

**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 16, 2008.

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

**RA SUBCOMMITTEE MEMBERS ABSENT:** Gene Fisher.

**OTHER BOARD AND COMMISSION MEMBERS PRESENT:** Greg Unger.

**CITIZENS PRESENT:** Robert Carpenter.

**STAFF**

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

**CALL TO ORDER**

The meeting started at 7:30 p.m.

Mr. Lawrence provided a brief overview of Transfer of Development Rights (TDR). In 2006, the State enabled Transfer of Development Rights and to date, nobody has adopted a program. Last year, a joint subcommittee in Richmond met to figure out what can be done to enhance the TDR program. Their last meeting is in November of this year. One thing Mr. Lawrence learned from the joint subcommittee meetings is from their September meeting when they had a guest speaker from either Maryland or Pennsylvania. He spoke of the benefits of the TDR program, but the speaker said one of the tools you need to have is impact fees to offset the impacts of new houses.

Mr. Lawrence further stated that the way the enabling legislation was adopted, it says we have to choose a sending area and a receiving area and, in the receiving area, the County is responsible to make sure the facilities necessary to accommodate the houses are in place. So we're not set up to levy additional fees of any type on these houses; we have to make sure the transportation system can handle these houses as well as schools, fire and rescue and typical community services. Mr. Lawrence stated that conceptually, one way to think about the TDR's application in Frederick County is to identify the sending areas as potentially the prime agricultural soils. The receiving area could be the UDA. Mr. Lawrence asked members for guidance in figuring out if there's a value in somebody buying a one-for-one exchange; if you can go to a 100 acre farm in our key prime area, buy the 20 development rights and then be allowed to develop 20 houses in the UDA. Mr. Lawrence pointed out that we don't address the capital facilities; the impacts generated by a new house are one of the missions of our task as a subcommittee. The TDR program would conceptually re-locate those houses from the rural

areas to the UDA.

Mr. Shickle posed the question of why would anybody buy because they already have more density, probably, than they're intending to develop. Mr. Lawrence thought that to make it more enticing, do we investigate setting up a system where instead of buying the development right and applying it to RP zoned land in the UDA, we say it applies to areas to plan for residential use in the UDA which are still zoned RA. Is there a way to make it enticing for someone instead of going through a rezoning process?

Mr. Lawrence gave an example of if you buy the development rights for 300 acres of RA land, you've got 60 housing rights, and then you go to the RA within the UDA. Mr. Lawrence is going with the belief that someone probably isn't going to be able to buy 1,000 development rights so we're never going to see 1,000 new houses show up in the UDA without a rezoning component, but logically somebody could buy 20.

Mr. Dove asked if someone could not be in the UDA but be in the SWSA. Mr. Lawrence responded that the receiving area would have to be in the UDA and would have to be planned residential, so you couldn't go to planned commercial areas that are zoned RA and build houses. You'd have to go some place where we said we want houses and instead of going through a residential rezoning, you just buy your residential development rights and then you have to follow the RP standards.

Mr. Dove stated that now, they'd have to get the property rezoned and we would expect proffers. So Mr. Lawrence is saying this could be a by-right that they wouldn't have to necessarily give proffers, and it would have to benefit them enough to where they're going to say I'm putting residential units here and it's not going to cost me \$22,000 per unit. Mr. Dove said if we work these numbers, he doesn't see how it can work and Mr. Lawrence agreed. That would mean that they give no money to the farmer who wants to sell his development rights.

Mr. Shickle asked what are the reasons you wouldn't want to do it. Mr. Dove responded it could possibly cost too much money; the developer could have to pay too much for development rights.

Mr. Lawrence pointed out that the County wouldn't be getting the proffers so that's an extra \$25,000 the County loses. Under this scenario, we get a \$25,000 impact and we don't have a chance to recover the proffer. Mr. Lawrence is suggesting that through TDR, you're taking that house out of the RA and putting it in the UDA. We continue to not get a proffer, but the house is in the right location, the farm is left alone and the farmer gets a proffer.

Mr. Shickle asked members if they're interested in pursuing this, as it exists, or wait and see what happens, or if they're not interested, just wait and see if something happens that's of more interest. Mr. Dove, Mrs. Wilmot and Mr. Unger felt we should look at the numbers first because that's what will dictate whether we pursue it or not. Mr. Lawrence stated he'll talk to some people in development, give them some scenarios and let them tell him if the concept will work.

Mrs. Wilmot stated that we have a new ordinance to write to the UDA and that ordinance

is the one that deals with urban centers; that's where we intend our density to be. Mrs. Wilmot thinks this is an opportunity to use TDRs in those urban centers and it would be the additional density that would be the icing on the cake for the developer. Mrs. Wilmot continued that you can't use TDRs as a function of rezoning, but if we create an ordinance by which an urban center could be rezoned to an urban center and then did something like an overlay of TDRs which would bump up the amount of density, it will do a couple of things. It's going to create a developer-paid impact and it would incentivize some of the other things that we need within that urban center like cheaper housing. Mr. Sickle said in order to make that work, the TDRs would have to be used as "icing"; if they were necessary to make the project work, we could lose something because there were no sellers.

Mr. Dove said that Mrs. Wilmot may be correct, but he guesses everybody's thought of what the urban centers are going to be is different; his is walkable stores with units over top of the businesses. When you take a piece of property and there are several acres of parking, Mr. Dove believes they're probably within our ordinance going to be able to put the density that they want. There's parking, setbacks and buffers that are going to be required. Mr. Dove would think that a parcel of 20 acres, 50 acres, whatever, is even going to use the total density that we allow right now, even in an urban center, because there are stores, too. Mrs. Wilmot said this is just something to look at.

Mr. Shickle wonders if the per unit proffer in an urban center might drop to a value lower than what you might be able to buy something for. Mr. Dove agreed; and it would not be a benefit to farmers.

Mr. Lawrence said that he and Mrs. Wilmot talked earlier and they believe that one of the reasons nobody may have done TDRs is because not everybody has growth boundaries; we have our UDA.

Mr. Shickle believes a consensus of members would like to continue learning about TDRs. Mr. Lawrence responded he'll do further research and he'll try to talk with some farmers and developers and figure out if they'd be interested in trying to strike a deal if we come up with a program.

Mr. Lawrence handed out a chart, summarizing the Committee discussions since July. The chart included Vision for the community's future, Choices available to achieve the vision, Implementation of choices and Acknowledgement. The following briefly outlines the underlined subjects:

Vision: Agricultural Economy and Viewshed Preservation.

Choices: Rural Preservation (clustering of lots), Transfer of Development Rights (TDRs). Purchase of Development Rights (PDRs). Land use tax program and Lot size.

Implementation: Clustering with 40, 50, 60% set-aside parcels. Clustering on small lots. Create TDR program, Federal, State or local PDR funding.

Sliding scale land use program, 2, 5 or 10 acre maximum lot size, ¾, 2, 5 or 10 acre minimum lot size.

Acknowledgement of:

Fiscal impacts to the County's capital facilities (such as schools, public safety [fire and rescue, Sheriff], parks and recreation, libraries).

Fiscal impacts to transportation system such as road construction, improvements, hard surfacing and maintenance.

Environmental impacts.

Choices: Enable rezoning in rural areas to implement subdivisions greater than 1 unit per ? acres.

Maintain by-right development.

Establish housing densities of 1 unit per 5, 10 or 20 acres.

Regulate health systems: establish limitations on experimental and provisional systems; evaluate drainfield reserve areas, wellhead protection and system maintenance.

Concerning the percentage of set-aside in clustering, Mr. Lawrence stated that a lot of people have commented strongly in support of the larger set-aside of 50% to 60%. Currently we allow two acre lots for clustering. What we've learned through our health discussions is that a two acre lot is probably a fair number.

Mr. Shickle stated that he's heard frequently from people, whether they support PDRs or not, the hang-up has been whether tax dollars should be spent. Mr. Shickle would like to have a reference of Virginia counties who actually are budgeting tax dollars for PDRs. Mr. Lawrence stated he will get the information and include that with his chart.

Mr. Lawrence stated that the sliding scale program is not going to offer any additional incentives over what our current land use program does, so there's not an advantage for us to create the sliding scale program.

Mr. Lawrence talked about the fiscal and environmental impacts on the County, which was outlined as follows with the hand-out:

IMPLEMENTATION of Choices:

- Enable rezoning in rural areas to implement greater than 1 unit per 2 acres.
  - Existing ordinance enables rural areas subdivision as an administrative process ("by-right"). No opportunity to address fiscal impacts generated by the development.
    - Potential Effort: Require a rezoning for developments that exceed 1 unit per 7 acres.
      - ❖ Enables developer to mitigate impacts generated by development.
- Maintain By-Right development.
  - Existing ordinance enables 1 unit per 5 acres as a by-right development.
    - Fiscal impacts are not mitigated.

- Establish housing densities of 1 unit per 5, 10 or 20 acres.
  - Existing ordinance provides for a by-right density of 1 unit per 5 acres.
    - Potential Effort: Decreasing density would reduce the number of housing units constructed in the rural areas, which results in a reduction of the fiscal impacts levied on the County.
      - ❖ Scenario: Recent growth rates result in some 300 new homes constructed in the rural areas annually – equating to an unmet capital fiscal impact of \$7,145,400. This does not include impacts on the transportation system.
      - ❖ Scenario: Reductions in the density could result in reductions in the capital facility fiscal impacts.
        - 1 unit per 10 acres projected to generate impacts of \$3,572,700 annually.
        - 1 unit per 20 acres projected to generate impacts of \$1,786.350 annually.
- Regulate health systems.
  - Existing ordinance permits state minimum standards to be applied in Frederick County.
    - 50% drainfield reserves.
    - All health systems approved (general approval, provisional and experimental).
    - 50 foot wellhead separation distance.
  - Potential Effort:
    - Establish limitation on experimental and provisional systems.
      - ❖ These types of systems are not necessarily tested for appropriateness for the County’s soil type.
      - ❖ Require 100% drainfield reserve areas.
      - ❖ Increased wellhead protection.
        - Require 100 feet separations.
      - ❖ Require operation and maintenance for alternative health systems.

Mr. Shickle stated that he doesn’t see anything that brings up the issue of communal systems for clustered housing on the list. Mr. Lawrence replied that the only time it was talked about as a group was at the last meeting and Mr. Lawrence gathered that it was great for the rural community centers but not for other areas. Mr. Lawrence further stated what he heard from the meeting was that it was to help out existing community and failing systems and so he didn’t sense that was what we were trying to do in protecting the rural community. One concern that

Mr. Lawrence has is that if you introduce community systems in the farm land, it allows one acre or  $\frac{3}{4}$  acre lots and there's a market that's been opened up. There are a lot of people who want a  $\frac{1}{2}$  acre lot and right now, we get them in the UDA. If you allow community systems in the agricultural area on  $\frac{1}{2}$  acre lots, then people can look in the RA also.

Mr. Shickle raised the issue to see if it's a possibility or if we want to leave it off the list. Mr. Lawrence asked if the Committee wants community systems on the bullet list. After a brief statement from Mr. Carpenter in support of community systems, Mr. Shickle stated it is his desire to get extensive public input, bring this matter to closure and for us to make the recommendation.

Mr. Dove stated there would be a lot of details and probably ordinances that would say if you do this, then you have to have a homeowner's association or some entity that maintains it to make sure it's not neglected after the developer leaves.

The consensus of the Committee is to put community systems on the bullet list.

Mr. Shickle asked the Committee to make a decision about having community meetings. Mr. Lawrence suggested that the meetings be scheduled on November 3<sup>rd</sup>, November 6<sup>th</sup> and November 13<sup>th</sup>, in a school setting, from 7 pm to 9pm. The Committee members decided to go with Mr. Lawrence's schedule of meetings.

It was also suggested that the next Subcommittee meeting be held on November 20<sup>th</sup>. That will be decided after the last community meeting.

The meeting adjourned at 9:05 pm.