

AT A WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 26TH DAY OF FEBRUARY 2013, AT 4:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

B. ROLL CALL

John J. McGlennon, Chairman, Roberts District
Mary K. Jones, Vice Chairman, Berkeley District
James G. Kennedy, Stonehouse District
James O. Icenhour, Jr., Jamestown District
M. Anderson Bradshaw, Powhatan District

Robert C. Middaugh, County Administrator
Leo P. Rogers, County Attorney

C. BOARD DISCUSSIONS

Mr. McGlennon addressed the other members of the Board stating that the County Attorney had informed him that in instances where a Board member is participating in a meeting from a remote location, the Board must in fact approve it. He stated that to satisfy the requirements of the State Code, a motion to approve would need to be made for Mr. Kennedy, whose medical issues require him to be at his home this evening.

Mr. Icenhour made a motion to approve.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Bradshaw, Mr. Kennedy, Ms. Jones, Mr. McGlennon, (5). NAY: (0)

1. New Virginia Stormwater Management Regulations Briefing

Mr. Scott Thomas, Director of Engineering and Resource Protection, addressed the Board giving a summary of the staff report included in the Work Session Agenda Package. He stated that the importance of the new regulations includes: property protection, are a required element of The Municipal Separate Storm Sewer System (MS4) program plan, are a required element of the Virginia Erosion and Sediment (E&S) law and regulations, satisfies Virginia commitments in the PH2 Watershed Implementation Plan (WIP) to address the Chesapeake Bay Total Maximum Daily Load (TMDL) (urban sector strategy), now incorporates runoff reduction, and will bring equilibrium with neighboring Bay Act localities Stormwater Management (SWM). He stated that the New Stormwater Regulations have an eight-year history, going back to 2004. The original regulations were approved in 2008 and the final regulation was approved in May 2011. He stated that the County is required to adopt and administer by ordinance a Virginia Soil and Water Conservation

Board and Department of Conservation & Recreation (DCR) approved local stormwater management program per the Code of Virginia because the Tidewater locality is subject to the Bay Act and Regulations as well as designated as required to obtain coverage under an MS4 permit.

Mr. Thomas stated that the adopted law requires local adoption no later than June 13, 2013; however, the law has a "substantive progress" provision which allows for a 12-month extension for local implementation. The "substantive progress" application is due by April 1, 2013, and would give a local implementation date of July 1, 2014.

Mr. Thomas stated that the notable differences between the County's current program and the new regulations are that the regulations are equal if not slightly better than the current program and the regulations are based on sound science and current treatment technologies. The County has many of the required elements in place already, and there should be a reduction in legislative case proffers or conditions.

Mr. Thomas stated that the County has had an erosion/sediment plan review and inspection fee for a long time. He stated that there is also a Stormwater facility installation and inspection fee. Currently, Virginia Stormwater Management Program (VSMP) registration and fee collection are independent of the County E&S plan review and land-disturbing process. He stated that the State administers the VSMP program, but the County is required to check to make sure applicants have gone through the VSMP program.

Mr. Bradshaw asked if, in regard to the new combined fee, is there any indication if the total sum of the combined fee will be more or less than the current fees.

Mr. Thomas stated that under the new VSMP Program there will be fees for permit registration, for permit modification or transfer, and for annual maintenance. Mr. Thomas directed the Board to view the Summary of Fee Schedule depicted in the PowerPoint handouts.

Ms. Jones asked how the fees were determined.

Mr. Thomas stated over the review process of the last eight years, the fee scheduled was revised and honed until it was included in the new regulations.

Mr. McGlennon asked that if these fees are statewide fees and every locality pays the same.

Mr. Thomas stated yes.

Mr. Icenhour asked if these fees were just for the new program regulations, and wanted to verify that they do not supersede any of the County's fees.

Mr. Thomas stated yes. These fees would be in addition to whatever fees the County has.

Mr. McGlennon asked about the coverage for large scale built outs like planned developments.

Mr. Thomas stated that the developer would get the permit and then would continue to pay

the annual fee for every year that the build out continued.

Ms. Jones asked about the terminology "coverage."

Mr. Thomas stated that it means that if you get the permit and abide by the rules and regulations stated in the permit, then you are covered and compliant with the permit.

Mr. Thomas noted that in the handouts for the PowerPoint presentation that there is a snapshot of mid-year data for the County. He stated that it shows what the County has collected and what would have been collected under the new VSMP program.

Ms. Jones noted that the new program regulations are basically doubling the cost to the applicant.

Mr. Thomas stated yes, but it is also allowing the County the opportunity to recoup plan review costs that the County has not been able to do before.

Mr. Icenhour asked for clarification on the fees. He stated that the applicants had been paying these fees to the State, but now a portion of the fees would be coming back to the County. So, in fact, the applicant has been paying these fees all along, it is not being doubled. He stated that the funds are being distributed differently than they were before.

Mr. Thomas stated that the fee structure is different and the annual permit maintenance fee is new and the some of the fees are higher, but the applicant has been paying two types of fees, one to the County and one to the State.

Mr. Thomas stated that staff recommends maintaining the current County fee structure and adopting the statewide VSMP fee schedule in accordance with most current law and regulations and the model ordinance. He stated that this would provide equilibrium with neighboring Bay Act communities and consistency for the development community.

Mr. Thomas stated that the next milestone event is the minimum "substantive" progress submittal. He stated that if the extension is granted, then the County has a lot of work to do over the next year. He stated that the Engineering and Resource Protection Division would be identified as the local program/stormwater program administrative/VSMP authority for the purpose of the VSMP program. He stated it would be necessary for the Board to adopt a "stand-alone" ordinance, and there would be other housekeeping updates that would have to be made to other ordinances.

Mr. Icenhour questioned having information about the program in several different ordinances. He stated that it would make the process difficult for the development community.

Mr. Thomas stated that if looking purely at the ordinances, yes it would be in three different places. However, staff intends to condense the information down and post it on the County website to make it easier.

Mr. Thomas stated that at this time, there is no intention of adopting any more stringent criteria. He stated that staff intends to use the State clearinghouse website and the new State SWM

handbook. He stated that staff would continue to refine the final ordinance and add in any additional elements beyond the base model template.

Mr. Thomas asked the Board members if they concur with staff's general approach and overview.

Mr. Icenhour asked Mr. Middaugh if the guidance from the Board needs to be in the form of a formal motion or if agreement within the Work Session is sufficient.

Mr. Middaugh stated that agreement within the Work Session is fine.

Mr. Icenhour asked if the one-year extension is pro-forma, or is there the chance that it can be denied and then the County is stuck with a July 1, 2013, deadline.

Mr. Thomas stated that there is no reason to believe that if staff gets the application submitted on time, the State would not grant the extension.

Mr. Allen Murphy, Director of Development Management, noted that the State has not completed all of its work either. It is still working on its website and refining its manuals. Therefore, there is no reason to believe the extension would not be granted.

Mr. Middaugh noted that Mr. Thomas and his staff are well regarded within the State for their Stormwater work and James City County is ahead of many localities and jurisdictions in their Stormwater Program.

Mr. Bradshaw asked if staff anticipates the State changing or revising its model ordinance in the coming months.

Mr. Thomas stated that it is anticipated that it might change in the spring due to the MS4 portion of the regulation. He stated that he does not believe that the changes will be significant.

Mr. McGlennon asked if the County is submitting independently of other jurisdictions.

Mr. Thomas stated yes.

Mr. McGlennon stated however, we are anticipating that all of the localities in the Tidewater Region being treated as a block. He asked what would happen if one of these localities did not get the extension.

Mr. Thomas stated that the application is due to the Regional Office, and they are beginning to ask for portions of it in incremental stages. He stated that he believes that the Regional Offices have a pretty good handle on the localities that may or may not do this and are in a position to help them more.

Mr. Rogers stated that he views this situation as similar to what happened with the Chesapeake Bay Ordinance where there were one or two localities that did not adopt the ordinance and the State had to take them to court to bring them into compliance. He stated that it does not

seem likely here since the State does not appear ready with its own program; however, it may eventually happen.

Mr. Bradshaw asked if staff has made any determinations that there might be some partnerships with other localities that could be engaged in.

Mr. Thomas stated that if the one-year extension is granted, then one of the elements is that the County must explore these types of partnerships. He stated that some of the opportunities would be our local soil and water conservation district or our neighbors. He stated that staff feels that we have a good program and we anticipate that other localities would be coming to us.

Mr. Bradshaw asked that if others are learning that we are ahead of the curve and want to partner with us, is that something that we are giving consideration.

Mr. Thomas stated that working with the local soil and water conservation district would be much easier. In regard to working with other localities, that is something that staff will have to evaluate.

Ms. Jones asked for clarification on the fees. She stated that the new fee schedule will have a significant impact on applicants. She questioned what the options are if the Board does not adopt this fee schedule today. She asked if the other localities are adopting this same fee schedule.

Mr. Thomas stated that it is hard to get a handle on what other localities are currently doing. He stated that he believes that once the extensions are filed, it will be easier to get a summary of what other localities are doing. He stated that the fee schedule is pretty much established based on the passage of the law. Localities may raise or lower the actual amounts in the different tiers; however, the State will still take its 28 percent based on the fee schedule shown.

Mr. Murphy stated that what staff is proposing is basically a placeholder ordinance. The final ordinance will be adjusted and refined, as well as subject to a public hearing.

Mr. McGlennon asked how these fees will relate to the cost for the County in staff hours.

Mr. Thomas stated that staff has examined the program costs and revenues cover roughly 10 percent of the program costs. He stated that this fee schedule may bring that up about the 40 percent range. He stated that it will not cover cost completely.

Mr. McGlennon stated that the fees are not coming close to recouping the cost to the County.

Mr. Icenhour asked if this program will increase the staff requirements.

Mr. Thomas stated that at this time the program can be implemented with the current level of staff.

Mr. Bradshaw asked about the common plan of development.

Mr. Thomas stated that at this time, staff is not sure how it will work. He stated that it is a

hot topic. He stated that the Home Builders Association will probably give a lot input to the State on this topic. He stated the overlap is not as bad, in James City County, as it is in other localities.

Ms. Fran Geissler, Director of Stormwater Division, stated that that language is being pushed by the Environmental Protection Agency, and the State is fighting it as well.

Mr. Bradshaw stated that according to the way the ordinance reads, if two plots of land are adjacent to each other with a plan to do land disturbance of more than 2,500 square feet, then those two plots would be treated as a common plan of development, regardless of whether or not they are related. He stated that he cannot believe that the ordinance is interpreted that way, but that is how it reads.

Mr. Thomas stated that the stage of development would play a factor. However, this is still a topic that is being debated and refined.

Mr. McGlennon asked when the Board might be looking at a draft of the ordinance.

Mr. Thomas stated that once the extension is granted, movement on the ordinance will happen pretty quickly. He stated that a draft of the ordinance would probably be back to the Board in the fall.

Mr. Thomas asked for the Board's concurrence on assigning the administrative ability to the Engineering and Resource Protection Division, on drafting the model ordinance as a placeholder ordinance, and on filing for the one-year extension.

Mr. Bradshaw stated that it seems to be the appropriate action to take.

The rest of the Board concurred with Mr. Bradshaw.

2. Jamestown Beach Briefing

Mr. Paul Holt, Director of Planning, addressed the Board giving a summary of the Staff Report included in the Work Session Packet.

Mr. John Carnifax, Director of Parks and Recreation, addressed the Board stating that he has given the Board an overview of the case and is available to answer any questions that the Board has.

Mr. McGlennon asked Mr. Carnifax to put up the large map and give the Board a brief orientation before answering questions.

Mr. Carnifax explained that the map is just a conceptual plan and subject to change. He pointed out the areas where the expanded parking would go and the areas that would be worked on as a result of this case. He explained that the covenants from the grant funds require that the County own the property in perpetuity; however, there is nothing stating that the County cannot sub-contract out the operation of the Vermillion House or any other opportunities of that type. He stated that at some point if the Board decided to dispose of the property that would cause a whole different set of problems in regard to returning money and grant funds.

Mr. Icenhour asked Mr. Carnifax to roughly point out the areas on the maps that are subject to the covenants of the grant funds.

Mr. Icenhour asked for clarification about the land included in the re-zoning application.

Mr. Holt and Mr. Carnifax stated that all of the land on the beach side of Jamestown Road is being included in the re-zoning application. The other side of the road, where the marina is, is not being included in the re-zoning.

Mr. Icenhour stated that the marina would remain a B-1 zone with a mixed-use designation.

Mr. Holt stated yes.

Mr. McGlennon stated that the re-zoning is just making the land designation fit the ownership of the property and the intended use.

Mr. Bradshaw asked how the ordinance designation and the covenants work together, or does one supersede the other.

Mr. Rogers stated that they are two separate bodies of law that would apply to the property. He stated that the zoning can be changed by the Board at a later date. Also, the covenants have option provisions which allow the owner to buy back the easements or transfer them to a different area of the property.

Mr. Icenhour asked if the Board left the zoning as B-1 and developed it B-1, it would still be a non-conforming use with the Comprehensive Plan.

Mr. Rogers stated that if it was developed B-1, it would be in compliance with the zoning, but possibly non-conforming with the Comprehensive Plan. However, a public park is not permitted in a B-1 district, so if this land is to be a public park, it has to be re-zoned.

Mr. Bradshaw stated that if it is not a public park, then the County is in violation of the requirements of the LCWF grant.

Mr. Icenhour asked in regard to the Special Use Permit (SUP) application, which states very specific actions that staff wants to take and is not an overall approval for the whole vision.

Mr. Carnifax stated that the SUP is part of declaring the land a public park.

Mr. Icenhour stated that his concern is that the Board maintains control over what happens with this property over time.

Mr. Carnifax reiterated that this is a conceptual plan that is subject to change. All staff is looking for now is to change the designation to Public Lands and move forward with the beach restoration, parking, and bathrooms. Everything else in the conceptual plan is open for change, or to be put on hold by this Board or any future Board.

Ms. Jones made note of the grant funds that the County accepted when purchasing this property. She stated that this is a situation where these grants came with restrictions, and she does not believe that the public was aware of the restrictions that came with the grants.

Mr. McGlennon stated that a significant portion of the cost of this land was funded by the grants and he does not believe that there was a question in anyone's mind about the purpose of this land and the restrictions of those grants.

Mr. Rogers noted that the Virginia Land Conservation Grant has a lot of flexibility built into and it can be moved around on the property. He stated that the preservation area can be moved to a different area on the property if necessary.

Ms. Jones stated that in regard to the B-1 designation, it was stated that public parks are not allowed in an area zoned B-1. She questioned why then the campground is allowed to operate as a public campground.

Mr. Rogers stated that it was a private business that was purchased by the County and turned into a public campground. He stated that it is a non-conforming use and any expansion would be limited by the zoning.

Mr. Bradshaw stated that in 1968 or so when the ordinance was adopted, there were three or four pieces of property that were zoned the same way.

Mr. McGlennon asked if the Vermillion House was renovated, would it then be able to be used as a venue, and could the County contract out the operation of it.

Mr. Carnifax stated that there have been several private individuals that have expressed interest in operating the Vermillion House.

Ms. Jones asked about the condition of the house.

Mr. Carnifax stated that it is weatherized. He stated that staff has done some minor repairs to stop leaks. He stated that for the Vermillion House to become a revenue producing facility, the estimated cost of repairs and updates was \$700,000. He stated that the County has begun the application for the historical site designation for the house. He stated that it would not limit what the County could do to the inside of the house.

Mr. Kennedy stated that he has concerns about the County getting into private business. He stated that then the County is basically subsidizing competition for local, small businesses. He stated that he hopes this is approached with caution, with an eye toward the small businesses so that the County is working with them instead of against them. He also asked why the zoning was not done as part of the original acquisition.

Mr. Rogers stated that at the time, the County was not sure what was going to be done with this land. He stated that the Shaping our Shores Master Plan was still being developed, so it was decided to bring the zoning back to the Board at a later date.

Ms. Jones stated that she doesn't understand why this property was not included in the zoning to Public Lands like all the other County owned property.

Mr. Rogers stated that he was not involved in that decision at the time and likely the previous County Administrator or Development Manager had a reason for not having it included. However, there was uncertainty surrounding this land and how it was going to be used.

Mr. Carnifax stated that during the Shaping our Shores process, there was a lot of discussion about the marina and its mixed use designation. Perhaps the issues with the marina are the reason it was not included in the re-zoning of the entire County owned property.

Mr. Kennedy asked what has caused the change of mind now to re-zone it to Public Lands. He also asked if the house is not historical, is there any thought about just tearing it down.

Mr. Carnifax stated that he agrees that the situation with the house needs to be addressed sooner rather than later. He stated that the Board has the decision about the house. It can be razed or it can be restored. He stated there is money allocated, as a placeholder, in the FY 2015 Capital Improvements Program (CIP) for the house. He stated that between now and then, that decision needs to be made.

Mr. Kennedy stated that the decision about the house should be made now with this proposal.

Mr. McGlennon stated that while he agrees with Mr. Kennedy that the house needs to be discussed, he does not believe it is central to the reason that the case is before the Board right now. He stated that the case was brought before the Board because of the anticipation of more intense park use and some basic things like restrooms, parking, and beach stabilization that need to be done for that usage. As it begins to be used as a public park, the conformity with the zoning and the Comprehensive Plan comes in to play, hence the re-zoning application.

Mr. Kennedy stated that he understands that, his point is that some of these other decisions need to be made instead of continuing to put them off until later. He stated that it has been four years since the Shaping our Shores Master Plan has been discussed.

Mr. McGlennon stated that the Shaping our Shores Master Plan has not been utilized because the County has not had the resources.

Mr. Kennedy stated that he is not sure that the County has the resources now either.

Mr. McGlennon stated that there is money allocated in later budgets and there are also grant funds for restoring the beach.

Ms. Jones stated that she does not understand the zoning application having an SUP with it for a recreational facility. She also asked why the public could not visit the beach, even if it stayed with the B-1 designation.

Mr. Holt stated outside the B-1 business use, there would not be the public access, or the public restrooms, or the public trail. To establish those improvements, the land must be re-zoned to

PL. He stated that the beach would be the recreational facility, and under the PL designation, that requires an SUP.

Mr. Rogers stated that in regard to Mr. Kennedy's statement about timing, this property was acquired in 2006 and the PL zoning category did not exist until July of 2007. He stated that it was shortly after the adoption of the ordinance that almost all County owned property was rezoned PL. Mr. Kennedy asked if the plan can be scaled back and minimized.

Mr. Carnifax stated yes. He stated the conceptual plan can be altered and the effect on the land minimized and it would still be in conformity with the grants. He stated that some grants are more specific, so if the County accepts one for the beach, then the beach must be improved.

Mr. Kennedy asked if the developments of this property are required.

Mr. Carnifax stated they are not required.

Ms. Jones asked if the Board had not adopted the PL ordinance, what would the zoning of this property be.

Mr. Murphy stated that likely it would have been A-1.

Ms. Jones asked when the PL ordinance was initiated and why.

Mr. Holt stated that there was an initiating resolution issued by the Board in April 2006 to begin working on the PL zoning category.

Mr. Rogers stated that the PL designation was his idea. He stated that lands that are used solely for public use and shown on the Comprehensive Plan as public use should have a public use designation. He stated that it is the County's way of controlling the use of the land now and in the future.

Ms. Jones asked if the PL ordinance was drafted by County staff or if it was based on a model ordinance.

Mr. Rogers stated that we drafted it on our own.

Mr. Middaugh stated that other localities have their own way of doing the same thing. He stated that it is not an uncommon concept.

Mr. McGlennon stated that the Board has agreed to take up this case again at the March 12 meeting.

Mr. McGlennon stated that there are some appointments listed on the regular meeting agenda. He asked the Board if a Closed Session was necessary.

Mr. Kennedy asked if staff had reached out to Mr. Jack Fraley in regard to his interest in serving on the Board of Zoning Appeals (BZA).

Mr. Middaugh stated that no one had contacted him. He stated that staff did not realize he was interested.

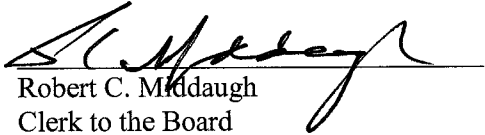
Mr. Kennedy asked that the BZA appointment be deferred then.

Mr. Icenhour made a motion to appoint Mr. Frank Abbott to the Historical Commission and Mr. Doug Powell to the Colonial Community Criminal Justice Board.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Bradshaw, Mr. Kennedy, Ms. Jones, Mr. McGlennon, (5). NAY: (0)

D. ADJOURNMENT

At 5:51 p.m., Mr. McGlennon recessed the Board until the Regular Meeting at 7:00 p.m.


Robert C. Middaugh
Clerk to the Board