

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 25th day of August, 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.

Board & Agency Presentations:

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

List of Sections Requiring Review by the Board

1. ~~Definitions~~ *completed*
  - a. ~~Recommendations by PC (finalize)~~ *completed*
  - b. ~~Staff Recommendations~~ *completed*
2. Districts
  - a. Uses (special use vs. permitted vs. not permitted) §154.1-205-215  
*(Conservation & Agriculture Districts have been completed.)*
  - 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 item #2 above. The following memorandum was distributed and the resulting Board action is shown:

To: Katherine H. Nunez, Administrator

From: Charles McSwain, Development Director

Re: Material to be discussed by the Board of Supervisors August 25<sup>th</sup>, 2014

Date: August 8, 2014

In reference to the Board of Supervisors' proposed review of the Zoning Code draft, please find attached materials which have been updated or are new in response to questions from the July 28<sup>th</sup> work session of the Board. Please place new materials in Binder 3 or you may substitute replacement material in Binder 2 as denoted below. As a reminder the black type is from the original public hearing draft, blue type is a recommendation from the Planning Commission, and red type indicates a staff recommendation.

3. Performance Standards (Existing materials are in Binder #2 except for a new version of b. Husbandry)

- a. Biomass (see new attachment herewith for replacement in Binder 2, Tab 1, Attachment 5)
- b. Husbandry (see new attachment herewith for replacement in Binder 2, Tab 1, Attachment 3)
- c. Family day home facilities (Binder 2, Tab 1, Attachment 4)

### **Response to Questions from July 28<sup>th</sup> meeting**

Page 107 clarification

### **BIOMASS Definition [in reference to question from Supervisor Hogg]**

*Planning Commission recommended definition*

"Biomass" means agricultural-related materials including vineyard, grain or crop residues; straws; aquatic plants; and crops and trees planted for energy production

*Board Consensus Definition of Biomass July 28<sup>th</sup>*

Biomass. Agricultural-related materials including vineyard, grain or crop residues; straws; aquatic plants; and crops and trees or waste materials capable of decomposition that are produced from the raising of plants and animals during agricultural operations, including animal manures, bedding, plant stalks, hulls, and vegetable matter planted for energy production.

*No action was needed by the Board; this was clarification simply provided to the Board.*

*Insert from Va Code*

§ 15.2-2288.01. Localities shall not require a special use permit for certain small-scale conversion of biomass to alternative fuel.

A. As used in this section, unless the context requires a different meaning:

"Biomass" means agricultural-related materials including vineyard, grain or crop residues; straws; aquatic plants; and crops and trees planted for energy production.

"Small-scale conversion of biomass" means the conversion of any renewable biomass into heat, power, or biofuels.

B. A zoning ordinance shall not require that a special exception or special use permit be obtained for the small-scale conversion of biomass if: (i) at least 50 percent of the feedstock is produced either on site or by the owner of the conversion equipment; (ii) any structure used for the processing of the feedstock into energy occupies less than 4,000 square feet, not including the space required for storage of feedstock; and (iii) the owner of the farm notifies the administrative head of the locality in which the processing occurs. Localities may adopt reasonable requirements for setback, minimum lot area, and restrictions on the hours of operation and maximum noise levels applicable to the small-scale conversion of biomass. No setback, lot area, hours of operation or noise requirements may be more restrictive than similar provisions for other agricultural structures or activities.

(2009, c. 363.)

*It should be noted that the definition in the Public Hearing draft was based on an additional definition in Virginia Code § 56-265.1. Definitions.*

(b) Utilities

(10) A farm or aggregation of farms that owns and operates facilities within the Commonwealth for the generation of electric energy from waste-to-energy technology. As used in this subdivision, (i) "farm" means any person that obtains at least 51 percent of its annual gross income from agricultural operations and produces the agricultural waste used as feedstock for the waste-to-energy technology, (ii) "agricultural waste" means biomass waste materials capable of decomposition that are produced from the raising of plants and animals during agricultural

operations, including animal manures, bedding, plant stalks, hulls, and vegetable matter, and (iii) "waste-to-energy technology" means any technology, including but not limited to a methane digester, that converts agricultural waste into gas, steam, or heat that is used to generate electricity on-site.

*Thus, using the agricultural waste definition, the animal waste portion of the definition was included in the Zoning Code draft.*

Page 111

**Disposal practices and structures (only applicable for intensive farming):** An area or structure to put dead animals into a landfill or disposal pit; the treatment and complete destruction of dead animals in an incinerator or treatment by rendering or composting; or the management of dead animals by other methods approved by the State Veterinarian and in accordance with other state laws and regulations. *[This definition was created by blending multiple definitions from VA Code – MK; the term poultry was changed to animals - CMc]*

*The Board concurred with this definition.*

Page 116

**Industrial services** Businesses in which goods are generally mass produced from raw materials on a large scale through use of an assembly line or similar process, usually for sale to wholesalers or other industrial or manufacturing uses.

*The Board concurred with this definition.*

Page 118

**Migrant labor camp.** One or more structures, buildings, tents, barracks, trailers, vehicles, converted buildings, and unconventional enclosures of living space, reasonably contiguous, together with the land appertaining thereto, established, operated or used as living quarters for one or more persons, one or more of whom is a migrant worker engaged in agricultural or fishing activities, including related food processing. [This is the VA Code definition word for word and it includes the word “tent” in the text.]

*The Board took no action as this definition is taken from the Code of Virginia.*

Page 121

**Parking space.** A space of sufficient size and shape to park one standard size automobile and containing not less than 180 square feet of area, **unless otherwise specified in §154.1-604 OFF-STREET PARKING.**

- *As information: “For perpendicular or angled parking spaces, the length is commonly 16 feet to 18 feet. Meanwhile, the standard width is 7.5 feet to 10 feet.” – Source: Dimensionsinfo.com This suggests that the NZC proposed definition is typical. Compact car spaces are at the low end of the range, say 7.5 feet by 16 feet or 120 square feet. In a survey of regional parking uses a mall in Hampton Roads has spaces 8.5 feet by 20 feet or 170 square feet. A nearby specialty retail center has spaces 9.5 feet by 20 feet or 190 square feet. Given the high percentage of local citizens driving pick-up trucks, a space less than 9X10 feet would be difficult to maneuver. If a large project were developed, then some compact spaces may be encouraged to minimize impervious area but such a use would likely be a planned unit development which could incorporate this use into the design.*

*The Board concurred with the proposed definition.*

Page 125

*Shoreline: The line where fastlands (uplands) abut open tidal water during mean high water, tidal wetlands, beaches, and/or coastal primary sand dunes.*

*The Board concurred with this definition.*

New Definitions per Virginia Code as a result of 2014 legislation:

*Residential facility. (1) Any group home or other residential facility for which the Department of Behavioral Health and Developmental Services is the licensing authority pursuant to the Virginia Code. For this type of residential facility in which no more than eight individuals with mental illness, intellectual disability, or developmental disabilities reside, with one or more resident or nonresident staff persons, it shall be considered as residential occupancy by a single family. Mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in § 54.1-3401 of the Virginia Code. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility; or (2) Any assisted living facility or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to the Virginia Code. For this type of residential facility in which no more than eight aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, it shall be considered as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility.*

*Agricultural products. Any livestock, aquaculture, poultry, horticultural, floricultural, viticulture, silvicultural, or other farm crops.*

*The above definitions will be incorporated into the draft Zoning Code unless the Board directs otherwise.*

*The Board concurred with the proposed definitions.*

**In regard to DISTRICTS (Questions from Board)**

Regarding the question on height limits the following is provided by the Northampton County Building Official, John Outten:

<i>Typical 1 story with 4 block foundation showing, 8 ft. ceilings, 8" pitch roof 30' in width</i>	<i>= 20' -22'</i>
<i>Typical 2 story ( add 8 ' )</i>	<i>= 28' - 30'</i>
<i>Typical 3 story (add 8 ' )</i>	<i>= 36' -38'</i>

*Final measurements are to peak of roof. Zoning definitions of height or mean height may vary. Determining factors of height: Crawlspace foundation or slab foundation, Wall height at 8', 9', or 10' ceilings and pitched roof which has some exemption from height maximum.*

Staff Comment: a grand house of three stories with 10 foot ceilings built up to 5 feet above grade could then reach a height of 50 feet (5'+11'+11'+11'+12'). Most residential districts restrict single family height to 35' plus any height required by flood zone. Ag District can be exempted up to 45 feet with further setback.

Existing historic housing structures in Eastville may serve as an example. An approximate measure of the height of 16546 Courthouse Road shows the top of chimney at 47 feet above grade; the top of roof at 42 feet above grade. In the Proposed Zoning Code this home would only be allowed in Ag zoning. Ralph Dodd's house on Willow Oak Road is 32 feet at the peak of roof. This home is permissible in any residential zone.

*The Board indicated that it liked the flexibility of being provided with qualifying language in each district.*

**OTHER ITEMS BOARD REQUESTED ON JULY 28TH:**

- Intent paragraphs – location in Binder 2 – behind Tab 11 – Also attached here for convenience to include in Binder 3

*The Board concurred with each of the proposed intent paragraphs.*

- Basic utilities
  - According to a cost survey of countries throughout the world, basic utilities consist of Electricity, Heating, Water, Garbage (source: Nationmaster.com) The term implies the essential utilities needed to support a household or individual business. It does not infer the distribution of utilities to serve communities per se, and the distribution of these is otherwise enabled by right of way law if for the public good.

*Following questions from the Board members, Assistant County Attorney Beverly Leatherbury agreed to research the issue of whether the County maintains zoning control over the placement of power transmission lines.*

- Legal counsel check religious institutions
  - Beverley Powell Leatherbury, Assistant County Attorney, offers the following counsel on the question of any law related to land use control of religious organization facilities. She writes:

“Religious institutions are not exempt from land use regulation; however, such regulation must not infringe the First Amendment right to the free exercise of religion or the federal Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”). RLUIPA requires that local land use regulations shall not impose a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden is in furtherance of a “compelling governmental interest” and “is the least restrictive means of furthering that compelling governmental interest.” It is my opinion that a complete prohibition of churches in agricultural zoning districts, or in any district where residential uses are allowed would not meet the RLUIPA standard. In this County most of the existing churches have historically been in agricultural districts. The Board should carefully consider whether any restriction which would substantially burden a religious institution furthers a compelling government interest and if so, whether the proposed regulation is the least restrictive means of achieving the end.”

\* \* \* \* \*

At this time, the Board resumed its discussion from last month regarding item #2 – Districts. To provide some clarification and ease of use by the Board members, a document entitled, “Staff recommendations for review August 25, 2014” was distributed to the Board. This document is on file in the Office of the County Administrator. District designations are as follows:

Section 154.1-204 Hamlet (H). It was the consensus of the Board that the “Inn”, “Museum”, and “Recreational playing field” uses be permitted by right in the Hamlet District as recommended by staff. All additional uses as proposed by right in the Hamlet District were approved by the Board in keeping with staff and/or Planning Commission recommendations.

This list is contained on page 7 of the July 28, 2014 hand-out as referenced above. It was the consensus of the Board that it approve all staff recommendations including proposed uses and qualifying size limitations as contained under section (B) – uses allowed by special use permit in the Hamlet District. With regard to the density listings, Mr. Hogg questioned the logic of allowing 4 multi-family dwellings per acre if central water and sewer is not allowed in the Hamlet District. Mrs. Kellam commented that a mass drainfield to accommodate the higher density would be handled as either a primary or accessory use depending on its placement. Mr. Hogg suggested a wider shoreline width and following a lengthy discussion, it was the consensus of the Board to move this topic to the future “mapping” meeting for further discussion. Mrs. Kellam agreed to survey the existing Hamlet communities of Red Bank, Bayford, Bridgetown and Cherrystone for existing shoreline widths.

Section 154.1-205 Village (V). It was the consensus of the Board to approve all staff recommendations including proposed uses and size limitations relative to by-right uses in the Village District. The full list of proposed by-right uses and their size limitations are contained on pages 10-11 of the hand-out. The Board specifically agreed that “Dredge spoil disposal site” and “Waste water treatment plant” be uses allowed by special use permit. It was the consensus of the Board to approve the staff recommendations for those uses, as listed in the hand-out under Section (B), which would be allowed through a special use permit. Mr. Hogg questioned the existing lot widths and suggested a review of existing lot sizes and shoreline widths within the proposed Village District. Following much discussion, this topic was also moved to a future “mapping” meeting for further discussion.

Village-Waterfront Commercial (WC) District. It was the consensus of the Board that this district be deleted as proposed.

Section 154.1-206 Village Waterfront Business (V-WB). Mr. Hogg questioned the multiple residential uses proposed for this district, asking whether we should encourage residential or commercial development in the flood plain. Following much discussion, this topic will be further discussed at a future “mapping” meeting.

Section 154.1-206 Working Waterfront (WW). This topic will be further discussed at a future “mapping” meeting.

Section 154.1-207 Village – Commercial (VC). It was the consensus of the Board to approve the staff recommendations for all listed uses within the by-right and special use permit categories, including the removal of “Sales, retail general, up to 2500 sq. ft.”, “SFD attached”, and “SFD detached – single-wide manufactured home”. The full lists of proposed uses are contained on pages 19 and 20 of the hand-out.

Section 154.-1-208 Cottage Community (CTCM). It was the consensus of the Board to approve the staff recommendations for all listed uses within the by-right and special use permit categories, including the “Adult day care center” use being moved to the SUP category. The full lists of proposed uses are contained on page 22 of the handout.

Section 154.1-209 Commercial. It was the consensus of the Board to move “Heliport” to the SUP category as well as “Wind turbine, small scale > 35 ft. and 120 ft. in total height”. All other uses and size limitations were approved as recommended by staff including the removal of the use “Sales, retail general, up to 2,500 sq. ft.”, “SFD attached”, “SFD detached”, and “Wind turbine, small scale > 120 ft. and 199 ft. in total height”. Under Category (B) – special use permit required, it was the consensus of the Board to approve the removal of “SFD detached”. With regard to the density and dimensional criteria, Mr. Hogg questioned why the Route 13 setback has been reduced. He suspected that VDOT may have issues with commercial entrances

and parking within a smaller setback. Mrs. Kellam replied that parking is allowed within the setback. It was the consensus of the Board to leave the Rt. 13 setback at “50 ft.” but Mr. Hogg disagreed, saying that it should be kept at the current 100 ft. Ms. Nunez suggested that this may be a mapping issue rather than a setback issue and the Board agreed.

Section 154.1-210 Industrial. It was the consensus of the Board to move “Heliport” to the special-use permit category and to eliminate in their entirety the uses “museum”, “civic groups, clubs and organizations”, “kennel”, “recreation, outdoor”, “recreation, indoor”, and “farm stand”. It was the consensus of the Board to approve the staff recommendations as applied to the special use permit category. These uses are listed on pages 26-27 of the hand-out.

Upon a question from Mr. Hogg, the Chairman confirmed that the Board may be able to review earlier “completed” sections of the zoning ordinance amendments in the future.

Action Item:

(2) Approval of comments – submitted to VDOT re: Rt. 642 Project.

Motion was made by Mr. Hubbard, seconded by Mr. Trala, that the Board approve the proposed letter containing comments as requested by the Virginia Department of Transportation relative to the Route 642 Project. All members were present and voted “yes.” The motion was unanimously passed.

Closed Session

Motion was made by Mr. Hubbard, seconded by Mr. Trala, 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*

(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.  
*Status of Lease Agreement – Town of Eastville – old jail buildings*

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 1 and 3 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.

Motion was made by Hubbard, seconded by Mr. Trala, that the Board appoint the following individuals to serve on the Ad-Hoc Tax Study Committee: Mr. John Coker, Mr. Bill Prorise, Mr. Wayne Bell, Mr. Ralph Dodd, Mr. Arthur Upshur, and Mr. Pat Coady. All members were present and voted “yes”. The motion was unanimously passed.

With regard to action taken at the August 12, 2014 meeting, motion was made by Mr. LeMond, seconded by Mr. Hubbard, that the lease termination letter proposed to be sent to the Town of Eastville be “put on hold”, and that the Board appoint two members to meet with two members of the Eastville Town Council and two members from the historic preservation group, to discuss plans for the two old jail buildings, currently under lease to the Town of Eastville. All members were present and voted “yes,” with the exception of Mr. Bennett who voted “no.” The motion was passed. Mr. Bennett noted that he voted “no”, “because in the past, we had other situations that we did not handle in the same manner.” Mr. Hubbard and Mr. Trala were designated to be the Board’s representatives.

In response to a question from Mr. Hogg, the County Administrator indicated that the Eastern Shore Communications’ request for space on both the County and Town water towers will be placed on the next meeting agenda.

In response to comments by Mr. Hubbard, it was noted that the Board may wish to have future discussions relative to requesting the ESV PSA to review the existing Bayview system for possible use with the Southern Node project as well as the Webster group proposal.

Lastly, the Chairman indicated that he will have conversations next week with Accomack Supervisor Donald L. Hart, Jr., relative to the Eastern Shore of Virginia Broadband Authority.

Adjourn

Motion was made by Mr. Hubbard, 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