

**REPORT ON THE
TOWN OF WASHINGTON –
RAPPAHANNOCK COUNTY
VOLUNTARY SETTLEMENT AGREEMENT**



Commission on Local Government

Department of Housing and Community Development

Commonwealth of Virginia

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

July 2024

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Executive Summary

On November 20, 2023, the Town of Washington and Rappahannock County jointly submitted a notice of a proposed Voluntary Settlement Agreement to the Commission on Local Government for review. This Proposed Agreement was negotiated under § 15.2-3400 of the Code of Virginia, which allows localities to settle interlocal issues through negotiated agreements. However, before localities may 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 as to whether the voluntary settlement agreement is in the best interest of the Commonwealth 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 provides for the Town of Washington to annex four acres of a parcel that currently lies in both the Town and the County. It also sets limitations on use of the property to commercial uses only. The Commission finds that the Proposed Agreement is in the best interest of the Commonwealth and recommends its adoption because the provisions are beneficial to the orderly growth and continued viability of the Town and County and do not negatively affect the citizens of the localities or the Commonwealth. The Commission recommends the agreement be adopted in its current form without any changes.

What follows is the Commission's advisory report on the Proposed Agreement. First, this report overviews the proceedings before the Commission that led to this report. Second, it explains the characteristics of the Parties, highlighting those that are most relevant to the Commission's review. Third, it discusses the relevant standard of review and applies that standard to the Proposed Agreement through findings of fact and recommendations. Finally, the report concludes that the Proposed Agreement is in the best interest of the Commonwealth.

Proceedings of the Commission

On November 20, 2023, the Town of Washington (“the Town”) and Rappahannock County (“the County”) filed a notice of their intention to enter into a Voluntary Settlement Agreement (“The Notice”).¹ The Notice stated the Town and County’s (collectively, “the Parties”) intention to agree to a boundary line adjustment (BLA) to annex approximately four acres of County land into the Town. To accomplish the boundary line adjustment, the Parties drafted a voluntary settlement agreement (“the Proposed Agreement” or “the VSA”) that would move the boundary line and ensure that the annexed property would be zoned for commercial uses once subject to the Town’s jurisdiction, among other provisions.

On March 13, 2023, the Town Council authorized Town staff to take the necessary steps, in coordination with the County, to submit a voluntary settlement agreement to the Commission,² and on April 3, 2023, the County Board of Supervisors accepted the Proposed Agreement in principle and voted to submit it to the Commission for review.³ The Notice contains the final Proposed Agreement, dated April 18, 2023, supporting narratives, and additional evidence. Consistent with the Commission’s regulations, the VSA Notice was also sent to the political subdivisions that are contiguous to the Town and County or with which they share functions, revenue, or tax sources.⁴

The Commission held a hearing to review the Proposed Agreement on May 20, 2024 with oral presentations from the Parties at the County Courthouse in Washington, VA. The Commission also held a public hearing, advertised in accordance with § 15.2-2907(B) of the Code of Virginia, in the evening on May 20, 2024, also at the County Courthouse for the purpose of receiving public comment on the Proposed Agreement. The public hearing was attended by approximately 30 people and produced testimony from 5 individuals in support of the Proposed Agreement. To permit receipt of additional public comment, the Commission agreed to keep its record open for written testimony through 5:00 pm on June 4, 2024. The Commission did not receive any additional written testimony.

¹ Town of Washington, NOTICE BY THE TOWN OF WASHINGTON, VIRGINIA, AND COUNTY OF RAPPAHANNOCK, VIRGINIA, OF THEIR INTENTION TO PETITION FOR THE APPROVAL OF A VOLUNTARY SETTLEMENT AGREEMENT BETWEEN THE TOWN OF WASHINGTON AND RAPPAHANNOCK COUNTY, November 20, 2023, [hereinafter *the VSA Notice*].

² *Id.*, p. 3; included in Appendix on page 6.

³ *Id.*

⁴ *Id.*, p. 7-8; included in Appendix on pages 10-11.

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.⁵ However, the Commission may extend that deadline either by 60 days on its own motion or to a date agreed upon by both Parties.⁶ The Commission extended the report due date by 60 days,⁷ and this report was adopted at a regular meeting of the Commission on July 23, 2024, and sent to the Parties for their consideration and approval by their respective governing bodies.⁸ Following this Commission report, 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.

Overview of the Proposed Agreement

The Proposed Agreement is a basic boundary line adjustment that adds additional restrictions on uses of the annexed property. It represents several years of careful planning by the Parties and the property owner, Black Kettle, LLC (“Black Kettle”), and multiple rounds of community input and feedback. The key provisions are i) a boundary line adjustment to bring four acres owned by Black Kettle into the boundaries of the Town and ii) limitations on the use of the property to commercial uses only.

The goal of the Proposed Agreement is to allow for growth that will benefit both localities, but only in a way that is both acceptable to the County and consistent with the Town’s longstanding preference to only extend utilities to properties that are within the Town’s boundaries so that it can control how its utilities are used. In furtherance of the Town’s preference, its current policy is “not to accept applications for BLAs from adjoining properties, currently in the County, for a period of 5 years from the [approval of the Proposed Agreement]. Unless [sic] the owners of said properties should present reasonable proof that the sewer system on their property is failing or should they wish to construct a single-family home on a property, adjacent to the Town, which has failed a perc test.”⁹ Ultimately, the Town’s self-imposed policy

⁵ Va. Code Ann. § 15.2-3400 (2024); 15.2-2907(A) (2024).

⁶ Id.

⁷ *Minutes of the March 22, 2024 Regular Meeting*, COMM. ON LOCAL GOV’T, March 22, 2024.

⁸ *Minutes of the July 23, 2024 Regular Meeting*, COMM. ON LOCAL GOV’T, July 23, 2024.

⁹ *The VSA Notice*, at Exhibit 3; included in Appendix on page 14.

of limiting its own annexation authority was not included in the Proposed Agreement and is therefore not permanently binding on the Town.¹⁰

Characteristics of the Town and County

The Town of Washington and Rappahannock County are located in the northwestern portion of Virginia. Adjacent to Fauquier, Culpeper, Madison, Page, and Warren Counties, the County is in a rural, mountainous part of the state, in the heart of the Shenandoah mountains. The Town and County host small populations, with a total of ~7,400 County residents and less than 150 Town residents.¹¹ The County is sparsely populated and has focused its commercial and higher-density residential development around several unincorporated villages and the Town of Washington.

As part of Western Virginia, the Town and County are in Growth and Opportunity Virginia Region #9, characterized by a large presence of healthcare, education, and hospitality services industries (though the region has made efforts to increase activity in key trade sector industries). Furthermore, the Town's economic output is almost entirely driven by tourism activity, namely from the Inn at Little Washington, the Theater at Washington, and related retail enterprises.

While hosting small populations, the County's standards of living are similar to the Commonwealth's. When comparing Median Household Incomes (MHIs), the MHI for the County at \$98,663 per year is slightly greater than the statewide median of \$87,249. The workforce is reflective of the prominent industries; while 41% of Virginians have attained a bachelor's degree or higher, only 33.8% of County residents have done so.

¹⁰ Because it is not included in the Proposed Agreement, the Town's commitment to not accept boundary line adjustments is not analyzed in this report beyond these references to establish the events that led to Proposed Agreement. The Commission does not wish to prejudice either party should the Town change its policy and return with a case or position that is consistent with a different policy in the future.

¹¹ Table 1, *infra*.

Table 1: Selected Demographic and Economic Characteristics of Parties			
Population Characteristics	Virginia	Town of Washington	Rappahannock County
Total Population	8,715,698	<150	<7400
Total Size (Square miles)	39,482.11	.26	267.2
Median Household Income	\$87,249	N/A	\$98,663
Educational Attainment (Bachelor's Degree or Greater)	41.0%	N/A	33.8%
Percent Minority*	41.9%	N/A	13.0%
Population per Square Mile	218.6	N/A	27.6
Source: <u>Census Quickfacts</u> , 2018-2022 ACS 5-year estimates			
*Includes all individuals who identified as Black or African American, American Indian, Asian, Native Hawaiian or Pacific Islander, Two or More Races, or Hispanic or Latino.			

The Town of Washington is the only incorporated town within the County and is the County seat of government. It is also one of two areas in the County with public water and sewer systems.¹² The total land area of the Town is only .26 square miles. While it is the only incorporated town, there are other villages in the County that are registered as census designated places, such as Chester Gap, Flint Hill and Sperryville, that are of varying sizes. The villages generally have slightly higher population densities than the Town.

¹² The village of Sperryville has public sewer owned and operated by the Rappahannock County Water and Sewer Authority.

Characteristics of the Annexation Area

Rush River Commons Phase II

The property being annexed by the Proposed Agreement is approximately four acres of land owned by Black Kettle, LLC (“Black Kettle”) currently located in Rappahannock County.¹³ The acreage is part of one lot that is connected to another, similarly sized lot, all owned by Black Kettle.¹⁴ These two contiguous lots are approximately nine acres.¹⁵ Five acres are in the Town and are currently being developed as Rush River Commons Phase I according to a development plan approved by the Town.¹⁶ The proposed boundary line adjustment will allow for the development of Rush River Commons Phase II. Black Kettle desires to develop the entire nine acres as a cohesive whole with housing, commercial tenants, government offices, community services, and other, to-be-developed spaces, all on either side of a wetland that bisects the property roughly along the current boundary line.¹⁷

The four acres that are the subject of the Proposed Agreement have not been developed and cannot be developed as a commercial space without access to public utilities.¹⁸ Therefore, the plans and designs for the land are tentative and subject to development approvals from the Town once the property has been annexed. However, Black Kettle plans to integrate the area with Phase I via street ingress and egress and walking paths over the wetland.¹⁹ Since Phase I is already in the Town and will contain higher-density housing, government services, and a food pantry, Black Kettle’s counsel testified that its intent is to construct a multi-purpose commercial and community space on the property that could be used for large events, receptions, and potentially live music and performances.²⁰

¹³ *The VSA Notice*, p. 2; included in Appendix on page 5.

¹⁴ *Id.*, at Exhibit 1; included in Appendix on page 12.

¹⁵ *Id.*, p. 1; included in Appendix on page 4.

¹⁶ *Id.*, p. 2; included in Appendix on page 5.

¹⁷ *Id.*, p. 1; included in Appendix on page 4.

¹⁸ Oral Presentations before the Commission on Local Government, May 20, 2024, *Testimony of John Foote, Esq., counsel for Black Kettle, LLC* [hereinafter *Foote Testimony*]. A recording of the Oral Presentation is on file with the Commission.

¹⁹ *Id.*

²⁰ *Id.*

Scope and Standard of Review

The Proposed Agreement was negotiated under § 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.”²¹ 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.²² The local governments may then adopt any recommendations before the Agreement is sent to a special court for ultimate disposition.²³ The Commission’s report shall be admissible as evidence in any court proceedings on the VSA, but it shall not be binding upon any court and shall be advisory in nature only.²⁴

The General Assembly encourages local governments to attempt to negotiate settlement of their interlocal concerns.²⁵ 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.

This Proposed Agreement, as noted previously, is the product of negotiations by the Parties and accounts for a significant amount of public feedback that the Parties have already received. Its main provision is a boundary line adjustment that brings property into the Town and

²¹ Va. Code Ann. § 15.2-3400(3) (2024).

²² Va. Code Ann. § 15.2-3400(3) (2024); 15.2-2907(A) (2024).

²³ Va. Code Ann. § 15.2-3400(3) (2024).

²⁴ Va. Code Ann. § 15.2-2904(B) (2024); 15.2-3400 (2024).

²⁵ See Va. Code Ann. § 15.2-3400 (2024).

²⁶ Va. Code Ann. § 15.2-2903(3) (2024).

²⁷ Va. Code Ann. § 15.2-3400(3) (2024).

limits its uses in exchange for access to public utilities. When applying the "best interest of the Commonwealth" standard of review to voluntary settlement agreements like the Proposed Agreement that contain a mixture of annexation and other provisions, the Commission considers "whether the agreement will be beneficial to the orderly growth and continued viability of the localities, whether it would promote strong and viable units of government, and whether there are ramifications of the proposed annexation for other parties and the Commonwealth."²⁸ This standard is derived from the stated purpose of voluntary settlement agreements in § 15.2-3400 of the Code of Virginia, the court's standards of review, and Commission precedents.²⁹ Applying this standard to this Proposed Agreement, the Commission therefore finds it necessary to consider whether the VSA is in the best interest of the localities and their citizens.³⁰

Findings of Fact

This Proposed Agreement is an agreement between the Town and the County to limit the possible uses of privately-owned property through zoning restrictions. Therefore, the Commission believes it is more important to consider the impact of this VSA on the property owner and the citizens, and less important to focus on the local governments, who have agreed to enforce the limitations and believe those limitations are already in their mutual best interests. With this emphasis in mind, the Commission must review these impacts under the "best interest of the Commonwealth" standard by providing findings of fact and recommendations. The findings of fact are provided in this section, and the analysis of whether the Proposed Agreement is in the best interest of the Commonwealth is provided in the next section.

²⁸ Comm. on Local Gov't, Report on the Town of New Market - Shenandoah County Voluntary Settlement Agreement, May 2023, at 8-9; <https://www.dhcd.virginia.gov/sites/default/files/Docx/clg/voluntary-settlement-agreement/final-report-new-market-%26-shenandoah-wtih-appendix.pdf>

²⁹ *See, e.g.*, Id; Comm. on Local Gov't, Report on the City of Emporia - County of Greensville Annexation Agreement, May 1983, at 15-16, <https://www.dhcd.virginia.gov/sites/default/files/Docx/clg/voluntary-settlement-agreement/city-of-emporia-county-of-greensville-annexation-agreement-may-1983.pdf>; Comm. on Local Gov't, Report on the Town of Grottoes – Augusta County Voluntary Settlement Agreement, January 2010, at 6, <https://www.dhcd.virginia.gov/sites/default/files/Docx/clg/voluntary-settlement-agreement/town-of-grottoes-county-of-augusta-voluntary-settlement-agreement-january-2010.pdf>

³⁰ Comm. on Local Gov't, Report on the Town of Leesburg- Loudoun County Voluntary Settlement Agreement, April 2024, at 14; <https://www.dhcd.virginia.gov/sites/default/files/DocX/clg/town-of-leesburg/final-clg-leesburg-loudoun-vsa-report-withappendix-4.30.24.pdf>

a. *Impact on the Town and County*

The County and the Town stated clearly in their presentations that they do not want overdevelopment. The Town has reinforced this preference through its longstanding practice of not extending public utilities to properties that are not in the Town, and the County has done so by including a provision in the VSA that the property cannot contain housing without express approval from the County’s Board of Supervisors.³¹ However, the Parties also testified that some development is desirable, and when Black Kettle approached the Town about a citizen-initiated annexation, each Party subsequently engaged its citizens to determine what development could occur on this specific property for the benefit of the community.³² That engagement led to the Proposed Agreement, which has taken the form of a voluntary settlement agreement instead of a citizen-initiated annexation.

The Proposed Agreement has no negative impact, financial or otherwise, on the County, as the zoning restrictions generally match the County’s commercial zoning ordinance and conform with the County’s comprehensive plan that limits residential and commercial development to the Town and designated village areas.³³ The largest impact on the localities is the creation of a new zoning district in the Town—Village Commercial. A new zoning district is necessary to enforce the County’s requirement that no housing be built on the parcel.³⁴ Because the Town does not have a dedicated commercial district, adding this new zoning district would increase the potential administrative burden to review the development plan for consistency with its requirements. However, the Town was willing to accommodate this request, and on February 13, 2023, several months before the Proposed Agreement was finalized and submitted to the Commission, it created the new district for the express purpose of providing “limitations on the final end-use of the property commonly known as Rush River Commons II if the pending request

³¹ The Town’s utility policies combined with its policy stated in Exhibit 3 of *The VSA Notice* severely limit what properties the Town will annex. The Town will not extend utilities to a property until it is annexed, and it will not annex a property unless it is a current or proposed single-family home that can show an urgent need for public utilities.

³² *Foote Testimony*.

³³ Oral Presentations before the Commission on Local Government, May 20, 2024, *Testimony of Garrey Curry, Rappahannock County Administrator*. A recording of the Oral Presentation is on file with the Commission.

³⁴ *The VSA Notice*, at Exhibit 6, art. 1 § 3, included in Appendix on page 35; see WASHINGTON, VA., ZONING ORDINANCE, art.1, § 1-3-1 (2008) (single-family residences were allowed “by right in every zoning district” in the Town).

for the adjustment of the boundary between the Town of Washington and Rappahannock County related to the property known as Rush River Commons is approved.”³⁵

By the terms of the agreement, the property will be annexed into the Town under this new Village Commercial district.³⁶ The following uses will be allowed by right³⁷:

- Orchards, gardens, and vineyards;
- Making of cider and/or wine;
- Retail uses of less than 1,000 square feet;
- Craft occupations in existing retail spaces;
- Public buildings for offices, courtrooms, meeting rooms, and jails;
- Offices in buildings of not more than two stories or 1,000 square feet on the ground level.

There are also uses that are allowed by special use permit,³⁸ which include:

- Retail uses of greater than 1,000 square feet;
- Clubs and lodges civic, fraternal, or patriotic, with bona fide membership;
- Restaurants;
- Museums;
- Houses of Worship;
- Offices in buildings of not more than two stories or 1,600 square feet on the ground floor;
- Craft occupations in other than existing retail space;
- Public libraries;
- Amphitheaters;
- Non-profit offices.

Given the size of the property, the Parties’ stated preference for limitations on development, and the fact that the Town willingly created a new zoning district in anticipation of an agreement, the Commission finds that the limitations the VSA places on the Town are either consistent with the Town’s priorities, or self-imposed. The impact of the Proposed Agreement on the Town is therefore minimal.

³⁵ *The VSA Notice*, at Exhibit 2; included in Appendix on page 13.

³⁶ *Id* at Exhibit 6, art. 1 § 3; included in Appendix on page 35.

³⁷ WASHINGTON, VA., *Resolution to amend the zoning ordinance of the Town of Washington, Virginia to add a new zoning district labeled “Village Commercial” (VC)*, 13 Feb. 2023; <https://washingtonva.gov/wp-content/uploads/2024/05/zoning-village-commercial.pdf>

³⁸ *Id.*

b. Impact on Black Kettle

An additional purpose of the Proposed Agreement is to allow Black Kettle to develop Rush River Commons Phase II in a manner that is acceptable to the Town and the County.³⁹ Once the property is annexed and rezoned, Black Kettle will be able to develop its property with any of the uses allowed by right in the Village Commercial District, and additional uses by application to the Town. The owner's vision is to integrate Phase I, which contains commercial buildings and residential developments, with Phase II, which would be a more community-focused space.⁴⁰ This vision does not conflict with the Village Commercial District or the Proposed Agreement, which simply states that housing cannot be built on the parcel unless and until both the Town and the County agree to allow residential uses.

Black Kettle's representative indicated that the restrictions on housing were acceptable for two reasons. First, Phase I already contains dense housing and commercial spaces, and second, the Village Commercial zoning district still allows for uses that are consistent with the stated goal of providing a primarily community-focused space with access to public utilities.⁴¹ It is clear to the Commission that during the development of the Proposed Agreement, the Town, the County, and Black Kettle all discovered that their interests were not necessarily incompatible with each other. Therefore, while the impact to the property owner may seem onerous, in context, it is a reasonable restriction that is necessary to secure the priorities of the Parties without infringing on the vision of Black Kettle.

c. Impact on the citizens of the Town and County

The Commission learned at the public hearing that the Town of Washington and the surrounding County are a tight -knit community that wants to limit their growth. They have collectively taken steps to do that by electing representatives that have enacted policies that limit fast-paced, large-scale growth and development. However, these representatives have also engaged in robust outreach with the citizens concerning this potential development, and this

³⁹ While Black Kettle's counsel presented preliminary concept art for Phase II, any plans for Phase II are subject to conformity with the Village Commercial zoning district and other development approvals by the Town.

⁴⁰ While the Commission is impressed with the vision of Black Kettle and the intent behind Phase I, the focus of the Proposed Agreement is on the potential development of Phase II.

⁴¹ *Footnote Testimony*; Although community-focused potential uses were discussed, the Commission understands that the ultimate uses must only comply with the zoning requirements, and therefore may not be exclusively community-focused.

outreach led to well-informed citizens who were supportive of the proposed boundary line adjustment and potential development.

At the public hearing, several county residents spoke to support the agreement with a variety of justifications. Some indicated that they did not oppose smaller developments so long as they were not higher-density housing, and therefore supported the restrictions regardless of the end result.⁴² Others indicated that they supported community-focused facilities and wanted to see this particular project come to fruition.⁴³ A citizen of the Town further cited the robust public engagement process, and there was no public opposition to the Proposed Agreement.⁴⁴

In sum, the community expressed that they want community-focused development, which by their definition, means this property should remain commercially zoned. The only way for the property to be developed as a commercial property is if it has access to utilities provided by the Town. This requires a boundary line adjustment, which can only be accomplished through this type of agreement. Therefore, the impact on the citizens of the VSA is generally welcomed because it allows for desired development with minimal impact.

Analysis and Recommendations

When considering proposed agreements that contain annexation provisions, the Commission considers whether the proposed agreement is beneficial to the orderly growth and continued viability of the localities, whether it would promote strong and viable units of government, and whether there are ramifications of the proposed annexation for other parties and the Commonwealth.⁴⁵ This Agreement meets all three components of this test. For the Parties, who are wary of large-scale growth and economic development, any agreement that will allow for the productive use of land in ways that are consistent with the values of the community will promote orderly growth and continued viability. Even if the agreement severely limits the types of allowable uses, it also allows unproductive land to have access to needed utilities and become productive for the betterment of the Parties.

⁴² *Minutes of Public Hearing*, COMM. ON LOCAL GOV'T, May 20, 2024.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Comm. on Local Gov't, Report on the Town of Leesburg- Loudoun County Voluntary Settlement Agreement, April 2024, at 13-14; <https://www.dhcd.virginia.gov/sites/default/files/DocX/clg/town-of-leesburg/final-clg-leesburg-loudoun-vsa-report-withappendix-4.30.24.pdf>

For similar reasons, the Proposed Agreement will also help the Parties remain strong and viable, both culturally and as solvent political subdivisions of the Commonwealth. The Proposed Agreement allows for development that conforms to current Town utility policies, which, in turn, allow for consistency and control over the growth that occurs at the edge of the Town. The goal of the policies is not to completely ban growth, but to allow it at a pace that is acceptable to the community. Part of what makes the Town and surrounding areas of the County strong and viable is their commitment to slower growth and local control, and the Proposed Agreement reinforces that commitment.

As to the effects on other parties and the Commonwealth, the strong support for Phase II as a commercial development was persuasive to the Commission. The Commission has indicated in previous reports that a robust community feedback process is in the best interest of the Commonwealth, and such a process was on full display here.⁴⁶ The Commission supports allowing localities to craft voluntary settlement agreements that respond to the needs and requests of their citizens. Furthermore, the Commission has also found that expanding utility access to promote orderly growth is generally in the best interest of the Commonwealth, especially when it occurs at a pace that is locally acceptable.⁴⁷ The Commission therefore commends the Parties on their engagement surrounding the VSA and encourages them to continue to work together with their citizens to decide what is best for their community.

Conclusion

Based on the findings of fact and analysis above, the Commission finds that the Proposed Agreement is in the best interest of the Commonwealth and recommends it be adopted by the localities as written.

⁴⁶ See Comm. on Local Gov't, Report on the City of Martinsville - Henry County Voluntary Settlement Agreement, October 2021, at 36, 39; <https://www.dhcd.virginia.gov/sites/default/files/Docx/clg/town-status/martinsville-henry-county-vsa-%20reversion-%20final.pdf>

⁴⁷ See Comm. on Local Gov't, Report on the Town of Leesburg - Loudoun County Voluntary Settlement Agreement, April 2024, at 21; <https://www.dhcd.virginia.gov/sites/default/files/DocX/clg/town-of-leesburg/final-clg-leesburg-loudoun-vsa-report-withappendix-4.30.24.pdf>

Appendix

Town of Washington – Rappahannock County
Proposed Voluntary Settlement Agreement

Prepared by the Commission on Local Government

July 2024

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A. Notice by the Town of Washington, Virginia, and the County of Rappahannock, Virginia of Their Intention to Petition for the Approval of a Voluntary Settlement Agreement between the Town of Washington and Rappahannock County.	Page 3
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The Town of Washington
"The First Washington of Them All"

POST OFFICE BOX 7, WASHINGTON, VIRGINIA 22747
540/675-3128

November 20, 2023

The Virginia Commission on Local Government
c/o Mr. LeGrand Northcutt
600 East Main Street, Suite 300
Richmond, Virginia 23219

Dear Mr. Northcutt:

Enclosed you will find a Notice from the Town of Washington, Virginia, and the County of Rappahannock, Virginia, of their intention to petition for the approval of a voluntary settlement agreement between them. I believe that you have been made aware of the ongoing discussions between the two jurisdictions.

The Town is acting as the petitioning party solely for convenience since it is the jurisdiction seeking to alter the Town boundary. We believe that the Notice provides a clear explanation of why this change is requested.

Please let us know what further information or assistance is required.

Sincerely yours,

Joseph J. Whited

Mayor

Town of Washington, Virginia

cc: Ms. Debbie Donehey, Chair of the Rappahannock County Board of Supervisors
Mr. Garrey Curry, Rappahannock County Administrator
Mr. Arthur Goff, County Attorney
Mr. Martin Crim, Washington Town Attorney
Mr. Charles Akre, Black Kettle, LLC
Mr. John Foote, Walsh, Colucci, Lubeley & Walsh, PC
Mr. John Egertson & Ms. Sheila J. Weimer, Culpeper County
Ms. Janelle Downes & Ms. Tracey A. Gallehr, Fauquier County
Mr. Jonathon Weakly & Ms. Clarissa T. Berry, Madison County
Ms. Amity Moler & Mr. Bryan Cave, Page County
Dr. Edwin C. Daley & Mr. Jason J. Ham, Warren County
Mr. Russell Gilkison, RSW Regional Jail
Mr. Evan Vass and Mr. Jason Ham, Shenandoah County

VIRGINIA:

BEFORE THE VIRGINIA COMMISSION ON LOCAL GOVERNMENT

**RE: AGREEMENT BETWEEN THE TOWN OF)
WASHINGTON, VIRGINIA, AND THE)
COUNTY OF RAPPAHANNOCK, VIRGINIA)
PURSUANT TO THE PROVISIONS)
OF VA. CODE ANN. § 15.2-3400)**

**NOTICE OF TOWN OF WASHINGTON, VIRGINIA, AND COUNTY OF
RAPPAHANNOCK, VIRGINIA, OF THEIR INTENTION TO PETITION FOR THE
APPROVAL OF A VOLUNTARY SETTLEMENT AGREEMENT BETWEEN THE
TOWN OF WASHINGTON AND RAPPAHANNOCK COUNTY**

Pursuant to Va. Code Ann. § 15.2-3400, and Virginia Administrative Code 1 VAC 50-20-230, the County of Rappahannock, Virginia (the “**County**”), and the Town of Washington, Virginia (the “**Town**”), by 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 a Boundary Line Adjustment Agreement By and Between the County of Rappahannock, Virginia and the Town of Washington, Virginia (the “**BLA Agreement**”), to the Commission for its review pursuant to law, and ultimately the approval and of a BLA Agreement between them.

In support of this Notice, the Parties state the following:

1. Black Kettle, LLC (“**Black Kettle**”) is the owner of two parcels of land identified as Tax Map #20-18 and #20-18A on the Tax Maps of Rappahannock County. These Parcels consist in total of approximately 9.09848 acres, more or less. Of this acreage 3.29789 acres of Parcel #20-

18, and 1.85196 acres of Parcel #20-18A, more or less, are situated in the Town, and are subject to its jurisdiction (the “Town Property”).¹

2. Approximately 3.94953 acres of Parcel #20-18A, more or less, of the Black Kettle land are situated in the County and subject to its sole jurisdiction (the “County Property”). These Parcels are depicted on the Boundary Line Adjustment Plat attached as **Exhibit 1**).

3. Black Kettle has obtained Town approval for the first phase of the development of Rush River Commons I (“Phase I” of the “Project”) on the Town Property, and has obtained site plan approval and has commenced construction of that Phase I.

4. Black Kettle has further requested that the Town and County so adjust the boundaries between them as to bring the County Property into the Town’s limits in order that Black Kettle’s further development of the Project may be planned and developed consistently with the approvals for Phase I, pursued according to the Town’s Zoning and Subdivision Ordinances and other development ordinances and processes, and so that the land so adjusted may have access to the Town-provided public utilities that are essential to that development.

5. Following extensive communication between and among Black Kettle, the Town, and the County regarding a potential Boundary Line Adjustment to serve these ends, a proposed Boundary Line Adjustment Agreement was submitted for review and consideration by the jurisdictions on June 5, 2022. The Town and the County undertook review thereof.

6. To initiate the formal consideration of a boundary adjustment, the Town and County each held separate public hearings at which the details of the BLA Agreement were openly discussed upon proper notice thereof.

¹ Because this Parcel lies within the Town of Washington, it is also subject to County jurisdiction for those purposes recognized under Virginia law.

7. On February 13, 2023, the Town Council unanimously adopted a resolution whereby, among other things, it affirmatively agreed that should the remaining phase of the Project, called Rush River Commons II (“Phase 2”) be developed on the County Property once brought into the Town through a Boundary Line Adjustment, said Property will be zoned commercially, and any development on that County Property will be restricted to by-right commercial uses. **Exhibit 2.**

8. On that same day, the Town Council further unanimously adopted a Resolution that “it will be the policy of the Town of Washington not to accept applications for [boundary line adjustments] from adjoining properties, currently in the County, for a period of 5 years from the conclusion of said agreement, unless the owners of said properties should present reasonable proof that the sewer system on their property is failing or should they wish to construct a single-family home on a property, adjacent to the Town, which has failed a percolation test,” **Exhibit 3.**

9. On March 13, 2023, the Town Council unanimously voted, at a public meeting, to authorize Town staff to take the necessary steps, in coordination with the County, to submit the draft BLA Agreement to the Commission of Local Government, incorporating those changes appearing in the minutes of that meeting. **Exhibit 4.**

10. The Town forwarded that revised BLA Agreement to the County Board of Supervisors for its consideration and at its April 3, 2023, public meeting the Board accepted the proposed BLA Agreement in principle, and authorized that it be submitted to the Commission on Local Government for review. **Exhibit 5.**

11. Counsel for the Town and the County subsequently made minor revisions to the draft BLA Agreement with the concurrence of their clients, and the agreed upon final version thereof, dated April 18, 2023, is enclosed as **Exhibit 6.**

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

13. Virginia Code Ann. § 15.2-3400 provides that voluntary settlement agreements shall not become effective until the provisions of that section are complied with.

14. 1 VAC 50-20-230 requires that referral of a proposed voluntary settlement agreement to the Commission under the provisions of Virginia Code Ann. § 15.2-3400 be accompanied by resolutions, joint or separate, of the governing bodies of the localities that are the parties to the proposed agreement, requesting that the Commission's review, stating the parties' intention to adopt the agreement, and providing certain information to the Commission.

15. As detailed above, the Town and County have separately approved motions that the parties request that the draft BLA Agreement be submitted to the Commission for its review that are attached hereto as Exhibits.

16. The parties will further submit to the Commission, in consultation with its staff, such materials as are relevant to the requirements of 1 VAC 50-20-610.

17. The Town and the County respectively designated as their principal contacts with the Commission the following individuals, who may be contacted by the Commission or any locality to whom this Notice is sent:

TOWN OF WASHINGTON, VIRGINIA
Joseph Whited, Mayor
Town of Washington, Virginia
P.O. Box 7
Washington, Virginia 22747
Phone: (540) 675-3128
Email: joe.whited@washingtonva.gov


COUNTY OF RAPPAHANNOCK
Garrey W. Curry, Jr., County Administrator
County of Rappahannock, Virginia
P.O. Box 519
Washington, Virginia 22747-0519
Phone: (540) 675-5330
Fax: (540) 675-5331
Email: gwc Curry@rappahannockcountyva.gov

18. Pursuant to the aforesaid provisions the parties have mailed copies of the Notice, resolutions, adopted minutes, and the BLA Agreement, to each Virginia local government contiguous to the County and/or the Town, and each Virginia local government with which the County or Town shares any function, revenue, or tax source. The undersigned certifies, pursuant to 1 VAC 50-20-390(L) that the source of the information provided in this Notice came from publicly available sources. The undersigned further certifies that the material is correct within the knowledge of the submitting party.


WHEREFORE, the County of Rappahannock, Virginia, and the Town of Washington, Virginia, hereby request that the Commission find that the BLA Agreement is in the best interest of the Commonwealth, and of the jurisdictions, and that it recommend the BLA Agreement be affirmed and given full force and effect upon consideration by the Special Court.

Respectfully submitted this 20th day of Nov., 2023.

TOWN OF WASHINGTON, VIRGINIA

By: 
Joseph J. Whited
Mayor
567 Mt. Salem Avenue, Suite 3
Washington, Virginia 22747

RAPPAHANNOCK COUNTY, VIRGINIA

By: 

Debbie Donehey

Chair of the Board of Supervisors

P.O. Box 519

3 Library Road

Washington, Virginia 22747

(540) 675-5330 (o)

LOCAL GOVERNMENTS NOTIFIED

Pursuant to 1 VAC 50-20-230(C), the parties have mailed copies of the Notice, resolutions, adopted minutes, and the BLA Agreement, to each Virginia local government contiguous with the County and/or the Town, and each Virginia local government with which the County or Town share any function, revenue or tax source.

CULPEPER COUNTY

John C. Egertson, County Administrator

Culpeper County, Virginia
302 North Main Street
Culpeper, Virginia 22701-2622
Phone: (540) 727-3427
Fax: (540) 727-3460
Email:

Sheila J. Weimer, County Attorney

Culpeper County, Virginia
306 North Main Street, Second Floor
Culpeper, Virginia 22701-2622
Phone: (540) 727-3407
Fax: (540) 727-3462
Email:

FAUQUIER COUNTY

Janelle Downes, County Administrator

Fauquier County, Virginia
10 Hotel Street, Suite 204
Warrenton, Virginia 20186-3208
Phone: (540) 422-8001
Fax: (540) 422-8022
Email:

Tracy A. Gallehr, County Attorney

Fauquier County, Virginia
10 Hotel Street, Second Floor
Warrenton, Virginia 20186-3208
Phone: (540) 422-8010
Fax: (540) 422-8022
Email:

MADISON COUNTY

Jonathon Weakly, County Administrator

Madison County, Virginia
P.O. Box 705
Madison, Virginia 22727-0705
Phone: (540) 948-7500
Fax: (540) 948-3843
Email: jweakley@madisonco.virginia.gov

Clarissa T. Berry, Commonwealth's Attorney

Madison County, Virginia
P.O. Box 450
Madison, Virginia 22727-0450
Phone: (540) 948-7000
Fax: (540) 948
Email: commonwealthattorney@madisonco.virginia.gov

PAGE COUNTY

Amity Moler, County Administrator

Page County, Virginia
103 S. Court Street, Suite F
Luray, Virginia 22835-1262
Phone: (540) 743-4142
Fax: (540) 743-4533
Email: amoler@pagecounty.virginia.gov

Bryan Cave, Commonwealth's Attorney

Page County, Virginia
116 S. Court Street, Suite D
Luray, Virginia 22835-1200
Phone: (540) 743-4517
Fax: (540) 743-2045
Email: bcave@pagecounty.virginia.gov

WARREN COUNTY

Mr. Edwin C. Daley, County Administrator

County of Warren, Virginia
Front Royal, Virginia 22630-4412
Phone: (540) 636-4600
Fax: (540) 636-6066
Email: edaley@warrencounty.va.gov

Jason J. Ham, County Attorney

Litten & Sipe, LLP
410 Neff Avenue, #275
Harrisonburg, Virginia 22801-5437
Phone: (540) 437-3654
Fax: (540) 437-5353
Email: Jason.ham@littensipe.com

THE RSW REGIONAL JAIL

Russell Gilkison, Superintendent

6601 Winchester Road
Front Royal, Virginia 22630
Phone: (540) 622-6097

Brendan Hefty, Attorney

Hefty, Wiley & Gore
100 W. Franklin St, Suite 300
Richmond, Virginia 23220
Phone: (804) 780-3142
Email: brendan@heftywiley.com

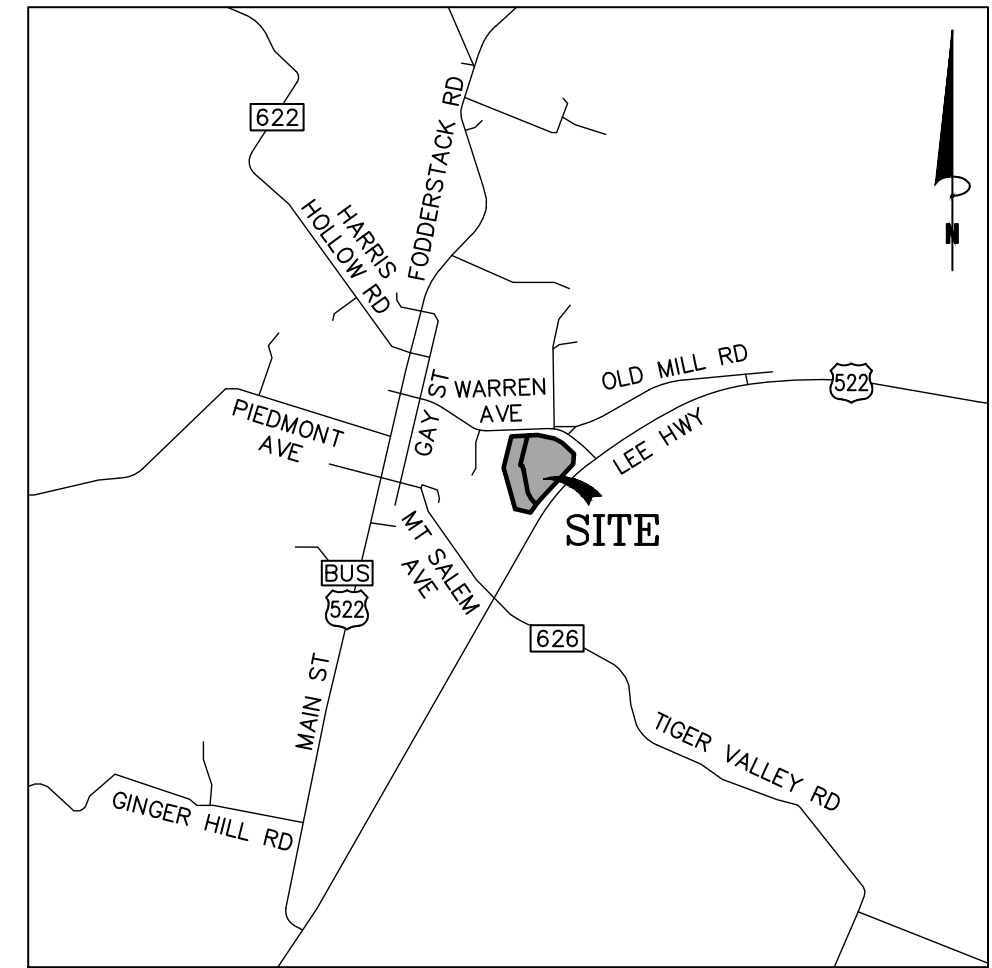
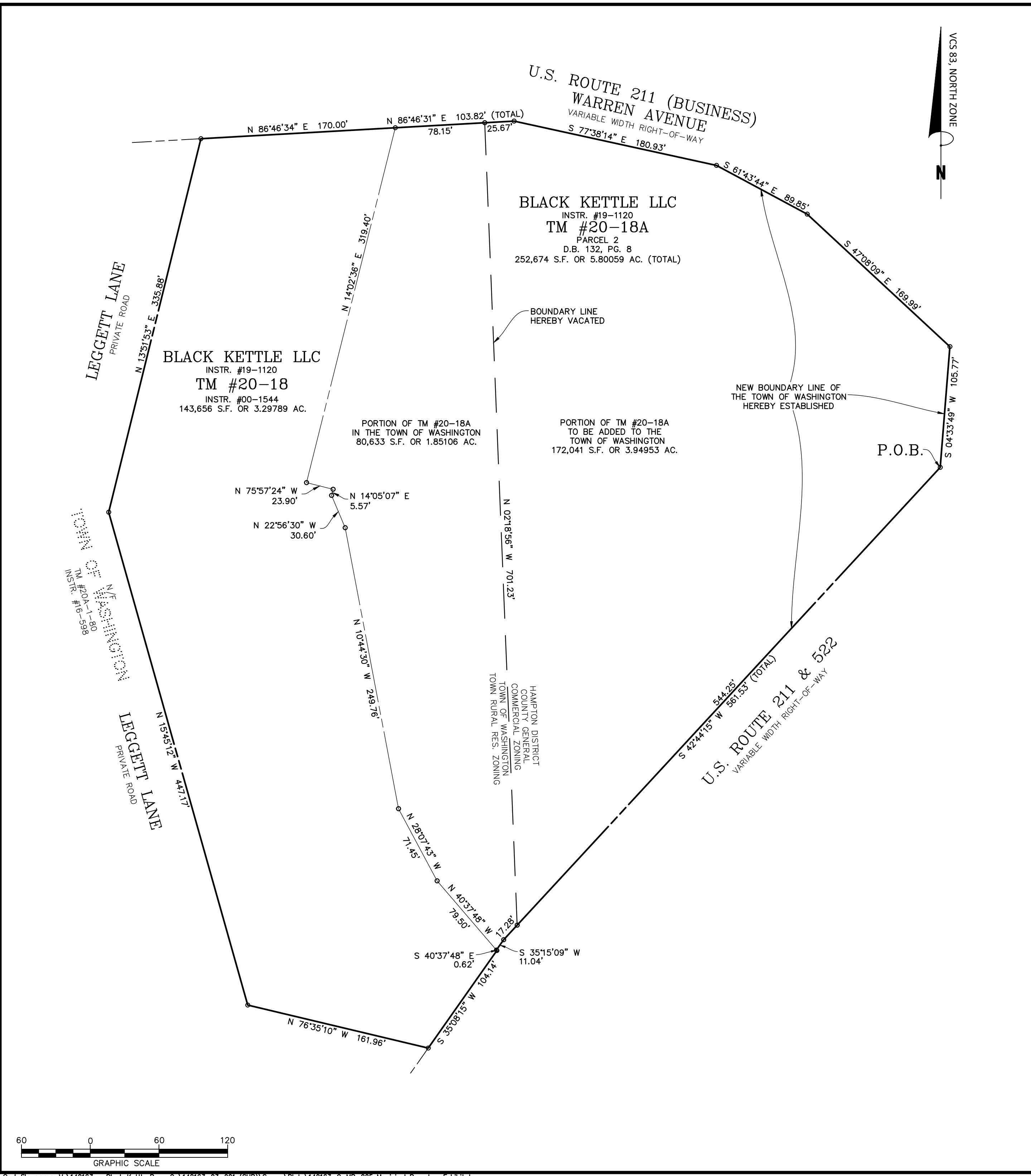
SHENANDOAH COUNTY

Evan Vass, County Administrator

600 North Main Street, Suite 102
Woodstock, Virginia 22664
Phone (540) 459-6165

Jason Ham, County Attorney

Litten & Sipe, LLC
410 Neff Avenue
Harrisonburg, Virginia 22801
Phone: (540) 434-5353
Email: Jason.ham@littensipe.com



VICINITY MAP
SCALE: 1" = 2000'

NOTES

1. THE SURVEYED PROPERTIES DELINEATED HEREON ARE LOCATED AT RAPPAHANNOCK COUNTY TAX ASSESSMENT MAP NUMBER 20-18 AND 20-18A.
2. THE SURVEYED PROPERTIES ARE NOW IN THE NAME OF BLACK KETTLE LLC AND ARE RECORDED IN INSTRUMENT NUMBER 19-1120 AMONG THE LAND RECORDS OF RAPPAHANNOCK COUNTY, VIRGINIA.
3. BOUNDARY INFORMATION AS SHOWN HEREON IS BASED ON DEEDS AND PLATS OF RECORD AS BEST FIT TO A CURRENT FIELD RUN SURVEY COMPLETED BY THIS FIRM ON NOVEMBER 9 THROUGH 25, 2020. BOUNDARY INFORMATION AS SHOWN FOR DESIGN PURPOSES AND DOES NOT REPRESENT A BOUNDARY SURVEY.
4. THE HORIZONTAL AND VERTICAL DATUMS AS REFERENCED HEREON WERE ESTABLISHED BY STATIC GPS CONTROL METHODS. THE HORIZONTAL DATUM IS REFERENCED TO VIRGINIA STATE GRID, NORTH ZONE, NAD83 (2011), GEOID18, AND IS REFERENCED IN U.S. SURVEY FEET. THE VERTICAL DATUM IS REFERENCED TO NAVD88. THE NGS MONUMENTS USED TO ESTABLISH THE HORIZONTAL DATUM WERE: LOYJ, LOYJ, AND LOYJ. THE NGS MONUMENTS USED TO ESTABLISH THE VERTICAL DATUM WERE: LOYJ. THE COMBINED SCALE FACTOR IS 1.000075445039 FOR GRID TO GROUND CONVERSION. THE BASE POINT FOR THE PROJECT IS IDENTIFIED WITH COORDINATES OF NORTHING: 6942328.3318, EASTING: 11581894.0256 AND THIS COORDINATE IS THE SAME FOR BOTH GRID AND GROUND.
5. THE PROPERTIES AS SHOWN HEREON ARE SUBJECT TO ALL COVENANTS AND RESTRICTIONS OF RECORD AND THOSE RECORDED HERewith, BOWMAN CONSULTING GROUP, LTD. WAS PROVIDED A COMMITMENT FOR TITLE INSURANCE FROM OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY FOR TITLE INSURANCE FILE NUMBER: VA-19-3840, COMMITMENT DATE: DECEMBER 23, 2019 AT 12:43 PM.
6. THE SURVEYED PROPERTIES AS SHOWN HEREON ARE NOT IN A 100-YEAR FLOODPLAIN. THEY LIE IN ZONE "X" (UN-SHADED)(AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN) AS SHOWN ON FEMA FLOOD INSURANCE RATE MAP FOR RAPPAHANNOCK COUNTY, VIRGINIA, COMMUNITY-PANEL NUMBER 51157C0110D, EFFECTIVE DATE JANUARY 5, 2007.

METES AND BOUNDS DESCRIPTION

OF A PORTION OF TM #20-18A TO BE ADDED TO THE TOWN OF WASHINGTON

BEGINNING AT A POINT AT THE INTERSECTION OF THE NORTHWESTERLY RIGHT-OF-WAY LINE OF U.S. ROUTE 211 & 522, VARIABLE WIDTH RIGHT-OF-WAY, AND THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF U.S. ROUTE 211 (BUSINESS), WARREN AVENUE VARIABLE WIDTH RIGHT-OF-WAY, SAID POINT BEING AN EASTERLY CORNER OF THE LANDS OF BLACK KETTLE LLC AS RECORDED IN INSTRUMENT NUMBER 19-1120 AMONG THE LAND RECORDS OF RAPPAHANNOCK COUNTY, VIRGINIA; THENCE, DEPARTING SAID U.S. ROUTE 211 (BUSINESS) AND RUNNING WITH SAID U.S. ROUTE 211 & 522 AND PASSING THROUGH SAID BLACK KETTLE LLC

S 42°44'15" W, 544.25 FEET TO A POINT; THENCE, DEPARTING SAID U.S. ROUTE 211 & 522 AND PASSING THROUGH SAID BLACK KETTLE LLC

N 02°18'56" W, 701.23 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID U.S. ROUTE 211 (BUSINESS); THENCE, CONTINUING WITH SAID U.S. ROUTE 211 (BUSINESS) THE FOLLOWING FIVE COURSES

N 86°46'31" E, 25.67 FEET TO A POINT; THENCE

S 77°38'14" E, 180.93 FEET TO A POINT; THENCE


S 61°43'44" E, 89.85 FEET TO A POINT; THENCE

S 47°08'09" E, 169.99 FEET TO A POINT; THENCE

S 04°33'49" W, 105.77 FEET TO THE POINT OF BEGINNING,

CONTAINING 172,041 SQUARE FEET OR 3.94953 ACRES OF LAND, MORE OR LESS.





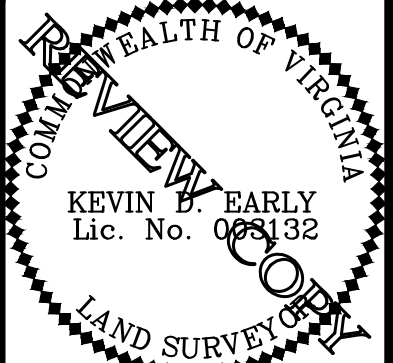
© Bowman Consulting Group, Ltd.
Phone: (540) 371-0288
www.bowman.com

1300 Central Park Blvd
Fredericksburg, VA 22401

REVISIONS	DESCRIPTION	DATE

EXHIBIT SHOWING
A PORTION OF TM #20-18A
ON THE LANDS OF
BLACK KETTLE LLC
INSTRUMENT NUMBER 19-1120

TO BE LOCATED WITHIN THE TOWN OF WASHINGTON
ON THE LANDS OF
BLACK KETTLE LLC
INSTRUMENT NUMBER 19-1120



NOT FOR RECORDATION

DRAWN: MWH	CHK: KDE	QC:
SCALE: 1" = 60'		
PROJ No. 140163-03-001		
TASK No. SX007		
DATE : 05/25/2023		
SHEET 1 OF 1		

HAMPTON DISTRICT
RAPPAHANNOCK COUNTY, VIRGINIA

140163-C-MP-005

**TOWN OF WASHINGTON, VIRGINIA
RESOLUTION**

**Resolution Pertaining to the Potential Zoning of the Property Commonly
Known as Rush River Commons II**

WHEARAS, the Rappahannock County Board of Supervisors during its regular meeting on 6 February 2023 did request the Town of Washington consider limitations on the final end-use of the property commonly known as Rush River Commons II if the pending request for the adjustment of the boundary between the Town of Washington and Rappahannock County related to the property known as Rush River Commons is approved. And

WHEARAS, on this 13th day of February 2023 the Town has amended its Zoning Ordinance, creating a Commercial Zone, a zone that places considerable restriction on the use of property so zoned. Including a prohibition on the construction of housing units of any type.

Now, therefore be it resolved, that should the property commonly known as the Rush River Commons II be brought into the Town of Washington through a boundary line adjustment concluded with the County that said property shall be zoned as Commercial and any development on that plot shall be restricted to the uses allowed by right in such a zone.

Adopted by the Town Council of the Town of Washington, Virginia this 13th Day of February, 2023.

MOTION: Mayor Whited

**DATE: February 13, 2023
Town Council Meeting**

SECOND: Fred Catlin

Votes

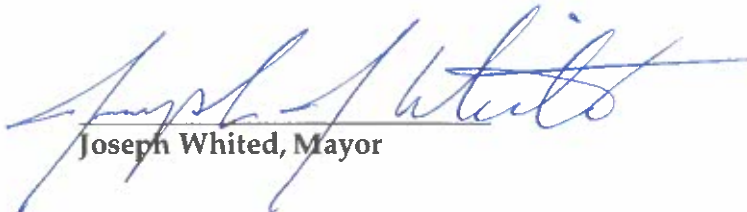
Ayes: Mayor Whited, Drew Beard, Fred Catlin, Jean Goodine, Patrick O'Connell, Brad Schneider, and Gail Swift

Nays: N/A

Absent from Vote: N/A

Absent from Meeting: N/A

BY ORDER OF THE TOWN COUNCIL


Joseph Whited, Mayor

Attested:


Barbara Batson,
Town Administrator/Clerk

**TOWN OF WASHINGTON, VIRGINIA
RESOLUTION**

Resolution Pertaining to Future Boundary Line Adjustments

WHEARAS, the Rappahannock County Board of Supervisors during its regular meeting on 6 February 2023 did request the Town of Washington consider moratorium on future boundary line adjustments (BLAs) for a period of 10 years from the time the BLA currently under consideration by the Town and the County is adopted. And

WHEARAS, it is the position of the Town that it should promote limited growth and infill construction in accordance with both the County's and the Town's Comprehensive Plans. And

WHEARAS, the Town operates a public water and sewer systems which can provide relief to County residents, adjacent to the Town, who may have failing water or sewer systems and also support the construction of single-family homes on land that might not otherwise support such construction IE property which will not pass a perc test.

Now, therefore be it resolved, that should the current BLA agreement under the consideration by the Town and the County be concluded that it will be the policy of the Town of Washington not to accept applications for BLAs from adjoining properties, currently in the County, for a period of 5 years from the conclusion of said agreement. Unless the owners of said properties should present reasonable proof that the sewer system on their property is failing or should they wish to construct a single-family home on a property, adjacent to the Town, which has failed a perc test.

Adopted by the Town Council of the Town of Washington, Virginia this 13th Day of February, 2023.

MOTION: Fred Catlin

**DATE: February 13, 2023
Town Council Meeting**

SECOND: Mayor Whited

Votes

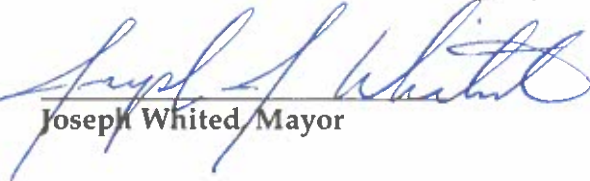
Ayes: Mayor Whited, Drew Beard, Fred Catlin, Jean Goodine, Patrick O'Connell, Brad Schneider, and Gail Swift

Nays: N/A

Absent from Vote: N/A

Absent from Meeting: N/A

BY ORDER OF THE TOWN COUNCIL


Joseph Whited, Mayor

Attested:


Barbara Batson,
Town Administrator/Clerk

The Town of Washington

March 13, 2023
Council Meeting
Approved Agenda
7:00 p.m.

- CALL TO ORDER Action
- APPROVAL OF THE AGENDA Action
- MINUTES • February 13, 2023 Council meeting minutes Action
- REPORTS • Mayor's Report: Mayor Whited Information
 • Treasurer's Report: Gail Swift Information
 • Town Attorney: Mr. Crim Information
 • Zoning Administrator: Mr. Gyurisin Information
 • Public Works Task Force Information
 • Planning Commission Information
 • Architectural Review Board Information
- OLD BUSINESS a) Boundary Line Adjustment Possible Action
- NEW BUSINESS a) Update on Public Works Information
 b) Economic Development Authority Action
- PUBLIC FORUM
- ADJOURNMENT

NEXT REGULARLY SCHEDULED MEETING OF THE TOWN COUNCIL
April 10, 2023

The Town of Washington

"THE FIRST WASHINGTON OF ALL"

March 13, 2023

7:00 p.m.

Draft Minutes

- CALL TO ORDER: Mayor Whited opened the meeting at 7:03 p.m. Council members Drew Beard, Jean Goodine, Brad Schneider, and Gail Swift were present with Fred Catlin and Patrick O'Connell absent. Town Attorney Martin Crim and Town Administrator/Clerk Barbara Batson were present.
- APPROVAL OF THE AGENDA: Mayor Whited made a motion to amend the agenda to add a boundary line adjustment discussion under old business and Ms. Swift seconded and a roll call vote was taken:

Mr. Beard voted "yes"

Ms. Jean Goodine voted "yes"

Mr. Schneider voted "yes"

Ms. Swift voted "yes"

Mayor Whited voted "yes"

And the motion passed 5-0 with Mr. Catlin and Mr. O'Connell absent.

- MINUTES: Ms. Swift motioned to accept the minutes for February 13, 2023 and Mayor Whited seconded and a roll call vote was taken:

Mr. Beard voted "yes"

Ms. Jean Goodine voted "yes"

Mr. Schneider voted "yes"

Ms. Swift voted "yes"

Mayor Whited voted "yes"

And the motion passed 5-0 with Mr. Catlin and Mr. O'Connell absent.

REPORTS:

Mayor's Report: there was no report

Treasurer's Report: there was no report.

Town Attorney: Mr. Crim reported that he prepared a formal easement agreement for water and sewer services. He also reported that the trail license agreement between the town and county is ready for execution.

Zoning Administrator: Mr. Steve Gyurisin was absent and submitted a written report.

Public Works Task Force: there was no report

Planning Commission (PC): There was no report.

Architectural Review Board (ARB): Mr. Drew Mitchell reported that the ARB elected officers at their last meeting, Ms. Deb Harris is now the chairperson. He also reported they considered an application for outdoor lighting for Rush River Commons. He felt there was a robust discussion with the community's participation and the application was approved.

- OLD BUSINESS:

- (a) Boundary line adjustment (BLA): Mayor Whited shared that at the last Board of Supervisors (BOS) meeting they asked the town to change the language prohibiting building residential housing on the property to make it more stringent. He recommended that Article 1 paragraph 3: Limitation of Use, be amended as follows:

Pursuant to the resolution adopted by the Town of Washington on February 13, 2023, this parcel shall be zoned Village Commercial, which does not allow for residential construction. The Town will not consider nor approve any rezoning, special use permit, or other legislative action which would allow for residential construction on this parcel without the concurrence of the County Board of Supervisors while this agreement remains in effect.

Mayor Whited asked Mr. Crim if he felt the language in paragraph 3 would be setting a precedent for future BLAs. Mr. Crim shared that according to Virginia State Law the Commission of Local Governments would need to review the agreement and make a report whether the zoning provision, that is binding to future town councils, should be approved. The BLA would then be put before a special three judge court, appointed by the Virginia Supreme Court. This two-step process requires notice to a lot of people. It would set a precedence to this particular parcel; it wouldn't set a precedent regarding future ordinary zoning decisions. Ms. Swift expressed that whatever language is agreed upon, does not set a precedence of future BOS involvement in town zoning matters.

Mr. Schneider expressed his concern that the county would be involved in future town business. Mr. Beard said he understands Mr. Schneider's concerns but thinks this event is only a snapshot of a moment in time and doesn't think we are setting a broad precedent. Mayor Whited expressed he strongly supports the sovereignty of the town and our leeway to act in its best interest. Ms. Goodine asked Mr. Crim what the legal ramifications were if the current language was approved. He replied the proposed language "...with the county's agreement", does provide the town with some flexibility.

Mr. Schneider suggested the following text be stricken from the paragraph: "without the concurrence of the County Board of Supervisors while this agreement remains in effect". He feels this would open the door to the County being able to dictate what happens within the town's boundaries. Ms. Goodine suggested that perhaps some additional language was needed to add a bit more flexibility. Mr. Schneider feels there is no need to negotiate with the county if a parcel is within the town. Mr. Crim reminded council that under the current agreement, if there is no development within 15 years, the agreement terminates. Ms. Swift stated that she wanted wording that emphasizes that restricting the zoning in this BLA only applies to this agreement and not future work and Mr. Schneider concurred. Mayor Whited proposed adding "...this parcel and only...".

Mayor Whited motioned to modify Article 1 paragraph 3 to the following:

Pursuant to the resolution adopted by the Town of Washington on February 13, 2023, this parcel shall be zoned Village Commercial, which does not allow for residential construction. The Town will not consider nor approve any rezoning, special use permit, or other legislative action which would allow for residential construction on this parcel, and only this parcel, without the concurrence of the County Board of Supervisors.

He also moved that the town staff take all steps necessary in coordination with the county staff to submit the draft agreement to the Commission of Local Government once all appropriate edits have been made and Ms. Goodine seconded and a roll call vote was taken:

Mr. Beard voted "yes"

Ms. Jean Goodine voted "yes"

Mr. Schneider voted "yes"

Ms. Swift voted "yes"

Mayor Whited voted "yes"

And the motion passed 5-0 with Mr. Catlin and Mr. O'Connell absent.

- NEW BUSINESS:

- (a) Update on public works: Mayor Whited shared that over the last four years this council has invested over \$800k in improvements on the water and wastewater systems, approximately 120k came from the federal government. He pointed out that the \$45k investment in the new water meter system has already shown a multi-thousand dollar return in savings on water that didn't need to be processed because we were able to catch leaks early and we didn't need to pass along large water bills to residents where leaks weren't caught until meters were read monthly. Mayor Whited thanked Mr. Schneider for his work on this project.

Mr. Schneider shared that the new water meter system runs electronically and allows us to see accounts that are running continuously to identify leaks quickly. The focus of the coming year is the water system. The water system is the lifeblood of the town and if it fails, business in town stops. Identifying a site for a new well and drilling it, is on the list of projects in the coming years. He also shared that the current filtration system is getting old and the fittings are corroding. He'd like to look into upgrading to a new filtration system and will be obtaining quotes. Mr. Schneider also reported that we currently pump water from the well, push it through the filtration system, then the water flows down Harris Hollow into town servicing all the accounts, and when waterflow exceeds demand, it pumps to the water tower. He shared this is not how the system should work. There is a line from the pumphouse to the tower but it apparently had a leak and instead of repairing the leak, a decision was made to run the line down Harris Hollow. He would like to have this part of the system fixed so the water is pumped directly to the tower and then sent through the town as needed. He wants to get the cost to engineer a line and then quotes to install the new line. He will also be looking at the potential to have a system in place that would monitor the water level in the tower. He's hoping to get a transmitter that would use the same wireless network as the water meter system. He will also work with Sean Polster of emergency services to figure out what amount of water should be maintained at all times in the tower for firefighting and public safety purposes.

Mr. Schneider also shared that the control system board at the wastewater treatment plant also needs to be replaced. He is looking into alternate solutions, in addition to using solar energy at the plant. Mayor Whited thanked Mr. Schneider for being such a good shepherd of the town's systems.

- (b) Economic Development Authority: Mayor Whited during his inaugural address challenged TC to think of new ways to incentivize business in town. After subsequent conversations it became clear a focus on restaurants and retail was needed. After talking to colleagues and Mr. Crim it was determined that if we wanted to give rebates to restaurants, or grants to retail or transient lodgings, an economic development authority would need to be created. This would give the town the ability to take appropriated funds and enable this sort of activity. Mayor Whited shared that an economic development authority (EDA) is a common construct across the Commonwealth. The council would provide some general guidelines of things that it would be interested in considering. A seven-member board would be appointed, which would include three members of council, the chairs of the ARB and PC, and then two members from the rest of the community. He shared that he would be asking TC to consider setting aside \$10,000 at the next budget work session to fund the EDA

PUBLIC FORUM: Mayor Whited opened the public forum at 7:47 p.m.

Mr. Jim Abdo thanked the council for its work for and care of the community. He expressed that zoning is the biggest challenge in bringing new business to town. He feels that needing special use permits versus having a by-right use, makes doing anything new in town challenging. Mr. Abdo expressed that he didn't need a grant, he just needed people to get out of the way. He feels that if the zoning ordinance had a clear path, you would see people come into town. He suggested the council consider putting money aside for the town attorney and zoning administrator to revamp the zoning ordinance. He also shared that he feels that Mr. Gyurisin is extremely knowledgeable about zoning and that Mr. Crim will provide a fresh perspective. He also thinks that the ARB is in place to ensure any work done will match the historical integrity of the town.

Ms. Swift shared that updating the zoning ordinance is reflected in the draft budget currently being consider for next year. Mayor Whited said there is a new team leading the town and that all businesses have its commitment to increase the vitality of our town.

Mayor Whited closed the public forum at 7:58 p.m.

ADJOURNMENT: Mr. Whited made a motion to adjourn the meeting at 7:58 p.m. and Mr. Schneider seconded and a roll call vote was taken:

Mr. Beard voted "yes"

Ms. Jean Goodine voted "yes"

Mr. Schneider voted "yes"

Ms. Swift voted "yes"

Mayor Whited voted "yes"

And the motion passed 5-0 with Mr. Catlin and Mr. O'Connell absent.

THE NEXT REGULAR MEETING OF THE TOWN COUNCIL IS
April 10, 2022.

Barbara Batson, Administrator/Town Clerk

Attachments:

Zoning Administrator's report
Draft Boundary Line Adjustment

AT THE REGULAR MEETING OF THE RAPPAHANNOCK COUNTY BOARD OF SUPERVISORS HELD ON MONDAY, APRIL 3, 2023 AT 2:00 P.M. AND 7:00 P.M. AT THE RAPPAHANNOCK COUNTY COURTHOUSE, 250 GAY ST., WASHINGTON, VIRGINIA.

CALL TO ORDER

Chair Donehey called the meeting to order at 2:00 p.m.

Board Members present: Debbie P. Donehey, Chair; Keir A. Whitson, Vice Chair; Van C. Carney; Ronald L. Frazier; Christine Smith. **Others present:** Garrey W. Curry, Jr., County Administrator; Bonnie L. Jewell, Assistant County Administrator.

PLEDGE OF ALLEGIANCE

Chair Donehey led attendees in the Pledge of Allegiance.

MOMENT OF SILENCE

Chair Donehey requested that attendees observe a moment of silence.

ADOPTION OF AGENDA

Chair Donehey introduced the agenda for approval. Mr. Carney moved to adopt the agenda as presented and Mr. Whitson seconded. Mr. Frazier asked why the Board had not received an update from legal counsel regarding current litigation noting that the Flint Hill case goes to trial on April 21 and this would be the last opportunity to speak prior to the trial. Mr. Curry stated he heard back from legal counsel on Friday, who apologized for not being in the office earlier in the week when the agenda was released. Mr. Curry stated all the documents for the case had been filed and no action was needed by the Board at this point. Mr. Frazier questioned how the attorney could file anything on behalf of the Board when they had not met with the Board. Mr. Whitson stated that he had not had contact with the attorney and stated that it was his position that the Board hired attorneys to provide representation in matters of litigation and that he did not believe he was qualified to provide legal input to the attorney. Mr. Frazier asked if any person sitting at the Board table had contact with the attorney and Mr. Curry stated that he and Mr. Goff had contact, but did not provide legal direction. Mr. Curry explained that this case had to do with parsing the language of the Virginia Code and did not, at this point, involve a discovery process that might require subjective decisions. He said that he would be happy to relay Board questions/directions to the attorney.

Mr. Whitson questioned what the current discussion had to do with adopting the agenda and Mr. Frazier stated that before the meeting he requested an agenda item regarding the Flint Hill legal matter, but it was not on the agenda that was presented. Mr. Curry stated that Mr. Frazier requested a closed meeting item about the topic, but that was not possible without legal counsel present. Following further discussion Chair Donehey moved to amend the motion on the floor (to adopt the agenda as presented) to alter it to approve the agenda with the addition of an item to discuss the Flint Hill Volunteer Fire Company legal matter as the last old business item during the day session. Mr. Frazier seconded the motion to amend the original motion. Chair Donehey called for a voice vote to amend the motion, which carried.

Aye: Donehey, Whitson, Carney, Frazier, Smith
Nay:
Abstain:

The original motion by Mr. Carney and seconded by Mr. Whitson, having been amended, was then presented for a vote by Chair Donehey, which carried. The agenda was adopted with the addition of "Company 4 Legal Discussion" as an addendum item.

Aye: Donehey, Whitson, Carney, Frazier, Smith
Nay:
Abstain:

PRESENTATIONS

SCHOOL REPORT

Dr. Grimsley presented the school report, which included an update of school activities, athletic achievements, and student accolades. She stated that the school hosted a workshop, "Hidden in Plain Sight" that was coordinated by the Rappahannock County Sheriff's Office, Culpeper Police Department, and Virginia Department of Health. She stated that the workshop focused on the dangers of fentanyl and other substances. She concluded by thanking the sheriff's office for their prompt response last week during a shelter-in-place incident, which after the fact was determined there was no threat. She then thanked the Board and welcomed comments and questions. Mr. Whitson recognized the coach of the year accolades received by the Jeff Atkins, coach of the state champion girls' basketball team, Mr. Carney thanked Dr. Grimsley for attending all budget work sessions, and Chair Donehey thanked RCPS for hosting the hidden in plain sight presentation.

COMPANY 4 MONTHLY REPORT TO THE BOARD AND COMMUNITY (PRESENTATION ONLY)

Chief Jarrell thanked the Board for the opportunity to present a revitalization plan to them as was required by the January 26, 2023 resolution of the Board. He stated that the revitalization plan was constructed to track thirteen categories that were defined by the referenced resolution. Chief Jarrell reviewed the revitalization plan and offered to answer questions. Mr. Whitson asked about the previous request to station ALS1400 at company 4 and Chief Jarrell stated that request was overcome by the quick permitting of ambulance 1404 under the county's EMS license. Mr. Whitson noted the high call volume over the weekend and asked for the company's roll in those calls. Chief Jarrell stated that there were several downed trees and power lines that resulted in live wires on the ground. He further noted there was a structure fire caused by a generator located too close to a structure. Chair Donehey stated that there were 75 total dispatched calls over the weekend including 17 fire & rescue calls and 58 law enforcement calls. She stated that the calls consisted of accidents, falls, chest pains, seizures, and fires. Mr. Frazier asked if the members of company worked together to develop the revitalization plan. Chief Jarrell stated that due to the consent order the company was unable to hold membership meetings so work on the plan was conducted by communicating through email. The Board thanked Chief Jarrell and company 4 for their valuable service to the community.

PUBLIC COMMENT

Chair Donehey requested speakers to limit their comments to three minutes and then opened the public comment period.

The Director of Social Services, Gail Crooks, informed the Board that April was child abuse prevention month and that social services had several activities planned. She stated that they partnered with RCPS for a coloring and T-shirt design contest for which entries and the winning entries would be displayed at SperryFest. She stated that during the month of April pinwheels would be placed at various locations throughout the county and then relocated to a pinwheel garden consisting of 450 – 500 pinwheels at SperryFest. She concluded by stating that during FY2022 there were over 100 children involved in child abuse & neglect cases.

John Beardsley of the Wakefield District stated that as could be seen by the number of citizens who were in attendance, that the Flint Hill community cares deeply for having an effective and well organized fire & rescue service. He stated that in spite of some of the regrettable side effects he hoped the Board would press on with the process.

Shelia Gresinger of the Hampton District commended those individuals who were working hard to keep the Flint Hill fire & rescue services going. She particularly expressed thanks for the good work over the past weekend when downed wires on her farm could have been much worse.

Monica Worth of the Wakefield District stated that she was a past-president and past-treasurer of Company 4. She thanked the previous volunteers and the new individuals for carrying it into the future.

Jennifer Alexander of the Wakefield District stated most people have volunteered for something and having done so, they know that it often requires very thick skin. She relayed her experience volunteering with the Red Cross at a shelter, which was stressful as disagreements occurred between individuals.

There being no other citizens wishing to speak, Chair Donehey closed the public comment

period.

CONSENT AGENDA

Chair Donehey introduced the consent agenda for approval. Mr. Whitson moved to adopt the consent agenda as presented; Mr. Carney seconded and the motion carried.

Aye: Donehey, Whitson, Carney, Frazier, Smith

Nay:

Abstain:

MINUTES FOR ADOPTION

By adoption of the consent agenda the Board approved the minutes of the January 26, 2023 special called meeting, February 6, 2023 regular Board meeting, and the February 14, 2023 joint Board and School Board budget work session.

ACCOUNTS PAYABLE

By adoption of the consent agenda the Board approved the accounts payable check runs for March 15, 2023 in the amount of \$252,004.65; March 23, 2023 in the amount of \$3,140.14; and April 3, 2023 in the amount of \$313,536.88.

SUPPLEMENTAL APPROPRIATIONS

By adoption of the consent agenda the following supplemental appropriations were approved:

- \$1,250: 100-4-04303-3004000-0000 – Aileen – Repairs & Maintenance
- \$3,577.38: 100-4-01301-5402000-0000 – Electoral Board – Ballots & Election Expenses
- \$7,000.00: Sperryville’s Portion of Staffing Salaries – EMS Salaries

POLICY 310 AMENDMENT (CORRECTION)

By adoption of the consent agenda, an amended Policy 310 was approved as follows:

Rappahannock County Board of Supervisors Policies & Procedures			
<u>Policy Name:</u>	Payment of Invoices	<u>Approved:</u>	April 3, 2023 (3 rd amendment)
<u>Policy Number:</u>	310	<u>Author:</u>	Curry
<u>Associated:</u>	Budget and Finance Policies		

PURPOSE:

To provide for the prompt payment of invoices with complete transparency.

POLICY:

Department/Budget Managers shall ensure the prompt payment of invoices consistent with the requirements of the Code of Virginia, Section 2.2-4352.

The Board of Supervisors enacted this policy by resolution at the December 3, 2018 meeting with direction to the County Administrator to transcribe the resolution to “policy form” and for that policy to be numbered 310 and be titled “Payment of Invoices.” The Board subsequently authorized amended the policy by resolution on June 6, 2022 and through the same resolution authorized future updates to the policy to be made by motion. The most recent amendment date of this policy by motion was made by the Board on April 3, 2023.

PROCEDURE:

To carry out the intent of the policy:

- Budget holders shall promptly confirm invoices are in proper form and for amounts agreed to and reflective of goods or services received. Budget holders shall further confirm that payments are within the amounts appropriated therefore.
- Budget holders shall promptly code each original invoice with the county budget expenditure general ledger number and transmit each invoice to the County Administration indicating it is acceptable for payment and within funds appropriated therefore. In cases when an original invoice is not available, a copy together with an explanation of why the original is not available shall be submitted.
- County Administration staff shall promptly enter each invoice into the county's computerized accounting system making them ready for payment.
- Invoices coded and entered into the accounts payable system will be used to generate checks that will be presented to the Board of Supervisors for review and approval at their regular meeting each month.
- Invoices or classes of invoices (such as utility payments) deemed necessary for payment prior to the Board's next regular meeting may be paid by check mid-month only when recommended by the County Administrator and approved by the Chairperson of the Board of Supervisors. County Administration will keep a listing of vendors for which the County Administrator recommends and Chairperson of the Board of Supervisors approves mid-month payment (**FORM A**). Budget holders shall use **FORM B** to request a vendor or specific invoice be authorized for mid-month payment.
- Rappahannock County is not required to pay sales tax and therefore purchases made by employees for the benefit of the County is not recommended and should only occur in an emergency situation. Employees should get prior approval before making such purchases and shall use **FORM C** for reimbursement. Purchases should be made in accordance with the Rappahannock County purchasing policy.
- The check register for all mid-month payments shall be presented to the public and the Board of Supervisors at their regular monthly meeting together with the listing of vendors for which mid-month payment is approved to ensure complete payment transparency.

Enc. **FORM A:** Tracking List of Vendors Approved for Mid-Month Payment
FORM B: Vendor/Invoice Mid-Month Authorization Form
FORM C: Employee Reimbursement Request Form (non-travel)

AWARD PROFESSIONAL ACCOUNTING & RELATED CONSULTING SERVICES AGREEMENT

By adoption of the consent agenda, the Board awarded professional accounting & related consulting services to MKE, PLLC for an estimated fee range of \$27,500 - \$30,000 and authorized the County Administrator to execute necessary documents.

RESOLUTION OF APPRECIATION AND COMMENDATION FOR JACKIE ESTES UPON COMPLETION OF SERVICE TO THE PSC

By adoption of the consent agenda, the Board approved the resolution of appreciation and commendation for Jackie Estes upon completion of service to the public safety committee. Chair Donehey read and presented the resolution of appreciation and commendation for Jackie Estes following the consent agenda item.

RESOLUTION OF APPRECIATION FOR RAPPAHANNOCK COUNTY PUBLIC SAFETY COMMITTEE MEMBER, JACKIE ESTES

WHEREAS, Jackie Estes served the citizens of Rappahannock County for over fifteen years as a member of the Public Safety Committee, serving as the citizen representative; and

WHEREAS, during his tenure on the Public Safety Committee, he was dedicated to the betterment of law enforcement and the fire and rescue programs of Rappahannock County; and

WHEREAS, he sacrificed countless hours as a volunteer Firefighter\Emergency Medical Technician for the protection of the citizens of Rappahannock County; and

WHEREAS, his consistent advocacy to the Board of Supervisors for the welfare of the public safety community has earned him the admiration of citizens and fellow firefighter and rescue personnel; and

WHEREAS, the members of the Rappahannock County Board of Supervisors will always consider Mr. Estes a respected friend.

NOW, THEREFORE, BE IT RESOLVED, that the Rappahannock County Board of Supervisors extend its sincerest thanks to Jackie Estes for his service on the Public Safety Committee and in other local public safety positions, and wishes him all of the best in future endeavors.

BE IT FURTHER RESOLVED, that this resolution be spread across the minutes of the Rappahannock County Board of Supervisors for all citizens to reflect upon the service and accomplishments of this dedicated public servant.

RECESS AND RECONVENE

Chair Donehey declared a brief recess at 2:42 p.m. and reconvened at 2:48 p.m.

APPOINTMENTS

RAPPAHANNOCK COUNTY WATER AND SEWER AUTHORITY (RWSA) VACANCY DUE TO RESIGNATION

Mr. Whitson stated that there were two qualified applicants and moved to appoint William Lloyd as citizen representative to the RCWSA to serve the remaining portion of a term that expires on July 31, 2024, and Mr. Carney seconded. Ms. Smith stated that she felt that the representative serving should have a connection to the water and sewer system, noting that Mr. Siler had such a connection. She stated that Mr. Siler had previously applied and that the authority members indicated that he would make a good addition. Mr. Frazier raised concern over Mr. Lloyd's interaction with others on social media and stated that the Board should consider that. Mr. Whitson noted that there were already appointees on the authority that had ties to the water & sewer system and that it was important for those who serve in appointed positions do so with a calm demeanor when interacting with the community. Chair Donehey asked if any of the applicants had grant writing experience and both applicants who were in attendance responded that they did not. Chair Donehey then called for a voice vote, which carried.

Aye: Donehey, Whitson, Carney

Nay: Frazier, Smith

Abstain:

OLD BUSINESS

COMPANY 4 MONTHLY REPORT TO THE BOARD AND COMMUNITY

This item was placed on the agenda in case Board action was necessary following Chief Jarrell's presentation earlier in the meeting. No action was taken.

TOWN BOUNDARY LINE CHANGE REQUEST

Ms. Smith stated that she was recusing herself from the agenda item because a family member had business with the town of Washington. Ms. Smith left the Board table and the meeting room during discussion.

Mr. Curry stated that this item had been discussed several times and that during past Board meetings the Board discussed several items that were tangential to the town boundary line adjustment itself. He stated that the Town Council passed a series of resolutions in February including one that agreed to restrict the zoning of the parcel to be taken into the town such that it remains commercial without the potential for residential development. He said that the Board welcomed that resolution, but in the previous regular meeting identified that the commitment could be reversed by the town at any time and that the Board required the provision to be included in the Boundary Line Agreement. Based on this, the Town Council agreed to include the zoning restriction as part of the Boundary Line Agreement. Town attorney Crim informed staff that by incorporating zoning restrictions within the agreement, the agreement would have to be developed

under the authority granted by Virginia Code Chapter 34 of Title 15.2 (Voluntary Settlement of Annexation, Transition or Immunity Issue) rather than Chapter 31 (Settling Boundaries between localities). Mr. Curry stated that the Chapter 34 process required the mutually agreed upon proposed voluntary agreement to be sent to the Commission on Local Government, which body would conduct a hearing to determine if the change is in the best interest of the Commonwealth. He said that the commission would then provide a written report of findings and recommendations. He stated that following receipt of the Commission on Local Government's report, both governing bodies would have to adopt an ordinance accepting the changed boundary (thus requiring advertised public hearings). He stated that the next step in the process to move toward that eventuality was to settle on agreement language that was acceptable to the town and the county. He said that the latest draft was provided with the meeting materials, which was in final form except for changing references from Chapter 31 to Chapter 34 and cleaning up references to exhibits and plats. He informed the Board that Mr. Crim indicated that the Commission process could take 6-months.

Mr. Whitson moved to accept the terms of the proposed boundary line settlement agreement in principle and authorize the agreement to be submitted to the Commission on Local Government for review; Mr. Carney seconded and the motion carried.

Aye: Donehey, Whitson, Carney, Frazier
Nay:
Abstain: Smith

Ms. Smith returned to the meeting room and resumed participation in the Board meeting.

RESTRICT ISSUANCE OF LAND DISTURBANCE AND BUILDING PERMITS DUE TO DELINQUENT TAXES

Mr. Curry stated that the county treasurer requested the Board to consider leveraging state law as it relates to the types of permits that may be withheld in circumstances when taxes are delinquent. He stated he spoke with the county attorney and they agreed that the best way to proceed would be to add a single paragraph to Rappahannock County Code, Chapter 151, Article XVI, § 151-94, Violations and penalties. He stated that a draft ordinance amendment was prepared to that end and was provided with the meeting materials. He stated that to modify county code, the Board would have to advertise and schedule a public hearing regarding the ordinance amendment.

Ms. Smith moved to authorize staff to place a notice in the local newspaper advertising a public hearing to consider amending § 151-94 of the Rappahannock County Code to incorporate permitting restrictions in cases where taxes are delinquent as shown in the provided draft; Mr. Whitson seconded and the motion carried.

Aye: Donehey, Carney, Frazier, Smith, Whitson
Nay:
Abstain:

VIRGINIA TOURISM CORPORATION (VTC) GRANT MATCH OPPORTUNITY

Mr. Curry stated that during a previous meeting Ms. Smith indicated that when she lived in another locality, those who requested funding for restricted tourism dollars were required to follow a precise application process. He stated that the county did not have a defined process prompting he and the county attorney to review Virginia Code § 58.1-3819, Transient occupancy tax, which states that prior to spending restricted tax revenue dedicated to tourism the county must consult with a local tourism industry organization or where one does not exist, hold a public hearing. He stated that since it was unclear whether Businesses of Rappahannock fit the role of a "tourism industry organization," it was recommended by the county attorney that a public hearing take place. He said that the annual budget public hearing takes care of most of the restricted funding, but a portion of funding that is left unallocated at the time of budget adoption would require another public hearing prior to its allocation. He stated that the Board may want to develop an application process in order to have consistency and to be able to make informed decisions. He stated he reached out to the Virginia Institute of Government seeking examples from other localities for such processes, but that unfortunately nothing valuable was received.

Referring to the grant match requests, Ms. Smith stated that the county submitted letters of support and said that she had conflicting feelings over the county's ensuing obligation. Mr. Curry

stated that while the county did submit letters of support for several local VTC grant applications, those letters did not promise financial support. Ms. Smith asked how the Board felt about putting money into events, noting that the Board previously did such with the Farm Tour but decided to only fund them until they were able to fund themselves. She stated she felt that she could support the two requestors (SperryFest and Farm Tour) through other means, such as security but was hesitant about setting a precedent of granting money to an event. She stated that by doing so it may become difficult in the future as the Board would then have to pick and choose which events should receive local funding. Mr. Curry stated that the funds were restricted and if the Board was not inclined to provide funds for events, then the Board would need to determine what type of use would be appropriate for the FY2024 budget. Mr. Carney agreed that the Board should have a clear process for the restricted tourism funds. Ms. Smith stated that the Planning Commission was developing language that would require certain applicants to have fire & rescue on site, which might have associated cost and be a potential use of the restricted funding. Following continued discussion regarding various ways to invest the restricted funds, the Board requested staff to add the topic to the June regular meeting for further discussion.

CLASSIFICATION AND COMPENSATION STUDY UPDATE

Ms. Jewell informed the Board that Baker Tilly sent an updated pay scale in mid-March and that the next step was for staff to work with department heads to match employees with the updated job descriptions. She stated that work would resume immediately following the FY2024 budget development process.

POLE MOUNTED SPEED DISPLAY SIGNS

Mr. Curry stated that he had been in contact with RadarSigns, the company from which he previously received purchase quotes, who informed him that as of April 1 they would be affiliated with the national purchasing cooperative "BuyBoard." He stated that if the county was to join the cooperative, it would streamline purchasing for the PMSD devices and other goods. He requested the Board's authorization to execute the provided agreement to join BuyBoard, following review by the county attorney. He stated he was still working on the required VDOT land use permits for the signs.

Mr. Carney moved to authorize the county administrator to execute the national purchasing cooperative interlocal participation agreement with BuyBoard for which RadarSigns will be a vendor starting April 1, 2023 following review and approval from the County Attorney; Ms. Smith seconded and the motion carried.

Aye: Donehey, Carney, Frazier, Smith, Whitson

Nay:

Abstain:

ADDENDUM ITEM – COMPANY 4 LEGAL DISCUSSION

Mr. Frazier voiced concern over the VACorp assigned attorney submitting filings on behalf of the Board without speaking with the Board. Mr. Curry stated if it was the will of the Board, he would request legal counsel to meet with the Board. Ms. Smith agreed with Mr. Frazier and Chair Donehey stated that the case was specific to the interpretation of Virginia Code and she was unsure what the Board would need to discuss. Mr. Frazier stated he did not have a copy of the court filings made by the Board's legal counsel, to which Mr. Curry stated he believed he had forwarded that to the Board. Ms. Smith asked if there was time during the budget hearing on April 17 to meet with counsel in a closed meeting. Mr. Curry stated that the April 17, 2023 meeting was scheduled to take place at RCES and he would have to find an appropriate room. Mr. Whitson stated he was hesitant to enter a closed session regarding a filing that was already a public document. Ms. Smith stated that legal matters were allowed to be discussed in a closed meeting in order to discuss strategy and to not jeopardize the case. Mr. Curry asked Board members if they would like him to read the pertinent code section, and they requested that he read it: § 2.2-3711 A.7 "*Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.*" Mr. Curry requested a motion to clarify the will of the Board.

Mr. Frazier moved instruct staff to contact legal counsel and arrange a consultation either in person or electronically on April 17, 2023; Ms. Smith seconded and the motion failed due to not receiving a unanimous vote that was required because it was an addendum item.

Aye: Donehey, Frazier, Smith
Nay: Carney, Whitson
Abstain:

NEW BUSINESS

VDOT SECONDARY SIX YEAR PLAN, PRELIMINARY DISCUSSION

Mr. Curry introduced the preliminary VDOT secondary six-year plan (SSYP) through which the Board would be empowered to allocate funding for secondary road improvements. He stated that last year the Board adopted a project priority list of secondary roads needing hard-surfacing and that that each successive year, the plan was advanced one year in the six-year planning period necessitating the allocation of funds to the “new” sixth year.

He stated that the priority list adopted last year included; two sections of Keyser Run Road, Whorton Hollow Road, Pullens Bluff Road, and Turkey Ridge Road. He said that there was approximately \$562,934 available to allocate to another project. Mr. Curry reviewed a list of roads that were eligible for the hard-surfacing program and stated that he prepared a draft public hearing notice that listed the following hard-surfacing projects as potential additions to the SSYP:

- SR 615, Turkey Ridge Road, 0.8 mile section from 0.8 mile from the Culpeper line to 1.6 miles from the Culpeper line, at the bridge
- SR 631, Mill Hill Road

Ms. Smith stated she received feedback requesting that Sycamore Ridge Road be included in the SSYP and requested it be advertised for the upcoming SSYP public hearing. Mr. Whitson stated that Long Mountain Road did not meet the requirements for the rural rustic program, but requested VDOT to consider maintenance activities for the portion of the road extending from Rock Mills Road and heading east. Mr. Curry stated that the public hearing for the SSYP would be held during the May 1 regular Board meeting and requested formal direction from the Board regarding the road sections that should be identified in the public hearing notice.

Ms. Smith moved to authorize the content of the VDOT secondary six-year plan public hearing notice as presented to include all projects on the priority list that are not yet complete and the two potential additions identified on the draft notice prepared by staff along with the addition of Sycamore Ridge Road, Mr. Carney seconded and the motion carried.

Aye: Donehey, Carney, Frazier, Smith, Whitson
Nay:
Abstain:

SCHOOL BUILDING BI-DIRECTIONAL AMPLIFIER (BDA) SYSTEMS

Mr. Curry stated that during the table top study with the schools, they discussed the fact that portable radios on the public safety radio system did not have acceptable coverage within the two schools because the heavy construction buildings were too far away from the transmitter receiver sites located in Culpeper County and Fauquier County. He stated that staff contacted L3Harris to obtain quotes to provide and install Bi-Directional Amplifier (BDA) systems. He stated that this would be a one-time use of funds, which would cost \$48,389.34 for RCES and \$53,358.96 for RCHS for a total of \$101,748.30. Mr. Frazier stated he thought the radios that were purchased worked with the WIFI, to which Mr. Curry stated that the L3Harris radios did, but if anything changed with the WIFI system (SSID or password), then the radios would have to be reprogrammed. He further noted that he was unsure whether the new Motorola radios would work with WIFI. He stated he did not believe it was a public safety grade to rely on a WIFI connection and that the BDA system was P25 compliant and would work with any P25 radio. Ms. Smith requested that this item be included on future agendas in order to stay updated.

Mr. Carney moved to appropriate \$102,000 from the general fund balance to a new capital improvement fund budget for school BDA's and award the work to SSC; Mr. Whitson seconded and the motion carried.

Aye: Donehey, Carney, Frazier, Smith, Whitson
Nay:
Abstain:

SAFER GRANT – RECRUITMENT AND RETENTION

Mr. Curry stated that the county received a SAFER grant from the Federal Emergency Management Agency (FEMA) in the amount of \$561,617.02 over four years. He stated that staff was requesting authorization to accept the award, which action must occur by April 23, 2023.

Ms. Smith moved to authorize the county administrator to accept the SAFER grant award as outlined in the provided award letter; Mr. Carney seconded and the motion carried.

Aye: Donehey, Carney, Frazier, Smith, Whitson
Nay:
Abstain:

INFORMATION, REPORTS, AND CORRESPONDENCE

BOARD COMMITTEE REPORTS

Board members provided reports for the committees to which they were assigned. No action was taken by the Board.

TREASURER'S REPORT

Mr. Curry stated that everything was still on track as forecasted and that the Treasurer's monthly report was enclosed in the meeting packet with no other discussion of the topic made by the Board.

UPDATE ON COUNTY ADMINISTRATOR ACTIVITIES

Mr. Curry informed the Board that the well at the Aileen property had experienced some issues requiring a new pump installed at depth. He stated that he sent a letter to DEQ regarding the county's responsibility as related to the Aileen site and the voluntary remediation program (VRP) that the county entered when it owned the parcel. DEQ representatives responded that they concurred that the County had no further obligation and that the obligation for the terms of the VRP were conveyed to the current owners with the sale of the property. He also stated that the county received the required amended DEQ solid waste permit to change the leachate pond at the closed landfill to a tank system and that LaBella was working on bid documents. The county administrator's mid-month report and monthly report were enclosed in the meeting packet with no other discussion of the topic made by the Board.

BUILDING PERMIT REPORT

The building permit monthly report was enclosed in the meeting packet with no discussion of the topic made by the Board.

ZONING ADMINISTRATOR REPORT

The zoning administrator monthly report was enclosed in the meeting packet with no discussion of the topic made by the Board.

EMERGENCY SERVICES COORDINATOR REPORT

The emergency services coordinator monthly report was enclosed in the meeting packet with no discussion of the topic made by the Board.

VDOT MONTHLY REPORT

The VDOT monthly report was enclosed in the meeting packet with no discussion of the topic made by the Board.

MATTERS PRESENTED BY THE BOARD

Ms. Smith informed the Board of upcoming fire & rescue fund raising events and noted that SperryFest was approaching. Mr. Whitson requested the county recognize the contributions made by Medge Carter who was soon retiring from the Health Department. He further requested that a list of AED locations for the public be provided so that the public may be mindful of their locations in case of an emergency. He then asked if staff could see if localities had the authority to impose a limit on the number of short-term rentals approved to operate in the community. Chair Donehey stated she had citizens requesting that the exterior lights at the now closed Truist bank be dimmed. She then commended the "Hidden in Plain Sight" presentation and requested that the May or June Board meeting have a similar presentation. She then asked if the county could do anything about dangerous structures, to which Mr. Curry stated that the county did have an ordinance that speaks to unsafe structures and he could report on the process in a future meeting.

RECESS

At 4:33p.m., the Chair declared a recess until 7:00 p.m.

RECONVENE IN OPEN MEETING

Chair Donehey reconvened in open meeting at 7:00 p.m.

PUBLIC HEARING – SE#23-01-01, GLEN FARM LLC, MORE THAN ONE DWELLING PER TRACT OR PARCEL, TM#55-1

Ms. Somers stated that Glen Farm LLC. requested a special exception for a second dwelling on the property located at 461 Quaintance Road in Woodville. She stated that the property was 577-acres and was zoned conservation and agriculture. She stated that the proposed second dwelling was already under construction as a pool house and that the initial plans included four bedrooms and a bathroom, but no kitchen (making it a legal guest house). She stated that the applicant would like to add a kitchen to the building, which would make it another dwelling unit. She stated the proposed second dwelling was intended to be used solely as a guesthouse for family and visitors. She stated that VDOT commented that they had no objections to the request and that the Health Department stated that they would approve the four-bedroom dwelling for 600-gallons per day. She stated that the pool house structure shared a well with the original structure and that there were no objections by the Health Department. She stated that the planning commission held a public hearing on February 15, 2023, following which they recommended approval with no conditions by a vote of 7-0.

Chair Donehey opened the public hearing.

Property owner, Bruce Wardinski of the Piedmont District stated that the original building constructed approximately ten years ago had one bedroom. He said that the new building for which this permit regards has four bedrooms for his family to use when they visit. He stated that construction of the new building had been a long process that began prior to the pandemic. He stressed that the second dwelling would only be for personal guests.

There being no other citizens wishing to speak, Chair Donehey closed the public hearing.

Ms. Smith stated that the planning commission had no concerns, noting that it met all the requirements and that there were no concerns made by the public.

Ms. Smith moved to approve SE#23-01-01 without conditions; Mr. Whitson seconded and the motion carried.

Aye: Donehey, Carney, Frazier, Smith, Whitson

Nay:

Abstain:

PUBLIC COMMENT

Chair Donehey opened the public comment period.

John Cappiali of the Hampton District voiced concern that the Board was considering taking away some of the authority of the Board of Zoning Appeals (BZA) and placing it with the

Board of Supervisors. He stated that it appeared that the Board was trying to acquire more power and voiced concern over possible legal consequences over such action. He further raised concerns over the budget work sessions and suggested that public comment be added to the end of the meetings so the public could comment after hearing what was discussed.

Ron Makela of the Jackson District and Chairman of the BZA requested details as to the issues the Board had with the BZA that would lead to the proposed change. He further voiced support for increasing the number of members sitting on the BZA from five to seven and noted that the BZA was required by the state to serve as an independent body. He stated that taking away special use permits from the BZA would deprive the public of an independent review.

There being no other citizens wishing to speak, Chair Donehey closed the public comment period.

NEW BUSINESS

ZONING ORDINANCE AMENDMENT REVIEW – REASSIGN SUP TO SE

Mr. Curry stated that the Board recently discussed modifying the Rappahannock County Code to reassign special use permits (SUP) such that they would become special exceptions (SE). He stated that a draft ordinance amendment had been prepared and reviewed with the county attorney. Mr. Whitson noted that the zoning ordinance references special use permits in various sections and asked if the zoning ordinance would be cleaned up to eliminate those references. Mr. Curry stated that the proposed change simply reassigns those uses now designated to be considered by SUP to be considered by SE and retains within the ordinance reference to SUPs in general. He said the broader zoning ordinance amendments would remove all reference to the SUP process. Mr. Frazier suggested that perhaps a statement in the definition section about the change would be helpful, to which Mr. Curry stated that the wording was so interconnected he felt that the SUP process needed to be retained, just that no uses would be assigned to that process. Mr. Carney stated that he was in favor of the amendment noting that many of the requests for special use permits significantly changed the allowable land use, therefore making it more of a legislative decision, which he stated he felt should be tied to elected officials who are held accountable by the public. Mr. Curry stated that a draft ordinance amendment was provided with the meeting materials and he sought Board Direction to place necessary notices for a joint planning commission-Board public hearing to be held at the Board's regular May meeting.

Ms. Smith moved to authorize staff to advertise a joint public hearing for May 1, 2023 to amend Rappahannock County Code as shown in the provided ordinance amendment to reassign SUPs to SEs; Mr. Carney seconded and the motion carried.

Aye: Donehey, Carney, Frazier, Smith, Whitson

Nay:

Abstain:

BOARD OF ZONING APPEALS – NUMBER OF MEMBERS

Mr. Curry stated that during a previous meeting, Ms. Smith noted that Virginia Code § 15.2-2308 permits the BZA to have five or seven members. He stated that the Rappahannock County Code § 170-140 states that the BZA in Rappahannock County has five members, and that if the Board desired to change the number of members, the local code would have to be amended. He stated that if the Board was so inclined, staff would review the ordinance in detail to identify all necessary changes and present a defined ordinance amendment document at the next meeting. Ms. Smith stated she felt it was a good idea to expand the number of BZA members from five to seven, to which Mr. Whitson voiced concern that with the reduced responsibilities, it would not be an improvement upon efficiency and that he was not in favor. Mr. Frazier stated the county no longer had local judges who were familiar with the community and voiced concern that there were some individuals who were campaigning for appointment by the court. He stated that he was in favor of the Board submitting recommendations to the court for appointees and of increasing the number of BZA members. Ms. Smith stated that BZA consisted of a Chair, Vice-Chair, FOIA officer, secretary, and a representative to the planning commission. She stated that by enlarging the body it would provide an opportunity to fill those positions with individuals who may have more experience. She further requested staff to keep the Board updated about additional land use training opportunities.

Ms. Smith moved to direct staff to analyze the county code to determine sections that must be amended to change the BZA membership from five members to seven; Mr. Frazier seconded and the motion carried.

Aye: Donehey, Carney, Frazier, Smith
Nay: Whitson
Abstain:

BERKLEY GROUP – ZONING ORDINANCE UPDATE

Mr. Curry stated that the planning commission reviewed the proposed scope of work by the Berkley Group for phase 1 of the zoning ordinance rewrite, which mainly focused on the objective/procedural portions of the update. He stated that he felt the proposal met the objective of the planning commission, but that body deferred action until their next meeting. He stated that if the Board was inclined to proactively award Berkley Group work order #5 contingent on planning commission approval, the planning commission could take action during their April meeting and the work could begin as early as May. Following a brief discussion Mr. Carney stated he wanted to make the zoning ordinance user friendly, which he thought this effort would do and Ms. Smith agreed.

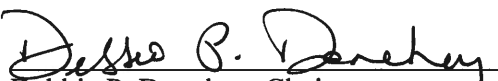
Mr. Carney moved to award work order # 5 to the Berkley Group for phase 1 of the zoning ordinance rewrite, contingent on scope approval by the planning commission; Mr. Whitson seconded and the motion carried.

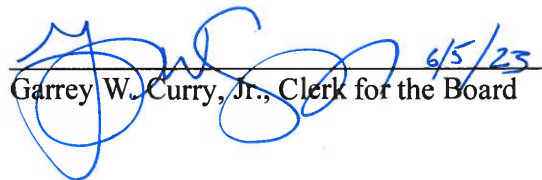
Aye: Donehey, Carney, Frazier, Smith, Whitson
Nay:
Abstain:

ADJOURNMENT

Mr. Carney moved to adjourn the meeting at 7:50 p.m.; Mr. Whitson seconded, and the motion carried.

Aye: Donehey, Carney, Frazier, Smith, Whitson
Nay:
Abstain:


Debbie P. Donehey, Chair


Garrey W. Curry, Jr., Clerk for the Board

**BOUNDARY LINE ADJUSTMENT AGREEMENT
BY AND BETWEEN THE COUNTY OF RAPPAHANNOCK, VIRGINIA AND
THE TOWN OF WASHINGTON, VIRGINIA**

This Boundary Line Adjustment Agreement (“Agreement”), dated as of _____, 2023, is made by and between **The Board of Supervisors of Rappahannock County, Virginia**, a political subdivision of the Commonwealth of Virginia (the “County”), and **The Town of Washington, Virginia**, a political subdivision of the Commonwealth of Virginia (the “Town”). The County and the Town are herein each a “Party” and collectively, the “Parties.”

RECITALS

R-1. The Parties have been approached by Black Kettle LLC (“Black Kettle”), owner of certain property comprising 5.8005 acres, more or less, of which 3.9523 acres, more or less, are situated solely in the County and subject to its jurisdiction, and 1.8482 acres, more or less, are situated in the Town and subject to its jurisdiction, (Tax Map parcel TM#20-18 as shown on the plat attached to this Agreement as Exhibit 1) with a proposal to make productive use of that property (“Rush River Commons”). Black Kettle or a subsequent Developer proposes to construct structures to house community-serving uses and other uses that the Parties find to be in their mutual interests.

R-2. The Town and the County have been asked by Black Kettle to consider a Boundary Line Adjustment, which would bring that portion of the Black Kettle Property presently subject to the County’s jurisdiction into the Town’s boundaries in order that it might process development plans pursuant to a single Zoning and Subdivision Ordinance and development processes, and have access to public utilities that are essential to the development of the Rush River Commons Property.

R-3. The Parties have agreed to give due consideration to this request and directed their counsel and other members of staff to discuss a potential Boundary Line Adjustment Agreement and Boundary Line Adjustment with representatives of each jurisdiction and Black Kettle. Town and County representatives have presented each governing body this proposed Agreement for that purpose, utilizing the process for voluntary settlements among local governments under Virginia Code § 15.2-3400 so as to incorporate zoning arrangements as enforceable provisions of this Agreement. This process requires several steps, namely submission to the Virginia Commission on Local Government, advertisement and holding of public hearings, submission of the proposed Agreement to a special three-judge Court, and final approval by the County Board of Supervisors and Town Council if the Court will only approve the Agreement with modifications; these steps are summarized in recitals R-4, R-5, and R-6.

R-4. The Town and the County will by resolution refer this Agreement in draft format to the Virginia Commission on Local Government for hearing and report as required by Virginia Code § 15.2-3400.

R-5. After receipt of the Commission’s report, the Town and the County will jointly advertise their intention to consider such an Agreement at least once a week for two successive weeks in a newspaper having general circulation in both localities, such notice including a descriptive summary of the proposed Agreement and describing the new boundary, together with a statement that a copy of the Agreement has been on file in the office of the clerk of both the Town Council and the County Board of Supervisors.

R-6. The Town Council, after having held a public hearing on the adoption of the Agreement on {{INSERT APPLICABLE DATE}}, and the Board of Supervisors after having held a public hearing on the adoption of the Agreement on {{INSERT APPLICABLE DATE}}, both pursuant to Va. Code Ann. § 15.2-3400, and upon due consideration of the matter, both governing bodies will vote on whether to petition the Circuit Court of Rappahannock County for an order affirming the Agreement by Resolutions identified as {{INSERT NAME}} adopted on those dates, copies of which are attached hereto and incorporated herein by reference as Exhibits {{INSERT EXHIBIT NUMBER}} and {{INSERT EXHIBIT NUMBER}}.

R-7. The Parties have caused a certified land surveyor to create a plat together with a metes and bounds description of the new boundary line and copies of which are attached hereto and incorporated herein by reference as Exhibits {{INSERT EXHIBIT NUMBER}} and {{INSERT EXHIBIT NUMBER}}.

NOW, THEREFORE, pursuant to Title 15.2, Subtitle III, Chapter 34, of the Code of Virginia, intending to be legally bound hereby and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby conclusively acknowledged, and subject to Court approval as provided in Virginia Code § 15.2-3400, the Parties do hereby agree as follows:

AGREEMENT

The foregoing Recitals are incorporated herein by reference.

DEFINITIONS

“Adjusted Property” means the property adjusted into the Town by virtue of this Agreement and the Order of the Court entered in accordance herewith.

“Boundary Line Adjustment” means an alteration in the presently understood and existing boundary between the Town of Washington and Rappahannock County voluntarily, formally, and legally altered by agreement of the two jurisdictions with the approval of the Circuit Court of Rappahannock County as provided by Virginia law.

“Commission” means the Virginia Commission on Local Government.

Boundary Line Adjustment Agreement

“**Court**” means the special three-judge panel of the Circuit Court as provided in Virginia Code § 15.2-3000.

“**Developer**” means any party who undertakes to develop the Adjusted Property in accordance with this Agreement.

“**Effective Date**” means the first day of the month succeeding entry of the Order.

“**Order**” means the unappealable Final Order entered by the Court affirming this Agreement.

“**Owner**” means Black Kettle LLC and its successors and assignees.

ARTICLE I

Agreements between the Town and County

1. **Boundary Line Adjustment.**

The Parties hereby agree that upon the approval of the Court as further provided herein with respect to the presentation of a Petition therefor, the Boundary Line between the Town and the County will be adjusted to the new Boundary as depicted on Exhibit A hereto, that certain Plat of Boundary Line Adjustment dated {{INSERT DATE}}, prepared by Bowman Consulting.

2. **Limitations on Lighting.**

All lighting constructed by a Developer will be downward directed and will employ cutoff feature to prevent off-site light pollution. Outdoor lighting fixtures will meet the IDA Dark Sky Friendly lighting standards.

3. **Limitations on Use.**

Pursuant to the resolution adopted by the Town of Washington on February 13, 2023, the Adjusted Property shall be zoned Village Commercial, which does not allow for residential construction. The Town will not consider nor approve any rezoning, special use permit, or other legislative action which would allow for residential construction on the Adjusted Property, and only the Adjusted Property, without the concurrence of the County Board of Supervisors.

ARTICLE II

Default

1. **Default.** In the event of a default under this Agreement, consisting of a failure of either party to perform an obligation or to refrain therefrom as set forth in this Agreement, including an attempted revocation of consent hereto, if a Party

has not cured an asserted default within sixty (60) calendar days of receiving written notice of the said default from the non-defaulting Party, the non-defaulting Party will have the right to seek any judicial remedy that may be available to it in law or equity, including the right to specific performance.

2. **Extension of cure periods by the Parties.** In the event of a breach and the appropriate notice thereof by the defaulting Party, the cure period noted above may be extended at the sole discretion of the non-defaulting Party.

3. **Attorneys' fees.** If either Party files a lawsuit, counterclaim, or cross-claim to enforce any provision of this Agreement, the prevailing Party is entitled to all reasonable attorneys' fees, litigation expenses, and court costs.

ARTICLE III

Termination of Agreement in the Event that Development does not Occur

If the Adjusted Property is not developed as contemplated by this Agreement within 15 calendar years from the date of the entry of the Order, then either party may petition the Court to revoke the Boundary Line Adjustment otherwise authorized herein by the filing of an appropriate proceeding pursuant to applicable provisions of Virginia law as they may then exist.

ARTICLE IV

Miscellaneous Terms

1. **Mutual Covenants and Cooperation.** The Parties agree that they will cooperate with each other in processing any documents, applications, or petitions that may be required to effectuate the Boundary Line Adjustment, that consent thereto will not be unreasonably withheld, and that, should there be a third-party challenge to the validity of the Boundary Line Adjustment, they will each use their best good-faith efforts to defend the matter at the trial court and upon appeal. The Parties agree that so long as neither is in breach of this Agreement neither will seek to invalidate this Agreement, or otherwise take a position adverse to the purpose or validity hereof.

2. **Third Party Beneficiaries.** This Agreement is binding on and solely for the benefit of the Parties hereto and their respective successors and permitted assigns, and no other person will have any right, benefit, priority, or interest in, under, or because of the existence of, this Agreement.

3. **Construction.** This Agreement was drafted with input by the Town and the County, and no presumption arising from draftsmanship will exist against either Party.

4. **Counterparts; Electronic Signatures.** This Agreement can be

executed simultaneously in any number of counterparts, each of which is to be deemed an original, and all of which will constitute but one and the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail/PDF, or other means of electronic transmission, has the same legal effect as delivery of an original signed copy of this Agreement.

5. **Amendment.** This Agreement may be amended, modified or supplemented, in whole or in part, by mutual consent of the County and the Town, subject to review by the Commission and approval by the Court, except for concurrence of the County Board of Supervisors in approval of residential construction as provided in Article I, Section 3 of this Agreement.

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

For notices to the County:

County Administrator
[if by hand] 3 Library Road
[if by mail] P.O. Box 519
Washington, VA. 22747

For notices to the Town:

Town Clerk
[if by hand] 567 Mt. Salem Ave, Suite 3
[if by mail] P.O. Box 7
Washington, Virginia 22747

ARTICLE V

PRESENTATION OF THE PETITION TO THE COMMISSION AND THE COURT.

1. As soon as practicable after the adoption of the Agreement by both Parties hereto, the County Attorney and the Town Attorney, or their designees, will present this Agreement to the Commission for a hearing and report pursuant to Virginia Code § 15.2-3400 (3).

2. Upon receipt of the Commission report, if the County and Town hold

Boundary Line Adjustment Agreement

public hearings as provided by law and thereafter pass ordinances to adopt either the original or a modified agreement acceptable to all parties, the County Attorney and the Town Attorney shall Petition the Circuit Court of Rappahannock County for an Order affirming such Agreement. The Petition will set forth the facts required by the Code of Virginia and the regulations of the Commission pertaining to the desire to relocate or change the boundary line between the localities, this Agreement, and will have attached to it the Plat of Boundary Line Adjustment attached hereto as Exhibit A, and this Agreement, which shall be incorporated into the Court's Order.

3. If this Agreement is not affirmed by the Court, this Agreement shall immediately terminate. However, if the Court proposes amendments or changes to the terms and conditions of this Agreement as a precondition for its approval, this Agreement shall not terminate if the County and Town mutually agree to accept the recommended amendments or changes.

4. Upon entry of the Order, that Order will be entered in the land records of the Circuit Court of Rappahannock County and indexed in the names of both the Town and the County, and certified copies of the Order will be provided to the Mayor of the Town and the Chairman of the Board of Supervisors.

5. The Town shall bear the costs of preparing all required documents and of recording the necessary plat and metes and bounds description and all other, if any, costs of recording.

6. On its Effective Date, this Agreement shall be binding on future local governing bodies of the County and Town, pursuant to express statutory authority.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by the officers whose names appear below as of the Effective Date first set forth above.

**The Board of Supervisors of
Rappahannock County, Virginia**

By: _____

Name:

Title: Chairman of the Board

Approved as to form:

By: _____
County Attorney

DRAFT

The Town of Washington, Virginia

By: _____

Name:

Title: Mayor

Approved as to form:

By: _____
Town Attorney

DRAFT