

# Report on the Town of Stephens City - County of Frederick Voluntary Settlement Agreement



Commission on Local Government  
Commonwealth of Virginia  
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## APPENDICES

**Appendix A: Voluntary Settlement Agreement Between the Town of Stephens City and Frederick County**

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**REPORT ON THE  
TOWN OF STEPHENS CITY - COUNTY OF FREDERICK  
VOLUNTARY SETTLEMENT AGREEMENT**

**PROCEEDINGS OF THE COMMISSION**

On September 9, 2004 the Town of Stephens City, acting in concert with Frederick County, formally submitted to the Commission on Local Government for review a proposed voluntary settlement agreement which had been negotiated under the authority of Section 15.2-3400 of the Code of Virginia. Consistent with the Commission's Rules of Procedure, the Town's notice was accompanied by data and materials supporting the proposed agreement.<sup>1</sup> Further, in accordance with the Commission's rules, the Town gave notice of the proposed agreement to 17 other political subdivisions with which it was contiguous or with which it shared functions, revenues, or tax sources.<sup>2</sup> The proposed agreement contains provisions which would (1) grant the Town an annexation of 360 acres of territory in Frederick County, (2) permit the Town to adjust its boundaries by ordinance in the future to incorporate additional areas specified in the agreement, (3) return 17.7 acres of territory presently located in Stephens City to unincorporated status in Frederick County, (4) preclude the Town from initiating or supporting succeeding annexation actions for a period of 15 years subsequent to the effective date of the initial annexation, and (5) insure the development of the areas

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<sup>1</sup>Town of Stephens City, **Notice by the Town of Stephens City of a Voluntary Settlement of Annexation Issues** (hereinafter cited as **Town Notice**), Sep. 9, 2004. Frederick County also filed with the Commission documents and materials in support of the proposed agreement. [County of Frederick, **Petition for Affirmation of a Voluntary Settlement Agreement Dated March 24, 2004, Settling Annexation Issues Between the Town of Stephens City and the County of Frederick, Virginia, and Providing for Certain Other Intergovernmental Relationships** (hereinafter cited as **County Petition**), Oct. 26, 2004.]

<sup>2</sup>Commission on Local Government, **Rules of Procedure**, Rule 3.8.

proposed for annexation in accordance with the provisions contained in the settlement agreement.<sup>3</sup>

In conjunction with its review of the proposed settlement, on November 11, 2004 the Commission toured relevant sections of the Town of Stephens City and Frederick County, and met in Stephens City to receive oral testimony from the two jurisdictions in support of the agreement. In addition, the Commission held a public hearing, as advertised in accordance with Section 15.2-2907(B) of the Code of Virginia, on the evening of November 10, 2004 in the Stephens City Municipal Building for the purpose of receiving citizen comment. The public hearing was attended by approximately 18 persons and produced testimony from 5 individuals. In order to permit receipt of additional public comment, the Commission agreed to keep open its record for written submissions through December 10, 2004.

### **SCOPE OF REVIEW**

The Commission on Local Government is directed by law to review proposed annexations and other local boundary change and transition issues, as well as negotiated agreements settling such matters, prior to their presentation to the courts for ultimate disposition. Upon receipt of notice of such a proposed action or agreement, the Commission is directed “to hold hearings, make investigations, analyze local needs” and to submit a report containing findings of fact and recommendations regarding the issue to the affected local governments.<sup>4</sup> With respect to a proposed agreement negotiated under the authority of Section 15.2-3400 of the Code of Virginia, the Commission is required to determine in its review “whether the proposed settlement is in the best interest of the Commonwealth.”

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<sup>3</sup>Voluntary Settlement Agreement Between the Town of Stephens City and Frederick County (hereinafter cited as **Settlement Agreement**). See Appendix A for the complete text of the **Settlement Agreement**.

<sup>4</sup>Sec. 15.2-2907(A), Code of Va.

As we have noted in previous reports, it is evident that the General Assembly encourages local governments to attempt to negotiate settlements of their interlocal concerns. Indeed, one of the statutory responsibilities of this Commission is to assist local governments in such efforts. In view of this legislative intent, the Commission believes that proposed interlocal agreements, such as that negotiated by the Town of Stephens City and Frederick County, should be approached with respect and presumption of their compatibility with applicable statutory standards. The Commission notes, however, that the General Assembly has decreed that interlocal agreements negotiated under the authority of Section 15.2-3400 of the Code of Virginia shall be reviewed by this body prior to their final adoption by the local governing bodies. We are 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 our review a **pro forma** endorsement of any proposed settlement. Our responsibility to the Commonwealth and to the affected localities requires more.

## **GENERAL CHARACTERISTICS OF THE TOWN, THE COUNTY, AND THE AFFECTED AREAS**

### **TOWN OF STEPHENS CITY**

The Town of Stephens City, which was first settled in 1758, was incorporated by the General Assembly in 1887.<sup>5</sup> Unlike most other towns in the Commonwealth, the resident population of Stephens City declined during the preceding decade, with its

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<sup>5</sup>Town of Stephens City, Virginia, **Comprehensive Plan, 2001-2021** (hereinafter cited as **Town Comprehensive Plan**), Apr. 2002, p. 2 – 1; and Gerald Davenport, **Virginia Date Book: Incorporation and Formation of Cities, Towns and Counties** (Richmond: Virginia Municipal League), p. 13.

populace decreasing between 1990 and 2000 from 1,186 to 1,146 persons, or by 3.4%.<sup>6</sup> A population estimate for 2002, however, placed the Town's populace at 1,184, an increase of 3.3% since the 2000 decennial census.<sup>7</sup> Based on its land area of 1.46 square miles and the 2002 population estimate, the Town has a population density of 811 persons per square mile.<sup>8</sup>

With respect to the nature of its population, the data indicate that the age profile of Stephens City's populace is similar to that of the State generally while the income level of its residents is less than that of the Commonwealth overall. As of 2000 the median age of Stephens City residents was 35.6 years, a statistic virtually the same as that for the State as a whole (35.7 years). Similarly, the evidence discloses that as of 2000, 11.1% of Stephens City's population was 65 years or over, a figure comparable to that of the Commonwealth collectively (11.2%).<sup>9</sup> In terms of earnings, data reveal that as of

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<sup>6</sup>U.S. Department of Commerce, Bureau of the Census, **1990 Census of Population and Housing, Summary Population and Housing Characteristics, Virginia**, Table 4; and U.S. Department of Commerce, Bureau of the Census, Table DP-1, Profile of General Demographic Characteristics: 2000, Geographic Area: Stephens City town, Virginia. (Online) Available: [http://www3.ccps.virginia.edu/demographics/2000\\_Census/DemoProfiles/Profiles2/Towns\\_CDPS/1605175344.pdf](http://www3.ccps.virginia.edu/demographics/2000_Census/DemoProfiles/Profiles2/Towns_CDPS/1605175344.pdf). Over the decade of the 1990s, 54% of Virginia's towns experienced an increase in population.

<sup>7</sup>U.S. Department of Commerce, Bureau of the Census, Table SUB-EST2002-11-51, Virginia Town Population Estimates and Population Change, July 1, 2001 to July 1, 2002. (Online) Available :<http://www3.ccps.virginia.edu/demographics/estimates/towns/towns-01-02.xls>.

<sup>8</sup>**Town Notice**, Tab "Best Interests of the Parties," p. 14. The boundaries of the Town of Stephens City have remained unchanged since its founding in 1758. (**Ibid.**, p. 9.) See **Appendix B** for a statistical profile of the Town of Stephens City, Frederick County, and the areas subject to annexation and deannexation under the terms of the settlement agreement. See **Appendix C** for a map of the Town and those areas.

<sup>9</sup>Table DP-1, Profile of General Demographic Characteristics: 2000, Geographic Area: Stephens City town, Virginia; and U.S. Department of Commerce, Bureau of the Census, Table DP-1, Profile of General Demographic Characteristics: 2000, Geographic Area: Virginia. (Online) Available: [http://www3.ccps.virginia.edu/demographics/2000\\_Census/DemoProfiles/Profiles2/04051.pdf](http://www3.ccps.virginia.edu/demographics/2000_Census/DemoProfiles/Profiles2/04051.pdf).

1999 (the latest year for which such data are available) the median family income in Stephens City was \$41,827, or only 77.2% of that for the State as a whole (\$54,169).<sup>10</sup>

In regard to the Town's present physical development, 2002 land use data revealed that 14.1% of Stephens City's total area is devoted to residential development, 2.2% to commercial enterprise, 1.4% to industrial activity, 23.7% to public or semi-public uses, and 2.1% to transportation purposes, with 56.5% (527.5 acres) remaining vacant or engaged in agricultural production.<sup>11</sup> However, exclusive of land affected by major environmental constraints (e.g., steep slopes, or location within the 100-year flood plain, or the Town's water resource protection area) or due to limitations imposed by locational concerns or other appropriate land use considerations, Stephens City retains only 133 acres, or 14.3% of its total land area, vacant and generally suitable for development.<sup>12</sup>

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<sup>10</sup>U.S. Department of Commerce, Bureau of the Census, Table DP-3, Profile of Selected Economic Characteristics: 2000, Geographic Area: Stephens City town, Virginia. (Online) Available: [http://www3.ccps.virginia.edu/demographics/2000\\_Census/DemoProfiles/Profiles2/Towns\\_CDPS/1605175344.pdf](http://www3.ccps.virginia.edu/demographics/2000_Census/DemoProfiles/Profiles2/Towns_CDPS/1605175344.pdf); and Table DP-3, Profile of Selected Economic Characteristics: 2000, Geographic Area: Virginia. (Online) Available: [http://www3.ccps.virginia.edu/demographics/2000\\_Census/DemoProfiles/Profiles2/04051.pdf](http://www3.ccps.virginia.edu/demographics/2000_Census/DemoProfiles/Profiles2/04051.pdf).

<sup>11</sup>**Town Notice**, Tab "Best Interests of the Parties," p. 22.

<sup>12</sup>**Ibid.**, p. 21. Excluded from Stephens City's vacant land inventory are properties that are engaged in active agricultural operation or parcels within the Town's water resource protection zoning district. In May 2000, Stephens City adopted a water source protection zoning district that includes much of the western portion of the Town, to prevent the possible contamination of former limestone quarries that are used as public water sources for much of southern Frederick County. (**Ibid.**, pp. 26-27.) That district includes elements of stormwater management similar to the requirements in the Chesapeake Bay Preservation Act as well as minimum buffering requirements to protect streams, sinkholes, caves, and quarries. (**Town Comprehensive Plan**, p. 4 – 20.) The Commission observes that while such water protection requirements do not bar the development of affected properties, in some instances they do constrain its utility and availability.

## **COUNTY OF FREDERICK**

Frederick County was established in 1738 from territory formerly part of Augusta and Orange Counties.<sup>13</sup> Unlike the Town of Stephens City, Frederick County, experienced significant growth in its population during the decade of the 1990s, with its populace increasing from 45,723 to 59,209, or by 29.5%.<sup>14</sup> The official population estimate for 2003 placed the County populace at 64,200 persons, an increase of 8.5% since the 2000 decennial census.<sup>15</sup> On the basis of its 2003 population estimate and an area of 427 square miles, Frederick County has an overall population density of 150 persons per square mile.<sup>16</sup>

With respect to the characteristics of its population, various statistical indices disclose that the County's populace is of comparable age but less affluent than that of the State generally. In 2000 the median age of the residents of Frederick County was 36.7 years, similar to that of the Town (35.6 years) and of the State as a whole (35.7 years). Further, the data indicate that as of 2000, 10.6% of the County's population was age 65 or over, a statistic comparable to that of Stephens City (11.1%) as well as the State

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<sup>13</sup>Emily J. Salmon and Edward D. C. Campbell, Jr. (Editors), **The Hornbook of Virginia History** (Richmond: The Library of Virginia, 1994), p. 164.

<sup>14</sup>**1990 Census of Population and Housing, Summary Population and Housing Characteristics, Virginia**, Table 1; and U.S. Department of Commerce, Bureau of the Census, Table DP-1, Profile of General Demographic Characteristics: 2000, Geographic Area: Frederick County, Virginia. (Online) Available: [http://www3.ccps.virginia.edu/demographics/2000\\_Census/DemoProfiles/Profiles2/Counties\\_Cities/05051069.pdf](http://www3.ccps.virginia.edu/demographics/2000_Census/DemoProfiles/Profiles2/Counties_Cities/05051069.pdf). In addition to Stephens City, the Town of Middletown is located within Frederick County. Between 1990 and 2000 the population in the unincorporated portion of the County increased by 31.2%.

<sup>15</sup>Weldon Cooper Center for Public Service, University of Virginia, Population Estimates for Virginia's Counties and Cities, 2003 provisional, 2002 & 2001 final estimates. (Online) Available: <http://www3.ccps.virginia.edu/demographics/estimates/city-co/2003estimates.xls>, Feb. 2, 2004.

<sup>16</sup>**County Petition**, p. 75.

overall (11.2%).<sup>17</sup> In terms of income, the median family income of Frederick County residents in 1999 was \$52,281, a figure significantly greater than that of Town inhabitants (\$41,827), but slightly less than the comparable statistic for the Commonwealth generally (\$54,169).<sup>18</sup>

In regard to the nature of its physical development, the data indicate that Frederick County has experienced significant growth and diversification in its economic base in recent years. Employment data reveal that between 1993 and 2003 the number of nonagricultural wage and salary employment positions in the County increased from 13,667 positions to 19,090 positions, or by 39.7%.<sup>19</sup> Despite the growth in Frederick County's employment opportunities during that period, however, slightly more than half of the County's total civilian labor force of 36,117 persons either continued to be engaged in agricultural activity, was required to seek employment outside Frederick County, or was unemployed.<sup>20</sup> With respect to its overall economic nature, the evidence

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<sup>17</sup>Table DP-1, Profile of General Demographic Characteristics: 2000, Geographic Area: Frederick County, Virginia. Unless otherwise indicated, statistics for Frederick County include data for the residents of the County's two incorporated towns.

<sup>18</sup>U.S. Department of Commerce, Bureau of the Census, Table DP-3, Profile of Selected Economic Characteristics: 2000, Geographic Area: Frederick County, Virginia. (Online) Available: [http://www3.ccps.virginia.edu/demographics/2000\\_Census/DemoProfiles/Profiles2/Counties\\_Cities/05051069.pdf](http://www3.ccps.virginia.edu/demographics/2000_Census/DemoProfiles/Profiles2/Counties_Cities/05051069.pdf).

<sup>19</sup>Virginia Employment Commission, Automated Labor Information on the Commonwealth's Economy, ES-202 Average Annual Employment by Size Code for Frederick County. (Online) Available: [http://ditmvs3.state.va.us:8080/servlet/resqportal/resqportal?rqs\\_custom\\_dir=vecalice](http://ditmvs3.state.va.us:8080/servlet/resqportal/resqportal?rqs_custom_dir=vecalice). Between 1993 and 2003, 37% of the new employment positions created in the County (1,984 positions) were in the manufacturing and trade sectors.

<sup>20</sup>Virginia Employment Commission, Annually Not Seasonally Adjusted Labor Force, Employment and Unemployment data in Frederick County for 2003. (Online) Available: <https://velma.virtuallmi.com/analyzer/printer.asp?cat=LAB&session=LABFORCE>; and Virginia Employment Commission, 2000 Commuting Patterns, Out Commuting Patterns. (Online) Available: [http://www.vec.virginia.gov/pdf/out\\_comm.pdf](http://www.vec.virginia.gov/pdf/out_comm.pdf), p. 34. The term "civilian labor force" is defined to include all individuals 16 years of age or over (exclusive of persons serving in the armed forces or in school)

suggests that agricultural and forestal operations remain significant components of the County's economy. According to 2002 U. S. Department of Agriculture data, there were 720 farms in the County, occupying a total of 112,675 acres (176 square miles), with the average market value of their agricultural products being \$30,059 per farm.<sup>21</sup> Further, 2001 data reveal there were 151,544 acres of County land (237 square miles) classified as "forest land."<sup>22</sup> In sum, while Frederick County experienced significant population and economic growth in recent years, portions of it remain rural and undeveloped.

## **AREAS PROPOSED FOR ANNEXATION**

### **Area Proposed for Immediate Annexation**

Under the terms of the proposed agreement with Frederick County, the Town of Stephens City would be permitted to annex three parcels of territory, formally designated as the "Phase I Annexation Area," following affirmation of the agreement by the

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within a specific geographic area that are either employed or unemployed and actively seeking employment. In 2000, 17,624 County residents traveled to jobs located outside the boundaries of Frederick County.

<sup>21</sup>U.S. Department of Agriculture, National Agricultural Statistics Service, **2002 Census of Agriculture, Virginia, State and County Data**, Table 1, p. 208. The average market value of agricultural products sold by farms in the State collectively in 2002 was \$49,593. (**Ibid.**, p. 204.) In that same year, 7,442 acres of land in the County was devoted to apple orchards, or almost 40% of the total of such land in the Commonwealth overall. (**Ibid.**, Table 31, p. 511.)

<sup>22</sup>U.S. Department of Agriculture, Forest Service, Southern Research Station, Forest Inventory and Analysis, Forest Inventory Mapmaker Version 1.7, Geographic area of interest is Virginia 2001: Frederick. (Online) Available: <http://ncrs2.fs.fed.us/4801/fiadb/temp2/j312252731.htm>. The Forest Service defines "forest land" as land at least 10% stocked by forest trees of any size, or formerly having such tree cover, and not currently developed for nonforest uses. The minimum area considered for classification as forest land is one acre. Such property may also be included in the Census Bureau's definition of "farm land." Between 1986 and 2001, the average annual value of timber harvested in Frederick County was approximately \$458,853. [Virginia Department of Forestry, Forest Economics, County Ranking. (Online) Available: <http://www.dof.virginia.gov/R3/fre-econ-cty-rank.shtml>.]

reviewing court. The “Phase I Annexation Area” comprises an area of 360 acres and contained, as of 2001, a population of 165 persons and, based on FY2002/03 assessment data, \$9.7 million in total assessed real estate and tangible personal property values.<sup>23</sup> Thus, the Phase I Annexation Area contains 0.1 % of the County’s total land area, 0.3 % of its population, and 0.2 % of its total FY2002/03 assessed real estate and tangible personal property values.<sup>24</sup> Based on its aggregate area and the 2001 population estimate, the total area proposed for immediate annexation has an overall population density of 295 persons per square mile, or slightly more than two times that of the unincorporated portion of Frederick County generally (142 persons per square mile).

In terms of current development, the Phase I Area contains three main residential concentrations, a number of commercial establishments, a church, and a quarry that is used as a water source for the and portions of Frederick County.<sup>25</sup> According to the most recent land use data, approximately 9.6% of the Phase I Annexation Area is devoted to residential development, 15.0% to commercial and industrial activity, and 13.9% to public and semi-public uses, with 61.5% (221.5 acres) remaining vacant or engaged in agricultural production.<sup>26</sup> Similar to vacant property within the current Town boundaries, some of the undeveloped tracts in the area proposed for annexation have environmental constraints (e.g., location within the 100-year flood plain or wellhead protection area, or steep slopes) which reduce their development potential. In sum, although the area

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<sup>23</sup>**Town Notice**, Tab “Best Interests of the Parties,” pp. 14, 15; and Town of Stephens City, “Other Information, October 2004 Revision,” filed with the Commission on Local Government, Nov. 11, 2004. Data concerning real estate in both the Town and the areas proposed for annexation do not reflect the application of Frederick County’s use value assessment program. (Carter Glass, IV, Special Counsel, Town of Stephens City, letter to staff of Commission on Local Government, Nov. 2, 2004)

<sup>24</sup>**Town Notice**, Tab “Best Interests of the Parties,” pp. 14-15; and “Other Information, October 2004 Revision”.

<sup>25</sup>**Town Notice**, Tab “Best Interests of the Parties,” pp. 12-13.

<sup>26</sup>Glass, letter to staff of Commission on Local Government, Nov. 9, 2004.

proposed for annexation contains a considerable amount of vacant land, it does contain focal points of development with some growth potential.<sup>27</sup>

### **Future Annexation Areas**

The proposed agreement would also allow the Town of Stephens City to annex by ordinance additional territory, designated officially in the instrument as the “Phase II Annexation Area,” subject to certain criteria specified in the settlement.<sup>28</sup> That area, situated generally to the southwest of the Town’s present corporate limits, embraces approximately 350 acres of territory containing a 2001 estimated population of 16 persons and \$2.3 million in FY2002/03 real estate and tangible personal property assessed values.<sup>29</sup> Although the Phase II Annexation Area at the current time is predominantly undeveloped or in agricultural uses, it does contain seven residences and two retail operations. According to the most recent land use data, 4.6% of the Phase II Area is devoted to residential development and 4.6% to commercial enterprise, with 90.8% of the area (318 acres) remaining vacant or engaged in agricultural production.<sup>30</sup>

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<sup>27</sup>Vacant tracts in the Phase I Annexation Area north of Town are adjacent to U. S. Highway 11 and have access to municipal water and sewerage.

<sup>28</sup>At the option of Stephens City, the Town may annex territory in the Phase II Annexation Area if the property (1) meets the criteria of “developed” as defined in the proposed agreement, (2) the County has issued a building permit for construction on property that is not “developed,” or (3) the owner of the property requests annexation into the Town. Further, any parcel in the Phase II Area proposed for annexation must be contiguous to the Town or contiguous to another parcel that is contiguous to Stephens City, in which case the Town must annex both properties to physically connect both properties to the municipality. When 60% of the total land area in the Phase II Area has been “developed,” then the Town may annex all of the remaining property within that area. (**Settlement Agreement**, Sec. 4.)

<sup>29</sup>**Town Notice**, Tab “Best Interests of the Parties,” pp. 14, 15; and “Other Information, October 2004 Revision.”

<sup>30</sup>Glass, letter to staff of Commission on Local Government, Nov. 9, 2004.

The development potential of the undeveloped property in the Phase II Annexation Area is enhanced, however, by access to major thoroughfares.<sup>31</sup>

### **AREA PROPOSED FOR REVERSION TO UNINCORPORATED STATUS**

The area to revert to unincorporated status under the terms of the agreement between Stephens City and the County, designated in the accord as the “Deannexation Area,” encompasses 17.7 acres of territory that is currently used for agricultural purposes.<sup>32</sup> The “Deannexation Area” is a component of a larger parcel under one ownership, the predominant portion of which is located within the County.<sup>33</sup> That area contains no resident population and has an assessed real estate value in 2004 of \$53,200.<sup>34</sup> Thus, the property proposed for reversion includes 1.9% of the Town’s current land area and 0.1% of its 2003 total real estate property values.

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<sup>31</sup>Most of the property in the Phase II Area has frontage along U. S. Highway 11 south of Town. In addition, the Virginia Department of Transportation has given tentative approval for the construction of an interchange for Interstate Highway 81 to be constructed within that area. (**Town Notice**, Tab “Best Interests of the Parties,” p. 11.)

<sup>32</sup>**Town Notice**, Tab “Best Interests of the Parties,” p. 5.

<sup>33</sup>According to a Stephens City official, during the interlocal negotiations between the Town and Frederick County, the County requested that the area be reverted to unincorporated status so that the entire parcel would be located within the County. (Presentation of Michael K. Kehoe, Town Manager, Town of Stephens City, to the Commission on Local Government, Nov. 11, 2004.)

<sup>34</sup>Carter Glass, IV. Stephens City – Deannexation Area Assessments. (Online) Available email: ted.mccormack@dhcd.virginia.gov from carter.glass@troutmansanders.com, Dec. 9, 2004.

## **STANDARDS FOR REVIEW**

As a previous section of this report has noted, the Commission on Local Government is charged with reviewing proposed interlocal settlements negotiated under the authority of Section 15.2-3400 of the Code of Virginia to determine whether such settlements are “in the best interest of the Commonwealth.” In our judgment, the State’s interest in this and other proposed interlocal settlements is fundamentally the preservation and promotion of the general viability of the affected localities. In this instance, the Commission is required to review an interlocal agreement which provides for (1) an immediate annexation by the Town of Stephens City of 360 acres of territory in Frederick County, (2) the future extension of Stephens City’s boundaries by ordinance into additional designated areas of the County, (3) the reversion of 17.7 acres of territory in Stephens City to unincorporated status, (4) the establishment of a moratorium on further Town-initiated annexations for a period of 15 years following the effective date of the initial annexation, and (5) collaboration of the Town and County in the development of the areas proposed for annexation. A proper analysis of the proposed Town of Stephens City - Frederick County settlement agreement, as mandated by statute, requires consideration of the ramifications of these provisions with respect to the current and future viability of the two jurisdictions.

### **INTERESTS OF THE TOWN OF STEPHENS CITY**

#### **Land for Development**

As indicated previously, the Town of Stephens City currently has within its boundaries approximately 527.5 acres of undeveloped land, with that acreage constituting 56.5% of the Towns’ total land area. However, excluding from that total acreage property situated on steep slopes, located in the 100-year floodplain or in the well head protection zone, or limited in its development potential by parcel size, land ownership patterns, or by appropriate land use considerations (e.g., active agricultural operations),

Stephens City has only 133 acres, or 14.3% of its total land area, vacant and generally amenable to development.<sup>35</sup> While this Commission acknowledges that adverse environmental factors and locational concerns are not absolute barriers to development, they do render sites less attractive to potential developers and can constitute major impediments to development. Some evidence of the limited potential for development within the Town is provided by the fact that since between 1992 and 2003 there were only seven building permits issued for the construction of new single-family homes within Stephens City.<sup>36</sup> Similarly, during the same period the Town issued only one building permit for the construction of a new commercial structure within its current borders.<sup>37</sup> Moreover, the Town has presented data that since the 1990s approximately six businesses or professional firms have ceased operation within Stephens City, with some of those commercial concerns relocating to the areas proposed for annexation.<sup>38</sup>

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<sup>35</sup>**Town Notice**, Tab “Best Interests of the Parties,” Table 2, p. 23; and pp. 26-27.

<sup>36</sup>**Ibid.**, pp. 18, 19. The Commission notes, however, that currently under construction within Stephens City are three developments that will add approximately 200 residential units to the Town’s housing stock. (Presentation of Kehoe, Nov. 11, 2004.)

<sup>37</sup>**Ibid.** According to a Town official, the Stephens Landing II development under construction on West Fairfax Street within the current municipal borders has reserved 1.5 acres of the tract for future commercial development. (Presentation of Kehoe, Nov. 11, 2004.) Since 1970, three major factors have had a detrimental impact on the commercial base of Stephens City: the construction of Interstate Highway 81 immediately adjacent to the Town’s eastern boundaries, the interchange of that thoroughfare with State Route 277 (Fairfax Street), and the County’s policy of extending public sewer service to territory east of the municipality to attract travel-oriented businesses. As a result, a majority of the development within the Stephens City environs in the past 35 years has occurred east of the interstate highway in Frederick County. (**Ibid.**, pp. 17-18.)

<sup>38</sup>**Ibid.**, pp. 19-20. Due, in large part, to competition with commercial development east of Interstate Highway 81, in 1995 two large retail operations in Stephens City ceased operation. Further, several other businesses in the Town relocated to the eastern side of the interstate highway, to other areas of Frederick County, or to the City of Winchester. (**Ibid.**, pp. 19, 20.)

The annexation of the Phase I Annexation Area would bring within the Town approximately 221 acres of vacant land for possible future development. While some of the vacant tracts within the Phase I Annexation Area have environmental restrictions similar to those affecting the vacant property within the current Town boundaries (e.g., steep slopes or location within the 100-year floodplain or the well head protection zone), land located in that area has potential for future development by virtue of access to a major thoroughfare and public utilities.<sup>39</sup> In our judgment, the proposed agreement will provide the Town of Stephens City with additional vacant land having significant development potential.<sup>40</sup>

### **Fiscal Assets and Public Service Liabilities**

**Fiscal Assets.** The Town of Stephens City, which has historically constituted a focal point of development in the southern portion of Frederick County, has not experienced growth in its fiscal base comparable to that of the County generally. Based upon assessment at 100% of fair market value, real property values (exclusive of public service corporations) increased in Stephens City from \$45.0 million in FY1998/99 to \$48.0 million in FY2002/03, or by only 6.6%.<sup>41</sup> During the same span of years, such values in Frederick County overall grew from \$2,975.5 million to \$3,807.0 million, or by 27.9%.<sup>42</sup> Moreover, with respect to revenues derived from all local sources, the data

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<sup>39</sup>**Ibid.**, Exhs. 8, 10; and Glass, letter to staff of Commission on Local Government, Nov. 9, 2004.

<sup>40</sup>The proposed agreement calls for the reversion of 17.7 acres of vacant territory within Stephens City's current boundaries to unincorporated status in Frederick County would reduce the Town's total land area by 1.9%. All of that property is presently used for agricultural purposes.

<sup>41</sup>Carter Glass, IV. Stephens City Assessments. (Online) Available email: ted.mccormack@dhcd.virginia.gov from carter.glass@troutmansanders.com, Dec. 9, 2004.

<sup>42</sup>County of Frederick, Virginia, **Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2003** (hereinafter cited as **County 2003 Financial Report**),

indicate that during the same period such revenues in the Town increased by 15.8%, while that of the County grew by 23.3%.<sup>43</sup> Thus, Stephens City's principal tax base (i.e., real property assessables) and its total revenue extracted from all local sources grew in recent years at rates substantially less than that of the County overall.

In terms of the comparative fiscal burden borne by Stephens City residents, an examination of the real estate tax rates in Virginia towns of comparable population is of relevance. Based upon the ratio between assessed property values and recorded sale prices, as calculated by the Virginia Department of Taxation, the true real property tax rate in Stephens City in 2001 (the latest year for which the calculation has been made) was \$0.07 per \$100, an amount considerably less than the average of such tax rates in the 26 other towns in Virginia with populations of similar size (970 – 1,350 persons).<sup>44</sup> As a consequence of the overlay of Town and County levies, however, the residents of Stephens City carried an aggregate true real property tax burden in 2001 of \$0.64, or 12% greater than that borne by residents of the unincorporated areas of Frederick County (\$0.57).<sup>45</sup> With respect to total real property taxes actually paid, in FY2002/03 Stephens

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Statistical Section, Table 4. Assessed values for the County include property located within the Towns of Stephens City and Middletown. Data concerning assessed values in the County include real estate, tangible personal property, machinery and tools, and public service corporation real estate and tangible personal property.

<sup>43</sup>Town of Stephens City, **Report on Audit of Financial Statements for the Fiscal Year Ended June 30, 2003** (hereinafter cited as **Town 2003 Financial Statement**), pp. 18-19; and **County 2003 Financial Report**, Statistical Section, Table 1.

<sup>44</sup>Virginia Department of Taxation, **2001 Virginia Assessment/Sales Ratio Study**, April 2004; Virginia Department of Taxation, **Virginia Local Tax Rates, Tax Year – 2001**; and Weldon Cooper Center for Public Service, **Tax Rates 2001, Virginia's Cities, Counties, and Selected Town**, Table 3.1. The set of towns for this analysis was selected on the basis of 2001 population estimates. In order to calculate a true tax rate for the jurisdictions under study, the nominal real property tax rate of each town was multiplied by the median assessment/sales ratio of the respective county. The average true real estate tax rate for the 26 towns in 2001 was \$0.20 per \$100 of true value, and the range of such rates was between a low of \$0.06 (Middletown) and a high of \$0.56 (Craigsville).

<sup>45</sup>**Ibid.**

City residents contributed \$78.44 per capita to the Town and, in conjunction with residents in Frederick County generally, \$405.77 per capita to the County.<sup>46</sup> Thus, considering these taxes collectively, Stephens City residents bore a per capita local real property tax burden in FY2002/03 nearly 20% greater than that of residents in unincorporated portions of the County.

The proposed agreement will permit the Town to annex initially an area containing approximately \$9.7 million in FY2003/04 assessed real estate and tangible personal property values, constituting an increase in the Town's total of such values of 18.5%.<sup>47</sup> Based on current assessment data, tax rates, and fee structure, the Phase I Area is expected to generate initially approximately \$50,000 annually in additional local-source revenues for the Town, an increase of 11.7% above Stephens City's total local source revenue collections in FY2002/03.<sup>48</sup> In terms of intergovernmental aid, Stephens City has estimated that the annexation of the Phase I Annexation Area will result in an increase of approximately \$6,000 in State aid for the municipality.<sup>49</sup> While the proposed agreement will also permit the Town subsequently to annex by municipal ordinance

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<sup>46</sup>**Town 2003 Financial Statement**, pp. 18-19; and Auditor of Public Accounts, Commonwealth of Virginia, **Comparative Report of Local Government Revenues and Expenditures, Year Ended June 30, 2003**, Exh. B. Towns in Virginia may tax all classes of property eligible for taxation by a county. In such instances, town property taxes do not supplant county property taxes.

<sup>47</sup>**Town Notice**, Tab "Best Interests of the Parties," p. 15; and "Other Information, October 2004 Revision."

<sup>48</sup>Town of Stephens City, "Estimated Annual Town General Fund Revenue Increase as a Result of Possible Boundary Adjustment, October 2004 Revision," filed with the Commission on Local Government, Nov. 11, 2004. The reversion of the territory within the Town to unincorporated status as called for in the proposed settlement would reduce Stephens City's local-source revenues by less than \$50. [Carter Glass, IV. Stephens City – Deannexation Area Assessments. (Online) Available email: ted.mccormack@dhcd.virginia.gov from carter.glass@troutmansanders.com, Dec. 9, 2004.]

<sup>49</sup>"Estimated Annual Town General Fund Revenue Increase as a Result of Possible Boundary Adjustment, October 2004 Revision."

property in the Phase II Annexation Area under certain conditions, that area is now predominantly vacant, containing only approximately \$2.3 million in total FY2003/04 assessed real estate and tangible personal property values, with more distant and unknown fiscal ramifications.<sup>50</sup>

**Public Service Liabilities.** While the extension of Stephens City's boundaries as authorized by the agreement will provide the Town with additional revenues and the potential for future economic growth, it will concurrently present the municipality with increased public service responsibilities. The proposed agreement will require the Town to extend its general governmental services to the citizens in the areas annexed at the same level as currently provided to those within the municipality. In terms of these additional public service responsibilities, the Town estimates that it will be required to expend an additional \$11,500 annually from its general fund for operational purposes following the annexation of the Phase I Annexation Area.<sup>51</sup> Thus, the operating cost for the extension of services to the Phase I Area can be easily met from the estimated increase in general fund revenues resulting from the expansion of the Town's boundaries.<sup>52</sup>

With respect to the impact of the proposed annexation on the Town's enterprise fund two points merit note. First, Stephens City has identified sewer improvements that

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<sup>50</sup>“Other Information, October 2004 Revision.” Based on current assessment data, tax rates, fee schedules and State aid formula, Stephens City estimates that the annexation of all of the Phase II Annexation Area would generate initially approximately \$10,000 in general fund revenues for the Town. (“Estimated Annual Town General Fund Revenue Increase as a Result of Possible Boundary Adjustment, October 2004 Revision.”)

<sup>51</sup>Town of Stephens City, “Possible Boundary Adjustment Estimated Revenue Increases vs. Estimated Expenditure Increases, October 2004 Revision,” filed with the Commission on Local Government, Nov. 11, 2004. The Town does not anticipate that the annexation of the Phase I Area will require general fund expenditures for capital improvements or the purchase of additional equipment.

<sup>52</sup>**Ibid.**

will be needed to serve the Phase I Annexation Area, and it has agreed to undertake those utility projects to meet those needs.<sup>53</sup> Stephens City has estimated that approximately \$375,000 will be required to extend the Town's sewerage to the Phase I Area that requires such and to install additional collection lines within its current borders to ensure that such service can be provided to that area.<sup>54</sup> Town officials have indicated that the municipality anticipates utilizing reserves in its enterprise account, intergovernmental aid, and financial assistance from affected property owners to fund the utility improvements.<sup>55</sup>

Second, following the effective date of annexation, Stephens City's utility customers in the Phase I Annexation Area will be relieved of paying the surcharge imposed by the Town on nonresidents.<sup>56</sup> As a consequence, a representative for Stephens City estimates that the initial annexation will reduce the Town's enterprise fund's annual

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<sup>53</sup>Carter Glass, IV. Stephens City – Utility Data. (Online) Available email: ted.mccormack@ dhcd. virginia.gov from carter.glass@troutmansanders.com, Dec. 20, 2004.

<sup>54</sup>Glass, letter to staff of Commission on Local Government, Dec. 15, 2004. Stephens City has estimated that the cost to extend its sewerage to the Massie Street area north of Town in the Phase I Area will be approximately \$75,000, while the installation of sewer lines and appurtenances to serve West Fairfax Street within the municipality, will require approximately \$300,000. The latter project will ultimately serve the future development that will occur west of Town in the Phase I Annexation Area. [Carter Glass, IV. Stephens City – Utility Data. (Online) Available email: ted.mccormack@ dhcd. virginia.gov from carter.glass@troutmansanders.com, Dec. 20, 2004.]

<sup>55</sup>Glass, letter to staff of Commission on Local Government, Dec. 15, 2004; and presentation of Kehoe, Nov. 11, 2004. The Commission notes that in the fall of 2004, Stephens City received a Virginia Community Development Block Grant to develop a plan for the installation of sewer lines to serve a portion of the Fairfax Street area within Town. (Todd Christensen, Associate Director, Virginia Department of Housing and Community Development, letter to Michael K. Kehoe, Town Manager, Town of Stephens City, Sep. 24, 2004.)

<sup>56</sup>Resident and businesses that are located beyond Stephens City's corporate limits and connected to Town water and sewer systems pay a monthly surcharge of 33%. (**Town Notice**, Exh. 11.)

receipts by approximately \$15,000 during the first year after the annexation.<sup>57</sup> Data presented by the Town indicate, however, that the initial reduction in revenues, along with the proposed capital expenditures for sewer improvements, will not result in a deficit in its enterprise account.<sup>58</sup> Indeed, Stephens City officials contend that it has sufficient financial reserves in that enterprise account to defray a portion of the cost of both anticipated and any unanticipated capital needs for its sewer system that may result from the annexation of the Phase I Area.<sup>59</sup>

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<sup>57</sup>Glass, letter to staff of Commission on Local Government, Dec. 15, 2004.

<sup>58</sup>**Ibid.** The Town anticipates that the Massie Street sewer improvements will be completed during the second year following the effective date of the proposed annexation, at which time the Town estimates that it will receive approximately \$51,000 in sewer connection fees from new customers in that area. While Stephens City does not have an ordinance mandating connection to municipal water and wastewater lines, its estimates of revenues to be received from the Massie Street project assumes that approximately 60% of the residences and businesses in that area would connect to the new Town sewer lines. Further, as part of the conditions for the rezoning of the Stephens Landing II residential subdivision adjacent to West Fairfax Street, the developer of that project is installing a pump station that can be expanded to accommodate future growth in the western portion of the Phase I Annexation Area. (Presentation of Kehoe, Nov. 11, 2004; and communication with staff of Commission on Local Government, Dec. 29, 2004.)

<sup>59</sup>Glass, letter to staff of Commission on Local Government, Dec. 15, 2004. According to a Town official, as of June 30, 2004, Stephens City had a reserve balance in its enterprise fund of approximately \$250,000. (Kehoe, communication with staff of Commission on Local Government, Dec. 20, 2004.) The Town also expects its enterprise fund reserve to increase from connection fees derived from the three new residential developments under construction within the current Town boundaries. [Carter Glass, IV. Stephens City – Utility Data. (Online) Available email: ted.mccormack@dhcd.virginia.gov from carter.glass@troutmansanders.com, Dec. 20, 2004.] The Commission notes that the Town incurred indebtedness for the construction of a sewage treatment facility in 1988, but that plant was taken out of operation in 1996 when Frederick County Sanitation Authority agreed to treat wastewater collected by Stephens City sewer lines. (**Town Comprehensive Plan**, p. 4 – 71.) The Town, however, is still servicing the debt for its abandoned facility, and the balance on the outstanding debt as of September 2004 was approximately \$267,000. (Glass, letter to staff of Commission on Local Government, Nov. 2, 2004.)

In sum, the proposed agreement will provide Stephens City with fiscal assets that will enable the Town to extend its general governmental services to the residents and businesses in areas annexed, and the Town has sufficient enterprise fund reserves to address, in a prompt manner, the utility needs of the additional territory incorporated into the municipality.

### **Other Provisions**

Another component of the proposed agreement with major implications for Stephens City is the set of provisions that call for the Town and County to collaborate on the planning and regulation of development in the areas proposed for annexation. In July 2003, the Town and County each adopted a plan, referred to in the agreement as the “Joint Land Use Plan,” for the Phase I and Phase II Annexation Areas. That plan, which was based on an analysis of current and prospective land use conditions in those areas, is to guide the future development of properties incorporated into the Town under the terms of the settlement agreement. Both the Town and County have agreed to amend their respective comprehensive plans in order to implement the provisions of the “Joint Land Use Plan.”<sup>60</sup> In addition, the agreement commits the Town to the revision of its zoning ordinance in such a fashion that the revised ordinance will reflect the jointly adopted land use plan.<sup>61</sup> While the proposed agreement does not restrict the authority of Stephens City to amend and enforce its zoning and other land use control instruments, the settlement

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<sup>60</sup>**Settlement Agreement**, Sec. 3.1.

<sup>61</sup>The proposed settlement requires that prior to the annexation of the Phase I Area, the Town will amend its zoning ordinance to adopt temporary zoning classifications for each parcel in that area that is comparable to County zoning district in which such parcels are located prior to the annexation. Further, within six months of effective date of the proposed annexation, the Town agrees to adopt permanent zoning designations for the property in the Phase I Annexation Area. In both instances, the agreement requires that the zoning classifications for parcels in that area “substantially conform” to the Joint Land Use Plan adopted by the two localities. (**Ibid.**, Sec. 3.) The settlement accord also contains similar zoning requirements with respect to the Town’s annexation of property in the Phase II Area. (**Ibid.**, Sec. 5.)

accord provides that all future rezoning requests approved by the Town to substantially conform to the Joint Land Use Plan. Further, the agreement includes a provision that permits the Town and County to modify that plan by joint consent, if such is deemed appropriate.<sup>62</sup> This component of the accord recognizes that certain elements of the land use plan for the areas subject to annexation may require subsequent adaptation to meet future circumstances and needs which cannot now be foreseen. These efforts on the part of Stephens City and Frederick County to plan in a collaborative manner for managing future development of the Phase I and Phase II Annexation Areas are, in our judgment, clearly in the best interest of the Town.

## **INTERESTS OF THE AREAS PROPOSED FOR ANNEXATION**

### **Community of Interest**

One of the factors appropriate for consideration in the analysis of proposed voluntary settlement agreements is the strength of the community of interest that joins the area proposed for annexation to the adjacent municipality. In this instance, the evidence suggests that there exists a significant degree of interdependence between the areas subject to annexation, in particular the Phase I Annexation Area, and the Town of Stephens City. First, the data reveal that the Town is the source of certain public services to that area. The Commission notes that the Town presently provides water and sewer service to a substantial number of residences and business establishments in the Phase I Annexation Area.<sup>63</sup> In addition, all of the areas subject to annexation under the terms of

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<sup>62</sup>**Ibid.**, Sec. 3.1.

<sup>63</sup>Town water lines serve approximately 44 connections in the Phase I Annexation Area. Further, there are 28 municipal sewer connections in that area. (**Town Notice**, Tab “Best Interests of the Parties,” pp. 30, 32.)

the proposed agreement are within the Town's utility service area.<sup>64</sup> Further, Stephens City's recreational facilities and programs serve the residents of the general area. In addition, the Town's police department responds to emergency calls with the areas subject to annexation.<sup>65</sup> Moreover, the Town houses the volunteer fire department and rescue squad that serve both Stephens City, the proposed annexation areas, and other territory in Frederick County.<sup>66</sup> Thus, the areas adjacent to Stephens City presently benefit from a number of major public services provided by the Town.

In terms of the strength and general nature of the community of interest between the Town of Stephens City and its adjacent areas, three additional points should be noted. First, U.S. Highway 11, which traverses the areas subject to annexation, constitutes a principal "gateway" to Stephens City. The quality and nature of development along that thoroughfare is of considerable significance to that municipality and will affect its viability. Second, a number of developments radiating north from the Town along that primary highways are, in our judgment, essentially the extension of development patterns originating within Stephens City.<sup>67</sup> Finally, the presence in the Town of a number of public, semi-public, and other facilities serving the general populace increases the relationship between Stephens City and the area on its periphery. Such facilities include churches and offices for professional services, and community organizations serving the general area.<sup>68</sup> In sum, the Commission finds that there is a strong and pervasive

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<sup>64</sup>(**Ibid.**, p. 39 and Exh. 4.) In 1992, Stephens City's water and sewer service area was designated by agreement with the County and the Frederick County Sanitation Authority.

<sup>65</sup>**Ibid.**, p. 33.

<sup>66</sup>**County Petition**, pp. 27-29.

<sup>67</sup>Road access to a portion of an existing townhouse development in the Phase I Annexation Area is available only through the Town. Further, residents of the areas subject to annexation under the terms of the proposed agreement must travel through Stephens City in order to reach Interstate Highway 81.

<sup>68</sup>**County Petition**, p. 85.

community of interest between the Town of Stephens City and the areas it seeks to annex.<sup>69</sup>

### **Need for Urban Services**

The 360 acres of territory which is subject to immediate annexation by the Town of Stephens City under the terms of the proposed agreement with the County are estimated to contain a population of 165 persons, giving the area, as noted previously, a population density of 295 persons per square mile. While approximately 62% of the Phase I Annexation Area is currently vacant or in agricultural use, the area does contain three residential concentrations, a number of commercial enterprises, and a church. With respect to its prospective future development, the Joint Land Use Plan adopted by the Town and Frederick County, which is based on the comprehensive plans of both localities, indicates that the areas subject to annexation may be expected to experience development in the future and will increasingly need urban services that can best be provided by Stephens City.

**Sewage Collection and Treatment.** The Town of Stephens City owns and operates a sewage collection system that presently serves 557 connections, including 28 in the Phase I Annexation Area.<sup>70</sup> Sewage collected by the Town's system is treated at the Parkins Mill Wastewater Treatment Plant that is owned by the Frederick-Winchester

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<sup>69</sup>Section 15.2-3400 of the Code of Virginia, the statute under which the current agreement has been negotiated, requires a municipality annexing under its provisions to redraw election districts and to hold elections if the annexation increases the population of the affected jurisdiction by more than five percent. Since the incorporation of the Phase I Area into Stephens City will increase the Town's population by approximately 14%, the residents of the area annexed will become engaged quickly in the electoral affairs of the municipality.

<sup>70</sup>**Town Notice**, Tab "Best Interests of the Parties," p. 30. While all of the areas proposed for annexation are within the Town's utility service area, currently there are no municipal sewer connections in the Phase II Area.

Service Authority and operated by the Frederick County Sanitation Authority (FCSA).<sup>71</sup> By virtue of an agreement between Stephens City and the FCSA, the Town has a treatment allocation at the plant of 0.25 million gallons per day (MGD).<sup>72</sup> In 2003 the Town discharged an average of 0.20 million gallons per day of effluent to the FCSA plant for treatment, or approximately 80% of its allocation in the regional wastewater facility.<sup>73</sup> Due to the age of the Town's collection lines, a portion of the sewage pumped to the treatment plant is the result of the infiltration of groundwater and the inflow of stormwater, but the Town has an ongoing program to replace or rehabilitate its sewer lines in order to reduce the problem.<sup>74</sup>

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<sup>71</sup>The Parkins Mill Facility has a permitted capacity of 2.0 million gallons per day (MGD). During 2004 the plant treated 1.75 MGD, leaving an excess capacity of 0.25 MGD, or only 12.5% of its permitted capacity. (**County Petition**, p. 10.) The FCSA has agreed, however, to expand the plant initially to treat up to 3.0 MGD, but certain equipment at the facility will be constructed to permit a further increase in treatment capacity to 4.0 MGD in the future. The project is estimated to cost approximately \$12.5 million. (Wellington H. Jones, Engineer-Director, Frederick County Sanitation Authority, communication with staff of Commission on Local Government, Dec. 20, 2004.)

<sup>72</sup>**Town Notice**, Tab "Best Interests of the Parties," p. 29. The interlocal sewer agreement between Stephens City and FCSA required the Town to abandon its existing wastewater treatment facility and to connect its sewage collection lines to those belonging to the Authority. The Town pays a portion of the debt service on the Parkins Mill facility in return for its treatment allocation in the plant. In addition, Stephens City also pays proportionate share of operating and maintenance costs for the Authority's facility based on average daily flow of sewage emanating from municipal collection lines and transmitted to the treatment plant. (**Ibid.**; and Glass, letter to staff of Commission on Local Government, Nov. 2, 2004.)

<sup>73</sup>Glass, letter to staff of Commission on Local Government, Nov. 2, 2004. According to a representative for the Town, upon completion of the final plans for the expansion of the Parkins Mill wastewater plant, Stephens City will seek to amend its agreement with the FCSA to increase its allocation in the enlarged treatment facility. (Kehoe, presentation to the Commission on Local Government, Nov. 11, 2004; and Jones, communication with staff of the Commission on Local Government, Dec. 20, 2004.)

<sup>74</sup>Glass, letter to staff of Commission on Local Government, Nov. 2, 2004.

In terms of the impact of the proposed agreement on sewage service in the Phase I Annexation Area, its incorporation into Stephens City will have the effect of terminating surcharges on connection fees and user rates and will, thereby, substantially reduce the cost of service to the residents and commercial entities located therein.<sup>75</sup> Further, while the proposed agreement does not specifically commit the Town to extend its collection lines to serve additional properties in the Phase I Area, Stephens City has indicated, however, its intention to install sewerage to serve a portion of that area.<sup>76</sup> With respect to the need for central sewerage service in the area proposed for immediate annexation, the Commission notes that the Massie Street community, which is located in the Phase I Annexation Area north of Stephens City, is not served by central sewerage and confronts conditions suggesting the need for such. Records of the Winchester-Frederick County Health Department disclose that some soil conditions have generally limited the effectiveness of individual septic systems in areas adjacent to Stephens City.<sup>77</sup> The prospective need for public sewerage in the Massie Street community is heightened by the fact that the small residential lot size in that area will not permit the repair or replacement of septic tanks if such are needed<sup>78</sup> In sum, the proposed agreement will result in a reduction in the user charges for the residents and businesses in the areas annexed and, based on intent expressed by Stephens City, an extension of the Town's sewerage services to additional properties within those areas.

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<sup>75</sup>User fees charged by the Town are 33% higher for out-of-town customers. In addition, sewer connection fees imposed by Stephens City are 40% greater for residential and commercial users located beyond its corporate limits. (**Town Notice**, Exhibit 11.)

<sup>76</sup>Glass, letter to staff of the Commission on Local Government, Dec. 15, 2004.

<sup>77</sup>Steve Lee, Environmental Health Supervisor, Winchester-Frederick County Health Department, communication with staff of Commission on Local Government, Dec. 29, 2004.

<sup>78</sup>**Ibid.** Maintenance of the inoperative septic systems is provided by the periodic pumping of these facilities and through the disposing of the septage at the FCSA sewage treatment plant.

**Water Supply and Distribution.** The Town of Stephens City obtains its treated water through purchases from the Frederick County Sanitation Authority (FCSA).<sup>79</sup> The Authority operates a 6.0 MGD water treatment plant located in the northwest portion of the Town.<sup>80</sup> At the present time, the distribution system of the Town and that serving FCSA connections located in the unincorporated portions of the County collectively consume approximately 2.5 MGD, or approximately 41.7% of the plant's capacity.<sup>81</sup>

In terms of distribution and storage facilities, the Town owns and operates approximately four miles of lines, both within and beyond its current corporate boundaries, and utilizes two storage facilities that collectively hold 1.5 million gallons of treated water.<sup>82</sup> These facilities serve 557 connections within the Town's current borders and 44 in the Phase I Annexation Area.<sup>83</sup>

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<sup>79</sup>Under the water agreement with the FCSA, the Town is authorized to purchase an unlimited quantity of potable water from the Authority. (**Town Notice**, Tab "Best Interests of the Parties," p. 31.)

<sup>80</sup>**Ibid.**, p. 31; Glass, letter to staff of Commission on Local Government, Nov. 2, 2004; and **County Petition**, p. 9. The James Deihl Water Treatment Plant, which was constructed in 1994 by the Frederick County Sanitation Authority, uses as its raw water source three abandoned limestone quarries that are owned by the Town. The quarries are estimated to contain approximately 600 million gallons (MG) of water.

<sup>81</sup>**County Petition**, p. 9. Currently, the Town's distribution system requires approximately 0.12 MGD. (**Town Notice**, Tab "Best Interests of the Parties," p. 32.) The FCSA water treatment plant also serves the southwestern portion of the Authority's service area.

<sup>82</sup>**Town Notice**, Tab "Best Interests of the Parties," p. 32; and Glass, letter to staff of Commission on Local Government, Nov. 2, 2004. The municipal distribution system is served by a 1.0 MG storage facility at the Diehl plant and a 0.5 MG water tank at the FCSA offices east of Stephens City.

<sup>83</sup>As with municipal sewerage, all of the areas proposed for annexation under the terms of the proposed agreement are located within the Town's utility service area. However, there are no Town water connections in the Phase II Area. (Glass, letter to staff of the Commission on Local Government, Nov. 2, 2004. The Commission also notes that the City of Winchester owns a 30-inch treated water transmission line that traverses the route of U. S. Highway 11 through Stephens City north to the City's

Annexation into the Town will have the effect of terminating the 33% nonresident surcharge on water rates thereby substantially reducing the cost of water service to residents and businesses in annexed areas.<sup>84</sup> Further, although the Town does not currently propose any extension of water lines in the Phase I Annexation Area, the future development of the area will ultimately require such. In view of the excess capacity in the FCSA system and the Town's agreement with the Authority, we believe that Stephens City is capable of meeting the needs of the areas subject to annexation.

**Solid Waste Collection and Disposal.** The Town of Stephens City, utilizing the services of a private collector, provides weekly solid waste collection services to its residents and business concerns. The cost of this service is borne by the Town's general fund and is not supported by user charges.<sup>85</sup> Seasonal collection of brush and leaves, as well as miscellaneous large items, is also provided at no charge in residential areas. In

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corporate limits. Currently, there are approximately 30 connections to Winchester's water line located within the areas proposed for annexation, principally north of the Town in the Phase I Area. Further, Stephens City formerly purchased treated water from Winchester to serve connections within the Town. In 1988, Stephens City terminated the agreement with the City and contracted with the FCSA to provide potable for the Town's distribution system. The contract with the FCSA also designated the Town as the principal provider of public water and sewerage in certain areas beyond its corporate borders. Subsequently, Winchester and Stephens City entered into a separate accord by which the City agreed not to serve any additional connections within the Town's utility service area, but the City could continue to serve its existing customers in that area. In addition, the agreement with Winchester authorizes the Town to purchase treated water from the City if for some reason the FCSA cannot meet its service obligations to the Town. [Carter Glass, IV. Stephens City – Winchester Water Line. (Online) Available email: ted.mccormack@dhcd.virginia.gov from carter.glass@troutmansanders.com, Dec. 9, 2004; and Kehoe, communication with staff of Commission on Local Government, Dec. 20, 2004.]

<sup>84</sup>**Town Notice**, Exh.11. Nonresidents customers of the Town's water system also pay a connection surcharge of 40%.

<sup>85</sup>**Ibid.**, Tab "Best Interests of the Parties," p. 34. Businesses within Stephens City that generate large volumes of refuse generally contract directly with commercial concerns for solid waste collection and disposal. (Kehoe, presentation to Commission on Local Government, Nov. 11, 2004.)

terms of the disposal of refuse, the Town's contractor utilizes the County's landfill, which is located northeast of Stephens City.<sup>86</sup>

Frederick County does not provide curbside refuse collection to its residents or business firms. County residents can dispose of their household wastes at the County landfill or through the use of bulk containers located at 11 sites located throughout its territory.<sup>87</sup> Furthermore, County residents and commercial concerns, including those in the area proposed for annexation, have the option of contracting directly with private entities for collection services, with the cost of such services determined by the frequency of collection.<sup>88</sup>

Following the effective date of the initial annexation, Stephens City will extend its solid waste collection services to the annexed area. The Town has indicated that it will renegotiate its contract with the private disposal firm to include the residences and businesses located in the area proposed for annexation.<sup>89</sup> Areas adjacent to Stephens City both developed and those to be developed will benefit, in our judgment, from the solid waste collection services provided by the Town. The extension of the Town's services to the areas annexed will not only reduce the cost of refuse collection services for the

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<sup>86</sup>**Ibid.** The Frederick County landfill is a regional facility that receives refuse from Frederick and Clarke Counties and the City of Winchester. (**County Petition**, p. 13.)

<sup>87</sup> Frederick County has a Countywide system of nine compactor stations and two green box sites for the disposal of residential refuse, and this service is supported by the general fund. Businesses in the County, however, are required to utilize the services of private concerns for the collection and disposal of solid waste. (**County Petition**, p. 12.) The County compactor station closest to the areas subject to annexation under the terms of the proposed agreement is located between Stephens City and Middletown adjacent to U. S. Highway 11. (County of Frederick, **2003 Comprehensive Policy Plan**, p. 8 – 21.)

<sup>88</sup>**County Petition**, p. 12. A typical charge for residential private collection service in the annexation areas is \$15.00 per month. (Glass, letter to staff of Commission on Local Government, Nov. 2, 2004.)

<sup>89</sup>**Town Notice**, Tab "Best Interests of the Parties," p. 41.

annexed residents and businesses, it should also promote increased utilization of regular refuse collection services within those areas. Further, it has been our experience that the general availability of publicly financed solid waste collection services reduces the incidence of illegal disposal and has a salutary effect on a community.

**Planning, Zoning, and Subdivision Regulation.** The Town of Stephens City conducts its public planning efforts with the assistance of a planning commission and guided by a comprehensive plan that was initially adopted in 1985 and revised in 1992 and 2002.<sup>90</sup> In terms of development control instruments, Stephens City utilizes a zoning ordinance which was adopted in 2000 and subjected to its last major revision in 2003.<sup>91</sup> The Town's ordinance contains provisions authorizing the use of conditional zoning, which enables the municipality to mitigate the impact of development on public resources and concerns.<sup>92</sup> Stephens City also administers a subdivision ordinance which was adopted in 1991. Those regulations require developers to meet the standards of the Virginia Department of Transportation with respect to the construction of new roads, mandate connection to Town utilities where such are available, and establish criteria for the installation of curbs, gutters, and sidewalks.<sup>93</sup> The Town, however, is without a formal capital improvements plan which would strengthen and integrate its overall fiscal

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<sup>90</sup>**Town Comprehensive Plan**, p. 1 – 2. The Commission notes that although Section 15.2-2230 of the Code of Virginia requires local comprehensive plans to be reviewed at least once every five years by the local planning commission, there is no evidence that Stephens City reviewed its comprehensive plan during the intervening years since its initial adoption and subsequent revisions.

<sup>91</sup>Town of Stephens City, **Zoning Ordinance**.

<sup>92</sup>**Ibid.**, Article VI. The form of conditional zoning adopted by Stephens City authorizes the Town to accept cash contributions for road improvements or for planned facilities identified in the Stephen City Capital Improvements Plan.

<sup>93</sup>Town of Stephens City, **Stephens City Code**, Chapter 18, Subdivisions. See, for example, Sec. 18-72.

and development control efforts.<sup>94</sup> At the present time, the Town has no staff assigned exclusively to the administration and application of its planning and development control instruments, primarily due to the paucity of development in recent years. The Town Manager serves as Stephens City's planner and land development control administrator.

Frederick County also has, consistent with statutory requirement, a planning commission and a recently revised comprehensive plan to guide its development.<sup>95</sup> The County also utilizes a zoning ordinance, which was initially adopted in 1967 and which underwent its last major revision in 1990.<sup>96</sup> In addition, the County administers a subdivision ordinance which was last revised in 2003. The Frederick County subdivision ordinance contains elements similar to those of the Town with respect to the construction of public streets and the installation of curbs, gutters, and sidewalks in certain new developments.<sup>97</sup> Further, unlike the Town, the County has adopted a formal capital improvements plan to coordinate its fiscal planning and land development control processes. Frederick County maintains a staff of 13 persons for the administration and implementation of its various planning and development control instruments.<sup>98</sup>

Following the effective date of annexation, the Town will extend its comprehensive planning and its other regulatory instruments to the areas annexed.

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<sup>94</sup>According to a representative for Stephens City, in January 2005 the Town's planning commission will initiate the process to develop a capital improvements plan. (Kehoe, communication with staff of Commission on Local Government, Dec. 29, 2004.) The Commission notes that the Town cannot accept cash proffers unless it has an adopted capital improvements plan.

<sup>95</sup>The update of the County's comprehensive plan was adopted in January 2004. (**2003 Comprehensive Policy Plan**).

<sup>96</sup>**County Petition**, p. 18. Minor revisions to the County's zoning ordinance have occurred since 1990.

<sup>97</sup>**Ibid.**; and County of Frederick, **Code of the County of Frederick**, Chapter 144, Subdivision of Land, Sec. 144-17.

<sup>98</sup>**County Petition**, p. 81.

Further, as noted in a previous section of this report, the Town has agreed to amend its current comprehensive plan to implement provisions of the Joint Land Use Plan that was adopted by Stephens City and the County under the terms of the proposed agreement.<sup>99</sup> Moreover, the proposed agreement requires the Town to amend its zoning ordinance to reflect the jointly adopted land use plan for the Phase I and Phase II annexation areas. The application of the municipal policies, as well as the provisions of the Joint Land Use Plan, should result in a consistent and comprehensive approach to managing future growth and in protecting the distinctive features of the Stephens City area. There is, however, a deficiency which should be noted with respect to the Town's zoning ordinance. Currently, there are tracts within Stephens City that are actively used for agricultural purposes, and other agricultural properties may be incorporated into the Town under the terms of the proposed agreement. The Commission notes that the Town does not have a zoning district that will appropriately protect such properties from the incursion of incompatible uses.

**Crime Prevention and Detection.** Law enforcement services in Stephens City are provided by the Town's police department, which is staffed by three full-time and three auxiliary officers.<sup>100</sup> Each of those officers is assigned patrol responsibility, with the duty shifts structured so that the Town is regularly patrolled during most hours of the day.<sup>101</sup>

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<sup>99</sup>**Settlement Agreement**, Sec. 3.1

<sup>100</sup>**Town Notice**, Tab "Best Interests of the Parties," p. 32.

<sup>101</sup>Town police officers are on duty from approximately 6:00 a.m. until after midnight each day. (Kehoe, communication with staff of Commission on Local Government, Dec. 20, 2004; and Glass, letter to staff of Commission on Local Government, Nov. 2, 2004.)

The Frederick County Sheriff's Department, which maintains headquarters in the City of Winchester, assists the Town in meeting its law enforcement needs.<sup>102</sup> Sheriff's deputies regularly respond to calls for service from Town residents and businesses during periods when Stephens City's police officers are not on duty.<sup>103</sup> Similarly, Town police officers respond to calls for service beyond municipal boundaries when requested to do by the Sheriff's Department.<sup>104</sup> Further, the County provides dispatch services for the Town.<sup>105</sup>

The Commission has no knowledge of any extraordinary law enforcement problems in the Phase I Annexation Area, and the incorporation of that area into the Town is not expected to add substantially to the law enforcement burden of the Stephens City police department.<sup>106</sup> The extension of the Town's law enforcement services to the area subject to immediate annexation on a regular and routine basis should benefit the residents and businesses of that area.

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<sup>102</sup>The personnel complement of the Sheriff's Department includes 107 full-time sworn law enforcement officers, 61 of whom are assigned patrol responsibility. (Captain John D. Snoots, Captain of Patrol, Frederick County Sheriff's Department, communication with staff of Commission on Local Government, Dec. 29, 2004.)

<sup>103</sup>After midnight, County Sheriff's deputies respond to calls for service within the Town. Stephens City provides office space in the Town administration building that is used as a substation by the Frederick County Sheriff's Department. (**Town Notice**, Tab "Best Interests of the Parties," pp. 32-33; and Glass, letter to staff of Commission on Local Government, Nov. 2, 2004.)

<sup>104</sup>Town police officers respond to approximately 25 calls per month for law enforcement services from beyond municipal boundaries. (**Town Notice**, Tab "Best Interests of the Parties," p. 33.)

<sup>105</sup>The Town also utilizes the jail facilities provided by Frederick County. (**Town Comprehensive Plan**, p. 4 – 66.)

<sup>106</sup>The Town anticipates the need to hire an additional police officer as development in the Phase I Area increases in the future. (**Town Notice**, Tab "Best Interests of the Parties," p. 42; and Glass, letter to staff of Commission on Local Government, Nov. 2, 2004.)

**Streetlighting.** The Town of Stephens City adheres to a policy by which it arranges for the installation and operation of streetlights at public expense. At the present time, there are approximately 120 publicly funded streetlights within the Town's boundaries.<sup>107</sup> Stephens City considers requests from its citizens for additional streetlights, and where are such are deemed appropriate and necessary for public safety and welfare, new lights are installed and operated at public expense.<sup>108</sup> In order to extend this public service to areas annexed, the Town has developed a plan for the installation of streetlights at appropriate locations in the Phase I Annexation Area following the effective date of the agreement.<sup>109</sup> In our judgment, the area proposed for annexation will benefit from the application of the Town's policies regarding the installation and operation of these facilities.

### **Other Service Considerations**

The Commission notes that with respect to two other basic public concerns, fire protection and street maintenance, the residents of the annexed areas will not experience any immediate change in the level of service as a result of their incorporation into the Town of Stephens City. With respect to fire protection services, the Town and Frederick County jointly support the Stephens City Volunteer Fire and Rescue Department.<sup>110</sup> That

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<sup>107</sup>**Town Notice**, Tab "Best Interests of the Parties," p. 34.

<sup>108</sup>**Ibid.**

<sup>109</sup>Presentation of Kehoe, Nov. 11, 2004. Within the Phase I Annexation Area, the Town proposes to install 12 streetlights for the residential area of Old Valley Pike, the Massie Street subdivision, and along West Fairfax Street. The exact locations for those lights, however, will be determined in consultation with the local power company. (Glass, letter to staff of Commission on Local Government, Nov. 2, 2004.)

<sup>110</sup>Between 2000 and 2004, the Town has donated \$6,000 per year to the Stephens City Volunteer Fire and Rescue Company for capital and operating expenses. (Glass, letter to staff of Commission on Local Government, Nov. 2, 2004.) In addition, during the same period, Frederick County has provided approximately \$1.4 million in County and pass-through funds to the same fire company. (**County Petition**, pp. 27-28.)

fire company serves the Town and surrounding areas of Frederick County, including all the areas subject to annexation under the terms of the proposed agreement.<sup>111</sup> The fire suppression capabilities of the Stephens City fire company and the Town's water distribution system are such that properties within the municipality, as well as those portions of the areas proposed for annexation which are located within 1,000 feet of a fire hydrant, are classified "5" by the Insurance Services Office (ISO) of Virginia in terms of their exposure to fire loss.<sup>112</sup> Thus, through its support of the VFD and the presence of municipal water lines, the Town already contributes to the fire protection services available to residents of the areas proposed for annexation and, in some cases, to reduced fire insurance premiums.

In terms of street maintenance, almost all of the public roads in the Town, the areas eligible for annexation under the terms of the proposed agreement, and the County generally are maintained by the Virginia Department of Transportation (VDOT) in accordance with State-prescribed policies.<sup>113</sup> While the Commonwealth bears total financial responsibility for the maintenance of the qualifying public roadway in the Town, Stephens City has invested in recent years a modest amount of local funds to improve and maintain the roadway within its corporate limits. The data reveal that

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<sup>111</sup>The Stephens City Volunteer Fire and Rescue Company has a personnel compliment of 51 volunteer firefighters and two full-time firefighters paid by the County. (Kehoe, communication with staff of Commission on Local Government, Dec. 20, 2004.)

<sup>112</sup>**Town Notice**, Tab "Best Interests of the Parties," p. 33; and Glass, letter to staff of Commission on Local Government, Nov. 2, 2004. The ISO classification is based on a scale of "1" to "10" for comparison with other public fire protection systems and represents an indication of a system's ability to defend against the major fire which may be expected in any given community. Where protection class "10" is assigned, there is no or minimal protection. Protection class "1" represents a fire protection system of extreme capability. The principal features used by ISO in grading a community's fire system are water supply, fire department, fire communications, and fire safety control. [John L. Bryan and Raymond C. Picard, **Managing Fire Services** (Washington, DC: International City Management Association, 1979, p. 102.)]

<sup>113</sup>**Town Notice**, Tab "Best Interests of the Parties," p. 35. Stephens City maintains one-half mile of partially paved roadway within its current boundaries. (Glass, letter to staff of Commission on Local Government, Nov. 2, 2004.)

between FY1999/00 and FY2002/03 Stephens City has expended approximately \$80,000 in local revenue to improve and maintain roadway within its corporate boundaries, including the small segment of roadway in the Town that is not part of the State system.<sup>114</sup>

In summary, while annexation by Stephens City will not immediately affect the level of fire suppression and street maintenance services in the area annexed, the Town's commitment to such services and programs will increasingly benefit that area as it develops.

### **Summary of Service Needs**

In the preceding sections of this report, the Commission has endeavored to analyze the existing and prospective urban service needs of the areas subject to annexation under the terms of the proposed agreement, and the ability of the Town of Stephens City to meet those needs. On the basis of the data cited above, the Commission finds that the areas adjacent to Stephens City have been nurtured and sustained, in large part, by public utilities provided by the Town. Further, in our judgment, those areas will benefit from the extension of other Town services and policies.

### **INTERESTS OF THE COUNTY OF FREDERICK**

The annexation of the Phase I Annexation Area by the Town of Stephens City will have minimal adverse fiscal impact on Frederick County. Although the annexation of that area will not affect the County's receipts from any of its property taxes, it will reduce initially its collections from some its secondary revenue sources. Estimates developed by a consultant for Stephens City, with which the County concurs, indicate

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<sup>114</sup>Glass, letter to staff of Commission on Local Government, Nov. 2, 2004. Following the effective date of the initial annexation, the Town will also be responsible for the maintenance of approximately 200 feet of roadway in the annexed area that does not qualify for State maintenance.

that the incorporation of the Phase I Annexation Area into the Town will result in the County's loss during the first year after annexation of approximately \$39,000, or only 0.04% of the County's total general fund receipts during FY2002/03.<sup>115</sup>

In terms of the overall and long-term impact on the County resulting from annexation by Stephen City, the incorporation of the Phase I Annexation Area will permit the Town to benefit from an immediate infusion of fiscal resources, will assure the municipality land for future development, and will, accordingly, increase the Town's ability to serve the general area. Stephens City's increased capacity for the provision of public services can be a positive factor in supporting desirable development and strengthening the economy of its general area, with benefits accruing to residents of the County generally. Further, the provision in the proposed agreement that authorize future Town boundary expansions by municipal ordinance will promote the continued viability of the municipality while avoiding the prospect of costly adversarial annexation proceedings. The growth of Stephen City in a simple, non-adversarial manner with a minimum of attendant cost should economically strengthen the Town and its capacity to contribute to the fiscal and social health of Frederick County.

Another component of the proposed agreement that will have a significant impact on Frederick County is the set of provisions which commits the County and Stephens City to a coordinated and collaborative planning and land use regulatory program for managing future growth in the areas subject to annexation. This cooperative program, which was initiated prior to the submission of the settlement accord to this Commission, culminated in July 2003 with the adoption by the County and Town of the Joint Land Use

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<sup>115</sup>Town of Stephens City, "Frederick County's Estimated Loss of General Fund Revenues as a Result of Possible Boundary Adjustment (October 2004 Revision)," filed with the Commission on Local Government Nov. 11, 2004; and John R. Riley, Jr., County Administrator, County of Frederick, letter to staff of Commission on Local Government, Dec. 10, 2004.

Plan for the future development of the Phase I and Phase II Areas.<sup>116</sup> Further, in the proposed settlement the Town has agreed to revise its zoning ordinance in order to administer property that has been rezoned by the County prior to annexation. Moreover, under the terms of the proposed agreement all future land use changes proposed for the areas annexed are required to be consistent with the jointly adopted land use plan.<sup>117</sup> These provisions will assure Frederick County a significant role in the development of areas incorporated into Stephens City.

Aside from these elements, there are three additional provisions in the proposed agreement that are of significance to Frederick County. First, the agreement contains a provision by which the Town agrees not to initiate any further annexation proceedings, other than those required to obtain approval for the incorporation of property in the Phase II Annexation Area, for a 15-year period following the effective date of the Phase I annexation.<sup>118</sup> Second, the proposed agreement also addresses the allocation to the Town and County of the proffered conditions associated with any property rezoned in the Phase I or Phase II Annexation Areas.<sup>119</sup> Finally, under the terms of the proposed agreement

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<sup>116</sup>The proposed agreement also requires the Town and County to incorporate the jointly adopted land use plan into their respective comprehensive plans. (**Settlement Agreement**, Sec. 3.1.)

<sup>117</sup>The settlement accord provides that the future land use plan for the areas proposed for annexation may be amended by joint consent of the Town and County. (**Ibid.**)

<sup>118</sup>**Ibid.**, Sec. 6. In addition, the agreement calls for the Town to not support citizen-initiated annexations, and, if requested to do so by the County, to publicly oppose such initiatives.

<sup>119</sup>**Ibid.**, Sec. 7. Both the Town and County have adopted a form of conditional zoning that permit the localities to accept proffers such as cash contributions, the dedication of property, and the construction of off-site public improvements. The agreement requires the Town to pass-through to the County any cash proffers received in connection with the rezoning of property in areas annexed related to the construction of a capital facility that is the sole responsibility of the County, such as education, and fire and rescue. Further, for capital facilities to be constructed for other public services (e.g., parks), the Town has agreed to transfer to the County 40% of the proffered cash payment.

the Town will transfer to Frederick County a tract of land that will serve to unify a homogeneous property under the jurisdiction of the County.<sup>120</sup> In brief, these various provisions in the interlocal settlement between the Town and County, coupled with the modest financial impact of the proposed annexation, are features of the settlement which are, in the Commission's judgment, in the interest of Frederick County.

### **INTERESTS OF THE COMMONWEALTH**

The Commission notes that the Town of Stephens City – Frederick County agreement is the product of negotiations conducted under a State-established process that encourages the negotiated settlement of interlocal issues. By the establishment of this negotiation process, the State has expressed its desire for local governments to effect a resolution of their interlocal concerns within parameters established by law. This agreement, which constitutes a locally effected reconciliation of the needs and interests of the Town and County, is consistent with the interest of the Commonwealth in the promotion of negotiated settlements.

A second, and perhaps the paramount, interest of the State in the interlocal issues subject to the Commission's review is the preservation and promotion of the viability of Virginia's local governments. As previous sections of this report have indicated, the various annexation provisions will provide the Town of Stephens City with an opportunity to extend its boundaries and to increase its demographic and fiscal resources, as well as vacant land that can accommodate future development. Further, this infusion of present and prospective tax resources into the Town's fiscal base should not have any major adverse effect upon the County. The agreement, in our judgment is fully consistent

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However, until Stephens City adopts a capital improvement plan that meets the requirements of Sec. 15.2-2239 of the Code of Virginia, however, the Town cannot accept cash proffers. (Sec. 15.2-2298, Code of Va.)

<sup>120</sup>**Ibid.**, Sec. 6.3. The properties to be transferred to the jurisdiction of the County are currently used for agricultural purposes.

with the State's interest in protecting and promoting the viability of its local governments.

Finally, and clearly related to the previous concern, the State has an interest in the cooperation and collaboration of its local governments for the effective and efficient use of public resources. Where localities can collaborate on planning and land use issues, it is distinctly in the interest of the Commonwealth to encourage such concerted action. Moreover, this Commission is cognizant of the fact that a large and increasing number of public concerns transcend local boundaries and can only be confronted by localities acting in concert. This agreement commits Stephens City and Frederick County to continued cooperation in the decades ahead, and such commitment to collaborative action is in the best interest of the State.

## **FINDINGS AND RECOMMENDATIONS**

In the preceding sections of this report, the Commission has reviewed a proposed voluntary settlement agreement between the Town of Stephens City and Frederick County addressing the interest of the two jurisdictions. Based upon that review, we find the agreement promotive of the viability of both local governments and consistent with the best interests of the Commonwealth. Accordingly, we recommend the court's approval of the agreement. While finding the agreement to be in the best interest of the two jurisdictions and the State, there are several related issues which we are obliged to address.

## **RESOLUTION OF DISPUTES**

A significant portion of the proposed agreement is devoted to three major factors: 1) the initial and subsequent rezoning of property annexed by the Town; 2) the criteria under which the Town may annex property located in the Phase II Annexation Area; and 3) the adopted Joint Land Use Plan for the areas proposed for annexation that will be used by the Town and County to evaluate all rezoning applications and other development proposals affecting those areas. While the cooperative process used in the

negotiation of the proposed settlement has fostered mutual understanding and collaboration between the Town and County, future differences may occur as the application of the policies contained in the agreement are implemented. Accordingly, we recommend that the proposed settlement be amended to include a provision for the resolution of disputes that may arise relative to the future implementation of the agreement. Such a provision will benefit the Town and County by providing a mechanism to settle any disagreements between the parties concerning the future development of the Phase I and Phase II Annexation Areas.

### **PROVISION OF SERVICES**

As noted in previous reports, the Commission has held that one of the fundamental purposes of the State's local boundary change processes is to extend additional urban services to areas in need of such. From our perspective, it would be anomalous for those processes not to improve the quality of services provided in an area. In this instance, however, Stephens City has not presented for our review a comprehensive delineation of the capital facilities to be provided the citizens and businesses of areas subject to annexation under the terms of the proposed agreement. While the evidence indicates that most of the Phase I Area is currently served by municipal water lines and, in part, by Town wastewater collection facilities, Stephen City has acknowledged that there are neighborhoods within that area in need of public sewerage. Further, the annexation of properties in the Phase II Area will require the installation of additional municipal utility lines. Therefore, the Commission recommends that the agreement be amended to include a commitment by Stephens City to extend municipal water and sewer service to all residences, commercial concerns, and industrial enterprises (which are located in an area annexed at the time of the applicable annexation ordinance was adopted by the Town), in accordance with Town policies and ordinances, with such extension of utility services to be concluded within five years of the date of annexation if the services are needed or requested by property owners. This proposed amendment would provide assurance to all persons and entities annexed that they will have access to these municipal services within a reasonable period. This amendment

should also promote careful planning on the part of the Town and can lessen the basis for citizen apprehension.

### **ANNEXATION ORDINANCE**

Section 4 of the proposed agreement authorizes the Town to annex by ordinance portions of the Phase II Area that meet certain conditions specified in the intergovernmental accord. The Commission recommends that this section of the proposed agreement be amended to provide that such ordinances contain a statement as to the terms and conditions upon which the annexation will be effected, including provisions for the extension of utilities and for meeting the annexed area's other service needs.

This proposed amendment to the agreement should provide the residents and businesses affected by annexations with a list of specific improvements which may be expected and the timeframes within which such will be completed. Such specificity can remove grounds for citizen complaint.

Further, the Commission recommends that Section 4 be amended to include language essentially as follows:

No ordinance for the annexation of property in the Phase II Annexation Area shall be adopted by the Town until a public hearing, advertised once a week for two successive weeks in a newspaper of general circulation in the Town and that portion of the County affected by this agreement, has been held prior to the adoption of an annexation ordinance.

In addition to the amendments proposed above, the Commission further recommends that the agreement be modified to provide that certified copies of each adopted annexation ordinance be filed with the Circuit Court of Frederick County, the Secretary of the Commonwealth, and other State and federal agencies that require knowledge of local boundary changes.

## **PROTECTION OF AGRICULTURAL PROPERTIES**

The General Assembly has declared that it is the policy of the Commonwealth of Virginia to preserve the State's agricultural properties.<sup>121</sup> Consistent with that policy, the Commission recommends that the Town of Stephens City establish by ordinance a use value assessment program for the protection of the agricultural, forestal, horticultural, and open space property in the Town and which may be annexed immediately or in the future pursuant to the policies in the proposed agreement. The protection of such properties not only is of benefit to the owners of the parcels, but it serves the general community by enhancing its diversity and physical attractiveness. Since Frederick County presently operates a use value assessment program, the adoption and application of such a program within the municipality should not pose any administrative difficulty. In addition to the establishment of a use value assessment program, the Commission recommends that the Town of Stephens City amend its zoning ordinance to establish an agricultural zoning district that would prohibit incompatible uses within that district even on a conditional basis.

## **CAPITAL IMPROVEMENTS PROGRAM**

During the course of its review, the Commission was advised that Stephens City has initiated a process to adopt an initial capital improvements program for the Town. We endorse this effort on the part of Stephens City. It has been our experience that the development and periodic update of such a program would promote appropriate planning for the phased implementation of annexation ordinances. Further, the process of developing this financial instrument would provide added opportunity for residents of annexed areas and the Town generally, to comment on proposed capital improvements through participation in the public hearings and activities of the Town's planning commission. Capital improvement programs may be developed to cover five-year periods and, thus, would be appropriate instruments for planning and constructing

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<sup>121</sup>15.2-4301, Code of Va.

improvements specified in Town annexation ordinances, such as water, sewerage, curbs, gutters, and sidewalks.<sup>122</sup> With the initial and subsequent expansions of the Town's boundaries and the consequent increase in Stephens City's fiscal responsibilities, a capital improvements program will grow in significance.

### **CONCLUDING COMMENT**

The Commission on Local Government acknowledges the considerable effort devoted by officials of the Town of Stephens City and Frederick County to negotiate the agreement before us. That agreement reflects a notable commitment by the leadership of both jurisdictions to address in a collaborative fashion the concerns of their localities and the needs of their residents. Moreover, the inclusion of provisions in the agreement which call for continued cooperation between the parties in planning and land development control and other endeavors is founded upon the recognition of the social and economic interdependence of the Town and County. We commend the officials of the two jurisdictions for their public leadership and for the interlocal agreement which they have negotiated.

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<sup>122</sup> Section 15.2-2239 of the Code of Virginia authorizes local planning commissions to prepare and revise annually a five-year capital improvements program, based on the comprehensive plan of the locality, for submission to the governing body or chief administrative officer of the affected jurisdiction. The adoption and implementation of a capital improvements program assists localities in the proper implementation of their development control measures. Further, an adopted capital improvements plan is required before a locality can accept cash proffers.

**Respectfully submitted,**

*/s/*  
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**John G. Kines, Jr., Chairman**

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**Harold H. Bannister, Jr., Vice Chairman**

*/s/*  
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**James J. Heston**

*/s/*  
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**Kathleen K. Seefeldt**

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**Geline B. Williams**

**VOLUNTARY SETTLEMENT AGREEMENT BETWEEN THE TOWN OF  
STEPHENS CITY AND FREDERICK COUNTY**

THIS AGREEMENT is made and entered into this the 24th day of March, 2004, and executed in triplicate originals (each executed copy constituting an original) by and between the TOWN OF STEPHENS CITY, VIRGINIA, a municipal corporation of the Commonwealth of Virginia, and the COUNTY OF FREDERICK, VIRGINIA, a political subdivision of the Commonwealth of Virginia.

WHEREAS, the Town and the County have reached this Agreement, pursuant to Title 15.2, Chapter 34, of the Code of Virginia, (i) providing for the annexation of certain territory of the County to the Town (ii) providing for the development of the annexation areas in accordance with a jointly approved land use plan, (iii) providing for the grant of immunity to the County from annexation for a period of 15 years, and (iv) providing for the transfer of certain cash proffers received by the Town to the County.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Town and the County agree as follows:

**SECTION 1  
DEFINITIONS**

The Town and the County hereto agree that the following words, terms, and abbreviations as used in this Agreement shall have the following defined meanings, unless the context clearly provides otherwise:

- 1.1. "Town" means the Town of Stephens City, Virginia.
- 1.2. "Town Council" means the Town Council of the Town of Stephens City, Virginia.

- 1.3 “County” means the County of Frederick, Virginia.
- 1.4 “County Board of Supervisors” means the Board of Supervisors of the County of Frederick, Virginia.
- 1.5 “Code” means the Code of Virginia (1950), as amended. A reference to a specific Code provision shall mean that Code provision as it existed on the date of execution of this Agreement, or any successor provision should the Code be amended after execution of this agreement.
- 1.6 “Commission” means the Commission on Local Government.
- 1.7 “Special Court” means the Special Three-Judge Court appointed by the Supreme Court of Virginia pursuant to Title 15.2, Chapter 30, of the Code.
- 1.8 “Section” refers to the parts of this Agreement unless the context indicates that the reference is to sections of the Code.
- 1.9 “Subsection” refers to the parts of this Agreement set out in the various “Sections.”
- 1.10 “Future Land Use Plan” refers to the written text outlining the future land use for the Phase I and Phase II Annexation Areas agreed to by the Town Council and the County Board of Supervisors on July 9, 2003, and any or all amendments thereto mutually agreed upon by the Town and the County.
- 1.11 “Future Land Use Map” refers to the map dated July 9, 2003, agreed to by the Town and the County showing the future land use in the Phase I and Phase II Annexation Areas by colored bubbles.

**SECTION 2**  
**VOLUNTARY ANNEXATION**

2.1 Phase I Annexation Area. The Town and the County agree to the annexation by the Town of certain territory consisting of three (3) separate areas, collectively referred to as “Phase I Annexation.” Each area is described by metes and bounds on attached Exhibit A and is depicted on the map attached as Exhibit B.

The Phase I Annexation Areas are generally described as follows:

- (a) Area A (“Northern Area”): the area generally lying to the north of the existing Town boundaries and to the west of Interstate 81, including approximately 255 acres of land, more particularly described in Exhibit A.
- (b) Area B (“Southern Area”): the area generally lying southwest of the existing Town boundaries containing approximately 100 acres of land, more particularly described in Exhibit A.
- (c) Area C (“Interstate Area”): the small strip of land lying between the existing boundaries of the Town and the western right-of-way of Interstate 81, containing approximately 5 acres, more particularly described in Exhibit A.

2.2 Survey of Phase I Annexation Areas. The Town shall have prepared, at its expense, a survey showing each of the Phase I Annexation Areas. The survey plat of the Phase I Annexation Areas and a metes and bounds description of each of the Phase I Annexation Areas shall be submitted to and filed with the Commission and the Special Court appointed to affirm, validate and give full force and effect to this Agreement.

- 2.3 Effective Date of Phase I Annexation. The Phase I Annexation provided for in Subsection 2.1 of this Agreement shall become effective on the first day of the second calendar month after entry of the Order by the Special Three-Judge Court appointed pursuant to Va. Code § 15.2-3400 to affirm, validate and give full force and effect to this Agreement.
- 2.4 Extension of Municipal Services. The Town agrees that, upon the effective date of the Phase I Annexation, the Town will extend its municipal services to the Phase I Annexation Areas on the same basis and at the same level as such services are now or hereafter provided to the areas within its current corporate limits where like conditions exist. The Town and the County agree that the Special Court will have exclusive jurisdiction to hear any dispute between the Town and the County with respect to the Town's compliance with the provisions of this Subsection and agree that the County has standing to pursue a declaratory judgment action with the Special Court to enforce the provisions of this Subsection.

**SECTION 3**  
**LAND USE AND ZONING IN PHASE I ANNEXATION AREAS**

- 3.1 Future Land Use. The Town and the County agree that the orderly development of the Phase I Annexation Areas is in the best interest of both the Town and the County. The Town and the County have agreed upon the Future Land Use Plan attached hereto as Exhibit C, and the Future Land Use Map (hereinafter "the Map"), attached hereto as Exhibit D. The Future Land Use Plan and Map depict the types of land uses for the Phase I Annexation that the Town and the County have agreed are most appropriate for the reasonably near future. The Future Land

Use Plan and Map are to serve as a guide to future development as specified in Section 3 of this Agreement. The Town and the County agree that immediately upon validation of this Agreement by the Special Court to amend their respective Comprehensive Plans to incorporate the Future Land Use Plan and Map into their respective Comprehensive Plans, if they have not already done so. Nothing herein shall be construed to prohibit the Town and County, upon mutual agreement, from repealing, modifying, or amending the Future Land Use Plan and Map provided for herein.

3.2 Interim Zoning Classifications. The Town Council agrees to amend its zoning ordinance to provide that, upon the effective date of the Phase I Annexation, each tax parcel or parcel of land in the Phase I Annexation Areas shall be temporarily classified as part of the Town’s zoning district that is most comparable to the County” zoning district in which each such tax parcel was located immediately prior to the Phase I Annexation. The Town and the County agree that based upon the existing County and Town zoning districts, the most comparable districts are as follows:

<u>County Zoning District</u>	<u>Town Zoning District</u>
RA Rural Areas	Residential R-1
RP Residential Performance	Residential R-3
R4 Residential Planned Community	Residential R-3
R5 Residential Recreational Community	Residential R-2
B1 Neighborhood Business	Business B-1
B2 Business General	Community Business B-2
B3 Industrial Transition	Industrial I-1
M1 Light Industrial	Industrial I-1
M2 Industrial General	Industrial I-2
EM Extractive Manufacturing	Industrial I-2

3.3 Affirmation or Rezoning of Interim Zoning Classifications.

- (a) Within six (6) months after the effective date of the Phase I Annexation, the Town Council shall either (i) affirm the zoning districts established pursuant to Subsection 3.2, for the Phase I Annexation Areas, or (ii) reclassify one or more tax parcels in the Phase I Annexation Areas to different Town zoning districts that substantially conform to the Future Land Use Plan.
- (b) After completing the herein referenced reclassification process, the Town Council shall then have the full discretion and power to approve or disapprove any rezoning requests, whether initiated by property owners or the Town itself. The Town specifically agrees that it will only approve rezoning requests that substantially conform to the Future Land Use Plan until the terms and conditions in Subsection 3.4 or this Agreement are complied with.
- (c) The Town and the County agree that existing Town zoning districts that would substantially conform to the land use as shown on the Future Land Use Plan are as follows:

<u>Future Land Use Plan</u>	<u>Town Zoning District</u>
Light Industrial/Manufacturing	Industrial I-1
Conservation/Open Space	Residential R-1
Residential	Residential R-1, R-2, or R-3
Commercial/Office	Business B-1 or Community Business B-2
Mixed Use	Business B-2 and/or Residential R-3

3.4 Future Land Use Constraints.

- (a) The Town and the County agree that the obligations imposed on the Town Council with respect to zoning and rezoning matters as reflected in Subsections 3.1, 3.2, and 3.3 shall remain in effect and the Town Council will specifically

comply with such Subsections until such time as 60% of the total acreage in the Phase I Annexation Areas have developed.

- (b) After the development of 60% of the total acreage in the Phase I Annexation Areas, the Town Council shall have complete discretion to deal with all zoning and rezoning matters within the Phase I Annexation Areas upon the merits of each zoning application without reference to Subsections 3.1, 3.2 and 3.3.
- (c) In determining whether 60% of the undeveloped acreage in the Phase I Annexation has developed, the Town and the County agree that the calculation shall include an examination of each tax parcel in the Phase I Annexation Areas to determine if the tax parcel has developed since the effective date the Phase I Annexation
- (d) The Town and the County agree that the term “developed” as used in this Agreement for the purpose of making the 60% calculation shall mean:
  - (1) The Town and the County agree that if a residential dwelling of any kind is constructed upon any tax parcel in the Phase I Annexation Areas which contains (5) acres or less, then that entire tax parcel shall be deemed developed.
  - (2) The Town and the County agree that if a residential dwelling of any kind is constructed upon any tax parcel in the Phase I Annexation Areas which contains more than five (5) acres, then only five (5) acres of that tax parcel shall be deemed developed.

- (3) The Town and the County agree that any tax parcel in the Phase I Annexation Areas that is exclusively in commercial or industrial use shall be deemed developed in making the 60% calculation.
- (4) The Town and the County agree that any tax parcel being used for commercial or industrial activities on which agricultural operations or uses are also occurring, including the planting and harvesting of crops or plant growth of any kind, pasture, horticulture, silviculture, dairying, floriculture, or the raising of poultry and/or livestock, then the portion (or acreage) of such tax parcel being put to such agricultural uses shall be deemed undeveloped in making the 60% calculation.
- (e) The Town and the County agree that any tax parcel or part of any tax parcel used for public roads and highways or public facilities, or which lies in the 100-year flood plain shall be excluded from the total acreage in the Phase I Annexation Areas for the purpose of making the 60% calculation.

**SECTION 4**  
**PHASE II ANNEXATION**

4.1 Phase II Annexation Area. The Town and the County agree to the Phased Annexation of County territory lying generally to the south of the existing Town corporate limits and to the West of Interstate 81. This area is referred to as the Phase II Annexation Area and is described by metes and bounds in Exhibit A and is depicted on the map attached as Exhibit B to this Agreement containing approximately 350 acres. The Phased Annexation by the Town shall occur in strict accordance with the terms and conditions set out in Section 4 of this Agreement.

- 4.2 Survey of Parcels in Phase II Annexation Area. Prior to the annexation of any parcel in the Phase II Annexation Area, the Town shall have prepared, without expense to the County, a survey plat and metes and bounds description showing the parcel or parcels being annexed into the Town, as required by Subsection 4.5(b).
- 4.3 Terms and Conditions of Annexation. The Town and the County agree that the Town may annex any tax parcel or parcels in the Phase II Annexation Area by the passage of an ordinance by a majority vote of the members elected to Town Council provided one or more of the following terms and conditions are met:
- (a) The tax parcel is deemed developed subsequent to the effective date of this Agreement, as the term “developed” is defined in Subsection 3.4, or
  - (b) The County has issued a building permit for any such tax parcel or parcel subsequent to the effective date of this Agreement; or
  - (c) An owner in the Phase II Annexation Area requests the annexation of a tax parcel or parcels in the Phase II Annexation Area to the Town subsequent to the effective date of this Agreement; and
  - (d) The tax parcel or parcels referred to in Subsections 4.3 (a), (b), and (c) of this Section that are to be annexed are either contiguous to the Town or contiguous to another tax parcel that is contiguous to the Town;
  - (e) In the event annexation is sought for a tax parcel or parcels that are not contiguous to the Town but are contiguous to another tax parcel or parcels that are contiguous to the Town, the tax parcel or parcels that are contiguous to the Town, the tax parcel or parcels that are not

contiguous to the Town must meet the requirements of Subsection 4.3 (a), (b), or (c) of this Section. The contiguous parcel shall also be annexed to the Town to insure that the Town remains a compact body of land.

- 4.4 Complete Annexation of Phase II Annexation Area. When 60% of the acres in the Phase II Annexation Area have developed as that term is defined in Subsection 3.4 of this Agreement, the Town may annex the remaining tax parcels within the Phase II Annexation Area.
- 4.5. Conditions Precedent to the Town Annexing by Ordinance Pursuant to Subsections 4.1, 4.2, 4.3, and 4.4 of this Agreement. The Town shall not pass any ordinance to annex any territory in the Phase II Annexation Area unless and until:
- (a) The Town provided the County written notice of its intent to adopt an annexation ordinance for any tax parcel or parcels in the Phase II Annexation Area. Such notices shall be delivered at least 60 days prior to the adoption of an annexation ordinance.
  - (b) The Town provides with the Annexation Notice to the County, (i) a metes and bounds description, (ii) survey plat of the tax parcel or parcels to be annexed to the Town, and (iii) a written statement of the Town's basis for annexing such tax parcel or parcels. Such written statement should include reference to specific Subsections of this Agreement that permit such annexation;
  - (c) The County gives notice to the Town within such 60-day notice period that it does not object to the annexation. The Town and the County

specifically agree that in the event the County objects to the annexation, the County will give written notice to the Town (i) detailing its reasons for objecting to the proposed annexation and (ii) stating why the County feels the proposed annexation is not in compliance with this Agreement. The Town agrees that it will not pass any ordinance of annexation until such dispute between the Town and the County has been resolved.

- (d) The Town and the County further agree that should the County give notice of its objection to the annexation, that both the Town and the County shall have the standing to immediately initiate a declaratory judgment action with the Special Court appointed to affirm, validate and give full force and effect to this Agreement to determine if the noticed proposed annexation is in accordance with this Agreement.

4.6 Effective Date of Annexation by Ordinance. The effective date of any annexation that occurs pursuant to Section 4 of this Agreement shall be fixed or established in the Annexation Ordinance and shall be no sooner than 30 days after the date of adoption of any Annexation Ordinance.

4.7 Extension of Municipal Services. The Town agrees that, upon the effective date of any Phase II Annexation, the Town will extend its municipal services to the particular Phase II Annexation tax parcel or parcels that are annexed to the Town on the same basis and at the same levels as such services are now or hereafter provided to the areas within its current corporate limits where like conditions exist. The Town and County agree that the Special Court will have exclusive

jurisdiction to hear any dispute between the Town and the County with respect to the Town's compliance with the provisions of this Subsection and agree that the County has standing to pursue a declaratory judgment action with the Special Court to enforce the provisions of this Subsection.

**SECTION 5**  
**LAND USE AND ZONING IN PHASE II ANNEXATION AREA**

- 5.1 Future Land Use. The Town and the County agree that the orderly development of the Phase II Annexation Area is in the best interest of both parties. The Town and the County have agreed upon the Future Land Use Plan attached hereto as Exhibit C, and the Future Land Use Map (hereinafter "the Map"), attached hereto as Exhibit D. The Future Land Use Plan and Map depict the types of land uses for the Phase II Annexation Area that the Town and the County have agreed are most appropriate for the reasonably near future. The Future Land Use Plan and Map are to serve as a guide to future development as specified in Section 3 of this Agreement. The Town and the County agree that immediately upon affirmation and validation of this Agreement by the Special Court to amend their respective Comprehensive Plans to incorporate the Future Land Use Plan and Map into their respective Comprehensive Plans if they have not already done so.
- 5.2 Interim Zoning Classifications The Town Council agrees to amend its zoning ordinance to provide that, upon the effective date of the annexation of any tax parcel or parcels in the Phase II Annexation Area, each tax parcel or parcels annexed to the Town shall be temporarily classified as part of the Town's zoning district that is most comparable to the County's zoning district in which each such

parcel was located immediately prior to a Phase II Annexation. The Town and the County agree that based upon the existing County and Town zoning districts, the most comparable district are as follows:

<u>County Zoning District</u>	<u>Town Zoning District</u>
RA Rural Areas	Residential R-1
RP Residential Performance	Residential R-3
R4 Residential Planned Community	Residential R-3
R5 Residential Recreational Community	Residential R-2
B1 Neighborhood Business	Business B-1
B2 Business General	Community Business B-2
B3 Industrial Transition	Industrial I-1
M1 Light Industrial	Industrial I-1
M2 Industrial General	Industrial I-2
EM Extractive Manufacturing	Industrial I-2

5.3 Affirming or Rezoning of Interim Zoning Classifications.

- (a) Within six (6) months after the effective date of a Phase II Annexation, the Town Council shall either (i) affirm the zoning districts established pursuant to Subsection 5.2, for a Phase II Annexation; or (ii) shall reclassify one or more tax parcels of land in the Phase II Annexation Area to different Town zoning districts that substantially conform to the Future Land Use Plan.
- (b) After completing the herein referenced reclassification process, the Town Council shall then have the full discretion and power to approve or disapprove any rezoning requests, whether initiated by the property owners or the Town itself. The Town specifically agrees that it will only approve rezoning requests that substantially conform to the Future Land Use Plan until the terms and conditions of Subsection 5.4 of this

Agreement are complied with.

- (c) The Town and the County agree that existing Town zoning districts that would substantially conform to the land use as shown on the Future Land Use Plan are as follows:

<u>Future Land Use Plan</u>	<u>Town Zoning District</u>
Light Industrial/Manufacturing	Industrial I-1
Conservation/Open Space	Residential R-1
Residential	Residential R-1, R-2, or R-3
Commercial/Office	Business B-1 or Community Business B-2
Mixed Use	Business B-2 and/or Residential R-3

5.4 Future Land Use Constraints.

- (a) The Town and the County agree that the obligations imposed on the Town Council with respect to zoning and rezoning matters as reflected in Subsections 5.1, 5.2, and 5.3 shall remain in effect and the Town Council will specifically comply with such Subsections until such time as 60% of the original undeveloped acreage in the Phase II Annexation Area has developed.
- (b) After the development of 60% of the undeveloped acreage in the Phase II Annexation Area, the Town Council shall have complete discretion to deal with all zoning and rezoning matters within the Phase II Annexation Area upon the merits of each zoning application without reference to Subsections 5.1, 5.2, and 5.3.
- (c) In determining whether 60% of the acreage in the Phase II Annexation Area is developed, the Town and the County agree that Subsections 3.4

(a), (b), (c), (d), and (e) shall be followed and applicable to the 60% calculation in the Phase II Annexation Area.

**SECTION 6**  
**WAIVER OF ANNEXATION RIGHTS, IMMUNITY AND DEANNEXATION**

- 6.1 Waiver of Annexation Rights. The Town and the County agree that for a period of 15 years following the effective date of the Phase I Annexation, the Town waives all its statutory rights to annex County territory and will not initiate, institute or support any proceeding to annex territory of the County except (i) as specifically provided in Subsection 4 of this Agreement or (ii) any annexation that may be the result of a mutual agreement between the Town and the County. It is the intent of the Town and the County that the County be immune from any annexation to the Town for such 15-year period.
- 6.2 Citizen Annexation. In the event annexation proceedings are instituted by property owners or qualified voters pursuant to § 15.2-3203 of the Code or any statute similar thereto, the Town agrees that it will not support such proceedings and, if requested by the County, will oppose at no cost to the Town all such proceedings during the 15-year immunity period. The Town specifically agrees not to provide any legal assistance, engineering assistance, financial aid, or any other aid or assistance to property owners or qualified voters petitioning for annexation pursuant to Va. Code § 15.2-3203 of the Code.
- 6.3 Deannexation.
- (a) The Town and the County agree that it is desirable to contract the Town corporate limits by deannexing a small territory (Deannexation Area) in

the northwest part of the Town and south of Route 648.

- (b) The Deannexation Area is described by metes and bounds description on attached Exhibit A and is depicted on the map attached as Exhibit B.
- (c) The Town and County agree that the deannexation will take effect on the same date as the effective date of the Phase I Annexation.

## **SECTION 7**

### **CASH PROFFERS**

- 7.1 Proffers. The Town and the County have both adopted conditional zoning which permits landowners to offer cash proffers in connection with a rezoning application.
- 7.2 Payment of Cash Proffers. The Town and the County agree that the Town, as part of its review of any rezoning application in the Phase I or Phase II Annexation Areas, shall refer such application to the Frederick County Planning Department for its review prior to action by the Town. The County Planning Department will compute the capital facilities impact on the County of the zoning request as it relates to capital facilities for schools, parks and recreation, and fire and rescue. This will allow the applicant for rezoning in the Phase I or Phase II Annexation Areas to determine and submit proffers with its zoning application to the Town to address such capital facilities impact. The Town and the County agree that the Town will, upon receipt of cash proffers, relating to a rezoning in the Phase I or Phase II Annexation Areas, immediately pay and transfer to the County; (a) 100% of all proffers specifically designated by the rezoning applicant for school, fire, and rescue facilities or purposes, and (b) 40% of all proffers designated for any

other capital facilities or purposes. However, nothing herein shall be construed to require the Town to pay or transfer to the County any cash proffers, or any portion thereof, designated by the rezoning applicant for any specific capital facility or project which will be the sole obligation of the Town to construct or develop. Likewise, the Town will pay the County the entire amount of any cash proffers designated for any specific capital facility or project which will be the sole obligation of the County to construct or develop.

**SECTION 8.**  
**COMMISSION AND SPECIAL COURT APPROVAL**

- 8.1 Commission Approval. The Town and the County agree to promptly initiate the steps necessary and required by Title 15.2, Chapter 34 of the Code to obtain review of this Agreement by the Commission.
- 8.2 Special Court Approval. Following the issuance of the report of findings and recommendations by the Commission, the Town and the County agree that they will take all steps necessary and will submit this Agreement in its present form to a Special Court for affirmation and validation and to give it full force and effect, as required by Title 15.2, Chapter 34 of the Code.
- 8.3 Termination for Failure to Affirm and Validate and Give Full Force and Effect to This Agreement. The Town and the County agree that if this Agreement is not affirmed, validated and given full force and effect by the Special Court without modification, this Agreement shall immediately terminate. However, the parties may waive termination by mutually agreeing to recommend modifications by the Special Court.

**SECTION 9.**  
**MISCELLANEOUS PROVISIONS**

- 9.1 Binding Effect. This Agreement shall be binding upon and inure to the benefit to the Town and the County, and each of the future governing bodies of the Town and the County, and upon any successor to either the Town or the County.
- 9.2 Amendments. This Agreement may be amended, modified, or supplemented in whole or in part, by mutual agreement of the Town and the County, prior to affirmation, by a written document of equal formality and dignity, duly executed by the authorized representatives of the Town and the County.
- 9.3 Enforceability. This Agreement shall be enforceable only by the Special Court affirming, validating, and giving full force and effect to this Agreement or by a successor Special Court appointed to pursuant to Title 15.2, Chapter 30 of the Code, pursuant to a declaratory judgment action initiated by either of the parties hereto to secure the performance of any provisions, covenants, conditions and terms contained in this Agreement or the Order affirming, validating, and giving full force and effect to this Agreement.
- 9.4 Standing. The Town and the County agree that each shall and does have standing to enforce any of the provisions, covenants, conditions and terms of this Agreement.

WITNESS the following signatures and seals:

TOWN OF STEPHENS CITY, VIRGINIA

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

COUNTY OF FREDERICK, VIRGINIA

By \_\_\_\_\_  
Chairman of the Board of Supervisors

ATTEST:

\_\_\_\_\_  
Board Clerk

**STATISTICAL PROFILE OF THE TOWN OF STEPHENS CITY, COUNTY OF FREDERICK  
AND THE AREAS COVERED UNDER THE VOLUNTARY SETTLEMENT AGREEMENT**

	<u>Areas Proposed for Annexation</u>				
	<u>Town of Stephens City</u>	<u>County of Frederick</u>	<u>Phase I Area</u>	<u>Phase II Area</u>	<u>Deannexation Area</u>
Population <sup>1/</sup>	1,146	59,209	164	11	0
Land Area (Sq. Mi.)	1.46	427.0	0.56	0.55	0.03
Assessed Property Values <sup>2/</sup>					
Real Estate	\$ 46,680,175	\$ 3,806,927,513	\$ 8,563,300	\$ 2,113,700	\$ 53,200
Mobile Homes	N/A	\$ 30,878,859	N/A	N/A	\$ -
Personal Property	\$ 5,902,833	\$ 720,516,577	\$ 1,175,000	\$ 125,000	\$ -
Machinery and Tools	\$ 688,964	\$ 234,640,199	N/A	N/A	\$ -
Public Service Corporation	\$ 6,657,803	\$ 185,074,620	N/A	N/A	\$ -
Land Use (Acres)					
Residential	132.1	N/A	34.5	16.0	0.0
Commercial	20.1	N/A	54.0	16.0	0.0
Industrial	13.2	N/A	<sup>3/</sup>	N/A	0.0
Public, Semi-Public, Transportation	240.1	N/A	50.0	N/A	0.0
Vacant, Wooded, Agricultural	527.5	N/A	221.5	318.0	17.7

## NOTES:

<sup>1/</sup> Population data for Town and County are 2000 decennial U. S. Census; for annexation areas data are 2001 estimates

<sup>2/</sup> Assessed values for Town are for 2004; such values for County are FY 2003; and values for the annexation areas and deannexation area are for 2001.

<sup>3/</sup> Included in Commercial land use.

N/A = Not Available.

Statistics for Frederick County include data for the Towns of Stephens City and Middletown.

## MAIN SOURCES:

Town of Stephens City, Notice by the Town of Stephens City of a Voluntary Settlement Agreement of Annexation Issue.

County of Frederick, Petition for Affirmation of a Voluntary Settlement Agreement Dated March 24, 2004, Settling Annexation Issues Between the Town of Stephens City and the County of Frederick, Virginia, and Providing for Certain Other Intergovernmental Relationships

**Map of the Town of Stephens City, County of Frederick, and the  
Areas Subject to Annexation and Deannexation**