




# CEA

Frederick County  
Conservation Easement Authority

## MEMORANDUM

TO: Conservation Easement Authority

FROM: Eric R. Lawrence, CEA Secretary 

SUBJECT: January / February Meeting

DATE: January 28, 2010

---

The Frederick County Conservation Easement Authority will be meeting on **Thursday, February 4, 2010 at 8:00 a.m. in the Planning Department Conference Room** in the County Administration Building, 107 North Kent Street, Winchester, Virginia. ***NOTE THE MEETING LOCATION CHANGE.*** The Conservation Easement Authority will discuss the following agenda items:

### AGENDA

1. Annual Organizational Meeting:
  - a. Election of Officers
  - b. Adoption of Bylaws
  - c. Selection of Meeting Dates and Times
2. November 19, 2009 Meeting Minutes
3. Fundraising Efforts
  - a. GIFT – Give \$1 for Frederick's Tomorrow
  - b. Roll-back Taxes
4. Agricultural and Forestal District Renewal Update
5. Local Easement Activity Update
6. Next meeting date March 25, 2010
7. Other

Please contact the Planning Department (540-665-5651) if you are unable to attend this meeting.

**AGENDA ITEM 1 : Annual Organizational Meeting**

During the first meeting of the calendar year, the Conservation Easement Authority conducts its annual election of officers, adoption of Bylaws, and selection of CEA meeting dates and times for the ensuing calendar year.

Officer positions to be filled include: Chairman, Vice Chairman, Treasurer, and Secretary. The chairman, vice-chairman, and treasurer must be voting members of the Authority. The secretary shall be a member of the Authority or a county employee.

The Bylaws for consideration are consistent with those utilized by the CEA in 2009 - A copy of which is attached.

In 2009, the CEA held its monthly meetings on the 4<sup>th</sup> Thursday of the month, at 8:00AM in the Frederick County Administration Building.

**AGENDA ITEM 3 : Fundraising Efforts**

The CEA continues its discussion regarding potential funding opportunities that might be pursued as a source of ongoing funding for the preservation of farmland in the County. Two potential opportunities include the establishment of the GIFT program, and the utilization of roll-back tax collection.

The **GIFT (Give \$1 for Frederick's Tomorrow)** program/concept is an initiative to develop partnerships with local businesses enabling their customers to make donations towards the preservation of farmland, and an associated education effort on the benefits of farmland preservation. By design, this would be a voluntary effort that participating businesses would make available to their customers. Preliminary thoughts include the establishment of informative brochures that would be provided to businesses for distribution, and a method by which businesses could collect donations and then forward those donations to the CEA on an annual or semiannual basis. This concept is in its initial discussion phase.

There has been discussion by the CEA about the potential to utilize roll-back taxes to possibly contribute an on-going funding opportunity which directly links development of farmland and the preservation of farmland. Virginia Code §58.1-3237 states that "when real estate qualifies for assessment and taxation on the basis of use, and the use by which it qualified changes to a nonqualifying use, or the zoning of the real estate is changed to a more intensive use at the request of the owner or his agent, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes". The roll-back tax shall be equal to the sum of the deferred tax for each of the five most recent complete tax years including simple interest on such roll-back taxes at a rate set by the governing body". Frederick County does currently utilize the roll-back tax provision.

Interestingly, HB437 was recently introduced by Del. Toscano seeking to extend the roll-back period from five to ten years. If ultimately approved, and implemented in Frederick County, the additional five years of collections could possibly be considered for the CEA initiative.

Roll-back taxes received by the County Commissioner of the Revenue's Office

Year	Amount	Number of Parcels
1998	\$ 58,347.49	24
1999	\$ 194,933.56	41
2000	\$ 43,547.77	38
2001	\$ 138,987.09	58
2002	\$ 144,773.60	73
2003	\$ 254,437.63	59
2004	\$458,577.04	49
2005	\$ 583,234.42	66
2006	\$ 235,713.52	31
2007	\$ 120,853.31	31
2008	\$ 101,334.97	16
2009	\$ 68,203.61	6

# CONSERVATION EASEMENT AUTHORITY

## Bylaws

County of Frederick, Virginia

--Proposal for consideration by the CEA at their first meeting of 2010--

### ARTICLE I – AUTHORIZATION

- 1-1 The Frederick County Conservation Easement Authority is established by and in conformance with Chapter 68 of the Code of Frederick County, and under the Public Recreational Facilities Authorities Act, Chapter 56 of Title 15.2 (§15.2-5600, et seq.) Code of Virginia
- 1-2 The official title of this body shall be the Frederick County Conservation Easement Authority, hereinafter referred to as the “Authority”.

### ARTICLE II – PURPOSE

- 2-1 The purposes of the Authority are to acquire and/or receive conservation easements, by purchase, gift, or other conveyance; to hold and enforce conservation easements conveyed to it; to administer the Frederick County Conservation Easement Purchase Program pursuant to the ordinance establishing the Program; and to exercise any powers authorized by the Public Recreational Facilities Authorities Act.

### ARTICLE III – MEMBERSHIP

- 3-1 The membership of the Authority shall be determined by the Frederick County Board of Supervisors, per the Conservation Easement Authority’s Article of Incorporation, adopted August 24, 2005. Methods of appointment and terms of office shall be determined by the Frederick County Board of Supervisors.

### ARTICLE IV – OFFICERS

- 4-1 Officers of the Authority shall consist of a chairman, vice-chairman, treasurer and secretary. The chairman, vice-chairman, and treasurer must be voting members of the Authority. The secretary shall be a member of the Authority or a county employee.

4-2 Selection

4-2-1 The officers shall be elected by the voting members of the Authority at the first meeting of the calendar year.

4-2-2 Nomination of officers shall be made from the floor at the first meeting of the calendar year. Elections of officers shall follow immediately. A candidate receiving a majority vote of the entire voting membership shall be declared elected.

4-3 Duties

4-3-1 The Chairman shall:

4-3-1-1 Preside at meetings.

4-3-1-2 Rule on procedural questions. A ruling on a procedural question by the chairman shall be subject to reversal by a two-thirds majority vote of the members present.

4-3-1-3 Report official communications.

4-3-1-4 Certify official documents involving the authority of the Authority.

4-3-1-5 Certify minutes as true and correct copies.

4-3-1-6 Carry out other duties as assigned by the Board of Supervisors and the Authority.

4-3-2 The Vice-Chairman shall:

4-3-2-1 Assume the full powers of the chairman in the absence or inability of the chairman to act.

4-3-2-2 Carry out other duties as assigned by the Board of Supervisors and the Authority Chairman.

CEA Bylaws  
Proposed for adoption Feb 2010

4-3-3 The Treasurer shall:

- 4-3-3-1 Be responsible for the safekeeping of all funds of the Authority.
- 4-3-3-2 Maintain the financial records of the Authority.
- 4-3-3-3 Pay approved bills.

4-3-4 The Secretary shall:

- 4-3-4-1 Ensure that attendance is recorded at all meetings.
- 4-3-4-2 Ensure that the minutes of all Authority meetings are recorded.
- 4-3-4-3 Notify members of all meetings.
- 4-3-4-4 Prepare agendas for all meetings.
- 4-3-4-5 Maintain files of all official Authority records and reports. Official records and reports may be purged in accordance with applicable state codes.
- 4-3-4-6 Give notice of all Authority meetings, public hearings and public meetings.
- 4-3-4-7 Provide to the Board of Supervisors reports and recommendations of the Authority.
- 4-3-4-8 Attend to the correspondence necessary for the execution of the duties and functions of the Authority.

4-4 Term of Office

- 4-4-1 Officers shall be elected for a one-year term or until a successor takes office. Vacancies shall be filled for an unexpired term by a majority vote of the Authority. In such cases, the newly elected officer shall serve only until the end of the calendar year or until a successor takes office.

4-5 Temporary Chairman

- 4-5-1 In the event of the absence of both the chairman and the vice-chairman from any meeting, the Authority shall designate from among its members a temporary chairman who shall act for that meeting in the absence of the chairman or vice-chairman.

**ARTICLE V – MEETINGS**

- 5-1 Regular meetings shall be held at the time and place set by the Authority at the first meeting of each calendar year.
- 5-2 Special meetings may be called by the chairman or by the secretary after due notice and publication by the secretary.
- 5-3 Notice of all meetings shall be sent by the secretary with an agenda at least five days before the meeting.
- 5-4 All meetings of the Authority shall be open to the public except for Closed Sessions held in accordance with the provision specified of the Code of Virginia, 1950, as amended.

**ARTICLE VI – VOTING**

- 6-1 A majority of voting members shall constitute a quorum. No action shall be taken or motion made unless a quorum is present.
- 6-2 No action of the Authority shall be valid unless authorized by a majority vote of those present and voting.

**ARTICLE VII – OPERATING RULES**

- 7-1 Order of Business
- 7-1-1 Call to Order
- 7-1-2 Consideration of Minutes

CEA Bylaws  
Proposed for adoption Feb 2010

- 7-1-3 Public Hearings
- 7-1-4 Public Meetings
- 7-1-5 Discussions
- 7-1-6 Citizen Comments on Items not on the Agenda
- 7-1-7 Other
- 7-1-8 Adjournment
  
- 7-2 Minutes
  - 7-2-1 The Authority shall keep minutes of each meeting. The Chairman and Secretary shall sign all minutes following approval by the Authority certifying that the minutes are true and correct. Minutes made available to the public prior to formal approval by the Authority shall be clearly identified as a draft version of the meeting.
  
- 7-3 Procedures
  - 7-3-1 Parliamentary procedure in the Authority meetings shall be governed by Robert's Rules of Order, except where otherwise specified in these procedures.
  - 7-3-2 Whenever an agenda item involves a recommendation to the Board of Supervisors, the Authority shall continue to consider the item until a definite recommendation is made. If a motion has been made and defeated, additional, different motions may be made concerning the item under consideration.
  - 7-3-3 Business items on the agenda shall be considered using the following procedures:
    - 7-3-3-1 Report by County Staff
    - 7-3-3-2 Presentation by Applicant
    - 7-3-3-3 Citizen Comment

CEA Bylaws  
Proposed for adoption Feb 2010

- 7-3-3-4 Rebuttal by Applicant
- 7-3-3-5 Discussion by Authority
- 7-3-3-6 Motion and Action by Authority
- 7-3-4 Public comment shall be allowed in all cases required by the Code of Virginia, 1950, as amended, or the Code of Frederick County. In other cases, the Chairman may allow public comment.
- 7-3-5 The Authority members may ask questions of clarification and information after the staff report, applicant presentation and citizen comment.
- 7-3-6 Petitions, displays, documents or correspondence presented at a meeting may be made part of the official record of the meeting by motion of the Authority and are to be kept on file by the secretary. Such items need not be made part of the published minutes.
- 7-3-7 Public Hearings
  - 7-3-7-1 The Authority shall hold public hearings on all items which require a motion to accept a Conservation Easement.
  - 7-3-7-2 The Chairman may establish special rules for any public hearing at the beginning of said hearing. These rules may include limitations on the time of staff report, applicant presentation and citizen comment.
  - 7-3-7-3 The Authority may hold public hearings on any matter which it deems to be in the public interest. In such cases, the public hearings shall follow all procedures described for public hearing in these bylaws.
- 7-3-8 Tabling
  - 7-3-8-1 The Authority shall have the authority to table agenda items if any one of the following situations occurs:
    - A) The agenda item does not meet the requirements of the Code of

Virginia, 1950, as amended.

- B) The agenda item does not meet the requirements of the Code of Frederick County.
- C) Insufficient information has been provided for the agenda item.
- D) Issues or concerns that arise during formal discussion of the agenda item warrant additional information or study.
- E) The applicant provides the Authority with a written request to table the agenda item.
- F) The Authority is advised of an emergency situation that prevents attendance by applicant.
- G) The applicant fails to appear at the meeting in which the application has been advertised to appear.

7-3-8-2 The applicant shall be permitted to request that an agenda item be tabled from a scheduled Authority meeting.

7-3-8-3 An application that has been tabled for an unspecified period of time shall be re-advertised for consideration by the Authority once the following steps have been completed:

- A) The applicant has requested in writing that the agenda item be considered by the Authority.
- B) The applicant has provided all required information to the Authority which addresses all concerns of the Authority.

7-3-8-4 The Authority shall have the authority to act on an agenda item that has been tabled when the agenda item has been re-advertised for a subsequent Authority agenda.

## **ARTICLE VIII – AMENDMENTS**

8-1 These bylaws may be amended by a majority vote of the entire voting membership

CEA Bylaws  
Proposed for adoption Feb 2010

after thirty days prior notice.

- 8-2 Authority shall conduct an annual review of these bylaws to ensure their accuracy. All amendments to these bylaws shall be considered by the Authority in November of each calendar year. The Authority shall adopt their bylaws during the first meeting of each calendar year.

**DRAFT**

**MEETING MINUTES  
OF THE  
FREDERICK COUNTY CONSERVATION EASEMENT AUTHORITY**

Held in the First Floor Conference Room of the Frederick County Administration Building at 107 North Kent Street in Winchester, Virginia on November 19, 2009 at 8:00 a.m.

**PRESENT:** Diane Kearns, Chairman; Ritchie Wilkins, Vice-Chairman; Robert Solenberger; John Gavitt; Charles Triplett, Planning Commission Liaison; and Gene Fisher, Board of Supervisors Liaison.

**ABSENT:** Jim Lawrence, Treasurer; John Marker; and Todd Lodge.

**STAFF PRESENT:** Eric R. Lawrence, Secretary; and Bev Dellinger, Secretary III.

**PUBLIC MEETING:**

**1. Minutes**

On a motion made by Mr. Gavitt and seconded by Mr. Solenberger, the minutes of the September 24, 2009 meeting were approved.

**2. Farmland Preservation in the County**

Mr. Lawrence stated that he attended a meeting about two weeks ago in Shenandoah County where the VCC sponsored people from Lancaster County, Pennsylvania, to talk about PDRs. There were two speakers: one represented the comparable CEA of Lancaster County and the other represented Lancaster Trust, which is the non-profit organization that holds many of the easements. The aspect of the presentation was to show how they work together to promote land preservation. While we're just getting started here, our CEA and the relationship we're developing with Potomac Conservancy and VOF is very similar to what has happened in Lancaster County, although they have a 30 year head start. It's only been the last five to ten years where their easements started developing – it took a long time to convince people of the benefits of the easement program, and economics probably affected it as well as the pro-conservation Amish environment. Mr. Lawrence feels that the challenge we face as a community is to find that particular farming community that wants to preserve land. We can set up the structure and then it's just a matter of convincing people the benefits of PDRs, TDRs and easements.

**3. Agricultural and Forestal District Renewal Period Update**

Mr. Lawrence included two maps with the agenda showing rural preservation tracts and conservation areas. Mr. Lawrence stated we have drawn this information from one of the State groups that keeps a data base, so if the members know of any we haven't included, please let him know. Mr. Gavitt stated that Potomac Conservancy may be able to add to the list. Mr. Lawrence said we will circulate the information we have to the various holders we're aware of and see if they can let us know if we're missing anyone. The rural preservation tracts result in the fact that

a subdivision occurred but you cannot further subdivide those properties, so at this point, they're conservation tracts. We want to track everything in the County so that we're not going to allow subdivisions on properties that have easements or preservation components. The County has approximately 7,600 acres in some form of preservation that cannot be further subdivided. Members noted there are properties that are not included on the maps. Mr. Lawrence will get the information necessary to update the maps.

Ms. Kearns would like for the CEA to try to make everyone aware of the fact that Ag & Forestal District renewal is about to happen. Mr. Lawrence included with the agenda a questions and answers sheet about Ag & Forestal Districts. Mr. Lawrence stated staff has met with extension services. The first week in January, we're going to send out letters to everyone in the Ag Districts about renewing so we can have everyone signed up by the end of January and then have the Ag District Committee meet to endorse the appropriate district. Ms. Kearns plans on visiting some groups to make them aware of this opportunity.

Mr. Lawrence stated that the Planning Department is targeting the end of this year to make sure we have the RA ordinances, health systems and TDRs to the Board of Supervisors. The RA and health systems will have public hearings before the end of the year and, hopefully, we will be able to present a TDR discussion.

#### **4. Virginia Stormwater Management Regulations**

Ms. Kearns stated that she included a sheet with the agenda titled "Response to Common Concerns about Proposed Amendments to Virginia's Stormwater Regulations", put out by Potomac Conservancy's Advisory Board. This sheet shows the other side of the stormwater regulations' point of view, which is different from Mr. Joe Wilder, who spoke at the CEA meeting on September 24, 2009. Ms. Kearns said one way it's different from Mr. Wilder's is that it says these new regulations will help the development community.

Mr. Wilkins stated the Service Authority is spending millions of dollars to upgrade our sewage treatment plants; some of it is expansion, but the majority of it is to clean up the water that goes back into the creek.

Mr. Gavitt commented that he has noticed, especially in the State of Maryland, that the tidewater areas are unbelievably developed where there used to be a natural ebb and flow cleansing process; the marshes are now gone.

#### **5. Fundraising Discussion**

Ms. Kearns stated that she talked to Supervisor Chuck DeHaven concerning roll-back taxes. His suggestion is to wait until after this current budget year and then talk to the Board of Supervisors about these taxes possibly being set aside for the purchase of easements. Concerning the \$1 donation idea, now is not the time to launch this plan. Ms. Kearns believes that spring may be a better time to approach retailers about this idea.

Mr. Triplett said he mentioned to Mr. Jim Lawrence at the last meeting about approaching people for the \$1 donation when they purchase their hunting or fishing license. The members thought this would be a good idea.

The next meeting is scheduled for December 17, 2009 at 8:00 am.

There being no further business, the meeting adjourned at 9:05 a.m.

Respectfully submitted,

---

Diane Kearns, Chairman

---

Eric R. Lawrence, Secretary

[history](#) | [hilite](#) | [pdf](#)

10103145D

**HOUSE BILL NO. 437**

Offered January 13, 2010

Prefiled January 12, 2010

*A BILL to amend and reenact § 58.1-3237 of the Code of Virginia, relating to real property tax; land use assessment.*-----  
Patron-- Toscano  
-----Referred to Committee on Finance  
-----

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3237 of the Code of Virginia is amended and reenacted as follows:§ 58.1-3237. Change in use or zoning of real estate assessed under ordinance; roll-back taxes.

A. When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to this article, and the use by which it qualified changes to a nonqualifying use, or the zoning of the real estate is changed to a more intensive use at the request of the owner or his agent, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes. Such additional taxes shall only be assessed against that portion of such real estate which no longer qualifies for assessment and taxation on the basis of use or zoning. Liability for roll-back taxes shall attach and be paid to the treasurer only if the amount of tax due exceeds ~~ten dollars~~ \$10.

B. In localities which have not adopted a sliding scale ordinance, the roll-back tax shall be equal to the sum of the deferred tax for each of the five most recent complete tax years including simple interest on such roll-back taxes at a rate set by the governing body, no greater than the rate applicable to delinquent taxes in such locality pursuant to § 58.1-3916 for each of the tax years; *however, a locality may provide by ordinance that the roll-back taxes shall be extended to be equal to the sum of the deferred tax for up to each of the 10 most recent complete tax years, including the simple interest on such roll-back taxes.* The deferred tax for each year shall be equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year. In addition the taxes for the current year shall be extended on the basis of fair market value which may be accomplished by means of a supplemental assessment based upon the difference between the use value and the fair market value.

C. In localities which have adopted a sliding scale ordinance, the roll-back tax shall be equal to the sum of the deferred tax from the effective date of the written agreement including simple interest on such roll-back taxes at a rate set by the governing body, which shall not be greater than the rate applicable to delinquent taxes in such locality pursuant to § 58.1-3916, for each of the tax years. The deferred tax for each year shall be equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year and based on the highest tax rate applicable to the real estate for that year, had it not been subject to special assessment. In addition the taxes for the current year shall be extended on the basis of fair market value which may be accomplished by means of a supplemental assessment based upon the difference between the use value and the fair market value and based on the highest tax rate applicable to the real estate for that year.

D. Liability to the roll-back taxes shall attach when a change in use occurs, or a change in zoning of the real estate to a more intensive use at the request of the owner or his agent occurs. Liability to the roll-back taxes shall not attach when a change in ownership of the title takes place if the new owner does not rezone the real estate to a more intensive use and continues the real estate in the use for which it is classified under the conditions prescribed in this article and in the ordinance. The owner of any real estate which has been zoned to more intensive use at the request of the owner or his agent as provided in subsection E, or otherwise subject to or liable for roll-back taxes, shall, within ~~sixty~~ 60 days following such change in use or zoning, report such change to the commissioner of the revenue or other assessing officer on such forms as may be prescribed. The commissioner shall forthwith determine and assess the roll-back tax, which shall be assessed against and paid by the owner of the property at the time the change in use which no longer qualifies occurs, or at the time of the zoning of the real estate to a more intensive use at the request of the owner or his agent occurs, and shall be paid to the treasurer within ~~thirty~~ 30 days of the assessment. If

the amount due is not paid by the due date, the treasurer shall impose a penalty and interest on the amount of the roll-back tax, including interest for prior years. Such penalty and interest shall be imposed in accordance with §§ 58.1-3915 and 58.1-3916.

E. Real property zoned to a more intensive use, at the request of the owner or his agent, shall be subject to and liable for the roll-back tax at the time such zoning is changed. The roll-back tax shall be levied and collected from the owner of the real estate in accordance with subsection D. Real property zoned to a more intensive use before July 1, 1988, at the request of the owner or his agent, shall be subject to and liable for the roll-back tax at the time the qualifying use is changed to a nonqualifying use. Real property zoned to a more intensive use at the request of the owner or his agent after July 1, 1988, shall be subject to and liable for the roll-back tax at the time of such zoning. Said roll-back tax, plus interest calculated in accordance with subsection B, shall be levied and collected at the time such property was rezoned. For property rezoned after July 1, 1988, but before July 1, 1992, no penalties or interest, except as provided in subsection B, shall be assessed, provided the said roll-back tax is paid on or before October 1, 1992. No real property rezoned to a more intensive use at the request of the owner or his agent shall be eligible for taxation and assessment under this article, provided that these provisions shall not be applicable to any rezoning which is required for the establishment, continuation, or expansion of a qualifying use. If the property is subsequently rezoned to agricultural, horticultural, or open space, it shall be eligible for consideration for assessment and taxation under this article only after three years have passed since the rezoning was effective.

However, the owner of any real property that qualified for assessment and taxation on the basis of use, and whose real property was rezoned to a more intensive use at the owner's request prior to 1980, may be eligible for taxation and assessment under this article provided the owner applies for rezoning to agricultural, horticultural, open-space or forest use. The real property shall be eligible for assessment and taxation on the basis of the qualifying use for the tax year following the effective date of the rezoning. If any such real property is subsequently rezoned to a more intensive use at the owner's request, within five years from the date the property was initially rezoned to a qualifying use under this section, the owner shall be liable for roll-back taxes when the property is rezoned to a more intensive use. Additionally, the owner shall be subject to a penalty equal to fifty percent of the roll-back taxes due as determined under subsection B of this section.

F. If real estate annexed by a city and granted use value assessment and taxation becomes subject to roll-back taxes, and such real estate likewise has been granted use value assessment and taxation by the county prior to annexation, the city shall collect roll-back taxes and interest for the maximum period allowed under this section and shall return to the county a share of such taxes and interest proportionate to the amount of such period, if any, for which the real estate was situated in the county.

---

**Legislative Information System**