

DAVID D. LENTZ
Attorney at Law
11706 S. Briarpatch Drive
Midlothian, VA 23113
(804) 938-6744
daviddlentz@hotmail.com

June 20, 2006

Mike Pintz, President
Virginia Real Estate & Development

Annexation Question
Re: Drumwright

A thumbnail on "annexation"

There are two possible approaches. (I am assuming that Wakefield is a "town". If it is a "city" there may be other restrictions.)

1. The town of Wakefield adopts an ordinance expressing its desire to annex a territory. A majority of ALL town council members must vote in favor.

Or

2. "Whenever 51 percent of the voters of any territory adjacent to any ..town or 51 percent of the owners of real estate in number and land area in a designated area.... petition the circuit court" for the county where the land is being taken an annexation suit can be commenced.

{Thus, Purcell may be able to petition for annexation}

HOWEVER...

Before EITHER of these methods (above) can be employed a Notice of intent to petition for annexation must be filed with the "Commission for Local Government" (the CLG). This is a state commission appointed by the Governor. It is pre-existing. It's probably part of the state Department of Housing and Community Development.

The CLG then has 6 months to make a recommendation. It is not clear if CLG's decision (if adverse) ends the matter, but I don't think it does. During this 6 month period the parties can "mediate".

The CLG then renders its decision and then there is another 180 day period after the above period during which the parties can also mediate. A petition for annexation cannot be filed in circuit court during this 180 day period.

For a project of this magnitude a possible vehicle is a Registered Limited Liability Partnership. Either general or limited partnerships can be formed using this device. (I will assume that if this type of entity is chosen it will be formed as a limited partnership so that you can maintain control as a general partner and limit the control that the limited partners have.) The advantage of the Registered Limited Liability Partnership (an RLLP) is that it offers each general partner "full shield" protection from liability for debts and obligations of the partnership. And what is more, it shields general partners from the negligence, malpractice, wrongful acts or misconduct of any other partner, employee or agent while acting in the course of partnership business.

RLLP's get pass through tax treatment just like regular partnerships. Moreover, and unlike an S Corporation shareholder, a partner's tax basis for reporting losses allocated from the RLLP to the partner is increased by nonrecourse loans made by 3d parties to the RLLP. (This assumes that the RLLP is a limited partnership) This increases the possibility for writeoffs if there are losses—which may be helpful, especially in the early years of the project.

I am not suggesting an RLLP at this point but it is clearly worth considering. One possible disadvantage of an RLLP is that while most states recognize them, not all states do. But I believe this to be a minor disadvantage because the RLLP would be formed in Virginia and Virginia law would control, even if interests were sold in other states.

The biggest disadvantage of RLLP's, limited partnerships, general partnerships, S Corporations, limited liability companies and really any entity that is not publicly traded either over the counter or on some type of exchange, is the lack of potential liquidity that the investor has. One reason for this is that often the sale of interests in these entities often requires some sort of consent of the other members. They can't easily resell their investment if they need the cash. This may have the effect of reducing the offering value (the amount of cash that can be raised for a given expected rate of return on investment) of these investments when they are first made available. From this perspective, regular C Corporations (with their double level of taxation) are the most liquid and investor friendly and it is usually C Corporations whose stock is publicly traded. {It should be noted that securities firms do some trading in limited partnership interests and the like, but my experience has been that these trades are still somewhat cumbersome and seller's usually sell at some discount. }

A limited liability company, also remains an option. It is not taxed and is a pass through entity. As such it is not double taxed like C Corporation shareholders effectively are. There are no limitations on the type of income that LLC's can earn. The members tax basis is increased by both recourse and nonrecourse loans made by lenders, thus increasing the amount of potential writeoffs that can flow through to members. LLC's are recognized in all 50 states. There is no restriction on the type of person who may own an investment in an LLC. As such, membership interests in LLC's can be owned by corporations, other partnerships etc. This increases the pool of potential investors.