

Minutes
Northampton County Planning Commission
Public Hearing
January 05, 2016
16404 Courthouse Road, Eastville, VA
7:00p.m., Board Chambers

Those present – Dixon Leatherbury, Jacqueline Chatmon, Mark Freeze, Kay Downing, Sylvia Stanley and Michael Ward

Also in attendance was Peter Stith, Long Range Planner and Theresa Adkins, Recording Sectary

The meeting was called to order and a quorum was established.

The agenda was reviewed and accepted as presented.

Public Hearings:

Peter Stith read the following into the record in addition to the staff report:

- A. Special Use Permit 2015-16:** Eastern Shore Rural Health System, Inc. has applied to obtain a special use permit for a Medical Facility. The proposed facility will be located on an approximately 14 acre parcel to be subdivided from property described as Tax Map 68, double circle A, parcel 52, and parcel 51. Parcels 68-A-52 and 51 are zoned AG.

Ex parte communications

Chairman Leatherbury opened the hearing to the public for comments.

Mr. Bob Meyers spoke in opposition of the proposed project and submitted a letter into the record as follows:

PLEASE ENTER THIS INTO THE PUBLIC RECORD FOR

Northampton County Planning Commission Public Hearing on 5 Jan 2016

Questions for Northampton Planning Commission regarding Rural Health application.
Please provide written answers with the assistance of Rural Health. Until these questions are answered satisfactorily **I cannot support** this application.

1. How will this application improve the medical services for the citizens of Northampton significantly above what exists today?
2. Do the benefits of consolidation in one location through providing more and better medical services outweigh the obvious fact that citizens at both ends of the County will have to travel further to obtain those services?
3. What plans are part of this application for use/sale of the existing buildings in Franktown and Bayview? Could those facilities be enhanced for less money and services increased with new equipment and more staff?
4. Why has Rural Health not considered consolidating their proposal to include existing ambulance service operations into a joint operation that could be considered an Eastville Medical Center?
5. What guarantee would be provided with this application that the Rural Health proposed relocations would NOT prevent, in any way, another independent medical provider or medical provider associated with a hospital system NOT connected with Riverside from operating at or south of the Eastville location?
6. With the aversion of Riverside Hospital System for operating its own sewage and well facilities, why is it that Rural Health is willing to do so?
7. Will Rural Health provide a 25 year guarantee that they will not request public sewage and water service from either Northampton County or the Town of Eastville?
8. With this application, please provide a written justification that this proposal complies with the current Comprehensive Plan on all aspects regarding the site selection?
9. Access to the proposed location has no vehicle turn protection. Citizens using the facility will generally be ill and will not be as attentive to driving safety as a healthy person. VDOT standards are NOT to approve left turns onto a highway such as US13 without turn signals. If Rural Health is adamant about this location, any permit should require an acknowledgement that ingress and egress to the facility from the east lane of US13 will be only by Willow Oak Rd & Stumptown Rd. It should be acknowledged that the unprotected crossover 2100 feet north of Stumptown Rd will not be used and Rural health will support its closing.

Submitted by RH Meyers, 7615 Prettyman Cir Exmore, VA

Commissioner Downing asked if Mrs. Stern wanted to address any of Mr. Myers comment regarding the project. Commissioner Leatherbury said she would be provided with a hard copy.

Nancy Stern, applicant and CEO of Eastern Shore Rural Health (ESRH) stated she did not write down all of the comments. Commissioner Leatherbury said she would be provided with a hard copy. She stated there will be extended hours, Saturday hours, digital X-rays (not including MRI or CT scans), pre-employment drug testing and physicals, and an additional doctor on staff. Mrs. Stern was asked the age of the current facilities and she said Bayview is over 30 years old and Franktown is even older. She also stated the Franktown facility is out of space, both within the building and outside including parking areas. The Commission asked why this particular site. Mrs. Stern indicated there were originally 12 parcels and they were narrowed down to 3 based on certain criteria. The ESRH Board opted to move forward with pursuing this parcel as the location for the new facility.

Commissioner Fauber stated his concern with the site location and with the Comp Plan, specifically with the location on Rt. 13, it being within the recharge spine and using prime AG land. He also provided data on the number of speeding tickets issued from Chief Eder and expressed his concern that this is not a good site. Commissioner Downing stated the Comp Plan also encourages development in and around the towns and the proposed stormwater wetlands will promote groundwater recharge. Katherine McAllister, P.E., agent for the applicant, stated the proposed stormwater wetlands will actually create more recharge than the existing site conditions. She also stated a traffic impact analysis is currently underway.

With no other comments the hearing was closed and opened for discussion amongst the commission. Commissioner Freeze made a motion to recommend approval of the permit. The motion was seconded by Commissioner Stanley. Commissioner Downing asked to amend the motion to include Type C opaque screening along the north boundary and to explore option 1 when they go thru the subdivision process as outlined in the staff report. The amended motion passed (5-1) with Commissioner Fauber voting against.

Matters from the public –

Kenny Dufty – read the following in to the record:

6182 Wardtown Road
Exmore, Virginia 23350

January 5, 2016

Northampton County Planning Commissioners
Northampton County Administrative Complex
Eastville, Virginia 23347

Re: Rewriting of the 2009 Comprehensive Plan in violation
of Code and Law, as well as failure to adhere to Code
when recommending adoption of the 2015 Zoning Ordinance.

Planning Commissioners:

We are a nation of laws and as such, a nation of rules that dictate how those laws must be enforced and respected. The First Amendment of the United States Constitution guarantees that all citizens of this great Nation have the unrestricted right to petition their government for the redress of grievances. This right was affirmatively upheld in a 1983 decision by the United States Supreme Court in the matter of *Bill Johnson's Restaurant, Inc. v the National Labor Relations Board*.

In Virginia, thanks to John Forest Dillon's treatise called "Municipal Corporations" which he penned before he was appointed to the US Circuit Court by President Grant, we are among the 39 states that strictly limit what a county or local government can or cannot do, especially as it relates to land use, zoning law, and the adoption of ordinances. In his *Municipal Corporations* paper, written over 150 years ago, Judge Dillon surmised after witnessing many transgressions of established law and principle, that local government had a strong propensity to succumb to corruption, often being swayed and influenced by private interests at the expense and detriment of the public good.

The Dillon Rule was codified into Virginia's system of law and justice by the Virginia Supreme Court in 1896. The adoption of the Dillon Rule of Law resulted in the deliberation and adoption of a series of codes that strictly restrict the powers of local government, and in regard to land use law, dictates precisely what a county government, including this Commission must do before adopting laws, ordinances, or even a Comprehensive Plan.

In the process of rewriting our 2009 protective zoning ordinance over the last two years, there can be no doubt from even a casual look at the record, that this Commission, as well as the majority of the now former Board of Supervisors, has disregarded and indeed abandoned the letter, the spirit and indeed the intent of the Code of Virginia as it pertains to the adoption of zoning ordinances and now as it pertains to the writing of a Comprehensive Plan.

Similar attempts by other municipalities, although arguably not as egregious as the actions by this Commission and the former Board of Supervisors, have been admonished by the Virginia Supreme Court. I have pointed this out numerous times to this Commission and the former Board, and I will not belabor this point at this time of limited ability to address this Commission.

However, I will remind you that the Code of Virginia demands, not requests, that any modification or adoption of land use regulations, ordinances, or Comprehensive Plans be based on empirical data, studies, expert input, and fully involve the public. Failure to do this in either zoning ordinances or the writing of a comprehensive plan is a violation of the Code of Virginia and has been condemned *ad nauseam* by the Supreme Court of Virginia.

It is curious that this Commission, when asked to review and comment on the then proposed 2014 Zoning Ordinance revision, requested funding from the Board of Supervisors to hire experts to help perform the studies necessary and required by code to assist in making land use changes and decisions. That request was denied, and this Commission was denied its request for additional time to undertake the task at hand.

Yet, 15 months later, and without further study of the complete text of the proposed ordinance, this Commission unanimously recommended to the Board they adopt the wide and sweeping changes to our 2009 zoning ordinance. The hallmark of this recommendation can be construed as nothing but arbitrary and capricious and in complete disregard to the massive public comment and filings that protested this ill-fated and very expensive exercise.

To speak to the first paragraph of these comments regarding the right of redress, one of the most egregious violations of the constitutional right of citizens to petition their government for relief or grievance, was contained in the section of the new ordinance which forbids a citizen of Northampton County to petition the government for a zoning text amendment. So if a landowner wants to do something on his or her land that is not expressly spelled out in the text of the 2016 ordinance, and which cannot be construed as a use "similar to" a listed use, they are now, thanks to this Commission, barred from doing that. In the new ordinance, which you unanimously recommended that the BOS adopt and which is now law in

Northampton County, the ordinance specifically says that only the Board of Supervisors or the Planning Commission can petition for a zoning text change...a clear and unambiguous violation of the First Amendment to the Constitution and also violation of a right as allowed under Virginia Code 15.2-2286 (7) (iii) and as adopted and afforded under the 2009 zoning ordinance.

One has to wonder what you were thinking when you denied this constitutional right of redress, as afforded previously in our 2009 zoning ordinance, to the citizens of Northampton County. And one has to wonder why you recommended adding "electric generation facility" arbitrarily to the new zoning ordinance...with no studies or evidence to support that. And one has to wonder why you added waste management, a term that could allow chicken manure, medical and other waste incinerators as a land use that was not previously included in our former zoning ordinance. And why Town Edge Districts were eliminated as we knew them before. And, among the other curiosities why you would suggest reducing setbacks for invasive industrial chicken factories from water bodies, towns and villages.

But more than anything, I wonder why this sitting Board, after such egregious, unwarranted, and arguably illegal actions that belie established code and law, would sign on to a letter asking a citizen, a citizen who has repeatedly reminded you that you are bound by law, code, and an allegiance to the general public, to apologize to what can only be characterized as a governmental body that is operating outside the margins of law and established code, as mandated by the Dillon Rule.

Indeed, it is not this citizen that should be on bended knee apologizing for his actions. It is this Commission which should immediately and with sincerity apologize to the majority of residents in this fine county for the amount of time, resource and collective energy we have been forced to expend on defending this assault, both actual and perceived.

We are waiting.

Sincerely,

Ken Duffy
(757) 442-9889



Consideration of Minutes

November 24, 2015 – Approved by consentaneous.

December 16, 2015 – Commissioner Downing motioned to approve the minutes with changes. The motion was seconded by Commissioner Ward. The motion carried with all in favor (5-0).

Unfinished Business

CBPA

After some discussion the Planning Commission finalized their report to the Board of Supervisors.

TO: Northampton County Board of Supervisors
FROM: Northampton County Planning Commission
SUBJECT: Study of the Chesapeake Bay Preservation Act on the seaside as directed by Board Resolution dated October 27, 2014
DATE: January 6, 2016

In a resolution dated October 27, 2014, the Board of Supervisors requested the Planning Commission to study certain aspects of the Chesapeake Bay Protection Act as it relates to the seaside of the Eastern Shore.

Research on this topic included several publications which are listed below and also consultation with Mark Brush, Associate Professor of Marine Science (VIMS); Aaron Mills, Senior Microbiologist, (UVA); Karen McGlathery, Lead Principal Investigator, Virginia Coast Reserve LTER; Dr. Iris Anderson, Professor of Marine Science, VIMS; and Art Schwarzschild, on site director Long Term Ecological Research Network (LTER) in Oyster (UVA). The scientists listed above and referenced below have studied the coast of the Eastern Shore and similar coast line around the world for many years. They are available, accessible and willing to share their knowledge; all feel that the buffers are an important piece of the puzzle that will help to save our coastal environment from the fate of other areas.

1. (a) The effectiveness of the CBPA on the seaside since its adoption.

Although there have been no studies found that have focused directly on the effectiveness of the CBPA 100' buffer on the seaside, there has been data collected associated with nutrients flowing from the water shed into the shallow bays and lagoons of the seaside and their effect on that ecosystem.

Water flow into the seaside/Atlantic is generally indirect. Ground water, surface water, drainage, and streams flow into the shallow bays and lagoons along the shore line and then, by way of tidal flow, enter the Atlantic. Depending on the location, the residence time in the shallow bays and lagoons is days or weeks.

Coastal lagoons are particularly susceptible to nitrogen enrichment because of their proximity to land, shallow depths, high surface area to volume ratios, and long residence times (Duarte, 1995)

Nutrient enrichment continues to threaten the health of coastal lagoons as their watersheds experience intensified commercial and residential development, population growth, and agricultural activities. (Bricker et al. 1999, 2008)

Farming operations use organic and commercial fertilizers to help maximize yields. Nitrogen and phosphorus are two chemicals present in these fertilizers that can cause greatest concern. Phosphorus and nitrogen have different characteristics and the effective ways in which they are filtered from water runoff are different.

Phosphorus can be filtered directly on the surface as it passes through vegetated areas.

A main aspect of buffers have is their ability to reduce overland water flow, remove particulate matter.... This is more easily seen in phosphorus as much phosphorous coming from terrestrial sources is conveyed in runoff absorbed to particulate materials like

sediments. This phosphorous can be physically filtered out of the water as sediments are trapped in buffer zones. (Art Schwarzchild)

In contrast most nitrogen pollution is carried as dissolved chemical forms that cannot be physically filtered out of the water. (Art Schwarzchild)

The fact that Nitrogen is normally in a dissolved state is why the buffer along streams is so important. Dissolved nitrogen “bypasses” the surface buffer by being absorbed into the soil and passing into the ground water. The ground water flows in much the same way that a stream does, and when its flow is cross sectioned by a stream, the ground water flows into the stream. The rate of flow increases during wet weather and decrease in dry weather. Before the ground water reaches the stream, as it travels toward the stream, it passes through sandy, porous soils where the nitrogen level is relatively unaffected: “The aquifer is generally aerobic and is very low in organic matter, resulting in little attenuation of NO₃ concentrations during transport through groundwater. Groundwater discharge supplies the majority of flow to streams on the Delmarva Peninsula (Bachman et al., 1998) and represents a potentially large source of nitrogen to downgradient systems.” (Flewelling, Mills et al 2011)

As the groundwater reaches the stream, it passes through a layer of organic material that is created largely by decaying leaf clutter. This stream bed layer of organic matter is about 1 to 2 feet thick. As the ground water passes through this organic layer most of the nitrogen is “filtered out”. The microbes in the organic layer digest the nitrates which results in a byproduct of nitrogen gas, in a process similar to the one a waste water treatment plant digester uses to treat for nitrogen.

These chemical reactions take time to complete. By reducing overland flow and trapping run-off in the soil matrix, buffers help to provide time for these chemical reactions to occur. They also provide habitat for the bacteria and fuel (in the form of organic matter, leaves, etc.) needed by the bacteria in order to metabolize the nitrogen compounds. In this way, the types of vegetation, soil matrix, land slope and characteristics of the pollution load can impact the effectiveness of a vegetation buffer in removing excess nutrients.

(Art Schwarzchild)

To summarize, the buffer works in at least two ways. One by directly filtering nutrient laden particulate matter on the surface, and secondly by creating leaf clutter and other organic matter that in turn falls into the creeks, lining the beds to create the nitrogen filtering organic layer. The first is a more direct process and the second more indirect but equally or more effective. Both are required to complete an effective system and neither would perform adequately without the buffer area required by the CBPA or similar legislation. Measurement of the actual effectiveness of the CBPA on the seaside is not readily available and beyond the technical expertise of this Commission.

(b) What measures, if any, should be provided by the aquaculture community that operates on the seaside (that are currently provided, or not provided) under the CBPA.

Most of the scientific information below was taken from a “Marine Ecology Progress Series” (MEPS)(2015) publication, “Enhanced nutrient regeneration at commercial hard clam (*Mercenaria mercenaria*) beds and the role of macroalgae,” coauthored by Anna E. Murphy,

Iris C. Anderson, Mark W. Luckenbach (VIMS). The data for this study was collected from Cherrystone Creek. When Dr. Anderson was asked how a study done on the bayside, such as this one, would correlate to the seaside. She responded that they had "...measured the effects of both clam aquaculture and an oyster reef on sediment and water quality just behind Smith Island at the tip of the E. Shore. Results were quite similar to those observed on the bayside at Cherrystone.... Macroalgae did grow on the clam nets supported by the ammonium released from the clam beds as observed in Cherrystone but the macroalgae were not as dense.... In summary, we think that responses to aquaculture on the seaside will be very similar to those observed on the bayside." ¹

Shellfish aquaculture has become an important feature in many coastal waters worldwide, and understanding its impact within the context of increasingly eutrophic² waters is necessary to ensure its sustainability (Anna E. Murphy et al 2015)

Aside from land-based human perturbations, such as urban development, agriculture, and wastewater treatment, growth of in-water aquaculture represents an expanding anthropogenic perturbation to coastal waters. (Anna E. Murphy et al 2015)

These perturbations are an increase in nutrients that encourages macroalgal growth. The clams through excretions create their own nutrients. These nutrient sources along with the predator exclusion nets that cover the clam beds create an ideal habitat for macroalgae.

Clam growers frequently sweep the nets of accumulated macroalgae, which are allowed to drift away and decompose, releasing nutrients and potentially depleting dissolved oxygen (DO) in adjacent waters. Upon senescence due to density-dependent factors (e.g. self-shading) and/or environmental factors (e.g. increase in temperature), ephemeral macroalgae in the coastal bays of Virginia degrade rapidly, releasing nutrients and decreasing DO (Tyler et al. 2001, Hardison et al. 2010).

Implementing macroalgal harvest practices concurrent with clam harvest (i.e. an integrated multi-trophic aquaculture [IMTA] program) would eliminate the potentially detrimental impacts of excess macroalgal material in the system. Macroalgal growth rates and nitrogen (N) demands are variable and strongly dictated by the frequency in which the nets are swept. After the nets are cleaned, growth rates will initially be low when little macroalgal biomass is present, and then increase as biomass accumulates. However, as the macroalgal mats become thick, self-shading will result in decreased growth rates and N demands. More accurate measurements of macroalgal function and nutrient uptake are required to develop best management practices within an IMTA framework; specifically the frequency of sweeping that optimizes macroalgal nutrient sequestration while minimizing negative effects of dense macroalgal mats on clam growth. (Anna E. Murphy et al 2015)

¹ This was taken from an email from Dr. Iris Anderson to David Fauber on 12/16/2015

² Eutrophication may be characterized by phytoplankton or macroalgal blooms

There is interest in the possibility of harvesting macroalgae as a way to mitigate any negative impacts of clam aquaculture on the ecosystem. Other states have used harvested macroalgae as fertilizer. Some discussion with the clam farmers suggest that they would be willing to consider this possibility if they received some incentive, e.g., if they could sell the macroalgae for use as fertilizer. We do not believe this incentive is available in Virginia.³

In conclusion:

Although macroalgae temporarily sequester nutrients from the clam sediments, common management practice is to clean the macroalgae off the predator-exclusion nets and allowing them to drift away. The fate of these macroalgae is likely microbial decomposition, which releases the sequestered nutrients back to the water Column and may lead to hypoxic conditions in the system. If macroalgae were harvested, a considerable amount of aquaculture-facilitated recycled N would be removed from the system. The potential ecological benefit in establishing an IMTA system in which both clams and macroalgae are harvested should be further assessed. (Anna E. Murphy et al 2015)

2. Evaluate standards of the CBPA and its applicability to the seaside.

Riparian buffers help to reduce the stream sedimentation in several ways. A buffer may keep the land disturbing activity far enough back from the water feature that the disturbance does not directly affect the banks. Buffers can also reduce the speed and volume of overland runoff through enhanced infiltration. The vegetation, roots, leaf litter and detritus can trap sediment from surface runoff before it reaches the water. The vegetation, particularly their roots, helps stabilize stream banks preventing their failure, and also provides woody debris within the stream that helps trap sediment. During floods, the buffer moderates the velocity of the storm flow that surges onto the floodplain, reducing scouring, and allowing the sediment to settle out and be deposited on land.⁴

The width of the buffer is the primary determining factor for its effectiveness. In Virginia, a buffer width of 100-feet has been deemed sufficient to protect water quality through the removal of sediment and nutrients. Additionally, on-site sediment control is important in source areas such as agricultural fields and construction sites to prevent excessive loadings from reaching the buffer.⁵

The number of scientific studies and guidance manuals documenting the many values of riparian forest buffers would fill many bookshelves. In the Bay Act program, the RPA buffer area is viewed as the last line of defense against pollution, transported in overland runoff, reaching the Bay and its tributaries. In light of the abundant scientific evidence that woody vegetation is of

³ This was taken from an email from Dr. Iris Anderson to David Fauber on 12/16/2015

⁴ Virginia Department of Conservation and Recreation, Chesapeake Bay Local Assistance, Riparian Buffers Guidance Manual, Page 7

⁵ Virginia Department of Conservation and Recreation, Chesapeake Bay Local Assistance, Riparian Buffers Guidance Manual, Page 7

significant value for accomplishing these goals, the Regulations were crafted to protect existing woody vegetation.⁶

3. Review the recently enacted Stormwater Management Act and evaluate whether there is any duplication or replication of the CBPA within the Stormwater Management Act as it relates to the seaside.

The CBPA defines the RPA areas, lists the appropriate uses for the area and describes how a buffer should be established and maintained to be effective in reducing run off. It allows for some stormwater controls to be installed. The only BMP contained in the CBPA is the 100' buffer of natural woody vegetation. The only plan review or calculations required (except in the case of a WQIA) would be the delineation of the RPA/RMA and design of what is required to establish/reestablish the 100' buffer.

Stormwater management is more closely related to erosion and sediment controls. They contain many of the same controls and review items. In plan review, required items are soil types, topography, acreage, and drainage areas. BMPs are often structures that may be allowed in the CBPA Buffer area, but are not necessarily encouraged and would not normally be considered as a mediation item. Generally speaking:

1. Erosion and sediment controls are generally temporary installations installed during development but can also require permanent items that may require ongoing maintenance.
2. The storm water regulations are generally more concerned with permanent structures. Vegetation associated with the stormwater regulations is prescribed, for the most part, as it relates to soil stabilization around storm water installations.

The CBPA has been developed over a period of decades. Although its effectiveness may be difficult to quantify, there is solid science that supports the practices as effective. Although the seaside coastal shallow bays and lagoons are recharged by tidal flows at greater rate and generally less residence time than the bayside creeks, the basic principles for their protection are similar. What is good for one will generally be a benefit for the other. The seaside shallow bays and lagoons on the seaside of Virginia's Eastern Shore remain, at this time, relatively pristine, when compared Maryland and Delaware. This suggests that any small change has a greater affect in our waters than it would in the waters farther north.

We know that nitrogen is entering the bay by way of ground water. We know that we have "hot spots" of phosphorus in our county. We know that the most economical way to fertilize crops in our county is using chicken manure which is high in both of these elements.

We now know that clam culture walks a fine line between positive and negative effects on the

⁶ Virginia Department of Conservation and Recreation, Chesapeake Bay Local Assistance, Riparian Buffers Guidance Manual, Preface, Page iii

ecosystem and that there are basic maintenance tasks that could mitigate the negative.

It would be prudent to maintain the regulations that the scientific community agrees are effective and alter them in ways to address the above nutrient issues in such a way as to benefit the environment and still maintain the profitability of the upland operations.

4. Evaluate whether the CBPA or any modification thereof or some other type of ordinance should be recommended for the protection of the seaside.

We have identified four areas of regulations provided by the CBPA which are not covered by other regulations. They are:

- A. Septic tank pumps outs
- B. Reserve sewage disposal sites
- C. Agricultural soil and water conservation assessments
- D. Shoreline buffers

SEPTIC TANK PUMP OUTS

The CBPA requires a five year pump out of septic systems. As an alternative to the CBPA, a simple county ordinance could be used. However, the current regulation is not being monitored or enforced. Budgetary reasons are typically cited. In addition, the logical agency to handle this monitoring is the Health Department, as they have (or should have) the records. It is our understanding that to move the responsibility to the Health Department would require a change in statute at the State level. If county staff is to provide monitoring and enforcing, the Board would need to be willing to provide the necessary resources.

RESERVE SEWAGE DISPOSAL SITES

The CBPA requires a reserve sewage disposal site with a capacity at least equal to the primary site. The requirement does not apply to parcels recorded prior to October 1, 1989 if the parcel cannot accommodate the reserve site. If the Board wishes to retain this requirement, an overlay district can be created to require a similar set aside of land. The data supporting this need has not been studied by the Commission, but such data should be considered before adopting such regulations.

AGRICULTURAL SOIL AND WATER CONSERVATION ASSESSMENT

The CBPA requires a soil and water conservation assessment for all farms in the designated area. This assessment is ultimately the responsibility of the property owner, with oversight by the County. These assessments have been done sporadically over the last 27 years as funding has been made available. The Eastern Shore Soil and Water Conservation District has performed them; we estimate the cost per assessment of \$500.00. After the assessments are completed, they are reviewed by the Technical Review Committee of the Conservation District, recommendations are made to the land owner, and the resulting paperwork resides at the Conservation District office. The recommendations are passed along to the County who writes the land owner advising of possible infractions, if any. If necessary remediation is not made,

enforcement is via the DEQ. This cycle (when and if it occurs) takes place over a three year period (assessment, review, recommendations, enforcement).

Funding for assessments has only been made for the Bay watershed; therefore, no assessments have been made for the Seaside, nor probably will be made using grant money. Moreover, it is unlikely that the DEQ would become involved with any actions which might need to be taken on the Seaside. So again, the question becomes how seriously the Board wishes to press the issue of existing law on the Seaside.

If the Board elects to leave the CBPA in place on the Seaside, funding should be made a part of the budget to assess a minimum of 25 farms per year on the Seaside, and the Soil and Water Conservation District should be asked to review them and report to the County. Any enforcement issues would fall on the County, and budgetary provisions should also be made to deal with them.

SHORELINE BUFFERS

The CBPA has specific regulations regarding shoreline buffers, the benefits of which have been discussed previously. If the Act were removed from the Seaside, an overlay district could be created to tailor buffer zones on seaside properties within a given distance of a tributary. If this is the Board's desire, we would recommend the creation of such a district, utilizing distance, vegetation, and grade to determine what type of buffer would be required.

The determination of each of these factors would need to be carefully considered to balance environmental protections with costs. Expertise for specific technical requirements is beyond the skill set of the Planning Commission, and would need to come from an outside professional; cost analysis should also be made by an outside resource for all restrictions under consideration.

A common theme runs through all four of these areas, as well as items listed earlier: the Board must be committed to funding the associated costs for each of the protections. New regulations without funding will serve no purpose; indeed, septic tank pump outs and the agricultural assessments on the seaside currently fall into this category.

It was stated by Dr. Aaron Mills that the effect of our actions today in upland areas will not be apparent in the seaside ecosystem for 20 to 30 years, and that any "fixes" would take at least that long. The mistakes we might make today would, at best, not be mitigated for about fifty years.

The Commission will work on any of these areas as directed if you wish.

Referenced Publications:

Giordano, Juliette Christina Poletto, Mark J. Brush, Iris C. Anderson. 2009. Quantifying Annual

Nitrogen Loads to Virginia's Coastal Lagoons: Sources and Water Quality Response. *Estuaries and Coasts* (2011) 34:297–309.

Bricker, S.B., C.G. Clement, D.E. Pirhalla, S.P. Orlando, and D.R.G. Farrow. 1999. National estuarine eutrophication assessment: Effects of nutrient enrichment in the nation's estuaries. NOAA, National Ocean Service, Special Projects Office and the National Centers for Coastal Ocean Science. Silver Spring, MD. pp. 71

Bricker, S.B., B. Longstaff, W. Dennison, A. Jones, K. Boicourt, C. Wicks, and J. Woerner. 2008. Effects of nutrient enrichment in the nation's estuaries: a decade of change. *Harmful Algae* 8: 21–32.

Duarte, C.M. 1995. Submerged aquatic vegetation in relation to different nutrient regimes. *Ophelia* 41: 87–112.

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Flewelling, Samuel A., Janet S. Herman, George M. Hornberger, Aaron L. Mills. 2011. Travel time controls the magnitude of nitrate discharge in groundwater bypassing the riparian zone to a stream on Virginia's coastal plain. *HYDROLOGICAL PROCESSES Hydrol. Process.* (2011) Published online in Wiley Online Library (wileyonlinelibrary.com) DOI: 10.1002/hyp.8219

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Tyler AC, McGlathery KJ, Anderson IC (2001) Macroalgae mediation of dissolved organic nitrogen fluxes in a temperate coastal lagoon. *Estuar Coast Shelf Sci* 53: 155–168

Hardison AK, Canuel EA, Anderson IC, Veuger B (2010) Fate of macroalgae in benthic systems: carbon and nitrogen cycling within the microbial community. *Mar Ecol Prog Ser* 414: 41–55

Tyler AC, McGlathery KJ, Anderson IC (2001) Macroalgae mediation of dissolved organic nitrogen fluxes in a temperate coastal lagoon. *Estuar Coast Shelf Sci* 53: 155–168

Comp Plan

Commissioner had a brief decision regarding the Comp Plan decided to work on the document at the work session on January 20, 2016.

Communications

Peter Stith informed the Commission that the town of Cherton boundary line adjustment was approved by the Board and Town Council and on December 21, 2015 the judge signed off.

Mr. Stith also informed the Board of Supervisors adopted the new zoning on December 8, 2015. The Board approved those changes recommended by the Commission that did not require an additional public hearing with the exception of the removal of ammonia scrubbers for intensive farming. The Board retained that standard in the ordinance. The additional items that would require a public hearing were not acted on and will be taken up by the new Board in January.

Mr. Stith also informed the Commission that Hecate Energy is working on a submittal for a public hearing in February as a Special Use Permit request.

The Following was submitted to the Commission:

ATTN: Northampton County Virginia Planning Commission/BOS

To Whom It May Concern,

At the 12/8/2015 BOS meeting I proposed that by right aquaculture in the R-1 zoning district be added as an amendment to the recently passed zoning ordinance.

My proposal has evolved since this meeting into a request for the creation of a special use permit amendment which would allow low impact aquaculture and low impact commercial fishing for R-1 zoning districts.

A commercial fishing operation/peeler crab house exists on the property adjacent to our homeplace in Highland Heights. This commercial fishing operation/peeler crab house operated next door to us for over 30 years.

The operation evokes a low profile and was always kept in an orderly and low impact manner.

In my view this commercial fishing operation located next door to us sets a precedent that should allow my family to operate a similar low impact aquaculture/oyster farm and hatchery on our property adjacent to the property as per the commercial fishing operation located in Highland Heights.

I propose an amendment to the current zoning ordinance which allows for the creation of low impact

aquaculture/commercial fishing special use permits in R-1 zoning districts.

Please add this item to the agenda of the next planning commission meeting.

I appreciate your consideration.

Respectfully yours,

Adam Ashby
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After discussion from the Commission they decide to put it on the Boards agenda and wait for their recommendation on the zoning matter.

With no further business the Chairman asked for a motion to recess. A motion to recess until January 20, 2016 work session was made by Commissioner Downing and seconded by Commissioner Freeze. The motion carried with all in favor (5-0).

Chairman

Secretary