

BOARD OF SUPERVISORS WORK SESSION AGENDA

GOVERNMENT CENTER BOARD ROOM

SEPTEMBER 25, 2007 - 4 P.M.

A. Call to Order

B. Roll Call

C. Board Discussions

1. Purchase of Development Rights Committee ([Memorandum](#))
([Attachment 1](#)) ([Attachment 2](#))
2. Better Site Design Implementation - Builders for the Bay
([Memorandum](#)) ([Attachment](#))
3. Change in the Assessment Cycle, Tax Exemptions for the Elderly and Disabled, and Biennial Assessments ([Memorandum](#))
([Attachment 1](#)) ([Attachment 2](#))

D. Adjournment

MEMORANDUM

DATE: September 25, 2007

TO: The Board of Supervisors

FROM: Edward T. Overton, Jr., Administrator, Purchase of Development Rights Program

SUBJECT: Purchase of Development Rights Committee – Recommendations for PDR Guidelines

Attached for your consideration, is the Purchase of Development Rights (PDR) Committee report on issues impacting the PDR Program. The PDR Program Ordinance, in Section 16A-6(b).(3) charges the PDR Committee to “annually review the program’s eligibility and ranking criteria and recommend to the administrator any changes needed to maintain the program’s consistency with the Comprehensive Plan, or to improve the administration, implementation, and effectiveness of the program.”

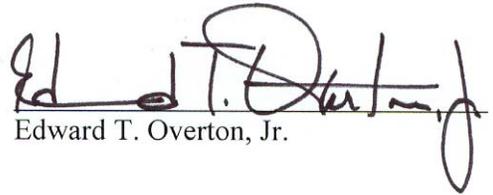
You will recall that when we met October 24, 2006, the PDR Committee reported that an analysis of feedback from previous applicants, most of whom withdrew their applications, identified two primary issues of concern - “additional dwellings” and “future uses” regarding PDR protected properties. Since that meeting, the PDR Committee and staff have met with several individuals familiar with the origins of the County’s PDR Program and knowledgeable of State requirements of PDR programs in general. Included among these individuals were Michael Drewry, Esq., the County’s first PDR Administrator; Allan Murphy, Zoning Administrator; and Adam Kinsman, Deputy County Attorney. Based on these interviews, a review of similar programs in Virginia and elsewhere, and support and feedback from staff, the Committee has prepared the attached documents. The first is the *Draft PDR Guidelines On Additional Dwellings, Subdivision and Future Uses*. The second document is a proposed revised template for the Deed of Easement, which addresses the “future uses” issue in a rather unique way.

The PDR Committee does not recommend a change in the goals of the PDR Program at this time. However, the Committee recommends Board consideration of a proposal to remove language in the Ordinance related to *Additional Dwellings* and *Subdivision* and transfer it to approved PDR Guidelines on *Additional Dwellings, Subdivision and Future Uses*. This would require a slight Ordinance revision that references the *Guidelines*. If approved as presented, a greater density of dwellings on some PDR parcels may result. As was stated in our October meeting, the Committee is confident that our citizens, in their extraordinary support of efforts to protect our remaining priority rural lands, are more flexible on this issue than the current Ordinance allows. The intent of these proposed guidelines is to better address the future needs of owners of protected properties as they may relate to housing for family, extended family, or farm-related housing. While the number of additional dwellings may increase, there is no recommendation to modify the current policy on “subdivision” of a protected property.

The proposed revised deed template is submitted for your consideration as being more easily understood, and much more transparent to the landowner in the “development rights” extinguishment process. You will see in Sec. 4. a. & b. FUTURE USES (pages 3 -6) of the draft template the complete list of *Permitted* and *Conditionally Permitted* land uses currently in the Zoning Ordinance. In practice, during the negotiations phase, the landowner will have the first opportunity to strike those uses they consider contrary to their desires in protecting their property. The County will do likewise. Once both parties are in agreement on future uses, they will be included in the actual deed. By starting the negotiations process with the complete list of what is permitted by ordinance, the landowner sees and understands clearly, which development rights are being extinguished. The expectation of the Committee is that the landowner will have a more clear understanding of the future uses of the property after the easement is in place than is currently possible using the original deed template. In addition, the proposed template includes Sec. 4.c. *Unlisted Uses* (page 6) that

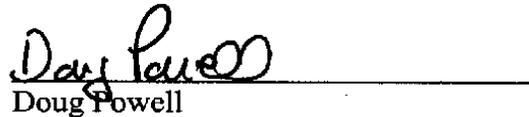
gives the landowner the right to petition the Board for additional uses that may become of interest in the future. The Committee suggests that it will be difficult to make the process any clearer for the original Grantor in defining future uses of their property. An additional departure from the original template is the omission of a signage restriction. This allows the County Sign Ordinance to take precedent.

Following Board decisions on these recommendations, the Committee is prepared to announce the Fourth Open Application Period. Furthermore, the Committee has determined that contrary to past Open Application Periods, there will be no closing date. Given resources currently available, the Committee wants owners of rural lands to have the flexibility of time in which to consider and submit their application. Each application will be processed as in the past, including determination of eligibility and evaluation via the ranking process. It is anticipated that those properties that score above the minimum threshold of 45 points will be presented to the Board for approval for further negotiation.



Edward T. Overton, Jr.

CONCUR:



Doug Powell

ETO/gs

PDRguideline.mem

Attachments:

1. Draft PDR Guidelines on Additional Dwellings, Subdivision and Future Uses
2. Proposed Revised Template - Deed of Easement

Draft

[Draft language for consideration for development of PDR Guidelines to be referenced by Chapter 16A, Purchase of Development Rights, in the JCC County Code.

[The recommendation is to have the *Guidelines* address the details of “dwellings” (existing and additional) and “future subdivision” and instead of the ordinance.]

PDR Guidelines on Dwellings, Subdivision and Future Uses of the Property

Statement of Intent:

The Rural Lands of JCC are predominantly known for their important agricultural and forestal activities. They also contain lands that are vital to the broader environmental health of the County, such as Natural Areas, extensive Resource Protection Areas (RPAs), and the headwaters for important watersheds. Therefore, land preservation is of utmost importance in this area.

The Purchase of Development Rights (PDR) Program was established in 2001 as a tool for preserving important rural lands. In preserving rural lands and the rural character of the County, attention is directed to limiting future subdivision of the property, thus limiting the number of additional dwellings on the property and encouraging continuation of current uses of the property.

The PDR Program provides an alternative to owners of rural land. Therefore, upon a determination by the PDR Committee that a PDR applicant’s proposal includes attributes and agreements that further enhance and achieve the purpose of the PDR program as listed in section 16A-2 of the County Code, the Board of Supervisors may waive the requirements of the PDR guidelines on *additional dwellings* and *subdivision* as they may otherwise apply to the applicant’s property. The applicant’s proposal must mitigate the effects of such a waiver with additional conservation enhancements of the property that are voluntarily offered in writing.

I. “Additional Dwellings” and the “Right to Subdivide”

Definitions:

Footprint - The gross, one-dimensional surface space or area occupied by a structure or other improvement to the property. This definition is irrespective of “useable” area, “living space” or other descriptors of a structure or surface improvement.

Conceptual drawing – A basic drawing or sketch of a quality and clarity acceptable to the County that provides a visual interpretation of the thoughts and/or intent of the original Grantor relative to future decisions impacting the original property.

Primary dwelling - ≤ 4,500 square feet maximum exterior footprint.

Secondary dwelling - ≤ 2,000 square feet maximum exterior footprint. Additional secondary dwelling(s) are intended for the needs of the GRANTOR regarding the use of the property

Subdivision – existing definition in the code; HOWEVER, for the purpose of this Chapter, the definition shall include the following requirement: Grantors of PDR properties that retain a “by right” for one or more subdivisions shall, prior to closing, provide a conceptual drawing showing the Grantor’s intent for future subdivision of the original property. This document will be included as an exhibit in the recorded Deed of Easement for the purpose of documenting the wishes and desires of the Grantor and to serve as a guide in the event any future subdivision of the original property is initiated.

Undeveloped – the original property, as described in the PDR Application, includes no existing dwellings. Properties without existing dwellings that are improved with agricultural structures and/or other non-residential structures or improvements generally permitted on PDR protected properties shall not be considered to be developed.

Developed - The original property, as described in the PDR Application, includes one or more dwellings.

A GOAL of the PDR Program, as stated in the PDR Ordinance, is to limit residential dwelling density to no more than one dwelling per each 100 acres of a property protected by easement. Recognizing the restrictive nature of this goal and the community’s strong desire to protect our most important rural lands, the PDR Program GUIDELINES shall allow flexibility in addressing dwelling needs of the landowner, to wit:

1. UNDEVELOPED Properties

Any undeveloped PDR parcel (at the time of the easement) shall be permitted a dwelling(s) according to the size of the original property as follows:

- A. Less than 50 acres - one primary dwelling; no right to subdivide.
- B. Parcels of at least 50 acres but less than 100 acres – one primary dwelling and one secondary dwelling; no right to subdivide.
- C. parcels 100 acres and larger – one primary and one secondary dwelling for the first 100 acres and each additional 100 acres with one subdivision right per each 100 acres, such that the cumulative result of all subdivisions shall create not more than one remainder parcel smaller than 100 acres.

Permitted dwellings on an undeveloped remainder parcel shall be determined by the size of the parcel.

2. DEVELOPED Properties

The established Goals of the PDR Program notwithstanding:

A. EXISTING DWELLINGS and SUBDIVISION

1. The disposition of EXISTING dwellings shall be determined in the negotiations phase. When the deed of easement permits more than one existing dwelling to remain, the Grantor shall designate each as either primary or secondary. The goal is no more than one primary dwelling and no more than one secondary dwelling per each 100 acres in an easement.
2. The right to SUBDIVISION of a developed property will be addressed in the negotiations phase using the guidelines for undeveloped properties.

- B. ADDITIONAL dwellings on a developed property will be addressed in the negotiations phase using the guidelines for undeveloped properties. The goal is no more than one primary dwelling and no more than one secondary dwelling per each 100 acres in an easement.

II. Future Uses of PDR Protected Properties

The PDR Committee proposes that the issue of “future uses” on PDR Protected properties be addressed by using the revised template for the Deed of Easement.

Section 4. Future Uses, (a). & (b)., pages 3 – 6, lists all uses contained in the Zoning Ordinance for property zoned A 1. In the negotiations process, the landowner will be accorded the first opportunity to strike all listed uses considered incompatible with the owner’s desires for the land. The County will do likewise. The edited list of uses will be included in the deed of easement. This approach with the landowner makes the process of extinguishing development rights as transparent as possible.

In addition, Sec. 4. (c)., Unlisted Uses, page 6, gives the landowner the future right to petition the Board for a permitted use that is not otherwise prohibited by the deed.

Summary:

These proposals on Additional Dwellings, Subdivision and Future Uses are recommended by the PDR Committee to:

- Add transparency and clarity to the “development rights” extinguishment process to benefit the Grantor in better understanding the program
- Encourage continuation of a number of diverse (including income generating) uses of the land currently found in the rural sector of JCC. While many, but not all of these uses relate to agriculture and forestry, they all are part of the County’s rural character that the PDR program is designed to protect. A goal of PDR is to enrich the County’s character and culture by fostering and encouraging rural working lands.
- Add flexibility: (1) to allow the PDR negotiation process to better design conservation easements that meet the needs of the Grantor while upholding the purposes of the PDR Program; (2) so that the PDR program is an attractive alternative to owners of rural land, specifically as agreements relate to additional dwellings, subdivision and future uses:
 - Permits one dwelling on any undeveloped PDR parcel (important for smaller properties)
 - Allows for one Primary and one Secondary dwelling for each 100 acres under easement. Subdivision is a separate issue.
 - Allows for one primary and one secondary dwelling on any original property or on one remainder parcel resulting from a subdivision, that is less than 100 acres but larger than 50. No right of subdivision
 - Subdivision of larger properties is based on a 100 acre minimum parcel size
 - When subdivision is permitted, only one remainder lot of < 100 acres shall be approved, irrespective of the number of “by right” subdivisions recorded in the easement.
 - Allows flexibility in negotiations on developed properties, keeping in mind the goals on dwelling density and subdivision limits proposed for undeveloped property of similar size & character.

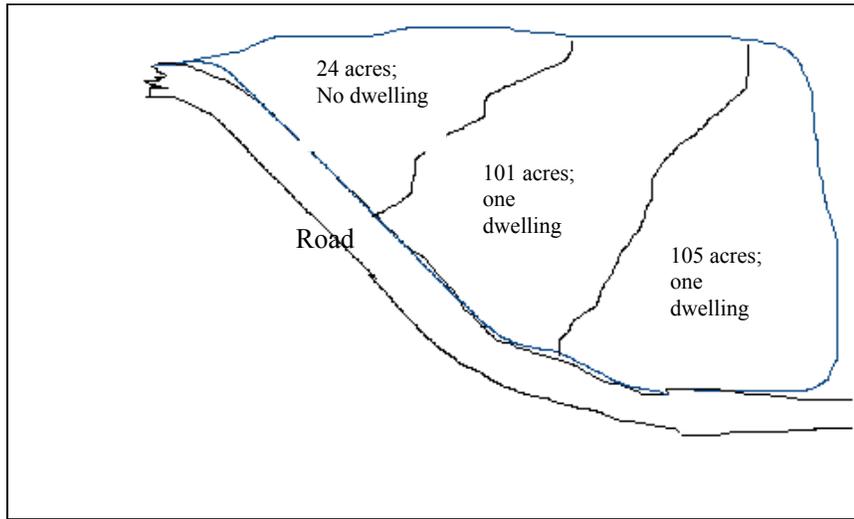
Summary Table: Proposals on Additional Dwellings and Subdivision

<i>Parcel Size</i>	<i>Additional Dwellings</i>		<i>“By Right”- Subdivision</i>	
	Currently	Proposed	Currently	Proposed
<50 Acres	0	1 primary	0 (Not specifically addressed in the ordinance; 1 per 100 acres implied)	0
50.0 - <100	0	1 primary + 1 secondary	0 (same)	0
100.0 +	1 per each 100 acres	1 primary + 1 secondary For each 100 acres; same for one remainder parcel ≥50 acres	1 per each 100 acres is implied (same)	1 for each 100 acres; only 1 remainder parcel < 100 acres is permitted

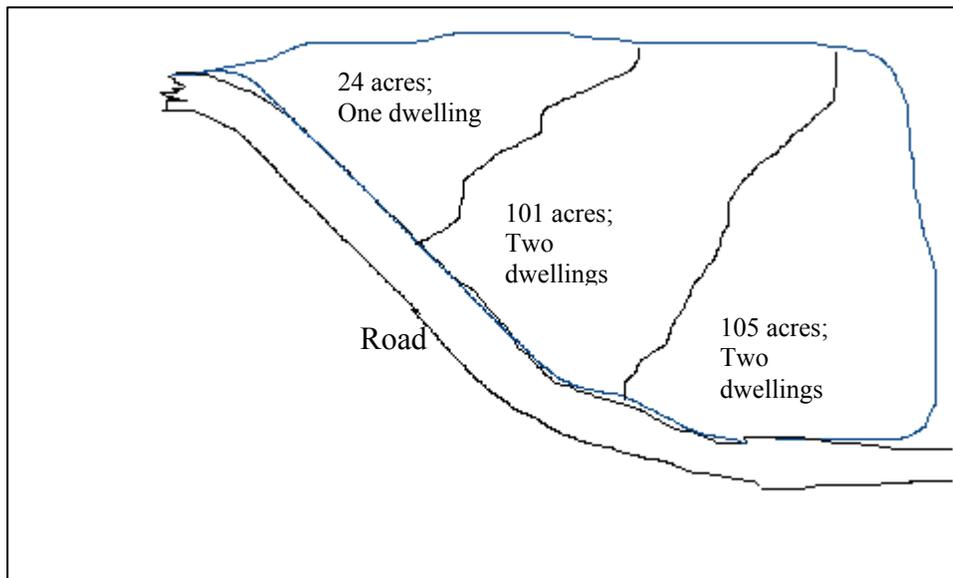
Example

An undeveloped (but developable) 230 acre property with road frontage:

Currently: one dwelling per each 100 acres is permitted. The ordinance does not directly address subdivision, but in practice, one per each 100 acres would be considered.



Proposed: One primary dwelling and one secondary dwelling per each 100 acres, one subdivision per each 100 acres, one primary dwelling on one remainder parcel < 50 acres.



JCC TAX ID: # _____
CONSIDERATION: \$ _____

THIS DEED IS EXEMPT FROM TAXATION UNDER VIRGINIA CODE
§§ 58.1-811 (A)(3) and 58.1-811(C)(4)

DEED OF EASEMENT

THIS DEED OF EASEMENT, made this _____ day of _____, 2007, by and between
The _____, (the "Grantor") and the **COUNTY OF JAMES
CITY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, (the "County" or
the "Grantee" and, together with the Grantor, the "Parties").

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of a parcel of property located at
_____ James City County, Virginia and further identified as James City
County Real Estate Tax Parcel Number _____ as more particularly described in
Exhibit A (the "Property").

WHEREAS, under the County's Purchase of Development Rights ("PDR") Program,
codified as Chapter 16A in the Code of James City County, as amended (the "County Code"),
the County is authorized to acquire conservation easements over qualifying properties in order to
accomplish the purposes of the PDR Program and the Open-Space Land Act (§§ 10.1-1700 et
seq. of the Code of Virginia, 1950, as amended (the "Virginia Code")); and

WHEREAS, the Grantor has voluntarily agreed to have the Property be subject to the
terms of this conservation easement; and

WHEREAS, the County's acquisition of the conservation easement identified herein
furthers the purposes of the PDR Program in that such acquisition, among other things, assures
that the County's resources are protected and efficiently used, establishes and preserves open
space, and furthers the goals of the County's Comprehensive Plan by protecting the County's
natural and scenic resources, conserving wildlife habitat, promoting the continuation of
agricultural and forestal activities, and protecting the quality of the County's surface water and
groundwater resources; and

WHEREAS, the Grantor has offered to sell a conservation easement and the County has
agreed to pay the Grantor the sum of _____ and 00/100 Dollars (\$-----)
for this conservation easement, such sum being based upon the fair market value of the
easement, as determined by a qualified appraiser.

NOW, THEREFORE, in consideration of the recitals and the mutual benefits, covenants and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor hereby grants, conveys, covenants, and agrees as follows:

1. GRANT AND CONVEYANCE OF EASEMENT. The Grantor hereby grants and conveys to the Grantee and their successors and assigns, with General Warranty and English Covenants of Title, a conservation easement in gross over the Property located _____ in James City County, Virginia and further identified as James City County Real Estate Tax Parcel Number _____ and as more particularly described in Exhibit A, restricting in perpetuity the use of the Property in the manner set forth in this Deed of Easement.

2. EXISTING STRUCTURES. Existing structures on the Property shall be authorized to continue as follows:

(a). *Existing residential structures.* The (# of existing dwellings allowed to remain as negotiated) dwellings that exist on the Property shown on and more particularly described in the Baseline Study attached as Exhibit B (the "Existing Dwellings") may be repaired, expanded upon, or replaced with the prior written consent of the Grantee, provided, however, that minor repairs that do not materially alter the existing character of either dwelling (e.g., repair of boards, shutters, stairs, railings, shingles, windows, trim, moldings, gutters, etc.) may be completed without prior consent of the Grantee.

(b). *Existing non-residential structures.* The non-residential structures that exist on the Property shown on and more particularly described in the Baseline Study attached as Exhibit B (the "Existing Non-Residential Structures") may be repaired, expanded upon, or replaced with the prior written consent of the Grantee, provided, however, that minor repairs to such Existing Non-Residential Structures (e.g., repair of boards, stairs, railings, shingles, windows, trim, moldings, gutters, etc.) may be completed without prior consent of the Grantee.

3. FUTURE STRUCTURES AND IMPROVEMENTS. There shall be no construction, placement or maintenance of any structure or other improvement on the Property unless the structure or improvement is authorized as follows:

(a). *Accessory structures.* Accessory structures, as defined by the County Code and incidental to the Existing Dwellings or otherwise incidental to a *bona fide* agricultural use conducted on the Property shall be permitted.

(b). *Structure Size.* No single structure on the Property, whether residential, accessory, or otherwise, may exceed four thousand five hundred (4,500) square feet without the prior written consent of the Grantee. The total area of all impervious surfaces on the Property shall not exceed ten percent (10%) of the surface area of the Property without prior written consent of the Grantee.

(c). *Structure Location.* No structure shall be located on the Property within _____ feet of the centerline of _____ (road name) as it is aligned on the date of execution of this Deed of Easement.

(d). *Fencing.* The Grantor may enclose any portion of the Property with fencing without prior written approval from the Grantee, provided, however, that such fencing is less than four feet in height. Fencing exceeding four feet in height may be erected upon the prior written approval of the Grantee. All fencing shall be kept in good repair.

4. **FUTURE USES.** No use may be established on the Property except as approved herein.

(a). *Permitted.* The following uses shall be permitted on the Property without the prior written approval of the Grantee; all uses shall be as defined in the County Code.

- ~~Accessory apartments in accordance with section 24-32.~~
- Accessory buildings and structures.
- Accessory uses, as defined herein.
- ~~Communication towers and tower mounted wireless communications facilities, up to a height of 35 feet.~~
- ~~Farmers' markets, limited in area to 2,500 square feet.~~
- General agriculture, dairying, forestry, general farming, and specialized farming, including the keeping of horses, ponies and livestock, but not intensive agriculture as herein defined and not commercial slaughtering or processing of animals or poultry.
- Greenhouses, commercial *for the sale of seasonal products grown on the Property.*
- Home occupations, as defined herein.
- Horse and pony farms (including the raising and keeping of horses), ~~riding stables.~~
- House museums.
- ~~Houses of worship and cemeteries accessory hereto.~~
- ~~Intensive agriculture as herein defined.~~
- ~~Manufactured homes that are on a permanent foundation.~~
- Nurseries.
- ~~Off street parking as required by section 24-53.~~
- Petroleum storage on a farm as an accessory use and not for resale.
- Preserves and conservation areas for protection of natural features and wildlife.
- ~~Rest homes for fewer than 15 adults.~~
- Retreat facilities.
- Single-family detached dwellings.
- Silviculture, with timbering in accordance with section 24-215(c).
- Slaughter of animals for personal use but not for commercial purposes.
- Storage and repair of heavy equipment as an accessory use to a farm.
- Water impoundments, new or expansion of, less than 20 acres and with dam heights of less than 15 feet.
- Wayside stands for seasonal sale of agricultural products, limited in area to 500 square feet.
- ~~Wineries, as herein defined, including a shop for retail sale of wine, but not including other commercial accessory uses.~~

Comment [JCC1]: This list is the complete, verbatim list of uses permitted by the zoning ordinance on A 1 property. This is every use that is permitted now on A1 land.

Obviously, not all uses are compatible with PDR.

The intent is that in the process of negotiating the terms of agreement, the land owner will have the first opportunity to strike all uses they do not want to occur on their property. The County will follow suit after the landowner. Once both parties are in agreement on future uses, the negotiations on terms will continue.

The expectation in this proposal is that by actually participating in the process of selecting which development rights are extinguished, the negotiations process will be more transparent, better understood, less contentious and hopefully faster.

~~Wireless communication facilities that utilize alternative mounting structures, or are building mounted, or are camouflaged, and comply with division 6, Wireless Communications Facilities.~~

(b). *Conditionally permitted.* The following uses shall be permitted on the Property only with the prior written approval of the Grantee; uses shall be as defined in the County Code. This prior written approval shall be exclusive of any requirement for a special use permit, if such is required by the County Code.

~~Accessory apartments
Adult day care centers.
Airports and landing fields, heliports or helistops and accessory uses.
Animal hospitals, veterinary offices and kennels.
Automobile graveyards.
Automobile repair and service.
Automobile service stations; if fuel is sold, then in accordance with section 24 38.
Beauty and barber shops.
Campgrounds.
Cemeteries and memorial gardens, not accessory to a church or other place of worship.
Commercial equipment repair accessory to a dwelling with no outdoor storage or operations and the use occupies a building not larger than 2,000 square feet.
Communication towers over 35 feet in height.
Community recreation facilities, public or private, including parks, playgrounds, clubhouses, boating facilities, swimming pools, ball fields, tennis courts and other similar recreation facilities except for facilities approved as part of a subdivision created pursuant to section 24 214(c).
Contractors' warehouses, sheds and offices.
Convenience stores; if fuel is sold, then in accordance with section 24 38.
Day care and child care centers.
Dinner theaters and dance halls as an accessory use to a restaurant or tavern.
Electrical generation facilities (public or private), electrical substations with a capacity of 5,000 kilovolt amperes or more, and electrical transmission lines capable of transmitting 69 kilovolts or more.
Excavation or filling, borrow pits, extraction, processing and removal of sand and gravel and stripping of top soil (but not farm pond construction, field leveling or stripping of sod for agricultural purposes and excavations in connection with development which has received subdivision or site plan approval, which do not require a special use permit.)
Family care homes, foster homes or group homes serving physically handicapped, mentally ill, mentally retarded or other developmentally disabled persons, for more than five such persons.
Farm equipment sales and service.
Farmers' markets over 2,500 square feet in area.
Feed, seed and farm supplies.
Fire stations, rescue squad stations, volunteer or otherwise.
Fish farming and aquaculture.~~

~~Flea markets, temporary or seasonal.~~
~~Food processing and storage.~~
Gift shops and antique shops.
~~Golf courses and country clubs.~~
Group quarters for agricultural workers.
~~Home care facilities.~~
~~Horse racing tracks.~~
~~Horse show areas, polo fields.~~
~~Hospitals and nursing homes.~~
~~Hunting preserve or club, rifle or pistol range, trap or skeet shooting.~~
~~Lodges, civic clubs, fraternal organizations or service clubs.~~
~~Lumber and building supply stores.~~
Manufacture and sale of wood products.
~~Manufactured home parks in accordance with the special provisions of article IV.~~
~~Medical clinics.~~
~~Petroleum storage, other than on a farm for farm use or accessory for a residence.~~
~~Post offices and public buildings generally.~~
~~Professional offices of not more than 2,000 square feet with no more than one office per lot.~~
~~Race tracks for animals or vehicles, including racing courses for power boats.~~
~~Railroad facilities, including tracks, bridges, switching yards and stations. However, spur lines, which are to serve and are accessory to existing or proposed development adjacent to existing railroad right of ways, and track and safety improvements in existing railroad right of ways, are permitted generally and shall not require a special use permit.~~
Rental of rooms to a maximum of three rooms.
~~Rest homes for 15 or more adults.~~
Restaurants, taverns.
Retail sales of plant and garden supplies.
~~Retail shops associated with community recreation facilities.~~
~~Sanitary landfills, in accordance with section 24 40, construction debris landfills, waste disposal or publicly owned solid waste container sites.~~
~~Schools, libraries, museums and similar institutions, public or private.~~
~~Seminaries.~~
~~Slaughterhouses.~~
~~Solid waste transfer stations.~~
~~Storage and repair of heavy equipment.~~
~~Storage, stockpiling and distribution of sand, gravel and crushed stone.~~
~~Telephone exchanges and telephone switching stations.~~
Tourist homes.
~~Tower mounted wireless communications facilities in accordance with division 6, Wireless Communications Facilities, over 35 feet in height.~~
~~Transmission pipelines (public or private), including pumping stations and accessory storage, for natural gas, propane gas, petroleum products, chemicals, slurry coal and any other gases, liquids or solids. However, private extensions or connections to existing pipelines, which are intended to serve an individual residential or commercial customer and which are accessory to existing or proposed development, are permitted generally and shall not require a special use permit.~~

~~Two family dwellings.-~~
~~Upholstery shops.-~~
~~Utility substations.-~~
~~Water facilities (public or private), and sewer facilities (public), including, but not limited to, treatment plants, pumping stations, storage facilities and transmission mains, wells and associated equipment such as pumps to be owned and operated by political jurisdictions. However, private connections to existing mains, with no additional connections to be made to the line, which are intended to serve an individual residential or commercial customer and which are accessory to existing or proposed development, and distribution lines and local facilities within a subdivision or development, including pump stations,, are permitted generally and shall not require a special use permit.-~~
~~Water impoundments, new or expansion of, 20 acres or more or with dam heights of 15 feet or more.-~~
 Waterfront business activities: marine interests, such as boat docks, piers, yacht clubs, marinas and commercial and service facilities accessory thereto, docks and areas for the receipt, storage, and transshipment of waterborne commerce; seafood and shellfish receiving, packing and shipping plants; and recreational activities primarily conducted on or about a waterfront. All such uses shall be contiguous to a waterfront.
 Wayside stands for sale of agricultural products over 500 square feet in area.
~~Wineries, with accessory commercial facilities~~

(c). *Unlisted uses.* The Grantor may petition the Board of Supervisors for approval to establish a use which is: (1) not otherwise prohibited herein, and (2) is consistent with this Deed of Easement, and (3) is otherwise permitted on the Property by the County Code.

5. CONFIGURATION/SUBDIVISION OF THE PROPERTY. (If permitted)

6. GRADING, EXCAVATION, EARTH REMOVAL, BLASTING, AND MINING. Earth removal, except for activities incidental to a *bona fide* agricultural operation, and blasting are prohibited. The exploration for, or development and extraction of minerals and hydrocarbons by mining or any other method is prohibited. Grading and excavation is allowed but shall not materially alter the topography of the Property; grading and excavation shall be allowed for dam construction to create private conservation ponds with prior written approval by the Grantee, and grading and excavation shall be allowed during the construction of permitted structures or associated improvements. Common and customary agricultural or forestal activities such as plowing, erosion control and restoration are permitted activities that do not materially alter the topography of the Property.

7. MANAGEMENT OF AGRICULTURAL AND FORESTAL RESOURCES.

(a). *Silviculture.* All silvicultural activities on the Property shall conform to a Forest Stewardship Plan. The Forest Stewardship Plan shall be prepared by a professional forester recognized by the Virginia Department of Forestry, the U.S. Forest Service, or other recognized professional forest stewardship agency or organization as approved by the Grantee. The Forest

Stewardship Plan shall include recommended Forest Best Management Practices, and other scientifically based recommendations as may be appropriate. The Forest Stewardship Plan shall be updated no later than every five years. Grantor shall provide Grantee a certified, signed and dated copy of the Forest Stewardship Plan, updates and supporting material and information within 30 days of receipt. Grantor shall submit to the Grantee, their successors or assigns, written notice not less than forty-five (45) days prior to the anticipated commencement of any commercial timber harvest. If an aspect of the harvest activities is inconsistent with one or more purposes of this conservation easement, the Grantee reserves the right to require modifications to the harvest activities that will minimize such impacts.

(b). *Agriculture.* All agricultural activities on the Property shall conform with a Farm Conservation Plan prepared by a professional certified and approved by the Virginia Department of Conservation and Recreation, Virginia Department of Agriculture and Consumer Services, an agency of the U.S.D.A., a Virginia Soil and Water Conservation District, or other recognized state or federal Soil and Water Conservation agency or organization as approved by the Grantee. Such Plan shall include recommended Agricultural Best Management Practices and an implementation schedule. Said Plan shall be updated no later than every three years by a certified professional and approved as specified above. The Grantor shall provide the Grantee with a certified, signed, and dated copy of all plans, supporting documents and information within 30 days of receipt.

8. ACCUMULATION OF WASTE MATERIAL. There shall be no accumulation or dumping of trash, refuse, or junk (e.g., old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material) on the Property. This restriction shall not prohibit customary agricultural, horticultural, or wildlife management practices including, but not limited to, establishing brush, compost piles, or the routine and customary short-term accumulation of household trash.

9. NOTICE AND PERMISSION.

(a). *Notice.* Whenever notice is to be given pursuant to any of the provisions of this Deed of Easement, or where a request for permission is required of the Grantee, or for a change of address, such notice or request for permission shall be in writing and shall be deemed to have been given upon (i) delivery by hand, (ii) three days after deposit in the U.S. mail with postage prepaid, for delivery by certified mail, return receipt requested, or (iii) one day after delivery to a recognized national courier service for overnight delivery to:

If to Grantor:

If to County:
County Administrator
101-C Mounts Bay Road
P.O. Box 8784

Williamsburg, VA 23185

With Copy To:
County Attorney
101-C Mounts Bay Road
P.O. Box 8784
Williamsburg, VA 23185

(b). *Permission.* When permission of the Grantee is sought by the Grantor, the Grantee shall submit such request and any supporting documentation in writing to the County. The request shall be considered by the Board of Supervisors at a public meeting as soon as practicable.

10. MISCELLANEOUS PROVISIONS.

(a). *No public right-of-access to Property.* This Deed of Easement does not create, and shall not be construed to create, any right of the public to enter upon or to use the Property or any portion thereof, except as Grantor may otherwise allow in a manner consistent with the terms of this Deed of Easement and the PDR Program.

(b). *Continuation.* The covenants, terms, conditions, and restrictions of this Deed of Easement shall apply to the Property as a whole, and shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs, and be considered a servitude running with the land in perpetuity.

(c). *Enforcement.* In addition to any remedy provided by law or equity to enforce the terms of this Deed of Easement, the parties shall have the following rights and obligations:

1. Monitoring. Employees or agents of Grantee may enter the Property from time to time, at reasonable times, for the purpose of monitoring compliance with the terms of this Deed of Easement. The Grantee shall give reasonable prior notice before entering the Property. The Grantor shall not unreasonably withhold permission.

2. Baseline Data. In order to establish the present condition of the Property, the Grantee has examined the Property and prepared an inventory of relevant features, conditions, and improvements (“Baseline Documentation”) which is incorporated by this reference. A copy of the Baseline Documentation has been provided to Grantor, and the original shall be placed and remain on file with Grantee. The Grantor and Grantee agree that the Baseline Documentation is an accurate representation of the Property at the time of this grant and is intended to serve as an objective information baseline for monitoring compliance with this Deed of Easement. The Grantor and Grantee further agree that in the event a controversy arises with respect to the condition of the Property or a particular resource thereof, the Grantor and Grantee shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy.

(d). *Action at law inadequate remedy.* The parties agree that monetary damages would not be an adequate remedy for the breach of any terms, conditions and restrictions herein contained, and therefore, in the event that the Grantors, their successors or assigns, violate or breach any of the terms, conditions and restrictions herein contained, the Grantee, its successors, or assigns, may institute a suit, and shall be entitled, to enjoin by ex parte temporary and/or permanent injunction such violation and to require the restoration of the Property to its prior condition.

(e). *Restoration.* Upon any breach of the terms of this Deed of Easement by Grantor, Grantee may require by written demand to the Grantor that the Property be restored promptly to the condition required by this Deed of Easement. Furthermore the Grantee retains the right to restore the Property to a condition consistent with the terms of this Deed of Easement and assess the cost of such restoration against the owner of the parcel in violation of this Deed of Easement and as a lien against the Property in violation of this Deed of Easement, provided however, that no such lien shall affect the rights of a subsequent bona fide purchaser unless a memorandum of such lien was recorded among the land records prior to such purchase, and such lien shall be subordinate to any deed of trust recorded prior to the recordation of a memorandum of such lien.

(f). *Failure to enforce does not waive right to enforce.* The failure of Grantee to enforce any term of this Deed of Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve Grantor from thereby complying with any such term. Furthermore, the Grantor hereby waives any defense of laches, estoppel, or prescription.

(g). *Costs of enforcement.* Any reasonable, documented costs incurred by the Grantee in enforcing the terms of this Deed of Easement against the Grantor, including, without limitation, costs of suit and reasonable attorneys' fees shall be borne by the Grantors, provided, however, if the Grantor prevails in any claim, litigation, or administrative order or ruling, the Grantee shall not be entitled to any of the costs or fees described herein.

(h). *No right of enforcement by the public.* This Deed of Easement does not create, and shall not be construed to create, any right of the public to maintain a suit for any damages against the Grantor for any violation of this Deed of Easement.

(i). *Extinguishment and exchange.* Upon the expiration of twenty-five (25) years from the date on which this Deed of Easement is recorded, the owner or successor in interest to the Property which is subject to this Deed of Easement may petition the James City County Board of Supervisors for the extinguishment of this Deed of Easement in exchange for the conveyance to the Grantee of a Deed of Easement on a different parcel located in James City County and in accordance with the PDR Ordinance in place at the time of the recording of this Deed of Easement.

(j). *Property right.* Grantor agrees that the purchase of the perpetual conservation restriction contained in this Deed of Easement gives rise to a property right, immediately vested

in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the purchase bears to the value of the Property as a whole at that time, which is _____ percent (%) as established by the appraisal conducted by _____, dated _____, 2007. If a subsequent unexpected change in the conditions surrounding the Property makes impossible or impractical the continued use of the Property for the conservation purposes specified herein, and the restrictions set forth in this Deed of Easement are extinguished, whether in whole or part, by a judicial proceeding, such extinguishment shall also satisfy the requirements of the Open-Space Land Act (Virginia Code §§ 10.1-1700 et seq.) and Chapter 16A of the County Code. The Grantee, upon a sale, exchange or involuntary conversion due to an extinguishment, shall be entitled to a portion of the proceeds determined by multiplying all the proceeds by the proportionate value established above. All proceeds to which Grantee is entitled from such sale, exchange or involuntary conversion shall be used by the Grantee in a manner consistent with the original conservation purposes of this Deed of Easement.

(k). *Notice of proposed transfer or sale.* The Grantor shall notify the Grantee in writing at the time of closing on any transfer or sale of the Property. In any deed conveying all or any part of the Property, this Deed of Easement shall be referenced by deed book and page number in the deed of conveyance and shall state that this Deed of Easement is binding upon all successors in interest in the Property in perpetuity.

(l). *Relation to applicable laws.* This Deed of Easement does not replace, abrogate, or otherwise supersede any federal, state, or local laws applicable to the Property. Notwithstanding any other provision of this Deed of Easement, the County Code shall apply to the Property. In the event of a conflict between any applicable law and this Deed of Easement, the more restrictive provision shall apply.

(m). *Severability.* If any provision of this Deed of Easement is determined to be invalid by a court of competent jurisdiction, the remainder of this Deed of Easement shall not be affected thereby. The Grantor shall remunerate Grantee for the proportionate loss of value in the Conservation Easement as determined by the Board of Supervisors due to any invalidated provision.

(n). *Recordation.* Upon execution by the parties, this Deed of Easement shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City, Virginia.

(o). *Authority to convey easement.* The Grantors covenant that they are vested with good title to the Property and may convey this Deed of Easement.

(p). *Authority to accept easement.* The Grantee is authorized to accept this Deed of Easement pursuant to Virginia Code § 10.1-1701.

(q). *Proceeds from eminent domain.* If all or any part of the Property is taken by

exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Deed of Easement, in whole or part, Grantors and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount received. Grantee's share of the balance of the amount recovered shall be determined by multiplying the proceeds by a fraction, the numerator of which shall be the value of the conservation easement as determined in section 10(j) and the denominator of which shall be the value of the Property. Grantee shall have the right to appear as a party in any eminent domain proceeding concerning the Property.

(r). *Transfer of easement by grantee.* Neither Grantee nor their successors and assigns may convey or lease the conservation easement established and conveyed hereby unless the Grantee conditions the conveyance or lease on the requirements that: (1) the conveyance or lease is subject to contractual arrangements that will assure that the Property is subject to the restrictions and conservation purposes set forth in this Deed of Easement, in perpetuity; and (2) the transferee is an organization then qualifying as an eligible donee as defined by Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder, or is a public body within the meaning of Virginia Code § 10.1-1700.

(s). *Construction.* This Deed of Easement shall be construed to promote the purposes of this Deed of Easement and the PDR Program.

(t). *Liability and indemnification.* Grantor agrees that Grantee has no obligations, express or implied, relating to the maintenance or operation of the Property. Grantor agrees to indemnify and hold Grantee harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys' fees arising from any personal injury, accidents, negligence, damage, or any claim relating to the Property. Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property and agrees to hold harmless, indemnify, and defend Grantee from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees arising from or out of the existence, actual or alleged, of any and all environmentally hazardous or toxic substances or materials on or under the Property.

(u). *Taxes and assessments.* Grantor shall be responsible for paying all taxes, levies, assessments and other governmental charges which due to the direct action of the Grantor may become a lien on the Property.

(v). *Controlling law.* The interpretation and performance of this Deed of Easement shall be governed by the laws of the Commonwealth of Virginia.

(w). *Entire agreement.* This instrument sets forth the entire agreement of the Parties with respect to this Deed of Easement and supersedes all prior discussions, negotiations,

understandings, or agreements relating to this Deed of Easement, all of which are merged herein.

(x). *Amendments.* This Deed of Easement may be amended only with the written consent of the Grantee and Grantors, and such amendment shall be duly recorded. Any amendment shall be at the sole discretion of the Grantee, and shall be consistent with the Open-Space Land Act (Virginia Code §§ 10.1-1700 et seq.) and Chapter 16A of the County Code. Any such amendment shall also be consistent with the overall purposes and intent of this Deed of Easement.

WITNESS the following signatures and seals:

GRANTOR:

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this _____ day of _____, 2007, by Grantor.

WITNESS my signature and notarial seal.

[SEAL]

Notary Public

The form of this Deed of Easement is approved, and pursuant to Resolution of the Board of Supervisors of James City County, Virginia, duly executed on the --th day of _____, 2007 and this conveyance is hereby accepted on behalf of said County.

_____ Date

_____ County Attorney

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

I, _____, a Notary Public for the Commonwealth of Virginia, do hereby certify that _____, Attorney for James City County, Virginia, has acknowledged the same before me in the jurisdiction aforesaid.

Give under my hand this _____ day of _____, 2007

Notary Public

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

BASELINE

EXHIBIT C

CONCEPTUAL PLAN

DeedofEasementForm_Draft.att2

MEMORANDUM

DATE: September 25, 2007
TO: The Board of Supervisors
FROM: Michael D. Woolson, Senior Watershed Planner
SUBJECT: Better Site Design

This work session will cover the recommendations of the Better Site Design Implementation Committee. This Committee was formed to develop implementation strategies for the Recommended Model Development Principles for James City County. Several of the strategies have already been implemented, some require policy or manual changes, and others require ordinance amendments. Our goals today are to inform the Board as to the progress for implementation of all the Roundtable recommendations and to seek guidance on several items regarding ordinance revisions and amendments. The end result of this process will remove regulatory hurdles and provide incentives, flexibility, and guidance for developers to implement Better Site Design on their projects.

Michael D. Woolson

CONCUR:


John T.P. Horne

MDW/gb
SiteDesign.mem

Better Site Design in James City County

Builders for the Bay – Local Site Planning Roundtable

- Center for Watershed Protection
- Alliance for the Chesapeake Bay
- Peninsula Housing and Builders Association
- James City County

*Recommended Model Development Principles for
James City County*

Today's Agenda

- Briefly discuss all Roundtable recommendations
 - 5 to 10 minutes
- Outstanding issues and further guidance
 - 10 to 15 minutes
- Question and answer session
 - 5 to 10 minutes

Implementation Committee

- Peninsula Housing and Builders Association
 - Mr. Tim Cleary
 - Mr. Bob Cosby
 - Mr. Sean Fisher
- Planning Division
 - Ms. Ellen Cook
 - Mr. Jose Riberio
- Environmental Division
 - Mr. Michael Woolson
- Planning Commission
 - Ms. Shereen Hughes

Objectives of Better Site Design

- Reduce overall site impervious cover
- Preserve and enhance existing natural areas
- Integrate stormwater management
- Retain a marketable product

Recommended Model Development Principles:

Consensus of the Local Site Planning Roundtable

Three categories

- Residential Streets and Parking Lots
 - Principles 1 through 9
- Lot Development
 - Principles 10 through 16
- Natural Areas and Stormwater Management
 - Principles 17 through 24

Residential Streets and Parking Lots

Roundtable Principle 1:

- VDOT should accept staff recommendations and not require BOS action for reduced street width. VDOT should reduce street widths from 26 feet to 24 feet.

Implementation Committee Recommendation:

- Policy Committee of the Planning Commission should look into this and forward recommendations to BOS for further action.

Residential Streets and Parking Lots

Roundtable Principle 2:

- Encourage alternative street designs to reduce overall site imperviousness

Implementation Committee Recommendation:

- Staff to develop Better Site Design guidance document.

Residential Streets and Parking Lots

Roundtable Principle 3:

- “Joint Trench Initiative”, requiring compatible utilities to use same trench for installation.

Implementation Committee Recommendation:

- Peninsula Housing and Builders Association to keep pushing Virginia Department of Conservation and Recreation to allow.

Residential Streets and Parking Lots

Roundtable Principle 3, continued:

- Water and sanitary sewer to be constructed within the pavement section

Implementation Committee Recommendation:

- Either a legislative action from the BOS or policy decision of the JCSA

Residential Streets and Parking Lots

Roundtable Principle 4:

- Reduce Cul-de-Sac impervious cover by minimizing paved turning radii

Implementation Committee Recommendation:

- County standards are in accordance with national standards

Residential Streets and Parking Lots

Roundtable Principle 5:

- Using vegetated open channels for conveying and treating stormwater runoff where permitted

Implementation Committee Recommendation:

- Staff to give guidance in a Low Impact Development section and referenced in the County stormwater BMP manual

Residential Streets and Parking Lots

Roundtable Principle 6:

- Discourage excess parking space construction to minimize impervious cover

Implementation Committee Recommendation:

- Staff to ask for additional information as to why parking requirements are exceeded during plan review

Residential Streets and Parking Lots

Roundtable Principle 6, continued:

- Encourage pervious pavement surfaces when parking requirements are exceeded

Implementation Committee Recommendation:

- Staff developed a porous pavement brochure, not yet available to general public

Residential Streets and Parking Lots

Roundtable Principle 7:

- Encourage the use of shared parking facilities to reduce impervious cover

Implementation Committee Recommendation:

- Staff developed a Model Shared Parking Agreement available to developers

Residential Streets and Parking Lots

Roundtable Principle 8:

- Recommend lowering the handicapped stall width to meet ADA requirements

Implementation Committee Recommendation:

- Staff developed an Ordinance amendment for PC and BOS action

Residential Streets and Parking Lots

Roundtable Principle 9:

- Create an award program through the PRIDE program for the development and engineering community for using Better Site Design in projects

Implementation Committee Recommendation:

- PRIDE has developed a program for single family builders and is developing one for the development/engineering community

Lot Development

Roundtable Principle 10:

- Open space development should be by-right in R-1 at base density. PC and BOS should consider if SUP process creates a barrier in R-1 and R-2 for using open space development. Consider incentives to ensure additional environmental protection

Implementation Committee Recommendation:

- PC and BOS should consider changes to the Cluster Ordinance

Lot Development

Roundtable Principle 11:

- Reduce front setbacks in R-1 and R-2 to 25 feet

Implementation Committee Recommendation:

- Staff developed an Ordinance amendment for PC and BOS action

Lot Development

Roundtable Principle 12:

- Sidewalks should slope to pervious surfaces. Use alternative pavement materials and promote low Impact Development techniques

Implementation Committee Recommendation:

- Staff will develop a Low Impact Development section for the JCC Stormwater BMP Manual

Lot Development

Roundtable Principle 13:

- Incentives to reduce impervious cover through the use of shared driveways and alternative driveway surfaces. Shared maintenance agreements should be available to developers

Implementation Committee Recommendation:

- Staff has developed a shared driveway agreement for developer use

Lot Development

Roundtable Principle 14:

- Conduct annual re-education and develop guidance for homeowner associations regarding open space management

Implementation Committee Recommendation:

- Allow PRIDE program to continue existing programs and develop guidance documents

Lot Development

Roundtable Principle 15:

- Utilize and enforce Chesapeake Bay Preservation Ordinance provisions for septic systems and provide incentives for alternative systems

Implementation Committee Recommendation:

- Continue existing program, some alternative systems allowed already

Lot Development

Roundtable Principle 16:

- Encourage redevelopment and infill practices that minimize land disturbance and impervious coverage

Implementation Committee Recommendation:

- Staff to encourage the Roundtable recommendations where applicable

Natural Areas and Stormwater Management

Roundtable Principle 17:

- Education of general public and homeowners on importance of natural buffers, protection of intermittent streams

Implementation Committee Recommendation:

- Continue existing PRIDE education programs. Staff working on intermittent stream buffer ordinance amendment for BOS action

Natural Areas and Stormwater Management

Roundtable Principle 18:

- Update approved native plant list and educate homeowners on stream buffer regulations

Implementation Committee Recommendation:

- Revise the native plant list and develop a homeowners Open Space Management brochure

Natural Areas and Stormwater Management

Roundtable Principle 19:

- Petition the State to request County receive erosion and sediment control inspection and enforcement authority over public utility projects

Implementation Committee Recommendation:

- Peninsula Housing and Builders Association has petitioned the State for this authority to be granted to localities

Natural Areas and Stormwater Management

Roundtable Principle 20:

- Continue conceptual site plan review to identify tree conservation and open space preservation opportunities

Implementation Committee Recommendation:

- Continue conceptual site plan review when asked for by development community

Natural Areas and Stormwater Management

Roundtable Principle 21:

- Expand JCC 10-point system to include open space options and Planning Commission should examine incentives and flexibility for conservation incentives

Implementation Committee Recommendation:

- Update BMP manual and have Policy Committee examine conservation incentives

Natural Areas and Stormwater Management

Roundtable Principle 22:

- Control quantity and quality of stormwater runoff from new sites

Implementation Committee Recommendation:

- Continue with existing stormwater management program

Natural Areas and Stormwater Management

Roundtable Principle 23:

- Should develop a formal Low Impact Development program and encourage pervious surfaces

Implementation Committee Recommendation:

- Staff will develop a LID component to the BMP manual and will continue to encourage pervious surfaces where appropriate

Natural Areas and Stormwater Management

Roundtable Principle 24:

- Stormwater credit should be allowed for reuse of stormwater runoff for irrigation

Implementation Committee Recommendation:

- Staff to revise BMP manual

Outstanding Issues

Low Impact Development Manual

Better Site Design Checklist

Stormwater BMP Manual revisions to include Better Site Design and Low Impact Development

- How does the BOS want to receive and adopt these final documents (consent calendar, reading file, work session)?

Minor Ordinance amendments

- Front setback reduction in R-2 district (Section 24-236)
- Americans with Disabilities Act compliance for parking lots (Section 24-56)
 - When does the BOS want to start process for these amendments?

Outstanding Issues

Planning Commission / Policy Committee

- Street width and right-of-way reductions
 - Does BOS want the Policy Committee to study and make recommendations?
- Conservation incentives
 - Does BOS want the Policy Committee to study and make recommendations?

Outstanding Issues

Planning Commission / Policy Committee

- Cluster Overlay Ordinance
 - Current cluster ordinance does not have adequate provisions to ensure open space development will be properly designed or implemented
 - Current cluster ordinance does not have adequate provisions to protect the character of existing residential development
 - Does the BOS want the Policy Committee to study potential revisions to the Cluster Overlay Ordinance

MEMORANDUM

DATE: September 19, 2007

TO: The Board of Supervisors

FROM: Richard J. Sebastian, Director of Real Estate Assessments

SUBJECT: Real Property Assessments

The Code of Virginia authorizes localities in Virginia to levy taxes on real property. There is no upper limit on the tax rate that may be imposed. The Code also provides that all general reassessments or annual reassessments shall be at market value.

Cities with a population over 30,000 must reassess at least every other year and counties with a population over 50,000 must have a general reassessment at least every four years. Localities can choose to reassess more frequently. James City County created the Office of Real Estate Assessments in 1972, electing a general reassessment on an annual basis. According to the State Code of Virginia 58.1-3274, the County shall assess all real estate on an annual or biennial basis.

Each locality sets a nominal tax rate based on \$100 of assessed value. The Virginia Department of Taxation conducts an annual assessment/sales ratio study for each locality that evaluates actual sales against the assessed values. Ratio data are analyzed in two ways to measure the quality of assessments. Measures of central tendency, such as the median ratio provide a measure of the general level of the assessments. While the coefficient of dispersion measures the average percentage that the individual ratios vary from the median ratio. The coefficient of dispersion is the chief measure of uniformity and should not exceed fifteen percent. The assessment ratio study evaluates how successful each locality is in reaching 100 percent of market value. The nominal tax rate multiplied by the "assessment/sales" or "median" ratio produces the effective tax rate. The State publishes annual listings of localities with nominal tax rates, the median ratio, and the effective tax rates.

Combined, the ratio of assessments and the coefficient of dispersion are important in determining the relative equity of the payment of real property taxes. A ratio of 94 percent, and a coefficient of five, means that the median assessment of all properties sold was at 94 percent of the actual sales prices and 50 percent of all the assessments were within 89 percent and 99 percent of the sales prices. This has been a consistent target of the County, a mid-90s assessment ratio and a coefficient of dispersion that, combined with the assessment ratio, is under 100 percent.

James City County has stayed with an annual assessment process for a number of reasons:

The first is the predictability of an annual revenue increase in committing to long-term borrowing or to contractual payments such as those required under the City/County school contract. That annual revenue increase takes some pressure off the tax rate in the annual budget process.

The second is that it helps facilitate an open market in real property; annual updates to property information and estimated values help both sellers and purchasers of property in James City County. Real estate brokers, mortgage lenders, and property insurers depend on updated information for real property to offer residents the most efficient, and least expensive, services.

The third is that is the best method of maintaining equity among real property taxpayers; annual updates keep the playing field level in estimating the proportionate share of tax revenue expected from each taxpayer. According to the International Association of Assessing Officer's, Standard on Property Tax Policy, The Principal of Annual Assessment, "Current market value implies annual reassessment of all property. This does not necessarily mean that every property must be reappraised each year. In annual assessment, the assessing officer should consciously reevaluate the factors that affect value, express the interactions of those factors mathematically, and use mass appraisal techniques to estimate property values. Thus, it is necessary to observe and evaluate, but not always to change, the assessment of each property each year to achieve current market value." The obvious advantage of annual reassessments is the ability to review assessments every year and to react to market changes that affect property values.

The fourth is that it keeps the effective tax rate more closely aligned with the nominal rate since public service property is taxed at the effective rate, and not the nominal rate; this is important for both annual revenues and tax equity.

Finally, by trying to incrementally adapt to an active market, it avoids the much larger surges that might occur in a less frequent cycle.

Even with an annual reassessment process, the County (and most other jurisdictions in the "urban crescent" over the past four years) has seen a steady erosion in the median ratio – actual sales prices increasing at a rate faster than reassessments. The County's median ratios for the last five years:

<u>Year</u>	<u>Percent</u>
2001	90.35
2002	86.89
2003	86.07
2004	82.21
2005	75.81

In addition to taxes defined by an assessment process relating to estimates of market value, the County has created a series of exemptions and deferrals to recognize that quality of life can be enhanced by alternatives to a market-based valuation of real property.

Land use taxation is a viable option where tax payments are based on agriculture, horticulture, or forestry uses rather than market value for thousands of acres in the County. The County has adopted a tax rebate system for qualifying commercial and industrial economic development investments that produce tax revenue and jobs. Tax exemption programs are offered to elderly and disabled homeowners whose net worth and income are below certain thresholds. The County has taken advantage of most of the alternatives to estimated market value allowed by the State Code.

I believe this memorandum is responsive to the specific issues raised by the Board. We would be happy to get into as much detail as needed to address other issues or questions.

Richard J. Sebastian

RJS/tlc
assessment07.mem

Attachments:

1. Hampton Roads Communities - Real Property Taxation
2. Counties with Annual Assessment Cycles
3. All Localities with Annual Assessment Cycles

Regionally, as taken from the Weldon Cooper Center for Public Service publication of Tax Rates in 2005, the most recent available, the cities and counties of Hampton Roads have the following characteristics:

HAMPTON ROADS COMMUNITIES - REAL PROPERTY TAXATION

Community	Nominal Tax Rate	Frequency of Median Assessment	Median Ratio	Coeff of Dispers	Effective Tax Rate
Chesapeake (a)	\$1.23	Annual	97.39	9.12	\$1.20
Hampton (b)	\$1.20	Annual	98.03	9.10	\$1.18
James City	\$0.785	Annual	75.81	13.96	\$0.60
Newport News	\$1.24	Annual	73.00	9.17	\$0.91
Norfolk\$	\$1.35	Annual	75.80	16.15	\$1.02
Poquoson	\$1.06	Biennial	77.44	13.19	\$0.82
Portsmouth	\$1.44	Annual	72.55	14.27	\$1.05
Suffolk (e)	\$1.06	Annual	72.00	16.56	\$0.76
Virginia Beach (f)\$1.239		Annual	64.21	12.94	\$0.80
Williamsburg	\$0.54	Annual	77.48	12.78	\$0.42
York	\$0.8175	Biennial	69.83	13.97	\$0.57

- (a) Chesapeake also levies \$0.02 in a mosquito control district
- (b) Hampton also levies a Business Improvement District tax of \$0.04 at Coliseum Central and \$0.20 in Downtown Hampton.
- (e) Suffolk also levies a \$0.16 Suffolk District tax and a \$0.26 Route 17 District tax
- (f) Virginia Beach also levies a Sandbridge Special District Tax of \$1.28

Attachment 2
Counties with Annual Assessment Cycles

Prince William County
Arlington County
Loudoun County
James City County
Roanoke County
Chesterfield County
Prince George County
Fairfax County
Hanover County
Henrico County
Accomack County

Attachment 3
All Localities with Annual Assessment Cycles

City of Fall Church
City of Manassas Park
City of Alexandria
City of Hampton
City of Charlottesville
City of Manassas
City of Newport News
City of Chesapeake
City of Norfolk
Prince William County
Arlington County
Loudoun County
City of Petersburg
James City County
City of Portsmouth
Roanoke County
Chesterfield County
City of Williamsburg
City of Roanoke
Prince George County
City of Richmond
City of Virginia Beach
City of Suffolk
Fairfax County
Hanover County
Henrico County
Accomack County

Assessment07_att3

Attachment 3
All Localities with Annual Assessment Cycles

City of Fall Church
City of Manassas Park
City of Alexandria
City of Hampton
City of Charlottesville
City of Manassas
City of Newport News
City of Chesapeake
City of Norfolk
Prince William County
Arlington County
Loudoun County
City of Petersburg
James City County
City of Portsmouth
Roanoke County
Chesterfield County
City of Williamsburg
City of Roanoke
Prince George County
City of Richmond
City of Virginia Beach
City of Suffolk
Fairfax County
Hanover County
Henrico County
Accomack County

Assessment07_att3