

**MEETING MINUTES  
OF THE  
FREDERICK COUNTY BOARD OF SUPERVISORS RURAL AREAS SUBCOMMITTEE**

Held in the first floor conference room of the Frederick County Administration Building, 107 N. Kent Street, Winchester, Virginia, on October 2, 2008.

**RA SUBCOMMITTEE MEMBERS PRESENT:** Richard Shickle, Gary Dove, Cordell Watt, June Wilmot, Gary Lofton, H. Paige Manuel and Gene Fisher.

**RA SUBCOMMITTEE MEMBERS ABSENT:**

**OTHER BOARD AND COMMISSION MEMBERS PRESENT:** Greg Unger and Roger Thomas.

**CITIZENS PRESENT:** Robert Carpenter and David Frank.

**STAFF**

**PRESENT:** Eric Lawrence, Planning Director; Candice Perkins, Senior Planner; Amber Powers, Planner I; and Bev Dellinger, Secretary III.

**SPEAKERS:** Rod Williams, County Attorney; Neil Thorne, Land Use Coordinator; Mike Lynn of Onsite Solutions; Bob Marshall of Cloverleaf Environmental Consulting; Scott Fincham, Environmental Health Manager for Virginia Department of Health; and Mason Allen, Virginia Department of Health Supervisor for Frederick County.

**CALL TO ORDER**

The meeting started at 7:35 p.m.

Mr. Williams presented information concerning tax-related issues which come up in conjunction with land use in rural areas, specifically rollback taxes and the sliding scale. Mr. Williams stated that State law allows for special, lower assessments of lands that are in particular uses set out in the State Code, specifically agricultural, horticultural, forestry and open space uses. In order for a property to be subject to that assessment, the locality must adopt a land use assessment program, and in order for a property to be eligible for the program, it must meet certain requirements.

Mr. Williams stated that the Virginia Constitution generally requires uniformity of taxation within the same class that is subject to a particular tax. The General Assembly may define different classes of property that are subject to taxation. The State Constitution specifically contemplates the land use assessment program...”the General Assembly may define as a class real estate devoted to agricultural, horticultural, forest or open space uses”. It authorizes localities to allow the deferral of or relief from portions of the taxes that are otherwise payable on such real estate. The General Assembly has enacted a program consistent with that authority, the Land Use Assessment Program, and it’s contained in § 58.1-32 of the Virginia Code and that’s what Frederick County currently operates under. Every locality in the State can

only do what's authorized under that Code. Frederick County has adopted the primary portion of the Land Use Assessment Program. It appears that what the State was trying to do with this program is not make it easy to qualify a property for the program. Once a property qualifies for a land use assessment, it is entitled to a reduced assessment at the land use rate, determined by State guidelines, until such time as it no longer qualifies, either because the use overtly changes or if the property is rezoned to a more intensive use. The portion of the tax on the reduced assessment, the allowance that the property owner is given, is considered deferred under State law. Once five years goes by, it's effectively exempted for any time prior to that.

Mr. Williams continued that once a property no longer qualifies, the owner must pay the rollback tax; the rollback tax is the amount of the taxes that were deferred for the last five years. In other words, they pay the difference between what they would have paid during the five years had it not been in the program, and what they did pay because it was in the program. The locality is authorized to charge interest on the rollback tax; the interest rate cannot exceed the interest rate that the locality charges on other taxes. Frederick County does not have a provision for charging interest. The rollback tax has some drawback to it in terms of its incentive to preserve rural land. Basically, is the five years of rollback tax a sufficient de-incentive for somebody to keep land out of another use?

The response to that is the sliding scale. In 1999, the General Assembly enacted amendments to the rollback tax land use taxation legislation that allows localities to adopt more extensive relief. The relief is called a sliding scale program, and basically the locality can further defer, and potentially ultimately excuse the taxes, in exchange for a more serious written commitment, properly recorded, on behalf of the land owner to maintain the qualifying use for a longer period. It appears, to date, the only locality that Mr. Williams knows of for sure that has adopted it is Loudoun County. In order for the locality to have a sliding scale program, it has to enact an ordinance that provides for it. Each property owner who seeks to obtain the benefit of the sliding scale program must enter into a written agreement with the locality that sets forth the period of time that the owner intends to keep the property in the qualifying use and that sets forth what the corresponding tax deferral percentage will be. The amount of time and the percentage have to be set out in the ordinance. The property becomes subject to the full sum of the deferred tax if at any time during the sliding scale agreement's period the use changes to a non-qualifying use or the property is rezoned to a more intensive use. The sliding scale authorization that the State has given allows a locality to adopt a sliding scale program that can cover a period of up to 20 years. It does not appear they've imposed any limit on the extent of the deferral within those 20 years. Loudoun County actually has a 20 year deferral where they will defer 99% of the tax.

The way the sliding scale program works is that the owner agrees to put the land into a qualifying use for the specified period of time, not to exceed 20 years, in exchange for which the locality agrees to defer a specified percentage of the taxes for that period. Mr. Williams noted that the sliding scale program works on top of the land use assessment program. In other words, if you have a qualifying use and you're in the land use program, you can already get that benefit. If you want to get a further benefit, you can enter into the sliding scale agreement with the county and the county will, per whatever the scale in the ordinance is, agree to defer whatever that percentage is of the remainder of the real estate tax for the property. If the property owner stays in the program and keeps the property in the qualifying use for the 20 years, at the end of the 20 years, they would need to enter into a new agreement to get the benefit of the program

again. However, at the end of the 20 years they have no further obligation under that part of the program. If they decide on day one after the 20 years they want to develop the property, they don't have to pay any of the sliding scale taxes. They would have to pay the last five years of the rollback, but they're excused from the rest of it. Mr. Williams handed out a copy of Loudoun County's sliding scale application. State law says 20 years is the maximum you can do the program, but a locality can decide it only wants to offer ten year programs and it can pick any percentage it wants within those years.

Mr. Williams reiterated that the sliding scale option is an all-or-nothing proposition, on top of the rollback tax. In other words, if you sign a 20 year agreement and in year 19 decide you can't do it anymore, you have to pay the whole thing back; there's no proration. Mr. Williams thinks the sliding scale option can be looked at as a very serious means to preserve rural land. But on the other hand, it's an opportunity to come up with a plan that would allow land to be preserved for a period of 20 years. The eligibility for the sliding scale program is the same as for the land use program. The locality does not have the option of saying there are less stringent requirements to qualify for the sliding scale program than for the regular land use program. Once you're in land use and you agree to the sliding scale, you're in for both; but if you leave one program, you're out of both.

Mr. Lofton asked if someone agrees to the land use, and the sliding scale, and after ten years of the 20 years decides to sell the land to someone who wants to keep the land use, does that go with the land or the owner? Mr. Williams answered it seems that since the agreement is recorded, it probably stays with the land, but Mr. Williams will check with Loudoun County.

Mr. Shickle stated that this option as a new tool rather than an add-on tool just went out the window. If a locality has a very low land use valuation and low land use tax, there's less incentive for the land owner to enter into it and less recovery for the locality. Mr. Shickle asked if a locality could enable the sliding scale for one of the four land use categories and not the other three. Mr. Williams responded he would have to look that up, but he thinks it would be the same rule that applies for land use and that it could be done for one category but not others.

Mr. Shickle stated that originally the discussion on land use was his desire to see if there was some way to have more land qualify for land use than currently does. If there's a fake farmer who doesn't want to develop his land, Mr. Shickle would rather have him in land use than kicked out of land use because he's a fake farmer. Mr. Shickle at first explored this under the recreational component and found out that was not going to happen. Then he saw step-tax reduction literature and thought maybe that would be another tool instead of an add-on. Tonight, Mr. Shickle learned that it's not another tool, it's just a variation to further reduce those already in land use. Mr. Shickle further stated that right now we work, under our tax structure, to get people out of land use who, under the definition, don't belong in there. To people who just have open land, who don't want to develop it, we do not have a tax incentive. Mr. Shickle had also asked if the rollback period could be longer, and the answer was no. The only thing Mr. Shickle has gotten out of all the discussions to date is we should probably seriously consider the assessment of interest on the rollback tax in our ordinance.

Ms. Wilmot asked what the full assessment would be on an agricultural piece of property if it wasn't in land use. Mr. Thorne responded it's the fair market value and that depends on

where the land is located.

Mr. Shickle stated, taking it to the extreme, if taxes get high enough and the land isn't in land use, the owner of the land will be forced to develop it because he was taxed as if he was going to.

Mr. Lawrence asked if the tax rate on agricultural land is consistent across the board. Mr. Thorne stated the rate is.

Mr. Unger feels Frederick County is very fair on land use tax. Mr. Shickle stated that the day the County taxes his acreage as non-land use is the day it gets sold; he couldn't afford to keep it.

Mr. Mike Lynn of Onsite Solutions presented a powerpoint titled Onsite Sewage Disposal Systems: Permitting, System Types and Regulations. His presentation enhanced the information provided by Mr. Scott Fincham of the Virginia Health Department at the September 25<sup>th</sup> meeting.

During Mr. Lynn's presentation, questions were asked. Mr. Shickle stated that at the last meeting, there was some discussion about the fact that some localities don't allow all the generally approved systems and Clarke County was used as an example of one that has very limited systems. Can any locality exempt any of the septic systems that it wants? Mr. Lynn stated that on Tuesday, Loudoun County will adopt an ordinance into code that bans alternative systems for a period of five years, generally approved and provisionally approved. Mr. Shickle said that answers his question.

Mr. Dove said that on July 1, 2009, the Health Department will be requiring some kind of maintenance and inspections on septic systems – is that correct? Mr. Lynn stated that July 1, 2009 is in the Virginia Code. Mr. Dove asked if it is going to be on current systems or just new systems and Mr. Lynn responded he doesn't know; that hasn't been decided yet. Mr. Dove asked how it will be funded. Mr. Lynn stated that every time somebody pumps a tank or files a report on any system, there's a \$1.00 or \$5.00 fee, he isn't sure, that is paid with that report.

Mr. Lawrence asked Mr. Lynn if he knew the background on why Loudoun County is going to prohibit alternative systems. Mr. Lynn stated there are 1,200 alternative systems installed in Loudoun County and there are permits or certifications issued for another 4,000, totaling 6,200. They have about 15,000 or 20,000 systems total in the county. If you look at the failure rate of what they've determined to be alternative systems versus conventional systems, the failure rate in the first couple years was higher than the failure rate of conventional systems in that same period.

Mr. Shickle asked how you're going to make someone with a conventional system pump their septic system and Mr. Allen responded that, as of right now, conventional systems aren't part of this. If somebody has an alternative system, how do you make them change filters? Mr. Allen stated that would go back to the maintenance and monitoring program. Mr. Lynn continued that some think when a property changes hands, at the point of sale, there should be an inspection and then the system would come into the program.

Mr. Bob Marshall of Cloverleaf Environmental Consulting gave a brief talk concerning failing septic systems which coincided with Mr. Lynn's presentation. Mr. Marshall stated that, as a rule, there's a 50% reserve area required.

Mr. Marshall stated that, as an opinion, he thinks a two acre lot is probably the minimum and there's not a good reason to go much smaller unless you start talking about off-site locations for the drainfields.

Mr. Lawrence said he heard Mr. Marshall say that he believes, based on illustratives, that one and one half acre was pushing it so a two acre minimum was probably reasonable to accommodate an appropriate health system. Mr. Marshall stated that's a minimum; he'd like to see it a little higher. But if you get a larger lot size, then you don't preserve open space.

Mr. Lawrence also stated that we do a 50% reserve and the saving grace was the alternative system because they could replace failing systems on the 50% reserve. But now we're starting to see the primary system as an alternative system, which means we don't have a replacement opportunity.

Mr. Lynn stated that he has never spoken to a group that had this kind of interest this early where there wasn't a huge cloud hanging over their head and they felt they had to do something right away.

Ms. Powers made a chart titled Overview of Septic System Requirements which compared Frederick, Clarke, Fauquier, Loudoun, Shenandoah and Warren Counties on different levels. Mr. Fincham felt this was a very good outline of surrounding counties.

Mr. Shickle asked Mr. Lawrence to do land use and septic summaries for the purpose of reference, outlining points we know to be true. This could be followed by a paper on, "These are things you could consider for adoption change or options", to use as a reference.

The next meeting will be on Thursday, October 16, 2008, at 7:30 pm. Mr. Lawrence will present his summaries.

Ms. Wilmot stated she would like to have a meeting about TDR's. Mr. Lawrence said there's none that he could find in the State that exists, but we can present some scenarios as to how it might work in Frederick County. Ms. Wilmot would like to know why a TDR is unable to be used. Mr. Shickle suggested that unless Mr. Lawrence can find information on the subject, that he take it first, in an attempt to reduce the writing, why it might work and why it would be difficult, and then as a group we decide whether it's worth agenda meeting time.

The meeting adjourned at 9:55 pm.

