

Joint Meeting, Wednesday, October 18, 2006, at 7:00 p.m. Government Center, Verona, VA.

PRESENT:

PLANNING COMMISSION:

Wayne F. Hite, Chairman  
James Walter Curd, Vice-Chairman  
Stephen N. Bridge  
Thomas H. Byerly  
Kitra A. Shiflett  
Joseph Shomo  
Justine D. Tilghman

BOARD OF SUPERVISORS:

Wendell L. Coleman, Chairman  
Nancy Taylor Sorrells, Vice-Chairman  
F. James Bailey, Jr.  
David R. Beyeler  
Kay D. Frye  
Larry C. Howdyshell  
Tracy C. Pyles, Jr.  
Steven L. Rosenberg, County Attorney  
Dale L. Cobb, Director of Community Development  
Becky Earhart, Senior Planner  
John Wilkinson, Zoning Administrator  
Michele Comer, Subdivision Administrator  
Doug Wolfe, County Engineer  
John C. McGehee, Assistant County Administrator  
Patrick J. Coffield, County Administrator  
Rita R. Austin, CMC, Executive Secretary

VIRGINIA: At a joint meeting of the Augusta County Board of Supervisors and the Planning Commission, held on Wednesday, October 18, 2006, at 7:00 p.m., at the Government Center, Verona, Virginia, and in the 231<sup>st</sup> year of the Commonwealth....

\* \* \* \* \*

Wendell L. Coleman, Chairman of the Augusta County Board of Supervisors; and Wayne Hite, Chairman of the Augusta County Planning Commission, called the meeting to order.

\* \* \* \* \*

Chairman Coleman welcomed the citizens present for the meeting and reviewed meeting protocols.

\* \* \* \* \*

Wendell L. Coleman, Supervisor for the Wayne District, led us with the Pledge of Allegiance and delivered invocation.

\* \* \* \* \*

PUBLIC HEARING RULES

Chairman Coleman reviewed Public Hearing rules noting that the purpose of the public hearing is to receive comments from the public prior to the Board or Planning Commission taking action on any particular item. The hearing is not a dialogue or debate and members of the Board and Planning Commission are not expected to respond to questions; however, any questions must be directed to the Chairman. Each citizen wishing to speak is encouraged to fill out a card which can be found at the entrance to this room and at the podium. Speakers will be called to approach the podium so they are visible and audible to the Board, staff and audience. Each speaker should clearly state his or her name and address. Comments are to be limited to three minutes; if speaking for a group, five minutes. Citizens were urged to help the Board preserve decorum in order to conduct the meeting in an efficient and responsible manner and to refrain from clapping or other public demonstrations of support or opposition and to respect others and their points of view. He also noted that a joint Public Hearing was being held for the benefit of the public so that both bodies can hear comments without the need for the citizens attending two separate meetings. It is not the Board's or Planning Commission's intent to discuss or take public action tonight. Written comments for those who prefer not to speak will be accepted until October 27<sup>th</sup> to the Community Development Department at P. O. Box 590, Verona, Virginia, to the attention of Dale Cobb, Director. The Planning Commission will be considering this matter at its Tuesday, November 14<sup>th</sup> meeting, and the Board of Supervisors will be considering this matter at its Tuesday, November 21<sup>st</sup> meeting. If necessary, a brief recess will be taken at 8:45 p.m.

\* \* \* \* \*

SUBDIVISION/ZONING ORDINANCE AMENDMENTS

This being the day and time advertised to consider an ordinance to amend the Code of the County of Augusta, Virginia, to modify the subdivision and zoning ordinances, fees for

certain reviews and applications under the subdivision and zoning ordinances and provisions concerning nonconventional sewage disposal systems.

Doug Wolfe, County Engineer, was asked to introduce the item and made the following statement:

Presented tonight for public comment are proposed amendments to the County Code involving land development regulations. I will not perform a reading of the ordinance, but will briefly make note of the most substantive amendments. This presentation is available in its entirety on the table as you entered the room. Also, available is a copy of the advertisement as published. As we have done throughout development of these ordinances, staff will record comments made tonight and throughout the comment period which ends October 27<sup>th</sup>. Please note that written comments must be received by the close of business October 27<sup>th</sup> in order to be added to the public record.

The advertised ordinance is a result of over two years of work on amendments suggested by a variety of groups. The current Board met with staff in 2004 to prioritize the Board's work plan. The subdivision ordinance was one of the priority items. Staff has compiled suggested changes and comments from the Board and Planning Commission; the Agricultural Task Force, appointed by the Board; local contractors, developers and designers, among others. Staff has also proposed changes to ensure consistency with State Code.

The proposed ordinance is presented tonight for public input. This input will be considered by the Planning Commission in work sessions over the coming weeks. The expectation is that the Planning Commission will be prepared to make a recommendation to the Board at its November 14<sup>th</sup> meeting as Chairman Coleman said.

As I said earlier, the Board prioritized work on the Subdivision Ordinance in 2004. Additionally, in early 2005, you appointed the Agricultural Task Force. The Task Force issued their report on December 29, 2005, which included recommendations on lot creation in agricultural areas.

Before we begin, I will give a general overview of the general differences between Minor and Major Subdivisions.

Highlights of the PowerPoint presentation are as follows:

## **PROPOSED ORDINANCE AMENDMENTS**

### **What is a Subdivision?**

- Minor Subdivision – Principally used in agricultural zoning to create 1 lot per year
- Major Subdivision – What you think of when you hear the word “Subdivision”. Creation of multiple lots in business, industrial and residential areas with extension of streets and utilities.

### **Proposed Amendments to General Provisions for Major Subdivisions**

- Require access to adjacent properties for interconnectivity
- Require private roads to be designed to state standards
- Subdivision and drainage design to follow natural topography/drainage
- Pipe all drainage channels that cannot fit within normal width ROW or easements on property lines

### **Proposed Major Subdivision Amendments - Master Plans**

- Clearly state that major subdivisions are not permitted in Agriculture districts
- Require that master plan submittal must include all required items before being routed to reviewing agencies
- Master plan (preliminary plat) will be scheduled for PC no sooner than 10 days after receipt of comments from reviewing agencies
- Resubmittal after being scheduled for PC requires the item be moved to the next meeting

### **Proposed Major Subdivision Amendments - Final Plats**

- Establish 15 day review time to allow for review and comment of plat and documents
- Require type of each onsite sewage disposal system be shown on the plat, or confirmation of public availability
- Require Deed of Dedication, Subdivision and Easement
- Require Stormwater Legal Agreement
- Require Deeds for any offsite easements
- Require Subdivision Agreement, bonds to remain valid for entire term of agreement

### **Proposed Minor Subdivision Amendments**

- Change time period for next division from Calendar Year to 12 month period
- Require Grantor/Grantee information on the plat for Family Member Exception (FME) lots. Certify that they have not previously received lot by FME
- Implement a 10 day review time. Plat considered denied if no response within the specified time period. This allows for the applicant to appeal to the BOS in writing

### **Zoning Ordinance Recommendations from the Agricultural Task Force Report**

- Currently in General Agriculture (GA) you can create 1 lot per year, new lot cannot be re-subdivided for 5 years
- Currently in Exclusive Agriculture (XA) you can create 1 lot per year off of your entire contiguous acreage, new lot cannot be re-subdivided for 5 years
- Limit to 1 lot every 3 years per parcel in GA
- Limit to 1 lot every 5 years per parcel in XA and remove the contiguous acreage requirement
- Retain requirement that the lot that is created cannot be re-subdivided for 5 years in either district

### **What is the Family Member Exception Clause?**

- An option authorized, but not required, by the Code of Virginia
- Allows the locality to provide for divisions of lots for conveyance to a family member
- Allows you to create lots without the required road frontage when conveying to a family member (currently parent, spouse, children, and grandchildren)

- All requirements other than road frontage still apply

#### **Zoning Ordinance Recommendations from the Agricultural Task Force Report**

- Limit lot creation using FME to children only. Lot to be held by the family member for minimum of 5 years with certain exceptions
- Affidavit for use of FME
- Boundary Line Adjustments count as a lot creation with the following exception: When a parcel of land is sold to an adjacent property owner for agricultural use and an affidavit is signed that the lot will remain in agricultural use for at least ten years

#### **Proposed Amendments to other Ordinance Sections**

- Health and Safety - Prohibit use of discharging septic systems except for replacement of a failing system for an existing dwelling
- Zoning - Allow Green Space / Common Area lots in all subdivisions. Green Space / Common Area lots need not meet frontage, width, and area requirements, but must have assigned maintenance responsibilities

#### **Proposed Amendments to other Ordinance Sections**

- Change naming conventions to simplify and maintain consistency with state code and surrounding localities:
  - Current Master Plan to be called Preliminary Plat
  - Current Master Planned Community to be called Planned Unit Development
  - Current Plan of Development for Master Planned Community to be called Master Plan
  - Current Plan of Development for MF and MHP to remain
- Changes to other sections to provide for consistency in naming, section references, etc.

Mr. Wolfe asked that the speakers cite the section in the ordinance to which their comments apply.

\* \* \*

Chairman Coleman, of the Board of Supervisors; and Chairman Hite, of the Planning Commission, declared the public hearing open.

The following spoke at the meeting:

1. Dr. Charles Curry, Chairman of the Agricultural Task Force, spoke about the Minor Subdivision Ordinance. He advised that the Ag Task Force had been challenged to look at the threats facing the agricultural industry and to recommend ways that would assure a strong agricultural economy over the next several decades. Issues ranging from escalating land values, aging farmers, to competition for agricultural land for many uses, including residential sprawl into agricultural communities were discussed. Sixty-two recommendations were presented to the Board of Supervisors for consideration. Some of these recommendations addressed lack of information (education); vitality of Ag Programs; and loss of agricultural land, etc. He noted that all of the recommendations addressed the

threats facing the agricultural community. The Task Force did not leave out recommendations because they were above the Board's authority, as a local board, but recommended legislative lobbying and legislative work with the General Assembly if necessary. Neither did the Task Force back away from recommendations because they knew they would be controversial and would be unpopular within the agricultural community. Out of the 62 recommendations, he felt that 56 would be supported by most farmers. Dr. Curry and the agricultural community did not agree on the revisions being discussed tonight concerning 1) further limiting lots or, 2) "tightening up loopholes" in Family Member Exceptions (FME) (that have been used to create 44% of the lots in agriculture), and 3) boundary line adjustments. "These particular ordinances are essential for the goal you gave us, assuring a strong future for our agricultural economy over the next several decades—not forever—just 20 or 30 years." He noted there would be a loss of 60% of traditional family farming during that time. "We're not thinking about what is good for us as individuals. I could not justify these as an individual farm owner and business person to you. I know you'll hear a lot of criticism of them. But we're talking about our agricultural industry in Augusta County, what has been the backbone of our economy for years. There are many businesses, retail and service businesses that are dependent upon it. We're talking about residential homeowners that come here because of our rural environment and quality of life and work ethic. We're talking about the next generation of farmers in Augusta County." He encouraged the Board to pass the ordinance and make the changes.

2. Homer Frazier gave a family history (since 1800) and expressed support for the current Family Member Exception provisions. "The greatest farming protection there is is a farmer that owns his land, has a clear title, that he can sell it, give it, or do what he wants to do with it, and we don't need people to tell him what he can do with it." He felt that the FME had been abused and he did not agree with subdivisions—giving a piece of land and building 15 to 20 homes.
3. Janet Wampler spoke of Everett M. Dirkson and communism and distributed books to the Board and asked that they not support eminent domain or controlling people's land, including the farmers'.
4. Debbie Shickel, a Mint Spring Realtor, said adoption of the changes would "drive the price of land through the roof". She said it would make people in this area, working class people, unable to afford homes. She proposed putting the ordinance before a public referendum. She felt that there was an "elitist group" that has been represented on the Task Force and Planning Commission and did not feel that the majority of the people in Augusta County have been heard.
5. Richard Wright made comments on the plusses and minuses of growth. He believed that industry brings jobs, more taxes and growth. He did not feel that industry helped the local area because workers came from other places. "When

growth occurs, you need housing, better roads, schools, law enforcement, and medical services.” He referred to expansion in other places such as Loudoun County, Harrisonburg, and Florida, and noted inadequate landfills, increased crime, increased assessments and taxes.

6. Leon Sheets acquired the family farm after his parents’ death along with his four siblings and noted that it was not viable to support five families. He learned from the Community Development Department that he could not rezone his property or sell lots because he did not have enough road frontage. He learned of the Family Member Exception from his attorney and, in accordance with the current guidelines, he has all permits, septic fields, surveys, built roads; he has sold a lot per year per parcel since 2003 and he still has four lots he wants to sell but he needs to convey them to his grandchildren. He wanted grandchildren to be included in the Family Member Exception.
7. Lawrence Campbell suggested that adequate drainage be required for all lots, not to exempt family member exception lots.
8. Jeff Gordon referred to §§ 25-85 and 25-77 and felt that these changes affected a lot of individuals who have acquired property over the years. “Their wealth is not measured in cash, but in acres of land.” He felt that the five-year restriction on lots and boundary line modifications is too restrictive. He said that this amendment would devalue the land. He suggested that if this is adopted, there should be a tax reduction. “This is limiting the potential to do anything with that land over that period of time. For these people to continue farming, you are asking them to, basically, give up their development rights and not giving them anything in return.” He asked what would happen if an owner of 300-400 acres died, and in his will he devised the real estate to his children. “Are they able to sustain their individual lots that they may be given? Or is this ordinance going to determine that only one lot can be split off of that?” He felt that this was not clear in the ordinance. He also asked when this ordinance would be effective.
9. Betty Jo Bishop, as a realtor, spoke for the farmer and stated that the farm is being used as retirement. “They should have the right to decide when they need that money.”
10. Susan McGee, a Mount Sidney realtor, said that her co-workers (18) and colleagues in the Greater Augusta Association of Realtors (425) overwhelmingly opposed any changes to the ordinance. She did not feel that the farmers’ rights should be violated. She also felt that parents and grandchildren should be included in the Family Member Exemption. “For the farmers, their farm is their 401K. If you take away that opportunity for them to liquidate assets, as needed, it would be a huge mistake. I think it gets into property rights.”
11. Norman Coyner felt that when “the County gets into the business of telling people

when and if they can sell their homes, they are putting the County in jeopardy of some serious legal issues.” He felt that there were many reasons to sell a piece of property within the five-year period—whether it be financial, or whatever reason, and that a panel or committee should not be able to make that decision. He suggested that the ordinance should be changed to indicate that a person would have to own the property five years before they would qualify to make a family exception lot.

12. Taylor Cole referred to the Minor Subdivision ordinance changes and quoted some statistics of a 1997 study which indicated that for every dollar of real estate tax revenue generated from agricultural land, it cost the County 80¢ in services. It also indicated that for every dollar of real estate tax revenue generated from residential properties, it cost \$1.22 for services. He realized that these numbers needed to be updated, but felt that the general outcome has not changed noting that most studies indicated that “farms generate more value than they consume; residential consumes more services than they generate in revenue”. He made the following conclusions:

Farms are subsidizing residential growth. As more farmland is converted to residential, there is less of that subsidy. As the subsidy diminishes, somehow the services demanded by County residents are going to be paid or we will have to do something about providing services. If future taxes and the availability of services for all citizens in Augusta County are concerned, then conversion of farmland to residential use should be slowed down. The proposed amended changes may help.

13. Larry Weeks stated that Augusta County has a good balance between agriculture, industry and business. He noted that the County has a low tax rate and 3% unemployment and expressed concern that the growth rate needed to be slowed down. He felt that the Family Member Exception is one of the most abused ways of creating lots. He stated we need to decide if we are going to treat farmers as farmers or as speculators.
14. Jerry Brunk, Civil Engineer and Land Surveyor, noted that this ordinance was modeled after nearby jurisdictions and suggested that this not be done. He stated that he has dealt with those regulations with great difficulty. In reference to §§ 25-85 and 25-77, he suggested that the County adopt the same time limit for both zones whether it is General Agriculture or Exclusive Agriculture. He said he has been in several situations where if a property is in different zones, it is sometimes difficult to make an adjacent transfer. He also suggested that parents and grandchildren should be included in the Family Member Exception. He also questioned the 10-year agricultural use clause for boundary line adjustments and questioned what would happen in areas that are not agricultural at all but still zoned General Agriculture. He encouraged changes to be made before adoption of the ordinance.



15. Donna Miller opposed the proposed amendments for the Minor Subdivisions and Family Member Exceptions and did not feel that her property rights should be violated.
16. Nick Collins referred to a brochure he had received and felt that this was not an agriculture issue that is being raised by farmers. "If farmers do not think it is a problem, why are we talking about making changes? The farmers in this area are the best stewards of our land. What is the future for agriculture? I think we have agriculture confused with the concept of open space." He asked the Board and Commission not to continue restricting him as to what he can do with his own property. He agreed that property should be owned for five years before you can do a Family Exception lot.
17. Kevin Lacey, a real estate broker, felt that many good comments had been made tonight. He reiterated Mr. Gordon's comments about taxation being considered if property cannot be sold for a period of time. He also questioned what to do with property in case of a death. He agreed that farmers were stewards of their own property. They should have division rights. He agreed that growth should be controlled. He pointed out that the County is two years behind in revising the 1995 Comp Plan and that it will need to be revised again in three more years. He stated that he had learned from the Building Inspections Department that building permits for residential lots is down 40% from last year. He mentioned that it has been predicted that real estate is going to be slow for the next five years. "When you're talking about putting in restrictions as far as farmland and things like that, we need to revisit it in three years and see what happens."
18. Rick Shiflet, Chairman of the Land Use Committee for the Headwaters Soil & Water Conservation District, read the following statement:

To the Members of the Augusta County Planning Commission and Board of Supervisors concerning the joint public hearing:

These comments reflect concerns presented at the Headwaters Soil & Water Conservation Board meeting on Tuesday, October 17<sup>th</sup>.

The major proposed changes involving general agriculture, exclusive agriculture parcel division and family member exception need to be considered after the comprehensive plan that is under review is put forward for public comment. We agree that land needs to remain in agriculture and farmland and that the loss has been excessive in the past ten years. We feel that as more land is developed, the natural resources of Augusta County are threatened. Our goal would be to see the county link development in a watershed to the least available natural resource in that watershed. As an example, the availability of water. We would recommend that the ordinances being considered tonight needing technical changes only could be approved immediately. We would also recommend that the controversial points be considered after the comprehensive plan is completed and also recommend that a committee be appointed to help guide implementation of the new comp plan and chart the effectiveness of ordinances

enacted to make the plan a working reality. Our primary message is to keep working for affective policies to guide growth away from our rural areas. We look forward to working with this process as needed.

He stressed that natural resources needed to be considered with development. "I would hope that Augusta County would guide its ordinances for lot production in a resource manner as opposed to ownership of land. We need tools and recognition that our resources are limited in Augusta County and our land is producing not only food and fiber but also recharging ourwater resources." He asked when do you get to the point of splitting lots off of a farm that is no longer a farm. He stated that he could support changes in Minor Subdivision ordinances to reduce the number of lots in Exclusive Agriculture after viewing the new Comp Plan. He wanted to hear comments from the Comprehensive Plan Steering Committee and greatly appreciated the work done by the Ag Task Force. "Nobody can keep splitting lots of land and think it is not making a difference for the good of this County. I want to see a response in the Comprehensive Plan with incentives such as PDRs, TDRs, and reduced taxes to make me want to stay in Exclusive Agriculture. I cannot support an ordinance that reduces my right whether I want to use it or not to split off lots different from those in General Agriculture. I want to see the Comprehensive Plan revised first. I would like to see the public educated to the changes needed and why they were drawn out in that plan before a public comment session is put forth. Then I want teeth in the ordinances to make it happen. I think that is the real reason why we are here today. There were no teeth put in ordinances to make the plan drawn up in the early 90's effective."

19. Andre Viette said he could not support laws that restricted his freedom to divide his property as he saw fit. He said lot creation allows farmers to pay their bills. It is not causing runaway growth. He said that easements and the selling of development rights, combined with tax incentives, would accomplish more. "The restrictions should be voluntary." He wanted Family Member Exception to remain as it is.
20. David Surratt opposed changing the ordinance.
21. Thomas Sensabaugh opposed changing the ordinance. He believed in the protection of property rights. He reminded the Board that when he was a supervisor, an Augusta County landowner could divide three parcels per tract per year. This was stopped when the Comp Plan was created and the ordinance provided one lot per year. He stated that "the demand that comes down I-81 is the problem with the growth in Augusta County. You can't legislate that away." He agreed with Mr. Viette. "I have seen a lot of farms saved by the farm owner having property rights—the right to sell some parcels off as he needed to. By getting money when he needed it, he safe-guarded the whole farm. On several occasions I have seen farmers purchase property because they had the right to

sell off a few acres to buy the debt load down, which saved more farmland.” He agreed that what is being proposed will save open space, but it would not save agriculture. He agreed that Family Member Exemptions have been abused and suggested that this could be corrected by having people own the property for one year before they can take an exception. He also felt that you could relieve pressure on lots in a rural area when you look at zoning requests, you create zoned land to take away some of the demand. He also suggested the Board stop the rhetoric if you create a lot of lots when you talk about changing the rules.

22. Pat Rexrode, a real estate broker, agreed with Mr. Sensabaugh and pointed out that many of the proposed regulations are going to result in increased housing costs. Referring to § 21-7(e), she understood it to read that “no new non-conventional septic systems be approved—only replacements”. She noted that engineered systems are going to cost approximately \$15,000 to \$25,000. She stated that Augusta County is a blue collar county and the median income is \$40,000. The first-time homebuyer’s loan is now capped at \$222,000. She expressed concern on how the regulations will affect housing costs.
23. David Gordon suggested that the Board requiring Major Subdivisions a Homeowners Association in all new subdivisions. “All the streets in the subdivisions would be maintained by the homeowners and the County would have no responsibility. All open space would be maintained by the Homeowner’s Association once it is built. “ He pointed out that the homeowners would have to maintain the streets and maintain the sewers in the subdivision. He also agreed that the lot creation should be either three years or five years for both districts. He suggested a 20-year roll-back penalty when farmers sell lots.
24. Peter Kyler wanted to see growth slowed. He mentioned concerns of increased costs for education, increased crime, and loss of open space that comes with unrestrained growth. He stated it will change our lives forever.
25. Trent Showalter opposed §§ 25-77.3 and 25-85. He wanted to see parents and grandchildren included and did not want his property rights violated.
26. R. G. Hizer, Jr., a full-time farmer, quoted prices of real estate adjoining his property. He stated he had no retirement but wished to pass his property on to his daughter and needed protection. He supported the current ordinance.
27. Bill Tueting recommended that if this ordinance is adopted, the affidavit stating the land must stay in agricultural use needs to be recorded with the boundary line adjustment.
28. Gary Meeks did not want his property rights violated and wanted to see balanced growth.

- 29. W. R. Guinn supported industry and suggested that lot size be small – 1 acre.
- 30. Ian Heatwole questioned the loopholes of the Family Member Exception. “What it is now is an end-run around the zoning regulations.” He noted that 16% of development is currently happening in the Agriculture Conservation Area; another 16% is in the Rural Conservation Area. “According to the Comprehensive Plan, this is not where we want that to happen.” He reiterated that 44% of the lots created have been created with the Family Member Exception; 38% of those lots have been given to a spouse. He questioned that and agreed that the Family Member Exception is being abused.

There being no other speakers, the Chairman of the Board of Supervisors and the Chairman of the Planning Commission declared the public hearing closed.

Ms. Frye requested that the public stand in support and opposition of the advertised ordinance.

In support:	Approximately 15
In opposition:	Over 150

Chairman Coleman expressed his appreciation of the public being present tonight and sharing their comments regarding the proposed changes to the Subdivision/Zoning ordinances.

\* \* \* \* \*

Wayne Hite, as Chairman of the Planning Commission, entertained a motion for adjournment.

ADJOURNMENT

There being no other business to come before the Planning Commission, Ms. Shiflett moved, seconded by Mr. Byerly, the Commission adjourned subject to call of the Chairman.

Vote was as follows:	Yeas: Shiflett, Tilghman, Curd, Hite, Byerly, Bridge and Shomo
	Nays: None

Motion carried.

\* \* \* \* \*

Wendell L. Coleman, as Chairman of the Augusta County Board of Supervisors, entertained a motion for adjournment.

