

## Special Meeting

Germanna Center for  
Advanced Technology  
July 28, 2008

The Council of the Town of Culpeper and the Culpeper County Board of Supervisors convened in special joint session at 6:06 p.m. with Mayor Pranas A. Rimeikis and Vice Chairman Steven E. Nixon presiding. Present: Calvin L. Coleman, Duke M. duFrane, F. Steve Jenkins, Michael T. Olinger (arrived 6:09 p.m.), James C. Risner, Robert M. Ryan, Christopher H. Snider, Council Members. Absent: Vice Mayor William M. Yowell. Also present: Thomas E. Huggard, Interim Town Manager; Kimberly D. Allen, Town Clerk; Chuck Stephenson, Town Engineer.

County Board of Supervisors present were Larry W. Aylor, Sue D. Hansohn, Brad C. Rosenberger, Steven E. Nixon, Vice Chairman, Steven L. Walker and Tom S. Underwood. Also present: Frank T. Bossio, County Administrator; J. David Maddox, County Attorney; Roy Thorpe, County Attorney; Peggy Crane, Deputy Clerk; John Egertson, County Planner; Paul Howard, Environmental Services Director.

### AGENDA APPROVAL

By general consensus the agenda was accepted as presented.

### MEMORANDUM OF UNDERSTANDING

Vice Chairman Nixon stated the Memorandum of Understanding had been revised per the comments and suggestions from the previous meeting.

Board Member Underwood moved for approval by the Board. There was no second.

Vice Chairman Nixon asked if there were any comments before approving.

Council Member Risner stated he had a few comments. Under paragraph I (c), he questioned what agreement was being addressed.

County Attorney Maddox stated that it would be the final agreement worked out between the Town and County.

Council Member Risner asked if the language could be clarified so everyone is clear on what is being asked for in the boundary adjustment.

County Attorney Maddox stated that the wording, in his view, was not critical because there would be a final agreement. Everyone understands what is intended and under I (b) it states there "shall be no legal force and effect." There are legal agreements contemplated as referred to in the boundary adjustment and the Virginia Code, Section 15.2-3400 governs boundary adjustment agreements.

Discussion ensued and Vice Chairman Nixon asked Council Member Risner if the following change would be sufficient.

"The final agreement contemplated by the parties governed by the MOU or as discussed in the MOU and governed by the Virginia Code Section ....."

Council Member Risner stated other paragraphs reference other agreements and this causes confusion.

County Attorney Maddox stated there would be the boundary adjustment agreement and other agreements that relate to the Regional Authority.

Council Member Risner stated that adding "boundary adjustment agreement" would clarify the paragraph.

County Attorney Maddox stated that the correct language should be “voluntary boundary adjustment” and he would make the change to the document for consistency.

Council Member Risner requested clarification on the last sentence on Page 6, paragraph V(a).

County Attorney Maddox stated the intent was that since there would be a separate boundary adjustment agreement and a regional authority agreement, it would still be acknowledged and part of the deal.

Council Member Risner stated the language was confusing because it states “agrees to any separate agreements relating to the creation and operation ....” and it appears the two bodies are looking at more than a voluntary boundary adjustment and regional authority agreement.

Board Member Underwood stated other related agreements referred to the by-laws and other items that need to be approved.

Council Member Risner stated the other agreements should be clearly listed in the document so there is no confusion. He felt that even though the document indicated it was non-binding, he needed to make sure he understood it fully, since he was signing on behalf of the citizens of the town.

County Attorney Maddox stated that language was drafted that way because there would be numerous documents, such as by-laws, operational agreements, and others that are not known of at this current time.

Vice Chairman Nixon stated when the MOU was being drafted, there was concern about being too specific, because there were areas that were yet to be determined and decided upon; however, this was a blueprint to go forward.

Board Member Underwood stated the language in the document was fine as it was and unless anyone else had issues, there would be future agreements both boards would have to agree upon. At the last meeting, each item was reviewed and changes were made; there will be other agreements regarding the service authority that will be a part of the boundary line adjustment. The boundary line adjustment is not a stand-alone deal.

Vice Chairman Nixon stated the board is happy with the language in the document as presented and discussion ensued about the document and that it was not a legally binding document.

Board Member Underwood commented the authority would be referred to as the Culpeper Service Authority, and there currently are no documents written yet on the Authority.

Council Member Risner asked for clarification on paragraph V(f) and the execution of the operating agreement.

County Attorney Maddox explained that an operating agreement is necessary pursuant to the Town Charter; a referendum is needed for the disposal of town assets. It is a contract to operate and maintain the system without the infrastructure assets having been turned over to the regional authority until the proper procedures take place. The boundary adjustment agreement must be approved by the court. Mr. Maddox indicated there would not be a boundary adjustment until there was a regional authority established.

Board Member Hansohn clarified that paragraph 5(a) could read as follows: “However, the parties agree that the creation and operation of the Culpeper Service Authority shall be a consideration for the voluntary boundary adjustment agreement” and it was the consensus to make the change.

A motion to approve the Memorandum of Understanding as amended was made by Board Member Underwood, seconded by Board Member Aylor. The motion carried.

Council Member Coleman moved to approve the Memorandum of Understanding as amended, seconded by Council Member Jenkins.

Council Member Risner asked for clarification on the amendments. County Attorney Maddox stated that in paragraph 1(c) the word "Agreement" should be struck and the words "voluntary boundary adjustment" agreement be inserted; paragraph V(a) should read "however, the parties agree that the creation and operation of the Culpeper Service Authority shall be a consideration, for the voluntary boundary adjustment agreement."

Council Member Risner stated he realized both staffs have worked hard on the document but felt there were more details that should be addressed. Even though he was told this was not a legal document, he felt it should have the clear intent of both bodies.

Council Member Jenkins stated that for six years, there has not been any movement toward having an agreement and for the past two years, since he has been on council, he had witnessed unwillingness on the part of the two bodies to work in a cooperative spirit toward an agreement. The main purpose is to get a final agreement and this document is a step in that direction. He believed Council was now doing what the community of Culpeper has always desired - local officials working together for the best interest of the community and doing it in open session.

Mayor Rimeikis spoke from prepared comments that he could not support the motion but supported the creation of a regional water and sewer authority. He could not support the MOU. At the end of the June 24 meeting, the elected bodies instructed staff to sort the details of what both bodies agreed to for crafting the MOU, and in his opinion, it did not happen. On July 11, the Interim Town Manager received a sealed envelope containing the initial draft MOU without the town's involvement. The first opportunity for council to review the document was as at the July 19 meeting with the first revision. Council was left to make counter proposals to a non-binding document or reject it all together. He commented that the purpose of the MOU was to show intent and felt more comfortable proposing a joint resolution. At the July 24 meeting, it was implied that council was setting the clock back by two and a half years with the lack of cooperation for objecting to a document the town had no involvement in writing, which had provisions that were not formally agreed to, and without adequate time to respond. The third revision was received four hours (4) prior to the next July 24 meeting, but council never saw revision two. A few editorial changes, none of the town's changes, were addressed in the final MOU.

Roll call vote: Ayes: Coleman, duFrane, Jenkins, Snider (4). Nays: Olinger, Rimeikis, Risner, Ryan (4). Absent: Yowell (1). Motion was defeated.

Board Member Hansohn stated that the governing bodies had been working on this for many years and everyone finally seemed to be getting along to come to an agreement; she did not know what more time would do and asked Council Member Risner what more he wanted.

Council Member Risner apologized for not being at the last meeting, however, both bodies need to sit down and discuss it further.

Board Member Hansohn stated this had already been done and asked how many times it needed to be discussed and at what point the members say enough is enough. She stated that if the town didn't want to enter the agreement, it should be stated; the county has things to do, but to drag it out for a few more years was ridiculous.

Discussion ensued with Council Member Jenkins stating he was convinced that the council did not know where they wanted to go and that a majority will never be satisfied with anything the county brings forward unless council themselves are given the full authority to draft the document. He stated everyone was present at the last meeting except Council Members Risner and Ryan, and there were no objections; everything was discussed and changes were made and agreed upon, so he was disappointed in the direction the current meeting was taking.

Council Member Risner stated something has to be given to the citizens of the town that states why the capital assets should be given to the authority, which is where the boundary adjustment comes into play; it is not an easy process.

Board Member Aylor stated that time was of the essence and thought the last meeting accomplished a lot. Nothing much has changed; the county has a plan and will continue to move forward. The door will continue to be open and if things come into place, both bodies can move forward together. Things will happen around Culpeper County based on what is best for the citizens.

Council Member Risner stated he was uncomfortable with two items in the document; therefore, he could not sell it to the citizens of the town.

Board Member Aylor stated that this was serious business and the county would like to have a regional authority that would be economically best for the entire community.

Council Member duFrane requested a five minute recess for council to caucus.

The Mayor recessed the meeting at 6:58 p.m.  
Vice Chairman Nixon declared a five minute recess.

The Mayor reconvened the meeting at 7:07 p.m.

Council Member Risner stated he had concerns with Item 1(e) on page 3 and paragraph 3(c) at the top of page 5; he felt they did not belong in the document and requested they be removed.

Vice Chairman Nixon stated the board has already voted on the document with the previously proposed amendments.

Discussion ensued and Council Member Jenkins commented that he felt the document does what it was designed to do - allows both staffs to continue working toward an agreement with the flexibility to continue to develop the final agreement.

Council Member Risner moved to approve the MOU as amended earlier in the evening and to strike paragraph 1(e) and 3(c) from the MOU. Council Member Olinger seconded the motion.

Roll call vote: Ayes: Olinger, Rimeikis, Risner, Ryan (4). Nays: Coleman, duFrane, Jenkins, Snider (4). Absent: Yowell (1). Motion was defeated by a tie vote.

Discussion ensued on the language in those sections previously discussed and Council Member Jenkins stated he felt it was more than fair.

Mayor Rimeikis asked why in the future the county could be trusted to do the right thing but not the town.

Council Member Jenkins stated that residential growth in the town happened within the past five years.

Council Member Olinger asked why Item IV, Lake Catalpa, was in the document.

Board Member Underwood indicated he agreed with Council Member Olinger on questioning that item and Board Member Hansohn stated that it was for future planning to provide another water source. Mr. Underwood stated at the last meeting, it was decided that it would be the authority's responsibility.

County Attorney Maddox stated the town has a legal right to surplus its water, and the county has some rights in terms of land use regulations regarding the lake; the authority would have to acquire the legal right to all rivers and lakes in the county.

Council Member Risner suggested changing the word "will" to "should" in paragraph IV.

Mayor Rimeikis reviewed suggestions to the MOU by council:

- I(e) – changing 15 years to "to be determined"
- Paragraph IV – remove the word "will" and replace with "should"

Mayor Rimeikis asked if there was a consensus to strike the language in III(c).

Council Member Risner moved to approve the MOU as amended earlier this evening with the additional amendment striking III(c), changing I(e) from fifteen years to "to be determined" and in paragraph IV, removing the word "will" and replacing it with "should". Council Member Olinger seconded the motion. Roll call vote: Ayes: Olinger, duFrane, Rimeikis, Risner, Ryan, Snider (6). Nays: Coleman, Jenkins (2). Absent: Yowell (1). Motion carried.

On motion by County Board Member Underwood, seconded by Vice Chairman Nixon, the county approved the MOU as amended earlier this evening with the additional amendment in IV changing the word "will" and replacing it with "should".

Council Member Jenkins moved to approve the MOU as amended by the County. Council Member Snider seconded the motion.

Roll call vote: Ayes: Coleman, duFrane, Jenkins, Olinger, Ryan, Snider (6). Nays: Rimeikis, Risner (2). Absent: Yowell (1). Motion carried.

Vice Chairman Nixon clarified the board's amendments:

- Paragraph 1(c) – insert "Voluntary Boundary Adjustment" before "Agreement".
- Paragraph IV – Lake Catalpa – (a), (b), (c), (d) the word "will" replace with "should".
- Paragraph I (a) – strike "any separate agreements relating to the" and "in part".

Council Member Coleman left the meeting at 7:43 p.m.

Discussion ensued as to what the next step would be and County Attorney Maddox stated that there would be multiple documents that both bodies would need to review.

Vice Chairman Nixon stated that staff needed to make the changes as discussed this evening and forward it to the board and council to review before signing.

It was the consensus of the council and board to schedule the signing of the MOU on Tuesday, July 29, 2008 at 3:00 p.m. in the County Board Room.

Interim Town Manager Huggard clarified that Mr. Franklin would be taking care of the service authority documents but asked who would be preparing other documents that needed to be drafted regarding boundary adjustment.

Discussion ensued and Mayor Rimeikis responded that staff should proceed with preparing the other documents.

Board Member Underwood stated staff should move forward with the other documents as expeditiously as possible.

Mayor Rimeikis amended Mr. Underwood's statement and directed the Interim Town Manager to prepare the documents as meticulously rather than expeditiously with focus on substance and not the clock.

Board Member Underwood stated that at the June 24 meeting, board members indicated they would like to have an MOU by July 23 and a Comprehensive Agreement by the third week of August. There were two time periods after that which were discussed at that meeting. The direction the county goes in is important and we need to be aware of alternatives with the town by the September board meeting. At the September 5 meeting, the county will be faced with having to make a decision that was predicated upon a December 31, 2010 deadline.

Board Member Underwood reiterated the county's deadlines are September 5, 2008 (non statutory) and December 31, 2010 (statutory deadline).

Vice Chairman Nixon stated that at this point, the council was at a disadvantage and couldn't agree on the deadline because they have not reviewed the documents.

Further discussion ensued as to both county and town staff working together to prepare documents for the council and board to review.

**ADJOURMENT:** Council adjourned at 7:58 p.m.

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Clerk

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Mayor