

**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 25, 2008.

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

**RA SUBCOMMITTEE MEMBERS ABSENT:**

**OTHER BOARD AND COMMISSION MEMBERS PRESENT:** Greg Unger and Chris Mohn.

**CITIZENS PRESENT:** Margaret Douglas and David Frank.

**STAFF**

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

**SPEAKERS:** Ellen Murphy, Frederick County Commissioner of Revenue, Neil Thorne, Land Use Coordinator, and Scott Fincham, Environmental Health Manager for Virginia Department of Health

**CALL TO ORDER**

The meeting started at 7:30 p.m.

Mr. Shickle asked Ms. Murphy to speak to the Committee about State enabled use, value assessments and taxation for land use.

Ms. Murphy gave each member a copy of a handout titled General Overview of Land Use Program – Agriculture, Horticulture, Forestry and Open Space.

Ms. Murphy stated there are four ways land can be tracked under the land use program at a value different than the fair market value: agriculture, which requires five acres (cows, cattle and almost any land product); horticulture, which requires five acres (various fruit trees, nut trees [which we don't have here] and vineyards); forestry, which requires 20 acres; open space, which requires five acres (golf courses, conservation easement property and public use space). Once you have gotten approved through the Commissioner's Office for that kind of use, you will have had a five year income history and if you're in forestry, you need a management plan. The use value is based on a commercial or profitable purpose for the land; so if someone has a couple head of cattle they're going to butcher solely for themselves, that would not qualify as there must be a profit motive for a barter and exchange system. An example would be if a farmer or a widow gets to the point where they can't manage the farm themselves, they'll do some kind of a trade-off or maintenance on the property with a farmer who can use that land for a buyable

product, and that is allowed.

Ms. Murphy continued that once you've put the land in that plan and you've gotten a benefit from it, the Commissioner's Office looks at it again once the use changes to a more intense use. That can be by the current owner, the one who has actually had the benefit, or it could be upon the sale by that owner to someone else. If the acreage is met only because the joining properties owned by the same person, called contiguous properties, are qualifying in number of acres, and if they sell off one of the parcels, neither parcel may qualify if it's under that acreage. For instance, if you're actively farming a seven acre piece that is a two acre parcel and a five acre parcel, contiguous, that seven acres can be in land use but if you sell the two acre parcel, it doesn't matter if the new owner is trying to do something with it farm-wise, it's not going to qualify unless in turn it is contiguous with other land of his. That's confusing to people because they'll sell land and the person buying it doesn't qualify, and that's often why - it doesn't meet the requirements under new ownership. After the use is discontinued for some reason, rollback comes into effect. What rollback does simply is give back to the County for the credit of the previous five years, if it was in use that long, the tax we would have gotten had it not been in land use, plus simple interest. An example would be if you've been farming for 20 years and you develop a piece of the farm, you're going to have rollback on the piece developed for the last five years, not the last 20 years.

Ms. Murphy referred to the handout, which gives the acreage which has been deferred in tax, to date, for the four land uses, and rollback taxes and parcels received, to date, from 1998 to 2008. Ms. Murphy noted that during the years of 2002 and 2003, there were large numbers because people were developing more.

Mr. Shickle stated that he had asked Mr. Williams, County Attorney, if we could have a longer rollback period and if we could find a way, under open space, to be able to put more land in land use. Mr. Williams responded with a letter which stated that five years of rollback is it and that the open space is probably not a good vehicle. However, he came up with something called a sliding scale which Loudoun County had endorsed and adopted. Mr. Shickle asked Ms. Murphy if she is familiar with this and Ms. Murphy responded that she is not, but she'll be glad to look into it. Mr. Shickle further stated that his purpose of looking at the issue is to try to see if land use taxation, i.e., reduction of taxes, might be a way to further our goal.

Mr. Shickle asked Ms. Murphy her thoughts about land use as a preservation of open space. Ms. Murphy replied that there has been a lot of interest by some of our fairly close neighboring counties of people that do not want to ever develop; they do a conservation easement where they assign the land permanently into some kind of a program, but she doesn't think that helps the farmers. The problem with it is, it's perpetual, so their children and grandchildren can't develop it either. It is increasingly popular in Rappahannock and Clarke County, as well as Fauquier and Loudoun County.

Mr. Shickle asked the current status of land not zoned RA, but in an agricultural pursuit? Does it qualify if it's an agricultural purpose? Ms. Murphy replied if it's meeting all the terms of the program, we let it in if it's a County-mandated rezoning.

Mr. Dove asked Ms. Murphy what the tax values per acre are for the four land uses. Ms.

Murphy responded that basically, for 2008, agriculture was at \$120 an acre. Mr. Dove stated that we tax 52 ½ cents on a \$120 value, which is around \$60. Horticulture is \$430, forestry \$250 and open space \$1,500.

Mr. Shickle stated it is his understanding that it is the Commissioner's job to determine the methodology used to assess; Ms. Murphy responded yes. Mr. Shickle asked if there are any pieces of the land use program that are up for decision or alteration for which we should get on the table as we look at rural areas. Mr. Murphy stated yes, she's working on the numbers now rather than maybe using the Sleac scale. Mr. Shickle asked if there are any options under the land use taxation program that need to be evaluated for change. Ms. Murphy stated that under Code, we're not allowed to change the number of acres requirement; that's been brought up in a lot of jurisdictions, they want to go to seven or ten as a minimum. One reason that has not been encouraged by the State is that the issue with that is under modern farming, vineyards, etc., the smaller parcels are generating just as good a revenue as the large parcels. There wasn't a logic for that and so the State has frowned on doing anything about making those kind of changes. Our hands are tied in a lot of different ways. Sleac recommends \$1,000 per year of revenue and our Code does not say that. You must generate so much in revenue in order to stay in the program. Mr. Shickle stated that putting \$1,000 in the Code would actually be a detriment and it would attempt to push more people out. Ms. Murphy stated that one reason Frederick County hasn't done that is because you can have a buyable pay crop, but you haven't been able to often generate that kind of revenue on a small parcel. The farmer could have a bad year and what do you do, throw them out for that year and take them back the next year? We're not in a high dollar agricultural product area. Southern parts of the State where they have tobacco is still a very buyable product to export, as well as peanuts and the big soy bean farms, that seem to generate more revenue.

Mr. Shickle requested that Ms. Murphy speak with Mr. Williams concerning the State Code and all issues regarding tax assessment.

Mr. Shickle introduced Mr. Scott Fincham, Environmental Health Manager with the Virginia Department of Health. Mr. Fincham talked at length concerning septic systems, which includes the following information:

The Health Department regulates everything from hotels and motels to migratory camps to restaurants, the septic program and on and on. Basically, the EPA estimates 26% to 40% of all Virginia has onsite sewage. The number of sewer systems in Frederick County, based off real estate, is guessed to be 13,000. One of the big questions is alternative systems.

Mr. Fincham stated there are three tiers the State allows. Frederick County has no local ordinances; other counties have chosen to make regulations stronger. The way these things get approved is we have General Approved Systems, which means they went through the State and they have all the testing needed to meet the standards of what the State believes is a satisfied system. It's basically producing affluent and disposing of it properly. There is Experimental Systems, where an engineer or somebody has an idea and they want to try this different type of treatment; there's not a lot of background. The State is going to ask a lot of questions and if the State allows it, they'll monitor these systems to see if they can move farther. There is Provisional Systems, which is when other systems are coming on the market. Puraflo is the

alternative system which we have primarily in Frederick County and is a General Approved System.

Advantex is another alternative system and it is also a General Approved System. This system is also highly used in Frederick County. Advantex doesn't use peat, it uses filter media. Advantex also requires an annual maintenance and monitoring contract with the homeowner, which the State thinks is great.

Mr. Fincham further stated that in 2009, the State regulations are going to change. One of the things coming about is maintenance and monitoring is going to be required on all alternative systems. The issue is, they haven't decided how they're going to do this. It's difficult to decide how to certify maintenance and monitoring, how to certify professionals, how the Health Department is going to keep up with all these systems.

One of the other systems is BestOne, which uses treatment; a regular septic tank treats sewage in an anaerobic process. BestOne changes it and basically uses aeration as the treatment. Once this is pre-treated, then what; how are they disposing of the effluent? In Frederick County, because you can hit shale, you can get a water table that's extremely shallow. When that happens, the regular, conventional system goes away and we bring in what's called a drip disposal system. The drip system is small lines that are laid in the ground; they can actually be installed on the surface to meet their criteria, and dirt brought in and placed on top. These are engineered systems that have the effluent going through each line equally and discharging by drip into the soil.

Mr. Fincham talked about centralized systems, which are not seen in Frederick County. There's a lot of information that has to be collected before the County could even think about it. The County would be required to hire a consultant firm, put a package together and present it to VDH. The State Engineer stated that Franklin County has 20 60-home subdivisions at 500,000 gallons a day where effluent is leaving the home and going into one central location. Fluvanna County is also using centralized systems, but these two counties have very deep soil. There are two ways to do this: all the subdivisions do lines and which are treated in a big wastewater treatment plant and discharged, or each individual lot has its own treatment plant, and it's then discharged in the soil. Apparently having the treatment plant on each lot has been the most economical way. The way that Fluvanna County does it is they allow the subdivision to come in, it's treated and sent to a central location, but the land use plan itself says you have to have ¾ of the land untouched to do this. For example, break it into a 100 acre parcel, 25 acres can be for homes and 75 acres must be for the septic system and untouched. Untouched can be for a park, but it cannot have construction on it.

If systems discharge into a creek or waterway, the DEQ only regulates if it's discharged sub-surface. DEQ regulates wastewater systems going into creeks; in Frederick County there are about 190 discharge systems. Discharge systems are where a homeowner cannot find the soil or conditions will not warrant one of these systems. If they have a drainage ditch or waterway, the homeowner can apply for a discharge system. It's basically the effluent is treated onsite and it's either raked to the stream or to a drainage ditch. The length of the stream or drainage ditch depends on if it's free-flowing water, you will need less area for the discharge protection. The

drainage ditch needs to be chlorinated and then de-chlorinated. These require two permits, one from VDH and one from DEQ.

Frederick County has a 50% reserve requirement for septic system failures, which is a State Code. Other counties, like Clarke and Shenandoah, require more. Mr. Lawrence stated if he had a conventional system in Frederick County and he had an alternative reserve, in theory, his reserve area could be 25%. Mr. Fincham stated it's based on what permeability the soil is and that's rated up to 120 minutes per inch. Anything that goes over 120 minutes per inch is not permeable enough to believe that treatment can occur. Warren County has a 100% reserve with a large focus on water quality and draught conditions. They require wells to be 100 feet apart from each other.

The EPA believes nationally that one of the largest problems causing failures and repairs is the that the State, counties and local jurisdictions are not working together to come up with a protective program. The National Small Flows Clearinghouse at [www.nesc.wvu.edu/wastewater](http://www.nesc.wvu.edu/wastewater), is a non-profit agency that works with communities to develop their water and wastewater program. They're out of WVU and they basically put together pretty large programs.

Mr. Shickle stated that alternative systems, or some kind of alternative, give more options to not use up as much of your prime farm land for houses that have good traditional septic systems.

One thing that Mr. Fincham recently brought up to Mr. John Riley and Mr. Kris Tierney is the pump and haul program. In Frederick County, pump and hauls are allowed, but pump and hauls technically are not supposed to be in this County unless it's an existing home. It's the County's responsibility to make sure that through invoices, etc., that they're actually being pumped out on a regular basis. Mr. Fincham wants to help to get the County back online with their program, because the permit for pump and haul is actually given to the County. Mr. Lawrence asked if other counties allow pump and haul and Mr. Fincham responded they make it very difficult to get.

The Carmody system is basically a computer program that the County and the State Agency can both get into and use for maintenance and monitoring companies and at any time can see how a person's alternative system is working.

Mr. Shickle asked Mr. Fincham which jurisdiction close to Frederick County has the nearest soil type to us. Mr. Fincham responded probably Warren County. Mr. Shickle asked if Warren County has been aggressive and Mr. Fincham said they have been with a 100% reserve and Doug Stanley continuously stays in contact. They're asking a lot of questions, just like you are.

Mr. Dove stated he thought we worked on the 100% reserve on new lots. Mr. Lawrence said we did; it stalled in the Public Works Committee. Mr. Dove knows it was discussed and it was agreed we couldn't change existing lots. Mr. Lawrence said he could go back to what the Public Works Committee talked about and he can submit it to this Committee.

Mr. Dove asked when the State started allowing alternative systems and Mr. Fincham replied they've been around for quite a long time.

Mr. Shickle asked if the Health Department's position is still three years on septic tanks and Mr. Fincham stated they recommend three years, but it's not required.

Mr. Unger asked when they start the mandatory checking of alternative systems, are they going to do anything about making it mandatory to have to pump conventional systems every three to five years. Mr. Fincham stated our County doesn't require that. Mr. Unger stated that's one of the reasons why the systems are failing now, because they're not taken care of.

Mr. Fincham stated the EPA website features a great book about wastewater treatment, harmful stuff that can hurt you and ideas on how to make a structure within the community. Mr. Fincham said Mason Allen is the Health Department's supervisor for Frederick County.

Mr. Shickle stated that thinking about going to 100% reserve goes against the smaller lot, pushed back with a smaller lot, and you push away from traditional toward non-traditional systems. Mr. Unger said if we use 75 acres as open space, maybe you can't do some things on it but nobody's going to build a house on it. It may be used as pasture or for cattle, but at least it won't have houses on it.

Mr. Lawrence stated he has heard that in some of the smaller lots, where the lots are so small that if you step too far to one side, you're standing in the drainfield or you're standing on the well. Is there an issue we need to be aware of that, if the lot is so small that tractors or equipment are going to run across the drainfield when they're trying to build the house, that it voids the drainfield. Mr. Fincham replied that depends on the issue. Right now the only failure we do have is in a subdivision, because the lot is so small that the only way they could build the house was to put their tractor across the field the entire construction time and then try to put the drainfield in. They're trying to figure out now how to keep these people in their home.

Mr. Fincham stated one of the things you'll see, because Frederick County doesn't have an ordinance concerning wells, is a 3B well which only requires that you're 50 feet from the septic field. Other counties require 100 feet and that increases the lot size. There are some restrictions the Health Department can help with: anything over 1,200 gallons per day on an acre is a mass drainfield. That forces drainfields to be away on an acre.

Mr. Shickle asked with a reasonably acceptable traditional or alternative septic system, is there any reason that lots in the rural areas can be less than two acres. Mr. Fincham responded that's almost impossible to answer because of things like soil.

Mr. Fincham stated that anything that is 25 people and more than 60 days a year on the same system, that water source is regulated by the Office of Drinking Water.

Mr. Shickle thanked Mr. Fincham and Ms. Murphy for coming tonight.

The next meeting will be on Thursday, October 2, 2008, at 7:30 pm. That will put the Committee back on track, meeting on the first and third Thursday.

Mr. Mike Lynn of Onsite Solutions offered to speak to the Committee further about drainfields and Mr. Unger suggested that Bob (no last name given) speak to the Committee about soil. Mr. Shickle stated Ms. Murphy will have more information on land use. Mr. Manuel suggested the drainfield and soil topics be heard on two separate nights to allow for the presentation and questions. Mr. Unger recommended that Bob come to the October 2<sup>nd</sup> meeting to speak. Mr. Shickle stated that soon he and Mr. Lawrence will have to plot a course that takes the Committee on a specific course of action.

The meeting adjourned at 9:35 pm.