

Town Incorporation of Massanutten – A Feasibility Study

(Update dated 16 August 2019)

Historical Reminder of Feasibility Studies of the Town Incorporation of Massanutten

Over the last 32 years, there has been several studies done regarding the feasibility of incorporating Massanutten into a town. The first known study was done by the Massanutten Property Owners Association (MPOA) in 1987 – a report was issued called the “MPOA Financial Model - Feasibility of Incorporation” dated September 18, 1987. The report concluded in summary that incorporation is financially feasible in two respects:

- 1). The new town should need no more money to provide services than does MPOA, and it can easily raise that money through taxes, and
- 2). There are certain "free lunches" which will supply some of the needed funds. For better or worse, however, much of the financial burden would be shifted from lot owners to homeowners and businesses.

In 1992, Ms. Sharon White of Fishersville did a Masters Thesis at UVA entitled “Town Incorporation: A Case Study of Massanutten”. In her Thesis, she concluded town incorporation was feasible and:

- 1). Being a town does make a difference to the people that live there, especially in terms of enhanced services and pride in community identity.
- 2). Representation appears more equitable in a town, as does the method of collecting revenues.
- 3). The town appears to have more authority to enforce rules and regulations.

In 1998-1999, the MPOA Government Structure Study Group took another look at town incorporation. It came basically to the same conclusions as the previous two studies noted above.

What is interesting is that the concluding statements of the very first report still hold today in 2019. However, there are possibly more “free lunches” available. And, there could be more of a shift away from lot owners and homeowners to businesses and visitors. It is important to keep in mind that Great Eastern did not acquire the non-single family home part of Massanutten Village until 1986-1987 from the Bankruptcy Court. And, there was a significant point of departure for the community in 2001 -- Great Eastern began selling timeshares in Woodstone Meadows. Woodstone Meadows is outside the financial boundaries of MPOA. This significant point of departure occurred after the previous studies had been done.

In 2009, a Group of property owners asked the MPOA Board if it planned to conduct a feasibility study of town incorporation following the previous 10 year cycle. The Group felt the point of departure in 2001 could have a significant impact on considerations for town incorporation. The Board said it would **not** do another study. So, the Group decided to conduct a feasibility study on its own. At midpoint of the study (in 2010), the Group held a meeting to receive inputs and questions from property owners. The Group was trying to encourage a free exchange of information to improve the quality of the final report. The Group invited a representative from the Virginia Commission on Local Governments. The representative presented how a Virginia Community could incorporate and what are the advantages/disadvantages. However, the meeting was hijacked by a small group of property owners (lead by the MPOA Vice President at the time), who were not only against town incorporation, but also against the free exchange of information. They spread (and are still spreading) myths about incorporation that are false to promote their own agenda against town incorporation. As a result, the MPOA Board of Directors and the County Board of Supervisors both prematurely voted not to endorse incorporation at the midpoint of the feasibility study – members of both Boards did not avail themselves of the study because it was not completed when they voted. The free exchange of information was stifled. However, the Group completed the Feasibility Study in 2011 and placed a comprehensive report on www.townofmassanutten.org. The report includes information about all towns in Rockingham County and an extensive list of references

included in downloadable pdf format to support that facts in the study. This short white paper updates the study, particularly providing an update to some of the financial information.

20 Year Impact of Development Outside the MPOA Financial Boundaries

I would like to start with a perspective to make an important point. In 1986, when Great Eastern purchased part of Massanutten from the Bankruptcy Court, MPOA did **NOT** go bankrupt – MPOA was formed in 1975. It was the Massanutten timeshare development that went bankrupt. Since 1986, timeshare development has had an impact on Massanutten. However in 1996, the County Supervisors first decided to rezone Massanutten land for timeshare and recreation development outside the financial boundaries of MPOA – specifically, in Woodstone Meadows. This has had a **major** impact on the Massanutten Community and on MPOA more than 20 years later. The impact can be summarized by examining the community in 2001 (when the first Woodstone timeshare was sold) and what it has become since:

- 1). In 2001, there was far more **built** single family homes than the number of **built** timeshares. By 2018, the relationship had flipped and now the number of **built** timeshares outnumbered single family homes by more than 60%.
- 2). In 2001, the vehicles entering at the gate of Massanutten Village was roughly 1.5 million. By 2011, just 10 years later, the total number reached almost 2.8 million vehicles entering into Massanutten Village . *It is important to note that MPOA has used an electronic road counter to log the number of vehicles since 2013. The counter requires vehicles to be traveling at 25 mph in order to get an accurate count. Unfortunately, the current location of the counter does not allow for the required vehicle speed. So, the number of vehicles counted by the electronic device is likely undercounted.*
- 3). In 2001, vehicles entering at the gate of Massanutten Village was almost split equally between MPOA and the General Public. By 2011, now the General Public outnumbered MPOA vehicles by almost 60% to 40%. *It is important to note that the number of MPOA vehicles includes the owners of MPOA timeshares. It is also important to note that since 2013, MPOA no longer differentiates the number of vehicles in its road counting operations.*
- 4). In 2001, the number of properties **zoned** for single family homes was more than the number of timeshares. In 2018, the relationship had flipped and now the number of properties **zoned** for timeshares outnumbered properties zoned for single family homes by **more than 2 to 1**.
- 5). In 2001, Massanutten Public Service Corporation (MPSC) customers **paid \$43 per month** -- for water usage up to 6,000 gallons. From 2009 to 2017, Utilities Inc. upgraded and **more importantly expanded** both the water and the sewer systems to accommodate for the growth outside of the financial boundaries of MPOA. *It is important to note that with each upgrade and expansion, Utilities Inc made investments and were allowed to profit a 9% return on the investments, which was passed along to its customers.* In 2017, now Utilities Inc. rates had increased by almost a factor of 3 for half the usage.
- 6). In 2001, Great Eastern proposed to construct 450 timeshares on the Springston Property. The MPOA Board voted 10 to 1 in favor of the project under threat by Great Eastern to stop paying MPOA dues for their timeshares – this is a known fact. The Project was pulled from County rezoning consideration because of the pressure placed on the County Supervisors by citizens of Massanutten and McGaheysville. In 2018, Great Eastern gained approval from the County Supervisors to build 140 duplex timeshares (280 units) on the Springston Property without paying any MPOA annual dues. The dues would have been valuable in compensating MPOA for additional services required. *It should be noted that the Project has been started and the deforesting of the 150 acre property can be readily seen from Massanutten Drive, the main thoroughfare of the Massanutten Community.*

7). In 2019, now Great Eastern is carrying thru with the threat of 2001 and does not want to pay MPOA dues on timeshares in Massanutten Village. *This is very convenient now that Great Eastern doesn't need any County rezoning for the next 10+ years.*

This shows that many of the issues facing the Massanutten Community today with Utilities Inc., Great Eastern and the financial solvency of MPOA stems from the 1996 decision by the County Supervisors to allow timeshare development outside the financial boundaries of MPOA. The County was initially at fault and they have exacerbated the problems with each successive rezoning for Great Eastern (*e.g rezoning to allow the Waterpark to be built*). Things are only going to get worse considering how many more timeshares are already zoned by the County to be built by Great Eastern, both inside and outside the financial boundaries of MPOA.

As example of the consequences created by the County zoning of 1996, MPSC expanded the sewage treatment back in 2002, specifically (*as noted the Great Eastern county zoning request of 2001*) to accommodate the growth in Woodstone Meadows. Great Eastern supposedly paid \$5 million for the expansion. However, once Utilities Inc bought MPSC, it started charging a 9% return on investment to its customers. So, the \$450,000 return on that investment was passed along to Massanutten customers. And, the investments (to include additional water wells) continued to accumulate into the future with the 9% return. As another example, John McNair (the Massanutten Village Project Engineer in the 1970s) said that Massanutten Drive was only designed to handle 6,000 vehicles per day. It has been handling more than twice that amount for the last 10 years. This requires the road to be resurfaced far more often, than if used as designed. This can be readily compared to Resort Drive, which was upgraded in 2007 and has not been resurfaced since. The reason Resort Drive has not needed resurfacing is because it does not receive the same cross community traffic from Woodstone Meadows, that Massanutten Drive receives. And, Resort Drive was designed to handle more traffic.

The County now enjoys receiving almost \$5.2 million dollars annually in real estate taxes from Massanutten. Plus, they receive annually more than \$800,000 in transient occupancy taxes and \$360,000 in meal taxes from Massanutten. But, the County is not responsible for providing police or maintenance services to Massanutten. Things will only get better for the County, as more timeshares are built and more taxes flow into the County, without the County having to provide hardly any services to Massanutten. Everyone is out to get a piece of the Massanutten Cash Cow – Utilities Inc., Great Eastern, and the County. And unfortunately, the MPOA Board has demonstrated it does not have much power to do anything about it.

2019 Update on the Feasibility of Town Incorporation

The only way to address all of the issues facing the Massanutten Citizens, those people who live here and are registered to vote here, is to incorporate into a town. It completely turns the tables on Utilities Inc., Great Eastern, and the County by having the Massanutten Citizens take control over **zoning and sources of revenues**. Plus, it will help solve the financial problems of MPOA. After incorporation, the **\$1.2 million** that the County now collects (per the County Commissioner of Revenues in 2018) in transient occupancy taxes, meal taxes, and vehicle license taxes will be levied by the town, **in lieu of the County**. These taxes can be modestly increased, commensurate with other Virginia towns, to bring in nearly **\$1.8 million** in revenues to a Town of Massanutten.

This amount of tax revenues (\$1.8 million) will easily pay for a Town Police Force that includes 9 or 10 Officers allowing 24/7 coverage with 2 Town Officers – this is 2-3 more Officers than currently provided by MPOA. The Town Police Department Budget would be \$900,000 per year, which is more than the Bridgewater Budget in 2018 for the same number of Officers. The tax revenues (\$1.8 million) will also easily cover the cost of Town Administration to include a Town Manager plus administrative assistants; a Town Treasurer plus administrative assistants plus an annual audit; a Town Director of Community Development plus administrative assistants; a Town Attorney on retainer; and, mortgage payments on a Town Hall. The Town Administration Budget would be \$900,000, which is more than all but one town budget in the Rockingham County in 2010 – *the one town was Elkton, which does not separate out the administration of utilities, as other County towns do.*

This kind of Town Tax Policy would not charge any real estate taxes or personal property taxes to the Massanutten Citizens – *it is important to note that one would still have to pay these same County taxes, because a Town is a dependent municipality – dependent on the County to provide certain services like schools.* And, if one worries about the tax base, the Town could readily add taxes on Cigarettes, BPOLs (*Business, Professional and Occupational Licenses*), and **Admissions**. Think about this, Virginia Beach levies a 10% Admissions Tax on certain city businesses in their resort community. Such an Admissions Tax could be legally levied on all Massanutten admissions to the Waterpark, passes to the Ski Hills, and/or greens fees to the Golf Courses -- *this was confirmed by a Tax Policy Analyst in the VA Department of Taxation.* If a person pays \$40 to participate in any one of these activities, the Town would receive \$4 in tax revenues for **EACH** person.

Here is a list of a few of the taxes that can be levied by a town in Virginia. The list includes the highest tax levied by a town in Virginia, highest tax levied by a city in Virginia, what Rockingham County currently levies, the high end a Town of Massanutten could levy, and the modest tax a Town of Massanutten might levy. The numbers in this table are as of 2017, unless otherwise noted. *The list is provided for purposes of confidence and was obtained from the Rockingham County Commissioner of Revenues (dated August 2019), the 2017 edition of the Virginia Local Tax Rates – UVA Weldon Cooper Center for Public Service, and various Virginia Town Budgets published on the web.*

- **Transient Occupancy Tax:** This tax can be levied by a town without limits on the rate. The town tax is levied in lieu of the County tax, unless otherwise mutually agreed upon by the Town and County.
 - Highest Town Tax in VA = Christiansburg @ 9% = \$1.6M (2019 budget)
 - Highest City Tax in VA = City of Emporia @ 11%
 - Rockingham County limited to 5% = \$800,000 from Massanutten (estimated 2019)
 - Town of Massanutten could levy @ 10% = \$1.6M (estimated 2019)
 - Town of Massanutten could modestly levy @ 7% (like Blacksburg) = \$1.12M (estimated 2019)
- **Meals Tax:** This tax can be levied by a town without limits on the rate. The town tax is levied in lieu of the County tax, unless otherwise mutually agreed upon by the Town and County.
 - Highest Town Tax in VA = Orange @ 8% = \$1.2M (2018 estimated)
 - Highest City Tax in VA = Covington @ 8%
 - Rockingham County limited to 4% = \$360,000 from Massanutten (2018)
 - Town of Massanutten could levy @ 10% = \$900,000 (2018)
 - Town of Massanutten could modestly levy 7% (like Elkton) = \$630,000 (2018)
- **Motor Vehicle License Tax:** This can be levied by a town limited by the charge for VA state license plates. The town tax is levied in lieu of the County tax.
 - Highest Town Tax in VA = Dayton @ \$30 per vehicle = \$46,000
 - Rockingham County @ \$20 per vehicle -- no decals required
 - Town of Massanutten could levy \$20/vehicle x 2000 vehicles = \$40,000 (estimated)
- **Admissions Tax:** This tax can be levied by a town without limits on the rate. The town tax is levied in lieu of the County tax.
 - Highest Town Tax in VA = Culpepper @ 5% = \$50,000 (2020 Budget)
 - Highest City Tax in VA = Virginia Beach @ 10%
 - Town of Massanutten could levy @ 10% for Waterpark, Skiing, Golfing
 - If \$40/person to participate, tax = \$4/person
 - Massanutten Tax Revenues could not be estimated due to lack of attendance data.
- **Cigarette Tax:** This tax can be levied by a town without limits on the rate.
 - Highest Town Tax in VA = Herndon @ \$0.75 per pack = \$266,543 (2020 Budget)
 - Highest City Tax in VA = Alexandria @ \$1.15 per pack
 - Massanutten Tax Revenues could not be estimated due to lack of sales data.

- **BPOL Tax**
 - Business Licenses – usually based on % of revenues
 - Professional Licenses
 - Occupational Licenses
 - Massanutten Tax Revenues could not be estimated due to lack of data.
- **DCJS 599 Police Grant Program**
 - VA Department of Criminal Justice Services administers program to local police departments
 - Distribution of funds uses formula based on population, crime rates, and social services needs
 - All towns in Rockingham County receive 599 Funds -- table in Feasibility Study
 - Town of Massanutten = >\$60,000 (estimated)

The Town Tax Policy would have to be determined by the Town Council – that is, what taxes to levy, to whom they are levied on, and why. Right now, MPOA pays for all police and maintenance services. Under the above incorporation scenario, which does not address maintenance of roads and open spaces, **MPOA dues should be cut in half**. This is because police services would be done by the Town, in lieu of MPOA – *it should be noted that MPOA would still retain the gate attendant services*. So, it is worth repeating, under this incorporation scenario, **nothing changes with regards to the privacy of the roads** – the decision to turn over the roads for public use would be determined by the MPOA Board, not the Town. The Town would do comprehensive planning and zoning, in lieu of the County, and the Town would provide police services, in lieu of MPOA. This is the logical start for what Town services would be provided to its Citizens – required services of comprehensive planning and zoning plus police services.

If the Citizens of Massanutten chose to pursue incorporation by route of the General Assembly, the following realistic timeline, assuming positive General Assembly action, could be realized:

- 1 December 2019 – A large number of signatures (*1/2 of town registered voters*) on a Petition
- March 2020 – General Assembly acts to incorporate and enacts a Town Charter
- November 2020 – Election is held for Mayor and Town Council Members
- 1 January 2021 – Elected Officials take office
 - Appoints Planning Commission to develop Comprehensive Plan
 - Begins Work on Tax Ordinance
- 1 April 2021 – Town Council enacts an initial Town Tax Ordinance, effective 1 July 2021
 - Transient Occupancy Tax of 7% = estimated revenues of \$1.12 Million
 - Meals Tax of 7% = estimated revenues of \$630,000
 - Motor Vehicle License Tax of \$20/vehicle = estimated revenues of \$40,000
 - Admissions Tax of 5% = estimated revenues of \$200,000
 - Total Estimated Revenues in 1st Year = \$2.07 Million
- 1 July 2021 – Town Manager and Treasurer are hired and taxes begin flowing to the Town
 - Town Administration Budget = \$900,000
 - Town begins work on Zoning Ordinance
- 1 October 2021 – Town Police Force begins services and the Town fills out the admin staff
 - Town Police Force Budget = \$900,000 annually (pro rated for first year)
 - Town Applies for 599 Local Police Grant

In a little more than two years, Massanutten could be a fully functional town.

Whether or not to provide Town Maintenance Services is best left to a FY2022 consideration. Maintenance Services would include maintenance of roads and open spaces currently performed by MPOA. It would require MPOA to turn the roads and open space over for public use. The MPOA parks and recreation amenities would likely remain with MPOA.

Whether or not eminent domain action is warranted on the MPSC water and sewer facilities is best left to a FY2022 or beyond consideration. It is important to note that as of the writing of this paper, nobody in State Government has stated that a town cannot eminent domain the MPSC water and sewer facilities. In fact, it appears that the Virginia Code §15.2-2109 supports this kind of action. The Code states “*Any locality may (i) acquire or otherwise obtain control of or (ii) establish, maintain, operate, extend and enlarge: waterworks, sewerage, gas works (natural or manufactured), electric plants, public mass transportation systems, storm water management systems and other public utilities within or outside the limits of the locality ...*”.

However, the issues regarding what to do with the roads and what to do about water & sewer rates are separate from initial town incorporation. The goal initially should be take control over zoning, in lieu of the County ... and, to relieve financial stress on Town Citizen and MPOA by providing police services, in lieu of MPOA, utilizing town tax revenues.

Summary Opinion

It has been eight (8) years since the Report was written regarding the Feasibility of Incorporating Massanutten into a Town. Now, it appears more and more likely that Massanutten will eventually incorporate into a town. The question is not really if, but rather when. This is because it has been demonstrated that financial issues for the residents, property owners, and MPOA have only gotten worse over the last 10 years and will likely get even worse in the future. MPOA is trying to provide police and maintenance services with membership dues, which get increasingly difficult and hard to justify, when a large number of the users of the services (visitors or the general public) are not in the membership of MPOA. But, Town incorporation is up to the Citizens of the Community – they have to want it, in order for it to happen.

Facts and Opinion by Gene Hauze

Author and Principle Investigator of Original Town Feasibility Study (2011)

Massanutten Citizen

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