

# To Incorporate or Not, a Recurring Question

By James Clark

Every now and then, there is talk about incorporating Crozet as a Virginia Town. Crozet is a neighborhood community in Albemarle County, a place name on maps, and a designation by the U.S. Census Bureau as a population-concentrated area for statistical purposes. Why the current interest by some people in suggesting Crozet be made a new political subdivision known as the Town of Crozet?

Our understanding is that the growth in population density and the associated impacts such as traffic increases appear to be the main impetus for proposing more independence for Crozet. County agencies and its governing body are now responsible for all planning and zoning within Crozet and Old Trail. Town status would give residents more authority over development affairs.

If town establishment were to occur and its boundaries included Old Trail, all included residents would feel the effect of the new layer of government. This would include an additional election of town council members and a possible added personal property tax for vehicle owners.

State rules govern the creation of a new government subdivision, so we asked the Virginia Department of Housing and Community Development to tell us what has to happen to establish a new town in Virginia. We also consulted the feasibility report on town incorporation done for Massanutten, a Virginia resort community likely to eventually incorporate.

## **Who initiates the process to form a town and is there an official procedure that must be followed?**

The process can be initiated in either of two ways. In the judicial process, a petition is filed with the county circuit court by at least 100 qualified voters residing in the area to be incorporated. The circuit court with which the petition is filed notifies the Virginia Supreme Court, which appoints a special court to hear the case for incorporation. The special court may request the Virginia Commission on Local Government to conduct a review of the proposed incorporation. The specific requirements of the judicial process are spelled out in the Code of Virginia law (chapter 36 of title 15.2).

Alternatively, petitioners can request the Virginia General Assembly to enact town incorporation on its own through a special act, requiring enough members to be persuaded for two-thirds majority votes in each house of the legislature for the incorporation to succeed.

## **What roles do the state or county play in the process to establish a new town?**

In the judicial process, a copy of the petition must be provided to the county attorney and each member of the Board of Supervisors. The county can be party to the incorporation case, but does not have veto authority. The special court may order incorporation of the town when it has been assured that all standards

in the law have been met. After incorporation has been ordered by the special court, the charter is requested for adoption by the new town council. The Virginia General Assembly is responsible for the adoption of the municipal charter. On the other hand, if the General Assembly passes legislation proposed by its members to enact a town, the legislation would be the town charter. The charter is the document that defines the organization, powers, functions, and essential procedures of the town government.

**How are the boundaries for a proposed town determined?**

There are two related standards that help determine the town boundary: First, the number of inhabitants of the proposed town must exceed 1,000. Second, the statute states that the area of land designated to be embraced within the town must be judged as “not excessive.”

**How many members must serve on the governing body and when do they take office?**

The first election of town council members must be held within 90 days of town incorporation and must include five members. Registered voters within the town boundaries, as determined by the county electoral board, are eligible to vote. The original council members serve until their successors are elected and take office pursuant to the town charter.

**Besides a governing body, what other agencies must be established for the new town to function and how and when are they established?**

Generally, additional agencies are established based upon the direction of the town governing body and as called for in the town charter. Other towns have established their own police departments or made arrangements with the county for law enforcement. Towns are required, however, to establish a local planning commission which typically consists of private citizens appointed by the town council. County public schools continue to provide education for town residents.

**Does an incorporated town have control over zoning and land use matters?**

Whereas counties are responsible for county-wide planning and zoning, towns are responsible for planning and zoning within town boundaries including the development and amendments of a town comprehensive plan. Towns ensure compliance with its zoning laws by appointing a Zoning Administrator and a Board of Zoning Appeals to hear appeals of the administrator’s decisions and zoning actions.

**Are taxes imposed by the new town in addition to or in place of other local taxes?**

The town would likely be required to assess a local real property tax to cover expenses. The town real property tax would be in addition to the county real property tax. The Lodge ownership would be subject to any new town real property taxes. A town vehicle tax would be in addition to a county vehicle tax.

The adoption of other tax powers that have been granted to towns appear to be at the discretion of the town governing body.

**How long does the process to establish a town typically last?**

Department of Housing and Community Development: We do not have an answer to this question because the process is rare and has not occurred since 1990 when the town of Clinchco was formed by Special Act of the General Assembly. Massanutten report: Town incorporation via judicial proceedings can be fairly time consuming and fairly expensive due to the necessity of legal representation, analysis, and court action. Town incorporation directly via Virginia General Assembly enactment can be relatively quick and inexpensive, but more politically based.

**Do private citizens get the opportunity to endorse or object to proposed town incorporation?**

If the matter is referred to the Commission on Local Government for review by either the Special Court or the General Assembly, the Commission would conduct a public hearing on whether or not the town's establishment meets the criteria of town incorporation. All interested parties may present evidence before the commission at the hearing. It is likely that the ruling bodies would want to hear from as many affected parties as possible, making a public hearing all but certain.

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