

MINUTES FOR THE WEEKLY MEETING OF THE STEERING COMMITTEE ON MONDAY, APRIL 13th, 2009 AT 3 PM IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, BUILDING F.

PARTICIPANTS:

MEMBERS PRESENT:

Jack Fraley
Mary Jones
Julie Leverenz
Bill Porter
Chris Henderson
Ruth Larson
Mark Wenger
Vaughn Poller
Tom Tingle

NOT PRESENT:

Rich Krapf
George Billups

STAFF PRESENT:

Tammy Rosario, Planning
Allen Murphy, Planning
Jason Purse, Planning
Ellen Cook, Planning
Brian Elmore, Planning

I. CALL TO ORDER

Mr. Jack Fraley called the meeting to order at 3:05 p.m. Mr. Mark Wenger, Mr. Vaughn Poller, and Mr. Tom Tingle arrived later in the meeting.

II. PUBLIC COMMENT

Mr. Fraley opened the public comment period.

Mr. Robert Richardson, 2786 Lake Powell Road, stated that the County's land could be represented by a pie chart, with finite resources. He said additional impacts are not sustainable.

III. MINUTES

Ms. Tammy Rosario stated for the April 6th minutes, at the end of section 5, where Mr. Steven Hicks stated "...funds are available" it should be changed to "funds could be used."

Ms. Julie Leverenz moved approval of the amended minutes, with a second from Mr. Chris Henderson.

In a unanimous voice vote, the minutes were approved as amended (7-0, Absent: Poller, Tingle, Krapf, Billups).

IV. LAND USE

Ms. Ellen Cook stated that in December, staff presented an overview of the land use topics to the Steering Committee. During that meeting, the Committee identified several topic areas where additional information would be helpful, and the consultants subsequently worked on utility extension and redevelopment tools topics. She then discussed the sections of the technical report including the introduction, development trends, planning in nearby localities, major new state planning laws, policy

discussions (including commercial capacity in the PSA, cash proffers, redevelopment strategies, cumulative impacts, and adequate public facilities), updated rural land discussions and implementation options, and sustainability. The goals, strategies, and actions have been updated with the development standards integrated with the land use designations.

Mr. Vlad Gavrilovic, Renaissance Planning Group, stated his firm reviewed post-2003 Comprehensive Plan planning legislation, rural lands issues, emerging planning tools, water extensions in public service areas, and redevelopment tool case studies. Regarding new planning legislation, several new initiatives include Urban Development Areas, transfer of development rights (TDR), mandatory rural clustering, and impact fees. Urban Development Areas attempt to create more compact development patterns, although many localities object to minimum intensities and densities. While the legislation is under continuing review, Renaissance recommends the County clarify density and intensity in Comp Plan designations. Transfer of development rights, which no county actively practices, is still under legislative review of incentives. TDR's do not work well in high rural densities or where there is a strong market for rural lands. TDR's could also cost the County proffer potential and create concern in receiving areas. Renaissance recommends the County consider TDR's based on actions of peer communities, further legal review, and market forces. Renaissance recommends continuation of the purchase of development rights (PDR) program. Regarding mandatory rural clustering, while Renaissance did not analyze whether the County met the legislation currently, it recommends the County study the issue further and meet any new legislative standards. Regarding impact fees, only one county currently collects road impact fees. Several counties studied impact fees but decided against them after learning the per-unit costs. Renaissance recommends the County consider impact fees but monitor peer localities.

Mr. Gavrilovic stated that regarding rural lands, Renaissance recommends that the Primary Service Area (PSA) remain as an efficient growth management tool. Renaissance recommends a specific area where utilities will be provided, creating cost predictability. Also recommended are updated build-out estimates inside and outside of the PSA. If the County decides to expand the PSA, Renaissance recommends infrastructure cost modeling. Regarding rural lands rezoning, Renaissance recommends the County provide incentives for very low density development, such as expedited review or private roads. To preserve historic or natural resources, clustering is recommended, as well as revising the three-acre minimum and its impacts. Regarding economic development, Renaissance recommends use value taxation, purchase of development rights, expanding permitted uses for rural businesses, funding a rural development officer, and combining open space economic incentives with cluster developments.

Mr. Gavrilovic discussed emerging planning tools including harmonized zoning, performance zoning, and form-based codes. Harmonized zoning matches zoning districts to the Comp Plan designation, but costs the County the ability to regulate development timing and also the ability to obtain proffers. Renaissance recommends harmonized zoning as only a limited basis tool, such as in areas needing redevelopment. Performance zoning regulates through standards and has proven complex to administer. Renaissance recommendations are for the County to consider zoning standards on a limited basis within its existing zoning framework, such as on issues related to resource protection. Form-based codes regulate form and design, putting less emphasis on the use itself. Renaissance recommends using form-based districts to encourage desired development patterns.

Mr. Gavrilovic presented findings on the effects of utility extensions, and on redevelopment tools. The findings indicated the least detriment to growth management policies when utility extensions outside the service area are for environmental or public facilities reasons, and where land values will not speculatively increase. Utility extensions should be considered under a guiding document with clear policies and purpose. Regarding redevelopment strategy case studies, including private-public partnerships, zoning incentives, and neighborhood conservation districts, Renaissance recommends developing plans, policies, and menus of incentives such as expedited review and relaxed regulations.

Mr. Henderson asked if Renaissance had researched the average County assessment per acre for both zoning and land use designations. He said a tax strategy may be the best strategy for preserving rural lands. Rural property owners often feel taxed out of their property.

Mr. Gavrilovic stated the County has the ability and currently uses certain taxing tools to preserve rural lands, including use-value taxation.

Mr. Bill Porter stated that it was his understanding that Virginia Tech established criteria for use-value tax rates.

Mr. Gavrilovic stated that areas seeking to preserve agriculture have used minimum densities at one unit per twenty acres. In these cases, rural residential areas turn into true agricultural areas.

Ms. Mary Jones stated property owners speaking with the Rural Lands Committee felt the low density recommendations hurt their property rights and values.

Mr. Gavrilovic stated peer communities considering TDR's included Albemarle and Chesterfield. He did not see flaws in that program, but rather a lack of incentives.

In response to a question asked by Mr. Henderson, Mr. Gavrilovic stated that although he did not know of any other localities that assumed private central wells, he could not state definitively that James City was unique in that regard. Although developers assume a large initial community well cost, the maintenance costs would be transferred to the homeowner's association (HOA) if not assumed by the James City Service Authority. HOA well maintenance may make certain neighborhoods more difficult to market.

Mr. Fraley stated that in conversations with the Hanover County Planning Director, they had changed policies to allow the County to either accept or reject community wells instead of automatic takeovers.

In answer to a question asked by Mr. Henderson, Mr. Gavrilovic stated absolute moratoriums on development based on water supply are unlikely to stand up to legal challenges, but localities are allowed to phase growth consistent with ability to provide utilities.

Ms. Jones discussed the recent agreement with Newport News Waterworks, stating that Newport News was required to fulfill its water contract with the County regardless of the reservoir situation.

Mr. Porter stated the Department of Environmental Quality ruled that localities must start looking for additional water sources and making plans to acquire them after reaching certain percentages of their capacities.

Ms. Rosario stated that County water supply is planned based on projections of development inside of the PSA.

In response to a question asked by Mr. Henderson, Mr. Gavrilovic stated localities cannot limit the number of building permit approvals in a year.

Ms. Rosario stated Hanover approaches that issue by using proffered limits to annual building permit approvals.

Mr. Henderson stated the County's challenge is to discourage continued development in rural lands.

Ms. Gavrilovic stated he has observed counties use phased subdivisions to slow down by-right development by limiting the number of subdivisions per year. This tactic has not yet been tested in the courts, and the County should seek legal counsel on that possibility.

In response to Committee questions, Mr. Gavrilovic indicated he had read the memo regarding the possible Economic Opportunity (EO) designation. He said Economic Opportunity (EO) appeared close to the Mixed Use designation, with an implication of phasing and deferred development.

Mr. Tingle and Mr. Henderson discussed the idea of the EO designation as being identified parcels for economic activities without, or with very limited, residential homes and for producing significant tax income.

Mr. Gavrilovic stated if the intent was for certain parcels to become revenue generating, the Comp Plan language should be clear about that.

Mr. Fraley stated the County's abundant use of Mixed Use has caused some citizen confusion over the designation.

Mr. Porter stated that the decision of whether to include EO parcels inside the PSA will affect development pressures. He said the residential sections of these zones could be developed long before the income producing sections.

Mr. Fraley brought up the topic of developers and citizens being concerned that the current zoning and Comprehensive Plan system brought about unpredictability.

Mr. Porter stated the Comp Plan, the rezoning process, and the site plan process are three levels of the development approval process in James City County. He said the site plan stage is most important one for being predictable regarding timing and requirements. He said the predictability benefits both citizens and developers.

Ms. Jones stated Comp Plan designations allow a degree of flexibility, and that citizen participation levels add predictability to development.

Mr. Fraley stated there was great unpredictability in development densities. He suggested there should be greater zoning/Comp Plan alignment, especially for commercial uses. Special Use Permits add another layer of unpredictability.

Mr. Porter stated harmonizing zoning could cause the loss of valuable proffers. He said proffer costs would be shifted back to the County.

Mr. Fraley stated impact fees could be imposed to offset lost proffers, recognizing though, that only road impact fees are allowed at this point in time. He said additional tests for facility adequacy could be imposed.

Mr. Porter stated the *status quo* was set by the state. He said a Virginia Department of Transportation representative had stated the agency would not recommend against a development even where the level of service was 'F' on the adjacent roads.

Ms. Rosario stated any cumulative impact tests would have to happen at the rezoning stage.

Mr. Gavrilovic stated that trends in comprehensive plans were moving to greater visual orientation and specificity, which can help provide predictability as to the appearance of new development.

Ms. Leverenz stated that if the system for controlling growth is broken, then the Committee has been called to make difficult decisions. In creating a vision for the next twenty years, she could support accepting no new water systems and down-zoning rural lands.

Mr. Vaughn Poller stated the General Assembly recently passed legislation allowing septic systems on smaller rural lots. He said systems are becoming increasingly sophisticated, allowing development on smaller parcels. The Committee should be cautious of unintended consequences, such as housing affordability for workers. A growth slow-down could impact businesses and their labor pools, especially among the creative class.

Mr. Gavrilovic stated Loudoun County used expedited review and private streets with low density development in rural lands. Development took the shape of a hamlet cluster in rural areas.

Mr. Rosario stated that the consideration of private streets had been included in the Rural Lands Committee discussion, but noted that one issue was that HOA's needed to be a certain size to be able to maintain private roads.

Mr. Gavrilovic stated new legislation does not necessarily require designation of a new urban development area, but it allows localities to document how their current plan meets the ordinance. Mixed use areas, which encourage smart growth, would qualify under the ordinance. He said the County may not fully meet the statute currently. Other localities have urban nodes spread across their jurisdictions, as opposed to a single area such as the Primary Service Area.

Ms. Rosario stated the County was positioned to absorb growth at a higher level through its placement of Mixed Use properties.

Mr. Gavrilovic stated that the general rule for takings in a down-zoning situation is that no economical use remained for a property owner. Down-zoning is required to be comprehensive and not "spot" zoning.

Ms. Jones stated there were several options to preserve rural lands, including conservation zoning and clustering.

Ms. Rosario stated that Loudoun County also increased opportunities for agricultural and rural business in its rural lands.

Ms. Cook stated the 2002 Development Potential Analysis studied the PSA's ability to absorb new residential units. She said staff also looked at available commercially-zoned acreage inside the PSA in relation to the Business Climate Task Force's research on the amount of land that would be needed for commercial use.

Ms. Leverenz stated the word "ensure" should be removed from the entire Goals, Strategies, and Actions (GSAs) section.

Ms. Cook stated that land use designations each have recommended densities and FARs. She said that the intent of Action 1.1.2 is for zoning ordinances to be updated to align zoning requirements with Comp Plan recommendations.

Mr. Purse stated FAR recommendations were based off existing development ratios and evaluation of state code on urban development areas. Neighborhood Commercial is recommended at a maximum of 0.2, with Community Commercial recommended at 0.2-0.4. Prime Outlets represents this intensity. This ratio will bring the County closer to alignment with possible state UDA laws. Prime meets the FAR but is over the square footage cap listed.

Mr. Henderson stated Monticello Marketplace was larger than the 200,000 sq. ft. maximum listed for Community Commercial designations. He said a larger cap would allow several commercial developments to be built at a single site.

Mr. Poller asked if a new designation was needed for developments significantly larger than Community Commercial.

Ms. Leverenz stated the Zoning Ordinance should require the 200,000 sq. ft. to be broken up in order to prevent large retailers from locating there.

Mr. Henderson stated the County should not discriminate against large retail operations.

Mr. Poller stated that while businesses understand their own sizing needs, the County should focus on indirect impacts, such as stormwater and traffic.

Mr. Purse stated that one of staff's goals was to incorporate all Community Commercial requirements and impacts, including environment and traffic standards, onto a single sheet.

Ms. Rosario stated Mixed Use designations allow both greater commercial FARs and square footage.

Ms. Cook stated that commercial development exceeding 200,000 sq. ft. would still be possible at the discretion of the Board under the rezoning process.

Mr. Porter questioned why there was a square footage cap.

Ms. Rosario stated that her understanding was that the square footage cap was designed to discourage commercial uses at a scale that would alter the County's character.

Mr. Purse stated the FAR minimum was designed to distinguish this designation from Neighborhood Commercial.

Mr. Henderson stated language should be added to Community Commercial that would allow FARs lower than 0.2 before build out.

Mr. Tingle stated the Committee should avoid creating the impression that Community Commercial greater than 200,000 sq. ft. would not be allowed. He said the Committee should study FARs further.

The Committee reviewed and discussed the language and wording of the Land Use Goals, Strategies, and Actions.

Mr. Tingle asked what incentives were provided for preserving open space in Action 1.1.4.

Ms. Cook stated the Rural Lands Committee explored relaxed subdivision regulations such as private roads.

Mr. Fraley stated the County has a current cluster overlay which is rarely used due to a lack of incentives.

Ms. Rosario stated density was one of the chief incentives for clusters in the rural lands. She said there were differing incentives for clusters inside and outside of the PSA.

Mr. Tingle stated that while the County favored clustering, many homebuyers were seeking their own rural lots. He said incentives could be listed by example in Action 1.1.4.

The Committee discussed whether or not to list incentives in Action 1.1.4, and decided that the clarification language offered by Mr. Fraley was sufficient.

Ms. Leverenz stated Action 1.4 should be changed to read “enforce policies of the Comp Plan to steer growth to appropriate sites in the PSA.”

Mr. Fraley stated the PSA line should be researched for environmental purposes before the next Comp Plan. He said the PSA, as a man-made line, does not follow topography or environmental resource lines. This action would be subject to a public hearing before getting underway.

Mr. Poller stated that if development in certain watersheds was accelerating environmental degradation, the PSA might be reconsidered in that area.

Ms. Cook stated the language in 1.3.1.a about bolstering urban cores meant, among other things, supporting complementary planning initiatives, such as linked transit systems.

In response to a question, Ms. Rosario stated the cores consisted of areas such as Norfolk, Hampton, and Newport News.

Mr. Fraley asked if the Committee wanted a straw vote to strike Action 1.3.1.a.

Mr. Tingle stated if the nearby urban cores go down, James City will decline as well.

Mr. Poller stated that seeking regional solutions is not incompatible with benefitting the County.

In a straw vote, the Committee tied on striking Action 1.3.1.a. Mr. Porter stated that the action should be left in since the motion to strike it had not passed.

Mr. Allen Murphy stated the “sufficient buffering” required by Action 1.4.6 was not an impetus for the Committee to start determining setbacks at the Comp Plan level.

Mr. Wenger stated the language in Action 1.5.1 appeared to halt all development, while 1.5.1.a through 1.5.1.c afforded flexibility.

Mr. Fraley stated he would let staff write language regarding flexibility in Action 1.5.1.

Mr. Porter stated Action 1.5.1.b regarding new state laws should read “beneficial” rather than “relevant.”

Ms. Cook stated Action 1.5.2 was reworded based on VDOT’s new traffic study requirements. She said the intent was not to increase submittal requirements.

Mr. Tingle stated Action 1.5.2.1 created the impression that by-right developments would have to perform an unnecessary amount of tests and studies. He said another action item listing new VDOT standards could be helpful.

Ms. Leverenz stated fees and proffers should be based on the full cost of the facility or service.

Mr. Tingle stated new homes could become even more expensive. He said trying to require affordable housing, new development paying its way, and slowing growth was expensive.

Ms. Leverenz proffer guidelines should be written with the full knowledge of growth cost impacts on all County departments. She said even if proffers do not recover full costs, the County should be conscious of what those costs are.

Mr. Henderson stated Action 1.6 should read “agricultural” instead of “farm.” He said the action item should be reworded to replace “encourage” with “discourage” residential development outside of the PSA. Those strategies should also be listed and highlighted.

Ms. Leverenz stated she would like to see the Committee take a stand and recommend down-zoning and 1 per 20 rural land densities to preserve quality of life in the community.

Mr. Fraley stated lowering densities and increased buffering was opposed by every landowner that attended the Rural Lands Committee meetings.

Mr. Tingle stated the Committee should be creative enough to transfer existing development potential from outside to inside the PSA. He said reducing densities in rural lands reduces the County’s build-out projections. The County has to mitigate property owners against the perceived loss of value.

Mr. Poller stated the Committee should be fully aware that lowering densities would need to be paid for.

Mr. Fraley stated some developers had told him that private roads were a greater incentive than higher densities.

Mr. Porter stated that James City Service Authority should be given the option whether or not to accept private wells in the system.

Mr. Fraley stated the County should begin to work more on balancing rural preservation with property rights. He said accepting private wells is a Board policy stemming from public health and safety issues. Several well systems had been failing.

Mr. Henderson suggested that the consultant assist Committee decision making by providing a complete picture of the tools that can be used as incentives or disincentives in the Rural Lands.

VI. ADJOURNMENT

Ms. Leverenz moved for adjournment, with a second from Mr. Henderson.

The meeting was adjourned at 6:30 p.m.

Mr. Jack Fraley, Chair