

AT A MEETING OF THE MIDDLESEX COUNTY BOARD OF SUPERVISORS
HELD ON TUESDAY, SEPTEMBER 20, 2005, IN THE BOARD ROOM OF THE
WOODWARD BUILDING, SALUDA, VIRGINIA:

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

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

CALL TO ORDER

Mr. Crittenden called the meeting to order at 7:30 P.M. and Mr. Miller gave a prayer. Mr. Culley led the group in the Pledge of Allegiance. Mr. Crittenden commented that the Board of Supervisors would be adopting a resolution at a later meeting in memory of Mrs. Weber. Mrs. Weber's family would be invited to attend the meeting for its presentation.

SPECIAL EXCEPTION APPLICATION #2005-04, MULTI-FAMILY DWELLINGS IN VILLAGE COMMUNITY ZONE

Planning Director, Matthew Higgins, presented the application, submitted by Diane Cox Basheer and Kenneth O. Thompson, requesting approval of a special exception for multi-family dwellings in the Village Community Zoning District. These dwellings would be located on Tax Map 27-10-1 and 2, a 521-acre portion of land approved last month for rezoning to Village Community as part of Rezoning Application #2004-04. The approved proffers with that rezoning application now regulate the overall development and limit the total development to 700 total dwelling units, including 108 multi-family dwelling units. At their public hearing, the Planning Commission recommended approval of the application, conditioned that the number of multi-family units not exceed the proffer for units already approved with the rezoning.

Mr. Crittenden opened the public hearing for comments. Mr. Andy Condlin, representing the applicants, requested approval of the application. He noted that approval would allow clustering of units, therefore allowing for fewer utilities, fewer roads, and more preservation of conserved areas. Mr. Condlin presented the master plan for the development which showed the types of structures to be built – 30 to 36 structures to make up the total of 108 units.

Mrs. Carolyn Wake spoke in support of the application, noting that the higher density is needed to support open spaces.

Ms. Janet Smith spoke in opposition to the application, noting that the rezoning of the property was a zoning choice and that special exception approvals should only be used for hardships. She also stated that another kind of zoning would have been better, as that rezonings stay with the property, but proffers do not stay if the property is sold.

Mr. Will Wills spoke in favor noting that the multi-family development would add to the overall quality of the development.

Mrs. Shannon Haley spoke against the application noting that it was bad for the community.

Mrs. Kerry Robusto questioned if the application was staying within the guidelines of the Comprehensive Plan, adding that the Board should not just go with the comfortable and beautiful development while disregarding guidelines.

There being no further comments, Mr. Crittenden closed the hearing for comments from the public. Mr. Crittenden asked that Mr. Higgins and Mr. Soberick respond to comments of Ms. Smith. Mr. Higgins noted that there are two types of uses for property, those that are by right and those that are by special exception. A variance is the relaxation of the ordinance to meet hardship needs and can be applied to either a permitted use or one by special exception. Both Mr. Higgins and Mr. Soberick confirmed that the proffers adopted with the rezoning approval do run with the property and are binding with the land, no matter who owns the property, and can only be changed after a public hearing and approval by the Board of Supervisors.

Board members all expressed their approval of the application for clustering the homes. Mr. Williams noted that he relied on the opinion of the County Attorney regarding the legal matters. The motion to approve Special Exception Application 2005-04 for multi-family housing in the Village Community District portion of Tax Map 27-10-1 and 2, as conditioned by the Planning Commission not to exceed the number of units approved with Rezoning Application #2004-04, was made by Mr. Miller, seconded by Mr. Jessie and carried unanimously.

SPECIAL EXCEPTION APPLICATION 2005-07, SURFACE MINING OPERATION

Mr. Higgins presented Special Exception Application 2005-07, an application for a surface mining operation by James Smith. It had been determined in May that a surface mining operation was being conducted on the property without proper permits from either the County or the Virginia Department of Mines and Minerals. The proposed application would be an excavation of sand and gravel on a limited, 5-acre portion of a 704-acre parcel. The proposed operation is the site of an abandoned sand and gravel operation located in the center of the parcel. Mr. Smith has applied for permits from the Department of Mines and Minerals. Mr. Higgins noted that there would be no visual impact on single-family residences that abut the proposed mining operation. According to Mr. Higgins, there are two accesses to the property, one from

Route 629 and the other from Route 33. It has been recommended that truck traffic be limited to the primary highway – Route 33.

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

1. The applicant shall obtain all required permits from and adhere to any required conditions of the Virginia Department of Mines and Minerals prior to the commencement of surface mining activities.
2. The applicant shall comply with the requirements of Article 7, Section 7-4-7 as applicable to surface mining operations.
3. All vehicular traffic related to the mining operation shall access the site from the existing entrance on General Puller Highway (Route 33).
4. Surface mining shall be limited to the location shown on the operational plan, and shall not expand to other locations on the property.
5. The mining operation shall be limited to five (5) acres – including all areas currently excavated.
6. The applicant shall obtain a VDOT Commercial Entrance permit.
7. A copy of the specific bounds of the operation shall be submitted to the Planning Director.

Mr. Crittenden opened the hearing for comments from the public. Mr. Jim Smith, applicant, stated that he would agree to all conditions and there would be no need to expand. Mr. Daniel Downs stated that this property did not have an access to Route 629. He also requested that language be included in the approval to require the seller to disclose the sand pit operation to potential buyers. There being no further comments, the public portion of the hearing was closed.

Mr. Williams questioned the suggestion for disclosure. Mr. Soberick commented that disclosure was up to the buyer and was not an enforceable concept for the County. The motion to approve the application as recommended by the Planning Commission was made by Mr. Williams, seconded by Mr. Miller and carried unanimously.

REZONING APPLICATION #2005-05, TERRY AND JODI EMERSON

Mr. Higgins presented the application to rezone Tax Map 40-293A, a 4.525-acre portion of property from Residential to Low Density Rural. The purpose of the rezoning is to allow the applicants to continue their practice of animal husbandry, raising pigs and goats in a zone that allows agricultural uses. This property is located in an area that has mixed zones - properties zoned Residential to the west, south and east and Low Density Rural to the north. A majority of the uses are for single family dwellings, with a dentist office across the highway. Mr. Higgins had suggested that the applicant submit proffers to limit the permitted uses on the property, including manufactured homes and commercial uses, and to clearly identify and screen areas on the property to be used for animal husbandry, and recommended approval if these were submitted. The Planning Commission recommended denial of the application; the following proffers were submitted after the hearing.

Mr. Crittenden opened the hearing for comments from the public. Mrs. Jodi Emerson restated the proffers that had been submitted to the Board. Joann Hensley expressed her concern with the smell and the effect on adjoining landowners. There being no further comments, the public portion of the hearing was closed.

Mr. Williams stated that he considered this to be an application for spot down-zoning and reminded the Board that a previous application for down-zoning to Low Density Rural had been denied. Other Board members agreed. The motion to deny the request was made by Mr. Miller, seconded by Mr. Jessie and carried unanimously.

PUBLIC HEARING – TELEPHONE UTILITY TAX

Mr. Culley presented the proposed telephone utility tax, which changes the language to be consistent with State Code. Rather than being a flat rate, the amount charged will be a percentage of the bill, but the maximum amount will still be the same \$2.00 per line for both land lines and wireless lines.

Mr. Crittenden opened the hearing for comments from the public. There being no comments from the public, the public portion of the hearing was closed. The motion to adopt the ordinance as proposed was made by Mr. Williams, seconded by Mr. Jessie and carried unanimously.

AN ORDINANCE OF THE COUNTY OF MIDDLESEX, VIRGINIA PERTAINING TO TELECOMMUNICATION SERVICE CONSUMERS TAX

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF MIDDLESEX COUNTY, VIRGINIA,
THAT THE FOLLOWING ORDINANCE IS HEREBY ADOPTED:

ARTICLE 1 Definitions.

Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

COMMERCIAL OR INDUSTRIAL USER -- The owner or tenant of property used primarily for commercial or industrial purposes who pays for utility service for such property.

DWELLING UNIT -- One or more rooms designed or intended for occupancy by a single family.

MOBILE LOCAL TELECOMMUNICATION SERVICE -- Any two-way mobile or portable local telecommunication service, including cellular mobile radio telecommunication service and specialized mobile radio.

MULTIPLE-FAMILY DWELLING -- A building or a portion thereof containing two or more dwelling units, but not including hotels or motels.

PURCHASER -- Every person who purchases a utility service.

RESIDENTIAL USER -- The owner or tenant of property used primarily for residential purposes who pays for utility service in or for such property, including but not limited to apartment houses, trailer parks and other multiple-family dwellings or accommodations.

SELLER -- Every person who sells or furnishes a utility service and who comes within the provisions of Title 58.1, Chapter 26, Article 2 of the Code of Virginia.

UTILITY SERVICE -- Local telecommunication service furnished within the county.

ARTICLE 2 Utility service tax levied; amount; exclusions.

Section A. Generally.

There is hereby imposed and levied by the county, upon each purchaser of a utility service, other than mobile local telecommunication services, a tax in the amount of 20% per month of the charge, exclusive of any federal tax thereon, made by the seller against the purchaser with respect to each utility service, provided that such tax shall not be applicable to any charge in excess of \$10 per month for residential customers. In the case of any multiple-family dwelling, accommodation or trailer park served by a master meter, the tax is limited to the lesser of 20% of the net bill or 20% of an amount calculated at \$10 times the dwelling units served. For commercial and industrial users, the tax is limited to 20% of a monthly ceiling of \$10 for each utility. Bills shall be considered monthly bills if submitted 12 times per year for periods of approximately one month each.

Section B. Tax on Mobile Service

There is hereby imposed and levied by the county, upon each purchaser of mobile local telecommunication service with a consumer service address located in the county, a tax in the amount of 10% of the monthly gross charge to a consumer of mobile local telecommunication, provided that such tax shall not be applicable to any amount so charged in excess of \$20 per month for each mobile service consumer.

ARTICLE 3 Applicability to telephone service.

The tax imposed and levied by this article on purchasers with respect to telephone service shall apply to all charges made for local telephone exchange service, except as follows:

Section A. No tax shall be imposed on telephone service paid for by inserting coins in coin-operated telephones.

Section B. With respect to flat rate and flat message rate service, the tax shall apply only to the amount payable for local area service and shall not apply to any specific charge for calls to points outside the county or to any general charge or rate differential payable for the privilege of calling points outside the county.

Section C. Where purchasers of telephone service are charged on a message rate basis, the tax shall apply only to the basic charge for such service and shall not apply to any charge for additional message units.

Section D. Local telephone service of a type not taxed by the United States as of September 1, 1966.

ARTICLE 4 Exemptions.

The United States of America, the state and political subdivisions, boards, commissions and authorities thereof, any public safety agency as defined in Virginia Code §58.1-3813, churches, hospitals and all other charitable, nonprofit organizations are hereby exempted from the payment of the tax imposed and levied by this article with respect to the purchase of utility services used by such governmental agencies, churches, hospitals and other charitable, nonprofit organizations.

ARTICLE 5 Duty of purchaser to pay.

The tax imposed by this article shall be paid by the purchaser to the seller, for the use of the county, at the time that the purchase price or charge for the utility service becomes due and payable under the agreement between the purchaser and the seller.

ARTICLE 6 Duty of seller to collect, report and remit.

It shall be the duty of every seller, in acting as the tax collecting medium or agency for the county, to collect from the purchaser, for the use of the county, the tax imposed and levied by this article, at the time of collecting the purchase price charged for the utility service. The tax collected during each calendar month shall be reported by each seller to the Commissioner of the Revenue, and each seller shall remit the amount of tax shown by such report to have been collected to the Commissioner of the Revenue on or before the last day of the first calendar month thereafter, together with the name and address of any purchaser who has refused to pay his/her tax. The required report shall be in the form required by the Commissioner of the Revenue.

ARTICLE 7 Seller's records.

Each seller shall keep complete records showing all purchases of utility service in the county, which records shall show the price charged against each purchaser with respect to each purchase, the date thereof and the date of payment thereof, and the amount of tax imposed under this article. Such records shall be kept open for inspection by the duly authorized agents of the county at reasonable times, and the duly authorized agents of the county shall have the right, power and authority to make transcripts thereof.

ARTICLE 8 Disposition of revenues derived from tax.

Revenues derived from the tax imposed by this article shall be placed in the general fund of the county to be used to offset expenditures approved by the Board of Supervisors.

ARTICLE 9 Violations and penalties.

Any purchaser failing, refusing or neglecting to pay the tax imposed and levied by this article and any seller violating the provisions of this article, and any officer, agent or employee of any seller violating the provisions hereof, shall be guilty of a Class 4 misdemeanor. Each failure, refusal, neglect or violation and each day's continuance thereof shall constitute a separate offense.

All prior ordinances of the County of Middlesex in conflict with the provisions of this ordinance are hereby repealed.

Adopted by the Board of Supervisors of Middlesex County, Virginia, on the 20th day of September, 2005. This ordinance shall be effective January 1, 2006.

PUBLIC HEARING – OYSTER FESTIVAL ORDINANCE

Mr. Culley presented the proposed ordinance, which is the same as those adopted in previous years, with the exception that the ordinance would be for five (5) years, expiring in 2009. Mr. Crittenden opened the hearing for comments from the public. Lewis Filling, Town Manager, stated that the ordinance helps the Oyster Festival Foundation with control of unlicensed, uncontrolled vendors and he knows of no problems with County residents. John England encouraged the extension of the ordinance to five (5) years, as it helps the Foundation with their long range planning. There being no further comments, the public portion of the hearing was closed. The motion to adopt the ordinance as proposed was made by Mr. Miller, seconded by Mr. Jessie and carried unanimously.

ORDINANCE OF THE COUNTY OF MIDDLESEX AUTHORIZING THE TOWN OF URBANNA TO APPLY ITS MASTER PLAN TO CERTAIN PORTIONS OF MIDDLESEX COUNTY DURING OYSTER FESTIVAL WEEKEND

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF MIDDLESEX COUNTY, VIRGINIA THAT THE FOLLOWING ORDINANCE IS HEREBY ADOPTED:

Section 1 Intent

It is the intent of the Board of Supervisors of Middlesex County to provide a healthy and safe environment for patrons and visitors at the Urbanna Oyster Festival.

Section 2 Area

It is hereby determined and ordained that the Urbanna Oyster Festival Master Plan (Town's Master Plan) shall apply to the following areas of Middlesex County: From the boundary of the Town of Urbanna west along State Route 602 to State Route 684 and: From the boundary of the Town of Urbanna south along State Route 227 to its intersection with Ivy Shore Road.

Section 3 Application

Middlesex County landowners in the stated "Area" are governed by the "Policies" of the Town's Master Plan as follows:

1. Landowners selling their own goods:

Non-food – must comply with the Town's Master Plan policies and procedures, including making application and Service Mark compliance. All Town and Foundation fees are waived for landowners.

Food – same as above, including compliance with Health Department temporary restaurant permitting procedures. Landowners must pay related Health Department fee(s).

2. Landowners leasing space to non-owner vendors, with or without compensation – vendors must comply with Town's Master Plan policies and procedures, including payment of all Town, Foundation and Health Department fees.

Section 4 Duration

This ordinance shall be in affect during the 2005 through 2009 Urbanna Oyster Festivals from 8:30 a.m. on Friday until 6:00 p.m. on Saturday.

Section 5 Exclusions

Provisions of this ordinance do not apply to parking.

Section 6 Enforcement

This ordinance may be enforced by the Town or County Sheriff or deputies, State Police or any authorized official of the Oyster Festival.

Section 7 Violation

A violation of this ordinance shall be a class III misdemeanor and shall be punishable by a fine of up to Five Hundred Dollars (\$500.00). Each day's violation shall constitute a separate offense.

Section 8 Severability

Should any provision or portion of this ordinance be determined by a court of competent jurisdiction to be unenforceable or held invalid, such portion or provision shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Adopted this 20TH day of September 2005.

This ordinance shall be in effect upon adoption.

COMPREHENSIVE PLAN

Planning Director, Matthew Higgins, explained that the Planning Commission had voted to commence with the regular update of the Comprehensive Plan and has developed a proposed Request for Proposals for the hiring of a consultant. In addition, the Commission has developed a public participation strategy for how the general public will be involved in the development of the Plan. A sub-committee of Commissioners John England, J. D. Davis and David Johnson will be reviewing the proposals and will make recommendations for a steering committee. It is hoped that the process will be complete by the end of 2006. Mr. Miller suggested making a strategic plan for water usage a part of the Comprehensive Plan. The motion to endorse the sub-committee and the solicitation of proposals for the consultant was made by Mr. Williams, seconded by Mr. Miller and carried unanimously.

HOLLY POINT NATURE PARK

Board members reviewed the prices received for tree removal work at the Holly Point Nature Park – Dangerous Tree Removal, \$5,500.00; Tree Top Service, Inc., \$8,000.00; WHW, Inc., \$12,500. The motion to proceed using Dangerous Tree

Removal for the work, after checking to make sure the company was licenses and insured, was made by Mr. Williams, seconded by Mr. Miller and carried unanimously.

RABIES CLINIC

The motion to move the rabies clinic to October 29th, from 9:00 AM – 11:00 AM was made by Mr. Williams, seconded by Mr. Jessie and carried unanimously.

PAYROLL

The motion to approve payroll for the month of September was made by Mr. Miller, seconded by Mr. Jessie and carried unanimously. Checks numbered 52907 through 52991 totaling \$245,082.78 were disbursed as approved.

DISBURSEMENTS

The motion to approve disbursements was made by Mr. Jessie, seconded by Mr. Miller and carried unanimously. Checks numbered 52993 through 53035 and totaling \$49,680.06 were disbursed as approved.

ELECTRIC SERVICE

Mr. Williams suggested the power company be contacted to encourage underground service be placed in low-lying areas prone to flooding.

HAZARD MITIGATION

The hazard mitigation plan will be scheduled for the October agenda.

CLOSED MEETING

The motion to convene in closed session to discuss matters regarding pending legal matters involving the Courthouse and the Middlesex County vs. Corbin suit per Code of Virginia, §2.2-3711.A7, and personnel per Code of Virginia, §2.2-3711.A1 was made by Mr. Miller, seconded by Mr. Jessie and carried unanimously. Upon reconvening in open session, the following motion was made by Mr. Williams, seconded by Mr. Miller and carried unanimously:

- To the best of the members' knowledge only public business matters lawfully exempted from open meeting requirements under Code of Virginia §2.2-3711.A1 and Code of Virginia, §2.2-3711.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, the motion to approve the transaction to repay C. F. Carter the moneys he expended in purchasing property in the Middlesex County vs. Corbin delinquent property sale was made by Mr. Jessie, seconded by Mr. Miller and carried unanimously. Money from the original property sale is being held by the court system.

ADJOURN

The meeting was adjourned until October 4, 2005, at 9:00 A.M. by motion of Mr. Williams, seconded by Mr. Miller and carried unanimously.

Fred S. Crittenden, Chair
Board of Supervisors