



# RENAISSANCE PLANNING GROUP

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## M E M O R A N D U M

**Date:** Revised - February 13, 2009

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**Subject:** Draft Report on Comprehensive Plan Issues and Trends

**Discussion:** Following is a report on current planning tools and topics relevant to the 2008-09 County Comprehensive Plan update. We look forward to discussing this material further with your staff.

**cc:** Milt Herd, Herd Planning and Design

## REPORT ON COMPREHENSIVE PLAN ISSUES AND TRENDS

Revised - February 13, 2009

### SCOPE OF REPORT

As part of an effort to refine and update the Land Use Section of the County's 2003 Comprehensive Plan, Renaissance Planning Group was tasked with providing information on current planning tools and topics that have emerged since the 2003 Comprehensive Plan update. The purpose of this research is to assess new or emerging planning tools that may be appropriate for use in James City County and to provide updated information on planning trends and best practices in Virginia and other states. This report includes a review of the following:

I. MAJOR NEW PLANNING LEGISLATION

An overview of major land use planning initiatives adopted by the General Assembly since 2003, including

- Urban Development Areas
- Transfer of Development Rights
- Mandatory Rural Clustering
- Impact Fees

II. RURAL LANDS ISSUES

A review of current Rural Land efforts including:

- A review and update of recommendations included in the memo entitled "Non-Rural Development Outside the Primary Service Area", prepared by Herd Planning and Design and dated April 7, 2003
- A review of tools used in peer localities
- Information from the Rural Lands Zoning Ordinance Process
- Rural Economic Development Options

III. EMERGING TOOLS

A review of the following potential plan implementation tools and emerging planning trends:

- Best practice approaches to land use, density & intensity
- Performance Zoning
- Harmonious or concurrent rezoning



## I. MAJOR NEW PLANNING LEGISLATION:

Since approval of the James City County Comprehensive Plan in 2003, the Commonwealth of Virginia has adopted potentially significant new planning tools for localities. This report will look at these following major new tools as follows:

1. Urban Development Areas (UDAs). Counties meeting certain growth parameters are now required to include designated growth areas, or Urban Development Areas, within their comprehensive plans.
2. Transfer of Development Rights (TDR). Transfer of Development Rights programs are now permitted, although not required, in all Virginia localities.
3. Impact Fees. Since 2003, the state has adopted voluntary Impact Fee Legislation
4. Rural clustering. The State has mandated that minimal rural clustering provisions be incorporated into local regulations.

Each of these planning tools and their relevance to the James City County Comprehensive Plan update is summarized below.

### URBAN DEVELOPMENT AREAS

#### Overview:

As part of the Transportation Act of 2007, Section 15.2-2223 of the Code of Virginia was expanded to include new requirements for preparation of comprehensive plans. The most significant new provisions, outlined in Section 15.2-2223.1, require that certain fast growing localities, including James City County<sup>1</sup>, must include at least one Urban Development Area (UDA). According to the new legislation, a UDA is an area located close to a city, town or other developed area that is designated as appropriate for higher density development due to its proximity to transportation facilities and to public or community sewer and water systems. The language further states that development within the UDA shall provide for reasonably compact development with residential densities of “at least” four units per gross acre and commercial densities of “not less than” 0.4 F.A.R (floor area ratio) per gross acre. Finally, the UDA or UDA’s must be of sufficient size to accommodate projected commercial and residential growth for at least

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<sup>1</sup> James City County is subject to the requirements of Section 15.2-2223.1 because it has adopted zoning and the County’s growth rate exceeded 15% between 1990 and 2000 based on U.S. Census Bureau estimates.



10 years but not more than 20 years.<sup>2</sup> Comprehensive plans may include incentives for development in UDA's and state and local funding for transportation improvements, housing and economic development shall be directed to UDA's to the extent possible. Localities subject to the new legislation are now also required to incorporate new urbanist design principles such as pedestrian friendly roads, interconnected road and pedestrian networks, stormwater management, preservation of natural areas, mixed use neighborhoods with a mix of housing types and reduced yard setbacks and street widths in their comprehensive plans.

Localities have until July 1, 2011 to come into compliance with Section 15.2-2223.1 either by amending their current comprehensive plan or by adopting a resolution that their current comprehensive plan "accommodates growth in a manner consistent" with the new requirements. To date, few, if any localities have specifically amended their plans to address the new legislation; however, some have indicated that the new provisions will be considered through routine updates or their normal five year review cycle. Localities do have the option of certifying that their current plans already meet the requirements of the legislation but, it is not clear if this provision means that the general intent of the legislation must be met, or the specific requirements laid out in legislation must be met. Several localities, including Fauquier and Goochland counties, have expressed concern about the implications of the new UDA requirements. As a result, in March 2008, the General Assembly established a joint subcommittee<sup>3</sup> to study development and land use tools. In particular, the joint subcommittee "shall examine and monitor the transition to channeling development into Urban Development Areas, and determine if additional legislation is needed to help localities as they transition to Urban Development Areas." The study is scheduled for completion on November 30, 2009.

### Peer County Review

Based on initial peer localities research ~~to date~~ conducted in the fall of 2008, there is only one locality in Virginia that is in the process of modifying its comprehensive plan specifically to ensure compliance (Spotsylvania County). Frederick County, on whose comprehensive plan the legislation was largely based, would still need to refine its UDA standards for them to be in compliance with the final, adopted from of the legislation. In addition, the following jurisdictions and agencies were contacted to inquire if they have initiated any studies or comprehensive plan revisions to address the legislation:

- Virginia Association of Counties
- Loudoun County
- Prince William County
- Hanover County

<sup>2</sup> The legislation states that future growth projections shall be based on official projections or estimates from the Weldon Cooper Center for public service or other official government sources.

<sup>3</sup> The study was initiated by House Joint Resolution No. 178.



- Albemarle County

The prevailing position that many suburban and urban localities in the Commonwealth are taking is that their current policies and districts in their comprehensive plans will comply with the legislation, although most have not yet undertaken an analysis of the issue.

**Advantages and Disadvantages:**

The UDA concept shares many of the advantages associated with other Urban Growth Boundary techniques, primarily focusing growth in areas that have the capacity to support higher density growth because public facilities, transportation, and public service are available or planned. By concentrating development, the provision of public facilities and services by local governments is more cost efficient and cost effective. However, the specific language included in the legislation may make implementation difficult and unpredictable.

The current UDA language sets out minimum density criteria that may not be appropriate for all jurisdictions and that may be difficult to implement based on market demands. Many rural, and even suburban and growing communities have found that market forces make it difficult to achieve commercial development of 0.4 FAR. Since this is a gross density figure, the net development densities – depending on the proportions of unbuildable land on various sites – may be considerably higher. Densities above 0.4 FAR for commercial buildings generally necessitate structured parking in order to accommodate on-site parking requirements, and only fairly urban areas have the kind of land values that make structured parking financially profitable.

In a free market, it is difficult to mandate development at minimum density levels, particularly if existing zoning allows development at less than the minimum mandated density levels; it is equally difficult to control the timing of development. The new legislation also requires an Urban Development Area that accommodates no less than ten years worth of commercial and residential growth but not more than 20 years worth of residential and commercial growth, but it provides no guidelines or methodology for predicting growth rates and market conditions. Such studies will likely vary widely between communities and, depending on the level of sophistication used to conduct such studies, may be costly and demand significant staff resources.

**Application in James City County:**

Based on initial findings, the County may want to consider whether or not a complete a study to document compliance with the legislation is warranted at this time. It appears that no other community in Virginia has undertaken such a detailed study yet. In light of the pending results of the Joint Subcommittee report, and potential legislative changes resulting from that report, the best course may be to wait until at least November, 2009 before initiating such a study; although the parameters of the legislation should be kept



in mind throughout the Comprehensive Plan update and the work of the joint subcommittee should be monitored.

In the interim, and as part of the 2008-09 Comprehensive Plan update, the County may want to consider generally clarifying the density and intensity policies of the Future Land Use Districts – particularly the high density/intensity ones that would be affected by this legislation. In addition, allowance could be made for redevelopment of older areas to higher densities/intensities and these should be quantified and reflected in the land use policies as well. The Density/Intensity issue will be discussed later in this report.

## **TRANSFER OF DEVELOPMENT RIGHTS**

### **Overview**

Since approval of the James City County Comprehensive Plan in 2003, the Commonwealth of Virginia has provided a potentially significant new planning tool to localities: Transfer of Development Rights (TDR). TDR programs are designed to conserve farmland and open space while reinforcing the concept of urban growth areas like the PSA in James City County. The TDR concept operates under the principle that the right to develop a property can be transferred or sold, similar to the way a landowner might sell or lease mineral rights, drilling rights or grazing rights. TDR programs have existed in the United States since at least the late 1970s. Over 140 programs are operating in several states including Maryland, California, Florida, Washington, and New Jersey with varying degrees of success.<sup>4</sup>

A TDR program allows landowners who do not wish to develop their property to sell their development rights to another landowner, typically a developer who wants to develop another property, at a density higher than existing zoning would allow, usually without the need for a rezoning. The TDR purchaser pays the seller for their unused residential development rights, usually on a per unit basis, and “moves” those units to another location in the community. The sender agrees to an easement that precludes residential development on the property, but allows the continuance of farming or other activities that maintain the property in an undeveloped state. Some programs (and the legislation approved in Virginia) also allow residential density to be transferred and converted to a square footage equivalent for use in a non-residential development.

Local governments, typically through their comprehensive plans, designate “sending” areas – where density is transferred from - and “receiving” areas – the area where density is transferred to. The sending areas are areas that a community wants to

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<sup>4</sup> “Transfer of Development Rights in U.S. Communities,” by Margaret Walls and Virginia McConnell published by Resources for the Future in September, 2007.



protect from development because they are sensitive environmental areas, prime agricultural lands or have scenic, historic or open space value. Receiving areas are locations that are usually well-suited for development because utilities, transportation facilities and public services are present or planned. The transfer of development rights and subsequent placement of restrictive easements can occur at the time units are approved or, in some programs, the two events can be separated by time and the TDR unit can be “banked” or set aside for use until there is a need or market for the unit.

Two of the oldest and most successful TDR programs are operating in Calvert County, Maryland and Montgomery County, Maryland – both located within commuting distance of Washington D.C. Approximately 49,000 acres of land has been placed under conservation easement through TDRs in Montgomery County, MD, making it the most successful TDR program in the country. TDR prices in Montgomery County have ranged on average (in 2007 dollars) between \$4,000 and \$18,000 per development right; the most expensive rights sold for approximately \$45,000 each. In Calvert County, prices (not adjusted to current dollars) per development right ranged from approximately \$1,200 to \$7,500 dollars between 1980 and 2006. To construct one new residential unit in a receiving area in Calvert County, a developer must purchase five TDRs.<sup>5</sup>

### **Virginia TDR Legislation**

In 2006, by adoption of, § 15.2-2316.2 the Virginia General Assembly authorized any Virginia locality to implement transfer of development rights. In 2007, the General Assembly authorized the transfer of development rights to adjacent jurisdictions. Further in 2008, by amendment of the Acts of Assembly, Chapter 440, Albemarle County became the first and only Virginia locality with the express authority to bank development rights for future use. As structured, the current legislation requires TDR programs be voluntary and that density transfer can not be required as a condition of development. It also allows for residential density to be converted to non-residential density.

### **Peer County Review**

At present, no predominantly suburban or rural Virginia locality has adopted a TDR program. Albemarle County’s Board of Supervisors is currently considering implementation of a TDR program, as is Frederick County, Virginia. Arlington, County Virginia adopted a limited Transfer of Development Rights program in January, 2006 based on more limited legislation approved by the General Assembly in 2005. It allows for the transfer of development rights through the site plan approval process for the parcel receiving the density, but must be approved by the Board of Supervisors. Sending and receiving areas are to be established on a case by case basis.

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<sup>5</sup> Wells and McConnell, September 2007.



The General Assembly has appointed a joint subcommittee to review the current TDR legislation to determine how to enhance the current legislation and provide incentives for use of TDR programs in the Commonwealth. This committee is scheduled to issue a final report during the 2009 legislative session as they must conclude their review by November 20, 2008.

### **Advantages and Disadvantages**

#### Advantages:

TDR programs are attractive to many communities because:

- They provide a means of directing growth to preferred locations and preserving land in agriculturally or environmentally sensitive areas.
- They preserve land without using public tax dollars.
- These programs can take financial pressure off rural land owners by providing a source of income or compensation while allowing them to continue using their property for agriculture or other compatible non-residential purposes.
- Well designed TDR programs are more flexible for landowners and developers than other measures designed to limit or direct growth, such as phasing, downzoning or moratoriums.

#### Disadvantages:

TDR programs also have some disadvantages which include:

- Complications associated with developing, managing, maintaining and marketing TDR programs.
- Results can be unpredictable since TDRs programs are voluntary, market driven and the value and need for TDRs fluctuate with development pressure, land values and market trends.
- Successful programs require a sophisticated market analysis to properly structure the program to respond to the local market, local land values and to ensure that underlying zoning in sending and receiving areas is favorable to the use of TDRs, or can be made favorable to the use of TDRs.
- TDRs allow development to be shifted but do not reduce overall development, as would a downzoning or a PDR program

### **Problems with TDR's**



A comprehensive review of TDR programs operating in the U.S. (Walls and McConnell, 2007) cited several reasons, mostly related to demand, that explained why certain TDR programs did not meet expectations:

- Forcing additional density into already developed areas was often difficult because existing residents objected to higher densities or developers did not see demand for higher density development in already developed communities.
- The availability of “free” density was also a problem. If developers were allowed to achieve higher density by any means except TDRs, such as providing public utility improvements or clustering, there was little incentive to use TDRs. In fact, most successful TDR programs are in localities where rezonings for increased density, or density increases, are not granted other than through the TDR program.
- In communities where the base rural density was relatively high, such as one unit per three acres, there was little incentive to use TDRs. For these areas, especially when there was a strong market for residential development, there was a much greater incentive for landowners to realize the higher return from selling their land for residential subdivisions than for selling the development rights. Some communities downzoned rural areas prior to adopting a TDR program.
- Programs that allowed “by-right” TDRs were more successful than those requiring an additional level of review, because the uncertainty of the potential approvals made the valuation of the development rights particularly difficult prior to going through the approval process.

#### **Application in James City County:**

James City County would face some challenges in crafting a successful TDR program. The most significant challenge is that the County currently relies in part on proffers associated with rezonings to provide facilities for new development and growth. A TDR program that is used to increase density, instead of rezoning, would limit the County’s ability to share the costs of growth with the development community. The County would need to weigh the trade-off associated with reduced development proffers in exchange for preservation of farmland and open space. If the use of impact fees or adequate public facilities ordinances is eventually permitted in Virginia, or if the County is willing to use public bonds, special taxing districts or other mechanisms for funding the costs of growth, this trade-off becomes less significant or ceases to exist entirely. It should be noted that there was an effort to adopt impact fees for capital facilities during the 2008 legislative session but this effort was tabled until the 2009 sessions, pending additional committee review and evaluation.



A second consideration is the existing baseline density in rural areas. Many communities downzoned prior to, or in conjunction with, adoption of a TDR program. These downzonings were generally pursued to protect natural areas, sensitive environmental features or to protect agricultural land; however, they had the secondary effect of boosting the market for TDRs because the residential subdivision potential of rural areas was less attractive than the potential for selling development rights to a receiving area.

In addition, many of these communities also had a very active and financially sound agricultural economy. In an area where there is money to be made in agriculture and the agricultural infrastructure is intact, there may be more willingness to sell development rights. The agricultural economy in James City County is not as large a part of its local economy as it was in many of the communities where TDR programs were successful.

A third consideration is whether there is sufficient market demand for higher density housing types in the PSA. The permitted densities in the current PSA range from 1 to 12 dwelling units per acre. Most of the current demand for development in the PSA appears to be occurring at typical suburban densities ranging from 2 to 4 units to the acre. Therefore, a study would need to show that there is sufficient demand for higher density development in order to make density increases in these “receiving areas” marketable.

Also, consideration of a TDR program would need to ensure that other ways of getting density increases outside of the TDR program be restricted. Unless use of TDRs becomes the only mechanism for increasing density to suburban or urban development levels, it is unlikely that a developer would participate in a TDR program to receive an additional increment of density.

As a final, and important consideration, the density required in a PSA to make a TDR program attractive to developers may not be acceptable to local residents. In any case, the County would need to prepare a fairly detailed development and market analysis to determine if the current PSA would have the capacity to accept additional density and to ensure that there is sufficient incentive for developers to participate in a TDR program.

The County could consider the use of TDRs for rural to rural density transfers only, or to allow density increases in any new or expanded PSA area that may be identified as part of the Comprehensive Plan update. However, it would be advisable for the County to monitor the experiences of other Virginia communities who are taking steps to implement TDR programs and to wait for the findings of the joint subcommittee currently reviewing the newly adopted TDR legislation.



In the meantime, the County should continue to support its current voluntary PDR program since it supports current Comprehensive Plan goals to reduce development in rural areas, accomplishes many of the goals that would be accomplished by a TDR program, and reduces overall development rather than shifting it to other locations. The County adopted its PDR program in 2001 and to date has purchased development easements on 366 acres. A County initiated bond referendum for \$20 million dollars to be used for the acquisition of open space through the PDR and Greenspace program was approved in 2005. Both of these programs can be a vital component in the County's Rural Lands strategy.

### **MANDATORY OPEN SPACE CLUSTERING**

In 2006 the General Assembly adopted legislation (§ 15.2-2286.1, effective July 1, 2007) requiring that certain localities that grew by more than 10% between 1990 and 2000, and with a density of less than 2000 persons per square mile, must provide cluster regulations applicable to at least 40% of the unimproved land in residential and agricultural zoning districts. These provisions apply to James City County since the County's growth exceeded 10% between 1990 and 2000. Cluster developments must be permitted by right under the local zoning and subdivision ordinance, without a public hearing or any kind of special use permit; however they may be subject to standards, conditions and criteria. As part of the Rural Lands Study, the County evaluated several rural/open space cluster options, including a by-right option. It is anticipated that at least one of the new by-right cluster options will satisfy the new legislation. The Rural Lands Study development options will be discussed later in this report.

### **IMPACT FEES**

#### **Overview**

An impact fee is a fee charged by a local government to offset the costs of public improvements required to support new development. Impact fees are based on the premise that new development should pay its own way and that the developer proposing the project should pay all or part of the costs of improvements required to serve the project. Initially used in the 1950s and 1960s to pay for water and wastewater facility improvements, the use of impact fees has been expanded to help finance construction of schools, roads, libraries, fire stations and similar public facilities. Use of impact fees has grown rapidly in the last 15 years and they are used to varying degrees in over 25 states. Impact fees have been most widely implemented in rapidly urbanizing states like Florida, Colorado and Arizona and in states where property revenues are limited, like California.

Impact fees are typically mandatory and not subject to negotiation. Most impact fees are collected at the time of building permit approval so they can be collected regardless of whether a development is approved administratively and by-right or subject to legislative approvals like rezoning. This differs from Virginia's voluntary



proffer/conditional zoning system which only garners funding for public improvements when a rezoning is necessary for development.

### **Virginia Impact Fee Legislation**

Virginia has long allowed cities, towns and counties to charge fees for connection to municipal sewer and water systems, often known as tap fees. The State Code allows for these fees to include the actual connection charge and a portion of the costs associated with funding or retiring the debt on the sewer or water facility. The only other type of impact fee currently permitted in Virginia is for road improvements.

In 1989, the General Assembly authorized localities in Northern Virginia to use impact fees for road improvements. None of the Northern Virginia localities opted to use transportation impact fees, which would have replaced the proffer system for road improvement. The legislation was expanded in 2002 to include Stafford County and in 2006 to include Fauquier and Spotsylvania County. In 2007, with the passage of House Bill 3202, the General Assembly expanded the roadway impact fee authority to 57 additional counties meeting certain criteria, including James City County. The new impact fee legislation authorizes the use of impact fees to expand existing roads to serve new development and to construct new roads or improvements to meet increased demand attributable to new development. The revised impact fee legislation not only increased the number of localities permitted to use this tool, it broadened the 1989 legislation by allowing impact fees to recover the costs of any road improvements that benefit new development.

Virginia's new impact fee legislation allows collection of road impact fees when a building permit is issued for the new development. Among other provisions, the legislation lays out the steps that a locality must undertake to implement a road impact fee program:

- Establish an impact fee advisory committee; at least 40% of the members must represent real estate, development, or building interests.
- Designate one or more Impact Fee Service Areas (IFSA).
- Conduct a road improvement needs assessment for each IFSA according to certain statutory standards.
- Develop a road improvements plan for each IFSA according to certain statutory standards.
- Adopt each IFSA road improvements plan as an amendment to the comprehensive plan



- Incorporate each IFSA road improvements plan into the local capital improvements plan and/or the six-year secondary road program.
- Adopt an impact fee ordinance for each IFSA.<sup>6</sup>

### Peer County Review

- Stafford County was the first, and so far remains the only, locality to establish a road impact fee program. The program, adopted in 2003 applies to new residential and commercial development. As of August, 2006, Stafford County had collected \$2.1 million through its road impact fee program.
- Henrico County and Newport News studied implementation of a road impact fee programs and elected not to go forward.
- Chesterfield County recently developed an impact fee proposal for new development. The study concluded that the road impact fee for the County, assuming the entire County as the service area would equal \$5,820. The County voted to defer adoption of the proposal to assess what other counties may do and to await potential outcome of impact legislation under consideration by the State. There was also significant opposition in Chesterfield to impact fees from citizens who felt the fees would be prohibitively expensive for small subdivisions and family subdivisions.
- Spotsylvania County elected not to pursue a road impact fee program under the revised legislation, opting to stay with its current proffer system. The County Board cited concerns with the expenditure of general fund monies that would be required for an extensive road building program. The County's preliminary impact fee study determined that the road impact fee for single family units in the eastern transportation service area would be \$7,608 and the fee would be \$4,873 for the western transportation service area.
- On July 22, 2008, after receiving an extensive, consultant study of road impact fees, the Prince William County Board of Supervisors elected not to pursue a road impact fee program. The study estimated impact fees of \$3,623 for single family homes built in the western service district and \$3,111 per unit in the proposed eastern service district.

### Advantages and Disadvantages:

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<sup>6</sup> List of steps as summarized in "Managing Growth and Development in Virginia: A Review of the Tools available to Localities", Virginia Planning Association, October 2007.



Advantages:

Some of the advantages associated with impact fees are as follows:

- Impact fees apply to all new development, even by-right approvals that are not subject to proffers
- Impact fees may help localities with stale zoning or “un-proffered” or “under proffered” developments since they can be applied even to properties with proffered conditions. Localities must allow credit against the impact fees for the value of any off-site or other transportation improvements benefiting the impact fee service area.
- Impact fees are not negotiated, like proffers, so every property in the service area is treated equally.
- Impact fees are known upfront and can be calculated into overall development costs; there is more certainty with the impact fee system than with proffered rezonings.
- Like proffers, impact fees help new development pay its own way.

Disadvantages:

The following are potential shortcomings of road impact fees:

- Developers argue that impact fees raise home prices; a criticism also leveled at proffers.
- Impact fees may place an undue burden on small property owners processing minor subdivisions.
- The studies required to establish an impact fee program are complex and costly; most have been prepared by outside consultants. In several cases in Virginia, communities have elected not to pursue impact fees after receiving study results.
- Road impact fee funds cannot be used for transit improvements.

**Application in James City County:**

James City County could pursue road impact fees as an alternative to the current proffer system; however it appears that from a local government standpoint, the use of impact fees may not prove to be a better option, at this time. Implementing such a system would require detailed study and an investment of staff time and/or funding



for a consultant study. It is instructive to note that most Virginia localities that have recently completed detailed studies of road impact fees have elected not to proceed with a road impact fee program.

It is possible that these communities are reluctant to make significant changes to the proffer systems while the General Assembly is still considering mandatory impact fees to replace proffers. Senate Bill 768 was introduced during the 2008 legislative session by Senator John Watkins and advanced by the Virginia Homebuilders' Association. The bill proposes to replace the current cash proffer system with impact fees on all new development, including by-right construction, and would cap cash proffers at per-unit levels significantly lower than some localities' current cash proffer guidelines. For counties located outside of Northern Virginia, like James City County, the bill proposes that "*the maximum impact fee for public facility improvements shall be \$7,500 per single-family detached dwelling unit, two-thirds of such maximum per single-family attached dwelling unit, and one-half of such maximum per multifamily dwelling unit.*" The bill passed the Senate by a narrow margin; it was referred to the House Committee on Rules and was amended and carried over to the 2009 Session of the General Assembly. Although it appears that this bill has died in committee for lack of action to date during the 2009 session, the County should monitor the progress of this bill until there is certainty that it will not be resurrected.



## **II. RURAL LANDS ISSUES:**

### **BACKGROUND**

As part of the Comprehensive Plan Update in 2003, consultant Milton Herd, of Herd Planning and Design prepared a report entitled "Non-Rural Development Outside the Primary Service Area." The report analyzed existing conditions in the County that influence rural land use and development activity and provided a summary of planning tools that were considered appropriate for use in James City County. The report also included a number of specific recommendations for the 2003 Comprehensive Plan update. Many of the suggestions were implemented by the County in the current Comprehensive Plan, and several others are at various stages of study. The major recommendations included in the report are reviewed and evaluated below.

In addition, the Board of Supervisors appointed a Rural Lands Steering Committee in 2005 to review and make recommendations for policies in the Rural Lands. In 2006, the Board also appointed a Technical Committee to develop the recommendations of the Steering Committee into specific regulatory changes to residential development in the A-1 and R-8 districts. This report also compares the relevance of the Rural Lands Technical Committee work to the recommendations in the 2003 report.

### **THE PRIMARY SERVICE AREA**

#### **Background**

One of the primary recommendations of the 2003 report was that the Comprehensive Plan should reaffirm the boundaries of the PSA as an effective urban growth boundary that would serve to protect the integrity of the Rural Lands. The 2003 Comprehensive Plan maintains a firm Primary Service Area boundary. This approach of concentrating development in designated areas and seeking to minimize residential development in outlying areas as a means of farmland and open space preservation is affirmed in the 2003 Comprehensive Plan. This is an accepted and well documented growth management technique practiced in growing, urbanizing communities throughout the United States and in Virginia. Specific pros and cons associated with use of Urban Growth Boundaries are outlined in the 2003 report as are examples of the other Virginia localities using this tool. In fact, this concept is the basis for the new UDA mandate adopted by the Virginia legislature.

#### **Relevance to the 2008-09 Comprehensive Plan Update & Conclusions**

The Primary Service Area concept as implemented by James City County remains sound planning practice and should be re-affirmed in the updated 2008-09 Comprehensive Plan. This concept provides a strong framework for rational growth and for directing growth to areas that can support it and away from areas that are less well suited for



development. Preliminary comments from the Community Conversations appear to indicate widespread community support for maintaining the PSA concept; however there was concern about overdevelopment in already developed areas. As part of the Comprehensive Plan update, the County is also reviewing landowner initiated requests to change land use designations for their properties; some of these applications include requests to add or remove property from the PSA. The following should be considered during the 2008 -09 plan update:

- Re-affirm the Primary Service Area concept as implemented by James City County in previous Comprehensive Plans.
- Review development activity data for the past 5 years to determine what proportion of new development has occurred within the PSA. This information would provide insights into how well current policies have guided recent growth.
- Re-evaluate the absorption potential for new development of the PSA to determine if there is adequate capacity for projected development over the next 10 to 20 years. This would require an updated buildout analysis similar to the one prepared by Kimley Horn as part of the 2003 plan update. That study projected the current PSA could absorb an additional 13,000 to 20,000 units and had a 20 year “life-span” in 2003. A new study of potential residential and commercial growth absorption would also help satisfy the new UDA mandate.

Readily available data from the Weldon Cooper Center indicates that 5,073 residential building permits or approximately 1,015 units per year on average were approved in James City County between 2003 and 2007. If it is assumed that 85% of these units or 930 units are constructed in the PSA each year, the remaining buildout potential for the current PSA is approximately 9 to 17 years.

While this is a very rudimentary analysis, and does not take into account units in the development pipeline (approved but unbuilt), it does illustrate that a period of very active residential construction could mean that the PSA has developed more rapidly than expected. The current national and local downturn in the housing industry provides the County with an opportunity to re-assess development potential before the next boom cycle begins.

- The County should use the absorption/build-out data to determine if additional development capacity is needed or desirable. This would provide an opportunity to examine how new growth has matched the expectations from the 2003 Plan. The pros and cons of various PSA options and the trade-offs associated with expanding the PSA vs. maintaining a firm boundary were outlined in the 2003 memo prepared by Mr. Herd. The County ultimately opted to maintain a firm boundary. An additional approach that maintains this



firm boundary but that was not discussed specifically in the 2003 memo is to encourage redevelopment and intensification within the PSA. This approach would support emerging market trends in evolving suburban localities for new urbanist development, such as the recent New Town example and a growing public preference for the principles of new urbanism. As the first wave of non-residential development matures and reaches its typical life cycle, many areas like shopping centers typically turn over and redevelop every 15-25 years. If land use policies encourage higher density in those areas and if adequate infrastructure is available, the redevelopment could accomplish multiple goals of more compact development that supports multi-modal transportation and frees up capacity for vacant land in the PSA to accommodate new development. The infrastructure modeling exercises that could be undertaken as part of the Comprehensive Plan Update can help assess the quantitative impacts of alternative PSA options.

## **THE PENDING RURAL LANDS ZONING UPDATE PROCESS**

### **Background:**

After receiving guidance from the Rural Lands Steering Committee in May, 2006, the Board of Supervisors appointed a Technical Committee to transform the Rural Lands Steering Committee's broad recommendations and concepts into specific policies and ordinances that would change the rules for residential development in the Rural Lands. The Technical Committee developed a draft "Narrative" set of ordinance revisions and a framework for new A-1 and R-8 zoning districts that would implement the recommendations of the Technical Committee. These drafts were presented to the public at large in a public forum on January 29, 2007

In conducting its work on the Rural Zoning Update, the Technical Committee strove to balance three main objectives:

- Respect property rights;
- Reduce overall development potential and impact; and
- Encourage development patterns that protect the character of the area.

### **Relevance to the 2003 Report**

The 2003 Report on Non-Rural Development Outside the Primary Service Area included the following recommendations for regulatory changes:

1. Strengthen the Subdivision and Zoning Regulations for the A-1 District: Establish Stronger Incentives for Low Density Rural Subdivisions and Stronger Regulations for Higher Density Rural Subdivisions.



2. Refine the Rural Cluster Zoning Provisions.
3. Refine the Zoning Regulations for Non-Residential Uses in the A-1 District.
4. Consider Implementing a Lot-Cap or Sliding Scale Zoning Provision in A-1.

The regulatory recommendations contained in the “Draft Narrative Ordinance” of 2006 specifically relate to the first three of the regulatory recommendations listed above from the 2003 report. They did not, however, address the non-residential uses in the Rural Lands, nor did they specifically recommend a lot-cap or sliding scale zoning provision.

The main thrust of changes recommended in the 2006 “Draft Narrative Ordinance” was to:

1. Create more options for property owners in A-1 and R-8 districts through the provision of additional residential development options, such as “Fixed Lot,” “Based Density Cluster” and “Rural Conservation Cluster.”
2. Preserve rural character and open space by lowering the by-right density for large tracts while allowing the same or increased density for smaller tracts through a “Fixed Lot” development option.
3. Refine and expand the cluster development provisions of the ordinance to allow for more flexible development and greater preservation of open space and sensitive environmental and historic resources.

Comparing the provisions of the “Draft Narrative Ordinance” to the recommendations of the Rural Lands report shows that many of the ideas contained in the 2003 report were reflected in the Draft Narrative Ordinance – in particular:

- Incentives were created for developing at lower densities through the provision of reduced public water system requirements for development under the large lot options (1 unit per 12 acres – Conventional Option and Base Density Cluster development options).
- Clarifications to the definitions and gross density calculations were incorporated.
- Further incentives were created for developing at lower densities through streamlining the review process by classifying the Conventional Option and Base Density Cluster development options as Minor Subdivisions and waiving the requirements for Major Subdivisions for these options.



- Refinements were made to the cluster provisions by establishing a Rural Conservation Cluster district that had features such as requiring 60% of the site area be protected under conservation easements, allowing for reduced lot sizes and establishing design standards to protect environmental and historic features of the site.

However there are a few key recommendations from the 2003 Rural Lands report that were not incorporated in the Draft Narrative Ordinance provisions, in particular:

The 2003 report recommended creating strong incentives for property owners to develop at “very low densities” with “lots of at least 20 or 25 acres or greater in size,” and further, that “No lots should be permitted between one to 1.5 acres and 20 or 25 acres in size.” This was a key recommendation central to the preservation of a typical rural character, rather than a more hybrid suburban/rural residential character that would result from development of smaller lots. The Draft Narrative Ordinance – if implemented – would reduce the overall permitted densities in the Rural Lands from the current 1 lot per 3 acres down to a range of from 1 lot per 3 acres to 1 lot per 12 acres. However, it would not approach the recommendations from the 2003 report of very low densities that were considered a key feature of rural character.

Furthermore, the Technical Committee specifically deferred discussion of non-residential uses in the Rural Lands until the more critical issue of residential density could be addressed. The 2003 report recommended that non-residential and residential uses in Rural Lands be considered together and that recommendations for each were closely linked. For example, expanding the allowable non-residential uses in rural districts could be a key incentive for property owners to pursue forms of development on their property that are more compatible with a rural economy and character than the development of residential subdivisions.

### **Relevance to the 2008-09 Comprehensive Plan Update & Conclusions**

For the 2008-09 Comprehensive Plan Update process, it is recommended that the County take up the issues of Rural Lands from both the 2003 Rural Lands Report and the Rural Lands Zoning Update process. Specifically, the County should consider including policies that do the following:

- Re-affirm the Primary Service Area concept, as discussed in the previous section, as the overall framework for the County’s growth. This concept is a key element in maintaining rural and agricultural uses in the Rural Lands Areas because it directs new development to the most appropriate locations.
- Affirm the key recommendations of the 2003 study for protecting rural character through zoning revisions that create incentives for very large lot development and disincentives for conventional small-lot subdivisions in the Rural Lands



- Affirm the findings of the Rural Lands Zoning Update process and consider implementing the recommendations of the Draft Narrative Zoning Ordinance along with a reassessment of its core density provisions in order to better preserve rural character through additional large lot incentives and small lot disincentives
- Include recommendations for expanding the permitted uses in rural zoning districts and other recommendations for rural economic development noted elsewhere in this report to offer a comprehensive package of incentives for rural landowners including choices other than small lot rural residential subdivisions that progressively erode the rural character of the County.

## **RURAL ECONOMIC DEVELOPMENT**

### **Background**

The 2003 Rural Lands report also addressed the issue of rural economic development and programs or incentives that can be used to encourage viable alternatives to residential development by encouragement/permitting of agriculture and forestry-compatible commercial uses in the rural lands. This continues to be an issue of interest as evidenced through the Rural Lands Study despite the relatively small percentage of the County devoted to active farming.

Since the 2003 Comprehensive Plan was completed, the results of the 2002 and 2007 Census of Agriculture have been released. The most recent Census of Agriculture data for James City County (released in February 2009) indicates that it has gone from 92<sup>nd</sup> to 90<sup>th</sup> in agricultural production statewide and that 5,831 acres were in farm use (down from 8,962 acres in the 2002), with 2,367 in harvested crops. The total number of farms in the County was up from 64 in 2002 to 74, with an average size of 79 acres (down from 140 acres) and a median size of 23 acres. While total acres in farm land and farm size have decreased, the market value of farm products went up 22% from \$2.3 million in 2002 to almost \$2.9 million to 2007. Data reported in the 2007 Virginia Agricultural Statistics and Resource Bulletin indicates that wheat and hay are the County's primary farm products.

### **Relevance to the 2008-09 Comprehensive Plan Update**

The need to allow a wider variety of non-residential uses in rural areas was discussed during the Rural Lands Study effort. More recently, during the County's Community Conversations meetings for the new Comprehensive Plan update, concerns were expressed that agriculture is not a viable long term use in James City County in the face of mounting development pressures. While it may be true that traditional crop



farming might be difficult to sustain in the long term, James City County may be able to create an environment that is supportive of more innovative farming practices and rural land uses. There is a pronounced trend – particularly in rural areas surrounding an educated and prosperous population – for agricultural economies to move from commodity farming (such as soybeans or corn), toward value-added and specialty agricultural products, such as wineries, organic produce and specialty produce catering to local consumers and restaurants.

Loudoun County is one particularly successful example of this trend. In 1997, Loudoun County had \$26 million in agricultural sales and 185,000 acres in farms. By 2007, agricultural sales had increased by 154%, reaching \$67.9 million, with only 144,000 agricultural acres, a net loss of 21,000 acres. During this same decade, Loudoun’s County population had increased by over 60%, making it not only the fastest growing County in Virginia, but among the top 10 fastest growing counties in the U.S. In essence, the rural economy grew with the population because specialty and value-added rural products found a substantial consumer base.

**Flexible Open Space Ownership and Maintenance:**

One way to provide opportunities for innovative uses that support the rural economy is to allow rural subdivision or cluster open space to be owned or leased by something other than a land trust or public entity. In Pennsylvania, there are several examples of non-common ownership that has allowed for compatible non-residential uses in rural areas. Examples include a working orchard at The Ponds at Woodward subdivision in Kennett Township, Chester County, a wholesale nursery operation at Indian Walk in Buckingham Township, Bucks County, horse pastures and an equestrian facility in Summerfield in Elverson, Chester County.

**Expanded Rural Zoning for Non-Residential Uses**

One initiative undertaken by Loudoun County to expand its rural economy was to increase the list of permitted and permissible uses in certain rural zoning districts. The zoning ordinance adopted in 2006 includes over 100 commercial uses, most permitted by right, subject to parcel size criteria. The uses are agricultural and equine enterprises, tourist attractions and services, and commercial businesses that are land-based, depend on large tracts of open land, and the area’s rural atmosphere. The permitted uses include uses such as farm machinery repair, feed lots, kennels, camps, antiques shops, art galleries and guest ranches. Loudoun County also implemented new rural subdivision provisions requiring the reservation of a rural economy lot in some districts.

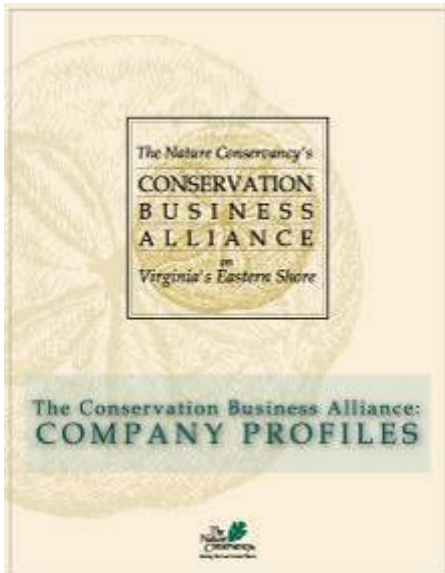
**Non-Governmental Programs:**

Some of the most successful programs in rural economic development have been spurred or supported by non-governmental programs. For example, on the **Virginia Eastern Shore**, from 1995 to 2001, the local chapter of The Nature Conservancy



initiated a number of pilot programs as part of its “Community-Based Conservation” approach. These were later adopted by other chapters and additional pilot programs were started by the Conservancy throughout the nation in areas where there were important natural resources and development pressures in combination. One of the programs that showed particular promise was called the “Conservation Business Alliance.” It consisted of a voluntary alliance of local Eastern Shore businesses whose mission and economic investments were linked to the preservation of the Eastern Shore’s natural resources, agricultural products or scenic rural character.

Alliance members signed a Memorandum of Agreement to support local conservation based businesses and initiatives and participated in joint marketing and promotional activities. In effect, it was a targeted chamber of commerce for local conservation-based businesses. The Nature Conservancy provided organizational assistance and access to national market outlets such as Fresh Fields (currently Whole Foods, Inc.). The businesses included local aquaculture operations, ranging from one-person outfits to a multi-million dollar operation that was the East Coast’s largest clam aquaculture business (Cherrystone Aquafarms). However, the range of businesses was wide and included a value added local specialty food product companies (Blue Crab Bay), craftsmen (Ravenna Mosaics) and restaurants specializing in local seafood.



Although the Conservancy eventually consolidated this program into its ongoing operations, it served an important catalytic role for local nature- and heritage-based businesses that have since formed the nucleus of a significant tourism industry on the Shore, including ecotourism operations and a growing rural economy. Northampton County in particular has pursued compatible initiatives from a planning and zoning standpoint, including revising its zoning and comprehensive plan recently to underscore rural protection and support for compatible rural industries. In 2007, Accomack County revised its agricultural zoning also to preserve its rural character from the former 1 unit



per 30,000 square feet to a base density of 1 unit per 5 acres. Similar initiatives have been developed in rural areas around the country, including:

- The Willapa Alliance - Willapa Bay, Washington
- The Sonoran Institute, Arizona
- Green Blue, Albemarle County, Virginia
- The ACE Basin, South Carolina

### **Community-Supported Agriculture and “Buy Local” Initiatives**

The growth of Community Supported Agriculture and “Buy Local” initiatives has been a particularly pronounced trend in rural economies, including some in Virginia. Community Supported Agriculture is a subscription based service linking local farms to consumers in an area to allow households to get a monthly allotment of local produce from known sources, frequently featuring organic produce and dairy products. “Buy Local” initiatives are a growing trend of marketing locally grown fresh food products in a region. Areas such as Albemarle and surrounding counties, as well as Loudoun and Fauquier counties have particularly successful programs. There is also a State certification program. These programs work best when there is a supply of farmland and entrepreneurial small farmers surrounding a metropolitan (though not necessarily large metropolitan) area that has the kind of educated and prosperous consumer base that is particularly interested in buying from local producers.

### **Application in James City County & Conclusions**

Based on a review of other communities and emerging trends, there are several opportunities for the County to deepen support for rural economic development in the coming years. James City County has a conducive demographic profile of well educated and reasonably prosperous potential consumers for local and specialty agricultural products. Its rural landowners have not yet made a full shift into this “new rural economy,” but there are encouraging signs of growing local horse-farms and winery initiatives. If nurtured and encouraged, there is a potential that the County’s rural lands could effectively transition towards a new rural economy based on businesses such as:

- Value-added and specialty agricultural products
- Locally grown produce and dairy products marketed to local consumers through community-supported agriculture programs
- Nature-based, heritage-based and agritourism
- Compatible and supportive rural uses such as nurseries, inns, and rural equipment suppliers



The primary role of County government in supporting this trend is to provide assistance and serve as a catalyst. Based on peer community research, the most effective ways to leverage this role is through programs like:

1. Continue the Use Value Assessment and AFD Programs to support rural preservation and reassess the qualification requirements to ensure that new rural economy land uses will still qualify for the programs
2. Continue and market the PDR Program, and promote the benefits of rural preservation as supportive of an overall rural economic development strategy – i.e. the maintenance of a significant base of rural land as essential to marketing the County as a viable location for rural entrepreneurs
3. Promote and Facilitate Easement Donation, including providing educational assistance to landowners on the benefits of easement donation
4. Consider funding the position of a Rural Resource Development Officer to serve as a primary economic development resource to develop new markets, products and rural entrepreneurship in the County
5. Provide Assistance for “Limited Development Plans.” The County may consider providing staff or consultant resources for landowners wishing to develop conservation-based Limited Development Plans for their lands that allow for a few select and carefully sited home sites on an otherwise easement-protected rural landscape.
6. Expand the list of permitted non-residential uses in the County’s rural zoning districts with an emphasis on uses that would support the region’s substantial tourism industry. Such uses might include meeting retreats/resorts,

**Additional Peer Community Research:**

The 2003 Report on Non-Rural Development Outside the Primary Service Area included a review of Rural Economic Development initiatives in Loudoun County, Fauquier County, Virginia Beach and Montgomery County, Maryland. The following provides information from rural economic development programs operating elsewhere in Virginia and in other states. Many of these communities incorporate rural economy and rural preservation concepts discussed above.

**Lancaster County, Pennsylvania**

Agriculture is central to Lancaster County’s identity. It is the most extensive land use in the County, with land in farms comprising 63% of the overall land area. Lancaster County is the leading agricultural county in Pennsylvania and the Northeastern US with



more than \$800 million in farm output. More than 62,000 acres of the County farmland preserved through easements or other means. The primary purpose of Lancaster's farmland protection program is farmland protection, rather than rural character or open space.

Lancaster County uses the follow major tools to preserve farmland and maintain its rural economy:

- Promoting growth in Designated Urban Growth Areas rather than in Designated Rural Areas or Agricultural Areas - Designated rural areas are reserved for uses that support agriculture, other significant economic links to the land (e.g., resource-based tourism uses such as farm stays, farm markets, roadside stands, B&Bs, outdoor outfitters, wineries, and other resource based uses such as timbering, and mining) and/or traditional outdoor activities (e.g., hunting and fishing)
- Effective agricultural zoning – Most of the county's 41 townships have adopted agricultural zoning ordinances. About 350,000 of the county's 600,000 acres are zoned for agriculture and 276,000 of those acres are "effective agricultural zoning", requiring at least 20 acres per residence. Most townships employ a zoning standard that generally allows the subdivision of one house on a two-acre lot for each 25 acres owned. Three townships have adopted a standard of one building lot per 50 acres.
- Agricultural Security Areas – These are similar to agricultural and forestal districts in Virginia. Agricultural security areas are voluntary; the creation, modification, or termination of a security area is a matter of landowner initiative and township supervisor approval or denial. In Lancaster County, landowners, in conjunction with the townships, have placed over 127,000 acres in agricultural security areas. An agricultural security area must be at least 250 acres in size, but the land does not have to be contiguous.
- Purchase of development rights program - The acreage of farmland preserved through permanent easements by the Lancaster County Agricultural Preserve Board and Lancaster Farmland Trust has increased from approximately 12,000 acres in 1993 to 62,000 acres in 2005. Through this program, the County has been able to purchase large blocks of preserved farmland to help create growth boundaries, thus strengthening the overall effort to channel growth to appropriate locations.

### **Bucks County, Pennsylvania**

Bucks County, PA, lies on the southeastern edge of the state along the Delaware River and is one of the five core counties in Pennsylvania that make up the Delaware Valley,



or Greater Philadelphia metropolitan area. Most of the land is typical of the piedmont region, with hills becoming more distinct further north. Unlike in the Southern Piedmont, soil in the Pennsylvania Piedmont has historically been fertile, giving Bucks County large areas of valuable farmland. The county's northern regions are renowned for their natural scenery, farmland, colonial history, and proximity to Philadelphia. With decline of the farming industry and rise of the tourist industry, debate has arisen over how much of this open space should be preserved, and how much should be allotted for commercial and residential development.

In 1995, the Bucks County Commissioners appointed an Open Space Task Force to develop a practical plan to protect natural resource areas and farmlands deemed essential to maintain the unique character of Bucks County. The Task Force identified three broad goals to be accomplished through the program:

1. Preserve Open Space for the purpose of protecting natural areas, farmland, and providing for park and recreation areas.
2. Encourage and support municipal efforts to identify and meet open space needs.
3. Design a program that will coordinate open space preservation efforts among municipal, state, and federal governments, as well as private organizations, and individuals.

In May 1997, voters overwhelmingly approved a \$59 million bond referendum to fund a 10-year Open Space Program, which was divided into four components:

- Farmland Preservation - \$13.5 million
- County Parkland - \$16.5 million
- Municipal Open Space - \$20.0 million
- Natural Areas - \$9.0 million

The County's investment of \$59 million leveraged approximately \$80 million in additional funding (primarily through state and local matches) resulting in a total of \$140 million dedicated to the permanent preservation of more than 15,000 acres. According to the 2007 Open Space Task Force, the success of the program was due in large part to its simplicity and focus on land acquisition through the previously mentioned four components.

#### Agricultural Land Preservation Program

The Bucks County Agricultural Land Preservation Program is regulated by the Pennsylvania Department of Agriculture, Bureau of Farmland Preservation and governed by state law, as well as county program guidelines. The program utilizes funds from state, county, and local governments to purchase conservation easements on



productive farmland. Farms considered for preservation are prioritized according to soil quality, location, conservation practices, and threat of development.

#### County Parkland Acquisition

Totaling over 8,500 acres, the Bucks County park system represents the county's longest standing commitment to open space preservation. Since the mid 1960s, all county-owned parkland has been protected by covenant held by the Park Preservation Board. Additions to the county park system using the Open Space Program funds involved the purchase of 55 parcels totaling 900 acres, featuring stream banks along designated greenways and in-fill parcels within existing county parks. These lands contribute to the overall vision for a linked park system connecting publicly accessible county and municipal open space areas and facilities.

State, county, and municipal greenway plans have identified linkages as a top priority.

Aimed at connecting recreational sites, natural landscapes, scenic, and historic amenities, linkages can be provided by natural parklands, greenways, and multi-use trails. The Parks Department's long-standing and ongoing land acquisition program along the Neshaminy Creek forms the backbone of the County's linked park and greenway plan. The goal of the county plan is to establish an open space network of parks, open space, trails, and recreational opportunities that responds to the unique ecology of Bucks County and serves the needs of a diverse population. .

#### Natural Areas Program

In 1999, an inventory of significant natural areas in the County was completed (Natural Areas Inventory of Bucks County (NAI)) that prioritized 115 significant natural areas for preservation. The NAI serves as the primary means of establishing a site's eligibility for funding through the Natural Areas Program. Municipalities and nonprofit land conservation organizations are eligible to apply for Natural Areas funding, which is awarded through a competitive grant program. Applicants may be eligible to receive a grant up to 50 percent of the property's appraised value or \$500,000, whichever is less.

The Natural Areas Program has successfully completed 58 projects resulting in the acquisition of 2,379 acres in an effort to protect a critical mass of these resources. By the end of 2006, grant requests to the program exceeded available funding by more than \$1.5 million.

#### Municipal Open Space Program

The Municipal component of the Open Space Program was created to provide financial assistance to municipalities for open space planning and acquisition. Upon completion and adoption of a local open space plan, municipalities became eligible to



receive grants to acquire land in fee simple or through conservation easement to permanently protect natural areas, farmland, or park and recreation areas. The maximum grant available under the program is 75 percent of the property's appraised value.

These local plans have guided the funding and acquisition of more than 2,500 acres among 94 projects for the purposes of agricultural preservation (930 acres), natural resource protection (998 acres), and parks and recreation (649 acres). In addition to prioritizing local efforts, these plans also represent a collective plan for open space preservation throughout the county.

### **Hanover County, Virginia**

#### **Hanover County Comprehensive Plan**

Hanover County's Comprehensive Plan takes a similar approach to Lancaster County's Plan, recognizing the interrelationship between rural preservation and suburban growth areas, establishing targets for suburban and rural residential development, and concentrating development in areas with existing or planned services. The following are among the key objectives in the plan:

- Concentrate suburban areas in those sections of the County with an existing infrastructure, or where extension of service is economically feasible.
- Establish policies that encourage 70% of residential building permits for new homes to be located in planned suburban areas, and only 30% in rural areas.
- Allow neighborhood retail commercial development in areas appropriate to the residential areas served, including the rural areas.
- Identify agricultural and forestal operations and encourage their long-term preservation through techniques such as the Purchase of Development Rights and the creation of Agricultural and Forestal Districts, Conservation Easements, and Open Space Districts.
- Encourage the use of clustering of residential development in the rural areas.
- The overall density of development in the Suburban Service Area should approximate 2.5 dwelling units per acre, although individual project densities may range substantially higher when warranted and where appropriate

Hanover County's primary tool for managing growth is through the phasing of utility service for development. This concept is expected to be adapted to accommodate future growth demands by expanding utility service throughout the Suburban Service Area. Although the County will continue to grow, only those areas of the County planned for public utility service would be developed for suburban uses. As a result, suburban development would be confined to relatively efficient areas of the County, enabling the protection of the rural areas into the future.



Rural Land Use Areas, as designated on the Conservation and Phased Suburban Development Plan, consist of those areas outside of the Suburban Service Area and comprise both the transitional area and the Rural Conservation area. The predominant land uses in the rural areas would be expected to be 1) Agricultural and Forestal operations of all types. 2) Accessory land uses complementary to agriculture and forestry 3) Low density residential development in existing areas with vested rights and on marginal lands not indicated to be in conflict with agricultural and forestal development, at current densities (both 10-acres and 6.25 acres per lot) within the transitional area, and at the 10-acre density in the conservation area. 4) Open space to accommodate public parks. The only non-agricultural development that would be permitted in the Rural Land Use Area would be: individual homes (1 unit/10 acres); non-residential uses; uses which provide safety, education, employment, recreation, or other benefits for the rural population; or Neighborhood and Village Commercial Activities, Natural Resource Extraction Areas.

The plan also emphasizes the rural areas' "right to farm" and the need to protect these areas from inappropriate development. Protection of prime agricultural and forestal lands may be accomplished through consideration of various means, including use of open space zoning which clusters development. By channeling suburban growth into the Suburban Service Area, and by protecting the rural character of the County through both application of open space development and designation of conservation areas, the random pattern of subdivisions in the rural areas should be stabilized.

#### Agricultural Zoning

Since 1996, the Board has revised the requirements of the Agricultural zoning district to change the density from 1 unit/6.25 acres to 1 unit/10 acres. To address the issue of lost density for agricultural property owners, two new zoning districts were created: an agricultural-residential district and a rural conservation district. Both offer low-density residential opportunities, but the rural conservation district (the RC) also requires preservation of no less than 70% of the property. While both districts allow the same density, only the RC provides for maintenance of viable agricultural land in addition to the clustering of homes on a small portion of the property.

#### Open Space Planning in Suburban Service Areas

Open space is not only an important component of rural area planning and development, but also development within the Suburban Service Area. In 2000, the County eliminated conventional single-family zoning districts from its ordinance and created one variable-density residential district for use throughout the Suburban Service Area. This district, which requires the provision of open space, pedestrian pathways, buffers along the County's public roads, and other amenities in return for consideration of higher densities, also allows the development of attached dwellings in



addition to detached homes. The intent of this district is to maintain some of the rural character and feel of the County within the areas of higher concentration of population.

#### Land Use Taxation

Hanover County landowners who use their property for agricultural, horticultural or forestal uses or keep it in open space are invited to enroll in the Land Use Taxation Program. Under this program, qualified landowners can have their property assessed at “use value”, which may be lower than market value. About 3,146 parcels and more than 162,000 acres are currently enrolled in Hanover County’s Land Use Taxation program. The total tax savings realized by these property owners exceeds \$5.5 million. In order to qualify for the tax deduction, the property must be zoned for agricultural uses and have been in agricultural, horticultural, forest or open space uses for at least five years. Property that has been zoned Rural Conservation (RC) also can qualify for the Land Use program. The minimum qualifying acreages are five acres for agricultural, horticultural and open space and 20 acres for forest use. A one-acre house site is allowed in all categories. Requirements are established by the State Land Evaluation Advisory Council. If the land use is changed, the tax reduction must be repaid with simple interest for the current tax year and a maximum of the previous five tax years. Participants with acreage or use changes must re-apply and re-validate their eligibility. Re-validation is also required after six years even if there is no change in land use. There is no charge for this re-validation.



### III. EMERGING PLANNING TOOLS

#### **BEST PRACTICE APPROACHES TO LAND USE, DENSITY & INTENSITY INCLUDING NEW URBANISM AND FORM BASED PLANNING**

##### **Background**

Comprehensive plans with more explicit and extensive community design standards are starting to replace traditional use-based plans as a means of addressing the physical character of future development. Many localities are moving toward comprehensive plans and zoning ordinances that emphasize form over use, reflecting planning trends like Neo-traditional design and New Urbanism. This approach incorporates traditional land use concepts like use type, density and intensity but relates them to physical form and character.<sup>7</sup> Virginia has even embraced and mandated the use of these principles in the new UDA legislation describe above. These concepts may be beneficial as a means of further refining the Land Use Designations in the James City County Comprehensive Plan, ensuring that the County satisfies the new legislation.

New Urbanism is based on principles of urban design that are the underpinning of treasured and historic places, and have been used successfully for centuries, but which fell out of favor as new development became increasingly auto-oriented.

“New Urbanism principles seek to create new communities “by creating “human-scale” streetscapes that are comfortable for pedestrians, a “fine-grain” of mixed-uses, usable public spaces, prominent civic buildings, and strong neighborhood identity. These are provided in ways that still accommodate motor vehicles, modern commercial markets, and consumer preferences. New Urbanism, however, is based on principles of urban design rather than architectural design. Whereas architecture is concerned with style and materials, urban design is concerned with the relationship of buildings to the street, the real and perceived scale of buildings, public space design, site access, and street networks<sup>7</sup>.”

These principles can be applied to new development, redevelopment or infill development and in urban, rural or suburban communities.

New urbanism principles are being incorporated into comprehensive plans in many localities throughout the country. These plans feature detailed conceptual plans for the future street network, even in suburban communities. These plans also provide guidance for land use intensity across the locality, from the low density rural or agricultural areas, to the most dense areas, on a gradient known as the “transect.” For

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<sup>7</sup> VAPA, p. 34.



example, Albemarle County's comprehensive plan amendment for the Village of Crozet won a national Congress for New Urbanism award in 2004.

### **Peer Community Review**

New urbanism principles are being incorporated into comprehensive plans in Virginia and elsewhere. General land use maps are being supplemented by detailed conceptual plans with future street network and design guidelines, even in suburban communities. Some of the plans also provide guidance for land use intensity across the locality, using a "transect" to provide a visual and text description to describe the gradient from low density rural or agricultural areas, to the most dense areas.

Albemarle County, Loudoun County, Fauquier County, the City of Suffolk, the City of Lynchburg, the City of Chesapeake, the Town of Warrenton and the James City County Comprehensive Plan feature policy language promoting new urban principles. Several of the communities have prepared detailed studies like the New Town District in James City County and the Village of Crozet in Albemarle, that address a specific geographic area of the County. New Urbanist concepts are generally easier to envision on a small scale and in urban localities, making it a challenge to adapt the principles to suburban and rural counties with dispersed activity centers. Fluvanna County has undertaken such an effort in its draft Comprehensive Plan.

The draft Fluvanna County Comprehensive Plan features a transect chart that succinctly summarizes the seven community types that will be the basis for implementing the County's new comprehensive plan (see below).



JAMES CITY COUNTY COMPREHENSIVE PLAN UPDATE

		COMMUNITY ELEMENT MATRIX					
		urban					rural
		Regional Mixed-Use	Regional Employment	Neighborhood Mixed-Use	Neighborhood Residential	Village	Rural Cluster
Connectivity	Street Types (p 20)	Commercial Street Main Street Neighborhood Street	Commercial Street Main Street Neighborhood Street	Commercial Street Main Street Neighborhood Street	Neighborhood Street	Commercial Street Neighborhood Street Rural Road	Neighborhood Street Rural Road
	Block Size	400'-800'	400'-800'	300'-600'	200'-600'	200'-600'	200'-varies
Site Design	Building Height (p 22)	2-6 Stories	2-6 Stories	2-4 Stories	1-3 Stories	1-3 Stories	1-2 Stories
	Frontage (p 22)	Commercial Storefront	Commercial Storefront	Storefront Porch	Storefront Porch Residential Yard	Storefront Porch Residential Yard	Porch Residential Yard
	Parking (p 25)	Structured On-Street Surface	On-Street Surface	On-Street Surface Residential	On-Street Surface Residential	On-Street Surface Residential	Residential
Land Use	Mix of Uses	Large Commercial (25-40%) Storefront Retail (25-40%) Civic (10-25%) Office (10-25%) Restaurant (10-25%) Multi-Family Res (5-20%)	Office (25-75%) Healthy/Medical (10-25%) Light Industrial (10-25%) Storefront Retail (5-20%) Multi-Family Res (5-20%)	Storefront Retail (25-75%) Civic (10-25%) Office (10-25%) Restaurant (10-25%) Multi-Family Res (10-35%) Single-Family Res (5-20%)	Single-Family Res (25-75%) Multi-Family Res (25-50%) Limited Retail (10-25%)	Storefront Retail (10-25%) Civic (10-25%) Office (10-25%) Restaurant (5-20%) Multi-Family Res (25-50%) Single-Family Res (25-75%)	Single-Family Res (50-100%) Multi-Family Res (25-50%) Limited Retail (10-25%)
	Density	Commercial FAR: 2.0 Residential DUA: 10-15	Commercial FAR: 2.0 Residential DUA: 10-15	Commercial FAR: 1.0 Residential DUA: 8-10	Commercial FAR: .5 Residential DUA: 4-10	Commercial FAR: .75 Residential DUA: 4-8	Commercial FAR: .5 Residential DUA: 2-6
	Open Space (p 27)	Town Square Pocket Park	Pocket Park	Town Square Pocket Park Neighborhood Park	Neighborhood Park Recreational Park	Neighborhood Park Recreational Park Passive Open Space	Neighborhood Park Recreational Park Passive Open Space

This type of chart, used in conjunction with a future land use map and policy language, provides an excellent illustration of how New Urbanist concepts or even conventional land use designations can be translated into measurable characteristics like units per acre, floor area ratio (F.A.R.), development mix and design (relationship of buildings to streets, open space ratios, street type and width). Albemarle County, Virginia has also developed and adopted a Neighborhood Planning Model based on neo-traditional concepts and the transect concept.

The transect concept does not lend itself well to single use districts since new urbanism promotes mixed use development, almost to the exclusion of single use district, as the goal of new urbanism is to create human scale design. Some uses however, particularly industrial uses, may be of a scale and intensity that is inherently incompatible with new urbanist goals. Communities that have implemented “form based” planning have generally deviated from the transect-based districts for these types of uses. Nashville, TN, addressed this issue by developing a single use “district” transect for universities, office parks, commercial and industrial areas. The district transect still provides information about use, intensity, density and design and is particularly useful for areas that have already partially developed with single use zoning, such as an industrial park, but that may continue to build out.

**Advantages/Disadvantages of form based planning:**



- More detailed land use policies and design guidelines can increase consistency in the review of development applications.
- Clear land use policies provide a framework for public and private investment; a predictable and reliable land development process is essential to attract business investment.
- More specific design guidelines may be viewed unfavorably by the development community if they are perceived as overly regulatory or as a factor that limits the ability to respond to market trends.
- If detailed land use policies are implemented through form based codes or districts that promote mixed use and a wide range of uses, there may be more flexibility for individual projects to respond to the market and site constraints.
- Land use policies that emphasize development density and intensity without regard to design can result in incompatible development that is not responsive to community form.

### **Application to James City County**

Although the 2003 Comprehensive Plan has a number of policies that promote New Urbanist and form-based principles, the overall structure and organization of the Plan is land-use based rather than form-based. Virginia counties have generally not fully adopted the New Urbanist “transect” as the fundamental underpinning of their comprehensive plans or future land use districts. These principles, however, have been effectively employed in smaller communities and districts, such as Crozet in Albemarle County and the community elements in Fluvanna County. In fact, the plan for Toano is an example in James City County of employing specific form-based and urban design objectives in the context of a comprehensive plan that would also be a good foundation for the development of a form-based zoning district or districts for Toano.

### **Application in James City County:**

As additional growth occurs in the PSA, and particularly if the revised Comprehensive Plan promotes redevelopment or intensification of in the PSA, it becomes even more important to provide clear standards for not only development type, density and intensity but, character and design. These issues are equally important for the Rural Lands area. The County should consider enhancements to the current land use designations to provide additional guidelines for reviewing development applications and to set out land use categories that are easy for members of the development community and public to picture.



James City County currently defines the following eleven land use designations:

1. Conservation Area
2. Rural Lands
3. Low Density Residential
4. Moderate Density Residential
5. Neighborhood Commercial
6. Community Commercial
7. Mixed Use
8. Limited Industry
9. General Industry
10. Public Park/ Semi-Public Open Space
11. Federal, State and County Land.

In addition to these designations, there are community corridor overlays, community character areas, enterprise zones and the Primary Service Area designations that provide additional insights about the type of development envisioned in particular areas. There are also some minor inconsistencies in the current land use designations that should be evaluated. For example, the Park/Semi-public park/open space land use category and the Federal, State and County owned land categories mix the type of ownership with the actual land use. These areas might be better classified by how they are actually used.

The land use element of the plan would be enhanced if all districts included at a minimum, a description of anticipated intensity, density and preferred development characteristics for each land use category; similar to some of the most basic information depicted in the Fluvanna chart. Some of the existing land use designations, such as moderate density residential and mixed use categories are described in detail with a range of potentially appropriate densities. Others, such as the commercial districts, discuss appropriate building sizes but do not address factors that influence design quality like floor area ratio. For example, most commercial strip shopping centers have a *de facto* Floor Area Ratio of 0.2 or 0.25 since parking requirements and a market preference for one story structures tend to result in this level of intensity. New Urbanist, pedestrian oriented commercial centers that place more emphasis on design tend to have higher F.A.R.'s since traditional design encourages on-street parking, multi-story structures and structured parking or reduced parking standards. If the County wants to encourage particular types of development in the future, the Comprehensive Plan should proactively describe the develop type and the zoning ordinance should be updated to reinforce these policies.

If the County pursues transect based land use categories, it would be beneficial to maintain some single use districts, particularly for super-regional commercial uses that attract tourists – like Busch Gardens - and for established industrial areas. One reason for this is to maintain a strong economic development program and a balance of jobs to housing. In a down market, potential employment areas in districts designated for



mixed use could develop residentially. This is the reason that most New Urbanist transects include recommendations for the ratio of residential and non-residential uses.

Currently, there is not an easy way in the Comprehensive Plan to find an illustrative “snapshot” of what future development should look like to meet the policies of the Plan. Design guidelines and development standards are located in different parts of the Land Use chapter, without a clear explanation of how the policies relate to the future land use map. The County could consider the use of the transect concept, illustrated with photos or illustrations of intended development character and more specific ranges of density/intensity as an organizing framework for the land use designations. While some adjustments would need to be made to the existing designations, and some categories may need to be added, the continuum of districts would be roughly the same as are currently described in the Plan, and would range from the higher intensity uses permitted in the PSA at the urban end of the gradient to conservation areas at the most rural end of the spectrum. If this approach is not undertaken county-wide, it would still be very applicable to small area plans for communities or districts – especially those with a clearly defined existing or future design character such as Toano.



## PERFORMANCE ZONING

### Background

Performance zoning is an alternative approach to land use regulation that focuses on mitigating the impact of a use rather than the conventional approach of separating uses into distinct categories by use type. It is sometimes called Flexible Zoning because the zoning districts allowed under this concept permit a greater variety of uses and are more responsive to the characteristics of the specific parcel and use being developed. The performance zoning concept grew from efforts in the 1950s to develop performance standards for industrial uses to limit the impact of noise, vibration, glare, pollution, toxic waste etc. on adjacent properties. Since then, the use of performance standards has grown to include other issues such as steep slopes, floodplains, traffic impacts, buffers, etc. The James City County zoning ordinance includes several performance standards.

The first comprehensive performance based zoning ordinances were adopted in the late 1970s and early 1980s, in part as an outgrowth of increasing environmental awareness. Lane Kendig was a pioneer of the performance zoning movement. In 1974 he led the development and approval a performance based zoning system for Bucks County, PA, one of the most well known performance zoning codes still in use today in several Bucks County townships.

### Peer Community Review:

#### Bucks County, PA

The Bucks County Model Ordinance was designed primarily to protect natural resources and secondarily to provide design flexibility. Each property undergoing development review is evaluated on a case by case basis to determine development capacity and intensity.

The Bucks County model relies on four factors to regulate development intensity: density, floor area ratio, open space ratio and impervious surface coverage. These criteria vary depending on the desired community character or the on-site natural resources that must be protected. For example, in Bucks County, there is a 100% open space ratio for floodplains - all floodplain is excluded from buildable area calculations. In agricultural zones, the performance standards for density and open space are more stringent than for an area designated for residential use, resulting in the potential for more residential units in a residential area than in agricultural area. Every development application begins with a calculation of net buildable area. Therefore, the site's natural features directly influence the required minimum open space and the net buildable site area.



Performance zoning codes like the one in Bucks County’s allow a range of housing types in residential areas to provide design flexibility. On a tract with a high percentage of natural resources, the maximum density can be achieved through a mix of housing types including townhouses and garden apartments. This flexibility allows a developer to respond to market conditions without requiring a rezoning to another zoning district.

Fort Collins, CO

Another example of a well known performance based zoning code is Fort Collins, Colorado, adopted in 1981. This performance based code is an example of a point based approval system. The Fort Collins performance based zoning code was known as the Land Development Guidance System (LDGS). Any land use was allowed anywhere in the community. Development approvals were evaluated based on a list of criteria using weighted formulas outlined in the zoning ordinance. The criteria included 65 performance criteria and 49 other impact criteria. Development applications were reviewed and awarded points for meeting criteria and an overall score was determined after weighting. Development applications that met the minimum number of points were approved administratively. In addition to natural resource protection and design guidelines, criteria included items such as location of property, environmental protection, road capacity and school capacity. The system was substantially revised in 1997 to move away from performance zoning for two primary reasons: concerns from citizens and public officials about a lack of certainty about what could be built and concerns that the system placed too much emphasis on site specific impacts to the exclusion of overall community impacts.<sup>8</sup>

Virginia Communities

There are no communities in Virginia currently using performance based zoning ordinances. Communities in Colorado, Florida, Illinois, New York, New Jersey, and Pennsylvania have had mixed success with the concept. In 1989, Bedford County, Virginia adopted a performance type zoning system when it adopted its first ever zoning ordinance. The Bedford Land Use Guidance System (LUGS) was a point based system used points to rate developments, and no zoning districts were assigned. The LUGS approach was replaced by a more conventional zoning ordinance in 1998.

**Advantages and Disadvantages of Performance Zoning Codes:**

A review of recent literature about performance zoning indicates that most of the communities around the United States that adopted performance based zoning in the 1980s and 1990s have since repealed their performance based codes. Others refined

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<sup>8</sup> “Performance-Based Planning: Perspectives from the United States, Australia, and New Zealand, Douglas Baker, Neil Sipe & Brenda Gleason, July 2004.



their codes to a hybrid of conventional zoning with performance oriented districts and performance standards. One hybrid approach is a fairly conventional type of zoning ordinance that may include performance standards and flexible zoning districts such as Planned Unit Development Districts. Mixed use districts, environmental overlay districts, design guidelines, landscaping requirements, buffer zones and similar zoning techniques address many of the development impact issues that performance zoning set out to address.

Advantages:

On its face, performance zoning has a number of advantages:

- Performance zoning can be more responsive to market conditions or changes in market conditions since there is more flexibility with respect to uses.
- Performance based zoning is proactive rather than reactive.
- The development approval process is more transparent since review criteria are established upfront; also, the development process is often streamlined since applications can be processed administratively.
- In contrast to "traditional" zoning districts, performance zoning allows the market conditions of the community, the environmental factors on a site, and the surrounding land use to decide the type of development that should be in an area.
- The use of established criteria, if carefully crafted, ensures impartial evaluation of all projects.
- Performance zoning systems can provide better protection for sensitive environmental features since these areas must be identified upfront, as part of the initial site assessment.
- Allowing a wider variety of uses and providing flexibility on density and floor area requirements increases design flexibility.
- With established development criteria, there is little wiggle room for evaluating special cases or requests for waivers.

The promise of more flexibility in the application of land use regulations, the potential for a streamlined administrative approval process, and the potential market advantages of performance zoning generated initial support for performance zoning concept among members of the development community and property rights



advocates. However, as noted above, most communities that adopted performance based zoning have abandoned it, citing disadvantages such as:

Disadvantages:

- Performance zoning codes are typically complex and difficult to administer; considerable staff expertise may be required and experience has shown that there may be difficulty getting the concept across to the public
- Performance zoning requires considerable upfront, in-depth analyses; these analyses can be expensive and time consuming.
- Performance zoning is only as good as the established evaluation criteria. Great care must be taken in developing clear criteria that can be measured objectively.
- Performance zoning creates uncertainty about what can be built and emphasizes site specific impacts to the exclusion of overall community impacts
- The administrative process, depending on how it is structured, may preclude opportunities for public input.
- Performance zoning may not be appropriate for areas where redevelopment is occurring since established uses may have impacts that cannot be easily mitigated by new uses.

**Application in James City County:**

Based on the experiences of other communities in the United States, it appears that the Performance Zoning concept, while promising in theory, has not proved successful in the long term. Given this research, the consultant does not believe it is in County's best interest to pursue this approach. However, some of the best features of these ordinances, such as performance standards for resource protection can be implemented in James City County through overlay districts or by refining existing performance standards. Other concepts that allow design flexibility such as mixed use districts and planned development districts are already included in the James City County Ordinance and can be expanded. The County should consider other emerging zoning techniques, such as concepts derived from Form Based Codes, to increase design flexibility and market responsiveness. Form Based Code concepts were discussed earlier in this report.



## HARMONIZED OR CONCURRENT REZONING

### Background:

Some communities use a comprehensive plan update as the basis for rezoning and remapping some, or all, of the locality to match desired future land uses; this could be termed “concurrent” or “harmonized” zoning. These rezonings, initiated by the locality, usually occur at the same time as, or shortly after adoption of the new plan. Other communities amend the text of their regulatory documents, either simultaneously with or just after adoption of a revised or new comprehensive plan. Virginia does not require zoning to mirror planned land uses.

In states with strong statewide planning mandates, such as Florida and Maryland, localities often prepare zoning map amendments simultaneously with revisions to the comprehensive plan so that future land use maps and zoning maps are consistent. New zoning regulations are put into place as the new plan is approved to ensure that proposed future land uses are permitted by-right. This is generally the case in Montgomery County, Maryland. When an area plan (a detailed plan for a portion of the County) is adopted or updated, the County also prepares a new or revised sectional map amendment to amend zoning. In these communities, applicant initiated rezonings are much less common than in Virginia.

Very few localities in Virginia amend their zoning maps simultaneously with adoption of a new or revised comprehensive plan, unless they are downzoning or implementing major new policy initiatives. The primary reason is that most rapidly developing Virginia localities rely on development proffers to help fund the costs of new development. Communities outside of Virginia that routinely revise zoning maps concurrent with comprehensive plans usually fund the costs of growth through impact fees, special service districts or have some ability to regulate the timing of new growth through adequate public facilities requirements. Upzonings associated with adoption of a new comprehensive plan in Virginia have typically been reserved for:

- redeveloping or blighted areas,
- areas that are already well served by public facilities and service and that are targeted for redevelopment under innovative zoning provisions such as form based districts, or
- areas that are targeted for specific economic development purposes.

### Peer Community Review:

In cases where zoning maps were amended simultaneously with, or soon after adoption of a revised comprehensive plan in Virginia, the purpose of the rezoning was usually to



downzone property. Loudoun County (2006)<sup>9</sup>, Northampton County (2000) and Spotsylvania County (2004)<sup>10</sup> and Fairfax County (1982) are examples of communities that successfully rezoned large areas to reduce development densities following the adoption of new comprehensive plan policies that sought to preserve natural resources, protect water supplies and/or agricultural land. In these cases, it was determined that the existing zoning would potentially preclude implementation of plan policies that provided a significant public benefit.

#### Albemarle County

This year, Albemarle County rezoned the downtown portion of the Village of Crozet to allow higher development densities. The purpose of this upzoning was to implement the 2004 master plan for Crozet using a new, form based zoning district designed to promote pedestrian-oriented and mixed use development. Since the key component to the success of the new plan is maintaining a vibrant village core, and since the village center is already served by basic infrastructure, the County determined that there was a significant public benefit to the rezoning that outweighed the loss of potential development proffers.

#### York County

York County presents an unusual example in the Commonwealth of Virginia. In February 2007, York County rezoned over 400 parcels, or portions of parcels, in accordance with a revised Comprehensive Plan adopted in December 2005. The rezoning was initiated by the Board of Supervisors in June 2006 and included parcels located throughout the County. The comprehensive, concurrent rezoning included upzonings and downzonings intended to align the zoning map with the newly adopted future land use map. The comprehensive rezoning also corrected mistakes that were made as part of a previous comprehensive rezoning in 1995 that coincided with the adoption of a new Zoning Ordinance. One reason for this atypical approach to plan implementation may be explained by the fact that York County does not have a history of obtaining cash proffers through conditional rezonings. According to annual reports from the Virginia Commission on Local Government (COLG), York County only reported receiving \$300,000 in cash proffers since the State began collecting this data in 2003. Other fast growing counties reported obtaining millions of dollars in cash proffers in that same timeframe. A secondary factor may be the general developed nature of

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<sup>9</sup> Loudoun County downzoned the western two-thirds of the County to conform with new comprehensive plan policies for natural resource protection and agricultural land preservation. Although the rezoning was challenged and overturned in court due to insufficient advertising, the court affirmed the County's right to rezone in accordance with the new comprehensive plan. The County re-enacted a similar downzoning in 2006.

<sup>10</sup> Spotsylvania completed a large scale rezoning (downzoning) in 2002 which was overturned following a lawsuit from affected landowners; in 2004 the Supreme Court overthrew the decision and the downzoning was reinstated. A second downzoning in 2004 was successful.



much of the County - the County Comprehensive Plan indicates that less than a fifth of the County is considered “undeveloped.” This is partially attributed to the amount of federal and state owned land in the County.

**Advantages and Disadvantages:**

Rezoning to ensure that the zoning map is consistent with the future land use map increases the likelihood that a Comprehensive Plan will be realized as envisioned. It also reduces and streamlines the development approval process since most rezonings become unnecessary. A locality-initiated rezoning, concurrent with a comprehensive plan might also be useful as a means of boosting economic development activity, providing incentives for redevelopment in blighted areas or addressing specific design needs unique to a well-defined community.

However, there are also some distinct disadvantages to harmonizing zoning with the land use map. In Virginia, the conditional zoning process provides a mechanism to help offset the costs and impacts of growth and mitigate site specific impacts. In rapidly growing jurisdictions, proffers obtained through conditional zoning provide significant funds and in-kind contributions to offset capital facility and service demands associated with new residential development. Since mechanisms for funding improvements associated with new growth are limited in Virginia, a locality-initiated concurrent rezoning would preclude the ability to obtain development proffers and may shift the burden of new residential growth to existing residents. The rezoning process also provides an opportunity for the impacts of a specific use on a specific parcel to be evaluated by the community in the context of surrounding uses so that potential negative impacts can be mitigated.

**Application in James City County:**

The Comprehensive Plan in principle should serve as the starting reference point for all land use documents guiding development in James City County. In Virginia, the Comprehensive Plan is treated as a guide, rather than a strict regulatory document; however it provides a framework for consistent and defensible land use decisions and provides the rationale for the regulatory documents that will be used to implement the plan on a day to day basis. Therefore, it is essential that regulatory documents like the Zoning Ordinance and Subdivision Ordinance reflect the latest Comprehensive Plan policies. As James City County undertakes the Comprehensive Plan update, it makes sense to assess how well current regulatory documents support new policies and initiatives. It also makes sense to assess how well current zoning reflects desired future development.

However, considerable staff resources would be required to fully evaluate discrepancies between the future land use map and the existing zoning map and propose appropriate zoning changes. When Prince William County undertook such a



study in 2000, it took an estimated 700 staff hours and the concurrent rezoning was not pursued.

More importantly, though, unless and until new mechanisms for funding public facility and utility improvements are made available to James City County, it would be inadvisable to proceed with a countywide rezoning based on the future land use map just to ensure that the future plan map and the zoning map match. The instances, if any, where concurrent rezoning would be the only or best means of achieving a very specific public policy should become clear as the James City Comprehensive Plan moves forward and should be identified for review by the Planning Commission and Board of Supervisors.

