

**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 September 4, 2008.

RA SUBCOMMITTEE MEMBERS PRESENT: Richard Shickle, Gary Dove, Cordell Watt June Wilmot and H. Paige Manuel.

RA SUBCOMMITTEE MEMBERS ABSENT: Gary Lofton.

OTHER BOARD AND COMMISSION MEMBERS PRESENT: Greg Unger and Larry Ambrogi.

CITIZENS PRESENT: Bob Carpenter, Margaret Douglas and David Frank.

STAFF

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

CALL TO ORDER

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

Mr. Shickle asked for a motion to adopt the agenda. Mr. Dove made a motion, Mr. Manuel seconded the motion and the vote was unanimous to adopt the September 4, 2008 agenda.

Mr. Shickle started with a review of the comments and ideas received to date, which were organized by Mr. Lawrence. Mr. Lawrence stated that every comment heard since the beginning of July was put into categories based on some of the target topics such as agriculture, land use program, impacts and capital facilities. Mr. Lawrence noted that some of them repeat because he did not want to re-write someone's thought. If the thought touched on a couple different topics, it was repeated in each topic. This is not a summary; this is exactly what was received. We started advertising the web page last Saturday in the newspaper, so we are getting more comments. Mr. Lawrence eliminated the comments which were not legally empowered; we are not empowered to use impact fees at this point. In the list, Mr. Lawrence addresses these eliminated comments because the Committee wants to talk about things we can do, not what we can't do.

Mr. Shickle asked Committee members to read over the first category, label what they consider the five most important comments and he'll do a quick tally by category. The following is a discussion of that exercise:

❖ Promotion of Agricultural Economy

1. Maintain the spirit of the Frederick County Comprehensive Policy Plan by continuing to preserve large open parcels of land, tree cover, scenic views, sensitive environmental areas, and prime agriculture and locally significant soils.
2. Addressing Land Use tax breaks. Perhaps using a “scale” based on acreage FARMED would be a small part of the “incentive” to continue farming in this county. There IS a difference between “farming” and a plat of open land with a few cattle on it. A clear definition of “farming” vs “open space”, linked with an increased tax break (land use) based on acreage farmed (the more land you farm the higher the land use breaks) would help promote better relations (appreciation shown to those who continue to farm) between the county as a whole and the agricultural community.
3. If we give land owners a better tax increase, the County is still saving money and it might encourage land owners to keep on farming because they’re not paying a lot of taxes.
4. In planning for future, should recognize that family based farming opportunities are the future farms of the County.
5. *Promote family farms. Create policy to encourage farming of the preservation lots. Possibly enable family lots on the preservation parcel that must be held for at least 10 years. This would enable families to farm the preservation parcel, and construct homes for their children, so long as the lots remain in the family.
5. *Farmers need the flexibility of using land as a financial tool because most farmers invest their money in land. The proposed amendment (regarding an increase in lot size and decrease in density) will only cripple what farmers can do in the future with the land they have, if they have to make a major decision to sell.
5. *Support initiatives that will help maintain the rural character of Frederick County in the short run.

*There was a three-way tie for 5th place.

❖ Expansion of the use of the Land Use Program

Mr. Shickle stated that Mr. Lawrence has the letter he asked for from Rod Williams, County Attorney, about roll-back taxes. Mr. Shickle had asked Mr. Williams if there was a way, under the recreational use component of land use, to have more open space qualify for land use, rather than less, and if the County could have a longer roll-back period than five years. Mr. Shickle asked Mr. Lawrence to tell the Committee what the letter says.

Mr. Lawrence stated that the County is enabled to do a sliding scale tax program; we can set the tax amount based on the ownership of the land. Hypothetically, if someone entered a contract, a recorded agreement, which says I’m not going to develop my land for 15 years, then Frederick County can establish their tax rate or basically defer the tax. Also hypothetically, if we create an ordinance that says if you sign a contract with the County not to develop your land for 15 years, you’re only going to have to pay 1% annually of what your tax rate would have been and the 99% is deferred. If you violate the contract, you will have to pay all your roll-back taxes.

Mr. Shickle asked how that applies to what we do. Would the County have another land use that is based just on the contract not to develop?

Mr. Lawrence believes that we still have the same tax on the property, but you only have to pay 1% of that if you agree to the contract arrangement.

Mr. Unger asked if after 15 years, if you develop the land, do you have to roll back and pay those taxes? Mr. Lawrence stated no, you've signed a contract that basically the County would defer your taxes, and after 15 years you're free to do as you please.

Mr. Lawrence further stated he feels that if you violate the contract, it should be more than a roll-back penalty - it ought to be a significant penalty.

An example that Mr. Lawrence read states the County could establish a sliding scale based on a time frame. If your contract with the County is a five to ten year window, then you get a 50% deferment - if it's a 15 to 20 year window, then you get a 99% deferment.

Mr. Shickle stated that he can brief Ellen Murphy, Commissioner of Revenue, and she can come and talk to us about what she thinks the possibilities are.

Mr. Dove asked if anyone thinks any of this will have any bearing on lots being created.

Mr. Shickle stated it's his personal opinion that if you have open land and somebody is going to tax you as if it were lots, then they force you to turn it into lots. Mr. Dove agrees with that. Mr. Shickle said our tool not to do that right now is land use, but it's limited and he's trying to see if it can be expanded.

Mr. Watt stated that he thinks the key thing would be what the penalty is.

Mr. Unger stated that every time land gets developed, it costs the County money. But if it doesn't get developed and the land owner doesn't pay much tax, where does that money come from to offset what the County needs to operate. Mr. Shickle stated that residual properties pick up the load.

Mr. Unger asked Committee members what they thought about the tax impact on people selling or not selling their land. If you give them a big break, does that encourage them to keep it and farm instead of developing it?

Mr. Shickle stated that someone who doesn't make their living from farming and who doesn't get any income off of it will be forced to do something if you raise taxes too high.

Mr. Dove questioned if people who have owned their land for a long time could have a different rate than new people who buy it. Mr. Shickle responded he doesn't know if that can be one of the conditions of the sliding scale.

Mr. Lawrence stated it might make sense if there's interest in pursuing this land use concept further. Everyone can provide questions to Mr. Lawrence and he can provide them to

Mr. Williams and Mrs. Murphy and schedule them to talk to the Committee.

Mr. Shickle asked Committee members their opinion on if taxes paid on a piece of property effect whether it will be developed or not.

Mr. Unger responded yes, it probably does.

Mr. Watt feels the contract idea would be a good thing.

Mr. Manuel was thinking of an incentive where a percentage of the funds that are deferred are established into a reserve fund. When land is rezoned industrial, commercial or RP, anything that is in land use gets deposited to this reserve fund and those funds used to set up a PDR (Purchase Development Right).

Mr. Shickle said he's never heard it stated what the collection of roll-back taxes is annually and we should know that. So some money is there in a fund, we just don't know how much.

It was decided that Mr. Williams and Mrs. Murphy will be invited to the next meeting.

❖ By-Right Development. Should the County continue to enable rural area development (subdivision activity) as a by-right, non-legislative activity?

AND

❖ Development with a Rezoning action. Should subdivision activity require a legislative action – i.e. rezoning?

Mr. Shickle thinks the reason rezoning comes up repetitively is it's our only mechanism for proffers, which is a fiscal impact recovery.

Mr. Unger said if we would come up with a proffer that was fair to the County and let the farmer be willing to pay those proffers, he can develop the property. The County is getting what they need from it and the farmer is paying his dues.

Mr. Shickle stated the trouble with that is the County is not enabled to do that. Mr. Unger questioned why, because right now we have a by-right, we're trying to improve it for the County and you can't do it?

Mr. Shickle responded that the proffer system is voluntary. How would you come up with a value that you'd accept and that the farmer would be willing to pay; but you really can't ask him to pay it, but if he wants to make a contribution to the County he can.

Mr. Unger feels that the majority of the farmers in Frederick County realize they should pay their dues to pay for the development of their property.

Mr. Dove asked how many developers who would buy that farm from the farmer would do it?

Mr. Unger stated they don't have any choice if they buy it; they know they're going to do it.

Mr. Shickle stated you can't make them and Mr. Lawrence said it's not an obligation.

Mr. Unger said if we make it a regulation that you have to.....

Mr. Dove responded you can't make it a regulation.

Ms. Wilmot stated the reality is that it's not that cost, it's the ongoing services that need to be provided that's so costly. You get a one-time payment and the County is on the hook for the future.

Mr. Shickle said it goes back to the fact that proffers are an impact fee, but you can't call them an impact fee because we're not allowed to do impact fees, even for a rezoning.

Mr. Unger stated it supposedly costs about \$23,000 every a time a house is built in the County, and we haven't been getting a dime. Now we can pick up some money and that money has got to help. If somebody has to pay X amount of dollars to put a lot in the County, that money has got to be helping.

Mr. Shickle reiterated, in his opinion, the only reason the issue of rezoning stays on the table is it's the only tool we have to recover impact, i.e., proffers, and it has lots of bad sides to it.

Mr. Watt asked if this is something where we go to Richmond and try to get some things changed.

Mr. Lawrence stated that from a planning perspective, the State planning group which represents all counties, everyone supports impact fees. Everyone wants it who challenges the impact fees that were proposed this past year that were undermining what we currently get. The latest proposal, which was tabled until next year, said that we in Frederick County could capture impact fees of \$7,000 to \$8,000, but we could not do cash proffers any more, and we could only apply the impact fees outside of the UDA. So in our County, where we want our residential development – in the UDA – we would not be able to recover anything.

Mr. Shickle's understanding is that the building trade industry locally has been supportive of our proffer recoveries from rezonings as long as they don't become excessive, but that statewide, the biggest lobby against them in general and would like to see them done away with, is the building industry.

Mr. Shickle further stated that his interpretation of the study of zoning in general in this country is, that it was supposed to not be whether you can do it, it was supposed to be a how you do it, but it's turned into a can you do it. Mr. Lawrence stated that a Comprehensive Policy Plan is done and through rezoning, the County implements their Policy Plan.

Mr. Shickle thinks that the agricultural community in particular would be heavily in favor

of having a by-right; they may be flexible in saying what that by-right is, but Mr. Shickle believes they're going to be unanimous in support of a by-right.

Ms. Wilmot suspects the reason for that conclusion is really the money thing; they have the opportunity to subdivide a portion of their land.

Mr. Unger asked if the County could override a State Code and Mr. Shickle replied if the Code of Virginia doesn't specifically say that you can do it, you can't. If it's quiet, you can't; you can only do what it expressly says you can do – that's the Dillon Right.

❖ Recognition of Fiscal Impacts on the County. Should rural area development activity offset the resulting fiscal impacts on the County's capital and operational expenses/services?

Mr. Shickle stated we have continued to explore the transportation impact enablement. However, our understanding is there's recognition in Richmond that it wasn't too workable and promises that they'll improve it.

Mr. Lawrence stated the way the State Code is written, we are enabled to do transportation impact fees, but it's so cumbersome and complicated; you have to go through an economic analysis and justify everything, and you have to break the County into service areas so that the monies that a house might pay in the rural area is being contributed to improving that rural road. Unfortunately, if you have one house every five acres, it's going to take a lot of houses to get enough money to do any road improvements.

Mr. Shickle believes that any existing need, pre-development, couldn't be assessed as part of the impact.

❖ Lot Size. What are the targeted minimum and maximum lot sizes for the rural areas?

Mr. Dove stated that one comment really stood out to him: "Was in favor of raising lot sizes in rural areas to five acres (previously it was one to three acres); thought it would really slow down development in the rural areas. Time shows it didn't, but ate up more land, faster". Mr. Dove thinks that is a great statement. Whoever wrote this was involved, evidently, in the change that happened prior to this point and Mr. Dove thinks one of the challenges the County has is not eating up more land.

Mr. Shickle stated that currently he doesn't know of anybody that thinks that ten acre minimum lot sizes are a good idea.

Mr. Unger stated that whether it be five, ten or something in between, he would like to see clustering. You can do houses on small lots and maybe do a central drainfield or on each piece of property; a lot less land would be wasted. You don't have to call it a town, but make little communities in different parts of the County, if that's what is going to happen anyway. Mr. Unger is very much in favor of a 60% set-aside, if not more.

It seems to Mr. Shickle that to try to use the lot size to control the number of houses is a

bad strategy; it's a waste of real estate.

Mr. Shickle stated he thinks that our current regulations all but prohibit the expansion and further development of those rural communities that Mr. Unger is talking about. They don't have central facilities and he doesn't know if we even permit them to have any kind of central facilities. Mr. Lawrence said we don't permit central facilities in our zoning because all of the rural communities are already zoned.

Mr. Unger asked if he's saying you can't do a central drainfield to do 100 houses. Mr. Lawrence responded that right now, it's every house gets its own drainfield. We allow easements, so you could have everyone's drainfield in an easement area, but everyone has to have their own responsibility.

Mr. Lawrence said he's spoken with Scott Fincham, who's the Regional Health Supervisor, and he's offered to come and talk with us on September 25th, which is the best time for him.

Mr. Lawrence noted that the DRRS meeting is also on September 25th. The Planning Department will work it out so that the BOS RA Subcommittee will meet on September 25th.

Mr. Shickle asked the Committee members what they thought about the differential between lot size and density. Mr. Dove stated the five acre density we have works well; the lot size is too large and he thinks it could be smaller. It could be a maximum of a certain size and a minimum of whatever will work.

Mr. Shickle stated there won't be a Subcommittee meeting on September 18th, but we should have three guests at the September 25th meeting: Mr. Williams, Mrs. Murphy and Mr. Fincham.

The meeting adjourned at 9:20 pm.

