

**MEETING MINUTES
OF THE
FREDERICK COUNTY BOARD OF SUPERVISORS RURAL AREAS SUBCOMMITTEE**

Held in the first floor conference room of the Frederick County Administration Building, 107 N. Kent Street, Winchester, Virginia, on August 21, 2008.

RA SUBCOMMITTEE MEMBERS PRESENT: Richard Shickle, Gary Lofton, Greg Unger, Cordell Watt and H. Paige Manuel.

RA SUBCOMMITTEE MEMBERS ABSENT: Gary Dove.

OTHER BOARD AND COMMISSION MEMBERS PRESENT: Chuck DeHaven, June Wilmot, George Kriz, Gary Oates and Larry Ambrogi.

CITIZENS PRESENT: John Marker, David Frank and John Light.

STAFF

PRESENT: Eric Lawrence, Planning Director, Candice Perkins, Senior Planner, and Amber Powers, Planner I.

CALL TO ORDER

The meeting was called to order by Mr. Shickle at 7:30 p.m.

Mr. Shickle started with the first item on the agenda, which is the revised powerpoint presentation. Mr. Lawrence stated that two weeks ago he presented a draft powerpoint and everyone provided comments which he tried to incorporate into the revised powerpoint. Mr. Lawrence handed out a copy of tonight's powerpoint, and he noted on it the pages that have been changed. Mr. Lawrence further stated that the key features that this group is tasked with are recognizing that there are impacts on demand for County services as a result of the rural area growth, impacts to the agricultural economy, and certainly impacts to the viewshed and the rural landscape.

The following comments are made by Mr. Lawrence concerning the revised powerpoint presentation.

In July, the Board of Supervisors created the Rural Areas Subcommittee and this Committee was charged with three things: identify the growth and development trends and related issues in the rural areas, gather ideas to address those issues and then forward recommendations. We want this powerpoint to read on its own so people can read it and understand what's going on. The directive was clarified to say the Board of Supervisors are seeking your comments, rather than provide your comments. Mr. Lawrence defined what the rural areas are in the context of Frederick County, and it's all the land outside of the Urban Development Area and Sewer and Water Service Area. He pointed out that it does not include Lake Holiday or Shawneeland, which are outside of the UDA and SWSA as they are planned for residential, so they're not considered part of the rural areas. A key statistic is that rural areas are

most of the County – 89%. We’ve consistently grown by 2.9% annually for 30 years. That figure increased from 2000 to 2006 to 3.17% annually, and as of January 2008, our estimated population was 72,000 people. About half of Frederick County’s population lives in the rural areas based on the 2000 census. 30% of new homes are built in the rural areas. A new statement to the powerpoint is the County utilizes their Urban Development Area and the Sewer and Water Service Area as key growth management tools; approximately 5,700 acres have been added to these boundaries since 1990. Mr. Lawrence clarified that 5,700 acres have been removed from the rural areas and are now positioned for more intensive uses, whether it be residential, commercial or industrial, and are now in the UDA and SWSA. The increase in growth rate results in a greater consumption at a faster pace of our quality rural landscape, character and economy. Mr. Lawrence pointed out what the current ordinance requirements are in terms of subdividing the rural areas of the County, and the two most common are major rural subdivisions, where you’re creating three lots or more, and the rural preservation, which is essentially clustering. So far this decade, Frederick County had a greater than 20% population increase, which puts us in growth percentage increases with Loudoun and Fairfax County.

A good one third of new lots created in the County for residential purposes have been historically in the RA, and then in 2006 new lots in the RA picked up significantly. The majority was the rural preservation subdivision, which is the two acre minimum with the 40% set-aside.

Mr. Lawrence continued with the powerpoint, stating that from 2004 through June 2008, we had 82 subdivision applications which were seeking to create ultimately 1,400 lots. If you do the five acre density calculation, that’s about 7,200 acres that are in a by-right transition from agricultural use to residential use. Mr. Kriz asked Mr. Lawrence about minor rural subdivisions and Mr. Lawrence responded that we did not include minor rural subdivisions. The minor rural subdivision process is creating less than three lots and these statistics are not capturing those numbers. Mr. Lawrence pointed out that only 900 of the 1,400 lots have been recorded.

There were comments about the fact that we should recognize our agricultural districts and what we found is that it’s a net loss. There have been additions and subtractions from the Ag District since 1980, but we’ve had a net loss of 6,500 acres. Mr. Lawrence was not able to analyze whether the 6,500 acres have gone into housing, but they’re certainly not in the Ag & Forestal District. It’s important that we continue to strive to support and promote the agricultural economy interests, whether it be through the Ag & Forestal District Program or some other program we can come up with.

Mr. Lawrence stated that the current ordinance is a density of one per five, the by-right lot size at five acres, and the two acres if you choose to do the cluster minimum lot size.

As for community services and facilities, the dispersed population in the rural areas challenges the cost provisions for County services.

Mr. Lawrence stated that the powerpoint presentation has expanded on transportation. Concerning the six year road plan, we expanded and talk about what the six year road plan is. We have 30 roads on the list which total 35 miles, and based on limited state funds available, it will take well over 20 years to pave those roads. It was suggested at the last meeting that we ought to talk about a rural rustic road program, so there’s a slide on that. Essentially, the rural

rustic road program within VDOT stretches the dollar. They don't acquire right-of-ways and they will hardsurface a road. But if they're going to upgrade the road, it's got to have limited vehicles per day. For the road to qualify for the rural rustic road program, the Board has to be committed through our policies and resolution that we're not going to encourage or allow development along those improved roads.

Mr. Lawrence concluded the powerpoint presentation and asked for comments. Mr. Shickle suggested we put an ad in the paper, telling people where they can access the presentation and provide comments. Mr. Lawrence stated that we can do that, as well as put an ad on channels 6 and 16. Mr. Lawrence stated that the minutes and agendas will be on the web page with a link to the powerpoint. Mr. Shickle stated we're ready to go to the web page, the powerpoint presentation and advertisements. Mr. Shickle asked what our strategy is for personal contacts, mail or telephone calls for those who don't have a computer and Mr. Lawrence responded we can put the telephone number on the ads and if they call, they can talk to staff members. We can also make a hard copy available in the Planning Department at the front counter.

Mr. Shickle stated that at some point we will also seek input through public forums once a general concept or "game plan" is in place. Mr. Manuel stated that we could also advertise in the Community Notebook.

Mr. Shickle suggested that the Committee discuss Item 3 – Review of Ideas Submitted – and then go back to Item 2.

Mr. Lawrence asked the Committee members to look at page 3 of their agenda under Public Comments; these are the comments received since the August 7th meeting. Mr. Lawrence read through the comments, but he said he has not done an analysis to figure out what we can and can't do (based on State enabling legislation).

Mr. Shickle stated that at some point we need to consolidate the list and make the effort to tell people what we want to do and then we go into a learning/listening mode. Learning things that we need to know more about and listening to things that people have to say.

Mr. Shickle moved on to Item 2 – Review of State-Enabled Tools. Mr. Lawrence stated he searched planning documents throughout the State to find this list. It's important to note that these aren't solely for rural areas, these are county wide. Mr. Lawrence read the following list and presented a brief comment about each one.

- Urban Growth Boundaries – This is akin to our Urban Development Area which we've been using for 20 years to capture the more intensive forms of development. The Sewer and Water Service Area is also an example of Urban Growth Boundary.
- Chapter 2232 Review – This is a State Code which requires that you follow your Comprehensive Policy Plan when making public infrastructure improvements. When schools are constructed and are spent, they've got to be consistent with the Comprehensive Policy Plan.
- Special Exception Permitting – This is akin to our Conditional Use Permit and helps manage what types of uses go into the different zoning districts.

- Cluster Development Zoning – This is a State Code requirement that by-right cluster development be allowed and that’s akin to our rural preservation subdivision.
- Large Lot Zoning – Different organizations define the large lot zoning exercise differently. Some define it as 20 acres or more, but then different localities define it as five and ten acres. We currently use the five acre lot size.
- Conservation Easements – We’re starting to see more of these in Frederick County. Essentially, it’s a legal agreement between a landowner and a trust; it’s a voluntary exercise where the landowner chooses to restrict future development. Mr. Lawrence found it interesting in his research concerning the leasing of development rights - it’s a short-term conservation easement which defers growth. This is similar to our rural preservation parcel; someone develops a farm with 40% set-aside and then the parcel sits there and if it’s in the UDA after ten years, then they can seek a rezoning.
- Historic Districts – In recent years, property owners created the Opequon Historic District.
- Density Incentives – If you want to discourage a large lot subdivision and you want to encourage rural preservation, you can have a density incentive; possibly our current rural preservation subdivision requirement.
- Establishment of an Agricultural and Forestal District – We’re losing land over the years, but we did create a new Ag & Forestal District along Red Bud Road.
- Purchase of Development Rights – The Conservation Easement Authority is actively working on this using some State funds to help purchase development rights on property.
- Transfer of Development Rights – Essentially, the County could set up a program, as a voluntary exercise, an ordinance to enable a large property owner to sell his development rights (“the sending area”) and the County would designate a receiving area. For example, if someone has a 100 acre farm, right now they have 20 unit rights. Someone could buy 19 units and if it is a one for one transfer, they have the right to build 19 houses in the UDA. It should be set up as a by-right opportunity so that you’re not looking at a legislative action to allow it to happen.
- Virginia Department of Health (VDH) health system regulations – The VDH are the ones who regulate the private on-site systems. Through Richmond, they decide which systems are appropriate, but not every community in the State will allow everything Richmond says is acceptable. Presently, Frederick County does not allow conditional use systems, but additional restrictions could be considered.
- Implementation of a Use Value Assessment and Taxation (Land Use) - The longer you own the property and you commit not to develop the property, the more tax break the locality could offer you.

During this presentation, Mr. Shickle expressed interest in learning more on health systems and tax land use as growth tools. Mr. Unger questioned whether the County could reduce the real estate taxes for agriculture so that people wouldn’t want to develop their land.

Mr. Manuel asked if there are counties in Virginia that have had success with

PDR's and Mr. Lawrence stated there are a number of counties that are very active, like Albemarle County. Mr. Shickle stated if there was a way to tell who is making extensive use of them, or is it private funding or tax payer dollars, that would give him encouragement to look harder or not quite so hard. Mr. Lawrence said there is a statewide PDR organization so staff will try to get statistics.

Mr. Unger stated that with the way we've structured commercial use now, building houses over top of commercial buildings, if we didn't allow residential building over top of that unless they were to purchase property rights from someone, that might encourage people to do that instead of putting just commercial in there.

In response to Mr. Unger, Mr. Lawrence commented that instead of going through the Overlay District rezoning, a program could be established where if you acquire the residential rights, it will allow you to apply them in a commercial area. (A type of TDR program.)

Mr. Lawrence stated that to make a TDR program attractive, it should be a by-right exercise, so that says you're not going to capture proffers nor address impacts. One could argue that right now we're not capturing proffers, we're getting a \$24,000-\$25,000 impact, and we're not getting transportation improvements in the rural areas. If you shift those housing units through a TDR into the urban area and you still don't capture transportation and capital facility impacts, the County still has the same dollar burden, but at least now the house is in the right location for provision of service. Maybe long term, it's a better location for that house. That's one of the challenges with TDR; you've got to do an economics to make sure it's practical so someone will want to buy the rights. You don't want to hinder it by putting additional costs on it. If you go the TDR route, you have to figure out what burden does the County want to absorb. Do we want to try to recover capital costs or do we want to get those development rights out of the rural areas because we want to protect the rural areas?

Mrs. Wilmot asked if transportation development costs go down. Mr. Lawrence replied on urban road sections, it's significantly more expensive than a rural road section.

Mr. DeHaven stated that as the density goes up in the urban area, there's cost effectiveness to construction.

Mr. Manuel stated he'd like to look at other jurisdictions other than just Loudoun, like Stafford or Prince William or Spotsylvania.

Mr. Lawrence said he wasn't able to find any examples of TDRs. Mr. Shickle stated his understanding is the legislation recognized that what they'd enabled was not being used and they were going to have to improve it.

Mr. Shickle further stated that he knows that a majority of the Board, if not all of the Board, wanted to and did enable PDR capabilities in Frederick County. We have not gotten to the point where we were so sure that tax dollars should go toward that; however, we did budget this past cycle some funds that could be used to match. It's an

evolving issue.

Mr. Lawrence stated we are enabled and using PDR today in Frederick County. We are enabled to do TDR but locally we haven't created an ordinance to turn it on. The consensus is we haven't been directed to use the TDR program.

Mr. Lawrence said we're using most of the state-enabled tools now in Frederick County. The TDR and Department of Health are two things that we could investigate. Staff will get the Committee additional research on the health systems as well as the land use tax.

Mr. Marker asked if there's any way to charge impact fees.

Mr. Shickle responded not right now. The legislature hints that some time in the future it will be given serious consideration, but they're not enabled now. We have to constrain ourselves to the things that are available to us; however, Mr. Shickle wouldn't be bothered if out of our talks, lobbying efforts to put additional pressures on the legislature, particularly for things we think would be significant, would be okay.

Mr. Shickle asked staff and Committee members to find out what the legislature is interested in.

Mr. Shickle stated that except for some update on tools that might come along, he thinks we're fairly close to seeing how fast Mr. Lawrence could complete an organization of the input that the Committee could talk about. The next meeting could be devoted to that purpose. And then go out into the County for listening sessions.

Mr. Unger stated when we have a meeting with the public and get some ideas, he would like to see how they feel about selling their development rights and the value of them. If staff could structure the public's development rights into the triangle for development in the County over a period of years, that would be a perfect exchange if we could make it happen.

Mr. Shickle stated one strategy the Committee could use is to collectively come up with some questions and topics to pose to the public and ask for input. We could pre-publish them. And then maybe later, go back out with a preliminary plan.

Mr. Unger feels that one of the main things on the landowner's mind is if he's got 100 acres, is he going to be able to sell ten lots or 20 lots.

Mr. Lawrence stated he believes the Committee needs to do a public presentation, go through our list of information, our charge and some of the things that we're enabled to do. It would be a presentation to talk about everything this group has done to date and looking for the public's input. It would be appropriate to come up with questions, and we can post the questions on the web page to start the thought process. Mr. Lawrence feels it's important to go out there with some direction.

Mr. Shickle thinks this will be two, maybe three, presentations to get coverage.

Mr. Unger supposed we were doing 200 houses a year in the rural areas, at \$24,000 a house, if we were willing to hold that much each year for the last 20 years, it looks to Mr. Unger like the County would be broke right now or the taxes would be so high we wouldn't be able to stand it. It sounds to Mr. Unger like that number is inflated, because if it wasn't inflated and that money hasn't been paid for the last 20 years, we should be broke by now.

Mr. Shickle thinks the fallacy in that thought is it gets covered up somewhat by periods of growth - commercial, industrial and residential. During a slowdown is when you're going to see it.

Mr. Lawrence commented that the County is building a new school every two years at \$18,000,000, at a \$9,000,000 capital impact annually.

Mr. Shickle stated that during this period, when it appears localities may be asked to shoulder at least a significant part of the State's shortfalls in revenue, it's going to be a hard choice between raising taxes or cutting services, or a combination thereof. If we have delayed infrastructure impacts for which our past development begins to kick in, that doubles with those first two things. It could be a rough period of time coming here.

Mr. Unger agrees with Mr. Shickle and he's not saying money is not needed to offset those houses; it just seems to him that's not the right number. He doesn't know how we've done without it if that's the right number.

Mr. Shickle stated the next meeting is September 4th.

The meeting adjourned at 9:00 pm.

