

**REPORT ON
THE TOWN OF NEW MARKET -
SHENANDOAH COUNTY
VOLUNTARY SETTLEMENT
AGREEMENT**



Commission on Local Government

**Department of Housing and Community Development
Commonwealth of Virginia**

<http://www.dhcd.virginia.gov>

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Executive Summary

On October 28th, 2022, the Town of New Market and Shenandoah County submitted a proposed Voluntary Settlement Agreement to the Commission on Local Government for review. This Proposed Agreement was negotiated under Section 15.2-3400 of the Code of Virginia, which allows localities to settle interlocal issues through negotiated agreements. However, before localities enact any negotiated agreement, the Commission must review the agreement and issue an advisory report on whether the agreement is in the best interest of the Commonwealth. When issuing its advisory report, the Commission is directed “to hold hearings, make investigations, analyze local needs,” and then submit its findings of fact and recommendations to the affected local governments. The local governments may then adopt any recommendations before the agreement is sent to a special court for ultimate disposition.

The Proposed Agreement contains three substantive changes to the Second Amended Voluntary Settlement Agreement between the Town of New Market and Shenandoah County from 2012 (2012 VSA), which set forth certain requirements and processes for land use and annexation in a defined “Future Growth Area.” The first amendment (Amendment 1) changes the requirements for land use in specified portions of the Future Growth Area by substituting the current Future Land Use Map, defined as exhibit B in the 2012 VSA, with a new Future Land Use Map, defined as exhibit B-1. The second amendment (Amendment 2) creates a new process for the Parties to change those land use requirements again should they desire to in the future. The third amendment (Amendment 3) creates a new process for the parties to change the other sections of the Voluntary Settlement Agreement in the future.

The Commission finds that the Proposed Agreement generally meets its standard of review and recommends its adoption because the changes are beneficial to the orderly growth and continued viability of the Town and County. However, the Commission also suggests changes to Amendment 3 related to the process for future amendment(s) to the Proposed Agreement, and further recommends the Parties take specific actions to increase public participation and comment related to future changes to the Proposed Agreement and its potential impacts.

What follows is the Commission’s advisory report on the Proposed Agreement. First, this report will overview the proceedings before the Commission that led to this report and give further background on the 2012 VSA. Second, it will explain the characteristics of the Parties, highlighting those that are most relevant to the Commission’s review. Third, it will discuss the relevant standard of review and apply that standard to the Proposed Agreement through findings of fact and recommendations on each substantive amendment in the Proposed Agreement. Finally, it will offer general recommendations that are responsive to citizen comments and are related to the larger context surrounding the Proposed Agreement.

Proceedings of the Commission

The 2022 Proposed Agreement

On October 28th, 2022, the Town of New Market and Shenandoah County (the Parties) submitted, through counsel,¹ a proposed Voluntary Settlement Agreement (the “Proposed Agreement”) to the Commission on Local Government (the Commission) for review.² Consistent with the Commission’s regulations, the Proposed Agreement was accompanied by a supporting narrative and was sent to the political subdivisions that are contiguous to the Town and County or with which they share functions, revenues, or tax sources.^{3 4} The Proposed Agreement contains three substantive amendments to the Second Amended VSA that is currently in effect and was negotiated under the authority of §15.2-3400 of the Code of Virginia, approved by this Commission, and adopted by the Parties in 2012 (the “2012 VSA”).^{5 6} The first amendment (Amendment 1) changes the requirements for land use in specified portions of the Future Growth Area by substituting the current Future Land Use Map, defined as exhibit B in the 2012 VSA, with a new Future Land Use Map, defined as exhibit B-1. The second amendment (Amendment 2) creates a new process for the Parties to change those land use requirements again should they desire to in the future. The third amendment (Amendment 3) creates a new process for the parties to change the other sections of the Voluntary Settlement Agreement in the future.

In conjunction with its review of the Proposed Agreement, on March 9th, 2023, the Commission heard oral presentations from the Parties in support of the Proposed Agreement at the Town’s Municipal Offices in New Market, VA.⁷ The Commission also held a public hearing, advertised in accordance with §15.2-2907(B) of the Code of Virginia, in the evening on March 9th, 2023, at the Town’s Municipal

¹ Both the Town and the County were represented by Litten & Sipe, L.L.P., in the drafting of the Proposed Agreement and oral presentations and have properly waived all conflicts.

² Town of New Market and Shenandoah County, Notice of the County of Shenandoah, Virginia, and the Town of New Market, Virginia, of their Intention to Petition for the Approval of an Amendment to the Second Amended Voluntary Settlement Agreement Between the Town of New Market and Shenandoah County, October 26th, 2022. The Parties’ Amendment Notice contains: 1) A narrative cover letter supporting the Proposed Agreement and a list of local governments notified; 2) the Joint Resolution of the Parties requesting Commission Review of the Proposed Amendments to the Second Amended Voluntary Settlement Agreement; 3) the Second Amended Voluntary Settlement Agreement between the Town of New Market and Shenandoah County (henceforth referred to as the “2012 VSA”); 4) the proposed amendments to the Second Amended Voluntary Settlement Agreement Between the Town of New Market and Shenandoah County (henceforth referred to as the “Proposed Agreement”); and 5) correspondence between the Parties’ legal representation and Commission staff regarding the Proposed Agreement. The submissions from the Parties and other materials are available in the official public record of this case, which was produced in accordance with 1VAC 50-20-640, is attached to this report, and is hereinafter referred to as Appendix A.

³ The text of the Proposed Agreement can be found on page 33 of Appendix A.

⁴ Appendix A, Section 1A [Parties’ Notice], pages 8-10.

⁵ The text of the 2012 VSA can be found on page 16 of Appendix A.

⁶ This chapter as a whole governs the scope and creation of voluntary settlement agreements.

⁷ Audio/visual recordings of the oral presentations and the public hearing can be found on the Commission’s webpage under “CLG Minutes;” <https://www.dhcd.virginia.gov/commission-local-government-clg>

Offices for the purpose of receiving citizen comment.⁸ The public hearing was attended by approximately twenty-five people and produced testimony from fourteen individuals. To permit receipt of additional public comment, the Commission agreed to keep its record open for written submissions through 5:00 pm on March 23rd, 2023.⁹

The Commission is obligated to render a report with its findings of fact and recommendations within six months of receiving notice of a voluntary settlement agreement but may extend that deadline by no more than 60 days.¹⁰ The Commission extended the six-month deadline by 7 days to May 5th, 2023, to correspond with its May regular meeting. This report was adopted at the May regular meeting and sent to the Parties for their consideration.¹¹ The Proposed Agreement (either in original or modified form) shall not become binding on the Town or County until it has been adopted by ordinance by both Parties after a public hearing and subsequently affirmed by a special court.¹²

The 2012 VSA

As indicated to the Commission in oral presentations and public comments, the Parties began discussing the Town's growth plan as early as 2007.¹³ These discussions led to the 2012 VSA, which was reviewed by the Commission in the Spring of 2010.¹⁴ The final 2012 VSA set forth certain requirements and processes for land use and annexation in a defined "Future Growth Area." Specifically, it provides for the following:

- The establishment of an area of 1918 acres in Shenandoah County as a Future Growth Area;
- A process for the Town to incrementally annex the Future Growth Area once various conditions have been met;
- The allowable uses for land in the Future Growth Area;
- A grant of immunity for the County from Town annexation except for areas in the Future Growth Area and/or by mutual agreement of the Parties for 20 years;
- A process for how cash payments to the Town for new development in annexed area in the Future Growth Area are to be paid to the County;

⁸ Minutes of the public hearing can be found under Section 3(A), page 64 of Appendix A.

⁹ Additional comments received by the Commission can be found under Section 3(B-C) and Section 4, pages 68-86 of Appendix A.

¹⁰ Va. Code Ann. § 15.2-3400; 15.2-2907(A) (2023).

¹¹ Commission on Local Government (2023). 'Report on the Voluntary Settlement Agreement Between the Town of New Market and Shenandoah County,' *Regular Meeting of the Commission, May 4, 2023*. All Virtual Public Meeting.

¹² Va. Code Ann. § 15.2-3400(4) (2023).

¹³ Appendix A, Section 4, [Letter from Josh Stephens], page 72.

¹⁴ Commission on Local Government, Report on the Town of New Market-Shenandoah County Voluntary Settlement Agreement, July 2010; <https://www.dhcd.virginia.gov/sites/default/files/Docx/clg/voluntary-settlement-agreement/town-of-new-market-county-of-shenandoah-voluntary-settlement-agreement-july-2010.pdf>.

- A dispute resolution process for any disputes that arise over the VSA, and;
- The length of the agreement between the Town and County.

As stated by the Parties in their oral testimonies, the 2012 VSA arose from concerns over managing growth in the Town at a time when new development in the area was accelerating.¹⁵ The Future Growth Area and its land use designations were designed to meet the current needs of the Parties and to allow for further coordination in their respective Comprehensive Plans.¹⁶ However, during the ten years since the 2012 VSA was adopted, the Town has not annexed any land in the Future Growth Area, and there has been no additional development in the Future Growth Area.¹⁷

Characteristics of the Town and County

Shenandoah County was formed on May 15, 1772. Located in the northwest region of Virginia, the County was known as Dunmore County until 1778 when its name was changed during the American Revolution.¹⁸ The County is adjacent to Frederick, Page, Rockingham, and Warren Counties. It also contains six incorporated towns, including the Town of New Market, formed on December 14, 1796.¹⁹ The Town of New Market and Shenandoah County are located in the Growth and Opportunity Virginia Region #8, which is characterized by a lower population density and a focus on growing targeted industries of Financial and Business Services, Light Manufacturing, Healthcare, IT and Communications, Transportation and Logistics, Value-added Food-related Manufacturing, and Biomedical/Biotechnical fields.²⁰

Despite their long history, the County and Town are experiencing greater economic challenges than much of the rest of the state. Furthermore, these challenges are substantially more pronounced in the Town than the County. For example, the median household incomes for both the County and Town are substantially less than the statewide median of \$80,600, with the median household in the County earning approximately \$58,600 a year, and the median household in the Town earning only \$42,700 (see Table 1). This means that in general, citizens of the Town, and to a lesser extent the County, have fewer resources to meet their economic needs. These limited resources also impact the Parties, as lower median household incomes equate to a smaller tax base from which the Parties may collect revenues.

Additionally, both the County and the Town demonstrate signs of aging populations and other concerning trends. The median age for County residents is 44.2 years old, compared to the statewide

¹⁵ Appendix A, Section 2C [Slide 10], page 49.

¹⁶ Appendix A, Section 2C [Slide 6], page 48.

¹⁷ Appendix A, Section 1A [Parties' Notice], page 5.

¹⁸ Shenandoah County, Historical Timeline, (2022); <https://sc250.org/>

¹⁹ New Market, History, (2023); <https://www.newmarketvirginia.com/explore/page/history>

²⁰ Virginia Department of Housing and Community Development, Region 8 Information, (2023); <https://govirginia.org/regions/eight/>

median of 38.5. The median age of Town residents is even greater at 50.6 years. Similarly, the share of children living in the County or Town is less than the statewide share: 21.4% of the County’s residents are younger than 18, compared to 22.1% of Virginians. The share of the Town’s population is even lower, where children comprise only 13.5% of the Town’s population. Finally, both the County and Town have experienced slower population growth rates than the State. The County’s population grew only 3.9% from 2011 – 2020, compared to the State population growth of 7.4%. The Town’s population declined over this same period by 3.5%. These indicators - aging and slowly growing or declining populations - represent signs of fiscal stress for the Parties. The population growth trends indicate a decreasing tax base from which to provide services. The aging populations further compound this stress on the Parties, as aging populations generally correlate with declines in labor forces, incomes, and overall economic activity.

Table 1: Selected Demographic and Economic Characteristics of Parties			
Population Characteristic (Margin of Error)*	Town of New Market	Shenandoah County	Virginia
Total population	2,281 (± 431)	44,037	8,582,479
Median age (years)	50.6 (± 13.8)	44.2 (± 0.7)	38.5 (± 0.1)
Percentage of Population < 18 years	13.5% (± 4.4%)	21.4% (± 0.2%)	22.1% (± 0.1%)
Population Change 2011 – 2020 (Percent)	-3.5%	3.9%	7.4%
Median Household Income	\$42,727 (± \$4,112)	\$58,609 (± \$3,681)	\$80,651 (± \$377)
Source for Shenandoah County: American Community Survey 5 Year Estimates, 2021, DP05			
Source for Town of New Market: American Community Survey 5 Year Estimates, 2021, S1903			
Source for Virginia: American Community Survey 5 Year Estimates, 2021, DP05			
*Margins of error are provided when available for certain sample estimates.			

When considered together, the statistics in Table 1 support the testimony that the Parties are facing economic stressors in their jurisdictions.²¹ However, in every instance the Town appears to face greater stress than the County (especially in terms of their demographic changes), with each indicator pointing to an overall lack of growth in the Town over the past decade.

²¹ Appendix A, Section 2(C) [slide 7], page 52.

Scope and Standard of Review

The Proposed Agreement was negotiated under Section 15.2-3400 of the Code of Virginia, which allows localities to settle interlocal issues through negotiated agreements. However, before localities enact any negotiated agreement, the Commission must review the negotiated agreement and issue an advisory report on “whether the proposed settlement is in the best interest of the Commonwealth.”²² When issuing its advisory report, the Commission is directed “to hold hearings, make investigations, analyze local needs,” and then submit its findings of fact and recommendations to the affected local governments.²³ The local governments may then adopt any recommendations before the agreement is sent to a special court for ultimate disposition.²⁴ The Commission’s report shall be admissible as evidence in any court proceedings on the agreement, but it shall not be binding upon any court and shall be advisory in nature only.²⁵

As noted in previous Commission reports, it is evident that the General Assembly encourages local governments to attempt to negotiate settlement of their interlocal concerns. One of the statutory responsibilities of the Commission is to assist local governments in such efforts.²⁶ In view of this legislative intent, the Commission believes that proposed interlocal agreements, such as the Proposed Agreement being considered, should be approached with respect and presumption of their compatibility with applicable statutory standards. The Commission notes, however, that the General Assembly requires interlocal agreements to be reviewed by this body prior to their final adoption by the local governing bodies and review by a court.²⁷ The Commission is 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 the Commission’s review a *pro forma* endorsement of any proposed settlement. The Commission’s responsibility to the Commonwealth and to the affected localities requires more.

Therefore, in determining the specific application of the “best interest of the Commonwealth” standard of review, the Commission considers whether the agreement will i) be beneficial to the orderly growth and continued viability of the localities, and ii) whether the agreement will promote strong and viable units of government in the Commonwealth. The first question is derived from the purpose of voluntary settlement agreements in general as provided in the Code of Virginia. Section 15.2-3400 states that localities should be allowed to settle certain issues because “a resolution [by voluntary agreement]

²² Va. Code Ann. § 15.2-3400(3) (2023).

²³ Va. Code Ann. § 15.2-3400(3) (2023); 15.2-2907(A) (2023).

²⁴ Va. Code Ann. § 15.2-3400(3) (2023).

²⁵ Va. Code Ann. § 15.2-2904(B) (2023); 15.2-3400 (2023).

²⁶ Va. Code Ann. § 15.2-2903(3) (2023).

²⁷ Va. Code Ann. § 15.2-3400(3) (2023).

can be *beneficial to the orderly growth and continued viability* of the localities of the Commonwealth,” (emphasis added). Furthermore, a court reviewing these agreements must consider “whether the interest of the Commonwealth in promoting *orderly growth and the continued viability* of localities has been met,”²⁸ (emphasis added). The best interest of the Commonwealth is that the Code of Virginia be given full force, both in letter and in spirit. Therefore, the Commission finds it necessary to consider whether the Proposed Agreement will be beneficial to the orderly growth and continued viability of the Town of New Market and Shenandoah County as envisioned by §15.2-3400.

The second question is derived from the purpose of the 2012 VSA. A key component of that agreement is the modification of specific annexation rights. The County has relinquished its ability to challenge an annexation by the Town, and the Town has relinquished its statutory right to annex land unless the Town follows the processes laid out in the 2012 VSA and various prerequisite conditions are met. Given that annexation rights are central to the 2012 VSA, the best interest of the Commonwealth standard, as applied to the Proposed Agreement, should draw from the contested annexation standards as well.²⁹ When considering a contested annexation, the Commission looks at “the best interests of the Commonwealth *in promoting strong and viable units of government*,” (emphasis added).³⁰ Therefore, the Commission will specifically evaluate whether the Proposed Agreement will promote strong and viable units of government as the Commission considers the best interest of the Commonwealth more broadly.

Findings of Fact and Recommendations

The Proposed Agreement contains the three substantive amendments that the Commission must review under the “best interest of the Commonwealth” standard by providing its findings of fact and recommendations for each. Additionally, general recommendations that are responsive to citizen comments and are related to the larger context surrounding the Proposed Agreement are provided in the General Recommendations subsection.

Amendment 1: Amend Section 3.1 of the 2012 Voluntary Settlement Agreement to replace Exhibit B with Exhibit B-1.

Findings of Fact: Land Use Constraints

Exhibit B in the 2012 VSA is the “Future Land Use Map” of the Town and County showing the Future Growth Area.³¹ Each section of the Future Growth Area is labeled with a description of the broad types of land uses that would be allowed if the Town were to annex that land in accordance with the 2012

²⁸ Va. Code Ann. § 15.2-3400(5) (2023).

²⁹ Va. Code Ann. § 15.2-2907 (2023).

³⁰ Va. Code Ann. § 15.2-3209 (2023).

³¹ Appendix A, Section 1C [2012 VSA, Exhibit B], page 32.

VSA.³² Amendment 1 in the Proposed Agreement substitutes a new Future Land Use Map, exhibit B-1,³³ which changes the descriptions of two portions of the Future Growth Area to the South and Southeast of the Town. Substituting Exhibit B for Exhibit B-1 will change the description attached to two portions of the Future Growth Area from “Res Low Cluster-Conservation” to “HOUSES/ TOWNHOUSES/ PUD” which will give the Town more flexibility to zone land in the Future Growth Area after it annexes the land under the Proposed Agreement.³⁴

Exhibit B-1 does not change the zoning classifications of these portions of the Future Growth Area. Instead, Section 3.2 of the 2012 VSA requires that any annexed land will be annexed under the “Transitional X District” to avoid having un-zoned land in the Town.³⁵ The transitional district allows for a limited number of land uses by right with a minimum lot size of 5 acres.³⁶ Once the land has been annexed, the Town shall follow the normal zoning ordinance procedures to “classify all parcels so annexed to Town zoning districts that substantially conform to” the descriptions on the Future Land Use Map.³⁷ This process is governed by the Virginia Code and requires public hearings and other forms of engagement.³⁸

The Commission finds that substituting Exhibit B-1 for Exhibit B is distinct from any rezoning process; the substitution only allows for the Town to begin exploring alternative land uses for land that might be annexed from the Future Growth Area and does not circumvent or abbreviate any review process or public engagement required by §15.2-2204. Because the Town has separate authority under statute and the 2012 VSA to rezone property after it is annexed, the substantive question before the Commission when considering Amendment 1 is whether it is in the best interest of the Commonwealth to allow the Parties to substitute a new Future Land Use Map such that the Town has the flexibility to consider a wider variety of residential densities in the targeted areas after it has annexed the land.

³² These descriptions are not specific zoning designations. The parties indicated that there may be several possible Town zoning designations available for each section of the Future Growth Area once it is annexed (See Appendix A, Section 5 [Further Information from the Parties], page 87). Currently, the annexation process for land use in the Future Growth Area is governed by Section 3 of the 2012 VSA and the Future Land Use Map. Section 3.3 states that the Town may only zone annexed land to a classification that substantially conforms to the description on the Future Land Use Map. When applied to the Town’s zoning ordinances, this means that, currently, land in the subject area may only be zoned for a maximum density of one home per two acres (See Appendix A, Section 2(C) [slide 17], page 59).

³³ See Appendix A, Section 1D [Proposed Agreement, Exhibit B-1], page 35.

³⁴ See Appendix A, Section 1D [Proposed Agreement, Exhibit B-1], page 35.

³⁵ Appendix A, Section 5 [Further Information from the Parties], page 87.

³⁶ Appendix A, Section 6A [New Market, Va., Zoning Ordinance Art. X-A (2023)], pages 89 - 91.

³⁷ Appendix A, Section 1C [2012 VSA, Section 3.3], page 21; Appendix A, Section 5 [Further Information from the Parties], page 87.

³⁸ Va. Code Ann. § 15.2-2204 (2023).

Findings of Fact: Economic and Demographic Considerations

Testimony from the Parties' oral presentations, public comment, and data analysis demonstrates the Town has experienced population and economic decline over the past decade. As indicated earlier in this report, the Town, and to a lesser extent the County, have experienced significant economic challenges as borne out by various data sources; the high median age of the Town (50.6 years old) and the low median household income (~\$42,000) are particularly striking indications of these challenges. The Commission also notes more tangible indications of the economic challenges facing the Town; for example, the Town's Chamber of Commerce was closed in 2023 due to a lack of available local volunteers in addition to a general loss of business in the Town.³⁹

The Parties also indicated in their oral presentations that the loss of businesses and population decline have been an effect of a lack of new residential "rooftops" in the Town.⁴⁰ Although the Town experienced significant development prior to the Great Recession in 2008, new housing construction dramatically decreased after that point as macroeconomic factors caused housing prices to decline and limit the start of any new construction.⁴¹ To that end, the Town went from constructing an average of 12 homes per year from 1992-2009 to less than 2 homes per year from 2009 – 2023.⁴²

The lack of housing development has been exacerbated by limited land available for development. While part of this is due to conservation easements obtained by the Shenandoah Battlefield Association,⁴³ the Commission heard that the limit on housing density in the Future Growth Area imposed by the 2012 VSA has made the area unattractive for new construction. At the public hearing, the Commission heard directly from one landowner in the Future Growth Area that the lack of flexibility for zoning has made new construction economically infeasible.⁴⁴ Furthermore, several citizens shared their personal challenges with finding housing in the Town and the surrounding portions of the County at the public hearing.⁴⁵

Analysis and Recommendations

According to the Commission's standard of review, the substitution of Exhibit B-1 for Exhibit B must be in the best interest of the Commonwealth in order for the Commission to recommend Amendment 1. It must therefore i) be beneficial to the orderly growth and continued viability of the Town and County, and ii) promote strong and viable units of government in the Commonwealth.

³⁹ Appendix A, Section 2C [slide 10], page 52.

⁴⁰ Appendix A, Section 2C [slide 6], page 48.

⁴¹ Appendix A, Section 2C [slide 9-10], pages 51-52.

⁴² Appendix A, Section 2C [Slide 9], page 51.

⁴³ Appendix A, Section 2C [Slide 12-14], pages 54 - 56.

⁴⁴ Appendix A, Section 3A [Public Hearing Minutes, Testimony of Jody Greber], page 66.

⁴⁵ Appendix A, Section 3A [Public Hearing Minutes, Testimony of Chris Rinker and Jeff Mongold], page 66.

Regarding the orderly growth and continued viability of the localities, the Commission found that the consequences of the decision to limit density in the Future Growth Area in 2012 have led to a lack of development, which has contributed to the limited economic growth in the Town. These limitations therefore threaten the long-term financial health of the Town. With respect to orderly growth, substituting Exhibit B-1 for Exhibit B does not satisfy or replace any requirements under §15.2-2204 that would be necessary to change land uses; rather, it only allows for a greater range of potential land use densities in a limited area following Town annexation. As such, Amendment 1, which has been agreed to by both Parties, is beneficial to the orderly growth of the localities because it increases flexibility to achieve mutually agreeable growth while not removing any required processes for citizen engagement or planning around zoning decisions.

Furthermore, Amendment 1 is likely needed to promote the strength and viability of the Town and County in the foreseeable future. As stated above, the 2012 VSA was negotiated and agreed to in a different economic climate than what the Town and County are currently experiencing. At that time, it contained reasonable restraints that would manage growth in the area. Since then, the Commission finds that the Town and County have experienced the opposite challenge, namely a decline in economic and business activity in the area driven by an aging population and lack of housing, specifically in the Town and surrounding areas of the County. The Commission notes that this lack of growth will ultimately limit the continued viability of the localities (particularly the Town, as demonstrated in the Characteristics section). By substituting Exhibit B-1 for Exhibit B, the Town, with the consent of the County, will be granted greater flexibility to determine the appropriate land use in the Future Growth Area and therefore promote its the growth and fiscal health.

The Commission finds that Amendment 1 in the Proposed Agreement is in the best interest of the Commonwealth and recommends it be adopted as proposed.

Amendment 2: Amend Section 3.4(a) of the 2012 Voluntary Settlement Agreement to add the italicized text below, so that it states as follows: The Town and the County agree that the obligations imposed on the Town Council with respect to zoning and rezoning matters as reflected in Subsections 3.1, 3.2, and 3.3 shall remain in effect and the Town Council will specifically comply with such Subsections, unless otherwise agreed to by the governing bodies of the Town and County after following the procedure set forth in Virginia Code § 15.2-2204(A), until such time as 75% of the original undeveloped acreage in the Future Growth Area has developed.

Findings of Fact

In addition to amending the Future Land Use Map, the Parties wish to adopt Amendment 2, which will allow for future amendments to the map and related portions of the 2012 VSA by mutual agreement after the processes set forth in 15.2-2204(A). Under the current arrangement, any amendments to the 2012 VSA require hearings, Commission review, and court approval before they can be adopted.⁴⁶ Testimony from the Parties during their oral presentations indicated that Commission review increases the complexity of making mutually agreeable land use changes in the Future Growth Area. The Parties noted that land use decisions are typically made at the local level (either between or within localities), and the Commission's review in this instance was only necessary because these restrictions were placed in an unamendable VSA.⁴⁷ Amendment 2 in the Proposed Agreement seeks to remedy this situation.

The ability to amend by joint agreement after a public hearing would give the localities greater flexibility to determine the Future Growth Area's future land uses. This flexibility to amend part of a VSA is not unprecedented. At least thirty-eight Commission-approved voluntary settlement agreements have an amendment provision of some sort, and twenty-seven of those only require mutual agreement of the parties with no further process or involvement from the Commission or the courts.⁴⁸ Furthermore, at least one voluntary settlement agreement between the City of Manassas Park and Prince William County has been amended by mutual agreement of the parties without Commission involvement.⁴⁹ With respect

⁴⁶ Section 7.2 of the 2012 VSA allowed for amendments only before the VSA went into effect. See Appendix A, Section 1C [2012 VSA, Section 7.2], page 26. While this question of law has not been decided by a court, the Commission, after consultation with its own counsel, assumes, without deciding or establishing any precedent, that amendments to a voluntary settlement agreement that does not contain an amendment provision must be treated as an entirely new voluntary settlement agreement. Creating a new agreement necessitates following the same procedures that were required to create the first agreement, namely, those required by Va. Code 15.2-3400 et seq.

⁴⁷ Appendix A, Section 2C [slide 2], page 44.

⁴⁸ A review of amendment provisions in a sample of previous Voluntary Settlement Agreements approved by the Commission that were readily searchable electronically is on page 98 of Appendix A.

⁴⁹ See In re Voluntary Settlement of Annexation and Immunity Agreement, 2000 Va. Cir. 168, 169 (2000) (also on page 92 in Appendix A).

to amending land use restrictions specifically, the 2005 Voluntary Settlement Agreement between the Town of Stephens City and Frederick County allows the future land use plan (similar to the maps at issue here) to be amended by simple joint agreement of the Town and County.

Analysis and Recommendations

Again, the Commission is tasked with determining whether Amendment 2 in the Proposed Agreement would i) be beneficial to the orderly growth and continued viability of the Town and County, and ii) promote strong and viable units of government in the Commonwealth. Localities are not required by Virginia Code to come before the Commission for review of any land use changes, and yet the 2012 VSA has put this requirement on the Town of New Market and Shenandoah County. The Parties, in full cooperation with one another, are seeking to remove this requirement for Commission review and replace it with the typical process for ordinance changes outlined in 15.2-2204(A). The ample historical record of similar and often less demanding amendment provisions within voluntary settlement agreements indicates that the provisions of Amendment 2 are common and reasonable.

As with Amendment 1 analyzed above, any further changes made to the Future Land Use Map will be a separate procedure from the requirements under §15.2204(A) relating to zoning changes. Any rezoning in the Future Growth Area subsequent to an annexation will have to follow the zoning process, including periods of public comment and public notice. The amendment recommended here only allows for the Parties to undergo the process to potentially change land use decisions in the defined Future Growth Area without further Commission approval. It in no way circumvents or abbreviates the zoning and rezoning process.

In the same way that Exhibit B created unintended consequences for the Parties that led to Amendment 1, the inability to amend land use in the Future Growth Area may, in the future, create further unintended consequences for the Parties that would limit the future viability of these localities, most notably the Town. In order to promote their own orderly growth and continued viability, the Parties require flexibility to work together to achieve a land use and annexation process that will ensure their continued strength. Therefore, the Commission finds that amendment provisions that give power to the localities to determine local issues with reasonable guard rails such as mutual agreement after a public hearing are in the best interest of the Commonwealth. Accordingly, the Commission recommends the adoption of Amendment 2 in the Proposed Agreement to allow for the Parties, by joint agreement after a public hearing, to amend the land uses allowed within the Future Growth Area without needing to follow the additional requirements in §15.2-3400.

Amendment 3: Amend Section 7.2 of the 2012 Voluntary Settlement Agreement to read as follows: This Agreement may be amended by mutual agreement of the Town and the County after following the procedure set forth in Virginia Code § 15.2-2204(A). Any modifications to Exhibit B-1 should note the projected density at build out under the existing plan and the proposed modified plan.

Findings of Fact

In addition to being able to amend the Future Land Use Map and related provisions of the 2012 VSA, Amendment 3 in the Proposed Agreement, which amends Section 7.2 of the 2012 VSA, would allow the Parties to amend any other portion of the 2012 VSA by mutual agreement after a public hearing. As indicated above, there is historical precedent from the Commission to allow voluntary settlement agreements to be amended without further involvement from the Commission. Because the relevant findings of fact for these provisions are substantively identical, no further findings are necessary for the analysis of Amendment 3.

Analysis and Recommendations

The Commission recommends the Parties make further changes to Amendment 3 to clarify that the basic character of the 2012 VSA cannot be changed without further involvement of the Commission and courts. While the substance of Amendment 3 in the Proposed Agreement is the same as Amendment 2, the scale is much broader. The provisions of Amendment 2 are constrained to land use in the future growth area, which the Commission believes is a local matter that should be left to the Parties. Amendment 3, on the other hand, would potentially allow the Parties to address issues outside the scope of the 2012 VSA or make a whole new agreement by mutual consent and a public hearing, thus circumventing the need for Commission review and court approval in perpetuity.

The Commission has addressed this issue previously. In a 1999 voluntary settlement agreement between the Town of Franklin and Southampton County, the two localities included a provision stating that some sections would require both Commission and court approval to amend, while others would require only mutual consent. The Commission addressed this issue in its report, stating, in relevant part:

“The exclusion of changes [to specified provisions] from the review process prescribed by Section 15.2-3400 of the Code of Virginia rests, we assume, upon the judgment of the parties that no modifications to those sections would significantly impact the other long-term provisions of the current agreement which clearly require judicial sanction. While this Commission considers it desirable for jurisdictions to have the ability to modify elements of their interlocal agreements in an expeditious manner in recognition of changing needs and circumstances, and while we consider the distinction in the amendment process prescribed by [the amendment provisions] of

the current agreement as being reasonable, we are obliged to state that our recommendation to the court rests solely upon the current substantive provisions of the instrument and not upon consideration of prospective changes.”⁵⁰

The Commission did not recommend any changes to the Town of Franklin and Southampton County’s voluntary settlement agreement. However, given the circumstances that gave rise to the review of this Proposed Agreement (namely that the Parties realized in 2022 that the 2012 VSA did not have any amendment provisions and have expressly stated that they wish to avoid Commission review because it is time-consuming), the logic of our previous precedents requires more in this circumstance. Therefore, the Commission recommends the Parties add language specifying that future amendments to the 2012 VSA must be relevant and germane to the substance of the original agreement. Such substance includes, but is not limited to, the creation of the Future Growth Area by the Town and County and the processes by which the Town may annex land in that area. While the Commission believes it is in the best interest of the Commonwealth to allow the Parties the flexibility to modify the Proposed Agreement and finds Amendment 3 reasonable in concept, modification of the 2012 VSA beyond its original scope would allow for a potential circumvention of Commission and court review and would not be in the best interest of the Commonwealth because it would be contrary to the intent of Section 15.2-3400 of the Code of Virginia.

General Recommendations

In addition to the recommendations related to the Proposed Agreement, the Commission heard concern from citizens of the Town and County through oral and written public comment about the consequences of development in the proposed Future Growth Area.⁵¹ As stated in the proceedings of this case, the Commission’s role is to review the Proposed Agreement, which only contains amendments to the 2012 VSA between the Town and County, and make recommendations on whether the Proposed Agreement is in the best interest of the Commonwealth. These proceedings do not comment or judge the merits of certain zoning decisions, as the Commission believes those processes are best left to the local governments. The Commission believes that comments on the impacts of these zoning decisions should be made during the zoning process, rather than the Commission’s review of interlocal agreements.

However, the Commission believes that central to the orderly growth and viability of any locality is its responsiveness to citizen concerns and the prioritization of their wellbeing during decision-making. As such, the Commission does acknowledge citizen concerns about the potential impact of development

⁵⁰ Commission on Local Government, Report on the City of Franklin-County of Southampton Revenue-Sharing Agreement, 32, January 1999; <https://www.dhcd.virginia.gov/sites/default/files/Docx/clg/voluntary-settlement-agreement/city-of-franklin-county-of-southampton-revenue-sharing-agreement-february-1999.pdf>.

⁵¹ All public comments received as well as minutes from the public hearing can be found in Appendix A in Sections 3A-C and Section 4., beginning on page 64.

received through public comment and the public hearing. To that end, the Commission recommends the Town and County work diligently to promote awareness and to invite public comment on any changes to land use, including any future changes to Exhibit B-1, the Proposed Agreement, and/or zoning changes within the Future Growth Area. This includes not only following the prescribed notification periods in §15.2204(A), but also proactive outreach to the community through additional means (such as through mail flyers, newspaper ads, emails, etc.). Furthermore, the Commission also strongly recommends the Parties work together to directly notify the individual property owners who may be impacted by changes to future land uses and annexation processes that are accomplished through changes to the Proposed Agreement.

Finally, the Commission recommends that if any new development is formally proposed during or before the necessary rezoning process that is required after an annexation, that the Parties endeavor to thoroughly consider any impacts to residents above and beyond what may be required by law. This may include the need to perform studies to gauge the impact of the proposed development on the area, particularly related to impacts on transportation (traffic, roads, etc.) and the demands on the Town's water and sewer systems.

Appendix A

Official Public Record of the
Town of New Market – Shenandoah County
Proposed Voluntary Settlement Agreement

Prepared by the Commission on Local Government

May 2023

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Section 1

Submission by the Parties to the Commission on Local Government

October 28, 2022

1A – Notice of Shenandoah County and the Town of New Market of their Intention to Enter into a
Voluntary Settlement Agreement

1B – Joint Resolution of Shenandoah County and the Town of New Market

1C – Second Amended Voluntary Settlement Agreement Between the Town of New Market and
Shenandoah County

1D – Amendment to Second Amended Voluntary Settlement Agreement Between the Town of New
Market and Shenandoah County

1E – Correspondence Regarding the VSA Amendment

VIRGINIA:

BEFORE THE COMMISSION ON LOCAL GOVERNMENT

**RE: AMENDMENT TO SECOND
AMENDED VOLUNTARY
SETTLEMENT AGREEMENT
BETWEEN THE TOWN OF
NEW MARKET AND
SHENANDOAH COUNTY**

**NOTICE OF THE COUNTY OF SHENANDOAH, VIRGINIA AND THE
TOWN OF NEW MARKET, VIRGINIA OF THEIR INTENTION TO
PETITION FOR THE APPROVAL OF AN AMENDMENT TO SECOND
AMENDED VOLUNTARY SETTLEMENT AGREEMENT BETWEEN
THE TOWN OF NEW MARKET AND SHENANDOAH COUNTY**

Pursuant to § 15.2-3400 of the Virginia Code, and § 1 Virginia Administrative Code (“VAC”) 50-20-230, the County of Shenandoah, Virginia (the “County”), and the Town of New Market, Virginia (the “Town”), by their counsel, hereby notify the Commission on Local Government (the “Commission”), and all Virginia local governments contiguous to, or sharing any function, revenue, or tax source with the County or the Town, of their intention to refer an Amendment to Second Amended Voluntary Settlement Agreement Between the Town of New Market and Shenandoah County (the “VSA Amendment”), to the Commission, and to approve and give full force and effect to the VSA Amendment. In support of this Notice, the Parties state the following:

1. On the 15th day of March, 2012, the County and the Town entered into a Second Amended Voluntary Settlement Agreement between the Town of New Market and Shenandoah County (the “VSA”), **Exhibit 1**.
2. The VSA was affirmed by order of a special three judge panel pursuant to Code of Virginia § 15.2-3400 on May 1, 2012.

3. The VSA provided that the Town could annex from time to time by Town ordinance portions of land containing a total of approximately 1918 acres known as the Future Growth Area subject to certain terms in the VSA.

4. One of those VSA terms is that the land use in the Future Growth Area shall be in conformity with the Future Land Use Map attached to the VSA as exhibit B, as further described in section 3 of the VSA.

5. During the ten years since the VSA was adopted, no development has occurred in the Future Growth Area, and no territory has been annexed by the Town. In addition, the Shenandoah Valley Battlefields Foundation has purchased or obtained conservation easements over portions of the Future Growth Area, limiting the Town's growth within those originally conceived areas.

6. The parties wish to allow additional future uses of the areas to be annexed through the substitution of a new exhibit B-1, which provides for additional uses in two areas of the Future Growth Area. The two amendments are in the bottom of exhibit B-1 to the VSA Amendment, as hereinafter defined, and are marked Houses/Townhouses/PUD.

7. The parties also wish to add flexibility to the VSA in order to allow possible additional amendments to the uses permitted in the Future Growth Area and to the VSA by mutual consent of the Town and County, but without the necessity of instituting court action pursuant to Code of Virginia § 15.2-3400.

8. In order to begin the process of amending the VSA, following open meetings of both parties, the governing bodies of both parties have approved and both parties have executed an Amendment to Second Amended Voluntary Settlement Agreement Between the Town of New Market and Shenandoah County (the "VSA Amendment"), **Exhibit 2**.

9. Although the future growth area maps attached to both the VSA and the VSA Amendment reference growth into Rockingham County, the County and the Town recognize and agree that neither the VSA nor, should it become effective, the VSA Amendment allow annexation of portions of Rockingham County as Rockingham County is not a party to either agreement, and such annexation would require a court order that neither the County nor the Town are seeking.

10. Code of Virginia § 15.2-3400 provides that the VSA Amendment shall not become effective until all of the provisions of such section are complied with, which includes submission to the Commission, receipt of the Commission’s recommendations, public hearings, and approval by a special three judge court.

11. Code of Virginia § 15.2-3400(3) provides if a voluntary agreement is reached that the governing bodies shall present to the Commission the proposed settlement so that, following public hearings, the Commission may report to the governing bodies their findings and recommendations.

12. 1 VAC 50-20-230 requires that referral of a proposed voluntary settlement agreement to the Commission under the provisions of Code of Virginia § 15.2-3400 shall be accompanied by resolutions, joint or separate, of the governing bodies of the localities that are parties to the proposed agreement requesting that the Commission review the agreement, stating the parties’ intention to adopt the agreement, and providing certain information to the Commission.

13. The County and the Town have passed a Joint Resolution of Shenandoah County and the Town of New Market Requesting that the Commission on Local Government Review a Proposed Amendment to the Second Amended Voluntary Settlement Agreement (the “Joint Resolution”).

14. The Joint Resolution was passed by the County on October 11, 2022 and by the Town on October 17, 2022.

15. The Parties’ have respectively designated as their principal contacts with the Commission the following individuals, who, along with the undersigned Counsel, may be contacted by the Commission or any locality to whom this Notice is sent:

COUNTY OF SHENANDOAH, VIRGINIA
Evan Vass, County Administrator
Shenandoah County, Virginia
600 N. Main Street, Suite 102
Woodstock, Virginia 22664
Phone: (540) 459-6165
Fax: (540) 459-6168
Email: evass@shenandoahcountyva.us

TOWN OF NEW MARKET, VIRGINIA
J. Todd Walters, Town Manager
Town of New Market, Virginia
9418 John Sevier Road
Post Office Box 58
New Market, Virginia 22844
Phone: (540) 740-3432
Fax: (540) 740-9204
Email: t.walters@newmarketvirginia.com

16. Pursuant to § 1 VAC 50-20-230(C), the Parties have mailed copies of the Notice, Joint Resolution, VSA, VSA Amendment, correspondence of 9/23/2022, and the Annotated Index to each Virginia local government contiguous with the County of Shenandoah, Virginia and/or the Town of New Market, Virginia, and each Virginia local government with which the County or Town share any function, revenue, or tax source.

17. The undersigned attorney for the parties certifies pursuant to § 1 VAC 50-20-390(L) that the source of the information provided in this Notice came from publicly available sources and was learned during the course of representation of the County and the Town. The undersigned further certifies that the material is correct within the knowledge of the submitting party.

WHEREFORE, the County of Shenandoah, Virginia and the Town of New Market, Virginia request that the Commission find that the VSA Amendment is in the best interest of the Commonwealth and that it recommends that the VSA Amendment be affirmed and given full force and effect by a special three-judge court.

Respectfully submitted this 26th day of October, 2022.

COUNTY OF SHENANDOAH, VIRGINIA
And
TOWN OF NEW MARKET, VIRGINIA
By Counsel

LITTEN & SIPE, L.L.P.

By: _____
Jason J. Ham

Virginia State Bar No. 41514
410 Neff Avenue
Harrisonburg, Virginia 22801-3434
Telephone: (540) 434-5353
Facsimile: (540) 434-6069
Email: jason.ham@littensipe.com

Counsel for the County of Shenandoah, Virginia and the Town of New Market, Virginia

LOCAL GOVERNMENTS NOTIFIED

Pursuant to § 1 VAC 50-20-230(C), the Parties have mailed copies of the Notice, Joint Resolution, VSA, VSA Amendment, correspondence of 9/23/2022, and Annotated Index to each Virginia local government contiguous with the County of Shenandoah, Virginia and/or the Town of New Market, Virginia, and each Virginia local government with which the County of Shenandoah County, Virginia and/or the Town of New Market, Virginia share any function, revenue, or tax source.

FREDERICK COUNTY

Michael L. Bollhoefer
107 North Kent Street
Winchester, Virginia 22601
Phone: (540) 665-5666
Facsimile: (540) 667-0370
Email: michael.bollhoefer@fcva.us

Roderick B. Williams, Esq.
107 North Kent Street
3rd Floor
Winchester, Virginia 22601
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PAGE COUNTY

Amity Moler
103 South Court Street
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Luray, Virginia 22835
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ROCKINGHAM COUNTY

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WARREN COUNTY

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TOWN OF EDINBURG

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TOWN OF MOUNT JACKSON

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TOWN OF TOMS BROOK

Mayor Lisa Currie
3342 South Main Street
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TOWN OF WOODSTOCK

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Email: jay@pjneallaw.com

ANNOTATED INDEX

The following is an annotated list of the documents, exhibits, and other materials the Parties have submitted to the Commission:

1. Joint Resolution of Shenandoah County and the Town of New Market Requesting that the Commission on Local Government Review a Proposed Amendment to the Second Amended Voluntary Settlement Agreement (the “Joint Resolution),
2. Second Amended Voluntary Settlement Agreement Between the Town of New Market and Shenandoah County, attached to the Joint Resolution as Exhibit 1.
3. Amendment to Second Amended Voluntary Settlement Agreement Between the Town of New Market and Shenandoah County, attached to the Joint Resolution as Exhibit 2.
4. Correspondence of 9/23/2022 from Jason Ham to LeGrand Northcutt, Esquire regarding the VSA Amendment.

RESOLUTION #: 245

JOINT RESOLUTION OF SHENANDOAH COUNTY AND THE TOWN OF NEW MARKET REQUESTING THAT THE COMMISSION ON LOCAL GOVERNMENT REVIEW A PROPOSED AMENDMENT TO THE SECOND AMENDED VOLUNTARY SETTLEMENT AGREEMENT

WHEREAS, on the 15th day of March, 2012, Shenandoah County, Virginia (the “County”) and the Town of New Market, Virginia (the “Town”) entered into a Second Amended Voluntary Settlement Agreement between the Town of New Market and Shenandoah County (the “VSA”), **Exhibit 1**; and

WHEREAS, the VSA was affirmed by order of a special three judge panel pursuant to Code of Virginia § 15.2-3400 on May 1, 2012; and

WHEREAS, the VSA provided that the Town could annex from time to time by Town ordinance portions of land containing a total of approximately 1918 acres known as the Future Growth Area subject to certain terms in the VSA; and

WHEREAS, one of those VSA terms is that the land use in the Future Growth Area shall be in conformity with the Future Land Use Map attached to the VSA as exhibit B, as further described in section 3 of the VSA; and

WHEREAS, during the ten years since the VSA was adopted, no development has occurred in the Future Growth Area, and no territory has been annexed by the Town. In addition, the Shenandoah Valley Battlefields Foundation has purchased or obtained conservation easements over portions of the Future Growth Area, limiting the Town’s growth within those originally conceived areas; and

WHEREAS, the parties wish to allow additional future uses of the areas to be annexed through the substitution of a new exhibit B-1, which provides for additional uses in two areas of the Future Growth Area. The two amendments are in the bottom of exhibit B-1 to the VSA Amendment, and are marked Houses/Townhouses/PUD; and

WHEREAS, the parties also wish to add flexibility to the VSA in order to allow possible additional amendments to the uses permitted in the Future Growth Area and to the VSA by mutual

consent of the Town and County, but without the necessity of instituting court action pursuant to Code of Virginia § 15.2-3400; and

WHEREAS, in order to begin the process of amending the VSA, following open meetings of both parties, the governing bodies of both parties have approved and both parties have executed an Amendment to Second Amended Voluntary Settlement Agreement Between the Town of New Market and Shenandoah County (the “VSA Amendment”), **Exhibit 2**; and

WHEREAS, Code of Virginia § 15.2-3400(6) provides that the VSA Amendment shall not become binding on the parties until affirmed by a special three judge panel after compliance with all provisions of Code of Virginia § 15.2-3400; and

WHEREAS, Code of Virginia § 15.2-3400(3) provides if a voluntary agreement is reached that the governing bodies shall present to the Commission on Local Government (the “Commission”) the proposed settlement so that, following public hearings, the Commission may report to the governing bodies their findings and recommendations; and

WHEREAS, 1VAC50-20-230 requires that referral of a proposed voluntary settlement agreement to the Commission under the provisions of Code of Virginia § 15.2-3400 shall be accompanied by resolutions, joint or separate, of the governing bodies of the localities that are parties to the proposed agreement requesting that the Commission review the agreement, stating the parties’ intention to adopt the agreement, and providing certain information to the Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF SHENANDOAH COUNTY, VIRGINIA AND THE TOWN COUNCIL OF THE TOWN OF NEW MARKET, VIRGINIA THAT:

1. The County and the Town request that the Commission review the VSA Amendment and state their intention to adopt the VSA Amendment subsequent to the Commission’s review.
2. The County Administrator, Town Manager and the parties’ Attorney are authorized and directed to refer the VSA Amendment, together with all necessary data and materials, to the Commission and to take all other actions as may be required to accomplish the Commission’s review of the VSA Amendment; and
3. The County designates the following individual as the County’s contact persons for communications with the Commission regarding the review of the VSA Amendment:

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Evan Vass, County Administrator
 Shenandoah County, Virginia
 600 N. Main Street, Suite 102
 Woodstock, Virginia 22664
 Phone: 540-459-6165
 Fax: 540-459-6168
 Email: evass@shenandoahcountyva.us

4. The Town designates the following individual as the Town’s contact person for communications with the Commission regarding the review of the Agreement:

J. Todd Walters, Town Manager
 Town of New Market, Virginia
 9418 John Sevier Road
 Post Office Box 58
 New Market, Virginia 22844
 Phone: 540-740-3432
 Fax: 540-740-9204
 Email: t.walters@newmarketvirginia.com

Adopted by the County this 11th day of October, 2022.

CERTIFICATE


The undersigned Chairman and Clerk of the Board of Supervisors of Shenandoah County, Virginia hereby certify that the foregoing constitutes a true and correct copy of a Joint Resolution of Shenandoah County and the Town of New Market Requesting that the Commission on Local Government Review a Proposed Amendment to the Second Amended Voluntary Settlement Agreement adopted by the Board of Supervisors at a meeting held on October 11, 2022. A record of the roll-call vote by the Board of Supervisors is as follows:

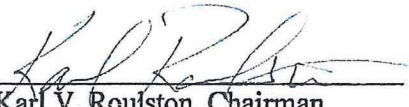
<u>NAME</u>	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Karl V. Roulston, Chairman	X			
Dennis M. Morris, Vice Chairman	X			
Steven A. Baker	X			
Bradley G. Pollack		X		
Josh M. Stephens	X			
Timothy F. Taylor	X			

Date: October 11, 2022

[SEAL]

ATTEST:


Evan L. Vass, Clerk
Shenandoah County, Virginia


Karl V. Roulston, Chairman
Board of Supervisors of
Shenandoah County, Virginia

Adopted by the Town this 17th day of October, 2022.

CERTIFICATE

The undersigned Mayor and Clerk of the Town Council of the Town of New Market, Virginia hereby certify that the foregoing constitutes a true and correct copy of a Joint Resolution of Shenandoah County and the Town of New Market Requesting that the Commission on Local Government Review a Proposed Amendment to the Second Amended Voluntary Settlement Agreement adopted by the Town Council at a meeting held on October 17, 2022. A record of the roll-call vote by the Town Council is as follows:

<u>NAME</u>	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Larry Bompiani, Mayor*				
Peggy Harkness	✓			
Janice Hannah	✓			
Peter Hughes	✓			
Bob King	✓			
Daryl Watkins				✓
Scott Wymer	✓			


*Mayor Bompiani votes in the event of a tie

Date: October 17, 2022

[SEAL]

ATTEST:


Larry Bompiani, Mayor
Town of New Market, Virginia


J. Todd Walters, Clerk
Town of New Market, Virginia

**SECOND AMENDED VOLUNTARY SETTLEMENT AGREEMENT BETWEEN
THE TOWN OF NEW MARKET AND SHENANDOAH COUNTY**

THIS AGREEMENT is made and entered into this 15 day of MARCH, 2012, and executed in triplicate originals (each executed copy constituting an original) by and between the TOWN OF NEW MARKET, VIRGINIA, a municipal corporation of the Commonwealth of Virginia, and the COUNTY OF SHENANDOAH, VIRGINIA, a political subdivision of the Commonwealth of Virginia.

WHEREAS, the Town and the County have reached this Agreement, pursuant to Title 15.2, Chapter 34, of the Code of Virginia, (i) providing for the annexation of certain territory of the County to the Town (ii) providing for the development of the annexation areas in accordance with a jointly approved land use map, (iii) providing for the grant of immunity to the County from annexation for a period of 20 years, and (iv) providing for the transfer of certain funds received by the Town to the County.

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

SECTION 1
DEFINITIONS

The Town and the County hereto agree that the following words, terms, and abbreviations as used in this Agreement shall have the following defined meanings, unless the context clearly provides otherwise:

- 1.1 "Town" means the Town of New Market, Virginia.
- 1.2 "Town Council" means the Town Council of the Town of New Market, Virginia.
- 1.3 "County" means the County of Shenandoah, Virginia.

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- 1.4 "County Board of Supervisors" means the Board of Supervisors of the County of Shenandoah, Virginia.
- 1.5 "Code" means the Code of Virginia (1950), as amended. A reference to a specific Code provision shall mean that Code provision as it existed on the date of execution of this Agreement, or any successor provision should the Code be amended after execution of this agreement.
- 1.6 "Commission" means the Commission on Local Government.
- 1.7 "Special Court" means the Special Three-Judge Court appointed by the Supreme Court of Virginia pursuant to Title 15.2, Chapter 30, of the Code.
- 1.8 "Section" refers to the parts of this Agreement unless the context indicates that the reference is to sections of the Code.
- 1.9 "Subsection" refers to the parts of this Agreement set out in the various "Sections."
- 1.10 "Future Land Use Plan" refers to the written text outlining the future land use for Future Growth Area entitled "future land use plan."
- 1.11 "Future Land Use Map" attached as Exhibit B

SECTION 2
ANNEXATION

- 2.1 Annexation Area. The Town and the County agree to the annexation of County territory lying generally to the north, south, east and west of the existing Town corporate limits. This area is referred to as the Future Growth Area and is described by metes and bounds in Exhibit A and is depicted on the map attached as Exhibit B to this Agreement containing approximately 1,918 acres. The

annexation by the Town shall occur in strict accordance with the terms and conditions set out in Section 2 of this Agreement.

2.2 Survey of Parcels in Future Growth Area. Prior to the annexation of any parcel in the Future Growth Area, the Town shall have prepared, without expense to the County, a survey plat and metes and bounds description showing the parcel or parcels being annexed into the Town, as required by Subsection 2.5(b).

2.3 Terms and Conditions of Annexation. The Town and County agree that the Town may annex any tax parcel or parcels in the Future Growth Area by the passage of an ordinance by the Town Council, provided that either subsection 2.3 (a), 2.3 (b), or 2.3 (c) has been satisfied.

- (a) The tax parcel is deemed developed subsequent to the effective date of this Agreement, as the term “developed” is defined in Subsection 3.4; or
- (b) The tax parcel or parcels are currently being served by Town water, sewer or both; or
- (c) An owner in the Future Growth Area requests the annexation of a tax parcel or parcels in the Future Growth Area to the Town subsequent to the effective date of this Agreement; and
- (d) The tax parcel or parcels referred to in Subsections 2.3 (a), (b), and (c) of this Section that are to be annexed are either contiguous to the Town or contiguous to another tax parcel that is contiguous to the Town;
- (e) In the event annexation is sought for a tax parcel or parcels that are not contiguous to the Town but are contiguous to another tax parcel or parcels that are contiguous to the Town, the tax parcel or parcels that are not

contiguous to the Town must meet the requirements of Subsection 2.3 (a), (b), or (c) of this Section. The contiguous parcel or parcels shall also be annexed to the Town to insure that the Town remains a compact body of land.

- (f) No annexation shall include land greater than 12% of the total Future Growth Area except as otherwise noted in Section 2.4 of this agreement. The Town agrees that all such annexations shall be consistent with its Comprehensive Plan concerning growth.

2.4 Complete Annexation of Future Growth Area. When 75% of the acres in the Future Growth Area have developed as that term is defined in Subsection 3.4 of this Agreement, the Town may annex the remaining tax parcels within the Future Growth Area without regard to the 12% limitation set forth in Subsection 2.3(f) of this Agreement.

2.5 Conditions Precedent to the Town Annexing by Ordinance Pursuant to Subsections 2.1, 2.2, 2.3, and 2.4 of this Agreement. The Town shall not pass any ordinance to annex any territory in the Future Growth Area unless and until:

- (a) The Town provided the County written notice of its intent to adopt an annexation ordinance for any tax parcel or parcels in the Future Growth Area. Such notices shall be delivered at least 60 days prior to the adoption of an annexation ordinance.
- (b) The Town provides with the Annexation Notice to the County, (i) a metes and bounds description, (ii) survey plat of the tax parcel or parcels to be annexed to the Town, and (iii) a written statement of the Town's basis for annexing such tax parcel or parcels. Such written statement should include

reference to specific Subsections of this Agreement that permit such annexation.

- 2.6 Effective Date of Annexation by Ordinance. The effective date of any annexation that occurs pursuant to Section 2 of this Agreement shall be established in the Annexation Ordinance as of either June 30th or December 31st, at the discretion of the Town.
- 2.7 Extension of Municipal Services. The Town agrees to only annex such areas as can be served by water and sewer within a period of five (5) years from the date of annexation and will allow its water and sewer service to be extended to the tax parcel or parcels that are annexed to the Town on the same basis and at the same levels as such services are now or hereafter provided in areas within its current corporate limits where like conditions exist. Water and sewer services shall be extended into annexed areas only as it becomes reasonably necessary and economically feasible. Additionally, other municipal services, exclusive of water and sewer, will be extended by the Town into annexed areas on the effective date of each annexation, or as soon as practicable. All such services will be at the same level and quality as are generally available within the entire Town.

SECTION 3

LAND USE AND ZONING IN THE FUTURE GROWTH AREA

- 3.1 Future Land Use. The Town and the County agree that the orderly development of the Future Growth Area is in the best interest of both parties. The Town and the County have agreed upon the Future Land Use Map attached hereto as Exhibit B. The Future Land Use Map depicts the types of land uses for the Future Growth Area that the Town and the County have agreed are most appropriate for the reasonably near future. The Future Land Use Map is to serve as a guide to future development as specified in Section 3 of this Agreement. The Town and the County have already amended their respective Comprehensive Plans to

incorporate the Future Land Use Map. The Town further agrees to amend their zoning ordinance to reflect the zoning districts proposed on the Future Land Use Map prior to any annexation requests.

3.2 Interim Zoning Classifications. Until such a time as a zoning classification is assigned, any unzoned land within the corporate boundaries may be used only as permitted by the regulations of the Transitional X District as set forth in the Town of New Market Zoning Ordinance.

3.3 Affirming or Rezoning of Interim Zoning Classifications.

- (a) Within six (6) months after the effective date of a Future Growth Area Annexation, the Town Council shall classify all parcels so annexed to Town zoning districts that substantially conform to the Future Land Use Plan.
- (b) After completing the herein referenced classification process, the Town Council shall then have the full discretion and power to approve or disapprove any rezoning requests, whether initiated by the property owners or the Town itself provided that the Town specifically agrees that it will only approve rezoning requests that substantially conform to the Future Land Use Plan until the terms and conditions of Subsection 3.4 of this Agreement are complied with.

3.4 Future Land Use Constraints.

- (a) The Town and the County agree that the obligations imposed on the Town Council with respect to zoning and rezoning matters as reflected in Subsections 3.1, 3.2, and 3.3 shall remain in effect and the Town Council will specifically comply with such Subsections until such time as 75% of the original undeveloped acreage in the Future Growth Area has developed.

- (b) After the development of 75% of the undeveloped acreage in the Future Growth Area, the Town Council shall have complete discretion to deal with all zoning and rezoning matters within the Future Growth Area upon the merits of each zoning application without reference to Subsections 3.1, 3.2, and 3.3.
- (c) In determining whether 75% of the acreage in the Future Growth Area is developed, the Town and the County agree that Subsection 3.4 (d) and (e) shall be followed and applicable to the 75% calculation in the Future Growth Area.
- (d) The Town and the County agree that the term “developed” as used in this Agreement for the purpose of making the 75% calculation shall mean:
 - (1) The Town and the County agree that if a residential dwelling of any kind is constructed upon any tax parcel in the Future Growth Area which contains five (5) acres or less, then that entire parcel shall be deemed developed.
 - (2) The Town and the County agree that if a residential dwelling of any kind is constructed upon any tax parcel in the Future Growth Area which contains more than five (5) acres, then only five (5) acres of that tax parcel shall be deemed developed.
 - (3) The Town and the County agree that any tax parcel in the Future Growth Area that is exclusively in commercial or industrial use shall be deemed developed in making the 75% calculation.

- (4) The Town and the County agree that any tax parcel being used for commercial or industrial activities on which agricultural operations or uses are also occurring, including the planting and harvesting of crops or plant growth of any kind, pasture, horticulture, silviculture, dairying, floriculture, or the raising of poultry and/or livestock, then the portion (or acreage) of such tax parcel being put to such agricultural uses shall be deemed undeveloped in making the 75% calculation.
- (e) The Town and the County agree that any tax parcel or part of any tax parcel used for public roads and highways or public facilities, or which lies in the 100-year flood plain shall be excluded from the total acreage in the Future Growth Area for the purposes of making the 75% calculation.
- (f) The Town agrees that properties currently shown on the Future Growth Area Map may remain in the Agricultural and Forest District as long as they remain in Shenandoah County. In the event that a tax parcel or parcels are located in the Agricultural and Forest District and the property owner has requested the property to be annexed, they must also request that the property be removed from the Agricultural and Forest District by the County and have such request approved prior to any approval of annexation by the Town. Both parties recognize that land within the Agricultural and Forest District is limited in its growth potential.
- (g) Prior to annexation, in the event of rezoning requests, special use requests, non-conforming uses or any other use situations not permitted by right in the Shenandoah County Zoning Ordinance, the County Zoning Administrator shall refer any such matter for a joint review by the County Planning Commission and the Town Planning Commission. The respective commissions may meet jointly and shall make their recommendations

jointly or severally, as each respective commission may so desire, to the County Board of Supervisors, as provided by law. The Town agrees that, provided such referrals are made in a timely fashion so as to allow adequate time for review, the Town Planning Commission shall in turn make a timely recommendation, if any, so as not to delay formal action by the County. Any such referrals by the County Zoning Administrator to the Town Planning Commission should be made no less than 10 days prior to any meeting of the Town Planning Commission during which action thereon by the Town Planning Commission is desired.

SECTION 4

WAIVER OF ANNEXATION RIGHTS, IMMUNITY AND DEANNEXATION

- 4.1 Waiver of Annexation Rights. The Town and the County agree that for a period of 20 years the Town waives all its statutory rights to annex County territory and will not initiate, institute or support any proceeding to annex territory of the County except (i) as specifically provided in Subsection 2 of this Agreement or (ii) any annexation that may be the result of a mutual agreement between the Town and the County. It is the intent of the Town and the County that the County be immune from any annexation to the Town for such 20-year period.
- 4.2 Citizen Annexation. In the event annexation proceedings are instituted by property owners or qualified voters pursuant to § 15.2-3203 of the Code or any statute similar thereto, the Town agrees that it will not support such proceedings and, if requested by the County, will oppose at no cost to the Town all such proceedings during the 20-year immunity period. The Town specifically agrees not to provide any legal assistance, engineering assistance, financial aid, or any other aid or assistance to property owners or qualified voters petitioning for annexation pursuant to Va. Code § 15.2-3203 of the Code.

SECTION 5
CASH PAYMENT TO THE COUNTY

- 5.1 Cash Payment. It is in both the Town and County's interest that new development pay its fair share of the costs for new capital projects in the Town and County. The County agrees to run a fiscal impact model for all new developments proposed in conjunction with a property requested to be annexed into the Town to determine the county's share of fiscal impact on the County Capital Improvement Plan. The composition of the model shall be determined from time to time, within the County's reasonable discretion. The Town agrees to negotiate a pre-annexation agreement with the property owner of properties proposed to be annexed for development that stipulates the payment of cash on a per unit basis in the amount determined by the County fiscal impact model. This cash payment will be paid by the property owner after completion of the final inspection and prior to the time of the issuance of any certificate of occupancy. Such cash payments shall be made payable to the Town of New Market. The Town will forward this payment to the County within 60 days.

SECTION 6
COMMISSION AND SPECIAL COURT APPROVAL

Commission Approval. The Town and the County have presented this proposed settlement to the Commission as required by Code of Virginia § 15.2-3400. This agreement incorporates the changes suggested in their report.

- 6.1 Special Court Approval. The Town and County agree to petition the Shenandoah County Circuit Court for an order affirming the proposed settlement.
- 6.2 Termination for Failure to Affirm and Validate and Give Full Force and Effect to This Agreement. The Town and the County agree that if this Agreement is not

affirmed by the Special Court as required by Code of Virginia § 15.2-3400 that this Agreement shall immediately terminate.

SECTION 7
MISCELLANEOUS PROVISIONS

- 7.1 Binding Effect. This Agreement shall be binding upon and inure to the benefit to the Town and the County, and each of the future governing bodies of the Town and the County, and upon any successor to either the Town or the County.
- 7.2 Amendments. This Agreement may be amended, modified, or supplemented in whole or in part, by mutual agreement of the Town and the County, prior to affirmation, by a written document of equal formality and dignity, duly executed by the authorized representatives of the Town and the County.
- 7.3 Enforceability. This Agreement shall be enforceable only by the Special Court affirming, validating, and giving full force and effect to this Agreement or by a successor Special Court appointed pursuant to Title 15.2, Chapter 30 of the Code, pursuant to a declaratory judgment action initiated by either of the parties hereto to secure the performance of any provisions, covenants, conditions and terms contained in this Agreement of the Order affirming, validating, and giving full force and effect to this Agreement.
- 7.4 Standing. The Town and the County agree that each shall and does have standing to enforce any of the provisions, covenants, conditions and terms of this Agreement.
- 7.5 Conflict Waiver. The Town and County recognize that both parties are represented by Litten & Sipe, LLP and waive any conflict that this presents, including but not limited to any conflict with respect to both sides being represented by the same law firm during the affirmation procedures set forth in

Code of Virginia § 15.2-3400 and any work incidental to obtaining such required approvals of this Agreement. The parties acknowledge and agree that the material portions of this Agreement were negotiated and agreed to without the participation of Litten & Sipe, LLP, and that if a dispute arises with respect to the interpretation or performance of this Agreement that neither side may be represented by Litten & Sipe, LLP.

SECTION 8
RESOLUTION OF DISPUTES

- 8.1 Should the parties have any dispute about the interpretation or performance of this agreement, the dispute will be resolved as follows:
- (a.) The Town Manager and the County Administrator will meet informally to discuss the parties' needs and concerns. They will search for solutions and, if necessary, they will seek their governing bodies' approval of any solutions developed.
 - (b) Should the dispute not be resolved through such informal discussions, the parties agree to participate in mediation as a further effort to resolve the dispute. If such mediation shall fail to be held within sixty days of either parties' request court proceedings may commence.
 - (c) Should both of the foregoing steps fail to lead to resolution of the dispute, the parties may bring such legal or equitable proceedings as may be proper under Virginia law. This procedure shall not prevent the institution of any legal proceeding necessary to preserve a claim.

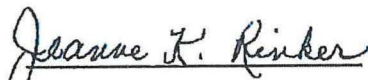
WITNESS the following signatures and seals:

TOWN OF NEW MARKET, VIRGINIA

By: 

Mayor

ATTEST:


Town Clerk

COUNTY OF SHENANDOAH, VIRGINIA

By: 

Chairman of the Board of Supervisors

ATTEST:


Board Clerk

EXHIBIT A

Metes and Bounds Description of Growth Area

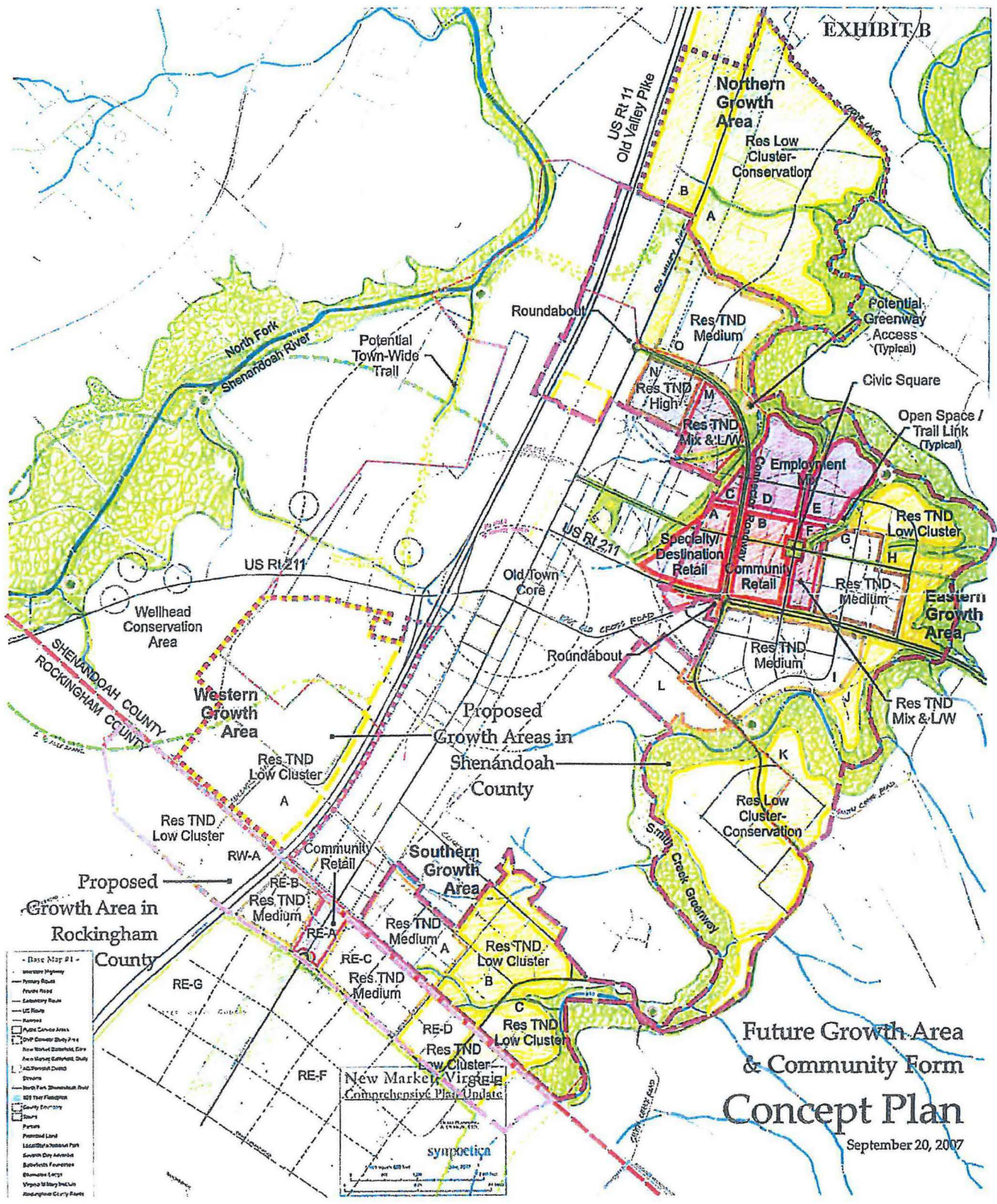
The following is the metes and bounds description, in layman terms, of an approximately 1,710 acre annexation area, to be described in two parts, and located adjacent to the Town of New Market, in the Lee Magisterial District of Shenandoah County, Virginia.

Beginning on Clicks Lane (Rt. 823) where it is intersected by Smith Creek (approximately 1.1 miles from Rt. 11); thence leaving Clicks Lane and following Smith Creek downstream until arriving at the southeast corner of tax map parcel 104-A-40D (106 White Mill Road); thence following said property line in a northwest direction until arriving at the western most point of tax map parcel 104-A-40A (a tractor trailer parking area on Smith Creek Road); thence following said property line in a northeast direction until the end of the gravel parking lot, thence turning east and crossing the gravel driveway, thence proceeding northeast until intersecting Smith Creek Road (Rt. 735), which becomes White Mill Road; thence following White Mill Road in a southeastern direction until arriving at the northwest corner of tax map parcel 104-A-38; thence following said property line in a northeastern direction to said property's northern most point; thence following said property line thru said property and to the northeastern corner of the adjacent property known as tax map parcel 104-A-38 (135 White Mill Road); thence following the property line of tax map parcel 104-A-15C until arriving at East Lee Highway (Rt. 211); thence following East Lee Highway in a western direction until Intersection East Old Cross Road (Rt. 1002); thence following East Old Cross Road in a western direction until arriving at a small pond at the Life Care Center of New Market; thence heading in a northeast direction until arriving at East Lee Highway; thence proceeding north across East Lee Highway and along the property line of tax map parcel 104-A-15 approximately 1,950' in a northeastern direction; then following said property line in a western direction (and crossing a small stream) until arriving at tax map parcel 104A-3-A (storm water detention pond for Horseshoe Bend Subdivision); thence proceeding northeast until arriving at the northeastern corner of tax map parcel 104A-3-17 (135 Dillon Court); thence following said property line in a northwestern direction along Horseshoe Bend Subdivision until arriving at Rt. 11; thence proceeding south along Rt. 11 until intersecting with Shipp Street (Rt. 1016); thence proceeding west on Shipp Street and across Interstate 81 until arriving at George R. Collins Memorial Parkway (Rt. 305); thence proceeding north until arriving at the northeastern corner of tax map parcel 103-A-51A (New Market Battlefield State Historical Park); then proceeding east across Interstate 81 to the southwestern corner of tax map parcel 99B-2-59 (188 Battlefield Lane); thence proceeding north along the right-of-way of Interstate 81 approximately 3,670'; thence proceeding east so as to follow the southern property line of tax map parcel 99-A-29 (3455 Old Valley Pike) until arriving at Rt. 11; thence proceeding south on Rt. 11 until arriving at intersection of Cedar Lane (Rt. 737); then proceeding along Cedar Lane in a southeastern direction approximately 0.6 miles (fork in road); thence proceeding south along the eastern property line of tax map

parcel 99-A-41 (turn right at aforementioned fork in road) until arriving at Smith Creek; thence proceeding upstream on Smith Creek until arriving at East Lee Highway; thence proceeding across East Lee Highway and following Smith Creek until arriving at the southern property line of tax map parcel 104-A-50 (2889 Smith Creek Road); thence proceeding on a straight line from said point in a southwestern direction to the eastern most point of tax map parcel 104-A-51 (open field located adjacent to and northwest of 1688 Smith Creek Road); thence proceeding south along said property line until arriving at Smith Creek Road (Rt. 620); thence following Smith Creek Road until arriving at Clicks Lane; thence proceeding north on Clicks Lane until arriving at the noted beginning point.

Beginning on Clicks Lane (Rt. 823) where it is intersected by Smith Creek (approximately 1.1 miles from Rt. 11); thence leaving Clicks Lane and following Smith Creek upstream until arriving at the Rockingham County/Shenandoah County line; thence proceeding in a northwest direction following said county line approximately 1.74 miles until arriving at the western most point of tax map parcel 103-A-81C (open field across road from 929 Miller Road; thence following said property line in a northeast direction until arriving at the southern most point of tax map parcel 103-3-59A (415 Burkholder Lane); thence proceeding along the southwestern property line until arriving at Burkholder Lane; thence following Burkholder Lane until arriving at Arthur Lane; thence proceeding east on Arthur Lane and following the existing corporate limits of the Town of New Market until arriving at Miller Lane (Rt. 619); thence proceeding north along Miller Lane until arriving at the northeastern corner of tax map parcel 103-A-72G (located just south of Shenandoah Valley Travel Association building); thence proceeding east across Interstate 81 to a point on tax map parcel 103-A-72A approximately 0.1 miles south of West Lee Street (Rt. 1007); then proceeding south and following the right-of-way of Interstate 81 until arriving at the existing corporate limits of the Town of New Market on tax map parcel 103D-4-A (directly behind 9995 Pleasant View Drive) and being a portion of the Pleasant View Subdivision; thence proceeding in a southeast direction and crossing Pleasant View Drive, Massanutten Avenue, Rt. 11 and arriving at the southern corner of the existing corporate limits located on tax map parcel 103-A-83E (open lot in front of 9892 S. Congress St.); then proceeding in a northeast direction along said property line until arriving at the Heritage Green Subdivision (open space with drainage area); then proceeding to the southeast along the boundary of the Heritage Green Subdivision and the Foothills Subdivision until arriving at the southern most corner of tax map parcel 103-A-82 (open space adjacent to 9921 Woodbine Way); thence proceeding in a northeast direction along said property line until arriving at Clicks Lane; thence proceeding southeast along Clicks Lane until arriving at the intersection of Driver Lane; thence proceeding in a northeast direction and following Driver Lane and then following the property lines of tax map parcel 103-A-95 that are adjacent to the Town of New Market and the Shenvalee Golf Course; then following the property lines of tax map parcels 103-A-94A, 103-A-94D, and 103-A-94B that are adjacent to the Town of New Market and the Shenvalee Golf Course; thence proceeding east following the rear

property lines of tax map parcels 103-A-93 (570 Clicks Lane), 103-A-92, 103-A-90, 103-A-89, 103-A-87, 103-A-86 (699 Clicks Lane) and including portions of tax map parcel 103-A-113 (Shenvalee Golf Course access ways) until arriving at the northeast corner of tax map parcel 103-A-86; thence proceeding along the southeast property line of tax map parcel 103-A-86 until arriving at Clicks Lane; thence following Clicks Lane until arriving at the noted beginning point.



Future Growth Area & Community Form
Concept Plan
 September 20, 2007

**AMENDMENT TO SECOND AMENDED VOLUNTARY SETTLEMENT AGREEMENT
BETWEEN THE TOWN OF NEW MARKET AND SHENANDOAH COUNTY**

This Amendment to the Second Amended Voluntary Settlement Agreement between the Town of New Market and Shenandoah County (the "VSA Amendment") is entered into between the Town of New Market, Virginia (the "Town") and Shenandoah County, Virginia (the "County") this 13 day of SEPTEMBER, 2022.

WHEREAS, on the 15th day of March, 2012 the Town and County entered into a Second Amended Voluntary Settlement Agreement between the Town of New Market and Shenandoah County (the "VSA Agreement"); and

WHEREAS, the VSA Agreement was affirmed by order of a special three judge panel pursuant to Code of Virginia § 15.2-3400 on May 1, 2012; and

WHEREAS, since the VSA's adoption and implementation it is the opinion of both parties that components of the areas to be annexed could be amended and remain mutually beneficial to both parties; and

WHEREAS, the parties wish to add flexibility to the VSA to allow for additional future uses of the areas to be annexed by mutual consent of the Town and County, but without the necessity of instituting court action pursuant to Code of Virginia § 15.2-3400; and

WHEREAS, the Town and County now wish to amend the VSA Agreement pursuant to this VSA Amendment.

NOW, THEREFORE, THE PARTIES HERETO DO HEREBY AGREE THAT THE VSA AGREEMENT IS AMENDED AS FOLLOWS:

- 1.) Section 3.1 is amended to replace Exhibit B with Exhibit B-1, as attached to this VSA Amendment.
- 2.) Section 3.4(a) is revised to add the italicized text below, so that it states as follows:

The Town and the County agree that the obligations imposed on the Town Council with respect to zoning and rezoning matters as reflected in Subsections 3.1, 3.2, and 3.3 shall remain in effect and the Town Council will specifically comply with such Subsections, *unless otherwise agreed to by the governing bodies of the Town and County after following the procedure set forth in*



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et-AM\2022 Working Docs\VSA Amendment\JJH\kds\7.19.2022

Virginia Code § 15.2-2204(A), until such time as 75% of the original undeveloped acreage in the Future Growth Area has developed.

- 3.) Section 7.2 is amended to read as follows: This Agreement may be amended by mutual agreement of the Town and the County after following the procedure set forth in Virginia Code § 15.2-2204(A). Any modifications to Exhibit B-1 should note the projected density at build out under the existing plan and the proposed modified plan.
- 4.) The parties agree in good faith to reasonably cooperate with each other during the affirmation process set forth in Code of Virginia § 15.2-3400, and agree that if this VSA Amendment is not affirmed by the special court as required by Code of Virginia § 15.2-3400 that this VSA Amendment shall immediately terminate.
- 5.) All other terms of the VSA Agreement shall remain in full force and effect, and the duration of the VSA Agreement shall not be modified by this VSA Amendment.
- 6.) The Town and County recognize that both parties are represented by Litten & Sipe, LLP and waive any conflict that this presents, including but not limited to any conflict with respect to both sides being represented by the same law firm during the affirmation procedures set forth in Code of Virginia § 15.2-3400 and any work incidental to obtaining such required approvals of this VSA Amendment. The parties acknowledge and agree that the material portions of this Agreement were negotiated and agreed to without the participation of Litten & Sipe, LLP, and that if a dispute arises with respect to the interpretation or performance of this Agreement that neither side may be represented by Litten & Sipe, LLP.

WITNESS the following signatures and seals:

TOWN OF NEW MARKET, VIRGINIA

By: Darryl A. Boyer
Mayor

ATTEST:

S. Hill
Town Clerk

COUNTY OF SHENANDOAH, VIRGINIA

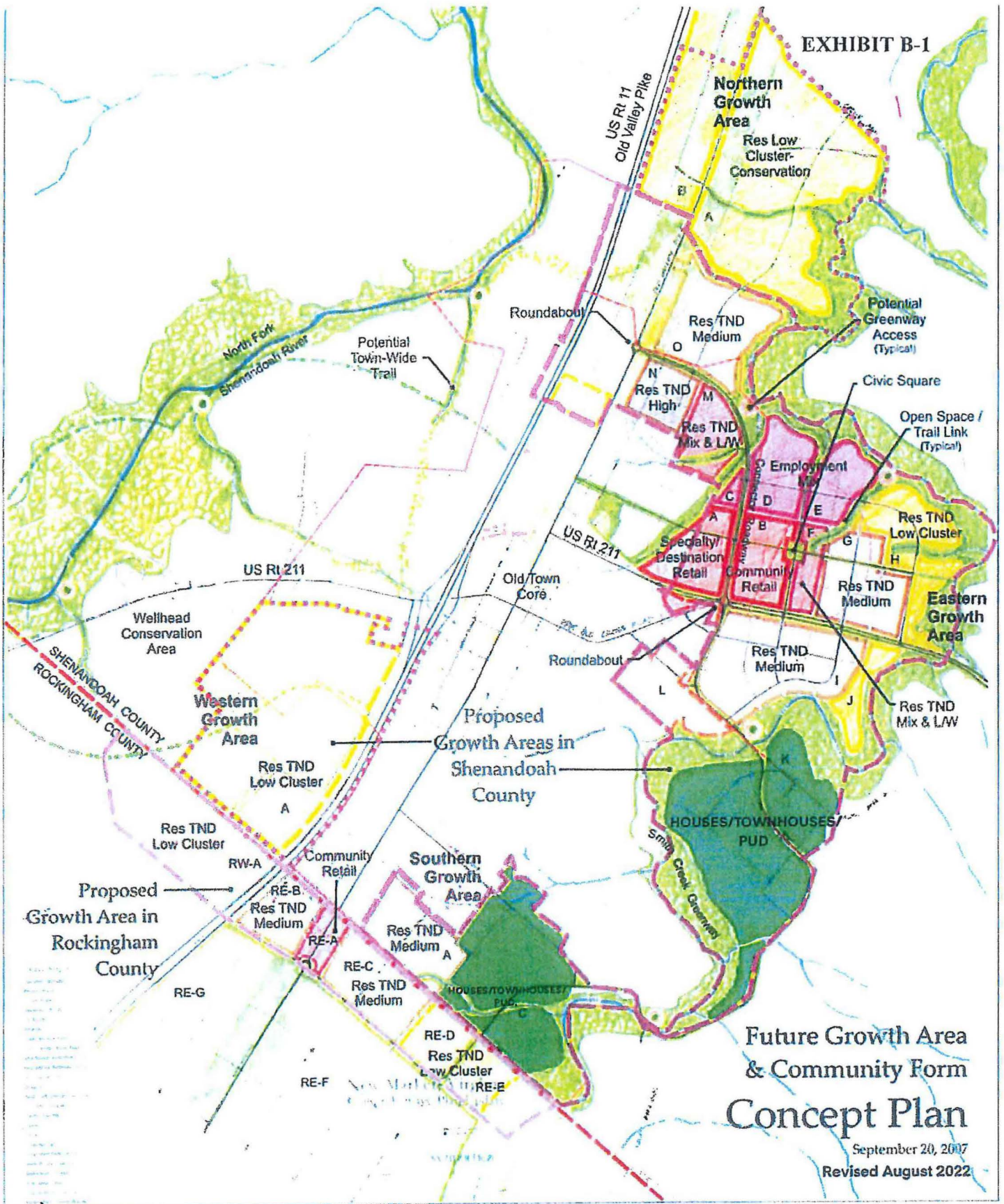
By: Jeffrey S. [Signature]
Chairman of the Board of Supervisors

ATTEST:

[Signature]
Board Clerk

Approved as to legal form:

Jason Ham
Jason Ham, County Attorney



Re: New Market -Shenandoah County Amendment to VSA

Jason Ham <jason.ham@littensipe.com>

Fri, Sep 23, 2022 at 9:36 AM

To: "Northcutt, LeGrand" <legrand.northcutt@dhcd.virginia.gov>

Cc: Evan Vass <evass@shenandoahcountyva.us>, Todd Walters <t.walters@newmarketvirginia.com>, Jordan Bowman <jordan.bowman@littensipe.com>

LeGrand:

Thank you for all of your assistance regarding the Amendment to the Voluntary Settlement Agreement.

We discussed my providing some background that you could share with the Commission on Local Government (the "Commission").

In 2012 Shenandoah County, Virginia (the "County") and the Town of New Market (the "Town") entered into a Second Amended Voluntary Settlement Agreement Between the Town of New Market and Shenandoah County (the "VSA").

My firm, with consent from the Town and County, represents both parties.

Per 15.2-3400, this was the second amended agreement because of feedback provided by the Commission that was incorporated into the VSA.

The VSA was approved by the Court per 15.2-3400, and the order is attached.

Both parties then adopted the VSA by ordinance, and it has been in effect since March 15, 2012.

The VSA provided that the Town could annex from time to time by Town ordinance land containing approximately 1918 acres known as the Future Growth Area subject to certain terms in the VSA.

One of those terms is that the land use in the Future Growth Area shall be in conformity with the Future Land Use Map attached to the VSA as exhibit B, as further described In section 3 of the VSA.

During the ten years since the VSA was adopted, no development has occurred in the Future Growth Area, and no territory has been annexed by the Town. In addition, the New Market Battlefield Foundation has purchased or obtained conservation easements over significant portions of the Future Growth Area, limiting the Town's growth.

The Town and County have agreed to amend the VSA, primarily to provide for a new exhibit B-1, which provides for additional uses in two areas of the Future Growth Area. The two amendments are in the bottom of the map attached to the VSA Amendment as an exhibit, and are marked Houses/Townhouses/PUD.

I have attached the VSA Amendment, which includes a new exhibit B-1.

Although the VSA Amendment has been executed by both parties, both parties understand that it does not become effective until compliance with the process set forth in 15.2-3400 has been completed.

Recognizing that this is a minor amendment which still requires time consuming compliance with 15.2-3400, the VSA Amendment also includes language designed to expedite the process of any other future amendments.

There is a developer that wants to build houses and townhouses in the Future Growth Area, which are allowed but at a density that is so low that the development is uneconomical.

As the Town has had almost no development in over ten years, the Town would like this project to proceed in a timely fashion.

For this reason, while recognizing the need for the Commission to perform its important work, the Town will do everything that it can do to expedite the process, and very much appreciates how responsive and prompt you have been with respect to this matter.

I understand that the Commission will meet to discuss this matter on November 4, 2022, and I will provide the resolutions requesting the commission to review the VSA Amendment pursuant to 1VAC50-20-230 before November 1, 2022, per our conversation.

Per our conversation of today, given the limited nature of the effect of the VSA Amendment, the only information responsive to the requirement to provide information described in 1VAC50-20-610 is this email describing the process, per subsection 8.

If there is additional information that I can provide to you, please let me know.

Cordially,

Jason J. Ham

Litten & Sipe, LLP

410 Neff Avenue


Harrisonburg, Virginia 22801

(540) 437-3064



3 attachments

 **VSA.pdf**
2550K

 **Order.VSA.pdf**
382K

 **VSA.Amendment.pdf**
2705K

Section 2

Oral Presentations of the Parties on the Proposed Voluntary Settlement Agreement

March 9, 2023

2A – Oral Presentations and Public Hearing Agenda

2B – Order of Presentations and List of Witnesses

2C – Materials Presented by the Parties During Oral Presentations



Glenn Youngkin
Governor

Caren Merrick
Secretary of
Commerce and Trade

COMMONWEALTH of VIRGINIA

Bryan W. Horn
Director

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

AGENDA

Shenandoah County and Town of New Market VSA

Oral Presentations & Public Hearing

Commission on Local Government

2:00 p.m., March 9th, 2023

New Market Town Office

9418 John Sevier Road

New Market, VA 22844

For the public, Microsoft Teams joining info:

Enter this URL to join the meeting:

https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2F%2Fmeetup-join%2F19%3Ameeting_OGFjNDI3ODItNmY4My00MDZjLWFjZGUtYTQ0MDRiOTk1MWE5%40thread.v2%2F0%3Fcontext%3D%257b%2522id%2522%253a%2522620ae5a9-4ec1-4fa0-8641-5d9f386c7309%2522%252c%2522oid%2522%253a%25223cd3642f-3ea5-49bd-b640-ac3795999550%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=b8e455ff-4ce6-4957-b144-68007bcad88a&directDl=true&msLaunch=true&enableMobilePage=false&suppressPrompt=true

Meeting ID: 220 827 619 929

Passcode: rbHYWi

Or call in (audio only)

+1 434-230-0065,,713486674# United States, Lynchburg

Phone Conference ID: 713 486 674#

1. Occupancy for the meeting space is limited, so the Commission encourages members of the public to observe the proceedings through the Microsoft Teams link provided above. Please contact LeGrand Northcutt (legrand.northcutt@dhcd.virginia.gov) for information on how to connect to the meeting using this method.
2. Members of the public viewing the meeting through the Microsoft Teams option are required to mute themselves during the meeting unless called upon by the Commission Chair to speak.
3. Access to meeting materials for members of the public is available on the corresponding meeting page of the [Virginia Regulatory Town Hall website](#) and on [Commonwealth Calendar](#).

I. Call to Order

A. Welcome

(Dr. Johnson)



Virginia Department of Housing and Community Development | Partners for Better Communities
Main Street Centre | 600 East Main Street, Suite 300 Richmond, VA 23219
www.dhcd.virginia.gov | Phone (804) 371-7000 | Fax (804) 371-7090 | Virginia Relay 7-1-1

- B. Introduction of Commissioners and Staff (Dr. Johnson)
- C. Commission’s Review (Mr. Northcutt)
- D. Comments by other Commission Members (Dr. Johnson)
- II. Set Date to Close the Record**
 - A. Commission Deliberation and Action
- III. Oral Presentations** (Parties)
 - A. Town of New Market
 - i. Opening Remarks (Mayor Bompiani)
 - ii. Presentation of VSA (Councilman Hughes)
 - iii. Questions (Town Staff)
 - B. Shenandoah County
 - i. Questions (County Staff)
- IV. Recess until Public Hearing at 7:00 pm** (Dr. Johnson)
- V. Reconvene for Public Hearing**
 - A. Chair’s remarks (Dr. Johnson)
 - B. Public testimony (Mr. Malloy)
- VI. Closing Remarks** (Commissioners/Staff)
- VII. Adjourn**





Glenn Youngkin
Governor

Caren Merrick
Secretary of
Commerce and Trade

COMMONWEALTH of VIRGINIA

Bryan W. Horn
Director

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

ORDER OF PRESENTATIONS AND LIST OF WITNESSES Shenandoah County and Town of New Market VSA

Oral Presentation

Commission on Local Government

2:00-5:00 p.m., March 9th, 2023

New Market Town Office

9418 John Sevier Road

New Market, VA 22844

Town of New Market

Opening Remarks:

- Larry Bompiani, Mayor of New Market

Presentation of the Voluntary Settlement Agreement:

- Peter Hughes, Councilman
- Jason Ham, Litten & Sipe, LLP

Additional Town representatives available for questions:

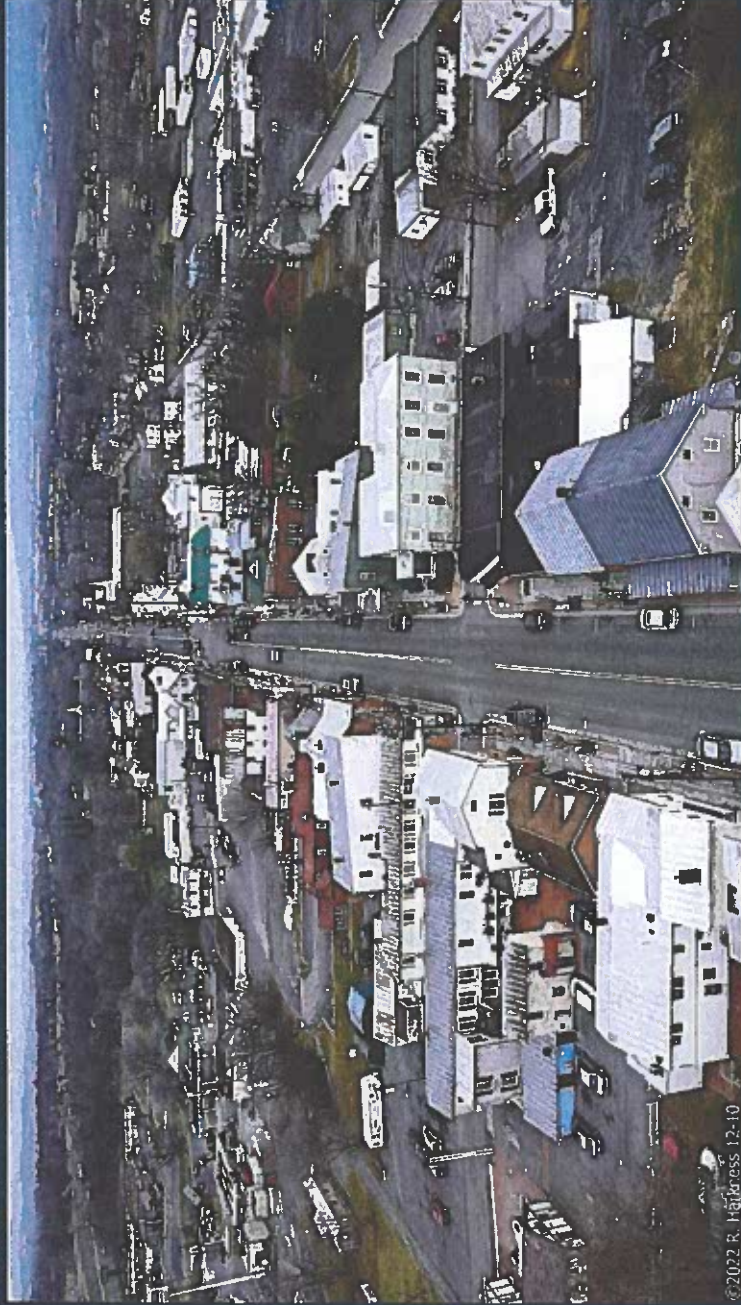
- Peg Harkness, Council Woman
- Todd Walters, Consultant, former Town Manager
- Jason Ham, Litten & Sipe, LLP

Shenandoah County

Representatives available for questions:

- Evan Vass, county manager
- Jason Ham, Litten & Sipe, LLP





TOWN OF NEW MARKET SEEKS AN AMENDMENT TO THE VOLUNTARY SETTLEMENT AGREEMENT OF 2012

HEARING ON THE AMENDMENT TO THE AGREEMENT OF 2012 MARCH 9, 2023

- ▶ This hearing is to review the Town of New Market and Shenandoah County's request for an amendment to the Voluntary Settlement Agreement entered into in 2012 (the "VSA"). This VSA was approved by the Town, Shenandoah County, and the Circuit Court. Changes require approval of the bodies that approved it.
- ▶ The VSA provides for a future growth area of 1918 acres, and allows the Town to annex portions of that land from time to time, after notice to the County and to residents, and after following other provisions of the VSA.
- ▶ In order to promote orderly development, the VSA only allows uses of land in the areas to be annexed that are shown on exhibit B to the VSA.
- ▶ A developer wants to develop on two parcels of land in the VSA that are limited to development of one house per every two acres on such parcels.
- ▶ The Town and County have approved and both parties have executed an Amendment to Second Amended Voluntary Settlement Agreement Between the Town of New Market and Shenandoah County (the "VSA Amendment").
- ▶ The VSA Amendment will only take effect after compliance with Code of Virginia 15.2-3400, including this referral to the Commission on Local Government, Court approval, and additional approvals following additional public hearings held by both the Town and County.
- ▶ The VSA Amendment allows for "houses/Townhouses/PUD" on the two parcels of land in the future growth area.
- ▶ The VSA Amendment also provides that the VSA Agreement can be amended by mutual agreement of the Town and County after public notice and other procedures to allow for additional land uses, by mutual consent, in the annexation areas in the future.

AMENDMENT TO SECOND AMENDED VOLUNTARY SETTLEMENT AGREEMENT BETWEEN THE TOWN OF NEW MARKET AND SHENANDOAH COUNTY

This Amendment to the Second Amended Voluntary Settlement Agreement between the Town of New Market and Shenandoah County (the "VSA Amendment") is entered into between the Town of New Market, Virginia (the "Town") and Shenandoah County, Virginia (the "County") this 13 day of SEPTEMBER, 2022.

WHEREAS, on the 15th day of March, 2012 the Town and County entered into a Second Amended Voluntary Settlement Agreement between the Town of New Market and Shenandoah County (the "VSA Agreement"); and

WHEREAS, the VSA Agreement was affirmed by order of a special three judge panel pursuant to Code of Virginia § 15.2-3400 on May 1, 2012; and

WHEREAS, since the VSA's adoption and implementation it is the opinion of both parties that components of the areas to be annexed could be amended and remain mutually beneficial to both parties; and

WHEREAS, the parties wish to add flexibility to the VSA to allow for additional future uses of the areas to be annexed by mutual consent of the Town and County, but without the necessity of instituting court action pursuant to Code of Virginia § 15.2-3400; and

WHEREAS, the Town and County now wish to amend the VSA Agreement pursuant to this VSA Amendment.

NOW, THEREFORE, THE PARTIES HERETO DO HEREBY AGREE THAT THE VSA AGREEMENT IS AMENDED AS FOLLOWS:

1.) Section 3.1 is amended to replace Exhibit B with Exhibit B-1, as attached to this VSA Amendment.

2.) Section 3.4(b) is revised to add the italicized text below, so that it states as follows:

The Town and the County agree that the obligations imposed on the Town Council with respect to zoning and rezoning matters as reflected in Subsections 3.1, 3.2, and 3.3 shall remain in effect and the Town Council will specifically comply with such Subsections, *unless otherwise agreed to by the governing bodies of the Town and County after following the procedure set forth in*

Virginia Code § 15.2-2204(A), until such time as 75% of the original undeveloped acreage in the Future Growth Area has developed.

3.) Section 7.2 is amended to read as follows: This Agreement may be amended by mutual agreement of the Town and the County after following the procedure set forth in Virginia Code § 15.2-2204(A). Any modifications to Exhibit B-1 should note the projected density at build out under the existing plan and the proposed modified plan.

4.) The parties agree in good faith to reasonably cooperate with each other during the affirmation process set forth in Code of Virginia § 15.2-3400, and agree that if this VSA Amendment is not affirmed by the special court as required by Code of Virginia § 15.2-3400 that this VSA Amendment shall immediately terminate.

5.) All other terms of the VSA Agreement shall remain in full force and effect, and the duration of the VSA Agreement shall not be modified by this VSA Amendment.

6.) The Town and County recognize that both parties are represented by Litten & Sipe, LLP and waive any conflict that this presents, including but not limited to any conflict with respect to both sides being represented by the same law firm during the affirmation process set forth in Code of Virginia § 15.2-3400 and any work incidental to obtaining such required approvals of this VSA Amendment. The parties acknowledge and agree that the material portions of this Agreement were negotiated and agreed to without the participation of Litten & Sipe, LLP, and that if a dispute arises with respect to the interpretation or performance of this Agreement that neither side may be represented by Litten & Sipe, LLP.

WITNESS the following signatures and seals:

TOWN OF NEW MARKET, VIRGINIA

By: Darryl A. Simpson
Mayor

ATTEST:
[Signature]
Town Clerk

COUNTY OF SHENANDOAH, VIRGINIA

By: [Signature]
Chairman of the Board of Supervisors

ATTEST:
[Signature]
Board Clerk

Approved as legal form:
[Signature]
Jaspa Ham, County Attorney



This is not a zoning hearing.

- ▶ This hearing on March 9, 2023 will not determine zoning regulations or any specific proposal to build on the Click's Lane or Smith Creek plots of land.
- ▶ - The Town Planning Commission will review all development proposals.
 - VDOT will review development proposals to ensure public safety.
 - A public hearing would be convened to seek input on development. The Planning Commission would recommend appropriate zoning levels to the Town Council.
 - The Town Council would consider the recommendations and schedule a Public Hearing to seek input, then finalize the zoning regulations and restrictions.

Why Change VSA of 2012?

- ▶ The VSA of 2012 met the needs of New Market in 2012. However, the needs of New Market have changed, and this agreement now impedes New Market's ability to address the needs of 2023.
- ▶ Demographics in New Market are now different than in 2012: the business community continues to struggle. Despite many of the town's efforts to adjust other factors, population growth and balance will be keys to future success.
- ▶ In 2018, the Town Manager contacted businesses. Those businesses suggested the town needs more rooftops. The effort to amend the VSA of 2012 is a step to increase the number of "rooftops" and provide needed housing so we can support a balanced population.

Prior to the Recession of 2008, Home Construction Helped the Town Grow

Subdivisions were built in New Market after 1990 including Century Village, Heritage Green, Foothills I and II, Horseshoe Bend, Fairway Manor, Fairway Commons, Village at Smith Creek, Lincoln's Crossing. (**See chart on growth**)

After successful building of Foothills I and II, an adjacent new subdivision, Foothills III, on the Clicks Lane property was delayed or cancelled due to the recession of 2008. This is one of two plots being discussed today. The Clicks Lane plot is now being proposed for development.

In 2008, New Market faced serious concerns related to waste water treatment. The existing plant needed to be upgraded and additional capacity was added to accommodate future growth.

Data on Population, Average Age, Population Under 18 Years Old

▲ Town	Pop. 2000	Pop. 2010	Pop. 2021	Ave. Age	Pop. < 18 yrs
▲ Strasburg	3,800	6,433	7,191	36.5	2,507 (35.4%)
▲ Woodstock	3,246	5,071	5,861	39.1	1,794 (30.9%)
▲ Mt. Jackson	1,583	2,052	1,987	38.4	696 (35.5%)
▲ Edinburg	838	1,037	1,178	34.3	254 (21.6%)
▲ New Market	1,442	2,181	2,158	54.6	317 (14.7%)

Data on Recent Home Building in New Market

NEW HOME CONSTRUCTION IN NEW MARKET (PAST 30 YEARS)

FISCAL YEAR	# of NEW HOUSES BUILT	FISCAL YEAR	# of NEW HOUSES BUILT	FISCAL YEAR	# of NEW HOUSES BUILT	FISCAL YEAR	# of NEW HOUSES BUILT
1992/1993	32	2002/2003	3	2012/2013	0	2022/2023	3
1993/1994	2	2003/2004	11	2013/2014	0		
1994/1995	8	2004/2005	9	2014/2015	3		
1995/1996	12	2005/2006	22	2015/2016	2		
1996/1997	6	2006/2007	7	2016/2017	2		
1997/1998	16	2007/2008	12	2017/2018	1		
1998/1999	14	2008/2009	10	2018/2019	4		
1999/2000	19	2009/2010	6	2019/2020	1		
2000/2001	10	2010/2011	0	2020/2021	2		
2001/2002	9	2011/2012	0	2021/2022	0		

Following the 2008 Recession, Several Businesses Left New Market

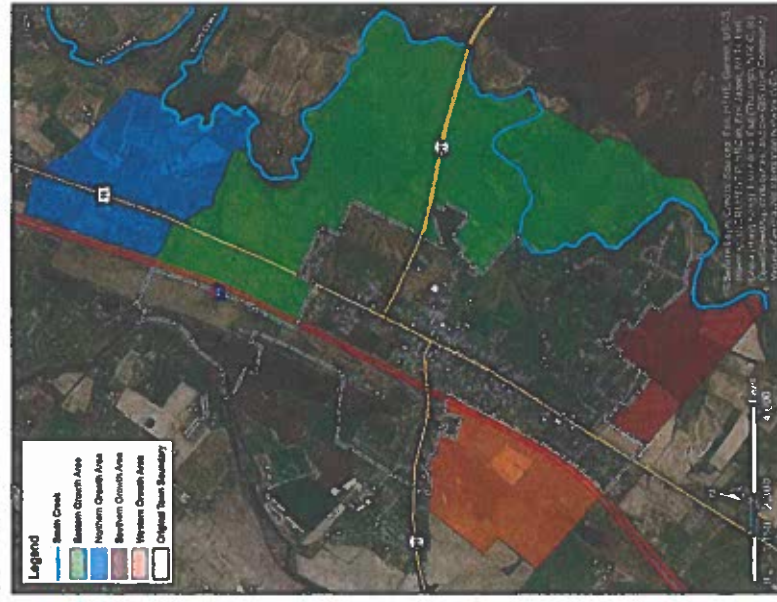
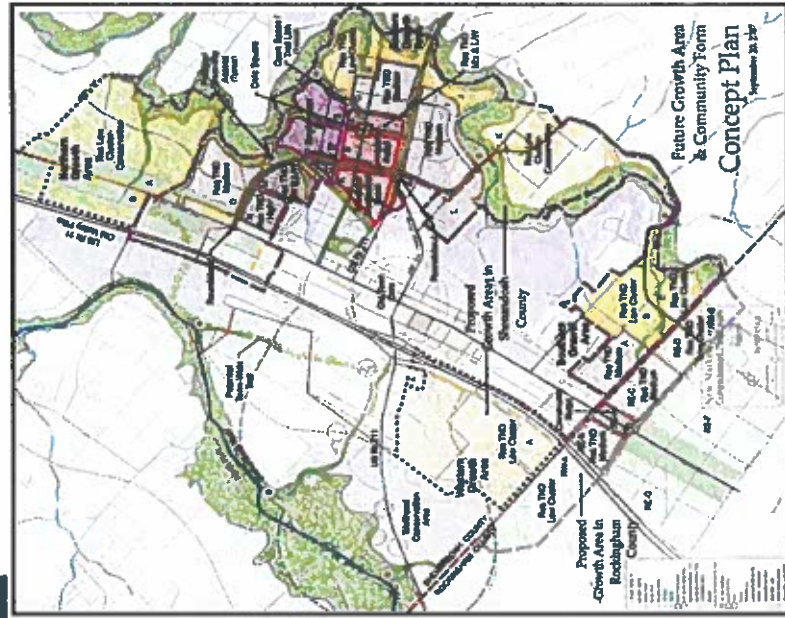
- ▶ Businesses began to leave after the recession of 2008: Hardware store, Pharmacy, Banks, Barbershop, Funeral Home, Car Dealers, Pottery Shops, Attorney's Office, Restaurants, Florist, Food Market, Insurance Companies, and several small businesses such as convenience stores, gift shops, antique and knick-knack stores.
- ▶ The number of empty store fronts and distressed properties are increasing.
- ▶ Recent businesses to leave include Primis Bank, Burger King. (As these businesses left, the town lost substantial tax revenue, about \$84,000.
- ▶ **In January 2023, the New Market Chamber of Commerce ceased operating after almost 100 years due to a lack of volunteers and support. Several businesses are concerned about remaining open.**

LIMITED LOCATIONS FOR PURCHASE OR RENT

- ▶ The inventory of available existing homes to purchase in New Market has been inadequate for several years. (realtors)
- ▶ **On March 8, 2023 there are 7 homes for sale in the Town of New Market.**
- ▶ The past two Town Managers had difficulty finding a home in New Market.
- ▶ The town's **only current real estate agent could not find a home in New Market when he needed to downsize. He moved to Woodstock.**

Property Available For Building Lots Is Limited

▲ Larger lots of land for future growth are identified in the comprehensive plan; the majority are outside of town limits and included in the comprehensive plan map.



Property Available For Building Lots Is Limited

See the map on Impact of recent acquisitions by Shenandoah Valley Battlefield Foundation. This land is no longer available for growth.

SHENANDOAH VALLEY BATTLEFIELDS PROPERTIES



March 8, 2023

1,364,112
0 0.25 0.48 0.75 1.5
0 0.38 0.75 1.5 km

Map data Copyright © Esri, DeLorme, Garmin, IGN, Intermap, iPC, NRC, Swisstopo, USGS, AeroGRID, IGN, Esri, Air Photo, USDA, FEMA, NPS, British Airways, NAVTEQ, Swire, GEBCO, DELorme, Esri

Property Available For Building Lots Is Limited

Two areas of proposed development include 100 acres east of Foothills 1, located off Click's Lane; and second plot along Smith Creek.



New Market's Efforts To Turn the Tide

- ▲ The town identified and mapped properties available for building homes.
- ▲ The town invited local builders to a meeting with a limited response.
- ▲ The Town Council reduced water and tap fees to entice more building.
- ▲ The town hired a marketing staff member.
- ▲ The town supported the new Community Child and Learning Center

Additional Town Efforts to Turn the Tide

- ▶ Town worked to improve “blight” properties.
- ▶ New Market Community Park has many recent improvements to support families. Improvements have been made to the community pool.
- ▶ New Market committed to address its water supply to meet future needs.
- ▶ Future waste water treatment capacity has been increased by an agreement with Broadway that assures the town’s capacity to handle future growth.
- ▶ New Market provides matching funds for downtown to improve building facades. These funds have been increased four fold since the program began.

REASON FOR MAKING REQUEST TO AMEND THE AGREEMENT OF 2012:

- ▶ A builder recently proposed a development adjacent to the town boundary for up to 300 units along Clicks Lane. This proposal has led to analysis of the VSA of 2012 including its limitations.
- ▶ The VSA of 2012 limited home building to only one house per every 2 acres on the two parcels in question. It is unlikely there will be development on this land unless the limits are changed.
- ▶ The town's needs have changed. The Agreement of 2012 no longer represents the interests of the Town New Market.

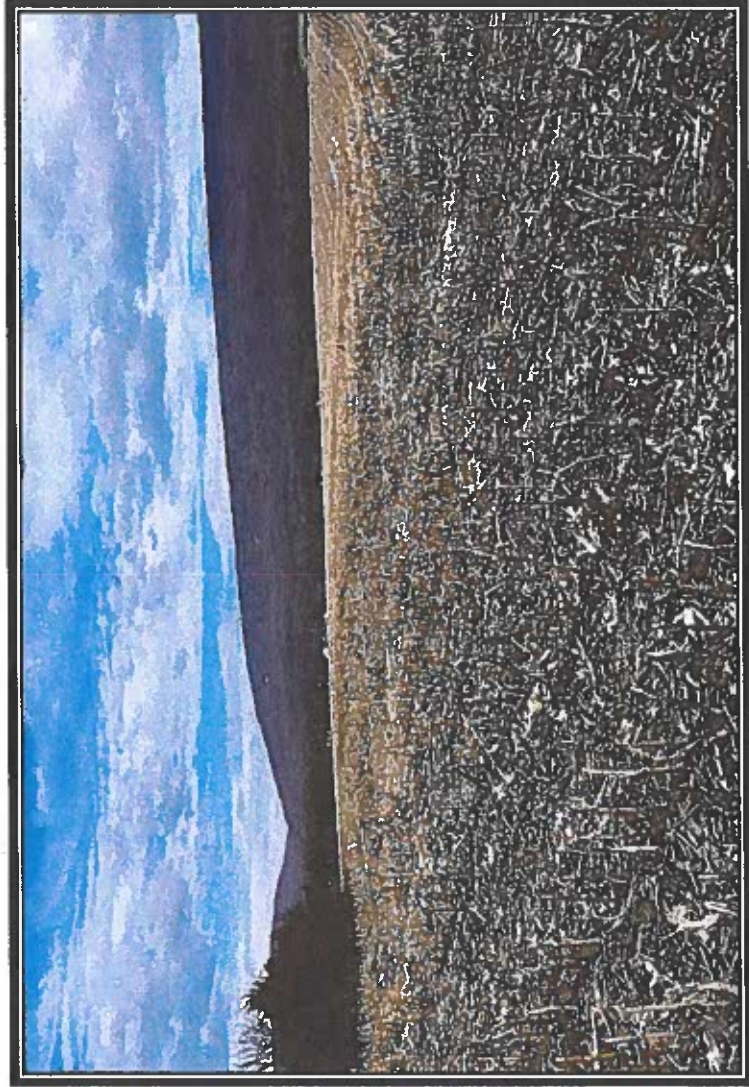
FURTHER BACKGROUND ON THE AGREEMENT OF 2012

- ▶ The comprehensive plan for New Market provides for additional growth on plots of land close to existing town water and sewer services. The Clicks Lane and Smith Creek parcels meet this criteria.
- ▶ The process for New Market to make land acquisition is clear, procedural and permitted by existing agreements.
- ▶ **Concerns for the total number of units being proposed should be tempered by the fact that the town will address new zoning requirements AFTER the agreement has been amended. That is when the town procedures to consider appropriate zoning and regulations will be considered.**

Conclusion

- ▶ The Comprehensive Plan describes areas where growth **should** occur. Both the county and town have agreed on this. The Comprehensive Plan identifies where land can be annexed and this land is adjacent or close to existing water and sewer infrastructure.
- ▶ Consider the impact of the VSA of 2012: since the date it has been in effect **No homes have been built on either of the two parcels. No interest has been expressed until late in 2022. See attached picture of the property.**

Note Current Homes Built On The
Click's Lane Parcel since 2012



Section 3

Public Hearing on the Proposed Voluntary Settlement Agreement

March 9, 2023

3A – Draft Meeting Minutes of the Public Hearing

3B – Submitted Letter from the Town of New Market Business Community

3C – Submitted Map from Adjoining Property Owner



Glenn Youngkin
Governor

Caren Merrick
Secretary of
Commerce and Trade

COMMONWEALTH of VIRGINIA

Bryan W. Horn
Director

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

**Commission on Local Government
Minutes of the Public Hearing
Town of New Market and Shenandoah County Voluntary Settlement Agreement
March 9, 2023
7:00 p.m.
New Market Town Office - Board Room
9418 John Sevier Road
New Market, VA 22844**

Members Present

Ceasor T. Johnson, D.Min., Chair
Edwin Rosado, Vice Chair
Diane M. Linderman, PE
Robert Lauterberg

Members Absent

Call to Order

The Commission on Local Government (CLG) Chair, Dr. Ceasor Johnson, called the meeting to order at 7:00 p.m.

Dr. Johnson led an introduction of the Commissioners and staff present at the public hearing.

Public Comment

Dr. Johnson announced that the purpose of the public hearing was to review proposed amendments to the Voluntary Settlement Agreement between the Town of New Market and Shenandoah County, which would i) amend the allowable land uses in the shared Future Growth Area, following the process set forth in 15.2-2204(A), and ii) set the processes by which the parties could make future amendments to the Voluntary Settlement Agreement, including any changes to land use in the Future Growth Area.

Dr. Johnson recognized Mr. LeGrand Northcutt, Senior Policy Analyst from the Department of Housing and Community Development to provide an overview of the process set out in the Code of Virginia guiding the Commission's review of the proposed amendments to the Voluntary Settlement Agreement.



Dr. Johnson provided an overview of the procedures for offering public comment and recognized Mr. Chase Sawyer, Senior Policy Analyst at DHCD, to call the speakers.

Peg Harkness, current Vice Mayor and Town Council Member for the Town of New Market, spoke to the necessity of the amendments to the Voluntary Settlement Agreement due to the need for additional housing development and economic growth in the Town.

Emmett Long, resident of the Town of New Market and owner of property adjacent to the Future Growth Area, expressed concerns over future development in New Market, including the overall economic feasibility of such a development and changes it would cause to traffic levels. Mr. Long provided the Commission with a map demonstrating the adjacency of his property to the future growth area. Mr. Long stated additional study was needed before proceeding with any new development in the Future Growth Area.

Jon Henry, resident of the Town of New Market and owner of the John Henry Convenience Store, expressed concerns over future new development in New Market, including the overall economic feasibility of the development and changes to traffic patterns. Mr. Henry also expressed concerns over the environmental impact of such new development. Mr. Henry stated additional study was needed before proceeding with any new development in the Future Growth Area.

Alvin “Al” Henry, resident of the Town of New Market and former owner of the local funeral home, expressed concerns over future new development in New Market, citing issues in Northern Virginia and stating concerns about utility bills increasing as a result to the growth. Mr. Henry stated additional study was needed before proceeding with any new development in the Future Growth Area.

Keven Walker, resident of the Town of New Market and CEO of the Shenandoah Valley Battlefield Organization, spoke on behalf of the Town’s historic district. Mr. Walker presented a letter to the Commission from other business owners expressing concerns about the future new development in New Market. Mr. Walker stated additional study was needed before proceeding with any new development in the Future Growth Area.



Mark Dotson, resident of the Town of New Market and member of the Shenandoah County Planning Commission, voiced concern about future new development in New Market and emphasized the importance of careful planning before any future development.

Kelly Stauff, resident of the Town of New Market, expressed concern about the impact any future new development would have on the demand on public services such as emergency response and traffic. Mr. Stauff also stated the need for an environmental impact study for any new development proposed, and specifically cited the potential impacts of such development on Smith Creek.

Jody Greber, resident of the Town of New Market and owner of land in the Future Growth Area, spoke in favor of the amendments to the Voluntary Settlement Agreement, stating that she could not market her land to developers or other interested buyers at current density restrictions.

Brad Pollack, current member of the Shenandoah County Board of Supervisors, expressed his opposition to the amendments to the Voluntary Settlement Agreement. Mr. Pollack indicated that the Commission's review of the amendments was premature and expressed concerns about the impact to residents on Clicks Lane and demand on the Town's water/sewer infrastructure.

Chris Rinker, resident for the Town of New Market and the Town Chief of Police, expressed his concerns over the lack of housing in the Town and the consequences the lack of housing supply presented to the Town.

Jeff Mongold, resident of the Town of New Market and Assistant Chief of the Volunteer Fire Department, expressed his concerns over the lack of housing and the consequences thereof in the Town. Mr. Mongold also noted the ability for the current EMS services to manage any increased demand generated from new development in the Town.

Larry Bompiani, current Mayor of the Town of New Market, spoke in favor of the amendments to the Voluntary Settlement Agreement, citing the consequences the lack of development have had on the Town's growth. He also expressed his concern over the lack of contact from concerned citizens, despite his and other Council member's availability.



Todd Walters, Shenandoah County resident and former New Market Town Manager, expressed support for the amendments to the Voluntary Settlement Agreement. Mr. Walters emphasized that any new development would need to follow the zoning process, including opportunities for public comment, and that the proposed amendments only enabled the parties to begin that initial rezoning process.

Sam Mongold, a member of the Town’s Planning Commission, emphasized that any new development would need to follow the zoning process, including opportunities for public comment. He also noted the consequences a lack of new development would have on the Town’s housing costs.

Mr. Sawyer offered an additional opportunity for further comments from those attending the proceedings virtually.

Dr. Johnson noted that the record will remain open for additional written comments through 5:00 pm, March 23, 2023.

Adjournment

By voice vote, the Commission moved to adjourn the March 2023 public hearing before the Commission. The motion passed, and the Commission adjourned at 8:03 p.m.



March 9, 2023

To the members of the Commission on Local Government:

As business owners and main street community leaders we are invested in the growth and prosperity of New Market. We applaud any serious effort that will create a bright and sustainable future for our community. We understand the importance of growing existing main street businesses and encouraging future businesses through a resilient community centered customer base. We also recognize that New Market is a unique regional crossroads with undervalued and underutilized tourism potential. Taken together, long range plans that encourage more local customers and higher tourism visitation are key to the vitality of our community and the success of its businesses.

Our main street community and business leaders have in recent years begun to work together to envision and stimulate economic development. This effort has been met with varying degrees of success. Through our years of dialog with our customers and neighbors it is evident that many have been anxious about large scale development and New Market's ability to remain relevant while at the same time maintaining its unique character and way of life. This character and way of life are essential to attractiveness of our town to residents, customers and visitors alike.

Though the proposed municipal expansion and the private development for which the expansion is being proposed may seem to be the answer to many of our shared economic concerns, there are very real costs and impacts associated with the expansion and development that have not been sufficiently explained, studied or explored. New Market already struggles under the weight of high water and sewer costs; deferred municipal maintenance projects, an antiquated and failing water system, major traffic issues, and lack of serious municipal investment in its streetscapes. As a town of little more than 2000 residents the thought of taking steps now that would facilitate a development that would increase our population by over 50% is both exciting and concerning. Among those growing concerns are the following:

- Changes to the overall character of the town
- Cost of this expansion and its infrastructure to our current population
- Serious deficiencies in our traffic and circulation capacity
- Capacity of our emergency services
- Demographic changes in our customer base
- Unforeseen disruptions to community lifestyle
- Impacts on Town services and operational capacity
- The cost and impact on our school system
- Environmental impacts

We sell our town every day to residents and tourists and we know better than most why they are here and why they support New Market. We don't want the town, the county or the commonwealth to sell us and our community short, by taking steps that will rapidly and drastically increase our population. Not until extensive research and study is completed and community input and dialog truly embraced, do we believe the contemplated town expansion should move forward in any way. We do not endorse or support this proposal without further due diligence. We look forward to continuing these discussions and working with the Town to chart the best path forward for our shared prosperity. As business owners and community leaders we do not fear change and adaptation. The success of our businesses has been based on informed decision making. We ask that our governments take the same approach and not move forward as proposed without extensive study and further analysis.

Very Sincerely and Respectfully,

New Market Exxon

Walter Z M G...

The Home Store

Kaua K...

Shenandoah Valley Battlefields National Historic District

Ken...

The Valley Sports Connection

Cathy E...

Holtzman Oil and Propane

The Buttercup

The Buttercup - Curtis...

Jon Henry's General Store

Jon Henry...

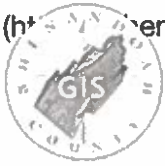
Jackson's Corner Café

Valley Pike Music

Classic Styling Salon

Jeanette...

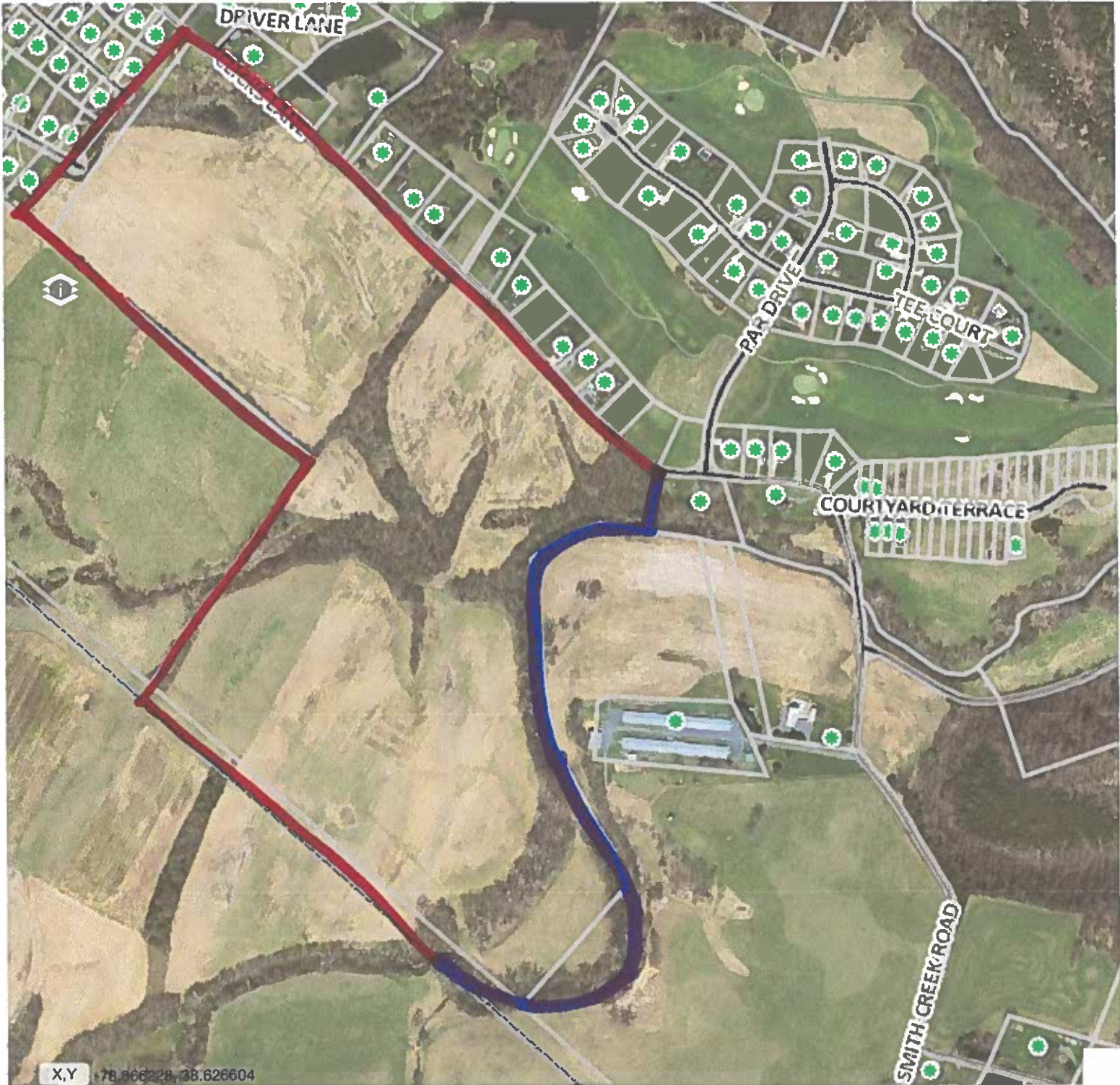
(https://www.shenandoahcountyva.us/)



PROPOSED SUBDIVISION



LONG FAMILY



Section 4
Public Comments Received via Email
March 9-23, 2023

County of Shenandoah

BOARD OF SUPERVISORS

DISTRICT 1 – JOSH STEPHENS
DISTRICT 2 – STEVE BAKER
DISTRICT 3 – BRAD POLLACK
DISTRICT 4 – KARL ROULSTON
DISTRICT 5 – DENNIS MORRIS
DISTRICT 6 – TIM TAYLOR

600 N. Main Street, Ste 102
WOODSTOCK, VA 22664



OFFICE OF COUNTY ADMINISTRATION

EVAN L. VASS
COUNTY ADMINISTRATOR

MANDY R. BELYEA
DEPUTY COUNTY ADMINISTRATOR

Tel: 540.459.6165 Fax: 540.459.6168
www.shenandoahcountyva.us

Virginia Department of Housing and Community Development
600 East Main Street, Suite 300
Richmond, VA 23219

March 23, 2023

Mr. Northcutt,

My letter is in reference to the March 9, 2023 Public Hearing held in New Market, VA before The Commission of Local Government regarding the Voluntary Settlement Agreement between the Town of New Market and Shenandoah County. I was unable to attend due to a work commitment and appreciate the consideration of this letter.

It has now been almost 11 years since Shenandoah County and the Town of New Market finalized a voluntary settlement agreement to address growth within the Town, as well as the identification of areas adjacent where growth could occur. The process for New Market's development of their growth plan started 5 years prior.

I support the ability for the Town of New Market to go back to the drawing board and revise their growth plan for the future. In order for the Town to prosper, this plan must include both residential and commercial/industrial growth. While the dated plan should be revised, the concerns of Town and County residents must be heard and align with the Town's revised plans.

The presentation on March 9 stated that a proposed development for up to 300 units has been presented to the town. I will go on record to say, that while I support New Market's ability to revise the current plan, I do not support a development to the size and scope in which the Town has been presented.

If you wish to reach out to me with any questions, feel free to reach out via telephone at (540)630-5727 or email at district1@shenandoahcountyva.us.

Regards,

Josh Stephens
Supervisor – District 1
Shenandoah County

New Market 2010 Settlement Agreement

Bill Rogers <bill.rogers715@gmail.com>

Thu 3/23/2023 12:52 PM

To: Northcutt, Legrand (DHCD) <LeGrand.Northcutt@dhcd.virginia.gov>

Mr. LeGrand Northcutt
VA Dept. of Housing and Community Development

I am a New Market resident and live on Periwinkle Lane, very close to the property in question. I am very concerned about the negative impact of the proposed development. It could negatively affect property values in my neighborhood, and the increased traffic would be a serious issue even if Click's Lane were widened and shoulders and a sidewalk added.

I am not opposed to annexation or to thoughtful growth for New Market, but too many questions remain unanswered about this project. Three hundred new "roofs" are too many for that 100 acre parcel, especially after subtracting the portion in the flood plain. I have been told by various officials "not to worry about it," that 300 units would not be built. If so, why authorize 300? The current plan allows one house per two acres. I would be comfortable with a bit more than that, but I oppose an R3 designation.

Many residents of my neighborhood have expressed concern and feel that something is being pushed on them without adequate planning or explanation. I hope the State will not recommend R3 and 300 houses.

Efforts to make New Market a better place to live are appreciated, but I moved here as a retirement move and very much want a small, quiet village without more traffic and crowded, low-income housing next to my neighborhood.

William Rogers
277 Periwinkle Lane
New Market, Virginia

New Market Plan Meetings

Dana Palmer <dnpalmer1@gmail.com>

Thu 3/23/2023 10:23 AM

To: Northcutt, Legrand (DHCD) <LeGrand.Northcutt@dhcd.virginia.gov>

I attended the meeting in City Hall on the proposed change to the 40 year plan and subsequent agreements between the county and the town. I also attended a meeting of local landowners on the same subject this week.

After reading your response to Susan Grandfield it is clear that the remarks by several speakers at both meetings misunderstood the purpose of the original meeting. It was agreed by attendees at both meetings that all support growth in New Market but are concerned about what the rumored plans are for the property in question. There doesn't appear to be an objection to reviewing the agreements.

I am in accord with those sentiments. I do not feel it is New Market's interest to prohibit review and make changes to the existing plan and agreements. However, I also share the desire of almost everyone at both meetings that a more open communication from the county and town is necessary prior to making any binding decisions. This feeling is the result of prior experiences where decisions were already made before public comments were received. We have spoken to the Mayor on this and the hope is for a better flow of information.

Thank you for your attention and the information you have provided.

Dana N. Palmer
991 Clicks Lane
New Market, Va. 22844

New Market housing development plans

Dennis Barlow <denbar945@gmail.com>

Wed 3/22/2023 4:48 PM

To: Northcutt, Legrand (DHCD) <LeGrand.Northcutt@dhcd.virginia.gov>

Mr. Northcutt,

We were so pleased that you came to our community to listen to the discussion regarding a whirlwind proposal to adopt a high density housing development in or near our town. Thank you!

My wife and I are opposed to such a move for the following reasons:

- 1) The original plan was adopted in 2007, and sorely needs to be re-visited. Areas marked for growth back then have been utilized for other projects and our town has undergone significant changes in the past 16 years. The new project seems to be trying to fit new requirements into a very out-dated plan.
- 2) The planned housing project would be located on the extreme southern end of our county. The new residents are almost certainly to take jobs and do their shopping in Harrisonburg, a bustling city only 15 miles south, leaving us in New Market with greater infrastructure (sewage, water, schooling, waste disposal) shortfalls which would incur massive resource requirements with very little revenues (comparably) coming in to fund those debts, while monies of the new residents would mostly find their way into the coffers of Harrisonburg merchants and vendors.
- 3) The area under consideration is interspersed with low-lying drainage pockets of soggy land which would add to an already expensive water dispersion and pumping problem.
- 4) The community has been blind-sided by this bolt out of the blue; we were given no public notification of its imminence. We do not know why it is being fast-tracked.

In conclusion, we believe that the way to grow New Market - YES, we want to grow New Market! - is to first encourage business and market growth that can in-turn both attract and support new house building plans.

Please help us do that!

Respectfully,
COL (retired) Dennis & Bonnie Barlow
5 Tee Court
New Market, VA 22844

New Market Annexation

Emmett Long <emmettlong@celongconstruction.com>

Mon 3/20/2023 10:51 AM

To: Northcutt, Legrand (DHCD) <LeGrand.Northcutt@dhcd.virginia.gov>

Good morning Mr. Northcutt. This email is written with regard to the 100 acre parcel located in Shenandoah County and the proposed annexation of this land by the town of New Market for the purpose of developing this parcel into high density residential, changing the current town plan of New Market from a two acre minimum lot size.

After much thought, I do not see any value in the annexation for this purpose. Studies, Planning, and VDOT costs are a pure waste of tax dollars. As a builder and developer, I see no economic feasibility in the annexation for the purpose of high density, low income housing for the town short term or long term. The Power Point presentation given by New Market Town Council member, Peter Hughes, opened the door for the discussion of the concerns of taxpayers pertaining to the number stated of 300 proposed homes. What will be the cost to the town and the county for perpetuity? Will the taxes from a low income development ever produce a return? This annexation will not solve the lack of economic development for New Market. The town's call for annexation to return growth in New Market lacks critical thought and first principles in problem solving. In fact, it will accelerate the demise of further economic development in New Market by creating a huge liability for the town and the county in infrastructure costs going forward for the long term. As I stated at the public hearing held on March 9, 2023, the current infrastructure is in such disrepair that waste water treated daily on a daily average is 300,000 gallons/day. However, on days it rains that number jumps significantly to 1,000,000 plus gallons/day. It is unconscionable to consider annexation while not addressing the failure of the current infrastructure. That the town continues to obfuscate the failure of the existing infrastructure is more evidence of how our town is in the current position and not realistically ready and able to accommodate any additional strain on its infrastructure.

Frankly, New Market has not looked at the feasibility of fiscal restraint in the face of insolvency. Annexation of the 100 acre parcel continues to dig a deeper financial hole for the town of New Market, Shenandoah County and the tax payers. This annexation is social engineering at its worst for a small rural town in America. Spending other people's money (the tax payer) is easily sold as a solution to correct a systemic decline of small towns across America. Bullying our citizens (the taxpayers) and stifling their voices containing legitimate concerns is a real disaster for the taxpayers and the town for a period long after the current mayor, town manager and NVR(developer) leave town. This 100 acres of farm land will be permanently removed for production along with the negative environmental impact on Smith Creek. The last developer has yet to remedy the damage caused to the adjacent pond as planned and promised. Devaluing adjoining and surrounding property and creating a behemoth burden to taxpayers will not solve the problem. In short, spending money to solve the problem of insolvency is not a fiscally responsible solution on any level.

Given the surrounding developed community, a low income/high density development will severely harm existing home and property owners by reducing the value of their homes and property.

Respectfully Submitted,
Emmett

--

Emmett Long

Owner, Operator

C. E. Long Construction

<https://celongconstruction.com/>

 <https://twitter.com/celongconstruct>

New Market

Harry Wine <harry.wine@gmail.com>

Sun 3/19/2023 10:31 AM

To: Northcutt, Legrand (DHCD) <LeGrand.Northcutt@dhcd.virginia.gov>

Mr. Northcutt,

Thank you and the rest of the commission for coming to New Market earlier this month.

I was in attendance but did not speak. I am gathering my thoughts and writing them down for you to consider.

My name is Harry Wine Jr, I live in the town limits (9962 Pleasant View Dr) and am currently serving on the Planning Commission for the Town of New Market. I have been a New Market resident, property owner, and taxpayer for almost 35 years. I have raised my family here, both of my children are attending Virginia colleges and I wish for them to be able to return to New Market to start their careers and raise their families. But we will need more housing available in New Market for that to happen.

A number of the people who spoke negatively against any growth in New Market do not live in the town limits.

I believe that all New Market is asking for is that we can pursue an amendment to the voluntary settlement agreement. This agreement that was made over 10 years ago really hurts any growth for the Town of New Market. New Market has very little opportunity for growth, we are basically landlocked on three sides, South and West by Rockingham County and North by the Battlefield and the Battlefield Conservation area.

We have watched all of the other towns in our county grow with both homes and businesses. I believe New Market has had about 3-4 homes built in the last 5 years.

While I do have concerns like many people brought up about the roads and traffic, I also realize that there would have to be a lot of planning and engineering completed before anything can be built. We are just asking for the opportunity to see if we can come up with a good and safe plan to grow our town. The current economics do not allow for any growth.

Please strongly consider letting the Town of New Market pursue this opportunity.

Respectfully,

Harry E. Wine, Jr.

2010 Voluntary settlement agreement with the Town Of New Market

John Chroniger <johnchroniger75@gmail.com>

Tue 3/21/2023 10:44 PM

To: Northcutt, Legrand (DHCD) <LeGrand.Northcutt@dhcd.virginia.gov>

Mr. Northcutt

I just attended an ad hoc citizens meeting concerning the potential movement of property along Clicks lane and the decision of the Town of New Market to try to bring this land into the town limits. The concerns at this meeting were many ranging from the complete lack of transparency on the part of the Town as to movement to make this land actionable for a developer with no information available to us property holders in the immediate area to the possibility of multi-use occupancy in an existing single house community.

While this is a local battle to be worked out with our elected officials, I am requesting that your department allow our citizens the time to engage on this issue by revoking the existing Voluntary agreement that the town had previously entered into in 2010.

John Chroniger
39 Greenview Lane
New Market, Va. 22844

New Market Annexation Agreement

Linda Smith <galidasmith@verizon.net>

Thu 3/23/2023 3:54 PM

To: Northcutt, Legrand (DHCD) <LeGrand.Northcutt@dhcd.virginia.gov>

To the members of the Virginia Department of Housing and Community Development and LaGrand Northcutt,

The Town of New Market County of Shenandoah Voluntary Settlement Agreement 2010 designates parcels of land that could be annexed in the future. Most of the acreage available for annexation has restricted growth. One such 100-acre parcel with a frontage on Clicks Lane is currently limited to one house per two acres or a low residency growth.

In a presentation to the neighborhood adjoining this property (which includes Woodbine and Periwinkle Lanes) the retiring Town Manager, Todd Walters, stated there was a developer interested in the acreage, but only if the property could be rezoned to a high-density R-3 designation. He also stated that potentially 300 roofs could be built on this land.

This has prompted me to seek more information regarding the Town of New Market's request to be released from the 2010 settlement agreement and what would happen if this agreement is voided. The DHCD afternoon session and public hearing were enlightening. However, little notice was given to the citizens and business community regarding the DHCD involvement and the impact.

The citizens and business leaders I have heard speak or spoken with are not opposed to growth but are very concerned that previously agreed upon growth plans may be thrown out to accommodate an interested developer. Community input and transparency needed to start with the first request to the Shenandoah County Board of Supervisors to pursue release from the 2010 agreement.

My hope is you will hear the concerns of the New Market citizens and business leaders, and respectfully deny the release from the 2010 voluntary agreement at this time.

Linda Smith
277 Periwinkle Lane
New Market VA 22844
301-751-0010

New Market's Proposed annexation of 100 acres on Clicks Lane

sgrfield@gmail.com <sgrfield@gmail.com>

Tue 3/21/2023 9:49 PM

To: Northcutt, Legrand (DHCD) <LeGrand.Northcutt@dhcd.virginia.gov>

Dear Mr. Northcutt,

I am a resident of New Market and I reside at 1025 Clicks Lane. I attended the meeting on March 9 at the New Market Town Office. I want to let you know that I am against the town annexing 100 acres of farmland on Clicks Lane if it's to be used for high density housing. I'm very concerned that high density/low income housing will be built on those 100 acres. I'm not against the town growing and building more houses rather I am against how the town Council appears to have been going about it. My neighbors and I would not have known of the meeting on March 9th if I had not attended a planning commission meeting earlier that week. I understand it was in the local paper, but who reads newspapers anymore? My concerns include the fact that a large contractor contacted the town to develop the land with 300 houses on this property. Our town's infrastructure cannot handle 300 more homes. We can't handle our own sewage, sewage has to be sent 6 miles away to Timberville. Our water system can't handle 300 more homes. We're supposed to get another water tower which probably will not be started until 2024. If you ever have an opportunity to drive down Clicks Lane, you will see that it is a very narrow road and unable to accompany an additional 600 cars driving on it every day. I know we were told that VDOT would be able to assess the road and have it widened. However, I don't think the town has contacted the citizens on Clicks Lane to let them know they will lose most of their front yards if this is the case. Our district 1 supervisor, Josh Stevens, is unable to get a clear answer from the town Council, other citizens of New Market are unable to get clear answers from New Market on how the town will handle such an expansion. The town has not been transparent with the citizens and that lack of transparency and unwillingness to answer questions smells bad. I'm also concerned how this will negatively affect the value of my home. My home is in the Fairway Manor neighborhood and this proposed development will certainly have an impact on us.

Isn't there a voluntary settlement agreement that New Market should be following? Are they following it?

Sincerely,
Susan Grandfield

Sent from my iPad

Re: 2010 Voluntary settlement agreement with the Town Of New Market

John Chroniger <johnchroniger75@gmail.com>

Wed 3/22/2023 4:25 PM

To: Northcutt, Legrand (DHCD) <LeGrand.Northcutt@dhcd.virginia.gov>

Cc: Wheaton, Grace (DHCD) <Grace.Wheaton@dhcd.virginia.gov>; Sawyer, Chase (DHCD) <Chase.Sawyer@dhcd.virginia.gov>

Thank you for the information. Yes, I would like to change my request based upon the information you supplied. The right to rezone should be a local issue and thus your department does play a vital role in making this happen. Therefore I am requesting an amendment to the voluntary settlement agreement that allows a rezoning after annexation takes place. Thanks for your prompt attention to the matter. As a side note, when I purchased my home on Periwinkle Lane in 1996 the impression given to the existing owners was that the two streets that border this property on the west, was that the future development of the two streets was forthcoming and would continue the single family homes that were in existence on the two streets. The zoning allowed on the property while a part of the county allows different zoning laws that would change the character of the existing neighborhood.

Thanks,

John Chroniger

On Wed, Mar 22, 2023 at 11:44 AM Northcutt, Legrand (DHCD)

<LeGrand.Northcutt@dhcd.virginia.gov> wrote:

Mr. Chroniger,

I have received your comment. Before I forward it to the Commission, I would like to clarify that the Commission does not have the authority to revoke the existing VSA from 2010. Rather, the question before it is whether the VSA should be amended to allow the Town to change the density through the normal zoning process after the land is annexed. Under the 2010 VSA, the Town can annex, but it cannot then change the zoning of the annexed land to higher-density residential.

Since you are in favor of revoking the VSA entirely, I assume you are in favor of the amendments that allow the Town to go through the normal rezoning process after the land is annexed. Then, as you put it, the citizens would have time to engage on the issue and work out what the zoning should be with the local elected officials during that rezoning process. Please let me know if this is correct.

To be clear, the Commission is not deciding or dictating what the zoning should be after the land is annexed. That is the job of the Town Council. The only question before the Commission is whether the zoning can be changed by the Town after it is annexed.

Would you like to amend your comment in light of this information? Please note that you have until 5:00 tomorrow to submit anything additional.

Sincerely,

LeGrand

W. LeGrand Northcutt, J.D.

Senior Policy Analyst

Virginia Department of Housing and Community Development

804-310-7151 (cell)

From: John Chroniger <johnchroniger75@gmail.com>

Sent: Tuesday, March 21, 2023 10:44 PM

To: Northcutt, Legrand (DHCD) <LeGrand.Northcutt@dhcd.virginia.gov>

Subject: 2010 Voluntary settlement agreement with the Town Of New Market

Mr. Northcutt

I just attended an ad hoc citizens meeting concerning the potential movement of property along Clicks lane and the decision of the Town of New Market to try to bring this land into the town limits. The concerns at this meeting were many ranging from the complete lack of transparency on the part of the Town as to movement to make this land actionable for a developer with no information available to us property holders in the immediate area to the possibility of multi-use occupancy in an existing single house community.

While this is a local battle to be worked out with our elected officials, I am requesting that your department allow our citizens the time to engage on this issue by revoking the existing Voluntary agreement that the town had previously entered into in 2010.

John Chroniger
39 Greenview Lane
New Market, Va. 22844

Re: New Market's Proposed annexation of 100 acres on Clicks Lane

Susan Grandfield <sgrfield@gmail.com>

Wed 3/22/2023 12:48 PM

To: Northcutt, Legrand (DHCD) <LeGrand.Northcutt@dhcd.virginia.gov>

Dear Mr. Northcutt,

Thank you for clearing this up for me. Yes, I oppose amending the VSA for purposes of changing/increasing the zoning density.

Sincerely,
Susan Grandfield

Sent from my iPhone

On Mar 22, 2023, at 11:29 AM, Northcutt, Legrand (DHCD)
<LeGrand.Northcutt@dhcd.virginia.gov> wrote:

Hello Ms. Grandfield,

I have received your comment. Before I forward it to the Commission, I would like to clarify that the Town is not proposing to annex the 100 acres at this time. Your question about the VSA is actually the question the Commission is answering. The Town would like to annex the land and then change the zoning density (through the normal zoning change process) at a future date, but it cannot do that under the terms of the VSA as currently written. Therefore, the issue before the Commission is whether the VSA should be changed to allow the Town to change the zoning density of annexed land after it is annexed at some future point.

I assume that are opposed to amending the VSA for this purpose, but would you like to amend your comment in light of this information? Please note that you have until 5:00 tomorrow to submit anything additional.

Sincerely,

LeGrand

W. LeGrand Northcutt, J.D.
Senior Policy Analyst
Virginia Department of Housing and Community Development
804-310-7151 (cell)
legrand.northcutt@dhcd.virginia.gov

From: sgrfield@gmail.com <sgrfield@gmail.com>

Sent: Tuesday, March 21, 2023 9:49 PM

To: Northcutt, Legrand (DHCD) <LeGrand.Northcutt@dhcd.virginia.gov>

Subject: New Market's Proposed annexation of 100 acres on Clicks Lane

Dear Mr. Northcutt,

I am a resident of New Market and I reside at 1025 Clicks Lane. I attended the meeting on March 9 at the New Market Town Office. I want to let you know that I am against the town annexing 100 acres of farmland on Clicks Lane if it's to be used for high density housing. I'm very concerned that high density/low income housing will be built on those 100 acres. I'm not against the town growing and building more houses rather I am against how the town Council appears to have been going about it. My neighbors and I would not have known of the meeting on March 9th if I had not attended a planning commission meeting earlier that week. I understand it was in the local paper, but who reads newspapers anymore? My concerns include the fact that a large contractor contacted the town to develop the land with 300 houses on this property. Our town's infrastructure cannot handle 300 more homes. We can't handle our own sewage, sewage has to be sent 6 miles away to Timberville. Our water system can't handle 300 more homes. We're supposed to get another water tower which probably will not be started until 2024. If you ever have an opportunity to drive down Clicks Lane, you will see that it is a very narrow road and unable to accompany an additional 600 cars driving on it every day. I know we were told that VDOT would be able to assess the road and have it widened. However, I don't think the town has contacted the citizens on Clicks Lane to let them know they will lose most of their front yards if this is the case. Our district 1 supervisor, Josh Stevens, is unable to get a clear answer from the town Council, other citizens of New Market are unable to get clear answers from New Market on how the town will handle such an expansion. The town has not been transparent with the citizens and that lack of transparency and unwillingness to answer questions smells bad. I'm also concerned how this will negatively affect the value of my home. My home is in the Fairway Manor neighborhood and this proposed development will certainly have an impact on us.

Isn't there a voluntary settlement agreement that New Market should be following? Are they following it?

Sincerely,
Susan Grandfield

Sent from my iPad

Section 5

Additional Information Requested from the Parties

March 16-23, 2023

The Commission asked the parties, through counsel, the following questions:

1. How do you interpret the words "shall classify" in sec on 3.3(a) of the Proposed VSA? Does this require a separate legislative act that follows the ordinance rules of 15.2-2204?
2. How many of the Town's current zoning districts "substantially conform" to the designation of "houses/townhouses/PUD" in the new B-1?

Below is the response from the parties, entered here into the public record:

"The Town has planned for annexation with a Transitional District X, which New Market adopted following a public hearing preceded by public notice many years ago, so that when new property is annexed into the Town it is zoned. Houses are allowed, but they must be in five acre lots, which is more restrictive than the current future growth plan.

I read the words "shall classify" in sec on 3.3(a) to be synonymous with "rezone".

So, if the VSA Amendment takes effect, then the Town must rezone the newly annexed area to substantially conform to the designation of "houses/townhouses/PUD".

As Transitional District X would substantially conform, as houses, albeit with five acre lots, are allowed in Transitional District X, then New Market would always be in compliance with the VSA, if it is amended.

However, given that the main purpose of seeking the VSA Amendment is to allow more dense use of the land, practically speaking a rezoning, which would involve public notice and a public hearing held by the planning commission and town council, would need to occur for development to proceed.

In addition to Transitional District X, the Town could rezone to R-1, allowing single family homes, R-2, allowing single family homes and duplexes, R-3, allowing townhouses, or it could be a planned unit development, another Town zoning district."

Section 6
Additional Resources Consulted

6A – Town of New Market Zoning Ordinance: *Article X-A. Transitional, District X*

6B – In re Voluntary Settlement of Annexation & Immunity Agreement

Article X-A Transitional, District X

Sec. 70-87.1 Statement of Purpose and Intent

The purpose of this district is to provide for the reasonable and orderly interim regulation of use and development of land within the said annexation area consisting of lands previously under the zoning regulations of Shenandoah County.

Sec. 70-87.2 Permitted Uses

In the Transitional X District, the structures to be erected or land to be used shall be for one of the following uses and its permitted accessory uses; provided that only one main building and its accessory buildings may be erected on any lot or parcel of land in this district:

- (a.) Agricultural uses, in accordance with Sec. 70-28 of this Article.
- (b.) Single-family detached dwellings.
- (c.) Home occupations.
- (d.) Churches and other places of worship, but not including rescue missions.
- (e.) Public works, playgrounds and play fields, bikeways, pedestrian trails, walkways, swimming pools, tennis courts, and nature preserves, in accordance with Sec. 70-28 of this Article.
- (f.) Golf courses.
- (g.) Minor public utilities, as defined.
- (h.) Group homes, as defined and in accordance with Sec. 70-139 of this chapter.
- (i.) Off-street parking and loading shall be subject to the same regulations as that of the R-1 District, in accordance with Sec. 70-150 and Sec. 70-151 of this chapter.
- (j.) Signs shall be subject to the same regulations as that of the R-1 District, in accordance with Sec. 70-152 of this chapter.
- (k.) Fences, in accordance with Sec. 70-133 of this chapter.
- (l.) Storage of recreational vehicles, in accordance with Sec. 70-129 of this chapter.
- (m.) Temporary buildings, in accordance with Sec. 70-136 of this chapter.

- (n.) Dish antennae, in accordance with Sec. 70-130 of this chapter.
- (o.) Other customary accessory residential buildings and uses that are clearly incidental to the principle building and/or use, as defined, and in accordance with Sec. 70-128 of this chapter and other applicable ordinances and regulations.
- (p.) Short-Term Rental, Owner-Occupied
- (l.) Short-Term Rental, Non-Owner-Occupied

Sec. 70-87.3 Permitted Uses with a Conditional Use Permit

- (a.) Bed and breakfast establishments, in accordance with Sec. 70-143 of this chapter.
- (b.) Resorts, country clubs and memorials.
- (c.) Private clubs and organizations.
- (d.) Public safety and other community facilities and public and semi-public uses, as defined, that are not listed in Sec. 70-87.2 of this Article.
- (e.) Nursing homes, rest homes, and retirement homes, in accordance with Sec. 70-141 of this chapter.
- (f.) Day care centers/facilities, as defined, and in accordance with Sec. 70-140 of this chapter.
- (g.) Major public utilities, as defined.

Sec. 70-87.4 Area Regulations

The minimum lot area shall be five acres.

Sec. 70-87.5 Setback Regulations

No structures shall be located closer than seventy-five feet to any street right-of-way.

Sec. 70-87.6 Frontage Regulations

The minimum lot width at the setback line shall be two-hundred feet.

Sec. 70-87.7 Yard Regulations

- (a.) Side The minimum side yard shall be thirty feet.

- (b.) Rear The minimum rear yard shall be thirty-five feet.

Sec. 70-87.8 Height Regulations

- (a.) Buildings may be erected up to two and one-half stories, or thirty-five feet in height from grade.
- (b.) A public or semi-public building such as a church may be erected up to a height of sixty feet from grade, provided that the required front, side and rear yards shall be increased one foot for each foot in height over thirty-five feet.
- (c.) Church spires, belfries, cupolas, municipal water towers, chimneys, flues, flagpoles, television antennae, and radio aerials are exempt. Parapet walls may be up to four feet above the height of the building upon which the walls rest.

Sec. 70-87.9 Lot Coverage

The buildings of resorts, country clubs, memorials, golf courses, and private clubs and organizations shall not cover more than ten percent of the site.

In re Voluntary Settlement of Annexation & Immunity Agreement

Circuit Court of Prince William County, Virginia

May 16, 2000, Entered

Law No. 23100

Reporter

2000 Va. Cir. LEXIS 168 *

In the matter of the Voluntary Settlement of Annexation and Immunity Agreement between Prince William County, Virginia, and the City of Manassas Park, Virginia.

Core Terms

hear, proceedings, three-judge, APPEARING, cases, parties, civil proceeding, governing body, access rights, justiciable, courts, notice, designated, questions, Modified

Case Summary

Procedural Posture

The parties filed a joint petition for affirmation and approval of amendments made to their voluntary settlement of annexation and immunity agreement.

Overview

The parties, a municipality and a county, filed a joint petition for affirmation and approval of amendments made to their voluntary settlement of annexation and immunity agreement. The parties noted in their petition that they advertised public hearings and, following those hearings, approved the amendments made to the agreement. The court noted the original voluntary settlement agreement met all the criteria for approval pursuant to Va. Code Ann. § 15.1-1167.1 and that the later amendments had been adopted following the procedure required by the voluntary settlement agreement. The court noted the voluntary settlement agreement, as amended, would continue to serve the best interests of the Commonwealth in that it will continue to promote orderly growth and the continued viability of the respective parties' governments. Therefore, the court approved and affirmed the amendments made to the voluntary settlement agreement and ordered they be validated and given full force and effect.

Outcome

Amendments approved, because the annexation agreement met all the criteria for approval pursuant to state law, each party conducted public hearings on the annexation amendments, and the agreement was in the best interests of the Commonwealth in that it would continue to promote orderly growth.

Counsel: [*1] SHARON E. PANDAK, County Attorney, ANGELA M. LEMMON, Assistant County Attorney, 1 County Complex Court, Prince William, Virginia, Counsel for the Board of County Supervisors of Prince William County, Virginia.

JOHN BELLASCHI, ESQ., McGuire, Woods, Battle and Boothe, L.L.P., McLean, Virginia, Counsel for the Mayor and City Council of the City of Manassas Park.

Judges: JANE MARUM ROUSH, 19th Judicial Circuit, Fairfax Circuit Court. JOHN E. WETZEL, 26th Judicial Circuit, Winchester Circuit Court. CLIFFORD R. WECKSTEIN, Judge Designate, 23rd Judicial Circuit, Roanoke Circuit Court, dissenting.

Opinion

ORDER APPROVING THE AUGUST 3, 1993, AND JULY 22, 1999, MODIFICATIONS TO THE VOLUNTARY SETTLEMENT OF ANNEXATION AND IMMUNITY AGREEMENT

THIS MATTER came before the Court upon the joint petition of the City of Manassas Park ("the City") and Prince William County ("the County"), through their respective governing bodies, by counsel, for affirmation and approval of amendments made by them to their Voluntary Settlement of Annexation and Immunity Agreement on August 3, 1993, and July 22, 1999. This matter was submitted to the Court on the pleadings and other papers. The Court conducted [*2] a hearing by

telephone conference call, during which the parties were represented by counsel and all judges of the Court were present. Counsel explained their joint request for approval of amendments to the Voluntary Settlement of Annexation and Immunity Agreement and answered the Court's questions. No evidence was presented to the Court during the telephone conference call, and this matter has been submitted to the Court on the pleadings and papers filed in the Circuit Court of Prince William County; and

IT APPEARING to the Court that the City and the County have entered into a Voluntary Settlement of Annexation and Immunity Agreement ("Voluntary Settlement Agreement"), pursuant to § 15.1-1167.1 (now [§ 15.2-3400](#)), VA Code Ann., and that this Voluntary Settlement Agreement was originally dated May 9, 1989, amended June 29, 1989, and further modified March 20, 1990; and

IT FURTHER APPEARING to the Court that on August 3, 1993, the governing bodies of the County and the City each conducted duly advertised public hearings and following those hearings, approved amendments to Sections 2.04.01, 3.01.03, 3.01.05, and 3.03.01, which are indicated by underlining and strike through [*3] in the relevant provisions in the Voluntary Settlement Agreement which is attached as Exhibit 1 to the Joint Petition; and

IT FURTHER APPEARING to the Court that on June 15, 1999, the City conducted a public hearing and following that hearing, approved an amendment to Section 2.04.02, to substitute a new Exhibit D2 to the Voluntary Settlement Agreement, which is indicated by underlining and strike through in that section of the Voluntary Settlement agreement which is attached as Exhibit A to the Joint Petition; and

IT FURTHER APPEARING to the Court that on July 20, 1999, the County conducted a public hearing, and following that hearing, approved an amendment to Section 2.04.02, identical to the amendment approved by the City on June 15, 1999, and

IT FURTHER APPEARING to the Court that the parties to the Voluntary Settlement Agreement intend that this latest amendment become effective July 22, 1999; and

IT FURTHER APPEARING to the Court that the original Voluntary Settlement Agreement met all the criteria for approval pursuant to then § 15.1-1167.1, Va. Code Ann., and that the August, 1993, and July, 1999, amendments have been adopted following the

procedure [*4] required by Section 8.03 of the Voluntary Settlement Agreement; and

IT FINALLY APPEARING to the Court that the Voluntary Settlement Agreement, as amended August 3, 1993, and July 22, 1999, will continue to serve the best interests of the Commonwealth in that it will continue to promote orderly growth and the continued viability of the respective governments of the City of Manassas Park and the County of Prince William; it is therefore

ORDERED, ADJUDGED AND DECREED that the amendments made to the Voluntary Settlement Agreement by the governing bodies of the City of Manassas Park and Prince William County, effective August 3, 1993, and July 22, 1999, be, and they hereby are, APPROVED and AFFIRMED; and

IT IS FURTHER ORDERED that the Modified Voluntary Settlement of Annexation and Immunity Agreement, as Amended June 29, 1989, and Modified January 23, 1990, and as Further Modified March 20, 1990, August 3, 1993, and July 22, 1999, is hereby validated and given full force and effect and shall be binding on all future governing bodies of the City of Manassas Park and the County of Prince William.

There being nothing further to be done in this action, the Clerk is ORDERED [*5] to remove this action from the active docket of this Court, to place it among the ended law actions, and to forthwith furnish certified copies of this Order to counsel of record.

ENTERED this 16 day of May, 2000.

JANE MARUM ROUSH

19th Judicial Circuit, Fairfax Circuit Court

JOHN E. WETZEL

26th Judicial Circuit, Winchester Circuit Court

For the reasons stated in the attached opinion herein incorporated by reference / respectfully dissent from the decision to enter the foregoing order

CLIFFORD R. WECKSTEIN, Judge Designate

23rd Judicial Circuit, Roanoke Circuit Court

Dissent by: Clifford R. Weckstein

Dissent

JUDGE WECKSTEIN, DISSENTING

I respectfully decline to join in the judgment of the court for two reasons: I do not believe that this case presents a justiciable question, and I do not believe that this court is empowered to hear the case-as it did--in a conference telephone call that appears on no court calendar or docket, and of which the public at large has no notice.

I.

This three-judge court ostensibly was requested by the parties pursuant to Chapter 34 of Title 15.2 of the Code of Virginia. The court's statutory duty is to determine whether voluntary [*6] agreements between governments should be denied, or whether the agreements should be affirmed, validated, and given full force and effect. [Code § 15.2-3400\(5\)](#). However, according to the representations of counsel for both parties, there can be no significance to whether this court approves the agreements presented to it. Everything that either party agreed to do has been done; nothing that has been done can be undone. (Two sets of agreements are involved. One has been in effect since 1993. The order that we enter today recites "that the parties to the Voluntary Settlement Agreement intend that [the] latest amendment become effective July 22, 1999," nearly four months before the petition for approval was filed. The Commission on Local Government reviewed a 1996 agreement between the parties. That agreement, which is appended to the only COLG report filed with the court, is not mentioned in today's order.) It is suggested that judicial approval is not, in truth, necessary. The county and the city have agreed that things have been done-and done to both parties' satisfaction--which modify provisions of a prior, judicially-approved, contract. They agree that the contract called for judicial [*7] approval of any such modification. Thorough harmony between the parties therefore existing, they agree that this three-judge court should place its imprimatur upon what has been done. Nothing in the statutory scheme pursuant to which this court was convened suggests that the court is empowered to decide a matter that is not justiciable.

"As a general rule, 'moot questions are not justiciable and courts do not rule on such questions to avoid issuing advisory opinions.' [United States v. Peters, 754](#)

[F.2d 753, 757 \(7th Cir. 1985\)](#)." [In re Times-World Corporation, 7 Va. App. 317, 323, 373 S.E.2d 474 \(1988\)](#). In order for a controversy to be "justiciable," there must be "'specific adverse claims,' based on present facts, that are 'ripe for judicial adjustment.'" [Reisen v. Aetna Life & Cas. Co., 225 Va. 327, 331, 302 S.E.2d 529, 531 \(1983\)](#); [Mosher Steel v. Teig, 229 Va. 95, 99, 327 S.E.2d 87 \(1985\)](#); [Historic Landmarks Commission v. Louisa County, 217 Va. 468, 476, 230 S.E.2d 449, 454 \(1976\)](#); [Board of Supervisors of James City County v. Rowe, 216 Va. 128, 132, 216 S.E.2d 199, 204-05 \(1975\)](#); [*8] [City of Fairfax v. Shanklin, 205 Va. 227, 229, 135 S.E.2d 773, 775 \(1964\)](#). Courts do not decide moot questions; courts do not give advisory opinions; courts decide only questions that are justiciable. [Hoffman Family v. Mill Two Associates Partnership, 259 Va. 685, 529 S.E.2d 318 \(2000\)](#); [Treacy v. Smithfield Foods, 256 Va. 97, 500 S.E.2d 503 \(1998\)](#). It is axiomatic that consent cannot confer jurisdiction. [Humphreys v. Commonwealth, 186 Va. 765, 772, 43 S.E.2d 890 \(1947\)](#); [Alexandria Water Co. v. Alexandria, 163 Va. 512, 535, 177 S.E. 454 \(1934\)](#).

II.

Each of the judges in the majority is more than wise. Both are extraordinarily able. Perhaps the absence of justiciability is demonstrated by the fact that such judges essentially treat this as an administrative or a ministerial matter, rather than a case or controversy to be presented to the court openly, publicly, in the regular course of judicial proceedings.

In the law of this Commonwealth, there is a rebuttable presumption of openness in civil proceedings, [Shenandoah Publishing House v. Fanning, 235 Va. 253, 368 S.E.2d 253 \(1988\)](#), [*9] though neither the Supreme Court nor the Court of Appeals of Virginia has ruled explicitly upon "the public's right to attend and observe the conduct of a civil trial." [Id., 235 Va. at 256](#). "Historically both civil and criminal trials have been presumptively open." [Richmond Newspapers, Inc. v. Virginia 448 U.S. 555, 580, fn. 17, 65 L. Ed. 2d 973, 100 S. Ct. 2814 \(1980\)](#). "There is no principled basis upon which a public right of access to judicial proceedings can be limited to criminal cases. . . . Indeed, many of the advantages of public criminal trials are equally applicable in the civil trial context. . . . Thus, in some civil cases the public interest in access, and the salutary effect of publicity, may be as strong as, or stronger than, in most criminal cases." [Gannett Co. v. Depasquale, 443 U.S. 368, 386-387, 61 L. Ed. 2d 608, 99 S. Ct. 2898 \(1979\)](#).

Indeed, every lower court opinion of which we are aware that has addressed the issue of First Amendment access to civil trials and proceedings has reached the conclusion that the constitutional right of access applies to civil as well as to criminal trials. (*Publiker Industries, Inc. v. Cohen* (3rd Cir. 1984) 733 F.2d 1059 [*10] (*Publiker*) [public has First Amendment right of access to civil proceedings concerning motion for preliminary injunction in securities litigation; closure is not warranted merely to protect disclosure of poor corporate management]; see also *Westmoreland v. Columbia Broadcasting System, Inc.* (2d Cir. 1984) 752 F.2d 16 [public and press have First Amendment right to attend, but not to televise, civil trial]; *In re Iowa Freedom of Information Council* (8th Cir. 1984) 724 F.2d 658 [First Amendment right of access applies to civil proceedings for contempt, but portions of proceeding involving trade secrets properly were closed]; *Newman v. Graddick* (11th Cir. 1983) 696 F.2d 796 [First Amendment right of access applies to hearings in class actions concerning prison overcrowding]; *Del Papa v. Steffen* (Nev. 1996) 112 Nev. 369, 915 P.2d 245 [First Amendment right of access applies to state high court's review of judicial disciplinary proceedings]; *State v. Cottman Transmission* (Md.Ct.Spec.App. 1988) 75 Md. App. 647, 542 A.2d 859 [First Amendment and state constitutional right of access applies to proceedings and documents in [*11] unfair trade practices lawsuit; closure not justified merely in order to minimize damage to corporate reputation].) No case to which we have been cited or of which we are aware suggests, much less holds, that the First Amendment right of access as articulated by the high court does not apply, as a general matter, to ordinary civil proceedings.... Moreover, the high court has not accepted review of any of the numerous lower court cases that have found a general First Amendment right of access to civil proceedings, and we have not found a single lower court case holding that generally there is no First Amendment right of access to civil proceedings.

NBC Subsidiary (KNBC-TV), Inc. v. Superior Court of Los Angeles County, 20 Cal. 4th 1178, 1208-10, 980 P.2d 337, 86 Cal. Rptr. 2d 778 (1999) (Litigants were well-known entertainment figures).

In cases such as *NBC Subsidiary v. Superior Court*, arguments against public access often are based on the asserted privacy interests of litigants who are private

individuals. Such arguments fail because of the public's interest in the integrity of its courts and judicial processes. *Id.*; see also *Shenandoah Publishing House v. Fanning*, *supra*. [*12] In this case, of course, the litigants are not private individuals—they are local governments. See *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 56 L. Ed. 2d 1, 98 S. Ct. 1535 (1978). "In *Mills v. Alabama*, 384 U.S. 214, 218, 16 L. Ed. 2d 484, 86 S. Ct. 1434 (1966), this Court observed: "Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs." *Id.* 435 U.S. at 838. Virginia's Freedom of Information Act (FOIA) declares a public policy of the Commonwealth: "The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government." Code § 2.1-340.1. Under FOIA, it would be unlawful for the governing bodies of these litigants to conduct any meetings through telephone conferences. Code § 2.1-343.1(A). These governing bodies cannot meet without giving prominent notice of the date, time and locations of their meetings. Code § 2.1-343.1(C).

Code § 15.2-3400 provides that the three-judge court designated to hear this case [*13] is to do so pursuant to § 15.2-3000 *et seq.* Neither § 15.2-3000 nor any other statute explicitly states how the three-judge special court designated to pass upon a voluntary agreement of the sort presented here is to hear and decide the case. The statutes addressing the same subject matter—the statutes that follow § 15.2-3000—may, however, be instructive. They at least suggest that, to the extent that legislators thought about it, they thought that judges designated to hear cases of this sort would, in fact, convene for hearing in open court.

For example, § 15.2-3004 provides that, if a member of a three-judge special court is unable to hear the case to conclusion, then, then "[no] decision shall be rendered or action taken after such designation with respect to any question previously submitted to but not decided by the court except after a full hearing in open court by the court as reconstituted of all the evidence theretofore introduced before the court and a hearing of all arguments theretofore made with reference to such question." When the case presented to the three-judge court is a boundary line dispute, the court must hear the case, without a jury "upon the evidence [*14] introduced in the manner in which evidence is introduced in common-law cases." *Code § 15.2-3104.*

When localities agree that boundary lines should be relocated, but cannot agree on the location of the new lines, § 15.2-3109 provides that "the court shall hear evidence." When an annexation petition is filed, "the special court shall hear the case upon the evidence introduced as evidence is introduced in civil cases." [Code § 15.2-3209](#). When considering a consolidation petition, the special three-judge court must order an election if, after "hearing the evidence," it makes certain findings. [Code § 15.2-3526](#).

Courts, like the executive and the legislative branches of government, do the public's business. They must do so in the sunshine. Public confidence in the integrity and vitality of the judicial branch of government demands no less. (Neither the Inquisition nor the Star Chamber conducted open or public proceedings.) Especially when the court has before it a public matter involving public litigants that, at every earlier stage, required advertising, notice and hearing, the court *must*, in my view, assure that the public has sufficient notice of the date, time, and place of the [*15] proceedings. If proceedings are to be conducted electronically, there should, in my view, be notice and opportunity for electronic observation. A three-judge court should not, in my view, hear oral arguments without such openness and notice unless there exists the same justification for closure that would pass muster in a criminal case.

For the foregoing reasons, I respectfully dissent.

Clifford R. Weckstein, Judge

End of Document

Section 7

**Table of Amendment Provisions in Representative Sample of
Approved Voluntary Settlement Agreements
Created by Commission on Local Government Staff**

<u>Locality 1</u>	<u>Locality 1</u>	<u>Date</u>	<u>What provision covers</u>	<u>Process</u>
Fredericksburg	Spotsylvania	June, 1982	Full amendment	mutual consent
Manassas Park	Prince William	October, 1989	Full amendment	Court approval, explicitly states no CLG approval needed
Culpepper	Culpepper	November, 2011	Everything but Section 15.4	Court and CLG approval
Bedford	Bedford	April, 1993	Full agreement	mutual consent
Clifton Forge	Alleghany	October, 2000	full agreement	mutual consent
Loudoun	Leesburg	March, 1983	full agreement	mutual consent
Bristol	Washington	July, 2014	full agreement	only prior to affirmation
Bristol	Washington	March, 1997	full agreement	Court and CLG approval
Falls Church	Fairfax	September,	modify or amend full	mutual consent
Franklin	Southampton	February, 1999	majority has to have regular approval. Certain sections need only	mutual consent for some provisions, court and CLG approval for others.
Danville	Pitsylvania	December,	full agreement	mutual consent
Radford	Montgomery	June, 1986	Full agreement	mutual consent
Franklin	Southampton	July, 1985	full agreement	mutual consent
Lynchburg	Campbell	March, 1986	full agreement	mutual consent, affirmed pursuant to applicable law
Radford	Montgomery	December,	full agreement	mutual consent
Bedford	Bedford	November, 1997	majority of agreement, except for tax and additions to designated development areas that require approval by	mutual consent for some provisions, court and CLG approval for others.
Maratinsville	Henry	October, 2021	Full agreement	mutual consent; commission and court review exempted unless required by law
Clarksville	Mecklenburg	May, 2013	All except specified sections	mutual consent, Court approval expressly exempted
Amherst	Amherst	August, 1993	full amendment	Court approval, explicitly states no CLG approval needed
Stephens city	Frederick	January, 2005	Full amendment	prior to affirmation
Ashland	Hanover	July, 1995	full amendment	mutual consent
Front Royal	Warren County	January, 2014	Full amendment	mutual consent
Farmville	Prince Edward	May, 1992	Full amendment	mutual consent
Herndon	Fairfax	October, 1987	Full agreement	mutual consent, affirmed pursuant to applicable law
Chatham	Pittsylvania	July, 1990	Full agreement	mutual consent
Christiansburg	Montgomery	October, 1987	Full agreement	mutual consent
Grottoes	Augusta	January, 2010	Full Agreement	mutual consent
Wythville	Wythe	September, 1989	Full agreement	mutual consent
South Hill	Mecklenburg	May, 2000	Full Agreement	mutual consent
Windsor	Isle of Wight	August, 2000	Full agreement	mutual consent

Vinton	Roanoke	October, 1999	Full agreement	mutual consent
Pearisburg	Giles	July, 1997	Full agreement	mutual consent
Herndon	Loudoun	September, 2014	All except section 2	mutual consent, Court approval expressly exempted
Hillsville	Carroll	March, 1995	Full Agreement	mutual consent
Pulaski	Pulaski	March, 1987	Full Agreement	mutual consent
Hillsville	Carroll	January, 2011	All except sections 2 and 3	mutual consent, Court approval expressly exempted
Marion	Smyth	September, 2014	All except sections 2 and 4	mutual consent, Court approval expressly exempted
Orange	Orange	September, 1991	Full agreement	mutual consent