

AT A MEETING OF THE MIDDLESEX COUNTY BOARD OF SUPERVISORS  
HELD ON TUESDAY, OCTOBER 19, 2004 IN THE BOARD ROOM OF THE  
WOODWARD BUILDING, SALUDA, VIRGINIA:

Present: Lenora O. Weber, Saluda District  
Wayne Jessie, Sr., Jamaica District  
Fred S. Crittenden, Pinetop District  
John D. Miller, Jr., Saluda District  
Kenneth W. Williams, Pinetop District

Charles M. Culley, Jr., County Administrator  
Michael T. Soberick, County Attorney

**CALL TO ORDER**

Mrs. Weber called the meeting to order at 7:30 P.M. Mr. Crittenden opened with a prayer and Mr. Culley led in the Pledge.

**PUBLIC HEARINGS – CONSIDERATION OF REPEALING THE DRAGON RUN WATERSHED MANAGEMENT PLAN**

Mrs. Weber announced the instructions for public speaking, prior to opening the floor for comments. The Dragon Run Watershed Management Plan had been adopted by the Board of Supervisors on May 18, 2004; this meeting was to consider repealing it. Mrs. Weber opened the floor for comments from the public.

Prue Davis – Chair of the Dragon Run Steering Committee. Requested that no action be taken until the Committee could meet to fully discuss the issues.

David Fuss – Staff support for the Dragon Run Steering Committee. Mr. Fuss stated the names of the committee members that were in attendance. The Board was reminded that the Plan was not developed by the Planning District Commission, but by the Steering Committee, which is made up of two landowners and one supervisor from each County. Mr. Fuss presented a list of planning principals, written by Edward McMahan, on which the recommendations of the plan are based. Mr. Fuss invited everyone to attend a meeting with Mr. McMahan on November 30<sup>th</sup>.

Pat Terrell – Advisor on the plan. Mrs. Terrell commented that it had been a 2-year process to develop the plan; requested no action and giving time to work with the landowners.

Janet Smith – Representing the Concerned Citizens of Middlesex; recommended no action. Everyone has a stake in the plan, not just the landowners. Encouraged updating the comprehensive plan with conservation management, however, do it with planning, not reacting.

Mike Anderberg – Has been a regular participant in the group; one of seven Middlesex residents that participated. According to Mr. Anderberg, the Comprehensive Plan only mentions the Conservation District, a 100-foot strip at the Dragon. No restrictions are imposed.

John “Buddy” Moore – Agreed that more than just the adjoining landowners would be effected, because it is a watershed management plan, which impacts 30% of taxable land in the County. Mr. Moore pointed out that by adopting, the Board was also accepting implementation of the policies, including a sliding scale tax rate for landowners. In addition, the plan obligates funding and financing for the Planning District Commission. Protection of the Dragon Run is needed, but something needs to be done now with people coming up the Piankatank River with chainsaws to cut. Mr. Moore added that the Zoning Ordinance restricts more than just the 100 foot buffer, it is a 100 foot buffer from certain types of soils.

Jimmy Pitts – Requested confirmation from the Planning Director on how the Middlesex County Zoning Ordinance compares to that of other adjoining counties.

Robert Hudgins – Mr. Moore is correct in that he has seen the people come up in boats with chainsaws. He noted that the more public access is provided, including the more nature trails, the more people will use it and the worse it will become.

Warren Milby – read the disclaimer that was included in the Plan.

W. D. Edwards – The County does not need another layer of bureaucracy; the County’s zoning ordinance is good; requested the plan be repealed.

Andy Lacatell – with the Nature Conservancy – 600 acres in Middlesex County have been bought by the Nature Conservancy along with 2000+ acres in King and Queen. The attempt is to maintain traditional uses for the property, including working forests, protecting the economic base, but limiting access, such as for hunting. The Brown tract purchased by the group was slated for development if sold. He added that John Hancock owns a quarter of the acreage in the watershed, however, in 5-10 years, the ownership will change. He suggested continued work on the plan, and representation by the landowners.

There being no further comment, the public portion of the hearing was closed. In response to questions about the County’s zoning ordinance, Mr. Higgins responded that the process for conserving the Dragon Run area was begun in 1985, and Middlesex County came the farthest ahead by establishing the Dragon Run Conservation District as part of the Zoning Ordinance. Mr. Higgins commented that the Management Plan could be seen as a process for the surrounding counties to correct their problems of not having a process to deal with conservation as Middlesex has. In Mr. Higgin’s opinion, the County should keep a partnership with the other counties, however, they need to come up to the same level of protection and conservation as what Middlesex has done.

Mr. Miller commented that as a member of the Steering Committee, he always tried to look out for the landowners at meetings and there is both good and bad in the plan. Mr. Miller also noted that there was currently a vacancy representing Middlesex County on the Steering Committee. Mr. Williams agreed that the County has done its part and that the Plan should be further studied.

Mr. Crittenden questioned Mrs. Davis regarding the status of Essex County ordinances to preserve the Dragon. Mrs. Davis commented that Essex had the property bordering the Dragon zoned for agricultural uses. Mr. Crittenden suggested that Essex and other counties should revise their own plans before they judge what Middlesex County has in place. Mr. Crittenden also commented on the small print disclaimer by the Planning District Commission and the fact that by going with a regional plan the individual counties lose control. Also, in this case, the landowners should be the ones calling the shots, not government workers. Mr. Jessie agreed, adding that the landowners are good stewards and others need to come up to par.

The motion to rescind the Dragon Run Watershed Management Plan was made by Mr. Williams, seconded by Mr. Crittenden and carried unanimously.

### **PUBLIC HEARING – ORDINANCE AMENDMENT 2004-10, AMENDING ARTICLE 7, LOW DENSITY RURAL DISTRICT AND ARTICLE 22, DEFINITIONS**

Mr. Higgins presented application 2004-10, an application to amend Article 7, Low Density Rural District and Article 22, Definitions of the Middlesex County Zoning Ordinance, as submitted by the Middlesex County Planning Commission. These amendments would establish special exception criteria for sport shooting facilities, including (1) property requirements (2) fencing and posting requirements; (3) submission of layout, noise abatement and safety plans and (4) limitations of expansion. The amendment would also establish a definition for the term, "firing point". It was noted that even if an application meets the minimum requirements as proposed, approval of the application was not guaranteed, and additional requirements could be attached to approval.

Most significant are property requirements, proposed as follows:

- The minimum property size for a sport shooting facility would be set at 150 acres.
- The minimum distance required from any firing point to the nearest property line would be 1000 feet.
- No property containing a sport shooting facility shall be located within 500 feet of a property in the Residential, Village Community or Cluster Development zoning districts;
- A minimum of 300 feet of mature forested buffer shall be provided on the perimeter of the property for noise reduction.

Additional requirements are included for backstops, baffles and side berms for outdoor ranges and requirements for indoor ranges. Fencing, posting and design requirements are also provided.

On a 9-1 vote, the Planning Commission recommended approval of the amendment application with the following revisions:

- Adding language regarding the diagram of the layout as following: "Existing and proposed finished contours at two (2) feet intervals must be shown";
- Adding language for notification of property owners as follows: "In addition to the requirements of Section 15.2-2204 of the Code of Virginia, all property owners within 1,000 feet of the property proposed for a sport shooting facility shall receive notification of the public hearing."

Mrs. Weber opened the hearing for comments from the public. Mr. Ray Ogden commended the Planning Commission for their work on the proposed amendments. Mr. Ogden questioned the need for minimum requirements for the length of a protective side berm. In addition, he believed that the minimum distance from adjoining properties in a Residential, Village Community or Cluster Development zoning district should be 1000 feet, not 500. There being no further comments, the public portion of the hearing was closed.

Mr. Crittenden questioned if there was a need to require that the course be certified; Mrs. Weber noted that that could be addressed on a case-by-case basis. Mr. Miller agreed that the minimum distance from all properties should be 1000 feet. Mr. Soberick noted that the requirement for side berms to exist along the entire length of the firing range could be added. In addition, the Board could add a requirement that the range be operated by certified, trained and qualified personnel, and then it could be decided on a case by case basis whether they meet the criteria.

The motion to adopt the amendments as recommended by the Planning Commission, in addition to the following, was made by Jessie seconded by Mr. Crittenden and carried unanimously:

- Increasing the requirement that no property containing a sport shooting facility shall be located within 1000 feet of a property in the Residential, Village Community or Cluster Development zoning districts;
- Side berms are to be located along the entire length of the range, at a minimum height of 10 feet;
- The range is to be operated by certified, trained and qualified personnel.

### **PUBLIC HEARING – SPECIAL EXCEPTION APPLICATION 2004-10, SPORTS SHOOTING FACILITY**

Mr. Higgins presented Special Exception Application #2004-10, submitted by the Boy Scouts of America to establish a sports shooting facility at property being developed into a major campground facility for the Scouts. The property, Tax Map 7-57, contains 231.7 acres. The proposed sport shooting facility would have three principal elements: a rifle range, an archery range and a sporting clays/skeet range. The initial staff recommendation for approval was based on a preliminary site plan dated August 9, 2004. The Planning Commission based their recommendation on a site plan dated October 7<sup>th</sup>. A revised site plan submitted on October 14<sup>th</sup> shows changes made by the applicant to accommodate the concerns of abutters regarding safety, noise and impact on eagle's nests. The existing eagle nests have two

protective zones around them, (1) a 750 foot no disturbance easement and (2) a ¼ mile nesting easement. The shooting facilities have been moved outside the critical 750 foot easement. Additional review by State and Federal officials should be made a condition of the approval. Additional limited concerns by staff regarding the impact on adjacent properties could be addressed with additional conditions, such as switching the archery and rifle ranges which would move the rifle range further away from adjacent property lines. In addition, the existing forested buffer should be maintained between the property and the adjacent property to minimize noise impacts.

The Planning Commission recommended approval of the application with the following conditions:

1. The sport shooting facility shall be located on the property as shown on the revised preliminary site plan dated October 7, 2004. However, the location of the proposed rifle range and archery range shall be switched to minimize impact on abutters.
2. A minimum of 300' of existing forested buffer shall be maintained between the sport shooting facility and adjacent properties.
3. Backstops (minimum 20 feet in height), baffles and side berms shall be installed on the rifle range.
4. The area used as a sport shooting facility shall be fenced and posted (at least every 50 feet) so that access to the site is controlled to insure the safety of patrons, spectators and the public at large.
5. The addition of any new firing points to this sport shooting facility must obtain approval from the Middlesex County Board of Supervisors.
6. Any applicable State and Federal permits shall be obtained in relation to the eagle's nests prior to construction of the sport shooting facility.
7. No higher than a .22 caliber pistol/rifle can be used at the proposed rifle range.

Mrs. Weber opened the hearing for comments from the public. The following people offered comments:

Jason Miles, representing Bay Design Group and the Boy Scouts of America – it is critical to centralize campsites on the property. Have met with landowners and have tried to address their concerns by shifting the range.

Kerry Robusto – questioned why the range was moved to its proposed location. Donald Caskie from Bay Design Group responded that there was a concern with sound and the adjoining property owner had asked that the range be relocated.

Dick Collins, representing the Boy Scouts of America – the Scouts run outside programs and are excited about the eagle's nests being present as they can be added to instructional programs.

Donald Caskie – this is a good facility and a lot of planning has gone into the layout and to keeping up with the changing criteria that the Planning Commission was trying to establish

Ray Ogden – questioned why a facility of this type, or shooting ranges are not allowed in Resource Husbandry Zoning Districts. Mr. Higgins responded that that district does not allow for development of any kind; it is a district to help preserve forested or agricultural land.

John England – The Board of Supervisors has bent over backwards to work with county citizens to allow the shooting facility use while at the same time being sensitive to noise issues; tree buffers will assist.

There being no further comment, the public portion of the hearing was closed. Mr. Jessie commented that the developer had done a good job in talking to the neighbors and helping to protect them from nuisance noises; he had received no phone calls in objection to the proposal. Mr. Williams commented that he had received no phone calls either.

The Board of Supervisors discussed the impact of the minimum requirements for shooting facilities that were adopted by the previous application. The current application locates the range at 750 feet from the location of the eastern eagle's nest, but approximately 650 feet from the property line. If Amendment Application #2004-10 requirements are enforced, then the range must be 1000' from the property line. There was discussion between the Board members, Planning Director and County Attorney regarding whether or not this application was required to meet the minimum standards that were not in place when their application was made. According to Mr. Soberick, the minimum requirements must be met unless the Board votes to rescind the previous action. Mr. Caskie commented that it would be very difficult to achieve the layout for the camping area if they have to conform to the additional buffer. Mr. Collins said that it could be worked out, but would be difficult.

The motion approve the concept of the plan and the application for a shooting facility with the following conditions was made by Mr. Jessie, seconded by Mr. Miller and carried unanimously:

1. All firing points shown on the revised site plan dated October 14, 2004 shall be at least 1,000 feet from all property lines.
2. A minimum of 300' of existing forested buffer shall be maintained between the sport shooting facility and adjacent properties.
3. Backstops (minimum 20 feet in height), baffles and side berms shall be installed on the rifle range.
4. The area used as a sport shooting facility shall be fenced and posted (at least every 50 feet) so that access to the site is controlled to insure the safety of patrons, spectators and the public at large.
5. The addition of any new firing points to this sport shooting facility must obtain approval from the Middlesex County Board of Supervisors.
6. Any applicable State and Federal permits shall be obtained in relation to the eagle's nests prior to construction of the sport shooting facility.
7. No higher than a .22 caliber pistol/rifle can be used at the proposed rifle range.

**PUBLIC HEARING – REZONING APPLICATION 2004-06, JAMES KENNEDY**

Mr. Higgins presented Rezoning Application #2004-06, an application to rezone the remainder of a 2.9 acre parcel from Residential (R) to Waterfront Commercial (WC). A 12-unit manufactured home park, which is a nonconforming use in both the WC and R districts is currently on the property (Tax Map 41-91). The intent of the rezoning is to eliminate the manufactured home park over time and to provide small commercial shops for small business. This site is located within an existing waterfront commercial area, primarily occupied by Chesapeake Cove Marina. Three (3) single-family dwellings abut the proposed site to the south and east; vacant land abuts the site on the west. Because of the presence of existing and future single-family dwellings in the area, the impact of higher intensity commercial uses, such as noise, dust, odors and visual impact, should be considered with the request. The following proffers were submitted by the owner and recommended for the Board of Supervisors' approval by the Planning Commission:

1. Up to 12 buildings for rental to small businesses shall be constructed on the property.
2. For each one (1) small business building constructed, one (1) manufactured home will be removed from the property.
3. All buildings shall be no smaller than 1,500 square feet and shall be no greater than 2,500 square feet in size.
4. All buildings shall be a minimum of twenty-five (25) feet apart and fifty (50) feet from the edge of the right-of-way.
5. No permanent outside display or storage of materials or merchandise shall be permitted.

Mrs. Weber opened the hearing for comments from the public. Mrs. Janet Smith asked the Board to consider, with this application and others, what they are approving and requiring for commercial development, making sure to protect esthetic values. The applicant, Mr. Kennedy, stated that the building fronts would be suited for waterfront commercial uses and that privacy fences would be installed between each. There being no further comment, the public hearing was closed.

Mr. Williams commented that his only concern was with people being required to move. Mr. Kennedy informed the Board that he had given sufficient notice to his tenants that they would be required to move. The motion to accept the proffers as submitted by the applicant and approving the application was made by Mr. Williams, seconded by Mr. Crittenden and carried unanimously.

**PUBLIC HEARING – SPECIAL EXCEPTION #2004-12, YARRINGTON**

Mr. Higgins presented Special Exception Application 2004-12, an application to locate more than one (1) principal residential structure on an individual parcel of land for an immediate family member in the Village Community (VC) Zoning District. This application, made for Tax Map 29-40, meets the minimum criteria for application by being 12.28 acres in size (a minimum of 5 acres is required). The Planning Commission recommended approval of the application with the following conditions:

1. The Health Department shall approve a permit for a new septic system or connection to an existing septic system prior to obtaining a Zoning and Building Permit.
2. The property owner shall remove one of the manufactured homes from the property within ninety (90) days of the discontinuance of use.
3. In terms of size, the proposed manufactured home must be a doublewide.

Mrs. Weber opened the hearing for comments from the public. There being none, the public portion of the hearing was closed. The motion to approve the application as recommended by the Planning Commission was made by Mr. Miller, seconded by Mr. Williams and carried unanimously.

### **DISBURSEMENTS**

The motion to approve disbursements dated October 19<sup>th</sup>, numbered 49969 through 50020 totaling \$74,176.76 was made by Mr. Miller, seconded by Mr. Jessie and carried unanimously.

### **OLD BUSINESS**

#### ***Mold Removal – Cooks Corner Office Complex:***

Mr. Culley advised the Board that all visible mold has been removed. Employees have been asked to set aside any books that have mold on them for disposal by the maintenance department. Prices are being obtained for cleaning carpets, duct work and bleachers.

#### ***Whitings Creek Dock:***

Maintenance staff has looked at the dock to see what repairs are necessary, however, work on the dock has been delayed by the mold remediation.

#### ***Dog Pound:***

Mr. Culley and staff are working to finish the site plan.

#### ***Department of Game and Inland Fisheries:***

Mrs. Weber encouraged the Board of Supervisors to review changes to highway hunting laws that are being proposed by the Game Commission.

#### ***Department of Environmental Quality Fees:***

Mr. Culley is waiting for a response from Delegate Morgan regarding the proposed fees for corrective action at the landfill. Mr. Culley will be in further contact with the engineer and Delegate Morgan regarding these fees.

***Virginia Association of Counties – Chesapeake Bay Clean-Up:***

Mr. Miller reported that it was looking more and more like localities would end up paying for the clean-up.

**CLOSED MEETING**

The motion to convene in closed session for consultation with legal counsel to discuss matters relating to contracts and pending litigation per §2.1-3711.A7 was made by Mr. Miller, seconded by Mr. Williams and carried unanimously.

Upon reconvening in open session, the following motion was made by Mr. Williams, seconded by Mr. Crittenden and carried unanimously:

- To the best of the members' knowledge only public business matters lawfully exempted from open meeting requirements under Code of Virginia §2.1-3711.A7 as identified in the motion by which the Closed Meeting convened were heard, discussed, or considered by the public body.

Action:

As a result of the Closed Session, there was no action taken.

**ADJOURN**

There being no further business, the motion to adjourn the meeting until Tuesday, November 2, 2004, at 9:00 A.M. was made by Mr. Williams, seconded by Mr. Miller and carried unanimously.

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Lenora O. Weber, Chair  
Board of Supervisors