

VIRGINIA:

At a regular meeting of the Board of Supervisors of the County of Northampton, Virginia, held at the Board Room of the County Administration Building, 16404 Courthouse Road, Eastville, Virginia, on the 9th day of June, 2015, at 4:00 p.m.

Present:

Richard L. Hubbard, Chairman

Oliver H. Bennett, Vice Chairman

Laurence J. Trala

Granville F. Hogg, Jr.

Larry LeMond

The meeting was called to order by the Chairman.

Closed Session

Motion was made by Mr. LeMond, seconded by Mr. Bennett, that the Board enter Closed Session in accordance with Section 2.2-3711 of the Code of Virginia of 1950, as amended:

(A) Paragraph 1: Discussion or consideration of employment, assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees or employees of any public body.

Appointments to boards, committees:

(Public Library Board, Planning Commission, Public Service Authority, Social Services Board, Community Criminal Justice Board, Bay Consortium Workforce Investment Board)

(B) Paragraph 3: Discussion or consideration of the condition, acquisition, or use of real property for public purpose, or of the disposition of publicly held property.

(C) Paragraph 5: Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

(D) Paragraph 7: Consultation with legal counsel and briefings by staff members, consultants, or attorneys pertaining to actual or probable litigation, and consultation with legal counsel employed or retained by the Board of Supervisors regarding specific legal matters requiring the provision of legal advice by such counsel.

All members were present and voted “yes.” The motion was unanimously passed.

After Closed Session, the Chairman reconvened the meeting and said that the Board had entered the closed session for those purposes as set out in paragraphs 1, 3 and 7 of Section 2.1-3711 of the Code of Virginia of 1950, as amended. Upon being polled individually, each Board member confirmed that these were the only matters of discussion during the closed session.

The Chairman read the following statement:

It is the intent that all persons attending meetings of this Board, regardless of disability, shall have the opportunity to participate. Any person present that requires any special assistance or accommodations, please let the Board know in order that arrangements can be made.

Board and Agency Presentations:

- (1) Ms. Laura Jenrette, Director of Parks & Recreation, briefed the Board regarding current activities of that department.

Consent Agenda:

- (2) Minutes of the meetings of May 12 and 26, 2015.
- (3) Consider adopting a resolution endorsing the Eastern Shore Juneteenth Festival to be held on June 20, 2015.
- (4) Consider approval of congratulatory letters to Mrs. Etta Robbins, Ms. Diane Powers and Mr. Tim Honeycutt.

Motion was made by Mr. Trala, seconded by Mr. LeMond, that the consent agenda be approved as presented. All members were present and voted “yes.” The motion was unanimously passed. The resolution as referenced in item (3) above is set out below:

RESOLUTION

WHEREAS, Northampton County's economic and social well-being requires the best efforts and cooperation of county residents of all races, creeds and backgrounds; and

WHEREAS, for fifteen years, the Juneteenth Festival has been an arena to educate and

promote cultural enlightenment and diversity to the residents of the Eastern Shore of Virginia; and

WHEREAS, Juneteenth, also known as “Freedom Day” or “Emancipation Day” is the oldest known festival to celebrate the end of slavery and celebrates African-American freedom, encourages strong family structure, and emphasizes the importance of the church in the African-American community; and

WHEREAS, this year’s festival will be held on Saturday, June 20, 2015 at the Eastern Shore Community College and will be in combined with a health fair to encourage and educate Eastern Shore residents on healthy living practices.

NOW, THEREFORE, the Northampton County Board of Supervisors does hereby endorse the EASTERN SHORE JUNETEENTH FESTIVAL to be held June 20, 2015.

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Mr. Tim Honeycutt, who had been selected as “EMS Provider of the Year”, was in the audience and was recognized by the Board and congratulated for his achievement.

County Officials’ Reports:

(5) There were no budget amendments and appropriations for the Board’s consideration.

At approximately 5:20 p.m., the Board recessed for the supper break.

At 7:00 p.m., the Chairman reconvened the meeting.

Mr. Trala provided the Invocation.

The Board recited the Pledge of Allegiance.

Public Hearings:

Chairman Hubbard called the following public hearing to order:

(7) ORDINANCE REENACTING THE VIRGINIA UNIFORM STATEWIDE BUILDING CODE WITHIN THE LIMITS OF NORTHAMPTON COUNTY.

This ordinance is codified as Section 15 of the Northampton County Code of Ordinances. The purpose of this amendment is to correct conflicting language within the document relative to refunding of building permit fees. This amendment will also add three new items relative to “re-inspection” fees.

ORDINANCE REENACTING THE VIRGINIA UNIFORM STATEWIDE BUILDING CODE WITHIN THE LIMITS OF NORTHAMPTON COUNTY

BE IT ORDAINED by the Board of Supervisors of Northampton County, that AN ORDINANCE REENACTING THE VIRGINIA UNIFORM STATEWIDE BUILDING CODE WITHIN THE LIMITS OF NORTHAMPTON COUNTY be amended as follows:

1. That Paragraph (C)(3)(b) of Section 150.01 Building Code, of the County’s Code of Ordinances, be amended to read as follows:

In accordance with the ~~2009~~ **2012** Uniform Statewide Building Code (USBC), Section 107.1.2, the Northampton County Building Department will refund 75% of permit fees when approved by the Building Official and when requested in writing by the permit holder in the event of revocation, abandonment or discontinuance of project.

2. That the Refunds section under *Services and Surcharges* be amended to read as follows:

<i>Services and Surcharges</i>	
Refunds; base fees are non-refundable. Refunds beyond base fee permits for work beyond rough-in inspection are non-refundable.	90% — No work started 75% — Below grade work only 40% — Rough-in inspection only 75% of permit fees when approved by the Building Official and when requested in writing by the permit holder in the event of revocation, abandonment or discontinuance of project.

3. That three (3) new Fees be added under the *Services and Surcharges* section as follows:

<i>Services and Surcharges</i>	
Lifting of a stop-work order fee	\$50.00
Not ready for inspection/No entry fee	\$50.00
2nd Plan Review fee	\$100.00

4. That all remaining portions and provisions of AN ORDINANCE REENACTING THE VIRGINIA UNIFORM STATEWIDE BUILDING CODE WITHIN THE LIMITS OF NORTHAMPTON COUNTY are reenacted and reaffirmed hereby.

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The Chairman asked if there were any present desiring to speak.

Mr. John Outten, Building Official, spoke in support of the amended ordinance, answered questions from Supervisors Trala and Hogg, and requested the Board's favorable consideration of same.

There being no further speakers, the public hearing was closed.

Motion was made by Mr. LeMond, seconded by Mr. Trala, that an ORDINANCE REENACTING THE VIRGINIA STATEWIDE BUILDING CODE WITHIN THE LIMITS OF NORTHAMPTON COUNTY be adopted as presented. All members were present and voted "yes." The motion was unanimously passed.

Citizens' Information Period (only matters pertaining to County business or items on Board agenda for which a public hearing has not already been scheduled).

The following letter was read into the record:

May 9, 2015

Dear Mr. Hubbard:

I have been developing communities in Northampton County for the past three decades. I have created beautiful communities that have attracted buyers from other areas into Northampton County that have since built wonderful homes. Building sites within my communities are now selling at much higher prices than my original development pricing. This has all added to the tax base of Northampton County. Other developers followed suit and have created wonderful communities as well.

I am no longer developing in Northampton County and own only a handful of lots and my private homes so I no longer have a large financial investment from a development standpoint. After creating many wonderful communities and bringing many new businesses into Northampton County through Shore Plaza Shopping Center and other commercial properties, I feel I must speak out in an effort to protect my life's work from any harm that may be created through the changes proposed to our zoning ordinance.

When I came to the Eastern Shore in the 1980s, I had unbelievable choices for farms to develop in both Northampton and Accomack Counties. I hired engineers, surveyors and others and quickly determined that Northampton County had far superior land to Accomack County and

made all of my original purchases in Northampton County with its higher elevations, better shorelines, cleaner waterways and easier access to shopping. After several years, I found a few choice pieces in Accomack County to purchase.

As a real estate developer it has been my obligation to develop my property into its highest and best use. I would think that would also be the aspiration of the county's leaders. Over the years, the Northampton County Board of Supervisors and the Northampton County Planning Board have worked hard to protect the county from over development and encourage sustainable commerce where its land farms can coexist with its aquaculture farmers. This peaceful growth not only benefits the local property owners but also adds to the desire of others to visit here and to move here, thereby increasing the tax base through assessments on new home construction and tourism.

The changes proposed to the zoning ordinance to decrease the setbacks for intensive farming will allow the construction of Concentrated Animal Feeding Operations (CAFOs) on Northampton County's pristine land, where it has been protected previously.

I supplied each of the members with a booklet on the subject recently with just a few of the studies and articles available. The May 2nd Eastern Shore News ran the enclosed story, written by Tom Horton for the Bay Journal News Service, about Maryland's agreement to no longer allow poultry manure to be spread on farms on Maryland's Eastern Shore after their studies showed three times more nitrate was spread than could be absorbed which ran off into local waterways including the Chesapeake Bay. This agreement came after other Maryland legislation to strengthen the regulations for CAFOs in an effort to limit further pollution caused by them including a new regulation to not allow a well permit for a CAFO to go into the same aquifer as residential properties draw their water from. Rather than conform to the new regulations, the CAFOs are choosing to move into Accomack County where there are few regulations on local and state levels to limit their construction resulting in an overabundance of CAFOs in Accomack County.

Accomack County encourages this type of industrial growth, under the guise of agriculture, and is turning a blind eye to the effects the pollution will cause to its local citizens' health and financial stability. In every locality we researched for our booklet, we found decreased property values and decreased quality of life for residents living near CAFOs.

I find it particularly disheartening that Northampton County, after years of protecting the Chesapeake Bay and the Virginia Coastal Reserve through its environmentally friendly zoning requirements (which at times caused financial hardships to my own developing efforts) would now be considering adopting a new zoning ordinance that has the potential to not only undo all the previous conservation gains within the county but to cause unbelievable harm.

I have had environmental studies and soil work done on many of the bayside necks as I applied for well and septic permits for my subdivisions. Many of the homeowners have installed their wells to shallow depths for the best water quality. I confirmed this today with Bundick Well & Pump. If the zoning ordinance is adopted as written, the reduced setbacks will allow CAFOs as a new agricultural use. On the bayside, intensive livestock and poultry farmers will then

compete with homeowners for water usage and will find the cost of installing their wells to deeper depths and treating the water to be prohibitive as the iron and other minerals destroy the machinery rapidly. The obvious decision will be to choose locations away from the bayside. When they purchase seaside farms, which have better soil conditions, to build the CAFOs, they will endanger the thriving aquaculture industry.

Northampton County is now a one of a kind gem along the entire eastern seaboard. Its land is still pristine, it is graced with miles of waterfront properties, its waterways house world renowned aquaculture farms, it is home to one of Virginia's best state parks and it has the enticing uninhabited barrier islands of the Virginia Coastal Reserve. We have conservation easements in place to ensure that it remains that way.

It now falls onto your shoulders to continue the protection guaranteed by leaders before you by voting to now allow setback changes that are not beneficial to the good health of the citizens or the growing industries which have developed under the stiff regulations required by the Chesapeake Bay Preservation Act and local zoning ordinances.

I urge you to: 1) retain the current 2009 setback requirements for intensive livestock and poultry farming (CAFOs), 2) eliminate the "resource recovery" language from the new waste management term, so poultry incinerators will not pollute Northampton County and 3) retain the current limit of 15% impervious surface coverage, which protects our single source aquifer, in any new zoning changes to our ordinance.

Sincerely,

/s/ Eileen Kirkwood

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The following letter was read into the record:

Submitted for public record by Price Clarke, 2559 Savage Neck Dr., Eastville, Va. for monthly Board of Supervisors meeting 6/9/15.

First of all, I want to thank you for all your hard work on behalf of the citizens of Northampton County. But then I wonder, is all this proposed rezoning really something you all are working on to benefit the majority of citizens who elected you? And it is all such a jumble, what ordinary citizen can even figure out what is being proposed now?

The rezoning came about through a totally flawed process, with minimal citizen output, and definitely NOT reflective of the Comprehensive Plan that DID have much citizen input. Additionally, tax money was used to pay Investment Consulting Associates for a Northampton County "Competitive Assessment" report, which advised education and work force training as the keys to open the door to improved economic status. NO recommendations were made about changes to the zoning ordinance.

I would wager to bet that EVERY citizen of Northampton County, young or old, rich or poor, appreciates the following about living in this county:

CLEAN, UNPOLLUTED AIR
OPEN EXPANES OF FARMLAND & THE VISTAS CREATED
CLEAN, UNPOLLED BAY & OCEAN ACCESS
THE AVAILABILITY OF GROUNDWATER FOR WELLS (not those served by water systems)

There are MANY proposed changes in the rezoning that would jeopardize these common goods, particularly those changes that would allow waste facilities and incinerators, large scape chicken houses and other industrial farming, removal of current lot coverage limits regarding impervious surface, just to name a few.

I REQUEST THAT THE PROPOSED REZONING BE WITHDRAWN! Not doing so will insure that your name is forever associated with the undoing of that which makes Northampton County loved by its citizens. Is that the legacy you really want?

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The following letter was read into the record:

I have had the pleasure of working on behalf of the citizenry on issues regarding natural resource protection for a very long time, much of it in an official governmental capacity. Most issues that I have worked on represented relatively local impacts, with a few issues threatening a more regional and even statewide impact zone. But, in regard to the proposal by the Northampton County Board of Supervisors to completely rewrite our current protective zoning ordinance, I have *never* seen such a blatant and unfettered attempt by elected leaders to unilaterally undermine EVERY protection of natural assets that residents have asked to be included in the safeguards encoded in their controlling Comprehensive Plan.

The Northampton County Board of Supervisors is proposing massive changes to our current zoning ordinance which will, in part, encourage the construction and operation of municipal, hazardous, medical, and chicken litter incinerators on agricultural lands. It will create Planned Unit Development zones...where anything goes, with no criteria or restrictions. Note Accomack County has just voted to eliminate these dangerous districts in their zoning code, only after realizing just how dangerous they actually are. The new zoning will also eliminate lot coverage limits.....put in place in response to the request by the majority of citizens when participating in the writing of our current Comprehensive Plan. Lot coverage limits restrict the amount of land that can be paved over or covered with impermeable surfaces. These limits protect the viability of our sole source aquifer and protect our coastal waters and our \$55 million aquaculture industry from excessive runoff.

Not one person that we have talked to indicated that they requested these changes, and it is perfectly clear that these proposed revisions to our zoning ordinance are being driven by personal agendas at the expense of the public good. My understanding of the "vision" that the majority of

citizens have for this great county is one of economic expansion, prosperity, and sustainability. This will be accomplished by: marketing and promoting our natural resource assets; improving our schools and supporting our students: providing workforce training, beginning in our primary and secondary schools; developing eco-tourism and other tourism-based opportunities; improving high-speed internet and cell phone service; supporting our core industries which are agriculture, aquaculture, and small business. and providing sustainable and economical infrastructure.

The proposed changes to our current zoning ordinance threaten to destroy the progress that we have made, and the vision we share in promoting this county and its assets in a sustainable manner. It is apparent that our attempts to encourage the Northampton County Board of Supervisors to include us in land use decisions that will affect each and every taxpayer in this county have not been successful.

Therefore, because the elected leaders have in essence thumbed their nose at the citizenry and have denied them participation in what should be a democratic process to shape the future of their community and determine land use therein, we should all take whatever measures, legally and within reason, to defend our investments in this great land.

Our forefathers and those who have charted a similar course before us, would not have it any other way.

Ken Dufty
757-442-7889

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Mrs. Martina Coker read the following comments:

I am taking this opportunity to express my concern about the process by which you are pushing through an undesired, ill thought out zoning document. My specific concern tonight is your utter disregard for the citizens of this County by discounting their input. Taxpayers in this County have been telling you, loud and clear that they do not want you to proceed with this flawed document.

I have copies of 580 written comments sent to you in opposition to the proposed rezoning. Some are requests for simple changes but the vast majority are requests for withdrawal of this document. Numerous organizations and municipalities have documented their opposition including:

- The towns of Eastville, Exmore and Cape Charles
- Willis Wharf Citizens Association
- Virginia Eastern Shorekeeper
- The Nature Conservancy
- Shellfish Growers of America

- Concerned citizens of Birdsnest, Sylvan Scene, West Birdsnest, Treherneville, Bridgetown
- Cape Charles Business Association (representing 60 businesses)

The input from these groups varies from requests for specific edits to withdrawal of the document. I know that more comments have been received since these comments.

Twenty three people wrote in support of the rezoning document, 8 from the same family. Three people have spoken in support of the rezoning, two of those are developers, while many have spoken against in the past few months.

Workshops held in preparation for the current revision of the Comprehensive Plan indicate that the people of the County desire:

- Retention of the rural character of the County
- Growth in and around small towns
- Protection of water quality
- Moderate growth in appropriate areas
- Need for more recreational opportunities
- Improvement of education and workforce readiness
- Focus on tourism
- Address the departure of the hospital
- Expand job opportunities
- Especially entrepreneurship and small business
- Preserve historic assets
- Ensure that the county is business friendly. Interestingly, a developer at your last meeting indicated that he felt that impediments to business starts is more related to process than zoning.

This rezoning does not address the above issues and is likely to harm all that citizens desire.

I will paraphrase from some citizen letters which are in the records:

“There has been no demonstrated need for the zoning changes. I have not heard of any business with a payroll ask for these changes. Speculators seem to be the only ones that want to see changes...

Push development into our towns...the infrastructure is already in place and increasing its use will cost the County little. Developments in the countryside are costly to taxpayers and decrease the viability of towns”

For me, a growing business with 120 employees, the zoning will make it more costly...to do business in the county.”

Ed Tankard

“I have grave concerns that the process in which the Board of Supervisors is engaging to force various measures on the public is being undertaken in a manner clearly not reflective of the democratic process...it appears that a particular agenda has been decided upon by a small group of individuals and opportunities for the larger populace is being stymied. The Board should be required to provide sufficient reasons for the actions they are undertaking. It appears that the Board is methodically eliminating any and all options to assure low-income affordable housing is provided. It is imperative that needs of all members of the community are considered...no group of people should be ignored.

This so called streamlining of zoning ordinances results in practically making zoning ordinances non-existent. For example, proposals including potential commercial waste sites in residential areas; location of poultry houses and other commercial sites right next to a residence without any notice to that resident”

William Hughes

So many other people sent comments in, including a land use attorney who suggested the retention of Intent statements in the Zoning document, saying “for example the R-M district looks like an R with shorter setbacks and no agricultural or aquacultural uses. I can’t distinguish what each district is really for.”

I am grateful to every person who has submitted written comments or has spoken publically about the rezoning, including the few in favor of it. It is not easy to take the time to do this and those who do speak up deserve at least the thoughtful consideration of their comments.

None of you ran on a platform of completely trashing the zoning ordinance or of bringing chicken houses and waste transport from out of the area for incineration, yet here we are, with you pushing through an undesired ordinance that encourages these types of businesses; Businesses that will harm our currently successful industries and likely decrease property values and cause people to invest their real estate monies elsewhere.

You are acting in an arrogant manner by assuming that you know best and flat out stating that you will not listen to the citizens of this County. The money of this County is OUR money, we are the ones who pay taxes. You do not have the right to do whatever you want and disregard all facts, the requirements of the Code of Virginia, and public opinion.

You have had business owners, community leaders, and realtors and leaders of municipalities within the County ask you to withdraw this flawed document. You have lied to people and told them only a few people are against this proposed ordinance, when facts indicate otherwise. The citizens of this County deserve to be appalled by this process.

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Mr. Butch Cleveland of Cape Charles said that the zoning ordinance amendment process has been disturbing. He said that public sentiment is that there are “back-room” deals going on.

Mr. Dave Kabler read the following comments:

June 8, 2015
The Board Of Supervisors of Northampton County
Eastville, VA

Public Comment for the Record

Dear Sirs,

Thank you for the opportunity to address you this evening. I shall comment about your proposed zoning ordinance. The more I study your proposal the more horrified I become of the possibilities it opens for the abuse of our community vision and goals. Present case in point is your inclusion of a Planned Unit Development district which can be placed anywhere in the county. With this PUD planning tool which prevails in urban and suburban communities, you are letting the foxes into the hen house.

Virginia Beach demonstrates prevalent Planned Unit Development in the extreme. When I was 12 years old I remember the intersection of Virginia Beach Blvd. and Holland Rd. looking like the Eastville rt. 13 intersection. When I was 16 years old, Great Neck Rd. looked like our Bayside Rd. between Machipongo and Franktown. In the many community meetings held here in Northampton County, and that I attended, the directive from the public was to preserve our rural scene, open space, and natural resources. PUD planning is a tool for maximizing land use and, hopefully, efficiently dealing with the consequences of high density population and commercial and industrial use – stuff like traffic flow, public safety, water and sewerage distribution and treatment, air pollution and noise abatement. That is exactly the type of development our residents want to avoid here.

Gentlemen, some of you have said that the “silent majority” approves your proposal. Well, that claim was used by Pres, Nixon to prolong the Vietnam war in the face of massive civic demonstrations against it. Look where that notion got us, and him. I will show you a majority – (to the audience) if you agree that the proposed zoning ordinance should be withdrawn, stand with me now! (nearly everyone in attendance stood)

Many of the best and brightest minds in our community are focused on the withdrawal of your zoning proposal. Last month you passed an Educational Economic Development Initiative. Withdraw your proposal and allow us to focus on what is really important, the improvement of our schools.

Sincerely,

David Kabler
10352 Church Neck Rd.
Machipongo, VA 23405

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Mrs. Sarah Trachy, a resident of Willis Wharf Road, said that the proposed zoning changes put in jeopardy the way of life that she came for as well as per property values. She asked the Board to provide justification for the proposed zoning changes.

Dr. Art Schwarzschild of Willis Wharf Road said that he was still confused and did not understand the justification for the proposed zoning ordinance changes although he noted that these changes were requested several years ago by Tyson and Perdue who wish to have 50 chicken houses in the County.

Mr. Jay Ford told the Board that a “silent majority” is not a reason for proceeding and that chicken houses are proposed to be by-right; therefore, the Board will not have a “say” in the matter. He said that even if Concentrated Animal Feeding Operations (CAFOs) were in compliance with their permits, that they could still result in creek contaminations. He questioned how much [chicken] litter does the Eastern Shore’s agricultural lands need and can handle? He said that no studies have been conducted to justify the important environmental changes that are proposed and urged the Board to have the studies done.

Mrs. Mary Miller read the following comments:

Good evening

After a recent meeting about the Town Edge District between Town officials and the County Economic Development Director, I submitted an alternate definition for “Waste Management”. This was to address the concerns of the Towns about importing waste into the county. The definition provided for managing **only** county-generated waste (att). I have been informed that you have seen and considered this definition and rejected it. I can only conclude that you intend that the proposed rezoning would allow imported waste into the county.

I have found five separate defined items in the proposed rezoning that open up the county to waste from other areas. “Waste Management” will include collecting, transporting, processing and treatment of unspecified waste anywhere in AG Districts. “Resource recovery” and “biomass conversion to energy”, especially large scale, will trigger the importing and incineration of vast amounts of chicken manure in the county. Dead chicken incinerators and holding ponds for manure waiting to be spread on farm fields are included in two brand new proposed definitions. If these activities are independent of industrial poultry farms, then normal

AG District setbacks could be as little as 25' from property lines. Waste water treatment plants can be a group of units to treat industrial and domestic waste water, and handle the resulting solids and gases – again, allowed in AG and Village Districts, 25 feet from property lines, with no additional protective setbacks.

So is this the dawn of a new waste-importing economic era for Northampton County? You've spent a quarter of a million dollars of our tax money for an Economic Development Director, and the best you can come up with is to bring in dripping truckloads of chicken manure?

I request that my statement and my 2-page previous submission to the county become part of the written record of tonight's meeting.

(Attachment)

22 April 15

Re: Proposed definition of "Waste Management" in rezoning document

The proposed definition agreed to by consensus of the Board for the new defined Use, "Waste Management", to replace the definition and the Use, "Waste Related", and particularly the addition of the waste industry phrase "resource recovery", does not respond to the concerns voiced by property owners regarding the possibility of the county allowing as yet unspecified commercial or industrial waste operations and facilities, especially in Agricultural Districts, which might be enabled by the unclear wording in both definitions.

The expressed intent stated by the Zoning Administrator for a new Use and definition, was a charge to create a designation that addressed the county's need for waste disposal and to consolidate the waste-related Uses in the current ZO. Both proposed definitions fail to demonstrate that intent, and the vague wording in both definitions vastly broadens the "waste" Use applications for county zoning.

The county's publicly stated reasons for the change to Use language for waste uses are: to consolidate the provision and management of the county's waste disposal needs into a single defined Use; to significantly address the concerns of citizens who oppose expanding the "waste" Use category with no specificity or performance standards; and to simplify the definition. I respectfully offer the following definition for your consideration, and suggest that it meets the county's needs and interests.

Waste disposal – to provide for disposal of county-generated solid and other waste through the management, operation and expansion of public wastewater treatment facilities, county owned and operated convenience centers for the collection and transfer of county solid waste, including recyclables, temporary hazardous waste collection events and the existing county-owned sanitary landfill and transfer station.

Any additional language which might be interpreted to allow public or private, for-profit commercial or industrial waste processing, including storage, recovery, processing, transport or disposal of solid waste generated outside the county, would be inconsistent with the state intends of the Board and county Staff.

The county has had a troubling history of vulnerability to the “dumping” of waste created elsewhere –tons of banned personal care products buried in a private landfill near Cheriton, streams of out-of-area dump trucks carrying oil soaked soil from Federal and other East Coast clean-up sites, including Wallops, to a plant near Nassawadox, and a scheme to bio-remediate more imported contaminated soil through a secret process at a closed processing plant in Cheriton. The community has made it clear, then and now, that it is opposed to this type of waste-related activity.

Thank you for considering this suggested definition. I request that a copy of this memo be distributed to each Board member, and that the memo be inserted into the public record.

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Ms. Donna Bozza, Executive Director for Citizens for a Better Eastern Shore, questioned what studies have been done to support the proposed zoning changes and the impacts of those changes on the County’s economic engines. She said that the Board’s constituents wanted to know why the Board was “sold” on those changes.

Ms. Linda Nordstrom, an Exmore resident, told the Board that it was dangerous to think that citizens who do not attend the meetings are in support of the proposed zoning ordinance amendments. She said that the Board was supposed to represent the citizens.

Mr. Ken Dufty read the following comments:

6182 Wardtown Road
Exmore, Virginia 23350

June 10, 2015

Northampton County Board of Superisors
County Administrator Nunez
County Administrative Complex
Eastville, Virgina 23347

Northampton County Supervisors and County Administrative Nunez:

I am writing in response to comments that were made by myself and others at the June 9, 2015 Northampton County Board of Supervisors (BOS) meeting during the 7pm session in the Board Chambers. In particular, during the citizen information session, many speakers spoke against the proposed revisions to the 2009 Northampton County Zoning Ordinance. The majority of those speakers questioned the motives behind the effort by county leaders to completely revamp our current zoning code which will allow many commercial and industrial uses not allowed now, as well as promoting higher density, changes that are not consistent with our current Comprehensive Plan. None of these proposed changes, as has been demonstrated, are in concert with the will and desire of the majority of residents in this county, nor has this rezoning effort been requested by the majority of citizens who will be negatively affected if the BOS is successful in their unilateral efforts.

During my comments at the end of the public comment period, I commented that there appears to be a conflict of interest, or indeed underlying personal motives for the furtherance of the rezoning process by two supervisors. I want to memorialize those comments in writing, and want these comments to be made part of the formal record of this proceeding.

I. The “biomass” issue has appearances of benefiting the Bay Coast Railroad, in which former Chairman and current Supervisor LeMond has a personal interest.

On or about August, 2008, shortly after purchasing our property in the Town of Exmore, my wife and I attended a meeting of the Concerned Citizens of Exmore. At that meeting, Mr. J.T. Holland, a representative of Bay Coast Railroad, informed attendees that permits had been granted by the Town of Exmore to the Exmore Energy Project. This pending project was described as a Bio Diesel refinery that would process a million gallons of vegetable waste oil that was currently being stored in tanks across the Chesapeake Bay by Norfolk Oil Transport Company, owned by Grant Norelle. The Bio-Diesel plant was to be located within several hundred yards of our new shop, and was in close proximity to the center of our business district. In conversations with Ed Pedrick, spokesperson for the Exmore Energy Project, I learned that methanol, a highly flammable and combustible mixing agent, was to be stored in single-wall railroad tanker cars that would be stored on an added railroad siding next to the proposed plant. Note again that the project was introduced to us by a representative of Bay Coast Railroad, and it appeared as if the project was a joint venture between principals of the Exmore Energy Project and the Bay Coast Railroad.

After learning about the dangers of this type of facility, we worked with other citizens and indeed the Virginia Department of Environmental Quality to discourage the construction and operation of the plant, and heard no more about the proposal for the next 5 (five) years.

Page 1 of 3

That is, until the afternoon of March 11, 2014 when a casual internet review of the proposed changes to Northampton County's 2009 zoning ordinance revealed that “Biomass conversion to alternative fuel” was to be allowed in every zoning district “by right” throughout Northampton County. This would allow a project like the Exmore Energy Project to be built in every Village, Hamlet, Waterfront, Ag district and elsewhere, with no notice to neighbors and no chance of being legally denied by the Board.

Again, working with representatives from the VDEQ, we verified that the Board's contention that Virginia "forced" counties to include biomass conversion to alternative fuel in all zoning districts was indeed a misinterpretation of the state law. Upon a cursory read of the Virginia law, it simply says IF a local government allows biomass facilities in a zoning district, it cannot require a special use permit for this process. We encouraged the BOS to change the draft language, and we were satisfied with that change.

But also in the draft, neatly tucked in a permitted use category, was a term "waste related". This broad term would allow projects like the Exmore Energy Project, as well as waste incinerators, waste storage, waste processing, and other invasive uses in zones where these processes are not allowed now. Again, public outcry was successful in getting "waste related" out of the draft zoning ordinance, thanks in part to the drive of Supervisor Larry Trala.

In response to a large public outcry, the BOS then proposed to insert "waste management" into the proposed zoning ordinance. But again, tagged on to the very end of that definition was a new term called "resource recovery". What "resource recovery" would allow is the import of waste products (like vegetable waste oil from Norfolk) into Northampton County and allow the processing of these waste oils into a petroleum additive in agriculture and commercial zones in the county. Note this would make the project that was presented as a joint effort by Bay Coast Railroad and Norfolk Oil Transport Company (or some other similar company) possible and viable.

It appears that the citizens of the Northampton County are being victimized by an administrative shell game that, either by design or accident, could benefit the Bay Coast Railroad. As former Chairman and current Northampton County Supervisor LeMond was President of Bay Coast Railroad, (retiring May 1, 2015) during the drafting of the proposed revisions to the 2009 Northampton County zoning ordinance, and never recused himself from any of the official votes that furthered the possibility of projects that would benefit his company, any reasonable person would conclude that there is the appearance of a conflict of interest and also the appearance of a violation of the Virginia State and Local Government Conflict of Interest Act codified in 2.2-3100 of the Commonwealth of Virginia Code. Note that section 2.2-3112 (A) (1) requires that any officer of a local government "(s)hall disqualify himself from participating in a transaction if (i) the transaction has application solely to property or a business or governmental agency in which he has a personal interest". While technically the proposed zoning changes relating to biomass conversion to alternative fuel and "resource recovery" may not *solely* benefit Bay Coast Railroad, again any reasonable person would conclude after seeing this issue arise again and again, that there may be other motives behind this woodpecker-like effort other than the public good. In short, the failure of Mr. LeMond to recuse himself from past and future votes on the rezoning issue is indeed a textbook example of a violation of the spirit and intent of Virginia ethics laws which frown upon this type of behavior by local and state officials.

Page 2 of 3

II Conflict of Interest and Promotion of the Zoning Ordinance Revisions to further personal gain rather than public good.

On the afternoon of June 9, 2015 I received an email from one of the hundreds of residents who are attempting to defend our current zoning ordinance and comprehensive plan from the unilateral revisions being proposed by the BOS. This constituent relayed to me that she had just had a conversation with the Chairman of the Northampton County Board of Supervisors, Richard Hubbard. When asked why the BOS was trying to change the current protective zoning ordinance with absolutely no support from the majority of Northampton County residents, she relayed to me (in recorded email) that Chairman Hubbard indicated to her that he had 4 or 5 acres with 30 acres contiguous to his home, and wanted to leave his estate to all of his 3 sons rather than just one. Note that under the proposed zoning ordinance with “accessory dwelling” being added that does not exist now, along with other density changes, the Chairman's desire to accomplish that personal goal could be realized.

Again, while it MAY be legal under a less-than-airtight Virginia ethics law to promote a private agenda at the expense of the majority of residents, it can be easily argued that promoting a private interest by using your influence as a public official is a violation of the spirit and intent of the Virginia State and Local Conflict of Interest Act as referenced above. In short, if there is even the appearance that an elected official will stand to personally benefit or profit from an act in which he or she is involved regarding his or her public office, a recusal from voting on that issue is in order and indeed required.

III. Case Law on Conflict of Interest Violations by County Supervisors

Attached to this letter is a September 10, 2013 article from the Washington Post. It speaks to the recusal of 7 of 10 Fairfax, Virginia supervisors regarding a zoning issue because of conflict of interest in that proceeding. As the article suggests, the supervisors recused themselves because of a recent Supreme Court decision in a case brought by Lorton Homeowners Association against two Fairfax Supervisors regarding conflict of interest. The Supreme Court in Lorton found that the county officials in that case must recuse themselves from voting on a zoning application “when they have financial ties-however tenuous-to zoning applicants” or considerations.

IV. The most egregious violation of the spirit and intent of Virginia Ethics Law

Early in this proceeding, many residents asked “who” was the applicant in the proceeding to completely rewrite Northampton County's 2009 zoning ordinance when indeed **NOT ONE** resident had stepped up and indicated that they were supporting or requesting such a zoning change. We were told that it is indeed the Northampton County Board of Supervisors who were listed as the applicant, with County Administrator Katie Nunez acting as the “agent” for the Board.

So here we have the BOS, with two of the members voting continuously in favor, promoting a complete rezoning of the county that will change the 2009 zoning ordinance and allow: bio-diesel plants and waste incineration; large scale intensive poultry operations; easing of subdivision rules; commercial and industrial uses on farmland; paving over of our aquifer, elimination of special use permits for many uses; and elimination of lot coverage limit ratios along with many other disastrous changes. And at least two of the five BOS members **appear** to have or to have had a vested interest in the outcome of this proceeding. Therefore, it is incumbent upon us to raise this issue and ask that, in the spirit of ensuring public trust in our

elected representatives, that Former Chairman LeMond and current Chairman Richard Hubbard recuse themselves from all future votes on the proposed zoning ordinance and rescind all past votes, including the unilateral vote to deem the BOS “applicants” in this instant proceeding.

Sincerely, Kenneth G. Dufty

757-442-7889

(Attached to these comments were two pages of a September 12, 2013 *Washington Post* article entitled, “7 of 10 Fairfax supervisors couldn’t vote on Inova zoning issue”. These pages are filed in the Office of the County Administrator.)

* * * * *

Mr. Ralph Dodd distributed a map of the State of Virginia which illustrated those counties and cities with enabling legislation for use-value taxation. He volunteered to do additional research if needed by the Board to show where Northampton County ranks in the use of use-value taxation.

The following future meeting agenda was shared with the Board:

Work session/other meeting agendas:

- (i) 6/22/15: Work Session: Joint Meeting with E. S. Public Service Authority
- (ii) 6/29/15: Work Session: Continued Zoning Discussions
- (iii) 7/27/15: Work Session: Topic to be Determined

(7) The County Administrator’s bi-monthly report was presented as follows:

TO: Board of Supervisors
FROM: Katie H. Nunez, County Administrator
DATE: June 5, 2015
RE: Bi-Monthly Report

I. Projects:

A. Public Service Authority:

The next meeting of the PSA is Monday, June 22, 2015 @ 5:00 p.m. as a joint meeting with the Board of Supervisors.

B. Personnel – Update:

As you are aware, the deadline for submission of applicants for the position of Finance Director is June 18, 2015. I am using Springsted, Inc. to assist with this search process. I have been handling the Finance duties in the interim which has taken up a considerable amount of my time. We are starting the preparation for the close of Fiscal Year 2015 and the auditors will be on-site from August 4 – 6, 2015 doing their preliminary fieldwork.

It is with regret that I announce that Charles McSwain, Economic Development Director, will be retiring at the end of July 2015. I am also using Springsted, Inc. to handle this search with the deadline closing for applications of June 18, 2015.

C. Zoning Text Amendment #2014-01 and Zoning Map Amendment #2014-01 – Extension of Application Review Time:

Pursuant to the Code of Virginia §15.2-2286 (A) (7), it states that “In any county having adopted such zoning ordinance, all motions, resolutions or petitions for amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed 12 months unless the applicant requested or consents to action beyond such period or unless the applicant withdraws his motion, resolution or petition for amendment to the zoning ordinance or map, or both.”

The Board of Supervisors is the applicant of the proposed zoning ordinance amendment and the Board voted on January 14, 2014 to submit this application for this proposed zoning ordinance amendment and the public hearing was held on March 11, 2014. The Board has voted previously at your December 9, 2014 meeting to extend the zoning ordinance amendment application for six months beyond the twelve (12) month window from the original Board of Supervisors vote of January 14, 2014.

Since that six-month extension deadline is approaching (July 14, 2015), I am requesting the Board to consider extending the timeframe for an additional six months with the following motion:

“I move to extend the zoning ordinance amendment application for Zoning Text Amendment #2014-01 and Zoning Map Amendment #2014-01 an additional six months, thus bringing the new deadline to January 14, 2016 for the Board to take action on ZTA #2014-01 and ZMA #2014-01.”

Motion was made by Mr. Hogg, seconded by Mr. LeMond, that the Board extend the zoning ordinance amendment application for Zoning Text Amendment #2014-01 and Zoning Map Amendment #2014-01 an additional six months, thus bringing the new deadline to January 14, 2016 for the Board to take action on ZTA #2014-01 and ZMA #2014-01. All members were present and voted “yes.” The motion was unanimously passed.

D. USDA Grant Obligation:

A teleconference call is scheduled for Tuesday, June 30, 2015 at 2:00 p.m. The intent of this call is to have both parties fully understand the remaining grant obligation owed by the County, how USDA will allow that to be resolved and any stipulations or requirements as part of that resolution, discussion of what County projects may qualify, and what source of funding that the County manages (capital funds, fund balance, etc.) would best apply to meet that obligation.

* * * * *

Tabled Item:

(8) Tabled motion from last month relative to creation of a capital plan committee

Motion was made by Mr. LeMond, seconded by Mr. Trala, that this matter remain on the table pending the June 30th meeting with USDA. All members were present and voted “yes.” The motion was unanimously passed.

It was noted that as pursuant to the Code of Virginia, the County’s Planning Commission is tasked with development of a capital improvement plan. This item is contained on the Commission’s work place for this year.

Action Items:

(9) Consider a request from Philip R. Custis for replacement of a single wide mobile home on property identified as Tax Map 16-4-A3 and is located within Custis Farm AFD.

Motion was made by Mr. Trala, seconded by Mr. Bennett, that the Board approve the request of Mr. Custis for replacement of a single-wide mobile home (12106 Sassafra Lane) on property identified as Tax Map 16-4-A1 and located within the Custis Farm AFD. All members were present and voted “yes.” The motion was unanimously passed.

(10) Consider adoption of revised Northampton County Fire and Rescue Commission By-Laws.

Motion was made by Mr. Hogg, seconded by Mr. Trala, that the Board approve the revised Northampton County Fire and Rescue Commission By-Laws as presented. All members

were present and voted “yes.” The motion was unanimously passed. Said By-Laws are on file in the Office of the County Administrator.

(11) Consider approval of a Fireworks Permit, issued to Zambelli Fireworks Mftg. Co. for a fireworks display at Cherrystone Campground on July 18, 2015.

Motion was made by Mr. Trala, seconded by Mr. LeMond, that the Board approve a fireworks permit issued to Zambelli Fireworks Mftg. Co. for a fireworks display at Cherrystone Campground on July 18, 2015. All members were present and voted “yes.” The motion was unanimously passed.

Matters Presented by the Board Including Committee Reports & Appointments

Motion was made by Mr. Hogg, seconded by Mr. Bennett, that Mrs. Barbara Coady be reappointed to the Board of Directors of the Eastern Shore Public Library. All members were present and voted “yes.” The motion was unanimously passed.

Motion was made by Mr. LeMond, seconded by Mr. Bennett, that the Board appoint the following individuals to the Community Criminal Justice Board as recommended by the Chesapeake Bay Alcohol Safety Action Court Community Corrections Program. All members were present and voted “yes.” The motion was unanimously passed. Said individuals include:

Rick Wilkins	CCCCP Executive Director
Carletha Ayres-Harmon	CCCCP Supervisor
Latoya Harmon	CCCCP Probation Officer
Honorable Gordon Vincent	General District Court Judge
Honorable William R. Lewis	Circuit Court Judge
Honorable Croxton Gordon	Juvenile & Domestic Relations Judge
Brittney Taylor	Chief Magistrate
David L. Doughty, Jr.	Sheriff
Bruce Jones	Commonwealth Attorney
Thomas Dix	Public Defender
Eddie Lawrence	Local Educator
Shenay Wharton & Debra Olsen	Community Services Board Administrator
Katherine Nunez	County Administrator

(12) Resolution Authorizing a Regional Study Committee on the Creation of a Standing Regional Navigable Waterways Committee.

Motion was made by Mr. Trala, seconded by Mr. Bennett, that the Board adopt the following Resolution and that Supervisors LeMond and Hogg represent the Board thereon . All members were present and voted “yes.” The motion was unanimously passed. Said resolution as adopted is set forth below:

**A RESOLUTION AUTHORIZING A REGIONAL STUDY COMMITTEE ON
THE CREATION OF A STANDING
REGIONAL NAVIGABLE WATERWAYS COMMITTEE**

WHEREAS, Federal funding for dredging projects and water channel maintenance has become scarce and hard to obtain, with much recent funding coming in the form of one-time funding opportunities and efforts by specific Board members to get help for the Shore’s navigational needs; and

WHEREAS, at the urging of Accomack Supervisor Thornton and support from all the Board members, both Accomack and Northampton Counties have begun hosting an ad hoc, invitation-based, regional stakeholders group referred to as the Navigation Partnership; and

WHEREAS, the purpose of the Partnership has been to develop a unified voice in working with agencies charged with maintaining the Nation’s waterways, particularly the US Army Corps of Engineers and Coast Guard, primarily by developing and providing them with a prioritized list of requests for assistance; and

WHEREAS, such an approach serves as a conduit for information to and from Federal Agencies and local government, and also enables the Army Corps to focus its very limited available funding to the Shore on our most critical needs; and

WHEREAS, the US Army Corps of Engineers and Coast have provided significant support for the group and much help in understanding the Federal process for maintaining or closing channels, as well as help in understanding the scoring process for obtaining federal resources, and also help in understanding the condition of our deteriorating Shore waterways; and

WHEREAS, this informal committee serves as a voice for the entire Shore, but has never been formalized; and

WHEREAS, this change in Federal funding is apparently a long-term condition, calling for more local and regional effort and consideration of the area’s water transport needs.

NOW, THEREFORE, BE IT HEREBY RESOLVED, by the Northampton County Board of Supervisors that a joint bi-county study committee should be convened to consider the worth of forming a permanent regional navigable waterways committee or partnership which might continue the work started by the current ad hoc Partnership, as well as its powers and mission, it being the sense of the Board that the work of the Ad Hoc Partnership has been helpful and valuable in obtaining resources for dredging projects; and it is

FURTHER RESOLVED, that the Northampton Board appoint members for the same purpose, which study committee shall be comprised of individuals from both counties, as well as elected officials from both the Northampton and Accomack County Boards, to-wit:

* Two members of each Board of Supervisors, selected as determined by the respective Board, and

* Two citizen members from each county, selected as determined by the respective Board, and

BE IT FINALLY RESOLVED that the purpose of the exploratory group shall be to advise their respective Boards on the following topics:

- * The wisdom and desirability of creating a permanent joint regional group for the purpose of dealing with the Shore's water navigation needs, and
- * The appropriate form of its structure, and
- * The appropriate location for its administration, and
- * The suggested scope of the group's duties, mission and powers (if any), and
- * The suggested name for the group, and
- * Other matters which may arise in the work of the group.

* * * * *

Recess

Motion was made by Mr. Trala, seconded by Mr. Bennett, that the meeting be recessed until 5:00 p.m., Monday, June 22, 2015, in the Board Room of the County Administration Building, 16404 Courthouse Road, Eastville, Virginia, in order to conduct a joint work session with the Eastern Shore of Virginia Public Service Authority. All members were present and voted "yes." The motion was unanimously passed.

The meeting was recessed.

CHAIRMAN

DRAFT