



Ralph S. Northam
Governor

R. Brian Ball
Secretary of
Commerce and Trade

COMMONWEALTH of VIRGINIA

Erik C. Johnston
Director

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

MINUTES

Oral Presentations

Commission on Local Government

2:00 p.m., May, 8, 2019

The Culpeper Economic Development Center

Board Room

803 S. Main St.

Culpeper, Virginia

Members Present

R. Michael Amyx, Chair
Rosemary M. Mahan, Vice-Chair
Diane M. Linderman, PE
Kimble Reynolds, Jr.

Members Absent

Dr. Stephanie Davis

Staff Present

J. David Conmy, Local Government Policy Administrator
Ali Akbor, Senior Public Finance Analyst
Cody Anderson, Legislative and Board Affairs Coordinator

I. **Call to Order**

A. **Welcome**

Commission on Local Government (CLG) Chair, Mr. R. Michael Amyx, called the meeting to order at 2:00 p.m. He mentioned that the Commission is present to review a citizen-initiated petition for annexation of certain territory containing approximately 120.62 acres in Culpeper County into the Town of Culpeper.

B. **Introduction of Commission Members and Staff**

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

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II. Commission's Review

Mr. Conmy stated that, on the authority of § 15.2-3203 of the Code of Virginia, the CLG is directed by law to review any proposed annexations and other local boundary change and transition issues prior to their presentation to the courts for ultimate disposition. Upon receipt of such notice, the Commission is directed to "hold hearings, make investigations, analyze local needs, and make findings of facts and recommendations" regarding the issue to the affected local governments. Mr. Conmy explained that the CLG is required to report, in writing, their findings and recommendations as to "the necessity for and expediency of the proposed annexation."

Mr. Conmy also stated that the oral presentations were advertised by notice published in the *Culpeper Star-Exponent* on Wednesday April 24, 2019, and again on Wednesday, May 1, 2019. In addition, notice of the oral presentations was mailed to the local governments contiguous to, or sharing functions, revenue, or tax sources with, the Town and County.

Mr. Conmy stated that the Commission is here today as a result of a Notice filed by Caruso Odin, LLC requesting the annexation of approximately 120.62 acres of territory in Culpeper County into the Town of Culpeper. Such petitions may be filed by 51% of the voters or 51% of the property owners in number and land area. He indicated that Caruso Odin, LLC is the sole property owner of the site petitioned for annexation. Mr. Conmy noted that prior to this meeting, the Commission received and reviewed documents from Caruso Odin, LLC in support of such petition and responses from the County and Town in relation to the petition. He added that on April 26, 2019, the Commission received and reviewed responses from Caruso Odin, LLC, the Town, and the County in response to the Commission's request for additional information made on April 5, 2019.

He then reviewed the meeting schedule for the Commission's on-site meetings in Culpeper, explaining that at noon the Commission toured the site proposed for annexation and that at 7:00 p.m. this evening, a public hearing on the matter will be held. He added that the Commission's record would remain open on this matter until the close of business on Thursday May 23, 2019, and that the Commission would endeavor to render its report on the matter prior to the end of July 2019. He indicated that the Commission is currently scheduled to meet on Thursday July 11, 2019, and additional details regarding the meeting would be mentioned on the Virginia Department of Housing and Community Development's website as well as the Virginia Regulatory Town Hall website and the Commonwealth Calendar.

III. Oral Presentations by Caruso Odin, LLC and the County

A. Opening Statements

Mr. Amyx recognized Mr. John Foote, of Walsh, Colucci, Lubeley, and Walsh, counsel for Odin Caruso, LLC to speak. Mr. Foote argued in his opening statement that the Caruso Odin property should

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be allowed to be annexed for reasons including: the need for the Town of Culpeper for room to grow, the property was scheduled for annexation in the future, the current Rural Area zoning did not make sense for the property, and because the annexation eligibility formula set into place by the Voluntary Settlement Agreement (VSA) agreed to by both the Town of Culpeper and the County of Culpeper does not work. Mr. Foote expressed skepticism that the application for rezoning would receive a favorable outcome and that even if a rezoning would be approved, that there would be issues meeting Town standards.

Mr. Amyx recognized Ms. Bobbi Jo Alexis, attorney for the County of Culpeper, to speak. Ms. Alexis argued in her opening statements that the Caruso Odin property should not be annexed into the Town for reasons including: the lack of a need for services by the property; the lack of a need for the Town of Culpeper for more developable land; the best interest of the people, the locality, and the Commonwealth; and because Caruso Odin, LLC had not adequately exhausted the rezoning process within the County.

B. Presentations and Cross-Examinations

Mr. Amyx recognized Mr. Foote to begin his oral presentation. Mr. Foote called Mr. Andrew Garrich, Vice President of Land for Caruso Homes as his first witness. Upon questioning from Mr. Foote, Mr. Garrich explained that Caruso Odin purchased the property in 2005 and did not develop the land at that point due to the economic downturn of 2007. Mr. Garrich explained that, through conversations with the Town, it became obvious that the property would not be rezoned to a density that was satisfying to Caruso Odin, LLC. Mr. Garrich explained that Caruso Odin would not build a development to the Rural Area zoning standards of the Town because that zoning criteria would not be annexed under the VSA.

Ms. Linderman asked Mr. Garrich if, when the property was purchased in 2005, they were aware of its zoning. Mr. Garrich explained that Caruso Odin was aware of the zoning of the property but anticipated a future rezoning.

Mr. Conmy asked Mr. Garrich if Caruso Odin was aware of the development of the VSA. Mr. Garrich noted that he was not personally aware of the VSA when it was being developed.

For cross-examination, Ms. Alexis asked Mr. Garrich if Caruso Odin attended a rezoning hearing. Mr. Garrich indicated that they did not. Ms. Alexis then asked if Mr. Garrich believed that if a property was located within the Future Boundary Adjustment Area (FBAA), that it will be annexed. Mr. Garrich indicated that this was not what he believed. Ms. Alexis asked if Mr. Garrich was aware if the Town of Culpeper-County of Culpeper Joint Planning Commission was approached about the property. Mr. Garrich indicated that the Joint Planning Commission was not approached.

Mr. Foote noted to the Commission that Ms. Sarah Mernin, another attorney for Caruso Odin, LLC

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would be questioning their second witness.

At the direction of Ms. Mernin, the witness introduced himself as Mr. Roddy Reyes of Bowman Consulting. Mr. Reyes noted that he was the engineer for the project. Mr. Reyes explained that Caruso Odin attempted to rectify County concerns over the development, including proposing new traffic patterns and having conversations with VDOT and Norfolk Southern about the bridge crossing into the Town and building a possible pedestrian bridge.

Ms. Linderman asked Mr. Reyes whose jurisdiction Nalles Mill Rd. falls under. Mr. Reyes indicated that the road was under the jurisdiction of VDOT.

Ms. Mahan asked Mr. Reyes why the Three Flags property wasn't being developed. Mr. Reyes explained that the infrastructure at Three Flags would be too costly to develop.

Under cross-examination, Ms. Alexis asked if Mr. Reyes worked on the Three Flags project, to which he responded that he did not and only knew of the property by other people. Ms. Alexis asked if, under Culpeper County standards, Caruso Odin could develop to accommodate Culpeper Town standards. Mr. Reyes indicated that Caruso Odin could. Ms. Alexis asked if a crossing solution was submitted to VDOT. Mr. Reyes indicated that the signaling proposal submitted to VDOT was rejected and that the cost of building a pedestrian bridge would be \$1 million.

Ms. Mernin asked Mr. Reyes why Caruso Odin did not proffer the \$1 million dollars necessary for the crossing. Mr. Reyes explained that amount of money was not feasible from a cost effective standpoint.

A motion was made by Mr. Amyx and properly seconded for a recess until 3:45p.m.

Prior to presenting, Ms. Alexis requested clarification on the procedure of witness examination. She asked if attorneys may proffer information and look to their witness for confirmation that that information would be their testimony. Mr. Foote objected to this procedure, noting that in this case, the attorney is essentially testifying, not the witness. Mr. Foote explained that his witnesses were meticulously chosen and prepared. Mr. Amyx allowed Ms. Alexis's procedural request.

Ms. Alexis then began her presentation by calling on Mr. Sam McLearn, Director of Development for Culpeper County, as a witness. Mr. McLearn recounted that two work sessions were afforded to the Caruso Odin rezoning application and that one staff report was filed. He noted that there are cases where more than three staff reports are filed for any given application. Mr. McLearn stated his opinion that Caruso Odin, LLC did not exhaust all of the rezoning avenues with the County. Mr. McLearn went on to sum up that across multiple pieces of developable land near and around the Town of Culpeper, that there just under 900 developable homes.

Mr. Reynolds inquired about the concerns of Mr. McLearn in terms of the development of the

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Caruso Odin property. Mr. McLearen explained that he held concerns regarding the bridge near the Caruso Odin property, the roads nearby, other capital improvements needed to support the development, and that no public hearing had been afforded for the citizens of the area.

Mr. Reynolds asked for more information as to why the Three Flags property had not been developed further. Mr. McLearen noted that there had been water pressure issues, however those issues had been resolved. Mr. Foote interjected to ask whether Mr. McLearen was aware that there was a moratorium signed by the Town of Culpeper terminating the development of Three Flags. Mr. McLearen was not aware of this moratorium. Mr. Foote requested Commission permission to allow the moratorium into evidence. This request was allowed.

Ms. Alexis called on Mr. John Egertson, Culpeper County Administrator, as a witness. Along with the previous concerns argued by the County of Culpeper, Mr. Egertson explained that it was legally troubling to allow a citizen to circumvent the rules of annexation laid out by the VSA.

Ms. Linderman asked Mr. Egertson why the VSA had an exception for annexation built in for citizen initiated annexation. Mr. Egertson explained that this was required by law.

Mr. Foote asked Mr. Egertson for clarification on limitations on rezoning after a property is annexed to the Town. Mr. Egertson explained that there are no limitations on rezoning at that point. Ms. Linderman asked if there was any plans for the road under VDOT's TIPS plan. Mr. Egertson indicated that there was not.

C. Closing Statements

Mr. Amyx recognized Mr. Foote to speak for his closing statement. Mr. Foote concluded that completing the rezoning process with the Town was a waste of time and that a lack of clarity in the 2016 proffer legislation initially restricted their ability to communicate with both the Regional Planning Commission and the Board of Supervisors. Mr. Foote went on to concede that after further research, the fact that the application for rezoning was submitted prior to the passing of the legislation, the application did not fall under the new regulation.

Mr. Amyx recognized Ms. Alexis to speak for her closing statement. Ms. Alexis concluded that the citizen-initiated annexation did not meet the legal standards to proceed as described in state code.

Mr. Conmy asked both Mr. Foote and Ms. Alexis why mediation previously offered by the Commission was not utilized. Ms. Mernin, on behalf of Mr. Foote, explained that that she understood that the Town of Culpeper, by virtue of the VSA, was not able to participate in any sort of mediation because it cannot take a position on such matters. Ms. Alexis indicated that, while the Town of Culpeper could not comment on annexation, they were not legally bound from mediating other plans.

Ms. Mahan asked Ms. Alexis, in light of the assertion that the County of Culpeper had indicated

the Caruso Odin property for possible future mixed use, what had been done to meet that goal. Ms. Alexis responded that, while the County does not have a mixed use zoning category, there is a similar category called a PUD, and that in order to reach that zoning classification, a new road was planned, but had yet to be funded.

IV. Chair's Closing Remarks

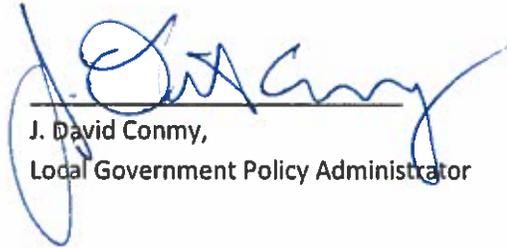
Mr. Amyx thanked everyone for their participation. He noted that the Commission plans to close its record on the matter by May 23, 2019. He added that if anyone wanted to submit additional data or comments – other than those requested by the Commission – that they please do so by that date. He also stated that the Commission will endeavor to submit its report soon after its regularly held meeting on July 11, 2019, in Richmond.

V. Adjournment

By consensus of the Commission, Mr. Amyx called the meeting adjourned at 5:17 p.m.



R. Michael Amyx,
Chair



J. David Conmy,
Local Government Policy Administrator