

VIRGINIA:

At a recessed 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 27th day of July, 2015, at 5:00 p.m.

Present:

Richard L. Hubbard, Chairman

Oliver H. Bennett, Vice Chairman

Larry LeMond

Laurence J. Trala

Granville F. Hogg, Jr.

The meeting was called to order by the Chairman.

County Administrator's Report:

(1) Budget Amendment & Appropriation

The following Budget Amendment and Appropriation memorandum was distributed to the Board as follows:

MEMORANDUM

TO: Board of Supervisors

FROM: Katherine H. Nunez, Interim Director of Finance

DATE: July 17, 2015

RE: Budget Amendments and Appropriations – FY 2015 - GRANT

Your approval is respectfully requested for the attached budget amendments and supplemental appropriations:

\$1,975.00 – This represents the FY 2016 Byrne Justice Grant award. . Please transfer these funds to the Sheriff's Police Supplies line item (100-3102-559500) for the purchase of tasers.

As you may recall, you saw this Budget Amendment & Appropriation for Fiscal Year 2016 at the July 14, 2015 Board meeting. While the grant was labeled as “FY 2016”, we have since determined that the grant revenue was received during FY 2015. The resulting expenditures were also made during FY 2015. It is therefore respectfully requested that the Board reconsider its action of July 14, 2015 and instead, consider this budget amendment and appropriation as applicable for Fiscal Year 2015

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Motion was made by Mr. LeMond, seconded by Mr. Bennett, that the Budget Amendment and Appropriation be approved as set out above. All members were present and voted “yes.” The motion was unanimously passed.

Continued Zoning Ordinance Discussions

(2) Mr. Charles McSwain, Economic Development Director, Mr. Peter Stith, Long-Range Planner, and Ms. Melissa Kellam, Zoning Administrator, led the Board in a discussion relative to several remaining issues which are illustrated in the following memorandum:

Board Review of 2015 YTD Public Comments on Proposed Zoning Code

Update for July 27th 2015 Work Session

The following provides staff background on summarized issues brought forward by members of the public during the past few months since the Board completed its last review (June 29) and update of language in the draft zoning code.

Items 2 & 3: Poultry Litter & Incineration

Generally, poultry litter is addressed by state regulation and its use permitted as part of the right to farm. It is further addressed by significant setbacks under the intensive farming standards. However, the broader concern appears to be the processing of waste, from any source or type, at facilities in Northampton County. Thus, the proposed amendment to the definition of waste management is recommended:

***Waste management.* The collection, source separation, storage, transportation, transfer, processing, treatment and disposal of waste or ~~resource recovery~~ recycling except that no more than 15% of any waste stream may originate from outside Northampton County.**

This change effectively eliminates the siting of any large scale waste facilities in Northampton

County.

It was the consensus of the Board to approve the amended definition of “Waste Management” as outlined above.

Item #4: PUD (see comments #200, #205, #209, and #210 in the FY I packet for correspondence between and among Roberta Kellam and Mike Chandler.)

PUD §154.1-219

The section was reviewed by Chandler who was engaged by R. Kellam and M. Coker to opine on the current draft. Chandler did not contest the adequacy of the section as to prescribing what a PUD is. By its nature, the PUD is intended to “**provide flexibility in design...to encourage comprehensive planning of developments and to insure compatibility of developments with surrounding areas.**” Thus, his assertion that the PUD provision lacks the “where, when and how” it will be applied is by design. A Board of Supervisors’ approved PUD is a freestanding ordinance that has been specifically vetted with the comprehensive plan, adjacent use impacts, and community standards through the application review and public hearing process. The review of any PUD application will bring together leadership, staff and outside consultants specific to the nature of any proposal – whether it is housing, some mix of uses or a business park, for example. Providing standards within §154.1 of the code for all of these diverse types of uses could lead to conflicts and confusion by applicants and reviewers as well. It would also be unnecessarily verbose and the goal established by the Board of Supervisors was to reduce the complexity of the zoning code.

Chandler also raises legal questions about the proposed §154.1-219. In reading the distinguished background of Chandler, there was no reference to his legal practice and his ability to interpret the intent of the Code of Virginia. It should be pointed out the §154.1-219 only allows for PUD development. It does not approve it. The measure of legal acceptability of a PUD will come by the terms of any PUD ordinance which must be passed by the Board of Supervisors for any such PUD to take effect.

In establishing fees for PUD district applications, the Board of Supervisors could include, as it does with other fees and permits, the cost of outside consulting staff to assist the County in review and compliance with PUD law and good planning.

Mr. LeMond referenced a recent CBES newsletter which questioned the possibility of an agricultural PUD, specifically for intensive farming operations. Staff noted that if this possibility was of concern to the Board, they could remove “intensive agriculture” from the PUD section of the ordinance. The Board concurred with this recommendation.

Item #5: Solar Energy Facilities

Staff was directed by the Board to provide for solar energy facilities in the proposed draft. In the current ordinance, solar energy facilities would be included in the Solar Energy District (SED)

floating district. Below is a proposed definition and performance standards for a use called “solar energy facility” which shall be permitted only in the Agriculture (A) and Industrial (I) zoning districts by special use permit. The proposed text below came directly from the current ordinance §154.179 Solar Energy District (SED). This proposed text would provide for solar energy facilities as a use instead of a floating district as in the current ordinance. Item (C) (5) has been highlighted because this item may warrant further discussion by the Board. Item (C) (14) has been highlighted because staff is recommending insertion of the word “building” to provide clarity as to the type of code.

SOLAR ENERGY FACILITY. A principal use established for the sole use of generation of solar power using photovoltaic panels to be connected directly to the public utility electrical grid.

§ 154.1-314 SOLAR ENERGY FACILITY STANDARDS.

- (A) All solar energy facilities shall be subject to approval by the Board of Supervisors through a special use and in addition to any condition placed on a special permit approval by the Board of Supervisors. Solar energy facilities shall comply with the performance standards established in this section.
- (B) General performance standards.
 - (1) Any uses planned as accessory uses to the principal uses shall be subject to approval by the Board of Supervisors as part of the special use permit. If the solar power system is not built to completion within two years after the granting of the special use permit, or becomes unused, abandoned or vacated for more than 12 consecutive months, the Board of Supervisors shall initiate revoking the special use permit to eliminate the solar energy facility at that location.
 - (2) The uses allowed by the district in which the parcel(s) is (are) located prior to obtaining the special use permit may be continued in accordance with all applicable regulations set forth in this chapter or elsewhere in the Northampton County Code. Such uses are exempt from the performance standards within NCC §154.1-314 Solar Energy Facility.
- (C) Specific performance standards.
 - (1) The lowest surface of any panel shall be a minimum of four feet above the finished grade on which the panel is located.
 - (2) No stormwater discharge that causes a discharge of pollutants to or degradation of county or state waters is permitted.
 - (3) The entire solar energy facility, including the area underneath the solar panels, must be vegetated. Panels must be adequately spaced to ensure sufficient sunlight penetration to promote growth of vegetation. A plan must be submitted for maintenance of that vegetation, except for access roads and accessory structures.

- (4) All wiring not on the solar arrays shall be underground except where necessary to connect to the public utility.
- (5) The gross usable area will exclude any wetland areas that are regulated by the Northampton County Wetlands Board or the U.S. Department of the Interior (administered by the U.S. Army Corps of Engineers). All forested areas removed during construction or operation shall be mitigated by the creation of an equal number of acres of equivalent forest.
- (6) Space for any required public utility right-of-way must be allocated.
- (7) The following requirements shall govern the landscaping surrounding a solar energy facility:
 - (a) A vegetated buffer is required that consists of a landscaped strip at least 50 feet wide measured from each boundary line of the solar energy facility around the entire perimeter. Any fencing must be installed on the interior of the buffer. A recommendation that the screening and / or buffer creation requirements be waived may be made by the Planning Commission when the applicant proposes to use existing wetlands or woodlands, as long as the wetlands or woodlands are permanently protected for use as a buffer.
 - (b) Solar energy facilities shall be landscaped and maintained with a buffer of plant materials that are mature enough to effectively screen the view, to eight feet above ground level, of the solar panels from adjacent properties all year around. A landscape berm properly prepared to accept plants, up to four feet high, may be used to assist reaching the required screening height. The screening must be fully established within five years and effectively maintained for the life of the solar energy facility. Non-invasive plant species must be used. (See www.NPS.gov National Park Service - USFWS "Plant Invaders of the Mid Atlantic Natural Areas.")
 - (c) Existing vegetation may be removed only as authorized during the site plan review process to permit vehicular and utility access during construction of the facility and installation of transmission power lines.
- (8) Noise generated by the facility shall be limited to 60 DBA as measured at the property line except when a back-up generator is needed for maintenance. Construction on the site is exempt from this standard.
- (9) Any installed lighting shall be in accordance with § 154.1-607, Outdoor Lighting, of this chapter.
- (10) If solvents are required for cleaning of solar modules, they must be biodegradable.

- (11) If a water supply is required, it must be from a source no deeper than the Columbia aquifer even if a deeper source already exists within the solar energy facility.
- (12) All broken or waste solar modules shall be removed from the site within 60 days of being taken out of service.
- (13) Solar energy facilities, including the electrical and mechanical components, shall conform to relevant and applicable local, state and national **building** codes.
- (14) The following reporting is required.
 - (a) The solar installation operator will notify the Board of Supervisors as soon as the applicant is transmitting electricity from solar panels to the electrical public utility grid.
 - (b) The solar installation operator shall submit a report to the Northampton County once a year, no later than July 1. The report shall state the current status of the installation.
 - (c) Any change of ownership or management of the solar installation shall be reported to the Board of Supervisors within 60 days of the change.
- (15) Additional required setbacks are required for a solar energy facility as follows:

	<i>Primary Uses</i>	<i>Accessory Uses</i>
From Lankford Highway (US 13)	100 ft.	150 ft.
From other public access roads	60 ft.	60 ft.
From tidal waters and incorporated towns	150 ft.	200 ft.
From Solar Energy Facility exterior boundary line when not increased by the above	50 ft.	50 ft.

- (16) All setback areas must be vegetated. The vegetation must be maintained as effective soil sediment traps. The required screening buffer described above in division (C) (7) shall be created within and on the interior side of the setback when it exceeds 50 feet.
- (17) Solar energy facilities abutting US 13 shall not access the facility from US 13 if access is possible from a secondary road. If no secondary road is available, US 13 access is limited to one entrance per solar energy facility, constructed to

current VDOT standards.

- (18) Support and maintenance buildings are accessory structures and building to the solar energy facility and cannot be higher than 25 feet. The roofs may be designed to accommodate additional flush mounted solar panels.

(C) Removal of abandoned solar generating equipment.

- (1) A bond, whose amount shall be determined by Northampton County, shall be required to assure removal of an unused solar energy power generating system.
- (2) Any solar energy facility power generating system that has not operated for a continuous period of 12 months shall be considered unused and abandoned. The owner of an unused system shall remove the entire system within six months of receipt of notice from Northampton County notifying the owner of the equipment removal requirement. Removal includes removing any underground structures or supports and electrical transmission wire. All materials must be lawfully removed from the site. The site shall be restored to its original condition after removal is complete.

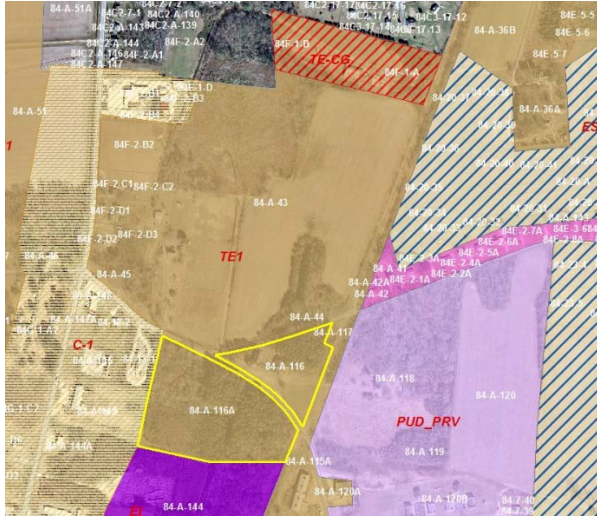
It was the consensus of the Board to approve the deletion of the highlighted text . as recommended by staff and contained in Section 154.1-314 (C) (5). It was further the consensus of the Board to insert the word “building” as highlighted above and contained within Section 154.1-314 (C) (13). Additionally, the Board concurred with the addition of language providing a 60-day notification to the County if the solar facility ceases operations.

Item #6: Cheriton Town Edge/Presbyterian Church

The highlighted parcel on the maps below represent Holmes Presbyterian Church just south of Cheriton. This parcel is currently zoned Town Edge-1 and is proposed to be Industrial. A more appropriate designation would be either Hamlet or Town Edge.

Current Zoning:

Proposed Zoning:



It was the consensus of the Board that the following properties be rezoned as outlined below:

- Tax Map 84-A-116 and 84-A-116A be zoned as Hamlet
- Tax Map 84-A-43 and 84-A-44 be zoned as Agriculture
- Tax Map 84-A-149, 84-A-150, 84-A-151, 84-A-152 and 84G-1-B be zoned to Town Edge

Item # 7: Other Mapping Issues (Follow up from June 29, 2015 Work session)

Request from Mary Jane Dodson (comment #118) to zone parcels 13-23-1, 2 and 3 Agriculture and not R-5. This request was reviewed by the Board in the fall of 2014 and it was the consensus of the Board to leave these three parcels as R-5. The Board vote was split 2-2 at the June 29th work session.



Mr. Hogg requested additional time to review the request with the applicant, Ms. Dodson. Mrs. Kellam confirmed that Ms. Dodson wanted “Agriculture” zoning. The Board concurred with Mr. Hogg’s request for tabling of the matter. It will be placed on the August work session agenda.

Additional mapping issues may be raised by Board members at this time.

Mr. Hogg asked the Board to reconsider the proposed commercial zoning for Tax Map 112-A-14. He read a lengthy explanation and requested an opinion from the Attorney General relative to approved site plan for this property. Supervisors Trala, Lemond and Bennett all indicated their desire that the property remain commercial; therefore, the Board did not reconsider its prior action as requested by Mr. Hogg.

Item #8: 15% Lot Coverage

The purpose of the maximum impervious coverage ratio for a single lot or development of a parcel is protection of the ecology, particularly water resources. According to Britt McMillan, Northampton County has a surplus of water available from the upper aquifer which is replenished from rainwater on a regular basis. Scientists such as Aaron Mills (UVA) have stated that the issue with nitrogen in waterways is from runoff, but the runoff is largely tainted by agriculture and intensive populations of small animals feeding along the shores. The built environment is not a concern at this time. However, there are several features of current local land use law that protect the water resource as follows.

Chesapeake Bay Protection Act (currently embedded in NCC §154 and proposed as standalone NCC §158) includes setbacks and buffers from wetlands and waterways. The proposed NCC §158 will also incorporate compliance with the Virginia Stormwater Act of 2012. That Act requires water quality and water quantity management for any impervious surface runoff from a development with a coverage ratio in excess of 16% of a parcel or development site. Any development in the County with more than 2,500 square feet of land disturbance is subject to these regulations, e.g., currently most houses must comply by memorandum of agreement where property owners affirm their understanding and compliance with these rules. The current consensus draft requires residential development to provide a BMP when lot coverage is 16% or greater.

Coastal Primary Sand Dunes, NCC §152, provides for protection of these dune barriers along the shore of both the Bay and Atlantic. Sand dunes are valuable both as storm protection and habitat.

Erosion and Sediment Control, NCC §153, provides for minimization of erosion and sediment reaching waterways by regulating land disturbing activities. Much of these control practices are now being incorporated by VDEQ into the Stormwater Act

administration as a single process which will be easier to understand by citizens and contractors, and less cumbersome to manage by Northampton County's certified inspectors and administrators.

Wetlands, NCC §151, protects wetlands which act as recharge and filtration areas for water. No development may occur in wetlands or wetland buffer areas, except as permitted by the Act, unless it is reviewed and approved by the Northampton County Wetlands Board.

Floodplain Management, NCC §159, minimizes development within the floodplain and floodways primarily for safety and property protection. This chapter of local code has less to do with coverage ratio than elevation of improvements and protection from natural flood incidents. Because of the added cost of elevating structures, this chapter has the effect of discouraging development in flood ways and along the flood prone coastal areas of the County.

All of the local environmental code chapters listed above combine to create a rigorous protection for community water resources. Thus, adding an addition maximum coverage ratio to the proposed zoning code will further complicate and restrict property rights with very little marginal benefit. The zoning code has implicit coverage ratios effective through the use of setbacks and performance standards. Recall the table presented to the Board showing the coverage ratio effect of various setback dimensions for intensive farming operations. In addition, a coverage ratio may be viewed as a blended average over the entire county. Hamlets and Villages, for example, enable small lot development where a coverage ratio may prohibit the development of small neighborhood lots. However, averaged with the more than 50% of farm land use in the county with very little coverage of impervious surfaces, the overall impervious coverage of the county is still fractional. By penalizing small lot Hamlet and Village development, the coverage ratio also works against the Comprehensive Plan by discouraging small lot neighborhood development such as in Hamlets and Villages where density is to be encouraged rather than sprawling it across valuable farm land.

Staff does not recommend use of a maximum coverage ratio in the proposed zoning code.

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Supervisor LeMond said that he would like to reconsider the 16% ratio and to let the other existing regulations continue to protect the water resources. Supervisor Bennett said that he was swayed by a "zone by zone" lot coverage designation. Supervisor Hogg said that he was in favor of the 15% lot coverage ratio.

Mrs. Kellam indicated that it is not a burden to homeowners to comply if their projects exceed the 16% ratio. She reminded the Board that, at the June meeting, it had selected Option 1 for single-family projects in that if they should exceed 16%, a BMP must be implemented.

It was the consensus of the Board that further review of the options is needed. This matter will be placed on the August work session agenda.

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Lastly, Mr. Hogg said that he would like additional review relative to the definition of “commercial vehicle service”.

Adjourn

Motion was made by Mr. Trala, seconded by Mr. Bennett, that the meeting be adjourned. All members were present and voted “yes.” The motion was unanimously passed.

The meeting was adjourned.

_____CHAIRMAN

_____ COUNTY ADMINISTRATOR