	296,046
Charges for services	39,225	62,041	62,613	57,188	50,010
Other	401,587	510,323	250,947	206,667	224,162
Recovered costs	1,630,016	1,544,137	1,461,127	1,168,821	758,563
Intergovernmental	2,562,603	1,949,588	2,338,101	1,869,723	1,630,967
Total revenues	<u>13,040,146</u>	<u>11,920,372</u>	<u>12,226,309</u>	<u>11,217,668</u>	<u>10,910,395</u>
Expenditures					
General government administration	2,146,254	2,583,546	2,203,714	2,188,450	1,966,866
Public safety	3,866,967	4,006,766	3,972,387	3,762,629	3,209,213
Public works	2,678,356	3,287,064	2,413,634	2,637,275	2,385,637
Health and welfare		11,378	5,129	6,907	7,370
Parks, recreation, and cultural	489,512	512,386	582,890	516,086	452,943
Community development	1,233,053	1,115,101	1,069,575	1,052,548	1,189,295
Capital projects	2,675,162	3,408,564	2,557,650	1,263,391	1,836,753
Debt service:					
Principal retirement	498,974	835,589	406,721	399,388	388,500
Interest and fiscal charges	393,527	299,844	273,288	168,525	148,077
Total expenditures	<u>13,981,805</u>	<u>16,060,238</u>	<u>13,484,988</u>	<u>11,995,199</u>	<u>11,584,654</u>
Excess (deficiency) of revenues over expenditures	<u>(941,659)</u>	<u>(4,139,866)</u>	<u>(1,258,679)</u>	<u>(777,531)</u>	<u>(674,259)</u>
Other Financing Sources (Uses)					
Issuance of general obligation bonds	5,629,000	540,124	1,607,021	3,750,000	
Grant proceeds			87,655		
Bond issuance costs	(27,991)				
Transfers in	302,145				
Total other financing sources (uses)	<u>5,903,154</u>	<u>540,124</u>	<u>1,694,676</u>	<u>3,750,000</u>	<u>0</u>
Net change in fund balances	<u>4,961,495</u>	<u>(3,599,742)</u>	<u>435,997</u>	<u>2,972,469</u>	<u>(674,259)</u>
Prior Period Adjustment	291,983				62,004
Fund Balances at July 1	<u>3,698,776</u>	<u>7,298,518</u>	<u>6,862,521</u>	<u>3,890,052</u>	<u>4,502,307</u>
Fund Balances at June 30	<u>\$8,952,254</u>	<u>\$3,698,776</u>	<u>\$7,298,518</u>	<u>\$6,862,521</u>	<u>\$3,890,052</u>

Source:

Town of Culpeper, Comprehensive Annual Financial Report, editions (2006-2010)

Appendix A

Enterprise Fund	2010	2009	2008	2007	2006	2010	2009	2008	2007	2006
						Common-Size Statements				
Assets										
Current Assets										
Cash and cash equivalents	\$26,250,762	\$7,331,967	\$4,016,374	\$1,817,177	\$534,311	28.2%	8.1%	4.4%	2.9%	1.0%
Cash and cash equivalents, restricted		17,371,093	34,665,940	20,690,295	19,908,544	0.0%	19.2%	37.7%	33.2%	36.1%
Receivables	2,309,715	1,859,742	1,861,371	1,703,161	1,486,166	2.5%	2.1%	2.0%	2.7%	2.7%
Accrued interest receivable	101,267	104,563	106,612	41,970	81,589	0.1%	0.1%	0.1%	0.1%	0.1%
Due from other governmental units	583,771					0.6%	0.0%	0.0%	0.0%	0.0%
Inventories	1,035,952	956,164	862,672	1,127,404	1,052,406	1.1%	1.1%	0.9%	1.8%	1.9%
Note receivable - interfund	164,081	157,042	150,308	143,865	20,066	0.2%	0.2%	0.2%	0.2%	0.0%
Prepaid expenses	20,128					0.0%	0.0%	0.0%	0.0%	0.0%
Total Current	30,465,676	27,780,571	41,663,277	25,523,872	23,083,082	32.7%	30.7%	45.3%	40.9%	41.9%
Noncurrent Assets										
Deferred expenses	451,769	471,256	492,883	35,653	41,295	0.5%	0.5%	0.5%	0.1%	0.1%
Due from other funds		2,750,000				0.0%	3.0%	0.0%	0.0%	0.0%
Note receivable - interfund	3,705,166	3,869,246	4,026,288	4,176,597	1,492,707					
Capital assets:										
Nondepreciable	1,352,731	28,644,363	17,143,507	2,119,215	3,036,931	1.5%	31.7%	18.6%	3.4%	5.5%
Depreciable, net	57,051,642	26,962,462	28,722,312	30,505,512	27,489,013	61.3%	29.8%	31.2%	48.9%	49.9%
Total Noncurrent	62,561,308	62,697,327	50,384,990	36,836,977	32,059,946	67.3%	69.3%	54.7%	59.1%	58.1%
Total Assets	93,026,984	90,477,898	92,048,267	62,360,849	55,143,028	100.0%	100.0%	100.0%	100.0%	100.0%
Liabilities										
Current Liabilities										
Accounts payable and accrued liabilities	912,049	2,380,911	3,413,398	1,360,525	1,032,561	1.0%	2.6%	3.7%	2.2%	1.9%
Accrued payroll and related liabilities	141,404	84,004	70,680	60,896	64,436	0.2%	0.1%	0.1%	0.1%	0.1%
Accrued interest payable	498,638	510,474	431,024	184,284	110,930	0.5%	0.6%	0.5%	0.3%	0.2%
Capital lease payable			38,180	59,659	55,596	0.0%	0.0%	0.0%	0.1%	0.1%
Deferred bond revenue		19,833	20,518			0.0%	0.0%	0.0%	0.0%	0.0%
Due to other governmental units	2,999,947					3.2%	0.0%	0.0%	0.0%	0.0%
Customer security deposits	968,924	906,708	879,272	803,298	678,706	1.0%	1.0%	1.0%	1.3%	1.2%
Compensated absences - within one year	236,308	204,339	201,840	160,468	225,028	0.3%	0.2%	0.2%	0.3%	0.4%
General obligation bonds - within one year	1,247,585	859,594	752,886	973,332	1,006,816	1.3%	1.0%	0.8%	1.6%	1.8%
Note payable - inter fund	164,081	157,042	150,308	143,865	20,066	0.2%	0.2%	0.2%	0.2%	0.0%
Total Current	7,168,936	5,122,905	5,958,106	3,746,327	3,194,139	7.7%	5.7%	6.5%	6.0%	5.8%
Noncurrent Liabilities										
Capital lease payable				38,668	100,128	0.0%	0.0%	0.0%	0.1%	0.2%
Note payable - inter fund	3,705,166	3,869,246	4,026,288	4,176,597	1,492,707	4.0%	4.3%	4.4%	6.7%	2.7%
Compensated absences - more than one year		30,646	40,923	85,597	33,653	0.0%	0.0%	0.0%	0.1%	0.1%
General obligation bonds - more than one year	29,046,885	30,213,765	30,963,750	9,176,637	10,105,250	31.2%	33.4%	33.6%	14.7%	18.3%
Total Noncurrent	32,752,051	34,113,657	35,030,961	13,477,499	11,731,738	35.2%	37.7%	38.1%	21.6%	21.3%
Total Liabilities	39,920,987	39,236,562	40,989,067	17,223,826	14,925,877	42.9%	43.4%	44.5%	27.6%	27.1%
Net Assets										
Invested in capital assets, net of related debt	28,124,024	22,251,714	14,111,003	21,597,950	19,258,154	30.2%	24.6%	15.3%	34.6%	34.9%
Restricted		2,470,415	19,219,105			0.0%	2.7%	20.9%	0.0%	0.0%
Unrestricted	24,981,973	26,519,207	17,729,092	23,539,073	20,958,997	26.9%	29.3%	19.3%	37.7%	38.0%
Total Net Assets	53,105,997	51,241,336	51,059,200	45,137,023	40,217,151	57.1%	56.6%	55.5%	72.4%	72.9%
Liabilities and Net Assets	\$93,026,984	\$90,477,898	\$92,048,267	\$62,360,849	\$55,143,028	100.0%	100.0%	100.0%	100.0%	100.0%

Source:

Town of Culpeper, Comprehensive Annual Financial Report, editions (2006-2010)

Note: Common-Size Statements allow the reader to analyze the proportion that an individual asset or liability represents as a percentage of total assets

Enterprise Fund	2010	2009	2008	2007	2006
Operating Revenues					
Charges for services	\$15,780,878	\$15,643,846	\$15,135,992	\$13,718,758	\$12,227,563
Penalties	74,194	85,158	80,142	71,292	57,795
Other charges	285,830	80,950	40,899	79,794	114,841
Total operating revenues	16,140,902	15,809,954	15,257,033	13,869,844	12,400,199
Operating Expenses					
Water treatment	1,668,935				
Wastewater collection	354,081				
Wastewater treatment	2,105,203				
Transmission and distribution	1,606,096				
Power generation	5,786,405				
Administration	668,342				
Salaries		2,425,875	2,378,149	2,305,392	2,162,769
Fringe benefits		841,250	812,916	765,368	651,035
Internal services		2,040,769	1,824,431	1,492,662	1,048,178
Operation and maintenance		2,714	2,714	166,111	152,945
Contractual services		209,249	137,424	88,162	83,262
Insurance		162,041	150,853	135,068	127,685
Materials and supplies		208,911	237,380	121,901	55,372
Repairs and maintenance		883,976	942,354	832,864	776,449
Purchase of natural gas and oil		84,857	153,145	111,484	143,135
Purchase of electricity		6,261,214	6,312,703	5,818,950	5,524,983
Other	135,458	461,424	197,704	137,809	138,235
Depreciation	2,423,369	2,334,093	3,378,269	2,266,116	2,154,570
Total operating expenses	14,747,889	15,916,373	16,528,042	14,241,887	13,018,618
Operating income (loss)	1,393,013	(106,419)	(1,271,009)	(372,043)	(618,419)
Nonoperating Revenues (Expenses)					
Interest income	329,668	738,832	1,362,743	1,145,169	762,413
Interest expense	(640,096)	(1,503,188)	(904,037)	(692,278)	(549,582)
Loss on disposal of capital assets	(78,740)				
Grant proceeds			2,234,966		
Tap fees	573,216	235,513	4,499,514	4,839,024	7,133,730
Net nonoperating revenue (expenses)	184,048	(528,843)	7,193,186	5,291,915	7,346,561
Income (loss) before transfers and capital contributions	1,577,061	(635,262)	5,922,177	4,919,872	6,728,142
Transfers out	(302,145)				
Capital contributions	2,823,708	817,398			
Change in net assets	4,098,624	182,136	5,922,177	4,919,872	6,728,142
Prior Period Adjustment	(2,233,963)				99,181
Net Assets at July 1	51,241,336	51,059,200	45,137,023	40,217,151	33,389,828
Net Assets at June 30	\$53,105,997	\$51,241,336	\$51,059,200	\$45,137,023	\$40,217,151

Source:

Town of Culpeper, Comprehensive Annual Financial Report, editions (2006-2010)

Table Appendix A

Town of Culpeper

Ratios	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>
<u>From Government-wide Statements:</u>					
Current (Current Assets/Current Liabilities)	4.04	4.27	5.61	5.30	4.67
Cash (Cash and Equivalents/Current Assets)	88.5%	89.9%	92.5%	89.1%	87.7%
Debt-to-assets (Total Liabilities/Total Assets)	0.3916	0.3854	0.3753	0.2342	0.2205
LTD-to-assets (Noncurrent Liabilities/Total Assets)	0.3133	0.3170	0.3034	0.1666	0.1503
Unrestricted (Unrestricted Net Assets/Total Assets)	0.2296	0.2366	0.1845	0.3123	0.2743
<u>From General Fund Statements:</u>					
GF Unrestricted (Unrestricted Net Assets/Total GF Expenditures)	0.3419	0.2303	0.4363	0.5721	0.3358
<u>From Enterprise Fund Statements:</u>					
Ent Unrestricted (Unrestricted Net Assets/Operating Expenses)	1.6939	1.6662	1.0727	1.6528	1.6099

APPENDIX C:
County of Culpeper
Supplemental Tables 7-12

Government-wide	2010	2009	2008	2007	2006	2010	2009	2008	2007	2006
						Common-Size Statements				
Assets										
Current Assets										
Cash and cash equivalents	\$28,921,730	\$27,833,005	\$34,542,330	\$43,094,977	\$41,621,530	14.6%	14.0%	17.7%	26.7%	33.7%
Receivables:						0.0%	0.0%	0.0%	0.0%	0.0%
Property taxes	3,785,065	3,281,276	2,426,866	1,808,884	1,085,759					
Accounts receivable	526,693	534,606	563,191	903,633	946,867	0.3%	0.3%	0.3%	0.6%	0.8%
Due from other governmental units	3,294,820	3,176,533	3,385,586	2,958,913	2,736,937	1.7%	1.6%	1.7%	1.8%	2.2%
Inventories	2,997,860	3,271,386	3,355,367	63,102	25,161	1.5%	1.6%	1.7%	0.0%	0.0%
Prepaid expenses	66,213	69,102	62,136	40,365	108,700	0.0%	0.0%	0.0%	0.0%	0.1%
Total Current	39,592,381	38,165,908	44,335,476	48,869,874	46,524,954	19.9%	19.2%	22.7%	30.3%	37.6%
Noncurrent Assets										
Capital assets (net of depreciation):										
Land and land improvements	11,517,982	11,517,982	11,351,382	11,354,173	4,499,249	5.8%	5.8%	5.8%	7.0%	3.6%
Construction in progress	94,428,753	100,296,448	90,078,073	47,645,727	27,103,804	47.5%	50.5%	46.1%	29.5%	21.9%
Buildings	37,947,660	31,612,239	30,107,142	31,260,835	21,590,125	19.1%	15.9%	15.4%	19.4%	17.5%
Equipment	2,130,109	1,889,191	2,140,832	2,533,024	1,395,865	1.1%	1.0%	1.1%	1.6%	1.1%
Jointly owned assets	13,142,557	15,117,646	17,200,262	19,832,139	22,531,127	6.6%	7.6%	8.8%	12.3%	18.2%
Total Noncurrent	159,167,061	160,433,506	150,877,691	112,625,898	77,120,170	80.1%	80.8%	77.3%	69.7%	62.4%
Total Assets	198,759,442	198,599,414	195,213,167	161,495,772	123,645,124	100.0%	100.0%	100.0%	100.0%	100.0%
Liabilities										
Current Liabilities										
Accounts payable and other current liabilities	797,717	2,809,694	2,730,971	1,632,392	1,041,807	0.4%	1.4%	1.4%	1.0%	0.8%
Accrued interest payable	2,061,989	1,811,081	1,917,685	1,963,358	1,953,015	1.0%	0.9%	1.0%	1.2%	1.6%
Unearned revenue	166,538	177,259	143,566	192,830	176,155	0.1%	0.1%	0.1%	0.1%	0.1%
Due to component unit	4,393,347	5,796,824	5,602,807	4,984,063	4,596,488	2.2%	2.9%	2.9%	3.1%	3.7%
General obligation bonds - within one year	4,864,624	12,325,524	11,876,363	3,081,929	2,903,843	2.4%	6.2%	6.1%	1.9%	2.3%
Total Current	12,284,215	22,920,382	22,271,392	11,854,572	10,671,308	6.2%	11.5%	11.4%	7.3%	8.6%
Noncurrent Liabilities										
General obligation bonds - more than one year	97,094,689	90,136,591	94,560,730	105,937,357	100,983,581	48.9%	45.4%	48.4%	65.6%	81.7%
Total Noncurrent	97,094,689	90,136,591	94,560,730	105,937,357	100,983,581	48.9%	45.4%	48.4%	65.6%	81.7%
Total Liabilities	109,378,904	113,056,973	116,832,122	117,791,929	111,654,889	55.0%	56.9%	59.8%	72.9%	90.3%
Net Assets										
Invested in capital assets, net of related debt	60,536,304	63,863,458	54,614,777	40,304,891	26,696,497	30.5%	32.2%	28.0%	25.0%	21.6%
Restricted					291,256	0.0%	0.0%	0.0%	0.0%	0.2%
Unrestricted	28,844,234	21,678,983	23,766,268	3,398,952	(14,997,518)	14.5%	10.9%	12.2%	2.1%	-12.1%
Total Net Assets	89,380,538	85,542,441	78,381,045	43,703,843	11,990,235	45.0%	43.1%	40.2%	27.1%	9.7%
Liabilities and Net Assets	\$198,759,442	\$198,599,414	\$195,213,167	\$161,495,772	\$123,645,124	100.0%	100.0%	100.0%	100.0%	100.0%

Source:
County of Culpeper, Comprehensive Annual Financial Report, 5 editions (2006-2010)

Note: Common-Size Statements allow the reader to analyze the proportion that an individual asset or liability represents as a percentage of total assets.

General Fund	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>
Common-Size Statements										
Assets										
Cash and cash equivalents	\$23,901,232	\$23,262,106	\$25,018,909	\$35,644,477	\$36,547,710	69.4%	69.5%	72.3%	80.1%	84.0%
Receivables:										
Taxes, including penalties	3,785,065	3,281,276	2,426,866	1,808,884	1,085,759	11.0%	9.8%	7.0%	4.1%	2.5%
Accounts	329,459	324,839	234,010	622,290	600,420	1.0%	1.0%	0.7%	1.4%	1.4%
Due from other governmental units	3,217,945	3,154,371	3,379,639	2,947,286	2,692,733	9.3%	9.4%	9.8%	6.6%	6.2%
Due from other funds	3,168,581	3,378,819	3,491,497	3,416,813	2,457,808	9.2%	10.1%	10.1%	7.7%	5.7%
Prepaid expenses	50,874	55,889	61,319	40,365	108,700	0.1%	0.2%	0.2%	0.1%	0.2%
Total Assets	34,453,156	33,457,300	34,612,240	44,480,115	43,493,130	100.0%	100.0%	100.0%	100.0%	100.0%
Liabilities										
Accounts payable	500,367	376,273	394,397	224,349	293,750	1.5%	1.1%	1.1%	0.5%	0.7%
Accrued liabilities			45,726	702,000	550,980	0.0%	0.0%	0.1%	1.6%	1.3%
Deferred revenue	3,480,926	2,978,899	2,161,131	1,664,241	1,112,174	10.1%	8.9%	6.2%	3.7%	2.6%
Due to component unit	4,393,347	5,796,824	5,602,807	4,984,063	4,596,488	12.8%	17.3%	16.2%	11.2%	10.6%
Total Liabilities	8,374,640	9,151,996	8,204,061	7,574,653	6,553,392	24.3%	27.4%	23.7%	17.0%	15.1%
Net Assets										
Designated for subsequent expenditures	2,130,135	2,067,984	3,004,067	1,618,995	1,758,229	6.2%	6.2%	8.7%	3.6%	4.0%
Designated for capital projects	1,606,334	1,606,334	2,392,005	1,892,005	3,592,005	4.7%	4.8%	6.9%	4.3%	8.3%
Unrestricted	22,342,047	20,630,986	21,012,107	33,394,462	31,589,504	64.8%	61.7%	60.7%	75.1%	72.6%
Total Net Assets	26,078,516	24,305,304	26,408,179	36,905,462	36,939,738	75.7%	72.6%	76.3%	83.0%	84.9%
Liabilities and Net Assets	\$34,453,156	\$33,457,300	\$34,612,240	\$44,480,115	\$43,493,130	100.0%	100.0%	100.0%	100.0%	100.0%

Source:

County of Culpeper, Comprehensive Annual Financial Report, 5 editions (2006-2010)

Note: Common-Size Statements allow the reader to analyze the proportion that an individual asset or liability represents as a percentage of total assets.

General Fund	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>
Revenues					
General property taxes	\$45,440,793	\$48,035,130	\$44,178,683	\$44,232,779	\$36,264,828
Other local taxes	8,791,222	8,844,267	9,155,369	9,780,716	11,101,087
Permits, privilege fees and regulatory licenses	563,189	624,759	916,830	1,488,884	2,161,763
Fines and forfeitures	77,962	90,718	52,278	96,752	60,453
Revenue from use of money and property	431,455	584,203	1,806,114	2,247,950	1,627,157
Charges for services	2,369,853	2,724,504	2,971,328	1,824,721	1,811,526
Miscellaneous	258,145	287,627	249,157	256,774	521,529
Recovered costs	258,658	264,157	219,596	173,423	96,416
Intergovernmental:					
School Board Contribution to Primary Government	4,391,244				
Commonwealth	12,632,122	12,028,450	12,275,773	10,990,674	10,336,751
Federal	5,087,717	6,076,961	5,154,640	4,970,402	5,965,813
Total revenues	<u>80,302,360</u>	<u>79,560,776</u>	<u>76,979,768</u>	<u>76,063,075</u>	<u>69,947,323</u>
Expenditures					
General government administration	3,665,766	3,923,014	3,968,434	3,785,043	3,431,935
Judicial administration	2,434,963	2,529,996	2,511,337	2,327,462	2,074,360
Public safety	13,684,548	14,140,308	14,620,059	12,583,880	12,226,921
Public works	1,080,072	1,419,945	1,074,653	1,165,109	1,011,376
Health and welfare	15,004,065	14,803,422	14,799,765	12,719,822	12,005,443
Education	29,387,093	30,588,952	29,739,630	25,151,466	24,141,359
Parks, recreation, and cultural	1,761,986	1,857,970	1,814,505	1,676,136	1,413,035
Community development	1,441,027	1,908,497	1,454,190	1,219,129	1,285,455
Debt service:					
Principal retirement	4,369,831	3,944,953	2,652,946	2,584,746	2,340,953
Interest and other fiscal charges	3,999,355	4,471,945	4,561,586	4,304,967	2,473,840
Total expenditures	<u>76,828,706</u>	<u>79,589,002</u>	<u>77,197,105</u>	<u>67,517,760</u>	<u>62,404,677</u>
Excess (deficiency) of revenues over expenditures	<u>3,473,654</u>	<u>(28,226)</u>	<u>(217,337)</u>	<u>8,545,315</u>	<u>7,542,646</u>
Other Financing Sources (Uses)					
Transfers in		72,500			
Issuance of literary fund loan	288,933				
Interim financing redeemed					
Issuance of lease revenue bonds					
Premium on bonds issued					
Transfers (out)	(1,989,375)	(2,147,149)	(10,279,946)	(8,579,591)	(3,981,313)
Total other financing sources (uses)	<u>(1,700,442)</u>	<u>(2,074,649)</u>	<u>(10,279,946)</u>	<u>(8,579,591)</u>	<u>(3,981,313)</u>
Changes in fund balances	1,773,212	(2,102,875)	(10,497,283)	(34,276)	3,561,333
Fund balances at beginning of year	24,305,304	26,408,179	36,905,462	36,939,738	33,378,405
Fund balances at end of year	<u>\$26,078,516</u>	<u>\$24,305,304</u>	<u>\$26,408,179</u>	<u>\$36,905,462</u>	<u>\$36,939,738</u>

Source:

County of Culpeper, Comprehensive Annual Financial Report, 5 editions (2006-2010)

Enterprise Fund	2010	2009	2008	2007	2006	2010	2009	2008	2007	2006
						Common-Size Statements				
Assets										
Current Assets										
Cash and cash equivalents	\$3,975,125	\$4,570,899	\$7,186,294	\$3,458,134	\$4,097,045	8.4%	9.5%	14.8%	11.2%	18.1%
Accounts receivable	197,234	209,767	329,181	281,343	346,447	0.4%	0.4%	0.7%	0.9%	1.5%
Due from other governmental units	76,875	22,162	5,947	11,627	44,204	0.2%	0.0%	0.0%	0.0%	0.2%
Inventories	2,997,860	3,271,386	3,355,367	63,102	25,161	6.3%	6.8%	6.9%	0.2%	0.1%
Prepaid expenses	15,339	13,213	817			0.0%	0.0%	0.0%	0.0%	0.0%
Total Current	7,262,433	8,087,427	10,877,606	3,814,206	4,512,857	15.4%	16.8%	22.4%	12.3%	20.0%
Noncurrent Assets										
Capital assets (net of depreciation):										
Land and land improvements	2,245,522	2,245,522	2,245,522	2,248,313	1,155,993	4.8%	4.7%	4.6%	7.3%	5.1%
Construction in progress	23,489,387	24,004,643	21,194,664	9,908,153	1,357,351	49.7%	50.0%	43.6%	32.0%	6.0%
Buildings	13,794,707	13,488,947	14,117,481	14,784,257	15,442,494	29.2%	28.1%	29.0%	47.7%	68.4%
Equipment	438,759	199,959	214,645	253,239	105,556	0.9%	0.4%	0.4%	0.8%	0.5%
Total Noncurrent	39,968,375	39,939,071	37,772,312	27,193,962	18,061,394	84.6%	83.2%	77.6%	87.7%	80.0%
Total Assets	47,230,808	48,026,498	48,649,918	31,008,168	22,574,251	100.0%	100.0%	100.0%	100.0%	100.0%
Liabilities										
Current Liabilities										
Accounts payable and other current liabilities	231,685	208,882	1,684,478	684,180	163,100	0.5%	0.4%	3.5%	2.2%	0.7%
Accrued interest payable	29,172	34,140	38,852	43,347		0.1%	0.1%	0.1%	0.1%	0.0%
Due to other funds	3,168,581	3,378,819	3,491,497	3,416,813	2,457,808					
General obligation bonds - within one year	254,385	271,434	260,430	214,414	204,191	0.5%	0.6%	0.5%	0.7%	0.9%
Total Current	3,683,823	3,893,275	5,475,257	4,358,754	2,825,099	7.8%	8.1%	11.3%	14.1%	12.5%
Noncurrent Liabilities										
General obligation bonds - more than one year	1,780,709	2,008,416	2,196,661	2,317,412	2,519,010	3.8%	4.2%	4.5%	7.5%	11.2%
Total Noncurrent	1,780,709	2,008,416	2,196,661	2,317,412	2,519,010	3.8%	4.2%	4.5%	7.5%	11.2%
Total Liabilities	5,464,532	5,901,691	7,671,918	6,676,166	5,344,109	11.6%	12.3%	15.8%	21.5%	23.7%
Net Assets										
Invested in capital assets, net of related debt	38,791,879	38,532,234	36,145,416	25,343,202	16,010,805	82.1%	80.2%	74.3%	81.7%	70.9%
Unrestricted	2,974,397	3,592,573	4,832,584	(1,011,200)	1,219,337	6.3%	7.5%	9.9%	-3.3%	5.4%
Total Net Assets	41,766,276	42,124,807	40,978,000	24,332,002	17,230,142	88.4%	87.7%	84.2%	78.5%	76.3%
Liabilities and Net Assets	\$47,230,808	\$48,026,498	\$48,649,918	\$31,008,168	\$22,574,251	100.0%	100.0%	100.0%	100.0%	100.0%

Source:
County of Culpeper, Comprehensive Annual Financial Report, 5 editions (2006-2010)

Note: Common-Size Statements allow the reader to analyze the proportion that an individual asset or liability represents as a percentage of total assets.

Enterprise Fund	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>
Operating Revenues					
Charges for services	\$2,117,530	\$2,477,725	\$3,383,354	\$3,445,872	\$3,417,868
Maintenance grants	7,560	54,741	10,260	33,434	
Total operating revenues	<u>2,125,090</u>	<u>2,532,466</u>	<u>3,393,614</u>	<u>3,479,306</u>	<u>3,417,868</u>
Operating Expenses					
Personal services	667,237	721,317	681,212	635,050	532,875
Fringe benefits	175,461	185,327	163,622	153,624	124,501
Contractual services	1,980,366	2,276,333	2,905,090	2,984,295	2,871,025
Other charges	868,846	1,068,707	637,664	528,993	768,371
Depreciation	821,881	707,784	705,370	705,372	683,790
Total operating expenses	<u>4,513,791</u>	<u>4,959,468</u>	<u>5,092,958</u>	<u>5,007,334</u>	<u>4,980,562</u>
Operating income (loss)	<u>(2,388,701)</u>	<u>(2,427,002)</u>	<u>(1,699,344)</u>	<u>(1,528,028)</u>	<u>(1,562,694)</u>
Nonoperating Revenues (Expenses)					
Interest income	12,334	72,560	227,094	236,184	80,001
Other nonoperating expenses			(272,400)	(334,453)	
Federal grant				12,427	
Interest expense	(64,100)	(74,915)	(85,122)	(94,883)	(104,092)
Total nonoperating revenues (expenses)	<u>(51,766)</u>	<u>(2,355)</u>	<u>(130,428)</u>	<u>(180,725)</u>	<u>(24,091)</u>
Income (loss) before contributions and transfers	<u>(2,440,467)</u>	<u>(2,429,357)</u>	<u>(1,829,772)</u>	<u>(1,708,753)</u>	<u>(1,586,785)</u>
Capital contributions and construction gains	381,494	1,686,515	12,222,118	5,950,655	3,244,989
Transfers					
Transfers in	1,989,375	2,181,579	6,253,652	2,859,961	1,878,878
Transfers (out)	(288,933)	(291,930)			
Total transfers	<u>1,700,442</u>	<u>1,889,649</u>	<u>6,253,652</u>	<u>2,859,961</u>	<u>1,878,878</u>
Change in net assets	<u>(358,531)</u>	<u>1,146,807</u>	<u>16,645,998</u>	<u>7,101,863</u>	<u>3,537,082</u>
Prior Period Adjustment				(3)	
Net assets at beginning of year	<u>42,124,807</u>	<u>40,978,000</u>	<u>24,332,002</u>	<u>17,230,142</u>	<u>13,693,060</u>
Net assets at end of year	<u>\$41,766,276</u>	<u>\$42,124,807</u>	<u>\$40,978,000</u>	<u>\$24,332,002</u>	<u>\$17,230,142</u>

Source:

County of Culpeper, Comprehensive Annual Financial Report, 5 editions (2006-2010)

Table Appendix A

County of Culpeper

Ratios	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>
<u>From Government-wide Statements:</u>					
Current (Current Assets/Current Liabilities)	3.22	1.67	1.99	4.12	4.36
Cash (Cash and Equivalents/Current Assets)	73.0%	72.9%	77.9%	88.2%	89.5%
Debt-to-assets (Total Liabilities/Total Assets)	0.5503	0.5693	0.5985	0.7294	0.9030
LTD-to-assets (Noncurrent Liabilities/Total Assets)	0.4885	0.4539	0.4844	0.6560	0.8167
Unrestricted (Unrestricted Net Assets/Total Assets)	0.1451	0.1092	0.1217	0.0210	-0.1213
<u>From General Fund Statements:</u>					
GF Unrestricted (Unrestricted Net Assets/Total GF Expenditures)	0.2908	0.2592	0.2722	0.4946	0.5062
<u>From Enterprise Fund Statements:</u>					
Ent Unrestricted (Unrestricted Net Assets/Operating Expenses)	0.6590	0.7244	0.9489	-0.2019	0.2448



COUNTY OF CULPEPER
302 North Main Street
Culpeper, Virginia 22701

DEPARTMENT OF DEVELOPMENT
(540) 727-3404
Fax: (540) 727-3461

BUILDING DEPARTMENT
(540) 727-3405

APPLICATION FOR REZONING

APPLICATION DATE: 10-13-15

I, We CARUSO OPIN, LLC owners, contract owners

Of TAX MAP 41 PARCEL 94 containing 121.62 sq. ft. acres of land

located in STEVENSBERG Magisterial District do hereby request that this property now zoned RA be rezoned to R-3 CLUSTER.
To permit 266 SINGLE FAMILY HOMES, MINIMUM LOT AREA 6000 Sq. ft.
AND 35 TOWNHOMES, MINIMUM LOT AREA: 2,000 Sq. ft.

Remarks REQUESTING CLUSTER TO PRESERVE AND PROTECT SURROUNDING STREAMS, WETLAND AREAS AND OPEN SPACE.

Have all necessary statements, plats, plans and other pertinent information been submitted?

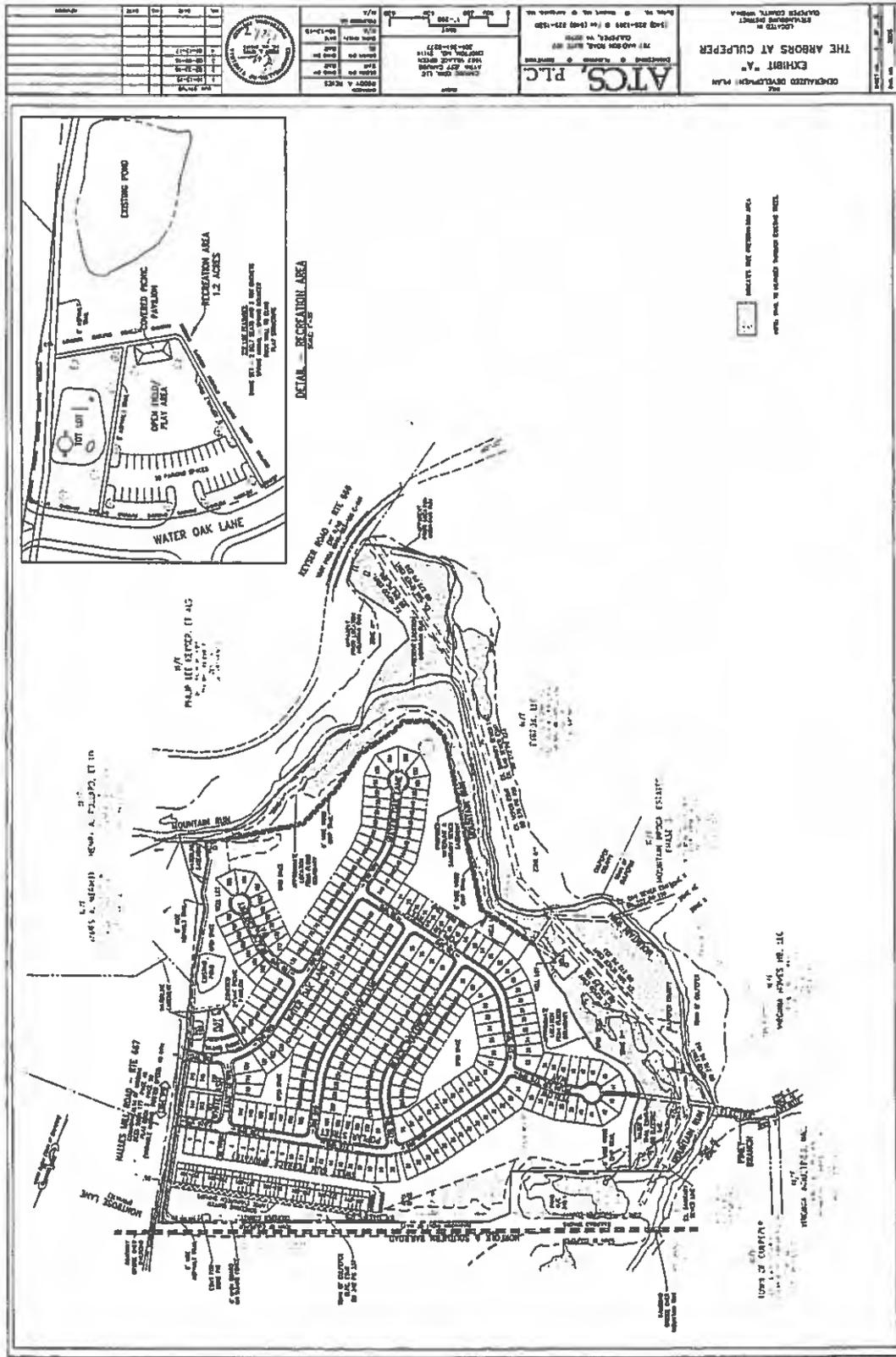
Zone RA
Tax Map No. 41-94
\$2,000+\$100/Acre for each
Acre 5+
\$ 2,500 1st AC + \$100/AC.
FOR EACH ADDITIONAL AC:
\$ 14,562.00
Fee received [Signature]
By [Signature]

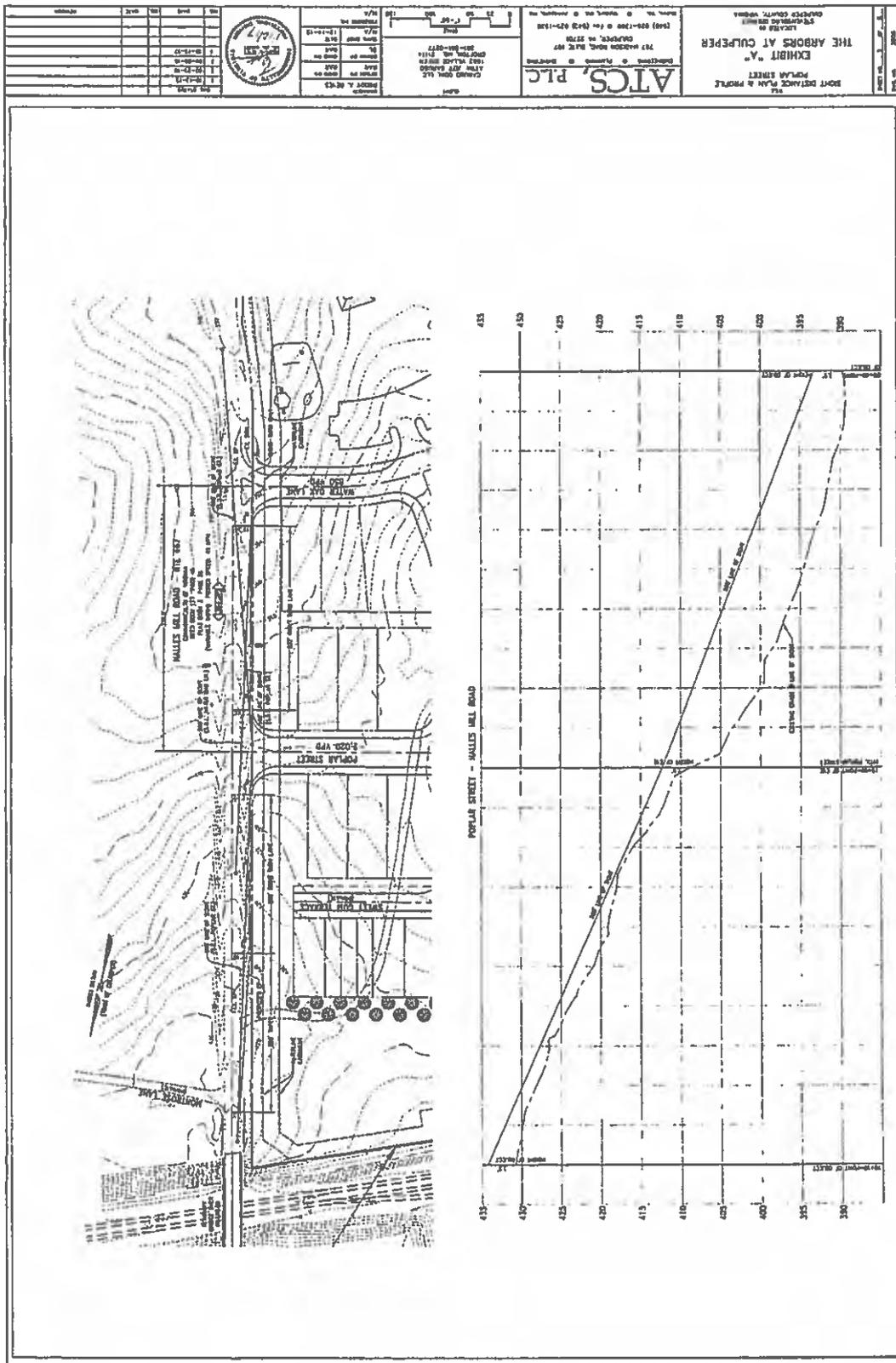
Print Name: JEFFREY V. CARUSO
Sign Name: [Signature]
Address: 1655 CROFTON BLVD, STE 200
CROFTON, MD. 21114
Telephone No. 301-261-0277 x111
By: _____
Title: _____
Address: _____
Telephone No.: _____

STATE OF VIRGINIA Nancye
COUNTY OF CULPEPER, To-wit: Anne Arundel
Subscribed and sworn before me this 9 day of October 2015

NOTARY: Nancy Walsh
By signing this application, I acknowledge that on any matter before the Planning Commission for determination, the Applicant or a representative of the Applicant who is fully authorized, able, and willing to act on behalf of this Applicant and to answer the Commission's questions, fails to appear before the Commission in its proceeding on the Applicant's matter, the Commission may deem the absence of the Applicant or representative, to be a request by the Applicant for a tabling of this matter.

NANCY R. WALSH
Notary Public
Anne Arundel County
Maryland
My Commission Expires May 13, 2016





THE ARBORS AT CULPEPER

by

CARUSO
H o m e s



EXISTING SITE INFORMATION



THE ARBORS AT CULPEPER

- Tax Map 41-94
- Bordering Town Limits
- 121.2 Acres
- Zoned RA
- Cow Pasture



GENERALIZED DEVELOPMENT PLAN

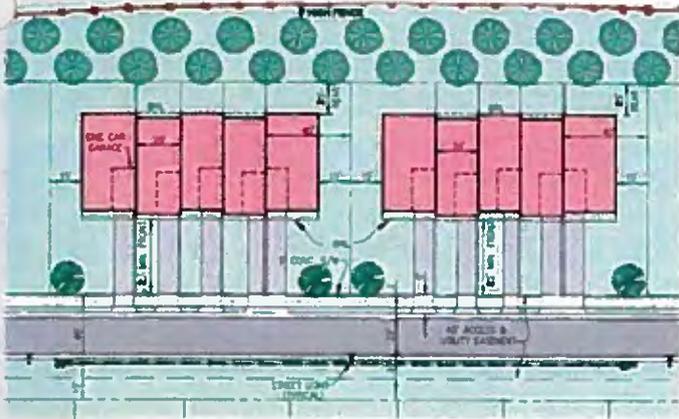


THE ARBORS AT CULPEPER

- Modified R-3 Cluster
- 266 Village Lots
- 35 Townhouse Lots
- 301 Total Lots
- 40% Open Space
- Recreational Amenities
- Trails



TOWNHOUSE LOT INFORMATION



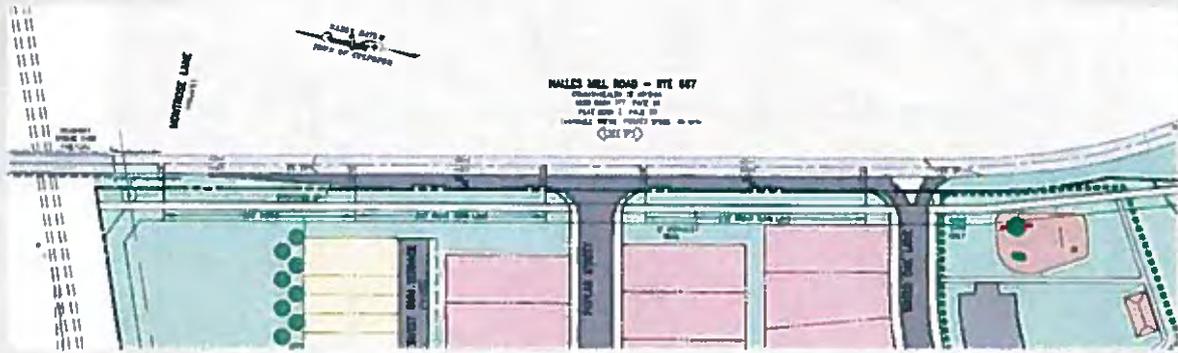
THE ARBORS AT CULPEPER

Data	Town R-3 Village	County R-3 Cluster	Proposed R-3 Cluster
Lot Width	20 (30) ft.	20 (40) ft.	20 (40) ft.
Front	0 ft.	35 ft.	25 ft.
Side	0 (10) ft.	0 (15) ft.	0 (15) ft.
Rear	25 ft.	25 ft.	25 ft.
Min. Area	2,000 sf.	2,000 sf.	2,000 sf.

- Curb & Gutter Streets
- Sidewalks
- Street Trees
- Street Lights



FRONTAGE IMPROVEMENTS

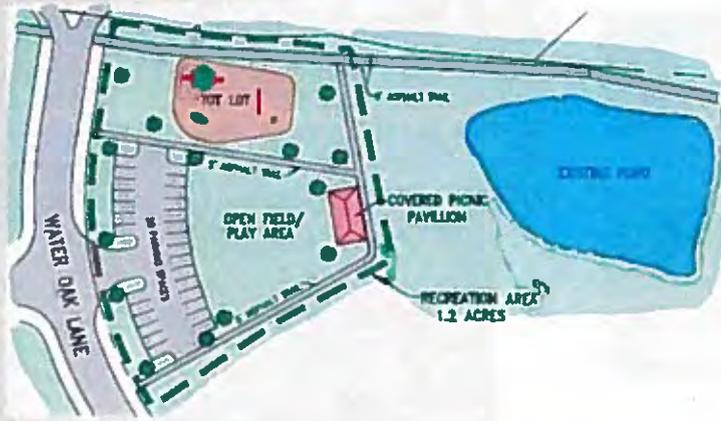


- Full Access Entrance
- Right In/Right out Entrance
- Right Turn Lanes
- 8' Asphalt Trail

THE ARBORS AT CULPEPER



PROFFERS AND AMENITIES



- Tot Lot
- Pavilion
- Play Area
- Trails
- 40% Open Space

THE ARBORS AT CULPEPER



PROFFERS AND AMENITIES

Pavilion



THE ARBORS AT CULPEPER



THANK YOU!

We appreciate your time and consideration.
We look forward to partnering with you
to build a premier community
for the Town of Culpeper.

THE ARBORS AT CULPEPER



Appendix B
ATTACHMENT J



302 N. Main Street
Culpeper, Virginia 22701
DEPARTMENT OF DEVELOPMENT
Planning and Zoning
(540) 727-3404 Fax: (540) 727-3461

April 6, 2017

Caruso Odin, LLC
c/o Roddy Reyes, P.E.
ATCS, PLC
767 Madison Rd., Ste. 107
Culpeper, VA 22701

RE: Case No. Z-440-15-1/Caruso – Preliminary Rezoning Comments

Dear Mr. Reyes,

I have reviewed the submitted rezoning application as well as the most recent concept plan, proffer statement, traffic impact analysis and other associated case documents and offer the following comments and recommendation at this time. I have also attached comments from Charles Rapp, Town of Culpeper Planning Director. This project as you know is right along the Town/County boundary and coordination with the Town of Culpeper is important for this development. As you will find, I have supported both my review and comments by referencing the most current 2015 Comprehensive Plan.

Comprehensive Plan

The 2015 Comprehensive Plan is the county's official policy guide for current and future land-use decisions such as this rezoning request. The Plan is considered to be long-range in nature as well as general in nature. The Plan includes designations of future land-use, transportation systems, public services, housing, etc.; each of which play a significant role shaping Culpeper County's future landscape. The following is a review of the submitted rezoning application in regards to this document.

Chapter 3. Economics

In 2012 the US Census Bureau indicated 53.3% of the county's population commuted out of the County for work and relied primarily on the single occupancy automobile as the primary means of workforce travel. This number of out-commuting persons has increased over the past several decades. There has not been a significant increase in creation of jobs in Culpeper in recent years. The proposed development does not include any commercial and/or industrial development to create any new local jobs. Therefore, most of the future residents of a project like this will need to commute out of the County for work.

The subject property however is strategically located near the McDevitt Drive & Bruggs Corner Technology Overlay Zone that is shown in the Plan. This zone was created with the intention of

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encouraging investment in existing businesses and industry and encouraging the location of new businesses and industry as well. Therefore, the subject property could potentially provide housing for any job-creating industry that might be established in this overlay zone.

Any revenues generated from this project will primarily be from personal property and real estate. **The applicant has not provided a fiscal impact analysis to fully analyze this.**

Chapter 4. Environment

The subject property is located along Mountain Run. There is a significant amount of Mountain Run floodplain on the property. The property is also located within a Dam Inundation Zone. Any future subdivision of the property will need to follow regulations as found in Section 15.2-2243.1 of the Code of Virginia in regards to any development wholly and partially within a dam break inundation zone. The applicant is seeking to employ a cluster residential development and therefore is largely avoiding these areas which is supported by staff. The applicant does propose to construct a trail that would primarily be located in the designated floodplain. The floodplain ordinance does allow for recreational uses such as trails in these zones. The property does contain some challenging topography in which any future land disturbing activities will need to be carefully monitored to ensure the integrity and health of Mountain Run and its associated floodplain. **A 301-unit residential development could have a negative impact on this resource if the property were to be graded all at one time. Phasing of any land disturbance activities may help alleviate this concern and should be considered.**

Chapter 5. Agriculture

Historically and currently this property enjoys agriculture as its primary use as well as the county's land use taxation relief program for agriculturally used properties. Farming and agriculture are a primary source of income and employment in the County and in recent years has been on the incline after numerous years of decline. However, this particular piece of property is isolated from the core of the agriculture community in Culpeper; being located next to town limits, railroad tracks and Mountain Run. It is not located within an Agricultural and Forestal District. While agricultural uses could continue to be enjoyed on this particular property, a long agriculture future for this property seems unlikely as areas inside town limits and around town continue to develop in a much different manner.

Chapter 6. Public Facilities

As the Plan indicates, population growth requires a significant increase of public services. More population means demand for more schools and recreational facilities and requires expansion of fire and rescue needs. The County's public facilities need to be coordinated with land use projects such as this to properly integrate the provisions of services, anticipated growth, revenues, and available funding. **The coordination of land use and public facilities is crucial in providing efficient and cost effective government services for not only future County residents, but current residents as well. The most recent Capital Improvements Program drafted by the county identifies many capital project needs totally approximately \$130,000,000 between the fiscal years of 2018-2022.**

-Schools

The 2015 Plan indicated a theoretical availability of 312 students amongst the county's six (6) elementary schools. This was based on a 2014-15 enrollment of K-5 membership of 3,739 and VDOE (Virginia Department of Education) capacity of the six schools at 4,051. The February 2017 membership numbers for K-5 indicate student enrollment at 3,757 leaving a theoretical

availability of 294 students for the existing elementary schools. The county's two (2) middle schools have a VDOE recommended capacity of 1,900 students. The February 2017 enrollment numbers for middle school membership was 1,768 indicating a current theoretical capacity of 132 students. The county's two (2) high schools have a VDOE recommended capacity of 3,300. The February 2017 high school membership was 2,479 students, leaving a theoretical capacity of 821. The total student membership for K-12 as of February 2017, is 8,004. The 2015 Plan estimated student enrollment at 8,008, indicating these projections were fairly accurate. The estimated total K-12 student enrollment is projected to trend lower in 2018-19 and 2019-2020.

Therefore, for the near future even if the proposed development were to be successful it appears that there is at least limited theoretical capacity amongst the county school facilities. However, it is important to remember that theoretical capacity and operational capacity are not the same and in reality an operational capacity threshold may be achieved earlier than the theoretical threshold. Beyond the year 2020, the picture isn't as clear and new facilities may be required and this development certainly could contribute to a growing school population and demand on this crucial public facility.

-Fire and Rescue

The 2015 Plan indicates based on the increased number of emergency calls in recent years, that this trend is expected to continue and that this increase may require additional stations and manpower to maintain or improve the current level of service. The Plan indicates the need to begin to plan and consider land acquisition for future stations as well as monitor the need for increased career personnel, as well as develop plans for a fire and rescue training center. This sized development will add to the already increasing emergency call volume. The county's FY' 18 CIP proposes funding one new ambulance at a cost of approximately \$250,000. There is a current need of two (2) new ambulances to serve the community as well as many other identified capital needs related to the Volunteer Fire and Rescue Association infrastructure.

-Parks and Recreation

The Plan mentions the significance of parks and recreation planning, potential new park acquisition as development increases. The applicant's property is located within approximately one mile of one existing Neighborhood Park that is located within Town limits and within approximately 2 miles from a larger Community Park, which is the County sports complex.

The applicant in their proffer statement has included the development of a 1.2-acre recreational area for use of the proposed development including a tot lot with playground equipment (swing set, spring bouncer, rock wall, play structure), picnic pavilion with picnic tables, along with associated on-site parking. This is to be completed at the time of the 75th building permit issuance according to the most recent proffer statement. The applicant has also proffered to construct a 6ft. wide woodchip trail to be completed prior to completion of the project. This trail could potentially tie into a future public multi-use trail facility. The applicant would provide maintenance of this trail until such public assignment of the trail occurs.

Sidewalks planned throughout the development will help provide pedestrian opportunities for recreation as well.

Although staff does recommend that the construction of the planned recreational amenities occur as early into the development as possible and earlier than the 75th building permit issuance the applicant has made a commitment to addressing a parks and recreation need for this type of

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development and is at least open to the idea of the planned multi-use trail for the development to be used by the public in the future.

-Other Public Facilities

New county government offices, regional jail facility, library, are all other public facilities that are mentioned in the Plan. Any increase in population will place a strain on existing facilities and possibly require new facilities and this type of development would in theory use such public facilities.

Chapter 7. Public Services & Utilities

-Water and Sewer

The subject property does fall inside the Town Environs Adopted Water and Sewer Service Area as shown in Chapter 7 of the Comprehensive Plan. This property is projected to be served by Town Water and Sewer. It appears there is capacity in the Town of Culpeper sewage treatment plant to service this development.

The applicant states in their proffer statement that they will provide at no cost to the Town of Culpeper two (2) public well lots and associated easements and supporting elements for the expansion of the Town's water system to better service the Town and County environs. This commitment does help achieve current and future public water needs for this development.

-Solid Waste

The County currently operates a single solid waste transfer station and is the only municipal solid waste disposal facility in the County. As the population grows, so does the need for public services such as the transfer station and should be considered when reviewing new developments.

-Broadband/Internet

As demand for internet service increases, additional broadband/internet infrastructure will be needed to provide 100% coverage throughout the County. A community of this density will expect high speed internet services and the process and ability to achieve this service should be explored at the rezoning stage. The applicant will want to show how internet access will be achieved for this development.

Chapter 8 Housing

This chapter was primarily derived from "A Housing Needs and Market Analysis for Culpeper County prepared for the Greater Piedmont Area Association of Realtors in April 2015. This study provided the profile of existing households and housing stock, a housing market overview, a future housing forecast and a summary of future housing needs. This study indicated that the current population of Culpeper County is already mismatched with its housing stock: while 78 percent of existing units are single-family detached homes, just 22 percent of households are "traditional" families of two married adults with children living at home and suggests that any housing stock that is to be added should address this growing mismatch.

While we currently do not know how much the development will seek per single family home or townhome, the price point of these homes will make a big difference as to what market these future homes will serve. The county's housing study suggests that "local area workers" will only be able to generally afford housing units priced below \$250,000. This segment of the housing market represents

about 75 percent of future demand, by far this largest segment of the housing market. A much smaller segment approximately 17 percent of future demand makes up the "Northern Virginia commuters" who generally have annual incomes in the range of \$100,000 and can afford units of \$300,000 or more. A third segment of the future housing market comprised of approximately 8 percent is seniors and retirees who are looking for smaller units priced below \$250,000.

The above research data should be considered for this rezoning and incorporated into the proposal. The applicant is proposing a small segment of townhomes which will potentially provide a lower price point and therefore theoretically supply the community with a housing type that is projected to be needed. **However, in the opinion of staff this mix of townhomes could be higher, therefore meeting a larger segment of the true community housing needs as mentioned in Chapter 8 of the Plan.**

Chapter 9 Transportation

Transportation is a key consideration when reviewing any land use application and is very much a crucial consideration with this proposed development. The automobile is the dominant form of transportation throughout the County. And although this development is adjacent to rail, it does not currently have access and therefore residents will be reliant on the existing road network that is adjacent to and in the near vicinity of this development. The project is located in an area identified in the Plan as Rt. 15/29 Business to Inlet area and a general plan for potential future access needs is further delineated on Map 9.4 of the Plan. While a major component of this area plan, the diamond interchange at Rt. 666 and Rt. 29 is well underway and projected to be completed later this year; there other aspects of this area plan that will need to be developed to ensure proper access to the existing main commercial center of the County and the larger road network throughout the County. The extension of Ira Hoffman Ln. to the south across the railroad tracks near Walmart to an intersection with Nalles Mill Rd. in the proximity of Rt. 799/Keyser Rd. is key to providing adequate interconnectivity for this area. **Staff is not in favor of encouraging significant development in this area without this future road or some other interconnectivity alternative being developed and built.**

The applicant has submitted a Concept Plan that is proffered and depicts access from two (2) separate entrances along Rt. 667/Nalles Mill Rd. that lead to internal streets that are proposed to meet state secondary street standards. The applicant proposes to build a 200' x 200' right turn lane and taper into the northernmost entrance. The second entrance will enjoy a continuous right turn lane from first entrance and proposes to function as a right-in, right-out entrance only. The Virginia Department of Transportation (VDOT) has reviewed the proposed entrance locations and details and lends its approval to this design. **However, staff is concerned about the lack of a left turn lane requirement into the development even though VDOT doesn't suggest one is necessary.**

The applicant has also produced a Traffic Impact Analysis (TIA) performed by ATCS. The study evaluates the impacts of existing traffic, regional traffic growth, and the impacts of traffic generated from the proposed development. This study does consider the most immediate road network and several of the intersections in close proximity to the subject property. The study reviewed five (5) specific intersections. VDOT also reviewed this study and provided comments to the applicant. The latest correspondence between VDOT and the applicant regarding the TIA was September 27, 2016. This comment letter suggests that "though efforts were made to address our comments, ATCS did not always provide definitive answers and/or recommendation for mitigating projected impacts from the development."

One of the main concerns as illustrated by VDOT in their letter and is also a major concern of staff is the intersection of Rt. 15/29 Bus. and Rt. 667/Nalles Mill Rd. This is an intersection that does not function

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in the most safe and efficient manner today. It is an unsignalized intersection, the median is narrow, and there is a history of angle crashes at this intersection. The TIA study suggests that the addition of a signal at this intersection will not help improve the Level of Service (LOS) at this intersection and would also require a design exception from VDOT for signal spacing. Although a signalized intersection may result in less angle crashes at this intersection. The study does offer some potential solutions for this intersection. The TIA suggests that the northbound shared through/left and right turn lane could be changed to a separate left and shared through/right turn lane and that conditions for northbound movements on Nalles Mill Rd. onto or across Rt. 15/29 Bus. do improve if this lane change configuration is completed and is hereby recommended. The study goes on to suggest other potential mitigation measures for this intersection as found on page 33 of the June 2016 TIA, including the possibility of a superstreet configuration restricting left turns from Nalles Mill Rd. onto Rt. 15/29, restricting the intersection to a right-in and right-out only, or even full closure of Nalles Mill Rd. The removal of the left and through traffic may reduce crashes, although it would put more U-turn movements at the intersections to north along Rt. 15/29 Bus. at signalized intersections. The applicant's TIA does not include analysis of these U-turning movements.

Since this section of road and intersection are located inside Town of Culpeper limits, any improvements will need to be closely coordinated with the Town of Culpeper and will require their consent. The Town of Culpeper is an integral component of the overall road network in the County and any changes to the County roadway system can have significant impacts to the Town. **The applicant has not offered any plans or proffers at this point to help mitigate the concerns as laid out by VDOT and staff at the intersection of Nalles Mill Rd. and Rt.15/29 Bus. and is a serious concern for staff.**

It is also worthy to note that Rt. 667/Nalles Mill Rd. to the south of the development towards the newly realigned intersection with Braggs Corner Rd. does contain some significant hills, curves, and has very narrow shoulder areas, and does have some crash history. In the opinion of staff a large segment of travelers will use this road to get to Rt. 29 which is a Corridor of Statewide Significance and Rt. 666 and adding 30!units to this road in its current alignment is not ideal.

The intersection of Rt. 667 and Rt. 799/Keyser Rd. was not studied by the applicant. However, with an increase in potential traffic along Nalles Mill Rd. this intersection will certainly be impacted.

The applicant has provided for potential pedestrian access to Electric Avenue, potentially connecting to a new subdivision across Mountain Run by adding a utility/trail easement. However, the applicant has not committed to actually constructing this pedestrian access. This access may ultimately be difficult to achieve because of the large of amount wetlands and floodplain on this part of the property.

One of the biggest transportation related concerns staff has regarding this project relates to pedestrian safety. The development is in near proximity to several commercial centers to the north of the property just on the other side of the railroad tracks. The existing bridge on Rt. 667/Nalles Mill Rd. is narrow and will not safely allow for pedestrian use. The applicant has stated that a pedestrian access at this location is not economically feasible. **Nevertheless, this is still a significant safety concern that staff has regarding transportation for this project. Staff is concerned that pedestrians will still seek to cross this bridge even though it is currently not safe to do so. The main purpose zoning exists is to serve the purpose the promoting of health, safety or general welfare of the public and to those ends until a resolution is reached on how to provide safe pedestrian access to the adjacent commercial centers, staff sees this issue as a major roadblock for a project such as this to move forward.**

Chapter 10 Historic Resources

While the County of Culpeper has a rich and diverse history, the subject property and properties adjacent do not appear to be mentioned or listed anywhere as historically significant.

Chapter 12 Future Land Use

The Future Land Use section of the Comprehensive Plan identifies areas planned for future growth and the anticipated land use associated with such growth. It is important to remember the Future Land Use Map that is included in this section does not stand alone and is not, by itself, the future plan for the County. The other sections of the Comprehensive Plan including maps, referenced data, etc. are important factors in the future land use plan for the County. And furthermore the identification of potential growth areas in the Future Land Use Plan is neither an assurance of community acceptance nor a commitment to development by the County. The scope and intensity of the planned project, timing of the project related to planned infrastructure, the current character of the surrounding area are also important factors to consider.

The subject property is identified on the Future Land Use Plan, Map 12.3 as primarily Mixed Use along with a small amount of Low Density Residential. The Mixed Use designation anticipates a mixture of higher density residential uses and commercial/office use. The intent of this category is to combine commercial and residential components within a single property. The applicant does propose a small mix of residential types, but does not include a commercial and/or office component to this project. The Low Density Residential designation is intended to allow for a maximum of one dwelling unit per acre. The proposed development well exceeds this density. **Therefore, the proposed development in the opinion of staff is not completely compliant with the current designation as indicated on the Future Land Use Map.**

The development is located next to the Town of Culpeper, which is the county's main primary village center and the center of commerce for the County and future residential in general is planned to follow the Village Centers in order to concentrate housing where services, utilities and infrastructure either already exist or are planned. The subject property is further identified on Map 12.4 in this section as being located within the Urban Services Boundary. This boundary is intended to provide an "edge" to dense urban development similar to that found within the Town Corporate limits. **In this aspect alone, the proposed residential development can be considered compliant with this designation.**

Chapter 13 Village and Convenience Centers (Design Considerations)

Many of the concepts mentioned in this chapter of the Plan should be implemented with the type of development being proposed. The following concepts should apply to this development:

- Pedestrian Orientation
- Safe, attractive and convenient streets and paths
- Interconnected streets and regional transportation networks
- Parks and open space
- Mixture of land uses
- Mixture of housing types and affordability
- Site Planning that respects the terrain
- Protection of agricultural or environmentally sensitive features
- Conformance with the Master Water and Sewer Plan

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The applicant has made an effort to implement many of these concepts into their proposed development. The proposed development does plan on and is committed to having sidewalks throughout the development and also propose to have a walking trail along Mountain Run. Open space is planned throughout the development along with a 1.2-acre recreation area. The developer proposes a small mixture of housing types with townhomes and single family homes planned. The developer is choosing to use a cluster design and does protect some steeper slopes, floodplain, and wetland areas that are located on the property which are environmentally sensitive areas. The developer is committed to complying with the master water and sewer plan and has committed to dedicating two (2) public well lots on the property to supplement the Town's drinking water supply.

However, while onsite pedestrian concerns are largely mitigated, off-site pedestrian concerns are not adequately addressed in the opinion of staff as detailed in the transportation section above. There is concern that a development of this size could use additional amenities (ex. Clubhouse, basketball goals, etc.) and disperse the amenities more evenly throughout the development. There is concern that with narrower streets (which does limit impervious area and helps with stormwater run-off) that on street parking would be discouraged or prohibited and this could potentially leave little room for guest parking. The development could be a good fit for rear access alleyways which could provide for parking to the rear of the planned homes instead of all in the front of homes.

The applicant has stated that since the property is located adjacent to Town limits that the density and type of development should match what you see in the Town. If that is the desire or goal of the developer with this development, the developer could simply commit to planning and building the project according to the Town of Culpeper's Facilities or Design Standards Manual. This document would address items such as street width, required recreational amenities, landscaping requirements, etc. However, at this time the developer has not committed to all of these standards as referenced in the latest Town of Culpeper's Planning Director's comment letter dated February 1, 2017.

Chapter 15 Implementation

It is imperative that land use decisions be based on surrounding land uses, environmental and economic impacts and many other aspects in addition to considering the goals the county's Comprehensive Plan. The Plan is a policy guide and should be the main planning document considered when reviewing rezoning requests and development proposals such as Case No. Z- 440-15-1.

Existing land use regulations as written in the county's Zoning and Subdivision Ordinances will regulate any development that is approved for this property. Another tool that localities enjoy when considering rezoning requests is the use of conditional zoning or proffers. The Code of Virginia provides that property owners may voluntarily proffer reasonable development conditions for the use or development of property. Proffers traditionally can include monetary contributions for public infrastructure and/or existing public facilities which are impacted by the proposed development. Proffers can help assist the development to better meet the goals of the Comprehensive Plan and needs that mentioned in this Plan.

The enabling state code legislation for proffers did change in 2016, specifically Section 15.2-2303.4, requiring all proffers for new residential development to address a proposed development's impacts that are "*specifically attributable to the development*". Any off-site proffers must provide a "*direct and material benefit*" to the proposed development and must address the following 4 categories of public facilities: Transportation (including transit); public safety; public school; and parks or recreational facilities. **A locality cannot request or accept any unreasonable proffer or deny a rezoning application or proffer condition amendment for new residential development where such denial is**

based in whole or in part on an applicant's failure or refusal to submit unreasonable proffer. The developer has submitted a proffer statement with the latest date of January 12, 2017.

Proffer Statement

The applicant has submitted a proffer statement with a most recent date of January 12, 2017. This instrument represents obligations and limits that the applicant is voluntarily proffering as conditions of this rezoning approval. The applicant agrees to record these proffers among the land records if the rezoning request is approved.

1. Financial Contribution

1.1 The applicant has committed to contribute a cash proffer at the rate of \$3,000 for each village home and \$1,400 for each townhouse in recognition of the capital needs of the County. This payment is payable for each unit at the time of issuance of such unit's occupancy permit. At full buildout for this development, the total commitment of cash proffers equals a total of \$844,000. This financial commitment in the opinion of staff will not cover the capital infrastructure needs that will be generated by this project. This figure most likely would not even fully address the major pedestrian safety need for this project and certainly would be inadequate to cover other transportation needs identified in the applicant's Transportation Impact Analysis. It will also certainly not cover any other public facility needs (education, public safety, etc.) that this development will generate.

There have not been many major residential rezoning requests in recent years, but some former examples for comparison include Clevenger's Village (unbuilt as of today) and Madison Grove. In 2004, Clevenger's Village (700 + units), the last major residential rezoning in which the Board approved had a total cash proffer commitment of \$8,525 per residential unit, plus millions of dollars' worth of other infrastructure such as related public water and sewer, roads, etc. In 2003, Madison Grove Subdivision (93 units) committed to a \$5,000 per unit cash proffer.

The applicant has adequately addressed in the opinion of staff any need related to public water and sewer infrastructure by providing in proffer 1.2 two (2) well lots and associated easements to the Town of Culpeper. At this time, no dollar value has been identified for this planned dedication of property.

2. Density and Design

2.1 The applicant requests modification of some of the R-3 cluster lot minimum standards as listed in Article 9-5 and this modification is request is also part of the applicant's proffer statement. Interior lot widths are proposed at 50ft. vs. current county minimum at 55ft. Corner lot widths at 70ft. vs. current county minimum at 75ft. Side setbacks are proposed at 5ft. vs. a county minimum that currently requires 8ft. Staff does not see any justification for providing this reduction to current minimum standards for an R-3 cluster development. Three Flags, a recent development in the County worked fine with 60ft. wide interior lots and 8ft. side setbacks and is a similarly sized development located near Town limits.

The applicant is committed to a minimum tree planting requirement for each village home unit which. Current zoning and subdivision ordinances do not include a minimum tree canopy requirement for single family developments, so this design proffer should help achieve a more attractive neighborhood and is supported by staff.

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The applicant has also committed to providing screening by evergreen plantings and a board on board fence behind the row of townhomes adjacent to the railroad tracks. This at a minimum is certainly encouraged by staff. Although a raised landscaped berm with trees and fencing and/or concrete wall with evergreen plantings of some sort may be the better option and provide for a more substantial buffer than a double row of evergreen shrubs and a board fence.

The landscape proffers as referenced in numbers 3.3, 3.4, 3.8 are currently mentioned in the Amenity section of the proffer document, but are probably better suited to be included in the Density and Design section.

3. Amenities

Recreation – The applicant has proffered a 1.2 area recreational area that will contain a tot lot with playground equipment (swing set, spring animal bouncer, rock wall, and play structure) and a commercial quality picnic pavilion with tables. The applicant agrees to provide this no later than when the 75th building permit is issued. This facility will remain private and will be maintained by a Home Owners Association (HOA). Staff supports this commitment as it will provide a direct and material benefit to the residents of the development. Staff would encourage the applicant to enrich this commitment to provide possibly a basketball goal or two, maybe some soccer goals on the identified open field play area or other features similar to this.

The applicant is also committed to dedicate and construct a 6ft. wide woodchip trail running from Nalles Mill Rd. along the rear of the property adjacent to Mountain Run. **However, it is recommended the trail be paved or hard surfaced in some manner as the trail is currently planned to be in or near the one percent annual chance floodplain of Mountain Run.** A wood chip trail will not endure the periodic flooding along Mountain Run as well as a paved or hard surfaced trail will. This trail concept in general is supported by staff and will provide a direct and material benefit to the residents of the development. The trail could potentially be tied into a greater public trail system in the future. **It is also recommended that the trail be constructed earlier in planned development process as currently it is only committed to be constructed prior to the completion of the project.**

4. Transportation

The applicant is currently proffering to provide a right turn lane into the development. However, this is the only proffer consideration offered at this time. **And as was mentioned previously in this report there are several other transportation related concerns regarding this project that are not currently addressed and therefore in the opinion of staff the transportation proffers are inadequate and do not fully address the impacts of this planned development.**

Summary and Recommendation

Staff recommends denial of this application in its current form.

- 1. The development is not in compliance with many aspects of the Comprehensive Plan as previously mentioned in the chapter by chapter analysis.**
- 2. The transportation needs of the community are not met and are adversely impacted by this development. This development is premature at best as it relates to needed infrastructure development as identified in the Plan for this area of the County.**

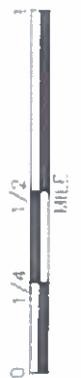
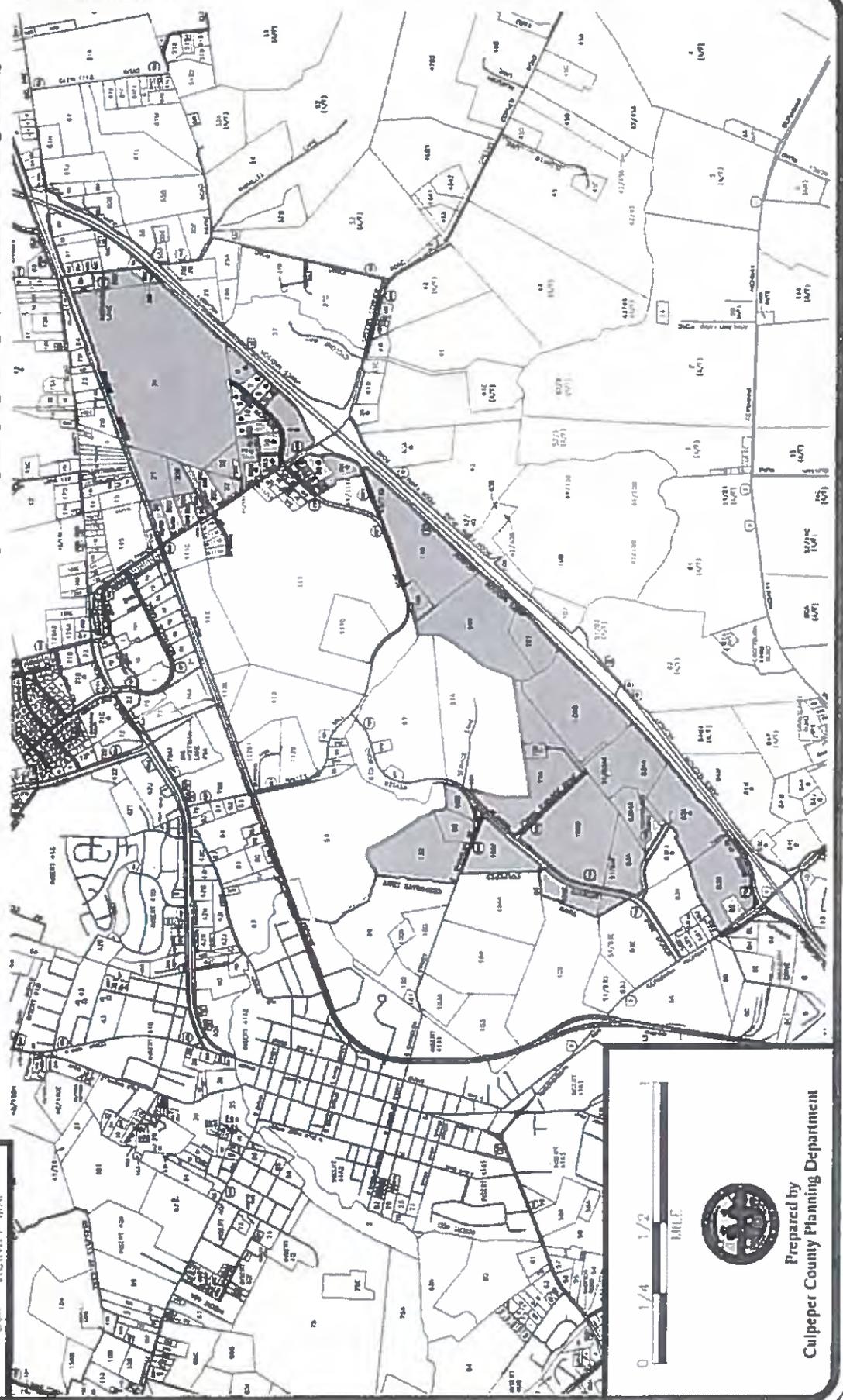
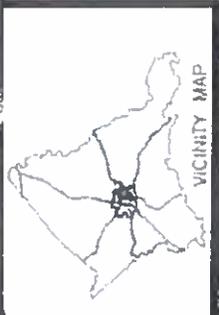
3. **The full impacts to other public facilities (education, public safety, etc.) have not been adequately addressed as previously mentioned.**
4. **The safety of the community has not been fully addressed specifically as it relates to pedestrian access across the Nalles Mill Rd. bridge crossing adjacent to the existing commercial center and automobile access at the intersection of Rt. 667/Nalles Mill Rd. and Rt. 15/29Business/James Madison Hwy. near this property.**

Sincerely,



Samuel A. McLearen, CZA
Director of Planning and Zoning

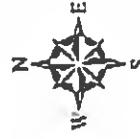
3.2 CULPEPER COUNTY McDEVITT DRIVE & BRAGGS CORNER TECHNOLOGY OVERLAY ZONES



Prepared by
Culpeper County Planning Department

7.1 CALPEPER COUNTY

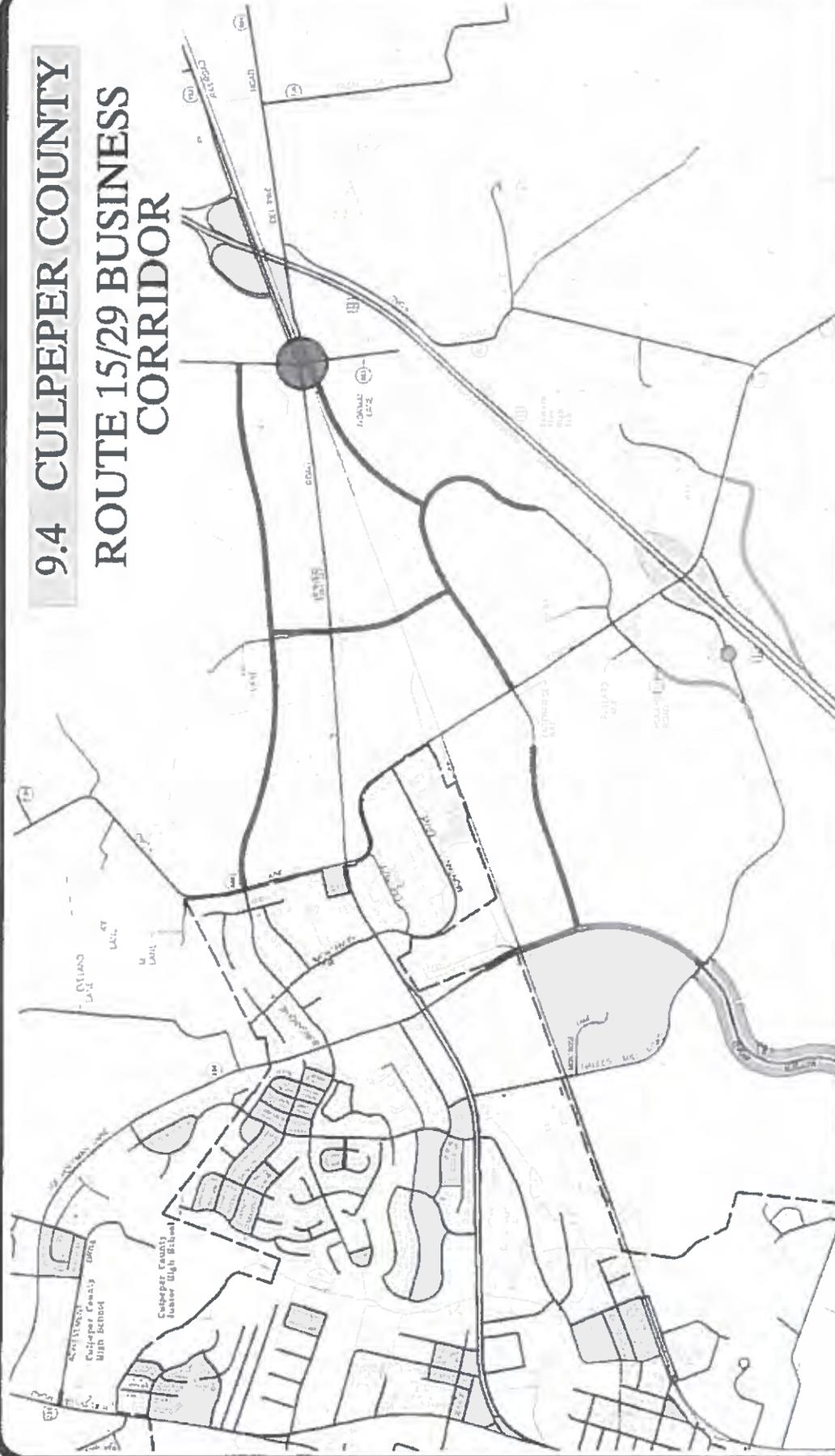
TOWN ENVIRONS ADOPTED WATER & SEWER SERVICES AREA



Prepared by
Calpeper County Planning Department



9.4 CULPEPER COUNTY ROUTE 15/29 BUSINESS CORRIDOR



LEGEND

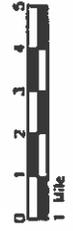
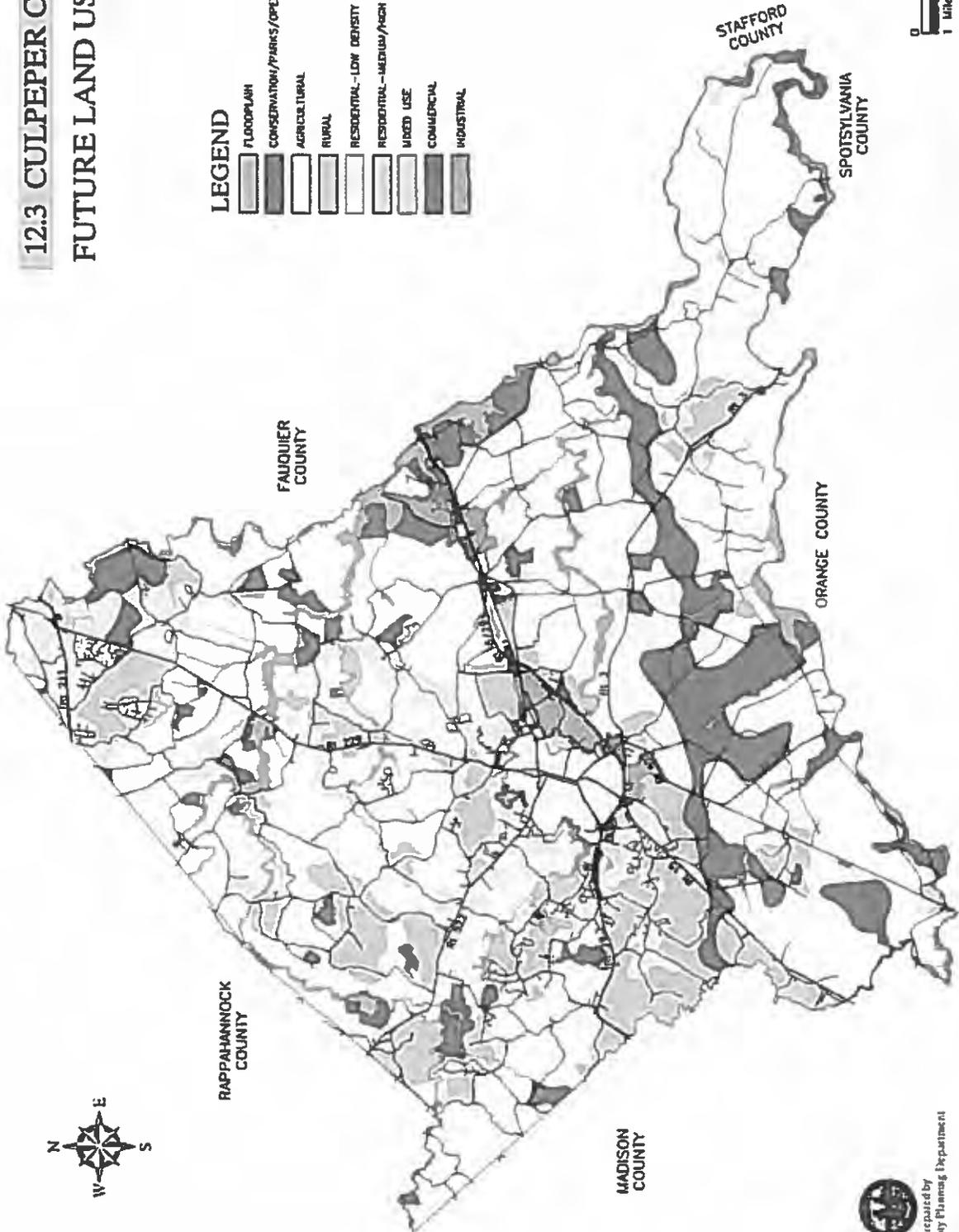
-  FUTURE INTERCHANGE
-  INTERSECTION STUDY REQUIRED
-  POTENTIAL SIGNALIZATION
-  MAJOR COLLECTOR
-  MINOR COLLECTOR
-  REVIEW AND UPGRADE ROAD
-  CUL-DE-SAC ROAD
-  NORTH
-  0 1/4 1/2 3/4 MILE



Prepared by
Culpeper County Planning Department

12.3 CULPEPER COUNTY FUTURE LAND USE PLAN

- LEGEND**
- FLOODPLAIN
 - CONSERVATION/PARKS/OPEN SPACE
 - AGRICULTURAL
 - RURAL
 - RESIDENTIAL-LOW DENSITY
 - RESIDENTIAL-MEDIUM/HIGH DENSITY
 - MIXED USE
 - COMMERCIAL
 - INDUSTRIAL



Prepared by
Culpeper County Planning Department

12.4 CULPEPER COUNTY URBAN SERVICES BOUNDARY



Prepared by
Culpeper County Planning Department



MINUTES (January 18, 2017)

CULPEPER COUNTY PLANNING COMMISSION

MINUTES

January 18, 2017 Work Session

Planning Commission Members Present:

Sanford Reaves, Chairman
Lou Price, Vice Chairman
Laura Rogers
Josh Millson-Martula
Cindy Thornhill
Walter Burton
Robert Burnett
Sally Underwood
Raymond Zegley

Staff Present:

Samuel McLearen, Planning Director
Morgan Green, Planning Assistant
Pam Schiermeyer, GIS Coordinator
Bobbi-Jo Alexis, County Attorney

Mr. Reaves called the meeting to order at 6:00 p.m.

Mr. McLearen introduced Case No. Z-440-15-1. A request by Caruso Odin, LLC to rezone 121.01 Acres from RA (Rural Area) to R-3 (Residential). The applicant is proposing a subdivision with 266 single family homes and 35 town homes. The property is located on Route 667 (Nalles Mill Rd) in the Stevensburg Magisterial District. Tax Map/ Parcel No. 41-94.

Bruce Clark came forward to represent the applicant, and gave a presentation on the proposed subdivision. He explained that Agricultural and Forestal land is best preserved by clustering residential properties. The property is unique, as it is surrounded by the Town of Culpeper, but still within the County limits. In an effort to assimilate the subdivision with the existing Town design, the applicant proposed to adopt some of the Town's Zoning Ordinances in place of the County's. He suggested that the Town and County come together and create a new zoning designation that would accommodate County properties which border Town limits; to prevent land uses that would not be favorable as the town expands over the next 20+ years.

Jeff Caruso came forward and gave a presentation on the success of subdivisions Caruso Homes has built in the past.

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Roddy Reyes came forward and gave a presentation on the design plans for the Subdivision. The applicant is proposing one main entrance, and another right-in, right-out only entrance; both off of Nalles Mill Rd. They plan to have a playground, pavilion, grills, tables and two walking trails- one wood chip trail along Mountain Run and an asphalt trail throughout the Subdivision. The property would have 40% open space, which would include the existing pond.

The Commission asked about walking access to town shopping centers. Mr. Clark explained that attempts were being made. However, after speaking to the Norfolk-Southern Railroad's Zone Manager for right-of-way control, he learned that it is not impossible to get authorization for a pedestrian crossover, but it is rare due to safety concerns. It is also time consuming and expensive. The Town of Culpeper is working on a project to install walking trails through the town, and the applicant is interested in incorporating their trails into the project.

Mrs. Rogers asked if one playground could accommodate all of the potential children in the subdivision. Mr. Clark explained that due to topography, there were not many areas that could be used for such amenities.

The Commission asked about the aesthetics, price range and size of the proposed homes. Mr. Caruso stated that the single family homes would be between 1800 and 2600 square feet, and the townhomes between 1300 and 1900. They would be mostly siding, but HOA may require a small percentage of the homes to have some stone or brick. The price range would depend on the final cost of the development. Mr. Caruso predicted the majority of buyers would be commuters and some existing local residents. In an attempt to keep the streets uncluttered the HOA would prohibit the storage of boats, trailers etc. from being parked on the street.

Ms. Thornhill asked about Storm water Management due to their proximity to a town water supply. Mr. Reyes stated that cluster-housing is the best solution, because there is more open space surrounding the water. The applicant also plans to create swales and bio-retention ponds for added protection.

Mr. Millson-Martula asked how the trails would be maintained. Mr. Clark stated that HOA payments would be used for the asphalt trails, and if the wood chip trails were tied into the Town's project, they may share the maintenance costs.

The Commission asked if there were a similar subdivision, facades or renderings they could access for comparison. Mr. Caruso stated that Caruso Homes had not built anything comparable. He would try to provide the Commission with example photos at a later date.

Mrs. Thornhill requested another work session for further review.

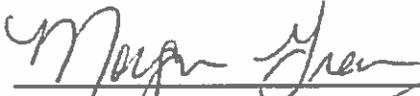
Mr. Reaves asked for a motion to adjourn. Mr. Burnett made the motion, Mrs. Price seconded. It passed unanimously.

Sanford Reaves	aye
Laura Rogers	aye

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Josh Millson-Martula aye
Lou Price aye
Cindy Thornhill aye
Walter Burton aye
Robert Burnett aye
Sally Underwood aye
Raymond Zegley aye

Meeting Adjourned at 7:15 p.m.



Morgan Green, Planning Assistant



Sanford Reaves, Chairman, Planning Commission

Attest:


Samuel A. McLearn, Director of Planning and Zoning

MINUTES (April 12, 2017)

CULPEPER COUNTY PLANNING COMMISSION

MINUTES

April 12, 2017

Planning Commission Members Present:

Sanford Reaves, Chairman
Lou Price, Vice Chairman
Laura Rogers
Cindy Thornhill
Josh Millson-Martula
Robert Burnett
Sally Underwood
Raymond Zegley
Walter Burton

Staff Present:

Samuel McLearn, Planning Director
Morgan Green, Planning Assistant
Pam Schiermeyer, GIS Coordinator
Neil Drumheller, Zoning Administrator
Laura Loveday, Comprehensive Planner
Bobbi-Jo Alexis, County Attorney

Mr. Reaves called the meeting to order at 7:00 p.m., and asked for an approval of the agenda. Mr. Millson-Martula made a motion to approve the agenda as written, Mr. Zegley seconded the motion. It passed unanimously.

Sanford Reaves	aye
Laura Rogers	aye
Lou Price	aye
Cindy Thornhill	aye
Josh Millson-Martula	aye
Robert Burnett	aye
Sally Underwood	aye
Raymond Zegley	aye
Walter Burton	aye

Mr. Reaves asked for an approval of the minutes of the March 8, 2017 meeting. Mr. Burnett made a motion to approve the minutes as written, Mr. Burton seconded the motion. It passed unanimously.

Sanford Reaves	aye
Laura Rogers	aye
Lou Price	aye

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Cindy Thornhill	aye
Josh Millson-Martula	aye
Robert Burnett	aye
Sally Underwood	aye
Raymond Zegley	aye
Walter Burton	aye

Mr. Drumheller introduced CASE NO. SP-71-16-1- Request by LifeSpire of Virginia/ Jonathan Cook for approval of a Site Plan to allow construction of a Continuing Care Retirement Facility. The Property is located at the corner of Route 299 (Madison Rd) and Route 15 (James Madison Hwy), in the Cedar Mountain Magisterial District and contains 108.89 acres. Tax Map/Parcel No. 50/9.

Mr. McLearn gave details on the case. While the number of residencies would not change, the types of care would. The primary change to the site would be the access location. The facility would face the West, with the main entrance located off of Route 299. Staff recommended approval, as necessary agency approvals required by code have been obtained.

Jim Jacobson, Executive Director of LifeSpire came forward and stated that he was available for questions.

The Commission referenced the proposed fire-flow storage tank, and asked if it was needed for the existing facility or just the proposed new building and how it would be re-filled. Mr. Jacobson referred the questions to Derrick Johnson with Timmons Group. Mr. Johnson stated that the existing building is served by a pump, new ordinances require 2 hours of water for the facility. Due to timing concerns they made a decision to install the storage tank rather than wait for public water to become available. The tank would be emptied and filled simultaneously, and would not affect the water to residences in the area.

Mrs. Rogers asked why the second storm-water basin was located across the street from the facility. Mr. Johnson stated that, that decision was made in an effort to disjoin the storm-water management from the facility, and for better elevation. The required pipes were already installed underneath of Route 15.

Mrs. Rogers asked about the truncated domes on the sidewalks, and how that could affect residents using canes or walkers. Mr. Johnson explained that it is a federal requirement, but he did not anticipate the domes being an issue.

Mr. Reaves opened the public hearing.

Katie Magura came forward with several questions. She asked if the Basin across the road from the facility would have standing water; if the new main entrance off of Route 299 was expected to reduce traffic along Route 15; if the applicant anticipated needing to blast through rock in order to construct the new facility, and if so, whom would be responsible for any potential damage. Mr. Johnson explained that the basin fills with water when it rains, but dries

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within 36 hours. Traffic along Route 15 may reduce some, but that entrance would still exist. Sarah Gregory with THW Design stated that because only two of the five floors would be underground, they did not foresee a need to blast any rock. Mr. McLearn explained that in the event of any damage to another property, the property owner would be advised to contact their attorney.

The public hearing was closed.

Mr. Zegley made a motion to approve the site plan as submitted, Mrs. Price seconded. It passed unanimously.

Sanford Reaves	aye
Laura Rogers	aye
Lou Price	aye
Cindy Thornhill	aye
Josh Millson-Martula	aye
Robert Burnett	aye
Sally Underwood	aye
Raymond Zegley	aye
Walter Burton	aye

Mr. Drumheller introduced CASE NO. SP-78-16-1- Request by Marlyn Development Corp. for approval of a Site Plan to allow construction of an 132 unit age restricted apartment complex. The Property is located off of Ira Hoffman Ln (Route 694), in the Stevensburg Magisterial District. Tax Map/Parcel No. 41/54D

Mr. McLearn gave details about the case and reminded the Commission that the rezoning was approved in November of 2015, and the Certificate of Appropriateness issued in February of 2017.

Brian Staub with Marlyn Development came forward for questions and stated that Janelle Logan, Engineer for the project, was available to answer questions regarding the engineering.

Ms. Thornhill came forward and asked about sidewalk crossing for pedestrians. Mr. Staub stated that sidewalks were proffered at the rezoning stage, and could connect to Ira Hoffman at some point if adjacent properties were to build a pedestrian access.

Mr. Zegley asked about the cemetery on site. Mr. Staub stated that they do not know who is buried there, but will provide access, as required by state law.

Mr. Zegley asked about the proposed solar panels. Mr. Staub explained that they would be 10' stationary panels angled away from the road and other adjacent properties.

Mrs. Rogers inquired about the water usage. She stated that while R4 zoning normally requires 300 gallons per day, she did not think that senior citizens would require that much

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water. Ms. Logan explained they would provide the County's required amount of 300 gallons per day.

Ms. Rogers asked when the applicant anticipated the project to be complete. Mr. Staub estimated 14 months.

Mr. Reaves opened the public hearing. With no comments, the public hearing was closed.

Ms. Thornhill asked about the sprinklers and if they would require a holding tank. Ms. Logan stated that a water analysis was conducted, and it was determined that the facility would have sufficient water pressure and would not require water storage.

Mr. Burnett made a motion to approve the site plan as submitted, Mrs. Rogers seconded the motion. It passed unanimously.

Sanford Reaves	aye
Laura Rogers	aye
Lou Price	aye
Cindy Thornhill	aye
Josh Millson-Martula	aye
Robert Burnett	aye
Sally Underwood	aye
Raymond Zegley	aye
Walter Burton	aye

Mr. Drumheller introduced DALRO PRELIMINARY SUBDIVISION – 1 LOT- Request by Dalro for approval of a 1 lot preliminary subdivision. The property is located on Bennet Road within the Stevensburg Magisterial District and contains 156.5 acres. The property is zoned HI (Heavy Industrial). The Planning commission would review the preliminary plan to determine its conformance with the standards contained in Appendix A (Zoning Ordinance) and Appendix B (Subdivision Ordinance) of the County Code. Tax Map/Parcel No. 42/31.

Mr. McLearn gave details on the request and explained that the reason the Planning Commission was reviewing the subdivision was because the property had exhausted its five year division requirement. He recommended approval as consistent with all applicable Zoning & Subdivision Ordinances.

Bill Canavan came forward to represent the applicant, and was available for questions.

Mrs. Rogers asked why the applicant chose a drain-field instead of hooking into the sewer system. Mr. Canavan stated that it was an economic decision.

Ms. Thornhill stated that she would prefer that the applicants develop a master plan for all of the lots, and complete the plan in phases rather than expanding one lot at a time.

Mr. Reaves opened the public hearing. With no comments, the public hearing was closed.

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Mr. Millson-Martula made a motion to approve the preliminary subdivision, Mr. Burton seconded the motion. It passed unanimously.

Sanford Reaves	aye
Laura Rogers	aye
Lou Price	aye
Cindy Thornhill	aye
Josh Millson-Martula	aye
Robert Burnett	aye
Sally Underwood	aye
Raymond Zegley	aye
Walter Burton	aye

Mr. Drumheller introduced an AMENDMENT TO CHAPTER 7 OF THE COMPREHENSIVE PLAN. The Planning Commission would consider an amendment to Chapter 7, Wireless Technology Plan, of the Comprehensive Plan. This amendment would add information regarding the future placement of broadband infrastructure. Concepts from the 2016 Culpeper Broadband Plan would be incorporated throughout by reference and text additions. A new map, "7.8 Existing Fiber Routes" was proposed for addition to the chapter.

Laura Loveday came forward and gave a presentation on the proposed changes, and explained additional changes regarding broadband for Emergency Services. She stated that "Next Generation 911" would need to fit in the broadband plan to keep up with communication technology used by the public. She also explained how recent changes to "FirstNet" would give public safety a dedicated connection which would provide highly secure communications.

Mrs. Price asked about propagation studies. Mrs. Loveday explained that the studies are required by code.

Ms. Thornhill made a motion to recommend approval of the proposed changes to the Comprehensive Plan, with the additional language regarding Broadband for Emergency Services. Mr. Zegley seconded the motion. It passed unanimously.

Sanford Reaves	aye
Laura Rogers	aye
Lou Price	aye
Cindy Thornhill	aye
Josh Millson-Martula	aye
Robert Burnett	aye
Sally Underwood	aye
Raymond Zegley	aye
Walter Burton	aye

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Mr. Drumheller introduced an AMENDMENT TO ARTICLE 9-1-8 of the Zoning Ordinance. Specifically Appendix A, Article 2 (Definitions), Family Day Home Definition, Appendix A, Article 3-2-1.6, family day homes as permitted uses and Appendix A, Article 9-1-8, special provisions regarding Family Day Homes. Family Day Homes are enabled by the Code of Virginia, Section 15.2-2292. This enabling legislation has recently changed, specifically reducing the number of children allowed to be cared for without the issuance of a zoning permit from five (5) to four (4). The purpose of this proposed amendment is for our local zoning ordinance to match this enabling legislation.

Mr. McLearen gave details on the proposed Amendment, and explained that the Virginia State Code regarding Family Day Homes was amended in 2015. The proposed amendment to the Culpeper County Code would match the State changes.

Mrs. Rogers asked what initiated the changes to the State Code. Ms. Alexis, County Attorney stated that due to some recent adversity associated with family day homes, the state felt the change would be favorable.

Mr. Reaves opened the public hearing. With no comments, the hearing was closed.

Mr. Burnett made a motion to recommend approval of the amendment. Mrs. Rogers seconded the motion. It passed unanimously.

Sanford Reaves	aye
Laura Rogers	aye
Lou Price	aye
Cindy Thornhill	aye
Josh Millson-Martula	aye
Robert Burnett	aye
Sally Underwood	aye
Raymond Zegley	aye
Walter Burton	aye

Mr. Reaves asked for a motion to move into the work session. Mrs. Rogers made the motion, Ms. Underwood seconded the motion. It passed unanimously.

Sanford Reaves	aye
Laura Rogers	aye
Lou Price	aye
Cindy Thornhill	aye
Josh Millson-Martula	aye
Robert Burnett	aye
Sally Underwood	aye
Raymond Zegley	aye

Appendix B

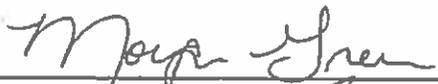
Walter Burton aye

Mr. McLearn stated that following work session item had been postponed: Case No. Z-440-15-1 Caruso Odin, LLC requesting to rezone 121.01 Acres from RA (Rural Area) to R-3 (Residential). The applicant is proposing a subdivision with 266 single family homes and 35 town homes. The property is located on Route 667 (Nalles Mill Rd) in the Stevensburg Magisterial District. Tax Map/ Parcel No. 41-94.

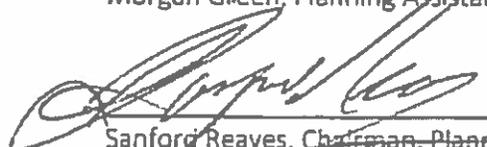
Mr. Reaves asked for a motion to adjourn. Mr. Millson-Martula made the motion. Ms. Underwood seconded. It passed unanimously.

Sanford Reaves aye
Laura Rogers aye
Lou Price aye
Cindy Thornhill aye
Josh Millson-Martula aye
Robert Burnett aye
Sally Underwood aye
Raymond Zegley aye
Walter Burton aye

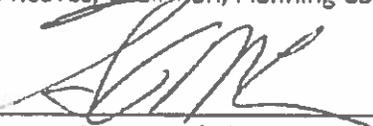
Meeting Adjourned at 8:30 p.m.



Morgan Green, Planning Assistant



Sanford Reaves, Chairman, Planning Commission

Attest: 

Samuel A. McLearn, Director of Planning and Zoning

MINUTES (October 11, 2017)

CULPEPER COUNTY PLANNING COMMISSION

MINUTES

October 11, 2017

Planning Commission Members Present:

Sanford Reaves, Chairman
Lou Price, Vice Chairman
Laura Rogers
Cindy Thornhill
Robert Burnett
Raymond Zegley
Walter Burton
Josh Millson-Martula
Sally Underwood

Staff Present:

Samuel McLearen, Planning Director
Morgan Green, Planning Assistant
Pam Schiermeyer, GIS Coordinator
Kyle Settle, Planner
Neil Drumheller, Zoning Administrator
Bobbi-Jo Alexis, County Attorney

Mr. Reaves called the meeting to order at 7:00 p.m., and asked for a moment of silence in honor of breast cancer awareness month.

Mr. Reaves asked for an approval of the agenda. Mrs. Underwood made a motion to approve the agenda as written, Mr. Zegley seconded the motion. Mr. Millson-Martula was not present for the vote. It passed unanimously.

Sanford Reaves	aye
Laura Rogers	aye
Lou Price	aye
Cindy Thornhill	aye
Robert Burnett	aye
Raymond Zegley	aye
Walter Burton	aye
Sally Underwood	aye

Mr. Reaves asked for an approval of the minutes of the September 13, 2017 meeting. Mr. McLearen stated that the minutes had been amended since the Planning Commission last received them. On the previous version, the summary of the work session item was incorrect. Mrs. Rogers made a motion to approve the minutes as amended, Mrs. Price seconded the motion. Mr. Millson-Martula was not present for the vote. It passed unanimously.

Sanford Reaves	aye
----------------	-----

Appendix B

Laura Rogers	aye
Lou Price	aye
Cindy Thornhill	aye
Robert Burnett	aye
Raymond Zegley	aye
Walter Burton	aye
Sally Underwood	aye

Mr. Reaves asked for a motion to move into the work session. Mr. Zegley made the motion, Mr. Burton seconded the motion. Mr. Millson-Martula was not present for the vote. It passed unanimously

Sanford Reaves	aye
Laura Rogers	aye
Lou Price	aye
Cindy Thornhill	aye
Robert Burnett	aye
Raymond Zegley	aye
Walter Burton	aye
Sally Underwood	aye

Mr. McLearen introduced Case No. Z-440-15-1 Caruso Odin, LLC requesting to rezone 121.01 Acres from RA (Rural Area) to R-3 (Residential). The applicant is proposing a subdivision with 266 single family homes and 35 town homes. The property is located on Route 667 (Nalles Mill Rd) in the Stevensburg Magisterial District. Tax Map/ Parcel No. 41-94. Mr. McLearen gave an overview of the documents submitted by the applicant.

Attorney, John Foote came forward to represent the applicant. He gave a review of the application and explained that because the original rezoning application was submitted prior to July 1, 2016, the new Virginia Proffer legislation did not apply to this case. Mr. Foote gave a presentation on the proposed use of the property, and addressed some of the concerns raised during previous work sessions. The base price for the townhomes would be approximately \$200,000; for village homes it would be \$300,000. While the applicant stated that building a new bridge would not be feasible, they are seeking consent from VDOT regarding pedestrian crossing on the bridge, and the R-cut intersection at the subdivision entrance.

Mr. Zegley asked about the wastewater system. Mr. Foote explained that the wastewater would be proffered as part of the town system, which currently has the capacity to serve the proposed subdivision.

The Commission expressed several concerns with the safety of pedestrians crossing the bridge and Nalles Mill Road to access the town limits. Mr. Foote explained that the current plan is to install call buttons, signaling the cars to stop and allow pedestrians and/or bikes to cross. The vehicles would remain stopped long enough to allow the pedestrians to cross the railroad bridge and Nalles Mill Road. Mr. Zegley suggested adding a handrail to the walkway. Mr. Millson-Martula suggested adding additional lighting around the crosswalk area to alert drivers.

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Jeff Caruso stated that there are many cases in Virginia of call buttons stopping multiple lanes of traffic for pedestrians. Bruce Clark added that when speaking with the railroad company, he was told that bridge issues are historically resolved by the government, and rarely by a developer.

Ms. Underwood asked the total distance traveled if crossing the bridge and Nalles Mill Road. Mr. Foote estimated 60 feet. Mrs. Price stated that per the concept plan scale, the distance looked to be closer to 200 feet.

Mr. Reaves added that due to the age of the bridge, and the amount of traffic congestion, he did not feel that a signalized pedestrian crosswalk would be safe.

Mrs. Price raised concerns regarding the safety of the "tot lot." Mr. Caruso stated that the lot would have either a four foot chain link fence with vinyl slats, or a wooden fence. Mrs. Price stated that she did not consider the location and barrier to be safe for small children to play; and suggested integrating the playground further towards the center of the subdivision.

Mrs. Rogers asked why so many parking spaces were necessary at the tot lot, when those who frequent would be within walking distance. Roddy Reyes stated that the plan was designed to meet the minimum parking requirement, but was willing to reduce the number if that were preferable. Mrs. Thornhill stated that she would prefer to keep the proposed parking spaces for those using the pavilion.

The members discussed some transportation concerns. Mr. Burton asked about cars potentially stacking in the deceleration lanes. Mr. Foote stated that the existing deceleration lanes had enough length to handle stacking. Mrs. Rogers asked about the turning lane into the subdivision. Mr. Foote stated that the Traffic Impact Analysis reported approximately 300 cars during peak hours. He did not foresee any issues.

Mr. Millson-Martula stated that the price range given by the applicant suggested that the majority of the home owners would be commuters, and asked if that would affect the traffic. Mr. Foote stated that in past studies, commuters have shown little effect on the estimated traffic count.

Ms. Thornhill was concerned that the neighborhood streets were too narrow. She stated the small lots would not have room for multiple vehicles or recreational storage such as boats and RVs, which would end up being parked along the street. Mr. Reyes stated that most homes would have a two car garage, and space in the driveway for two additional parking spaces. The applicant was open to restricting on-street parking to one side of the road. Mr. Burton added that Fire and Rescue would need easy access.

Mr. Burnett commented that he would like to see a study of the differences between the town and county Subdivision ordinances. Mr. Reyes stated that he would provide a study.

Mr. Millson-Martula asked about the potential addition of commercial structures on the South side of the railroad tracks. Mr. Foote explained that it would not make sense, due to access issues.

Mrs. Rogers discussed the possibility of the subdivision being annexed into the town limits during their next 10 year review. She stated that if the construction were not complete within the next few years, they may not annex for an additional 10 years. She asked why the applicant did not plan to construct to county standards rather than town if it were possible that the property could spend 10-15 years as part of the County limits. The applicants explained that the town's standards made more sense due to the properties proximity to the town limits.

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Ms. Thornhill asked about recent activity with wells and water lines on the property. The applicant explained that they deeded the land to the town for connection to town system.

With no further discussion, Mr. Reaves asked for a motion to take a five minute break. Mr. Millson-Martula made the motion. Mrs. Rogers seconded the motion. It passed unanimously.

Sanford Reaves	aye
Laura Rogers	aye
Lou Price	aye
Cindy Thornhill	aye
Robert Burnett	aye
Raymond Zegley	aye
Walter Burton	aye
Josh Millson-Martula	aye
Sally Underwood	aye

Mr. Reaves asked for a motion to return to the work session. Mr. Burnett made the motion. Mr. Burton seconded. It passed unanimously.

Sanford Reaves	aye
Laura Rogers	aye
Lou Price	aye
Cindy Thornhill	aye
Robert Burnett	aye
Raymond Zegley	aye
Walter Burton	aye
Josh Millson-Martula	aye
Sally Underwood	aye

Mr. McLearn introduced SUBDIVISION/ZONING CODE AMENDMENTS. The Planning Commission will consider authorizing advertisement for a public hearing regarding design and construction standards that are expected for certain sized subdivisions and/or commercial and industrial developments. The Planning Commission will consider revising existing zoning and/or subdivision ordinances, specifically items such as buffering of certain developments from primary corridors and the requirement for pedestrian access to and throughout certain sized residential and commercial developments.

Mr. McLearn reminded the Commission that he was still awaiting examples of ordinance amendments that the members would like to see. He suggested keeping the ordinance as simple as possible to avoid excessive waiver requests.

Mr. Reaves suggested aerial views and/or a group trip to some neighborhoods in the area to determine what designs worked well. Mr. McLearn agreed to look into it.

Mr. Burton recommended adding some language to the proposed ordinance amendment regarding the topography of the land. For example, a property with a berm along the road may need a

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less extensive buffer than a property with flat terrain. Mr. Burnett added that a vegetative buffer, in some circumstances, could affect the site distance for vehicles.

The Commission agreed to send examples and/or photographs of preferable design standards.

Mr. McLearn introduced an AMENDMENT TO APPENDIX A OF THE COUNTY CODE, ARTICLE 17 (Use Permits). The Planning Commission will consider authorizing advertisement for a public hearing regarding an amendment to the Zoning Ordinance, specifically Appendix A, Article 17-6 (Standards for Telecommunications Antennas and Towers.) The Planning Commission will consider whether to allow Small Broadband Facilities. The amendment would allow wireless services providers to install antennas, or microspots on private structures, and utility poles on privately owned property to increase broadband in underserved areas.

Mr. McLearn gave a review of Culpeper's recently adopted 2016 Broadband Plan, Virginia's recently adopted code section 15.2-2316, and reviewed Staff's recommended amendments to the County Code.

The members suggested some conditions such as the number of poles in an area.

Mrs. Rogers suggested amending the language to state that the "county has no responsibility" rather than defining whom should maintain the structure.

Mrs. Underwood asked why the proposal had a limitation of one pole per parcel. Mr. McLearn stated that he was willing to remove that restriction.

The members asked about the service range of each structure. Joe Lenig with Virginia Broadband came forward and explained that depending on the site distance, a microspot can reach up to 10 miles; if the site is blocked by trees the reach lowers to about 3 miles. He also stated that having multiple antennas clustered is not ideal, as the signals can interfere.

Mrs. Price asked how many customers would need to utilize one antenna to make the project feasible. Mr. Lenig stated that a minimum of ten is preferable, however he would consider as little as five.

Mr. Zegley suggested limiting the number of upgrades to a tower, and asked about dish style antennas. Mr. McLearn stated that the Virginia State Code does not allow localities to decide which equipment types can be installed. Mr. Lenig explained that he did not foresee any large dish antennas being installed.

Mr. Burnett made a motion that the amendment to Article 17-6 of the Zoning Ordinance be advertised for consideration, and stated that the amendment is required to serve the public necessity, convenience, general welfare, and good zoning practice as required by Virginia Code section 15.2-2286(A)(7). Mr. Burton seconded the motion, it passed unanimously.

Sanford Reaves	aye
Laura Rogers	aye
Lou Price	aye
Cindy Thornhill	aye
Robert Burnett	aye

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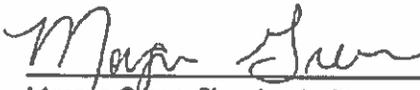
Raymond Zegley aye
Walter Burton aye
Josh Millson-Martula aye
Sally Underwood aye

Mr. McLearen reminded the Commission that the next Planning Commission meeting would be moved from its regularly scheduled date of November 8, 2017 to November 15, 2017 due to a scheduling conflict with Election Day and the Board of Supervisors meeting.

Mr. Reaves asked for a motion to adjourn. Mrs. Price made the motion, Mr. Zegley seconded. It passed unanimously.

Sanford Reaves aye
Laura Rogers aye
Lou Price aye
Cindy Thornhill aye
Robert Burnett aye
Raymond Zegley aye
Walter Burton aye
Josh Millson-Martula aye
Sally Underwood aye

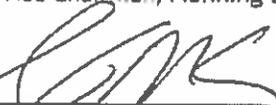
Meeting Adjourned at 9:30 p.m.



Morgan Green, Planning Assistant



Lucille Price, Vice Chairman, Planning Commission

Attest: 

Samuel A. McLearen, Director of Planning and Zoning



**John C. Egertson, AICP
County Administrator**

302 N. Main Street, Culpeper, Virginia 22701

Phone: (540) 727-3427

E-mail: jegertson@culpepercounty.gov

April 12, 2019

D. Mark Nesbit, P.E., Administrator
VDOT Warrenton Residency
457 E. Shirley Ave.
Warrenton, VA, VA 20186

RE: Nalle's Mill Road / Impact of Caruso Odin Project on bridge

Dear Mr. Nesbit:

I am writing to you to request that you provide some further input regarding VDOT's position on the potential rezoning of 120 acres fronting on Route 667, Nalle's Mill Road. The project proposes 301 new residential dwellings all of which would access Route 667 just south of the bridge over the railroad. VDOT did provide comments to the planning staff after review of the request, and while those comments address the need for turn lanes and other technical issues, I remain very concerned about the impact of adding 3,010 new vehicle trips per day to the road. Specifically, I am concerned that the majority of that traffic which will cross the narrow bridge over the railroad will create an unsafe situation. That bridge is directly adjacent to the northeast corner of the subject property, it is not a far-removed, off-site concern.

In addition to the volume of traffic, the area directly on the other side of the bridge is a commercial center with shops and restaurants. The likelihood of children and pedestrians crossing the bridge, which is not designed to accommodate pedestrian foot traffic, to access that area from this proposed neighborhood is high. This too is a safety concern.

Any additional comment or clarification of VDOT's position as to the impact upon the safety of the bridge that the project may have would be greatly appreciated. Time is of the essence with regard to my inquiry.

Sincerely,

John C. Egertson, AICP
County Administrator



**WALSH COLUCCI
LUBELEY & WALSH PC**

John H. Foote
(703) 680-4664 Ext. 5114
jfoote@thelandlawyers.com

July 5, 2017

Mr. Samuel A. McLearen
Culpeper County Director of the Department of Development
102 North Main Street
Culpeper, Virginia 22701

Re: Case No. Z-440-15-1/Caruso – Responses to Rezoning Comments

Dear Sam:

Enclosed please find the following revised application materials in connection with the above-referenced application. We here provide the Applicant's responses to the comments received to date together with a revised proffer statement and additional materials. Because the proffer statement has been completely reformatted and reorganized, I have not redlined it against the last submission. It would be all redline.

This supplements the comments and the responses that Mr. Reyes provided you, Mr. Howard, and Mr. Rapp on August 8, 2016.

STAFF COMMENT	APPLICANT RESPONSE
Comprehensive Plan Chapter 3. Economics	
In 2012 the US Census Bureau indicated 53.3% of the county's population commuted out of the County for work and relied primarily on the single occupancy automobile as the primary means of workforce. This number of out-commuting persons has increased over the past several decades. There has not been a significant increase in creation of jobs in Culpeper in recent years. The proposed development does not include any commercial	Two impact studies for the Arbors at Culpeper prepared by the National Association of Home Builders in June of this year are submitted with this response letter. Those studies demonstrate that the development will have a positive impact on the County and the Town.

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<p>and/or industrial development to create any new local jobs. Therefore, most of the future residents of a project like this will need to commute out of the County for work.</p> <p>The subject property however is strategically located near the McDevitt Drive and Braggs Corner Technology Overlay Zone that is shown in the Plan. This zone was created with the intention of encouraging investment in existing businesses and industry and encouraging the location of new businesses and industry as well. Therefore, the subject property could potentially provide housing for any job-creating industry that might be established in this overlay zone.</p> <p>Any revenues generated from this project will primarily be from personal property and real estate. The applicant has not provided a fiscal impact analysis to fully analyze this.</p>	
<p>Chapter 4. Environment</p>	
<p>The subject property is located along Mountain Run. There is a significant amount of Mountain Run floodplain on the property. The property is also located within a Dam Inundation Zone. Any future subdivision of the property will need to follow regulations is found in Section 15.2-2243.1 of the Code of Virginia in regards to any development wholly and partially within a dam break inundation zone.</p> <p>The applicant is seeking to employ a cluster residential development and therefore is largely avoiding these areas which is supported by staff. The applicant does proposed to construct a trail that would primarily be located in the designated floodplain. The floodplain ordinance does allow for recreational uses such as trails in these zones. The property does contain some challenging topography in which any future land disturbing activities will need to be carefully monitored to ensure the integrity and</p>	<p>The Applicant respectfully submits that this is an issue that would be finally determined at the subdivision/site plan stage of development. As an experienced developer, the Applicant has successfully dealt with properties far more challenged and challenging than this site and does not doubt its ability to manage any environmental challenge presented.</p> <p>Notwithstanding this, the Applicant is indeed pursuing a cluster development and appreciates the staff's support. The Applicant will proffer to the use of phased grading, and will employ adequate soil erosion and sedimentation control measures to protect Mountain Run.</p>

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<p>health of Mountain Run and its associated floodplain. A 301-unit residential development could have a negative impact on this resource if the property were to be graded all at one time. Phasing of any land disturbance activities may help alleviate this concern and should be considered.</p>	
<p><u>Chapter 5. Agriculture</u></p>	
<p>Historically and currently this property enjoys agriculture as its primary use as well as the county's land use taxation relief program for agriculturally used properties. Farming and agriculture are a primary source of income and employment in the County and in recent years has been on the incline after numerous years of decline. However, this particular piece of property is isolated from the core of the agriculture community in Culpeper; being located next to town limits, railroad tracks and Mountain Run, It is not located within an Agricultural and Forestal District. While agricultural uses could continue to be enjoyed on this particular property, a long agriculture future for this property seems unlikely as areas inside town limits and around town continue to develop in a much different manner.</p>	<p>The Applicant concurs that this property, while having been, and currently being, used for limited agricultural purposes, does not have an agricultural future of any consequence and is not planned for such uses. As the County is aware, this land is planned for eventual annexation into the Town of Culpeper, which further argues for its development consistently with a more urban character.</p>
<p><u>Chapter 6. Public Facilities</u></p>	
<p>As the Plan indicates, population growth requires a significant increase of public services. More population means demand for more schools and recreational facilities and requires expansion of fire and rescue needs. The County's public facilities need to be coordinated with land use projects such as this to properly integrate the provisions of services, anticipated growth, revenues, and available funding. The coordination of land use and public facilities is crucial in providing efficient and cost effective government services for not only future County residents, but current residents as well. The most recent Capital Improvements Program</p>	<p>The Applicant is aware that every Virginia locality is faced with capital needs and is consequently prepared to contribute a fair share toward its impact on public facilities.</p> <p>The Applicant has already dedicated two well lots and right-of-way for water lines for the Town's construction of new lines through the Property, and that construction is ongoing, and may be completed by the time this response is submitted for review.</p> <p>The Applicant considers that this,</p>

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<p>drafted by the county identifies many capital project needs totally approximately <u>\$130,000,000</u> between the fiscal years of 218-2022.</p>	<p>together with the payments that it will make for connections to the public water and sewer systems that are owned and operated by the Town of Culpeper, will amply offset its impact on those public utilities.</p> <p>We do not understand the planning staff to suggest that any particular project is obliged to fund the County's CIP by itself. Its obligation is only to mitigate its particular impact on public facilities and this will and can be addressed in further discussions with the County.</p>
<p><u>-Schools</u></p>	
<p>The 2015 Plan indicated a theoretical availability of 312 students amongst the county's six (6) elementary schools. This was based on a 2014-15 enrollment of K-5 membership of 3,739 and VDOE (Virginia Department of Education) capacity of the six schools at 4,051. The February 2017 membership numbers for K-5 indicate student enrollment at 3,757 leaving a theoretical availability of 294 students for the existing elementary schools. The county's two (2) middle schools have a VDOE recommended capacity of 1,900 students. The February 2017 enrollment numbers for middle school membership was 1,768 indicating a current theoretical capacity of 132 students. The county's two (2) high schools have a VDOE recommended capacity of 3,300. The February 2017 high school membership was 2,479 students, leaving a theoretical capacity of 821. The total student membership for K-12 as of February 2017, is 8,004. The 2015 Plan estimated student enrollment at 8,008, indicating these projections were fairly accurate. The estimated total K-12 student enrollment is projected to trend lower in 2018-19 and 2019-2020.</p>	<p>Insofar as the Applicant has been able to calculate either the theoretical or operational capacity of County schools, as against its likely generation of school children from this project at buildout, there is capacity in the County schools to accommodate those school children. The Applicant is aware of no legal basis upon which a locality may reserve or allocate available school seats. Nor is it aware of any rezoning that has been rejected by a locality on the basis that a development would cause a school to meet capacity, or that it would cause a school to exceed capacity by some de minimis amount.</p> <p>Indeed, the planning staff acknowledges that there is capacity in the schools serving this development at present, but that over time there may be additional pressure on the school system. There most surely will be additional school children if Culpeper is to continue to grow, and we do not understand the staff to argue for a moratorium on new residential development since Virginia law does not permit zoning moratoria.</p>

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<p>Therefore, for the near future even if the proposed development were to be successful it appears that there is at least limited theoretical capacity amongst the county school facilities. However, it is important to remember that theoretical capacity and operational capacity are not the same and in reality an operational capacity threshold may be achieved earlier than the theoretical threshold. Beyond the year 2020, the picture isn't as clear and new facilities may be required and this development certainly could contribute to a growing school population and demand on this crucial public facility.</p>	<p>Attached to this comments/response letter is a study prepared by ATCS, PLC, dated February 14, 2017, as to the probable impact of this proposed development on the Culpeper Count school system. According to that study, it is estimated that there will be 63 new elementary school students, 30 middle school students, and 36 high school students. This projection will mean that the greatest impact will be on Pearl Sample Elementary, which would theoretically be 16 students over its capacity. Neither Floyd Binns nor Eastern View would be.</p> <p>The Applicant is therefore prepared to make a reasonable contribution to the County for the purpose of mitigating any actual impact on County schools.</p>
<p align="center">-Fire and Rescue</p>	
<p>The 2015 Plan indicates based on the increased number of emergency calls in recent years, that this trend is expected to continue and that this increase may require additional stations and manpower to maintain or improve the current level of service. The Plan indicates the need to begin to plan and consider land acquisition for fire stations as well as monitor the need for increased career personnel, as well as develop plans for a fire and rescue training center. This sized development will add to the already increasing emergency call volume. The County's FY' 18 CIP proposes funding one new ambulance at a cost of approximately \$25,000. There is a current need of two (2) new ambulances to serve the community as well as many other identified capital needs related to the Volunteer Fire and Rescue Association infrastructure.</p>	<p>As with other public services, it is unlikely that this development by itself gives rise to the need for significant additional fire and rescue capital expenditures.</p> <p>Notwithstanding this, the Applicant is prepared to discuss with the planning staff a reasonable contribution toward those services, most particularly a contribution toward an ambulance.</p>
<p align="center">-Parks and Recreation</p>	

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The Plan mentions the significance of parks and recreation planning, potential new park acquisition as development increases. The applicant's property is located within approximately one mile of one existing Neighborhood Park that is located within Town limits and within approximately 2 miles from a larger Community Park, which is the County sports complex.

The applicant in their proffer statement has included the development of a 1.2 acre recreational area for use of the proposed development including a tot lot with playground equipment (swing set, spring bouncer, rock wall, play structure), picnic pavilion with picnic tables, along with associated on-site parking. This is to be completed at the time of the 75th building permit issuance according to the most recent proffer statement. The applicant has also proffered to construct a 6 ft. wide woodchip trail to be completed prior to completion of the project. This trail could potentially tie into a future public multi-use trail facility. The applicant would provide maintenance of this trail until such public assignment of the trail occurs.

Sidewalks planned throughout the development will help provide pedestrian opportunities for recreation as well.

Although staff does recommend that the construction of the planned recreational amenities occur as early into the development as possible and earlier than the 75th building permit issuance the applicant has made a commitment to addressing a parks and recreation need for this type of development and is at least open to the idea of the planned multi-use trail for the development to be used by the public in the future.

The Applicant acknowledges that its contribution to the recreational needs of its future residents is a part of its plan for this development, as described by the planning staff, and that the project is located close to existing public parks.

The Applicant believes that the project will be best served by a large open area that can be adapted by the residents for multiple uses, but it is prepared to discuss with the staff the construction of these amenities earlier than the 75th building permit, and to the extent practicable, to discussion of a multiuse trail.

As the planning staff notes, the development is located in proximity to local parks that will provide ample service to the residents.

The Applicant concurs.

The Applicant would note that because it is willing to phase grading and development, it is very difficult to install amenities any earlier in the development process. It is likely that construction will begin in different portions of the site than the amenities, and this will create construction difficulties were the amenities commenced at an earlier time. The Applicant's experience with other projects is that it takes time to design and

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	install amenities and that this is a reasonable point in the development process at which to ensure their completion.
<u>-Other Public Facilities</u>	
New county government offices, regional jail facility, library, are all other public facilities that are mentioned in the Plan. Any increase in population will place a strain on existing facilities and possibly require new facilities and this type of development would in theory use such public facilities.	While the Applicant is willing to discuss a reasonable contribution to these facilities, to mitigate any actual impact that it might have on them. these are services and facilities that necessarily benefit the public at large, and are customarily charges on the general fund.
<u>Chapter 7. Public Services & Utilities</u>	
<u>-Water and Sewer</u>	
The subject property does fall inside the Town Environs Adopted Water and Sewer Service Area as shown in Chapter 7 of the Comprehensive Plan. This property is projected to be served by Town Water and Sewer. It appears there is capacity in the Town of Culpeper sewage treatment plant to service this development.	As noted above, a water line to new well lots is presently under construction on the Property, to provide additional water for the Town's public water system. This water would be available not just for this development, but for other users in the area as well.
The applicant states in their proffer statement that they will provide at no cost to the Town of Culpeper two (2) public well lots and associated easements and supporting elements for the expansion of the Town's water system to better service the Town and County environs. This commitment does help achieve current and future public water needs for this development.	There is sufficient sewer capacity available to the site.
<u>-Solid Waste</u>	
The County currently operates a single solid waste transfer station and is the only municipal solid waste disposal facility in the County. As the population grows, so does the need for public services such as the transfer station and should be considered when reviewing new developments.	The Applicant concurs. The residents of the new community will pay for trash services as do all residents, and the tipping fees are presumably set to cover the costs of solid waste management.

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<p>Chapter 8 Housing</p> <p>This chapter was primarily derived from “A Housing Needs and Market Analysis for Culpeper County,” prepared for the Greater Piedmont Area Association of Realtors in April 2015. This study provided the profile of existing households and housing stock, a housing market overview, a future housing forecast and a summary of future housing needs. This study indicated that the current population of Culpeper County is already mismatched with its housing stock: while 78 percent of existing units are single-family detached homes, just 22 percent of households are “traditional” families of two married adults with children living at home and suggests that any housing stock that is to be added should address this growing mismatch.</p> <p>While we currently do not know how much the development will seek per single family home or townhome, the price point of these homes will make a big difference as to what market these future homes will serve. The county’s housing study suggests that “local area workers” will only be able to generally afford housing units priced below \$250,000.</p> <p>This segment of the housing market represents about 75 percent of future demand, by far this largest segment of the housing market. A much smaller segment approximately 17 percent of future demand makes up the “Northern Virginia commuters” who generally have annual incomes in the range of \$100,000 and can afford units of \$300,000 or more. A third segment of the future housing market comprised of approximately 8 percent is seniors and retirees who are looking for smaller units priced below \$250,000.</p> <p>The above research data should be considered for this rezoning and incorporated into the</p>	<p>The Applicant builds a quality product, and anticipates that the starting price of the townhouses will be approximately \$200,000 and the price of the village homes will be approximately \$300,000. These prices are well within the range of most homebuyers, and would qualify as affordable housing when considered as housing on which a family spends not more than 30% of its gross household income.</p> <p>The Applicant declines to add more townhomes to the mix of units, since the costs of doing so significantly outweigh the return on investment from such units. Given the housing market in the Culpeper area, and the costs of site entitlement and preparation, when ROI is reduced it reduces commensurately the builder’s ability to provide enhancements in the project such as sidewalks, street lighting, and the like.</p>
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<p>proposal. The applicant is proposing a small segment of townhomes which will potentially provide a lower price point and therefore theoretically supply the community with a housing type that is projected to be needed. However, in the opinion of staff this mix of townhomes could be higher, therefore meeting a larger segment of the true community housing needs as mentioned in Chapter 8 of the Plan.</p>	
<p>Chapter 9 Transportation</p>	
<p>Transportation is a key consideration when reviewing any land use application and is very much a crucial consideration with this proposed development. The automobile is the dominant form of transportation throughout the County. And although this development is adjacent to rail, it does not currently have access and therefore residents will be reliant on the existing road network that is adjacent to and in the near vicinity of this development. The project is located in an area identified in the Plan as Rt. 15/29 Business to Inlet area and a general plan for potential future access needs is further delineated on Map 9.4 of the Plan. While a major component of this area plan, the diamond interchange at Rt. 666 and Rt. 29 is well underway and projected to be completed later this year; there other aspects of this area plan that will need to be developed to ensure property access to the existing main commercial center of the County and the larger road network throughout the County. The extension of Ira Hoffman Ln. to the south across the railroad tracks near Walmart to an intersection with Nalles Mill Rd. in the proximity of Rt. 799/Keyser Rd. is key to providing adequate interconnectivity for this area. Staff is not in favor of encouraging significant development in this area without this future road or some other interconnectivity alternative being developed and built.</p>	<p>The Applicant is aware that the Transportation element of the Comprehensive Plan contemplates a Business to Inlet connection. This is a road improvement that is to occur off-site of the Property, and that will be very costly, and that is not likely to occur for a number of years to come. The Comprehensive Plan itself recognizes that the plan for the connection “represents a vision of future area access and circulation and may not be built in its entirety for many years.”</p> <p>The extension of Ira Hoffman Lane to the south over the railroad tracks to its intersection with Nalles Mill Road at Keyser Road is over ½ mile in distance, and requires an elevated crossing of the Norfolk Southern railroad tracks. The suggestion that this property should not or cannot develop until that road is complete is the equivalent of saying that no property presently planned for development on the south side of the railroad would be ripe for development for many years, when the Virginia Department of Transportation, and the professionally prepared Traffic Impact Analysis in this case essentially concur that the roads servicing the project will function at acceptable levels of service</p>

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The Applicant has submitted a Concept Plan that is proffered and depicts access from two (2) separate entrances along Rt. 667/Nalles Mill Rd. that lead to internal streets that are proposed to meet state secondary street standards. The applicant proposes to build a 200' x 200' right turn lane and taper into the northernmost entrance. The second entrance will enjoy a continuous right turn lane from first entrance and proposes to function as a right-in, right-out entrance only. The Virginia Department of Transportation (VDOT) has reviewed the proposed entrance locations and details and lends its approval to this design. **However, staff is concerned about the lack of a left turn lane requirement into the development even though VDOT doesn't suggest one is necessary.**

The applicant has also produced a Traffic Impact Analysis (TIA) performed by ATCS. The study evaluates the compacts of existing traffic, regional traffic growth, and the impacts of traffic generated from the proposed development. This study does consider the most immediate road network and several of the intersections in close proximity to the subject property. The study reviewed five (5) specific intersections. VDOT also reviewed this study and provided comments to the applicant. The latest correspondence between VDOT and the applicant regarding the TIA was September 27, 2016. This comment letter suggests that "though efforts were made to address our comments, ATCS did not always provide definitive answers and/or recommendation for mitigating projected impacts from the development."

One of the main concerns as illustrated by VDOT in their letter and is also a major concern of staff is the intersection of Rt. 15/29 Bus. and Rt. 667/Nalles Mill Rd. This is an intersection that does not function in the most

upon buildout of the Project.

The Applicant knows of nothing in the County's Comprehensives Plan that supports a moratorium on development south of the Norfolk Southern line.

According to the TIA submitted with this application, the impact of this project on the Nalles Mill / Route 29 interchange is actually very small. Notwithstanding this, the Applicant understands that the TIA submitted with this application was coordinated with VDOT from the onset of the project with respect to the intersections to be analyzed, and how new trips generated by the site were to be distributed across the existing roadway network. During the scoping process, it was determined and agreed upon with VDOT that the majority of the new trips generated by the development would use US 15/US 29 Business, with the remaining trips using Nalles Mill Road and McDevitt Drive.

Based on the trip distribution developed for the TIA, a maximum of only 54 vehicles generated by the site are anticipated to use Nalles Mills Road to access the development in the form of a left turn off of Nalles Mill Road (coming from the new US 15/US 29/Route 666 interchange). The VDOT Road Design Manual suggests that when left-turn volumes are higher than 100 VPH, an exclusive left-turn should be considered. Thus, the traffic generated by the proposed development is insufficient to warrant a left turn lane on Nalles Mill Road when considering the combination of site generated trips on Nalles Mill Road from Braggs Corner Road and Keyser Road.

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safe and efficient manner today. It is an unsignalized intersection, the median is narrow, and there is a history of angle crashes at this intersection. The TIA study suggests that the addition of a signal at this intersection will not help improve the Level of Service (LOS) at this intersection and would also require a design exception from VDOT for signal spacing. Although a signalized intersection may result in less angle crashes at this intersection. The study does offer some potential solutions for this intersection. The TIA suggest that the northbound shared through/left and right turn lane could be changed to a separate left and shared through/right turn lane and that conditions for northbound movements on Nalles Mill Rd. onto or across Rt. 15/29 Bus. do improve if this lane change configuration is completed and is hereby recommended. The study goes on to suggest other potential mitigation measures for this intersection as found on page 33 of the June 2016 TIA, including the possibility of a superstreet configuration restricting left turns from Nalles Mill Rd. onto Rt. 15/29, restricting the intersection to a right-in and right-out only, or even full closure of Nalles Mill Rd. The removal of the left and through traffic may reduce crashes, although it would put more U-turn movements at the intersections to north along Rt. 15/29 Bus. at signalized intersections. The applicant's TIA does not include analysis of these U-turning movements.

Since this section of road and intersection are located inside the Town of Culpeper limits, any improvements will need to be closely coordinated with the Town of Culpeper and will require their consent. The Town of Culpeper is an integral component of the overall road network in the County and any changes to the County roadway system can have significant impacts to the Town. **The applicant has not offered any plans or proffers at this point to**

Further, the results of the TIA have shown that the proposed development will not significantly impact operations at the study intersections during the weekday AM and PM peak hours for the two future years that were analyzed in the study. However, at VDOT's request, the TIA analyzed Saturday peak hour operations and determined that levels of service at the US 15/US 29 Business/Nalles Mill Road intersection would be the only intersection negatively affected by the proposed development in the future years that were analyzed.

Therefore, recommendations with respect to improving levels of service at the US 15/29 Business/Nalles Mill Road intersection were identified in the TIA. However, it was also recognized that while levels of service would be improved, safety would still be a concern by continuing to allow full access at that intersection. When the TIA was completed, it was felt that closing or restricting access to/from Nalles Mill Road at that location would be met with resistance/concern from the Town. However, after additional successful meetings with the Town, the Applicant is prepared to provide the Superstreet intersection improvement that was previously identified in the TIA. This intersection improvement will eliminate left turns from Nalles Mill Road onto US 15/US 29 Business, and replace them as right turns only. By removing the left turns onto US 15/US 29 Business, the intersection would operate in a safer manner than today.

While the TIA did not separately analyze U-Turns, these additional right turns

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help mitigate the concerns as laid out by VDOT and staff at the intersection of Nalles Mill Rd. and Rt. 15/29 Bus. and is a serious concern for staff.

It is also worthy to note that Rt. 667/Nalles Mill Rd. to the south of the development towards the newly realigned intersection with Braggs Corner Rd. does contain some significant hills, curves, and has very narrow shoulder areas, and does have some crash history. In the opinion of staff a large segment of travelers will use this road to get to Rt. 29 which is a Corridor of Statewide Significance and Rt. 666 and adding 301 units to this road in its current alignment is not ideal.

The intersection of Rt. 667 and Rt. 799/Keyser Rd. was not studied by the applicant. However, with an increase in potential traffic along Nalles Mill Rd. this intersection will certainly be impacted.

The applicant has provided for potential pedestrian access to Electric Avenue, potentially connecting to a new subdivision across Mountain Run by adding a utility/trail easement. However, the applicant has not committed to actually constructing this pedestrian access. This access may ultimately be difficult to achieve because of the large amount of wetlands and floodplain on this part of the property.

One of the biggest transportation related concerns staff has regarding this project relates to pedestrian safety. The development is in near proximity to several commercial centers to the north of the property just on the other side of the railroad tracks. The existing bridge on Rt. 667/Nalles Mill Rd. is narrow and will not safely allow for pedestrian use. The applicant has stated that a pedestrian access at this location is not economically feasible.

were added to the future left turn volumes at the Wal-Mart traffic signal. As shown in the TIA these additional left turn volumes did not significantly affect the operation of the intersection.

It is recognized that the existing geometry of Nalles Mill Road to the south of the development presents some concerns. However, based on published traffic volumes from VDOT, Nalles Mill Road carries only 2,000 vehicles per day from the intersection with Braggs Corner Road to the eastern limits of the Town of Culpeper. With the proposed development adding a maximum of 54 vehicles to this roadway during the PM peak hour, overall operations and safety on Nalles Mill Road should not be negatively impacted. Furthermore, the proposed development is anticipated to generate a maximum of 36 vehicles during the PM peak hour that will be using Keyser Road at its intersection with Nalles Mill Road in order to gain access to the development. VDOT's published numbers show that Keyser Road carries 5,000 vehicles per day from Nalles Mill Road to the eastern limits of the Town of Culpeper. The addition of a maximum of 36 vehicles during the PM peak hour should not significantly impact operations at the intersection with Nalles Mill Road. Thus, with the proposed change at Nalles Mill Road, the principal traffic impact may be safely and adequately managed.

With respect to pedestrian movement, the Applicant has provided easements for access to this pedestrian crossing of Mountain Run, but the cost of actually permitting and constructing that access is simply beyond the ability of a project

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<p>Nevertheless, this is still a significant safety concern that staff has regarding transportation for this project. Staff is concerned that pedestrians will still seek to cross this bridge even though it is currently not safe to do so. The main purpose zoning exists is to serve the purpose the promoting of health, safety or general welfare of the public and to those ends until a resolution is reached on how to provide safe pedestrian access to the adjacent commercial centers, staff sees this issue as a major roadblock for a project such as this to move forward.</p>	<p>of this size to bear and so it must decline to absorb that cost.</p> <p>With respect to the pedestrian crossing of the Nalles Mill Bridge, the Applicant will proffer to use its best good faith efforts to reach agreement with VDOT to install pedestrian controlled signalization at either end of the Nalles Mill Bridge across the railroad tracks and to provide a marked pedestrian crossing. Once actualized, these lights will halt traffic for a sufficient time to permit pedestrians to cross the bridge safely.</p> <p>The expense of a separate pedestrian crossing would be immense, and exceptionally difficult to obtain permission to construct, and to conclude that without such a separate crossing no project on the south side of the railroad tracks can be approved is to establish a de facto moratorium on any residential development at any density on that side of those tracks.</p>
<p><u>Chapter 10 Historic Resources</u></p> <p>While the County of Culpeper has a rich and diverse history, the subject property and properties adjacent do not appear to be mentioned or listed anywhere as historically significant.</p>	<p>The Applicant concurs that no historic resources will be adversely affected by this development.</p>
<p><u>Chapter 12 Future Land use</u></p> <p>The Future Land Use section of the Comprehensive Plan identifies areas planned for future growth and the anticipated land use associated with such growth. It is important to remember the Future Land Use Map that is included in this section does not stand alone and is not, by itself, the future plan for the County. The other sections of the Comprehensive Plan including maps, referenced data, etc. are</p>	<p>This property is considered appropriate for mixed use development, but contrary to the staff comment, the Comprehensive Plan nowhere affirmatively declares that mixed uses must be present on every given parcel so planned. Rather, in this case, the commercial uses that would in some cases be co-located with the residential uses are to be found within</p>

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important factors in the future land use plan for the County. And furthermore the identification of potential growth areas in the Future Land Use Plan is neither an assurance of community acceptance nor a commitment to development by the County. The scope and intensity of the planned project, timing of the project related to planned infrastructure, the current character of the surrounding area are also important factors to consider.

The subject property is identified on the Future Land Use Plan, Map 12.3 as primarily Mixed Use along with a small amount of Low Density Residential. The Mixed Use designation anticipates a mixture of higher density residential uses and commercial/office use. The intent of this category is to combine commercial and residential components within a single property. The applicant does propose a small mix of residential types, but does not include a commercial and/or office component to this project. The Low Density Residential designation is intended to allow for a maximum of one dwelling unit per acre. The proposed development well exceeds this density.

Therefore, the proposed development in the opinion of staff is not completely compliant with the current designation as indicated on the Future Land Use Map.

The development is located next to the Town of Culpeper, which is the county's main primary village center and the center of commerce for the County and future residential in general is planned to follow the Village Centers in order to concentrate housing where services, utilities and infrastructure either already exist or are planned. The subject property is further identified on Map 12.4 in this section as being located within the Urban Services Boundary. This boundary is intended to provide an "edge" to dense urban development similar to that found within the Town Corporate limits. **In**

approximately one half mile of the entrance to the site.

The site is destined to be annexed into the Town in due course under the Voluntary Settlement of Annexation and Utility Issues between the Town of Culpeper and the County of Culpeper, dated January 30, 2012. Because this will eventually be part of the Town, and thus partake of its more urban character, it makes little sense to plan and zone it to a low density simply because it is presently in Culpeper County. Indeed, § 3.4 of that VSA specifically says that in order to be considered for annexation, a property

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<p>this aspect alone, the proposed residential development can be considered compliant with this designation.</p>	<p>must have “sufficient density to be considered urban or urbanizing in terms of the nature of its development.” The Residential Density must be one unit per acre, or higher. Because of the proximity of this property to the Town, and to the commercial corridor that is Route 15/29 Business, it makes sound planning sense to develop it at the proposed density of 2.5 dwelling units per acre.</p> <p>In fact, the property already appears to meet the criteria for annexation into the Town under that VSA.</p>
<p><u>Chapter 13 Village and Convenience Centers (Design Considerations)</u></p>	
<p>Many of the concepts mentioned in this chapter of the Plan should be implemented with the type of development being proposed. The following concepts should apply to this development:</p> <ul style="list-style-type: none"> -Pedestrian Orientation -Safe, attractive and convenient streets and paths <ul style="list-style-type: none"> -Interconnected streets and regional transportation networks -Parks and open space -Mixture of land uses -Mixture of housing types and affordability -Site Planning that respects the terrain -Protection of agricultural -Conformance with the Master Water and Sewer Plan <p>The applicant has made an effort to implement many of these concepts into their proposed development. The proposed development does plan on and is committed to having sidewalks throughout the development and also propose to have walking trail along Mountain Run. Open space is planned throughout the development along with a 1.2 acre recreation</p>	<p>The Applicant acknowledges the planning staff’s recognition of the development’s inclusion of the design considerations that are identified. The project is pedestrian friendly with sidewalks throughout and with a trail provided. The internal street network lays out cleanly and connects appropriately with the VDOT road to which it is linked. There is a play area and a large park provided on site, and there are two housing types that will both be affordable. There is no longer a reasonable agricultural use of the land, and the development is in conformance with the Master Water and Sewer Plan and is indeed advancing that plan by its dedication of land to the Town at no cost.</p> <p>As noted elsewhere in this response, this project is simply not large enough to bear the expense of constructing a pedestrian crossing of the Norfolk Southern railroad. The Applicant will propose a reasonable solution that depends on the cooperation of VDOT and perhaps the Town, but that would work.</p>

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area. The developer proposes a small mixture of housing types with townhomes and single family homes planned. The developer is choosing to use a cluster design and does protect some steeper slopes, floodplain, and wetland areas that are located on the property which are environmentally sensitive areas. The developer is committed to complying with the master water and sewer plan and has committed to dedicating two (2) public well lots on the property to supplement the Town's drinking water supply.

However, while onsite pedestrian concerns are largely mitigated, off-site pedestrian concerns are not adequately addressed in the opinion of staff as detailed in the transportation section above. There is concern that a development of this size could use additional amenities (ex. Clubhouse, basketball goals, etc.) and disperse the amenities more evenly throughout the development. There is concern that with narrower streets (which does limit impervious area and helps with stormwater run-off) that on street parking would be discouraged or prohibited and this could potentially leave little room for guest parking. The development could be a good fit for rear access alleyways which could provide for parking to the rear of the planned homes instead of all in the front of homes.

The applicant has stated that since the property is located adjacent to Town limits that the density and type of development should match what you see in the Town. If that is the desire or goal of the developer with this development, the developer could simply commit to planning and building the project according to the Town of Culpeper's Facilities or Design Standard's Manual. This document would address items such as street width, required recreational amenities, landscaping requirements, etc. However, at this time the developer has not

The streets in the development have been designed with parking on one side of a 30' roadway (not so with the townhouses) and each unit (including the townhouses) has two off-street parking spaces. There will be ample parking provided. The addition of an access alley would dramatically affect the design and density of the project and it is the Applicant's experience that homebuyers in the Culpeper area market are mostly interested in acquiring a home with a backyard.

The Applicant is in the process of evaluating the impact on the project of adhering to the Town of Culpeper's development standards, consistently with the Applicant's understanding that this property will be annexed. It is studying the impact of proffering to meet Town standards throughout the development.

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<p>committed to all of these standards as referenced in the latest Town of Culpeper's Planning Director's comment letter dated February 1, 2017.</p>	
<p><u>Chapter 15 Implementation</u></p>	
<p>It is imperative that land use decisions be based on surrounding land uses, environmental and economic impacts and many other aspects in addition to considering the goals the county's Comprehensive Plan. The Plan is a policy guide and should be the main planning document considered when reviewing rezoning requests and development proposals such as Case No. Z-440-15-1.</p> <p>Existing land use regulations as written in the county's Zoning and Subdivision Ordinances will regulate any development that is approved for this property. Another tool that localities enjoy when considering rezoning requests is the use of conditional zoning or proffers. The Code of Virginia provides that property owners may voluntarily proffer reasonable development conditions for the use or development of property. Proffers traditionally can include monetary contributions for public infrastructure and/or existing public facilities which are impacted by the proposed development. Proffers can help assist the development to better meet the goals of the Comprehensive Plan and needs that mentioned in this Plan.</p> <p>The enabling state code legislation for proffers did change in 2016, specifically Section 15.2-2303.4, requiring all proffers for new residential development to address a proposed development's impacts that are "<i>specifically attributed to the development</i>". Any off-site proffers must provide a "<i>direct and material benefit</i>" to the proposed development and must address the following 4 categories of public facilities: Transportation (including transit); public safety; public school; and parks or</p>	<p>As the Applicant has stated on several occasions, it fully understands its obligations under Virginia law and Culpeper Ordinances and policies with respect to rezoning applications, and is prepared to work with the community in shaping an acceptable rezoning for an area that the County has long planned for residential development, and to which it has extended public utility services.</p> <p>It has also stated that the provisions of Va. Code Ann. § 15.2-2303.4, enacted at the 2016 Session of the General Assembly, were prospective only and do not apply to any application for residential rezonings that were in process before July 1, 2016. Indeed, Enactment Clause 3 appended to SB 549 makes this clear by stating that:</p> <p>3. That this act is prospective only and shall not be construed to apply to any application for rezoning filed prior to July 1, 2016, or to any application for a proffer condition amendment amending a rezoning for which the application was filed prior to that date.</p> <p>Additionally, and as evidence that other jurisdictions so understand the effect date of the statute, Fairfax County has adopted a formal resolution instructing its staff how to process new applications subject to the statute. As part of its "Resolution Regarding Senate Bill 549," it says affirmatively:</p>

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<p>recreational facilities. A locality cannot request or accept any unreasonable proffer or deny a rezoning application or proffer condition amendment for new residential development where such denial is based in whole or in part on an applicant's failure or refusal to submit unreasonable proffer. The developer has submitted a proffer statement with the latest date of January 12, 2017.</p>	<p>"WHEREAS, SB 549 takes effect on July 1, 2016, and is prospective only and will only apply to specified residential rezoning and proffered condition amendment applications filed on or after July 1, 2016. . . ." that certain policies shall apply.</p> <p>Had the requirements of this statute been the law prior to July 1, 2016, this statute would not have been required.</p> <p>To the best of the Applicant's knowledge, no jurisdiction has applied §15.2-2303.4 to any residential rezoning or proffer condition amendment that was pending prior to July 1, 2016. Whatever benefits or burden may accrue to either a locality or to an applicant as a consequence of that statute are yet to be determined, but they are not to be determined in this application.</p> <p>Finally, I am attaching an article from the April 20, 2017 issue of the Richmond Public Interest Law Review which takes the same position as does the Applicant here, that the statute applies only to cases initiated after July 1, 2016.</p>
<p>Proffer Statement The applicant has submitted a proffer statement with a most recent date of January 12, 2017. This instrument represents obligations and limits that the applicant is voluntarily proffering as conditions of this rezoning approval. The applicant agrees to record these proffers among the land records if the rezoning request is approved.</p>	<p>A revised proffer statement is attached for further discussion.</p>
<p>1. <u>Financial Contribution</u></p>	<p>As noted, a revised proffer statement is</p>

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<p>The applicant has committed to contribute a cash proffer at the rate of \$3,000 for each village home and \$1,400 for each townhouse in recognition of the capital needs of the County. This payment is payable for each unit at the time of issuance of such unit's occupancy permit. At full buildout for this development, the total commitment of cash proffers equals a total of \$844,000. This financial commitment in the opinion of staff will not cover the capital infrastructure needs that will be generated by this project and certainly would be inadequate to cover the other transportation needs identified in the applicant's Transportation Impact Analysis. It will also certainly not cover any other public facility needs (education, public safety, etc.) that this development will generate.</p> <p>There have not been many major residential rezoning requests in recent years, but some former examples for comparison include Clevenger's Village (unbuilt as of today) and Madison Grove. In 2004, Clevenger's Village (700 + units), the last major residential rezoning in which the board approved had a total cash proffer commitment of <u>\$8,525</u> per residential unit, plus millions of dollars' worth of other infrastructure such as related public water and sewer, roads, etc. In 2003, Madison Grove Subdivision (93 units) committed to a <u>\$5,000</u> per unit cash proffer.</p> <p>The applicant has adequately addressed in the opinion of staff any need related to public water and sewer infrastructure by providing in proffer 1.2 two(2) well lots and associated easements to the Town of Culpeper. At this time, no dollar value has been identified for this planned dedication of property.</p>	<p>provided with this response. The Applicant declines to proffer cash contributions similar to those which were made in connection with the Clevenger's Village project, prior to the Great Recession. The undersigned can speak with personal knowledge that the economic burden of those proffers is a principal reason that not one home has been built in Clevenger's since its rezoning.</p>
<p>2. <u>Density and Design</u> The applicant requests modification of some of the R-3 cluster lot minimum standards as listed</p>	<p>These requests are justified as stated above by the probability of annexation of</p>

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<p>in Article 9-5 and this modification is request is also part of the applicant's proffer statement. Interior lot widths are proposed at 50 ft. vs. current county minimum at 55 ft. Corner lot widths at 70 ft. vs. current county minimum at 75 ft. Side setbacks are proposed at 5 ft. vs. a county minimum that currently requires 8 ft. Staff does not see any justification for providing this reduction to current minimum standards for an R-3 cluster development. Three Flags, a recent development in the County worked fine with 60 ft. wide interior lots and 8 ft. side setbacks and is a similarly sized development located near Town limits.</p> <p>The applicant is committed to a minimum tree planting requirement for each village home unit which current zoning and subdivision ordinances do not include a minimum tree canopy requirement for single family developments, so this design proffer should help achieve a more attractive neighborhood and is supported by staff.</p> <p>The applicant has also committed to providing screening by evergreen plantings and a board on board fence behind the row of townhomes adjacent to the railroad tracks. This at a minimum is certainly encouraged by staff. Although a raised landscaped berm with trees and fencing and/or concrete wall with evergreen plantings of some sort may be the better option and provide for a more substantial buffer than a double row of evergreen shrubs and a board fence.</p> <p>The landscape proffers as referenced in numbers 3.3, 3.4, 3.8 are currently mentioned in the Amenity section of the proffer documents, but are probably better to be included in the Density and Design section.</p>	<p>this development into the Town and by the reasonableness of the adoption of more urban standards associated with its likely future. It is also a reason that it has enhanced its landscaping plans for the project. Three Flags is not to be so annexed, and indeed has ceased all development. Moreover, Three Flags has minimal landscaping and no street lightings, though it does have sidewalks.</p> <p>Further, and as noted above, the Applicant's engineer is evaluating whether it is feasible simply to proffer to develop according to the Town's development standards as the County's planning staff has suggested, since the property is, indeed, ultimately to be annexed.</p> <p>The Applicant prefers the use of a fence and plantings adjacent to the railroad cut for safety reasons. While it is surely possible to climb a fence, it would be more difficult than climbing a berm.</p> <p>The proffers have been completely amended to relocate the landscaping details.</p>
<p>3. <u>Amenities</u> Recreation – The applicant has proffered a 1.2</p>	<p>As noted elsewhere, the Applicant is</p>

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<p>area recreational area that will contain a tot lot with playground equipment (swing set, spring animal bouncer, rock wall and play structure) and a commercial quality picnic pavilion with tables. The applicant agrees to provide this no later than when the 75th building permit is issued. This facility will remain private and will be maintained by a Home Owners Association (HOA). Staff supports this commitment as it will provide a direct and material benefit to the residents of the development. Staff would encourage the applicant to enrich this commitment to provide possibly a basketball goal or two, maybe some soccer goals on the identified open field play area or other features similar to this.</p> <p>The applicant is also committed to dedicate and construct a 6 ft. wide woodchip trail running from Nalles Mill Rd. along the rear of the property adjacent to Mountain Run. However, it is recommended the trail be paved or hard surfaced in some manner as the trail is currently planned to be in or near the one percent annual chance floodplain of Mountain Run. A wood chip trail will not endure the periodic flooding along Mountain Run as well as a paved or hard surfaced trail will. This trail concept in general is supported by staff and will provide a direct and material benefit to the residents of the development. The trail could potentially be tied into a greater public trail system in the future. It is recommended that the trail be constructed earlier in planned development process as currently it is only committed to be constructed prior to the completion of the project.</p>	<p>does not believe that is appropriate to alter when amenities are constructed, and reiterates that it believes that an open play area may be more conducive to free play than one that is cluttered with additional equipment.</p> <p>The Applicant is open to discussion of a different surfacing of this trail, provided that the Town concurs; a fair distance of the trail runs over the water line that the Town is presently constructing. The easement granted to the Town requires its consent for any “permanent” construction in that easement, though the Applicant retained the right to use the easement for any purpose not inconsistent with its use for the Town’s water system.</p>
<p><u>Summary and Recommendation</u></p>	
<p>Staff recommends denial of this application in its current form.</p>	
<p>1. The development is not in compliance with many aspects of the</p>	<p>For the reasons set forth above, the Applicant is prepared to discuss</p>

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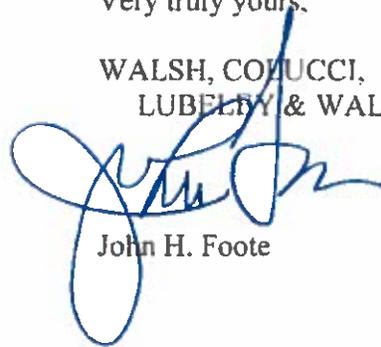
<p>Comprehensive Plan as previously mentioned in the chapter by chapter analysis.</p>	<p>modifications to the application that will respond to many, perhaps most, of the comments that have been made. It also does not concur with this assessment.</p>
<p>2. The transportation needs of the community are not met and are adversely impacted by this development. This development is premature at best as it relates to needed infrastructure development in the Plan for this area of the County.</p>	<p>For the reasons set forth above, the Applicant is prepared to discuss modifications to the application that will respond to many, perhaps most, of the comments that have been made.</p>
<p>3. The full impacts to other public facilities (education, public safety, etc.) have not been adequately addressed as previously mentioned.</p>	<p>For the reasons set forth above, the Applicant is prepared to discuss modifications to the application that will respond to many, perhaps most, of the comments that have been made.</p>
<p>4. The safety of the community has not been fully addressed specifically as it related to pedestrian access across the Nalles Mill Rd. bridge crossing adjacent to the existing commercial center and automobile access at the intersection of Rt. 667/Nalles Mill Rd. and Rt. 15/29/Business/James Madison Hwy. near this property.</p>	<p>For the reasons set forth above, the Applicant is prepared to discuss modifications to the application that will respond to many, perhaps most, of the comments that have been made.</p>

Mr. Clark, Mr. Reyes, and I would greatly appreciate the opportunity to meet with you soon to discuss these issues in detail.

Thank you very much for your kind attention to this.

Very truly yours,

WALSH, COLUCCI,
 LUBELBY & WALSH, P.C.



John H. Foote

JHF/jf

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cc: Jeff Caruso, Caruso Odin, LLC
Roddy Reyes, ATCS, PLC
Bruce Clark, Esq.
Bobbi Jo Alexis, Esq.