

VIRGINIA:

At a recessed meeting of the Board of Supervisors of the County of Northampton, Virginia, held in the Board Chambers of the County Administration Building, 16404 Courthouse Road, Eastville, Virginia, on the 28th day of July, 2014, at 4:00 p.m.

Present:

Larry LeMond, Chairman

Richard L. Hubbard, Vice Chairman

Laurence J. Trala

Granville F. Hogg, Jr.

Oliver H. Bennett

The meeting was called to order by the Chairman.

Motion was made by Mr. Trala, seconded by Mr. Bennett, that the following modifications be made to the agenda. All members were present and voted "yes." The motion was unanimously passed. Said modifications are outlined below:

(A) Add new item: Ratification of Declaration of Emergency

Motion was made by Mr. Bennett, seconded by Mr. Trala, that the Board ratify the issuance of the following Resolution - Declaration of Local Emergency. All members were present and voted "yes." The motion was unanimously passed. Said resolution as adopted is set out below:

**RESOLUTION
DECLARATION OF A LOCAL EMERGENCY**

WHEREAS, the Board of Supervisors of the County of Northampton does hereby find that due to the tornado which occurred on July 24, 2014, the County of Northampton is facing a condition of extreme peril which necessitates the proclamation of the existence of an emergency in order to provide mitigation, preparedness, and activities to protect life and property;

NOW, THEREFORE, IT IS HEREBY PROCLAIMED that an emergency now exists

throughout said County; and

IT IS FURTHER PROCLAIMED AND ORDERED that during the existence of said emergency the powers, functions, and duties of the Director of Emergency Services, and the Peacetime Emergency organization of the County of Northampton shall be those prescribed by state law and the ordinances, resolutions, and approved plans of the County of Northampton in order to mitigate the effects of said emergency.

Date: July 24, 2014

Chairman, Board of Supervisors
County of Northampton

Time: 8:30 a.m.

(It is noted for the record that the Emergency was terminated at 8:30 a.m., July 25, 2014. A full report of the July 24th tornado and associated costs will be presented at the regular August meeting.)

(B) Add new item: Consider waiving of solid waste tipping fees.

Motion was made by Mr. Trala, seconded by Mr. Bennett, that the Board waive solid waste tipping fees for storm debris disposal for a two-week period of July 24, 2014 – August 7, 2014. All members were present and voted “yes.” The motion was unanimously passed. It was noted that the Board may consider extension of the tipping fee waiver at its August meeting should circumstances warrant.

(C) Add new item: Resolution of Commendation.

Motion was made by Mr. Hubbard, seconded by Mr. Trala, that the following Resolution of commendation be adopted. All members were present and voted “yes.” The motion was unanimously passed. Said resolution as adopted is set out below:

RESOLUTION

Northampton County Board of Supervisors

July 28, 2014

WHEREAS, on the morning of July 24, 2014, with limited warning, a tornado touched down in Cherrystone Campground and across lower Northampton County through Cheriton and Oyster causing extensive damage to agriculture, numerous personal injuries, property damage and loss of life; and

WHEREAS, first responders including fire and EMS units throughout the Eastern Shore, State and local law enforcement, local and regional hospitals, county staff, Coast Guard personnel, and many fellow Cherrystone campers and staff rushed to find and treat those injured by the storm; and

WHEREAS, recognizing that this tragedy could have been much worse, Virginia Governor Terry McAuliffe has directed that a report be made of lessons learned and steps be identified to further protect Northampton County citizens in the future.

NOW, THEREFORE, BE IT RESOLVED, that the Northampton County Board of Supervisors wishes to recognize and thank all within the community who gave of themselves above and beyond the call of duty in this time of crisis, and

BE IT FURTHER RESOLVED, Northampton County will actively support and participate in a review of this tragic incident to enhance future preparedness and protect its citizens from catastrophic events.

* * * * *

Mr. Bennett expressed his appreciation for the outpouring of help in the recent storm event noting that many of the individuals who arrived to assist are never seen at Board meetings with complaints.

Mr. Hogg also noted the presence of Operation Blessing from Hampton Roads in the area performing roof repairs.

The County Administrator thanked Dr. Matson of the Eastern Shore Health District for their assistance as well as the school staff, calling the opening of the high school as evidence of a “great partnership”.

(D) Add new item: Consider change order for demolition project at the former Exmore-Willis Wharf Elementary School.

Ms. Nunez indicated that the contractor had been finally able to get into the basement of the facility and discovered additional asbestos-covered piping and bags of “raw” asbestos buried under the site. She presented change order requests for both the Macsons demolition contract (\$44,340) and the monitoring services contract with Applied Laboratory (\$7,785), totaling \$52,215, noting that funding would come from Undesignated Fund Balance. Motion was made by Mr. Hubbard, seconded by Mr. Trala, that the change order requests in an amount not to exceed \$52,215.00, be approved as presented. All members were present and voted “yes,” with the exception of Mr. Bennett to voted “no.” The motion was passed. Mr. Bennett stated that his vote was based on the fact that the Board did not know what else had been buried on the site.

(E) Delete item #3 on agenda (Performance Standards). Motion was made by Mr. Hubbard, seconded by Mr. Bennett, that item #3 on tonight’s agenda – Performance Standards – be deleted and moved to the August work session agenda. All members were present and voted “yes.” The motion was unanimously passed.

Board & Agency Presentations:

(1) County Administrator’s Report: Zoning Ordinance Amendments. Discussion items include:

List of Sections Requiring Review by the Board

1. Definitions
 - a. Recommendations by PC (finalize)
 - b. Staff Recommendations
2. Districts
 - a. Uses (special use vs. permitted vs. not permitted) §154.1-205-215
 - b. Dimensional and density requirements §154.1-205-215
 - c. Working waterfront uses and mapping
 - d. Mobile home parks as a PUD
3. ~~Performance Standards~~

- ~~— a. Biomass §154.1-315~~
- ~~— b. Husbandry §154.1-307~~
- ~~— c. Residential facilities/Family day home §154.1-314~~

Mr. Peter Stith, Long-Range Planner, Mrs. Melissa Kellam, Zoning Administrator, and Mr. Charles McSwain, Development Director, led the Board in a discussion regarding items #1 and #2 above. The following memorandum was distributed:

MEMORANDUM

TO: Northampton County Board of Supervisors

FROM: Development Department Staff

SUBJECT: Response to memo from County Administrator June 24, 2014

DATE: July 28, 2014

Additional questions were raised by the Board at the June 23, 2014 work session concerning the following:

- (a) Waste storage facilities – does the height requirement factor-in the flood plain level or not;
- (b) Domestic/traditional husbandry and intensive farming uses minimum standards – does the state code allow for grazing in the wetlands;
- (c) Would a biomass facility be considered as a support business and thus covered under the agricultural support business definition or not.

Staff Recommendations on Board questions above:

- (a) Staff recommends the following changes to the *Waste storage facility* definition and two options for performance standards for intensive livestock.

Waste storage facility. A waste holding **shed**, pond or tank used to store manure prior to land application, or a lagoon or treatment facility used to digest or reduce the solids or nutrients.

§154.1-307 (C)(6) The waste located within the waste storage facilities must be elevated above the required floodplain elevation plus one foot.

Or

(C)(6) Waste storage facilities shall not be located within the special flood hazard area.

(b) In a check of state and federal regulations, the federal authorities we checked with do not regulate grazing. The state has two references:

§28.2-1302§ 3(5) which allows grazing if otherwise permitted by law;

9VAC-830-140(5)(b)(1 -5) which prohibits agricultural activities in the resource protection area unless certain best management practices have been implemented to allow such encroachment.

(c) No, because it is a specific use on the use lists.

* * * * *

With regard to question (a) above, it was the consensus of the Board to approve the second red-lined option (C)(6) outlined above. Mr. Hogg stated that he would like to revisit this Board consensus at a later date.

Additionally, the Board agreed to add a discussion topic next month regarding domestic husbandry practices and should a performance standard be developed for waste storage facilities associated with domestic or traditional husbandry.

With regard to questions (b) and (c) above, there was no action needed by the Board.

At this time, Mr. Stith led the Board through a discussion relative to item (1) – Definitions and consensus of the Board is outlined below as tied to the specific pages numbers of the Article XII Definitions handouts. This document is on file in the office of the County Administrator.

Page 104. The Board agreed to the inclusion of the word “sales” within the definition of “Agriculture crop production operation”. All other modifications approved as presented.

Page 105. The Board agreed to the inclusion of the words “or land” following the definition of “alteration”. All other modifications approved as presented.

Page 106. All modifications approved as presented. It was the consensus of the Board to add

the following language, “Each district may further restrict this use by size and/or design” to the “artist/artisan studio” definition.

Page 107. The Board agreed to add the word “services” to the definition of “billboard” as follows: “A sign which advertises products, events, *services* or businesses.....”

Page 107. Under the definition of “Biomass”, it was the consensus of the Board to return the stricken language (currently shown in blue text), which derives from the Code of Virginia. Mr. Hogg stated that he would like to review the definition of “Biomass conversion to alternate fuel – small scale”, at a later date. All remaining modifications approved as presented.

Page 108. All modifications approved as presented.

Page 109. All medications approved as presented.

Page 110. All modifications approved as presented.

Page 111. Insert the words “A place” at the beginning of the definition of “Disposal Structure” and refer this definition back to staff for further review. All remaining modifications approved as presented.

Page 112. All modifications approved as presented.

Page 113. All modifications approved as presented.

Page 114. All modifications approved as presented.

Page 115. All modifications approved as presented.

Page 116. The definition of “industrial services” was referred back to staff for further review.

The remaining modifications were approved as presented.

Page 117. No changes were proposed.

Page 118. Under the definition of “migrant labor camp”, the word “tents’ was questioned. Staff was asked to verify this definition.

Page 119. All modifications approved as presented.

Page 120. All modifications approved as presented.

Page 121. Change the word “bordered” to “defined” within the definition of “Park”.

Page 121. Staff was asked to review specifications for “parking space” as it pertains to compact cars. The remaining modifications on this page were approved as presented.

Page 122. All modifications approved as presented.

Page 123. All modifications approved as presented.

Page 124. All modifications approved as presented.

Page 125. Staff was instructed to review the definition of “shoreline” with the idea of adding “whatever is the most landward feature abutting the fastlands” in the appropriate location. The remaining modifications on this page were approved as presented.

Page 126. All modifications approved as presented.

Page 127. All modifications approved as presented.

Page 128. Add the word “shed” after “holding” under the “waste storage facility” definition (referenced in the earlier memorandum)

Page 129. All modifications approved as presented.

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At this point, the meeting was briefly recessed. The Chairman reconvened the meeting after the five-minute break.

Mr. Stith led the Board through a discussion of item #2 – Districts of the handout page-by-page as outlined below:

Page 1. Section (A) – Uses Allowed By-Right in the Conservation District. Mr. Hogg questioned whether “artist and artisan studio” was compatible with the conservation district. Mr.

Hubbard stated that he would like to see an “intents” paragraph inserted in each district description. Mrs. Kellam agreed to provide this information for the next meeting. Mr. Hogg also questioned “emergency services”, “basic utilities”. Staff was tasked with doing further review when it was noted that if “basic utilities” was moved to Section (B) – those uses which require a special use permit – then all the by-right uses which require electricity would also require a special use permit. The Board agreed to create a use entitled, “artist and artisan studio – less than 1,000 sq. ft.” for inclusion as a by-right use. The Board agreed with the remaining modifications as proposed from the Planning Commission (shown in blue text) with the exception of “Ponds, agricultural irrigation”, “Research facility”, and “SFD detached” where the Board of Supervisors agreed to the staff recommendation (shown in red text).

Page 1. Section (B) – Uses Requiring Special Use Permit in the Conservation District. The Board approved the modifications as presented and as modified in the earlier discussion. from the Planning Commission (shown in blue text) with the exception of “Ponds, agricultural irrigation”, “Research facility”, and “SFD detached” where the Board of Supervisors agreed to the staff recommendation (shown in red text).

Page 2. Section (C) – Dimensional and Density Regulations in the Conservation District. It was the consensus of the Board to replace the “0 feet” side setback with “N/A”.

Page 3. Section (A) – Uses Allowed by Right in the Agricultural District. The Board agreed to move “artist and artisan studio – greater than 1,000 sq. ft.”, “funeral home”, “library”, “child day center”, “medical facility” and “school” to Section (B) – allowed by special use permit. Legal counsel was asked to check zoning prohibitions for “religious institutions”. The Board agreed to restore “Research facility” to a use by-right and remove same from SUP. The Board agreed with the recommendation from the Planning Commission (shown in blue text) with the exception of

“Personal services”, “Kennel”, and “Wastewater treatment plant”, where the Board of Supervisors agreed to the staff recommendation (shown in red text). The remaining staff recommendations were approved as presented.

Page 4. Section (B) – Uses Requiring Special Use Permit in the Agricultural District. The Board agreed that “research facility” should be allowed by right and therefore moved to Section (A). The Board agreed with the recommendation from the Planning Commission (shown in blue text) with the exception of “Commercial services”, “Commercial services 2,500 sq. ft.”, and “Industrial services”, where the Board of Supervisors agreed to the staff recommendation (shown in red text). The remaining staff recommendations were approved as presented.

Page 5. Section (C) – Dimensional and Density Regulations in the Agricultural District. It was the consensus of the Board to replace the “0 feet” side setback with “N/A”.

Page 6. Section (D) – Cluster subdivision regulations in the Agricultural District. While the Board made no changes to this page, at the suggestion of Mr. Hogg, staff was asked to review building height limits.

At this time, the Board ended its discussions relative to the proposed zoning amendments and decided to resume said discussions at the August work session.

Chairman LeMond read the following comments:

There is no “man behind the curtain” in regard to the proposed zoning code. The Code draft is per the direction of the Board of Supervisors and was drafted by a team of 7 employees from Administration, Legal, Planning and Zoning. Mr. McSwain was hired at the direction of the Board to provide several functions as Director of Development including among them streamlining the planning and permitting process and addressing economic development.

The author of these letters suggested that PEMSCO would be allowed under the draft zoning code. In fact, such a use is not permitted in any district. Perhaps the confusion is that the use of burning soil to remove petroleum is not a biomass conversion of any type. In fact biomass conversion, which is only permitted on a small scale in all districts because it is required by Virginia Code, is the process of taking renewable resources, such as wood, and creating some type of energy. So a wood fireplace is a small scale biomass converter. As to the statement

regarding the Exmore biodiesel project, the County has no influence over Exmore Zoning. Regardless, any industrial operation if permitted for a land use, must also meet all performance standards regarding offensive activity, U.S. EPA and VDEQ rules.

As to the draft code allowing a prison, the statements made are incorrect. Prison use is allowed in an agricultural district and then only with a special use permit which requires a public hearing. It is allowed by right in industrial but the large industrial site in the county is far too small to accommodate a prison and thus a rezoning would be required with a public hearing to create a prison. The prison use was included to address the topic in the zoning code, not to enable one without a public hearing.

Further, Mr. McSwain on occasion works outside the community to support the economic development profession. He recently served as a judge for the international Economic Development Council 2014 Awards. He has not accepted any new outside compensation engagements since being employed by Northampton County.

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Matters Presented by the Board Including Committee Reports & Appointments

(2) Clean Water Act – Definition of “Waters of the United States”

Ms. Katherine H. Nunez, County Administrator, indicated that a change in the definition of “waters of the United States” is being proposed wherein ditches would be classified as federal waters. This could have a far-reaching effect on many counties. She asked if the Board wished to offer a position on this matter. The Chairman suggested that a strong letter be written, opposing this proposed change, calling this amendment “an over-reach by the federal government”. Motion was so made by Mr. Trala, seconded by Mr. Bennett, and unanimously passed.

Closed Session

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

(A) 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.

Receipt of lease proposal – tillable farmland at landfill site

Receipt of sales proposal – EMS property

(B) 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.

Response from Cheriton on Boundary Adjustment Questions Posed by the County

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 paragraph 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.

Adjourn

Motion was made by Mr. Bennett, seconded by Mr. Trala, that the meeting be adjourned.

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

The meeting was adjourned.

_____CHAIRMAN

_____ COUNTY ADMINISTRATOR