

Regular Meeting, Wednesday, June 25, 2008, at 7:00 p.m. Government Center, Verona, VA.

PRESENT: David R. Beyeler, Chairman  
Tracy C. Pyles, Jr., Vice-Chairman  
Wendell L. Coleman  
Gerald W. Garber  
Larry C. Howdysshell  
Jeremy L. Shifflett  
Patrick J. Morgan, County Attorney  
Becky Earhart, Community Development  
Dale L. Cobb, Director of Community Development  
Jennifer M. Whetzel, Director of Finance  
John C. McGehee, Assistant County Administrator  
Patrick J. Coffield, County Administrator  
Linda Hughes, Administrative Secretary

ABSENT: Nancy T. Sorrells

VIRGINIA: At a regular meeting of the Augusta County Board of Supervisors held on Wednesday, June 25, 2008, at 7:00 p.m., at the Government Center, Verona, Virginia, and in the 232<sup>nd</sup> year of the Commonwealth....

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Chairman Beyeler welcomed the citizens in the audience and asked that a form be completed by anyone who plans to speak.

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Tracy Pyles, Supervisor for the Pastures District, delivered the invocation.

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Jennifer Whetzel led the Pledge of Allegiance.

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CLOSED SESSION

On motion by Mr. Pyles, seconded by Mr. Howdysshell, the Board went into closed session pursuant to:

- (1) the legal counsel exemption under Virginia Code § 2.2-3711(A)(7) [consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel, as permitted under subsection (A) (7)]:

- A) TIF Agreement (Wayne District)

Vote was as follows: Yeas: Howdysshell, Garber, Beyeler, Shifflett, Pyles and Coleman  
Nays: None  
Absent: Sorrells

Motion carried.

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June 25, 2008, at 7:00 p.m.

CLOSED SESSION (cont'd)

On motion of Mr. Pyles, seconded by Mr. Howdysshell, the Board came out of Closed Session.

Vote was as follows: Yeas: Howdysshell, Garber, Beyeler, Shifflett, Pyles and Coleman

Nays: None

Absent: Sorrells

Motion carried.

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CLOSED SESSION (cont'd)

The Chairman advised that each member is required to certify that to the best of their knowledge during the closed session only the following was discussed:

- (1) Public business matters lawfully exempted from statutory open meeting requirements, and
- (2) Only such public business matters identified in the motion to convene the executive session.

The Chairman asked if there is any Board member who cannot so certify.

Hearing none, the Chairman called the roll, noting members of the Board who approve the certification shall answer AYE and those who cannot shall answer NAY.

Roll call vote was as follows:

AYE: Garber, Shifflett, Coleman, Pyles, Howdysshell, and Beyeler

NAY: None

ABSENT: Sorrells

The Chairman authorized the County Administrator/Clerk of the Board to record this certification in the minutes.

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EBCO, LLC - REZONING

This being the day and time advertised to consider a request to rezone from General Agriculture to General Business approximately .4 acres owned by EBCO, LLC located on the north side of Stuarts Draft Highway (Route 340) just east of the intersection of Stuarts Draft Highway (Route 340) and School Boulevard (Route 9030) in Stuarts Draft (Beverley Manor District). The Planning Commission recommends approval with the revised proffers.

Ms. Earhart presented staff report and recommendation of Planning Commission.

The Chairman declared the public hearing open.

Ray Burkholder, Balzer & Associates, representing the applicant as the agent, said that the adjacent property owner has indicated the buffer is not necessary and requested Proffer No. 2 be removed.

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EBCO, LLC – REZONING (cont'd)

There being no one present to speak for or against, the Chairman declared the public hearing closed.

Mr. Shifflett moved, seconded by Mr. Coleman, that the Board adopt the following ordinance:

A request to rezone approximately 0.383 acres from General Agriculture to General Business with proffers owned by EBCO, LLC located on the north side of Stuarts Draft Highway (Rt. 340) just east of the intersection of Stuarts Draft Highway (Rt. 340) and School Boulevard (Rt. 9030) in Stuarts Draft in the Beverley Manor District.

AN ORDINANCE to amend Chapter 25 “Zoning” of the Code of Augusta County, Virginia.

WHEREAS, application has been made to the Board of Supervisors to amend the Augusta County Zoning Maps,

WHEREAS, the Augusta County Planning Commission, after a public hearing, has made their recommendation to the Board of Supervisors,

WHEREAS, the Board of Supervisors has conducted a public hearing,

WHEREAS, both the Commission and Board public hearings have been properly advertised and all public notice as required by the Zoning Ordinance and the Code of Virginia properly completed,

WHEREAS, the Board of Supervisors has considered the application, the Planning Commission recommendation and the comments presented at the public hearing;

NOW THEREFORE BE IT ORDAINED, by the Board of Supervisors that the Augusta County Zoning Maps be amended as follows:

Parcel number 61 on tax map number 75B (1) containing approximately 0.383 acres is changed from General Agriculture to General Business with the following proffer:

1. There shall be no direct access onto Stuarts Draft Highway (Route 340) from this property.

Vote was as follows:      Yeas:   Howdyshell, Garber, Beyeler, Shifflett, Pyles and Coleman  
                                      Nays:   None  
                                      Absent: Sorrells

Motion carried.

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CRESCENT DEVELOPMENT GROUP LLC; PONUS RIDGE, LLC; METRO AND ALICE GOSNELL OLESKA; ALICE GOSNELL OLESKA; AND STANLEY G., III, OR JEAN M. CLINE – REZONING

This being the day and time advertised to consider a request to rezone a total of approximately 139.3 acres from General Business, Single Family Residential, and General Agriculture to General Business with proffers (approximately 27.3 acres), Single Family Residential with proffers (approximately 26.3 acres), Duplex Residential with proffers (approximately 38.5 acres), Townhouse Residential with proffers (approximately 35.9 acres), and Multi-Family Residential with proffers (approximately 11.3 acres) owned by Crescent Development Group, LLC; Ponus Ridge, LLC; Metro and Alice Gosnell

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June 25, 2008, at 7:00 p.m.

CRESCENT DEVELOPMENT GROUP LLC; PONUS RIDGE, LLC; METRO AND ALICE GOSNELL OLESKA; ALICE GOSNELL OLESKA; AND STANLEY G., III, OR JEAN M. CLINE – REZONING (cont'd)

Oleska; Alice Gosnell Oleska; and Stanley G., III, or Jean M. Cline, located on the south side of Jefferson Highway (Route 250) across from the intersection of Jefferson Highway (Route 250) and Woodrow Wilson Avenue (Route 358) in Fishersville (Wayne District). The Planning Commission recommends approval with revised proffers.

Ms. Earhart presented staff report and Planning Commission recommendation.

The Chairman declared the public hearing open.

Scott Williams, Charlottesville, discussed the Myers Corner mixed-use project, schools, residential classifications, and the Route 636 improvements. He requested approval.

Stephanie Haskins, Staunton, spoke in opposition of the rezoning and the importance of maintaining the beauty of the land, potential traffic impact, and growth.

Mr. Williams addressed some of Ms. Haskins' concerns.

There being no other speakers, the Chairman declared the public hearing closed.

The Chairman asked the County Attorney to brief meeting attendees on the TIF agreement (tax increment financing).

Mr. Coleman discussed the road improvements that will be part of the Route 636 relocated project and "public-private partnerships."

Mr. Coffield commented on previous County TIF agreements.

Mr. Coleman said there are three distinct parts to this motion. Mr. Coleman moved, seconded by Mr. Garber, that the Board approve the proposed development agreement between the County of Augusta and Crescent Development, the proposed agreement concerning construction of Route 636 relocated between the County of Augusta and Crescent Development, and the proposed contribution agreement between the County of Augusta and the Industrial Development Authority; and that the County Administrator be authorized to execute these documents, and that he and the County Attorney be authorized to make adjustments in the form of minor amendments to these documents that are not inconsistent with the approval of this Board.

Mr. Pyles said that the Board has not discussed this extensively. He compared the taxpayer's portion of money with the developer's portion, and that the schools would lose growth in revenue but have an increase in students.

Mr. Pyles moved, seconded by Larry Howdyshell, that the motion be tabled.

Vote was as follows:           Yeas: Howdyshell, Garber, and Pyles

                                      Nays: Shifflett, Beyeler, and Coleman

                                      Absent: Sorrells

Motion failed.

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CRESCENT DEVELOPMENT GROUP LLC; PONUS RIDGE, LLC; METRO AND ALICE GOSNELL OLESKA; ALICE GOSNELL OLESKA; AND STANLEY G., III, OR JEAN M. CLINE – REZONING (cont'd)

Mr. Howdyshell commented that the Board was just presented with this matter on Monday, while Mr. Coleman has been working on it for some time. He was also concerned with the period of time for the TIF.

Mr. Coleman acknowledged that Board members see this road project differently and discussed costs.

Mr. Pyles would like the Board to have additional time for discussion.

Mr. Garber asked the County Attorney questions concerning tabling the matter.

The Chairman discussed improvements to Route 636 and that "this was something Augusta County needs for the future."

While Mr. Garber supports the concept, he would like the Board members who spoke against it to have more time to understand the project.

Mr. Coleman moved, seconded by Mr. Garber, that the TIF agreement and any rezoning actions be tabled until July 23, 2008.

Vote was as follows: Yeas: Shifflett, Howdyshell, Garber, Beyeler, Pyles and Coleman  
Nays: None  
Absent: Sorrells

Motion carried.

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**(END OF PUBLIC HEARINGS)**  
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MATTERS TO BE PRESENTED BY THE PUBLIC - NONE

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MATTERS TO BE PRESENTED BY THE BOARD

LIBRARY BOARD – APPOINTMENT

Mr. Shifflett, seconded by Mr. Garber, that the Board appoint Rhonda Winfield (Beverley Manor District) to serve on the Library Board effective July 1, 2008, to expire June 30, 2012.

Vote was as follows: Yeas: Howdyshell, Garber, Beyeler, Shifflett, Pyles and Coleman  
Nays: None  
Absent: Sorrells

Motion carried.

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PARKS AND RECREATION MATCHING GRANT – CHURCHVILLE ELEMENTARY BOOSTERS

The Board considered (A) recommendation of the Parks and Recreation Commission to award a grant in an amount not to exceed \$17,567 for an outdoor fitness cluster, and (B) approval of grant agreement.

Funding Source: Pastures Recreation Account #80000-8024-18

Mr. Pyles moved, seconded by Mr. Howdyshell, that the matching grant for Churchville Elementary Boosters be approved.

Vote was as follows:           Yeas: Howdyshell, Garber, Beyeler,  
  Shifflett, Pyles and Coleman  
  Nays: None  
  Absent: Sorrells

Motion carried.

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EROSION AND SEDIMENT ORDINANCE

The Board considered an ordinance to replace the provisions of Chapter 9 of the Augusta County Code pertaining to erosion and sediment control. This ordinance establishes definitions relating to erosion and sediment control; erosion and sediment control plan submittal and permit process; new erosion and sediment control fee structure in regards to site development and home construction; and new enforcement measures for non-compliance. This item was tabled at the June 11, 2008, Board meeting.

Mr. Coffield said that the Board worked through several issues at the Staff Briefing on Monday. At that time, there was also discussion on re-inspections. Mr. Coffield presented the revised fee schedule. Because the fees are not a tax, if there are any changes it does not need to be re-advertised.

The Chairman asked Todd Flippen, Community Development, questions concerning time allowed for seeding residential properties.

Mr. Coleman moved, seconded by Mr. Garber, that the ordinance be removed from the table.

Vote was as follows:           Yeas: Shifflett, Howdyshell, Garber, Beyeler,  
  Pyles and Coleman  
  Nays: None  
  Absent: Sorrells

Motion carried.

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Mr. Pyles moved, seconded by Mr. Coleman, that the ordinance be enacted to replace the provisions of Chapter 9, Augusta County Code, pertaining to erosion and sediment control as revised and adopted the following ordinance:

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EROSION AND SEDIMENT ORDINANCE (cont'd)

**AN ORDINANCE TO REPLACE CHAPTER 9 OF  
THE CODE OF AUGUSTA COUNTY, VIRGINIA,  
RELATING TO EROSION AND SEDIMENT  
CONTROL**

WHEREAS, Virginia Code § 10.1-560 et seq. authorizes the County of Augusta, Virginia to establish an ordinance for regulating Erosion and Sediment Control;

WHEREAS, Erosion and Sediment Control fees are increased to defray the cost of program administration as provided in Virginia Code § 10.1-562 (I);

NOW, THEREFORE, be it ordained by the Board of Supervisors of Augusta County, Virginia, that:

1. Chapter 9 of The Code of the County of Augusta, Virginia be, and hereby is, replaced by adding thereto new Sections 9-1 through 9-8 to read as follows:

**§ 9-1. Purpose, Title and Authority**

- A. This ordinance shall be known as the "Erosion and Sediment Control Ordinance of the County of Augusta." The purpose of this chapter is to prevent degradation of properties, stream channels, waters and other natural resources of the County by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.
- B. This Chapter is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4 (Sec. 10.1-560 et seq.), known as the Virginia Erosion and Sediment Control Law.

**§ 9-2. Definitions.**

As used in the ordinance, unless the context requires a different meaning, the following terms shall have the meanings indicated:

**"Agreement in lieu of a plan"** means a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence or any land disturbance over 10,000 square feet associated with any additions onto a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

**"Applicant"** means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

**"Board"** means the Virginia Soil and Water Conservation Board.

**"Certified inspector"** means an employee or agent of the County of Augusta who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.

**"Certified plan reviewer"** means an employee or agent of the County of Augusta who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

**"Certified program administrator"** means an employee or agent of the County of Augusta who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

**"Clearing"** means any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.

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EROSION AND SEDIMENT ORDINANCE (cont'd)

**"County"** means the County of Augusta, Virginia.

**"Department"** means the Department of Conservation and Recreation.

**"Department of Community Development"** The Augusta County, Virginia, Department of Community Development.

**"Development"** means a tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain residential dwelling units.

**"Director"** means the Director of the Department.

**"District"** or **"Soil and Water Conservation District"** refers to the Headwaters Soil and Water Conservation District.

**"Erosion and Sediment Control Plan"** or **"Plan"** means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the plan approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives. A narrative will also be included with the plan.

**"Erosion Impact Area"** means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes.

**"Excavating"** means any digging, scooping or other methods of removing earth materials.

**"Filling"** means any depositing or stockpiling of earth materials.

**"Grading"** means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

**"Land-disturbing Activity"** means any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

- (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
- (2) Individual service connections;
- (3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk provided the land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;
- (4) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
- (5) Surface or deep mining;



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## EROSION AND SEDIMENT ORDINANCE (cont'd)

(6) Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas;

(7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Article 2, (Sec. 10.1-604 et seq.) of Chapter 6 of the Code of Virginia ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (Sec.10.1-1100 et seq.) of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of Sec. 10.1-1163;

(8) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;

(9) Disturbed land areas of less than 10,000 square feet in size

(10) Installation of fence posts, sign posts or telephone and electric poles and other kinds of posts or poles;

(11) Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this ordinance; and

(12) Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan-approving authority.

**"Land-disturbing Permit"** means a permit issued by the County for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein.

**"Local erosion and sediment control program"** or **"local control program"** means an outline of the various methods employed by the County to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

**"Minimum Standards or Minimum Standard"** means any or all of the 19 minimum standards set forth by the Department.

**"Owner"** means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

**"Permit"** means a document issued by the County for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein. Permits shall be required for any land disturbance activity as defined in this article.

**"Permittee"** means the person to whom the permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

**"Person"** means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.

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## EROSION AND SEDIMENT ORDINANCE (cont'd)

**"Plan-approving authority"** Community Development Department is responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units of lands and for approving plans. In regards to inspections, the Community Development Department and the Building Inspections Department will be responsible for conducting regularly scheduled inspections in accordance with the Alternative Inspection Program rating form.

**"Program authority"** means Augusta County, which has adopted a soil erosion and sediment control program that has been approved by the Board.

**"Responsible Land Disturber"** means an individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who:

- (A). Holds a Responsible Land Disturber certificate of competence,
- (B). Holds a current certificate of competence from the Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review,
- (C). Holds a current Contractor certificate of competence for erosion and sediment control, or
- (D). Is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

**"Single-family residence"** means a noncommercial dwelling that is intended to be occupied exclusively by one family.

**"State erosion and sediment Control program"** or **"state program"** means the program administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia including regulations designed to minimize erosion and sedimentation.

**"State waters"** means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.

**"Stop Work Order"** A written notice sent to the responsible land disturber or appropriate agent that stops all land-disturbing activity on the project for a specified time period.

**"Transporting"** means any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

### **§ 9-3. Local Erosion and Sediment Control Program**

A. Pursuant to section 10.1-562 of the Code of Virginia, Augusta County hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook, as amended.

B. Before adopting or revising regulations, the County shall give due notice and conduct a public hearing on the proposed or revised regulations, except that a public hearing shall not be required when the County is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the County proposes or revises regulations that are more stringent than the state program.

C. Pursuant to Sec. 10.1-561.1 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The Erosion Control Program of the County shall

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### EROSION AND SEDIMENT ORDINANCE (cont'd)

contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.

D. The County hereby designates the Department of Community Development as the plan-approving authority.

E. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the Department of Community Development.

#### **§ 9-4. Submission and Approval of Plans; Contents of Plans**

A. Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the plan approving authority an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the plan-approving authority. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Board for review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

B. The standards contained within the "Virginia Erosion and Sediment Control Regulations", the Virginia Erosion and Sediment Control Handbook as amended are to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines.

C. The plan-approving authority shall review conservation plans submitted to it and grant written approval within 45 days of the receipt of the plan if it determines that the plan meets the requirements of the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, to the program authority, as provided by § 10.1-561, of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.

D. The plan shall be acted upon within 45 days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval.

When the plan is determined to be inadequate, the plan-approving authority shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

E. An approved plan may be changed by the plan-approving authority when:

- (1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
- (2) The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the plan-approving authority and the person responsible for carrying out the plans.

F. Variances: The plan-approving authority may waive or modify any of the standards that are deemed to be too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:

- (1). At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain

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### EROSION AND SEDIMENT ORDINANCE (cont'd)

the reasons for requesting variances in writing. Specific variances which are allowed by the plan-approving authority shall be documented in the plan.

(2). During construction, the person responsible for implementing the approved plan may request a variance in writing from the plan-approving authority. The plan-approving authority shall respond in writing either approving or disapproving such a request. If the plan-approving authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

G. In order to prevent further erosion, Augusta County may require approval of a plan for any land identified in the local program as an erosion impact area.

H. When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

I. In accordance with the procedure set forth by §10.1-563 (E) of the Code of Virginia, any person engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks, pursuant to a permit issued by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation banks annually with the Board for review and approval consistent with guidelines established by the Board.

J. State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia, Sec. 10.1-564.

### § 9-5. Permits; Fees; Security for Performance

A. Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.

B. No person may engage in a land-disturbing activity until he has acquired a land-disturbing permit, has paid the erosion and sediment control fees, posted the required bond and installed all perimeter controls, unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance,

C. An administrative fee shall be paid to the Department of Community Development at the time of submission of the land disturbance permit. The land disturbance permit fee is separate from all other fees paid to other departments in the County. The following fee is hereby adopted and shall be applied to land disturbance permits:

- (1) a) Agreement in Lieu of a Plan in non-residential zoned property -- \$500.00  
b) Agreement in Lieu of a Plan in residential zoned property -- \$200.00
- (2) Minimum Fee applicable to all other applications: where no more than one acre disturbed -- \$500. For each additional acre thereafter -- \$200.00.
- (3) Each Sediment Basin -- \$100.00
- (4) Applications impacting live watercourse -- \$100.00
- (5) Fee for applications requiring storm water detention or retention facilities -- \$250.00
- (6) Additional fee for applications requiring newly constructed storm water conveyance channels -- \$50.00 for each channel
- (7) Additional fee for each resubmittal of the required erosion and sediment control plan due to the owner's failure to include required information -- \$100.00

June 25, 2008, at 7:00 p.m.

## EROSION AND SEDIMENT ORDINANCE (cont'd)

D. No land-disturbing permit shall be issued until the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.

E. All applicants for permits shall provide to the plan approving authority a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the plan approving authority and the County Attorney, to ensure that measures could be taken by the plan approving authority at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him by the approved plan as a result of his land-disturbing activity.

The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the plan approving authority to take such conservation action, the plan approving authority may collect from the applicant any costs in excess of the amount of the surety held.

Once the plan approving authority receives an approved erosion plan and all applicable fees and surety bond, the owner shall install all perimeter controls as detailed in the approved erosion plan as indicated by Virginia Code, § 4VAC50-30-40 (4). Once perimeter controls are functional and seeded/stabilized, the plan approving will inspect erosion measures. If installed measures are satisfactory to the plan-approving authority, a land disturbing permit shall be issued. If land disturbing continues without a permit being issued, the offense will constitute as an illegal land disturbance with associated penalties assessed.

Within sixty (60) days of adequate stabilization, as determined by the plan approving authority in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

### **§ 9-6. Monitoring, Reports, and Inspections**

A. The plan approving authority shall require the person responsible for carrying out the plan to monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.

B. Inspection; notice to comply

(1) The plan approving authority shall periodically inspect the land-disturbing activity in accordance with Sec 4VAC50-30-60 of the Virginia Erosion and Sediment Control Regulations to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. A pre-construction Inspection will be conducted on the site of the proposed land disturbing activity to inspect perimeter controls prior to issuing the land disturbance permit.

(2) Notice to comply

(a) If the plan approving authority determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

(b) The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this ordinance and shall be subject to the penalties provided by this ordinance.

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## EROSION AND SEDIMENT ORDINANCE (cont'd)

### C. Action in case of violation

(1) Upon determination of a violation of this ordinance, the plan approving authority may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

(2) If land-disturbing activities have commenced without an approved plan, the Community Development Department may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

(3) Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, a stop work order shall be issued without regard to whether the permittee has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.

(4) If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the Community Development Department may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained.

(5) The stop work order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the County.

(6) The owner may appeal the issuance of an order to the Augusta County Circuit Court.

(7) Any person violating or failing, neglecting or refusing to obey an order issued by Community Development Department may be compelled in a proceeding instituted in the Augusta County Circuit Court to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the stop work order shall immediately be lifted.

(8) Nothing in this section shall prevent the Community Development Department from taking any other action authorized by this ordinance.

### **§ 9-7. Penalties, Injunctions, and Other Legal Actions**

(A) Violators of this article shall be guilty of a class I misdemeanor.

(B) The adoption of civil penalties according to this schedule shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection (a) of this section (refer to Code of Virginia, § 10.1-562.J).

(1) A civil penalty in the amount listed on the schedule below shall be assessed against the owner of the property where the violation has occurred, for each violation of the respective offenses:

a. Commencement of land disturbing activity without an approved plan as provided in section 30-29(a) shall be \$1,000.00/day.

b. A site with an approved erosion and sediment control or agreement in lieu of a plan found in violation of any of the 19 Minimum Standards shall be as follows:

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EROSION AND SEDIMENT ORDINANCE (cont'd)

	Single Violation	Multiple Violations
1 <sup>st</sup> Inspection:	Warning issued	Warning issued
2 <sup>nd</sup> Inspection:	\$100	\$250
3 <sup>rd</sup> Inspection:	\$150	\$500
4 <sup>th</sup> Inspection:	\$200	\$1,000
5 <sup>th</sup> Inspection:	\$250	\$1,500
6 <sup>th</sup> Inspection	Refer to Co. Atty.	Refer to Co. Atty.

c. Failure to obey a stop work order shall be \$100.00/day.

(2) The permittee shall be notified of each violation and associate assessment in writing, via certified mail or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities. This notification shall be sent or posted no later than the first working day after the violation.

(3) Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$3,000.00, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.00. The assessment of civil penalties according to this schedule shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection (a) of this section.

(C) The certified program administrator, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the Augusta County Circuit Court to enjoin a violation or a threatened violation of this article, without the necessity of showing that an adequate remedy at law does not exist. However, an owner of property shall not apply for injunctive relief unless:

(1) He has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and

(2) Neither the person who has violated the local program nor the program authority has taken corrective action within 15 days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

(D) In addition to any criminal penalties provided under this article, any person who violates any provision of this article may be liable to the County in a civil action for damages.

(E) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the County. Any civil penalties assessed by a court shall be paid into the treasury of the County, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

(F) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this article, the County may provide an order for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection (e) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (b) or (e).

(G) The County Attorney shall, upon request of the Community Development Department, take legal action to enforce the provisions of this article.

(H) Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

(I) Occupation permits and/or inspections by the County's building inspection department shall not be granted until corrections to all erosion and sediment control practices have been made in accordance with the approved plans, notice of violation, stop work order, or agreement in lieu of a plan requirements, and accepted by the County.

(J) Any violator may be required to restore land to its undisturbed condition or in accordance with a notice of violation, stop work order, or permit requirements. In the event that restoration is not undertaken within a reasonable time after notice, the County may take necessary corrective action, the cost of which shall be covered by the performance bond, or become a lien upon the property until paid, or be billed directly to the land owner.

June 25, 2008, at 7:00 p.m.

EROSION AND SEDIMENT ORDINANCE (cont'd)

**§ 9-8. Appeals and Judicial Review**

A. Any applicant under the provision of this ordinance who is aggrieved by any action of the plan approving authority or its agent in disapproving plans submitted pursuant to this ordinance shall have the right to apply for and receive a review of such action by the Board of Supervisors provided an appeal is filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before the Board of Supervisors shall be heard at the next regularly scheduled Board of Supervisors public hearing provided that the Board of Supervisors and other involved parties have at least 30 days prior notice. In reviewing the agent's actions, the Board of Supervisors shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the Board of Supervisors may affirm, reverse or modify the action. The Board of Supervisor's decision shall be final, subject only to review by the Circuit Court of Augusta County.

B. Final decisions of the Community Development Department under this ordinance shall be subject to review by the Augusta County Circuit Court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

C. This ordinance shall become effective upon enactment.

Vote was as follows:                   Yeas: Shifflett, Howdyshell, Garber,  
  Pyles and Coleman  
  Nays: Beyeler  
  Absent: Sorrells

Motion carried.

Mr. Howdyshell was appreciative of Government Center staff using common sense during inspections.

Mr. Coleman commented that property owners and developers need to do what they are supposed to do.

\* \* \* \* \*

MIDDLEBROOK BOOK STATION

The Board considered authorization in an amount not to exceed \$1,200 for survey and plat.

Funding Source: Riverheads infrastructure account #80000-8015-45

Mr. Garber moved, seconded by Mr. Pyles, that the authorization be approved.

Vote was as follows:                   Yeas: Shifflett, Howdyshell, Garber, Beyeler,  
  Pyles and Coleman  
  Nays: None  
  Absent: Sorrells

Motion carried.

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CONSENT AGENDA

Mr. Howdyshell moved, seconded by Mr. Shifflett, that the Board approve the following consent agenda:



June 25, 2008, at 7:00 p.m.

CONSENT AGENDA (cont'd)

MINUTES

Approved minutes of the following meeting:

- Regular Meeting, Wednesday, June 11, 2008.

STREET ADDITION

Approved recommendation to adopt resolution for acceptance of Windward Drive into the secondary road system (Wayne District).

THE VILLAGE AT WINDWARD POINTE - STREET ADDITION

WHEREAS, that the County and the Virginia Department of Transportation have entered into an agreement on August 26, 1996 for comprehensive stormwater detention which applies to this request for addition.

BE IT RESOLVED, that the Virginia Department of Transportation is hereby requested to add the following streets in **THE VILLAGE AT WINDWARD POINTE**, into the secondary road system of Augusta County pursuant to Section 33.1-229 of the Code of Virginia (1950) as amended:

<u>Windward Drive</u>	
From:	Route 250
To:	0.18 miles north of Route 250
Length:	0.18 miles

AND FURTHER BE IT RESOLVED, that the Board does guarantee the Commonwealth of Virginia an unrestricted right of way of 50 feet with necessary easements, for cuts, fills, and drainage as recorded in Instrument 060015674, Plat Book 1, Pages 6768 and 6769, recorded November 30, 2006.

AND FURTHER BE IT RESOLVED, that the Virginia Department of Transportation will only maintain those facilities located within the dedicated right-of-way. All other facilities outside of the right-of-way will be the responsibility of others.

TRAFFIC IMPACT ANALYSIS (TIA)

Approved staff proposal for enactment of TIA process.

INDOOR PLUMBING PROGRAM

Approved retaining Waynesboro Redevelopment & Housing Authority as the County's indoor plumbing/rehabilitation loan program administrator

GOVERNMENT CENTER – TRUCKWASH BAY

Approved donation of surplus property (metal buildings) to ACSA.

FIRE FLOW ORDINANCE

Approved authorization to advertise for public hearing the proposed code modifications as revised.

FISHERSVILLE SMALL AREA PLAN

Authorized advertisement of the Fishersville Small Area Plan for public hearing in August.

EDENBROOK – PRELIMINARY PLAT

Approved preliminary plat containing 24 lots zoned Rural Residential located on the south side of Ladd Road (Route 631) just west of the intersection of Ladd Road and Bel-Grene Drive (Route 1090) (South River District).

Vote was as follows:

Yeas:	Howdysshell, Garber, Beyeler, Shifflett, Pyles and Coleman
Nays:	None
Absent:	Sorrells

Motion carried.



June 25, 2008, at 7:00 p.m.

**CLOSED SESSION** (cont'd)

- (2) Only such public business matters identified in the motion to convene the executive session.

The Chairman asked if there is any Board member who cannot so certify.

Hearing none, the Chairman called the roll, noting members of the Board who approve the certification shall answer AYE and those who cannot shall answer NAY.

Roll call vote was as follows:

AYE: Garber, Shifflett, Coleman, Pyles, Howdyshell and Beyeler  
NAY: None  
ABSENT: Sorrells

The Chairman authorized the County Administrator/Clerk of the Board to record this certification in the minutes.

\* \* \* \* \*

**ADJOURNMENT**

There being no other business to come before the Board, Mr. Coleman moved, seconded by Mr. Shifflett, that the Board adjourn subject to call of the Chairman.

Vote was as follows:           Yeas: Howdyshell, Garber, Beyeler,  
  Shifflett, Pyles and Coleman  
  Nays: None  
  Absent: Sorrells

Motion carried.

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Chairman

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County Administrator