



# Massanutten Community Meeting September 8, 2010

Town Incorporation Process  
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Commission on Local Government  
Department of Housing and Community  
Development



# Commission on Local Government (CLG)

- Five members appointed by the Governor
- Knowledge and experience in local government
- Hold no other elective or appointive public office
- Current Members:
  - Harold Bannister, Chairman
  - Wendy Wingo, Vice-Chairman
  - Vola Lawson
  - Kathleen Seefeldt
  - Cole Hendrix
- Agency consolidated into DHCD in 2003 per recommendation of Governor Warner's Commission on Efficiency and Effectiveness



# CLG Purpose

- Promote and preserve the viability of Virginia's local governments by fostering positive intergovernmental relations
  - Advisory reports on annexation; governmental consolidation and transition; and voluntary settlement and economic growth sharing agreements
  - Technical assistance to local governments and citizens
  - Fiscal stress computation and analysis
  - Cataloging and assessment of state and federal mandates imposed on local governments
  - Cash proffer survey and report
  - Fiscal impact of proposed legislation
  - New: Designation of urban development areas report



# Background

- Town incorporation relatively easy for most of the early 20th Century
  - Charter from General Assembly or request to local circuit court
  - No legal standards by which requests were evaluated
- In 1964, General Assembly made process more difficult by limiting its ability to grant charters and imposing standards for the courts to use



# Background

- From 1964 until 1990, no new towns were incorporated in Virginia
- Since 1990, the General Assembly has incorporated two communities in SWVA
  - Clinchco in Dickenson County in 1990
  - Castlewood in Russell County in 1991
    - In 1998, Castlewood became the first town in Virginia to “unincorporate”
- Clinchco and Castlewood bypassed the statutory process and went directly to the General Assembly for their charters



# Background

- In 1999, the community of Prices Fork in Montgomery County filed a petition for incorporation in circuit court but that request was ultimately denied
  - Upon request, Commission on Local Government reviewed
  - Commission recommended against incorporation
  - Only town incorporation case the Commission has ever had
- Currently, there are 190 incorporated towns in the Commonwealth



# Procedure

- Request charter from the General Assembly
  - Two-thirds majority vote required (special act)
- Statutory process
  - Petition circuit court
  - Special court appointed
  - Commission on Local Government review (upon request only)
  - Charter



# Procedure

- Petition to the county circuit court
  - Signed by at least 100 qualified voters residing in area to be incorporated
  - Accompanied by a plat prepared by a registered surveyor showing boundaries of the proposed town
  - Served on appropriate officials of affected county
  - Advertised and posted in order to inform residents of affected area





# Procedure

- Circuit court notifies Supreme Court of Virginia
- Supreme Court appoints a special court to hear the case
  - Three judges from a panel of 15 selected to hear such matters
  - No judge may be appointed to hear a matter involving jurisdictions in his/her own circuit



# Procedure

- Legal standard for incorporation
  - Best interest of inhabitants of proposed town;
  - Petition is reasonable;
  - General good of the community;
  - Population exceeds 1,000;
  - Land area is not excessive;
  - Population density of affected county does not exceed 200 persons per square mile; **and**
  - Services required by community cannot be provided by establishing sanitary district or extending existing county services



# Procedure

- Special court may request the Commission on Local Government to review proposed incorporation prior to court's hearing on petition
  - Commission conducts public hearing to determine whether criteria for incorporation satisfied
  - All interested parties may present evidence
  - Affected county made party to Commission's hearing
  - Commission required to submit its findings to the court in writing



# Procedure

- If, after a hearing on the petition and receipt of the Commission's report, the court determines statutory criteria are satisfied, court enters order incorporating area described in petition as a town
  - However, newly incorporated town can perform no municipal services and can contract no debt until after its governing body is elected
  - Court order will include provisions for electing members of town's initial governing body



# Procedure

- Town Charter
  - At General Assembly Session following its incorporation, town must request charter
  - Until General Assembly grants charter, affairs of town are governed by general law
    - A charter is a special act of the General Assembly, which provides for the structure of and confers powers on a specific municipality
    - Where inconsistencies exist between general law and a charter, charter provisions take precedence over general law



# Advantages

- Town provides legally organized body composed of local residents with the power to act for the interest and welfare of the community
- Tangible, real place that focuses civic pride and community identity on a legally defined area
- Town residents can better plan and control development because they will have a greater voice
- Town charter provides more flexibility in controlling its own affairs
- Towns have the authority to provide most urban-type services
- Depending on services provided by the Town, its residents may benefit from improved service delivery



# Advantages

- Town is eligible to receive certain funds directly from the state
- Town may assist community in obtaining grants and loans
- Town citizens remain county citizens, vote in county elections, pay county property taxes and continue to receive certain services from the county – e.g., schools and health, mental health and social services
- State and federal tax burdens of town residents may be reduced because property taxes are deductible on income tax returns, while service fees and community association dues are not



# Disadvantages

- Legal standard for incorporation in Virginia is fairly stringent
  - Total county support or a long and pervasive pattern of neglect of the community by the county
- Initial establishment and ongoing operation of a municipal government can be complex, expensive and fraught with uncertainties
- Depending on what services the town chooses to provide, it will need either a sufficient tax base or an adequate customer base to pay for those services
- Residents of a new town may expect more services than the town can afford to provide





# Disadvantages

- Almost any service provided by a town is subject to state and federal mandates, which can be complex and expensive
- Certain revenue sources for a new town may be temporarily unavailable due to requirements in state law
- Incorporation as a town will bring about a new relationship with the county that may be a source of friction
- Functional or service disagreements often occur between towns and counties
- Question arises about how much influence town residents will have in county government



# Disadvantages

- Depending on which taxes and fees are levied by the town, some traditional revenue sources of the county may be reduced significantly – e.g., motor vehicle license tax
- Towns and counties often have different growth philosophies
- Presence of town utilities may become source of disagreement



# Provision of Services

- Only a few public services are **required** of a town by state law – e.g., planning commission, comprehensive plan, subdivision ordinance
- State law is **permissive** when it comes to providing other public services – e.g., water, sewer, police, fire
- Some services can only be provided by towns of a certain population size
- There are some services that towns typically do not provide because it is often inefficient to do so – e.g., libraries, building inspection, housing authorities
- Towns are barred from providing certain public services – e.g., schools, social services, mental health services, constitutional officers



# Provision of Services

- 1983 JLARC Survey revealed that 70 percent of towns provided the following services: police, planning and zoning, water treatment and distribution, sewage collection and treatment, solid waste collection and street cleaning
- Another 65 percent provided fire protection and parks and recreation
- About half maintained their own public streets



# Questions to Consider

- Is there general consensus among community residents on the issues that are driving the desire to incorporate as a town?
- Can those issues be solved within the current governmental framework?
- Have you discussed the idea with the county? What concerns does the county have? Will the county oppose the effort?



# Questions or Additional Info?

Contact Susan Williams

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