

Regular Meeting, Wednesday, February 22, 2017, 7:00 p.m. Government Center, Verona, VA.

PRESENT: Tracy C. Pyles, Jr., Chairman
Terry Lee Kelley, Jr.-Vice Chairman
Gerald W. Garber
Michael L. Shull
Wendell L. Coleman
Carolyn S. Bragg
Marshall W. Pattie
Timothy K. Fitzgerald, County Administrator
Jennifer M. Whetzel, Deputy County Administrator
John Wilkinson, Director of Community Development
Leslie Tate, Planner
James R. Benkahla, County Attorney
Angie Michael, Executive Assistant

VIRGINIA: At a regular meeting of the Augusta County Board of Supervisors held on Wednesday, February 22, 2017, at 7:00 p.m., at the Government Center, Verona, Virginia, and in the 241th year of the Commonwealth....

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Chairman Pyles welcomed the citizens present.

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The following student from Fort Defiance High School led the Pledge of Allegiance:

Louisa Esteban and Kristen Rhodenizer are both sophomores at Fort Defiance High School. They participate in Public Forum Debate and are defending conference champions and the team qualified for the state championship in their first year of debating.

Louisa Esteban: Besides debate, she is also a part of the cross-country and track teams. Ms. Esteban is a member of Envirothon and Technology Student Association (TSA). After graduating she plans to be a Biomedical Engineer.

Kristin Rhodenizer: Besides debate, she is also a member of TSA. Ms. Rhodenizer is a section leader in the marching band, plays in the symphonic band, is a Key Club officer, she is in JMY Valley Scholars and her Sophomore class President. After graduating she plans to become a lawyer.

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

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**** PUBLIC HEARINGS ****

FRACKING ORDINANCE

This being the day and time advertised to consider a request to amend Sections 25-4, 25-74, 25-384, and 25-385 of the Augusta County Code to prohibit the extraction of oil and natural gas, specifically by means of enhanced recovery and/or hydraulic fracturing in Augusta County and to amend the special use permit conditions for extraction of materials in General Agriculture and Industrial districts. Planning Commission recommends approval.

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FRACKING ORDINANCE (CONT'D)

The Chairman declared the public hearing open.

Leslie Tate, Planner, stated that the Attorney General had determined in 2013 that hydraulic fracturing could not be banned, but since then a determination has been made that hydraulic fracturing can be banned and the County has chosen to do so with this ordinance. To define enhanced recovery, the state code definition was used which states that any activity involving injection of any air, gas, water or other fluid into the productive strata, the application of pressure, heat or other means for the reduction of viscosity of the hydrocarbons or the supplying of additional motive force other than normal pumping to increase the production of gas or oil from any well, wells or pool. Hydraulic Fracturing is defined as the process of using pressurized liquids, gases, and/or sand to create artificial fractures in subsurface reservoirs where hydrocarbons are locked in shale, coal or other impermeable rock formations, for the purpose of extracting gas or oil. The ordinance amendment also clarifies some of the conditions in relation to the special use permit that can be applied for in order to extract materials both in general agriculture zoning district and industrial district. The ordinance amendment that is proposed would require a transportation study be submitted when a special use permit is applied for regardless of the type of extraction process it is. In addition, specifically for oil and natural gas, there would need to be a study performed to determine the use would not have an adverse effect on the public water supply.

Roland Micklem, of Churchville spoke in favor of the Fracking Ordinance. Mr. Micklem sang two songs regarding fracking and how it effects the land. Mr. Micklem also stated that Augusta County customarily starts with a Pledge to the Flag of the United States of America. He cannot say that his Country has not done much lately that he is proud of, however he does owe his Country a certain amount of allegiance. He also owes a greater allegiance to the planet of which we live. Mr. Micklem would like for the following pledge to be adopted by the Board of Supervisors:

I pledge allegiance to the planet on which we live and to the life that it sustains. Unique jewels of the cosmos, may we be ever worthy of thy bounteous gifts.

Nancy Sorrells spoke on behalf of all of the citizens in the area that drink water. Ms. Sorrells thanked the Board and stated that she is proud of where she is from. Augusta County where the most precious natural resource gets top priority from the local leaders such as those who sit on the Augusta County Service Authority, Headwater Soil and Water Conservation District and especially the Board of Supervisors. On issue after issue this Board, in partnership with the other mentioned agencies as well as various other groups, have put drinking water at the top of the list. In matters of drought, sourcewater protection, pipeline concerns and in the Forest Service Plan, the Board has spoken out forcefully on the side of good clean water. The hard work has translated into prospering communities, thriving farms and important industry. Creating a bright road map for the future. Augusta County is the place where the James and the Shenandoah Rivers arise from the earth and that is why the County is blessed with a powerful resource. This is also why the County is referred to as the Headwaters Soil and Water Conservation District and there is a Riverheads District where two famous rivers start. As everyone knows, the underground system with springs and wells and cracks and crevices is pretty fragile. The issue of fracking has been looked at and discussed for a long time. The devastation created by this extraction business and other communities. Not only is water in jeopardy, but emergency services is stretched beyond capacity when it occurs in communities. Businesses are ruined and roads are destroyed. Ms. Sorrells thanked the Board for stepping up and helping Mother Nature. It is doubtful that Richmond will be thanking the Board, but they should say thanks every time they turn on their tap and enjoy their fresh, pure Augusta County water.

Mark Poe of Greenville spoke in support of the Fracking Ordinance. Mr. Poe pointed out that is if residents live within five miles of the Blue Ridge Mountains, Big Levels Game Refuge, the Shenandoah Mountains and the surrounding National Forest, Little North

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FRACKING ORDINANCE (CONT'D)

Mountain and Goshen State Department owned lands then Fracking could indirectly touch your home. Wells leak raw gas into the atmosphere. 50% of all well casings leak after 30 years. Leaking wells send plumes of raw gas 100 to 200 feet in the atmosphere undetectable without expensive optics. Mr. Poe thanked the Board for considering this ordinance.

Diane Korte of Churchville spoke in support of the Fracking Ordinance. Ms. Korte thanked the Board for taking care of the stewardship of the water in Augusta County. Because of the fight against the pipeline for the past several years, everyone is well aware of the karst underneath the County. The karst is not going to change. Even if future Boards have different decisions they want to make, this hazard and the specific problem with doing things like this in the karst will not change. VDOT spends millions of dollars maintaining the highways specifically because of sinkholes due to the karst. In her opinion, fracking would be crazier than proposing the pipeline through this fragile genealogy. The County's economic growth is based on agriculture, food industry, beer and wine. These things depend on clean water.

Angela Lynn of Albemarle County spoke in favor of the Fracking Ordinance and thanked the Board for considering this and being a front runner in the state to have an ordinance to ban fracking. Albemarle County is a neighbor of Augusta County and the two share the same water. Ms. Lynn works and serves on the Agricultural and Forestal District Board and the Public Recreational Facility Authority. The two are deeply concerned about the State's health in the water, forest and farmlands.

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

Mr. Garber moved, seconded by Mr. Coleman, that the Board approve the request to adopt the following ordinance:

**AN ORDINANCE TO AMEND
SECTIONS 25-4, 25-74, 25-384, and 25-385
OF THE AUGUSTA COUNTY CODE**

WHEREAS, the Augusta County Board of Supervisors has deemed it desirable to prohibit the extraction of oil and natural gas, specifically by means of enhanced recovery and/or hydraulic fracturing in Augusta County and;

WHEREAS, the Augusta County Board of Supervisors has deemed it desirable to amend the conditions for a special use permit for the extraction of minerals, rock, dirt, gravel, sand, oil and natural gas, and similar materials.

NOW THEREFORE be it resolved by the Board of Supervisors for Augusta County that Sections 25-4, 25-74, 25-384, and 25-385 of the Augusta County Code are amended to read as follows:

25-4 Definitions.

Enhanced Recovery. (i) any activity involving injection of any air, gas, water or other fluid into the productive strata, (ii) the application of pressure, heat or other means for the reduction of viscosity of the hydrocarbons, or (iii) the supplying of additional motive force other than normal pumping to increase the production of gas or oil from any well, wells or pool (Va. Code Section 45.1-361.1)

Hydraulic Fracturing. Also referred to as "hyrdofracking," "fracking," or "fracing" is the process of using pressurized liquids, gases, and/or sand to create artificial fractures in subsurface reservoirs where hydrocarbons are locked in shale, coal or other impermeable rock formations, for the purpose of extracting gas or oil.

25-74 Uses Permitted by Special Use Permit D.

Uses away from developed areas.

Uses customarily found in areas away from developed areas, including but not necessarily limited to: batching plants, including asphalt and portland cement, storage of bulk fuel, explosives, ammunition and

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FRACKING ORDINANCE (CONT'D)

fireworks, outdoor shooting ranges and preserves, and extraction of minerals, rock, dirt, gravel, sand, **oil or natural gas** and similar materials **but not to include extraction of such materials by means of enhanced recovery, hydraulic fracturing, and/or horizontal drilling**, may be permitted by Special Use Permit, provided:

1. The neighboring area is not characterized by residential, commercial, or industrial development which would be adversely impacted by the proposed use; and
2. ~~Traffic generated by the proposed project will be compatible with the roads serving the site and other traffic utilizing said roads~~ **A technical transportation study shall be submitted that assesses the potential physical and operational impacts to the transportation assets (roads, bridges, right-of-way, etc.) which are anticipated to provide service to the subject parcel or parcels; and**
3. On-site traffic flow will adequately and safely accommodate all traffic to and from the public highways; and
4. The business shall have direct access to a state maintained road; and
5. The business and anticipated enlargements thereof will be appropriate for agriculture areas and is not more properly placed in an available industrial zone; and
6. All buildings, structures, and operations will be set back at least two hundred feet (200') from all property lines and at least one thousand feet (1000') from any residentially zoned property unless the board of zoning appeals determines that greater setbacks are necessary to adequately protect neighboring properties; and
7. The board of zoning appeals may reduce or eliminate the two hundred foot (200') set back between adjoining properties where similar industrial uses are ongoing and the adjoining property owners agree that such a reduction is mutually beneficial.
8. **All uses involving the extraction of oil or natural gas shall conform to applicable state and federal regulations concerning noise and vibration. The Zoning Administrator may require the submission of a copy of data submitted to state or federal agencies pertaining to these performance standards with the required site plan.**
9. **All mining operators shall submit to the Zoning Administrator a copy of the operations plan required by state agencies with the required site plan.**
10. For uses involving the extraction of oil or natural gas, a study shall be

performed to determine that the use will not have an adverse effect on the public water supply or private water wells within a five mile radius of the mining operation, and outlining what measures, if any are necessary, the operator shall take to insure the public water supply or private water wells within a five mile radius of the mining operation will not be adversely affected.

11. **The proposed location of the mining operation is not located within an Area 1, designated by the Sourcewater Protection Overlay District. If the proposed location of the mining operation is located within an Area 2, designated by the Sourcewater Protection Overlay District, then a Special Administrative Permit shall be obtained per Section 25-518 of the Sourcewater Protection Overlay ordinance.**

25-74.1 Uses prohibited.

B. Enhanced recovery and Hydraulic fracturing are prohibited in the General Agriculture District.

25-384 Uses Permitted by Special Use Permit

D. Extraction of minerals, rock, gravel, sand, oil, natural gas, and similar materials.

Extraction of minerals, rock, gravel, sand, **oil or natural gas** and similar materials, **but not to include extraction of such materials, specifically by means of enhanced recovery, hydraulic fracturing, and/or horizontal drilling** may be permitted by Special Use Permit provided:

1. The neighboring area is not characterized by residential, commercial, or industrial development which would be adversely impacted by the proposed use; and
2. ~~Traffic generated by the proposed project will be compatible with the roads serving the site and other traffic utilizing said roads~~ **A technical transportation study shall be submitted that assesses the potential physical and operational impacts to the**

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FRACKING ORDINANCE (CONT'D)

3. **transportation assets (roads, bridges, right-of-way, etc.) which are anticipated to provide service to the subject parcel or parcels; and**
4. On-site traffic flow will adequately and safely accommodate all traffic to and from the public highways; and
5. All buildings, structures, and operations will be set back at least one hundred feet (100') from all property lines unless the board of zoning appeals determines that greater setbacks are necessary to adequately protect neighboring properties. An accessory retail sales outlet may observe the normal principal building setbacks in General Industrial Districts; and
6. **All uses involving the extraction of oil or natural gas shall conform to applicable state and federal regulations concerning noise and vibration. The Zoning Administrator may require the submission of a copy of data submitted to state or federal agencies pertaining to these performance standards with the required site plan.**
7. **All mining operators shall submit to the Zoning Administrator a copy of the operations plan required by state agencies with the required site plan.**
8. **For uses involving the extraction of oil or natural gas, a study shall be**

performed to determine that the use will not have an adverse effect on the public water supply or private water wells within a five mile radius of the mining operation, and outlining what measures, if any are necessary, the operator shall take to insure the public water supply or private water wells within a five mile radius of the mining operation will not be adversely affected.

9. **The proposed location of the mining operation is not located within an Area 1, designated by the Sourcewater Protection Overlay District. If the proposed location of the mining operation is located within an Area 2, designated by the Sourcewater Protection Overlay District, then a Special Administrative Permit shall be obtained per Section 25-518 of the Sourcewater Protection Overlay ordinance.**

~~5.9.~~ Exemptions. The following extraction activities do not require a Special Use Permit.

Any operator engaging in mining and disturbing less than one (1) acre of land and removing less than five hundred (500) tons of material at any particular site is exempt from the provisions of this ordinance; providing, however, each person intending to engage in such restricted mining shall submit an application for exemption, a sketch of the mining site, and an operations plan to the Zoning Administrator, who shall approve the application if he determines that the issuance of the permit shall not violate the provisions of this ordinance.

25-385 Uses Prohibited

- A. All uses except those listed in 25-382, 25-382.1, 25-383 and 25-384 above are specifically prohibited in General Industrial Districts.
- B. **Enhanced Recovery and Hydraulic fracturing are prohibited in General Industrial Districts.**

Dr. Pattie is in agreeance with most of the ordinance. The ordinance provides most of the tools necessary to inform any future Board other potential harms of natural gas extraction. Dr. Pattie does not think banning the fracking is the right thing to do. Providing the information and giving the tools for future Board's to have that decision to ban is a better way to go. With the current ordinance, we are telling future Board's possibly 20 years in the future what they can and cannot do. By giving them the tools they still have the right to reject or except, but we are not prohibiting them from making that choice.

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FRACKING ORDINANCE (CONT'D)

Vote was as follows: Yeas: Shull, Garber, Coleman, Kelley, Bragg and Pyles
Nays: Pattie

Motion carried.

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AUGUSTA COUNTY CODE AMENDMENT

This being the day and time advertised to consider a request to amend Sections 25-602 and 25-604 of Division I, Article LX Rezoning and other Amendments of the Augusta County Code. Planning Commission recommends approval.

Leslie Tate, Planner pointed out that this amendment is specifically for residential rezoning applications or mixed use residential rezoning applications. This amendment will bring the current ordinance in compliance with the new State code. The State language has been incorporated into the ordinance which says any kind of voluntary proffer for residential rezoning must be specifically attributable to the development. If it addresses a public facility, it can only be in transportation, public safety, schools or parks. The proffer must address a need or identifiable portion of a need for public facility improvements in excess of existing capacity and would also need to lend a direct and material benefit to the development. This applies to applications filed after July 1, 2016.

The Chairman declared the public hearing open.

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

Ms. Bragg moved, seconded by Mr. Kelley, that the Board accept the following ordinance:

**AN ORDINANCE TO AMEND
SECTIONS 25-602 and 25-604
OF THE AUGUSTA COUNTY CODE**

WHEREAS, the Augusta County Board of Supervisors has deemed it desirable to amend parts of the Permits and Amendments Division of the Zoning Ordinance, more specifically Article LX. Rezoning and other amendments, to reference and incorporate State Code Section 15.2-2303.4. Provisions applicable to certain conditional rezoning proffers;

NOW THEREFORE be it resolved by the Board of Supervisors for Augusta County that Sections 25-602 and 25-604 of the Augusta County Code are amended to read as follows:

§ 25-602. Presubmission conference.

A. Prior to the formal submission of a petition for rezoning by the owner, contract purchaser with the owner's consent, or the owner's agent, the petitioner or his representative shall hold a conference with the Director of the Community Development Department concerning the proposed rezoning.

B. The presubmission conference shall be for the following purposes:

1. To allow the petitioner to submit unofficial preliminary studies of the concept of the proposed development for tentative review, comments and recommendations.
2. To review the Comprehensive Plan as it may relate to the requested rezoning and proposed development.
3. To review the procedures which must be followed to effect the requested rezoning.
4. To determine whether the proposal may have an undue adverse impact on the surrounding neighborhood.

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AUGUSTA COUNTY CODE AMENDMENT (CONT'D)

5. To consider possible conditions which the owner may be willing to voluntarily proffer to mitigate such adverse impact, **as provided by law.**

§ 25-604. Conditional zoning.

A. Purpose. The purpose of this section is to include and provide for the voluntary proffering in writing, by the owner, of reasonable conditions in addition to the regulations provided for the zoning district or zone by this chapter, as a part of a rezoning or amendment to a zoning map as authorized by state law.

B. Voluntary proffer authorized for non-residential rezonings. The owner of property which is the subject of an application for rezoning may voluntarily proffer in writing reasonable conditions in addition to the regulations provided for the zoning district by this chapter, as a part of the rezoning, provided that:

- 1. The rezoning itself gives rise to the need for the conditions.
- 2. Such conditions have a reasonable relation to the rezoning.
- 3. All such conditions are in conformity with the Comprehensive Plan.

State law reference--Virginia Code § 15.2-2298.

C. Voluntary proffer authorized for residential rezonings and the residential use portion of mixed use rezonings. The owner of property which is the subject of an application for rezoning may voluntarily

proffer in writing reasonable conditions in addition to the regulations provided for the zoning district by this chapter, as a part of the rezoning, provided that:

- 1. **Such conditions are specifically attributable to the proposed development.**
- 2. **Such off-site conditions address a development impact to a public facility, limited to the following areas: transportation, public safety, schools, or parks.**
- 3. **Such off-site conditions address a need or identifiable portion of a need for public facility improvements in excess of existing capacity.**
- 4. **Such conditions lend a direct and material benefit to the development.**

State law reference--Virginia Code § 15.2-2303.4.

Vote was as follows: Yeas: Shull, Garber, Coleman, Kelley, Bragg
Pyles, and Pattie

Nays: None

Motion carried.

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CHICKEN ORDINANCE

This being the day and time advertised to consider a request to amend Sections 25-4, 25-123, 25-133, and 25-134 of the Augusta County Code to provide for the keeping of chickens in rural residential and single family residential districts under certain circumstances and to clarify the requirements associated with allowing farms and limited agriculture by Special Use Permit in single family residential districts. Planning Commission recommends denial of the amendment to provide for the keeping of chickens and recommends approval of the amendment to clarify the requirements associated with limited agriculture by special use permit. Planning Commission further recommends that if the Board of Supervisors chooses to adopt the ordinance amendment, then the permit fee be sufficient to cover County costs to enact and

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CHICKEN ORDINANCE (CONT'D)

will be permitted because it could draw predators. An inspection of the permit is required and the permit is valid for one year. The birds will need to be tagged or banded to confirm ownership. If there are 3 valid complaints of violation of the conditions within one year, the permit could be revoked. These conditions are for both single family and rural residential. The Planning Commission recommends denial of the amendment. It was further recommended that if the Board of Supervisors chose to adopt the ordinance amendment they would suggest that the permit fee be sufficient to cover County cost to enact and implement the ordinance and the ordinance would only apply to rural residential zonings.

Dr. Pattie asked about the inspection portion of the ordinance. Will someone be sent out annually to do an inspection?

Mr. Wilkinson answered by saying that inspection would take place when the permit is originally applied for. The permit will be valid for one year. At the end of the one year, the applicant would have to reapply and another inspection would be done to make sure all requirements are still met.

Ms. Bragg asked if notification would be sent when permit is to be renewed.

Mr. Wilkinson stated that they would not be notified for renewal.

The Chairman declared the public hearing open.

Nadine Karnes of Stuarts Draft spoke in support of the Chicken Ordinance. The City of Waynesboro has allowed backyard hens for years. Waynesboro has one Animal Control officer for the entire city and there have been no chicken complaints to respond to. It would take six hens to create the mess of one medium dog. Augusta County allows for four dogs and seven cats per residence. Backyard hens would not be problem for anyone. They would only do well for our community.

Aylen Rosenthal of Stuarts Draft spoke in support of the Chicken Ordinance. Chickens eat bad bugs like mosquitos, stink bugs and ticks. Chickens lay eggs to eat that healthier than eggs bought from a store. Chickens make great pets and are friendly. Ms. Rosenthal wants to have chickens where she lives which is in the country.

Theresa Rosenthal of Stuarts Draft spoke in support of the Chicken Ordinance. She would like to speak on behalf of herself, her family, and her surrounding neighbors who all support backyard hens. Three years ago Ms. Rosenthal came before the Board with a petition containing 300 signatures and 200 citizens filled the room in support of backyard hens and still the majority voted no. This vote was not representative of the constituent's wishes. A survey was taken of citizens in the Stuarts Draft area on their feelings of backyard chickens. The citizens were fully supportive, however their Supervisor continued to tell them the reasons they should be opposed. The concept that someone should randomly access the opinions of people who are uneducated about a subject upsets Ms. Rosenthal. She is asking the Board to vote yes because Staunton, Waynesboro, Harrisonburg, Charlottesville, Roanoke and Richmond have all said yes with no issues arising. The Planning Commission states they voted no because of risks to poultry farms, but the Center for Disease Control states that there is no need at present to remove a family flock of chickens because of concerns regarding Avian Flu. The 2006 Grain Report states when it comes to bird flu diverse small scale poultry is the solution it is not the problem. Ms. Rosenthal's hope is the Board of Supervisors will consider their constituents and not big business when they vote. That they will consider the many benefits of backyard hens and the rights of people to have them as pets.

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CHICKEN ORDINANCE (CONT'D)

Michael Rosenthal of Stuarts Draft spoke in support of the Chicken Ordinance. When he and his family lived in the San Francisco area, his wife wanted to get chickens and he was against it, but he allowed it. He was surprised by the many benefits of having these chickens. His garden did very well, there was little mess and they didn't make noise. Mr. Rosenthal had a health scare and had to change his diet completely and the fresh eggs helped in his recovery. He realizes this is a challenging decision and appreciates the consideration and thoughts on the matter.

Amos Painter of Waynesboro is in support of the Chicken Ordinance. He lived in Augusta County until a few years ago and then moved to the City of Waynesboro. Mr. Painter loves having chicken as pets. They provide fresh eggs daily, the chickens benefit his garden, small amount of waste is produced and they eat food waste from the house instead of it going into the garbage. Most importantly, it's been a huge opportunity to teach his child about his agricultural roots, the nature of raising animals, the connection to our food, and the life cycle. Hearing his daughter say she wants to be a farmer when she grows up makes him proud and happy. Noise varies from bird to bird. For the most part he finds they are quiet. Waynesboro has not had many issues concerning backyard chickens. There's always a chance of abuse. There's always a position for people to get in over their heads, but for the most part people want to do right. Mr. Painter pointed out a few positives in having backyard chickens. They are a way to provide food and substance to our area. There are economic benefits to local businesses such as the local Co-op or the organic food mill in Waynesboro. Many cities allow backyard chickens and have little to no problems. He hopes to move his family back to the County eventually and would like to be able to have chickens.

Jay Price would like to see backyard chickens made legal without permits because unless there is a statute in Augusta County he can have a pet fox without a permit.

Veronica Clark of Verona asked how much the permit fee would approximately be.

Mr. Pyles stated that according to the ordinance the permit would be \$10.00 per permit.

Ms. Clark stated that her main concern with cost was for the students in the FFA program. Many of the students can't afford to purchase or house a horse, lamb or a goat. They are interested in showing an animal and a hen would be a good cost effective option.

Ms. Bragg asked if the FFA program currently had a poultry section.

Ms. Clark stated that currently there isn't one because people in Augusta County do not have the right to own chickens. If this ordinance passes it will be looked into further.

Mr. Kelley noted that 4-H in Rockingham County has a poultry section.

Guy Freesen of Staunton spoke in support of the ordinance. He moved from Illinois in 1999 and bought a 45 acre farm on Shutterlee Mill Road. He had not known much about chickens until moving here. Mr. Freesen plans to retire in the near future and move to a residential area. He would like to have the freedom to have backyard chickens he so chooses.

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

Mr. Fitzgerald pointed out that a letter was received from Jim Campbell, Chief Executive Officer for New Country Organics in Waynesboro, VA. . He wanted to show his support of the Chicken Ordinance. A copy was placed at each Board of Supervisors seat.

Dr. Pattie pointed out that he thinks this is government that has gotten out of control with the ordinance itself. The fracking ordinance is four pages and the chicken

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CHICKEN ORDINANCE (CONT'D)

ordinance is five pages. It's excessive to send a Government employee to check out four hens annually. It should be taken out of the ordinance. You can have four Great Danes on a 1/3 of an acre and a very small house and they are not inspected. If there is a complaint then someone should be sent out. As far as the stationary pen; many people move their litters around to fertilize their grass. He recommends amending that part of the ordinance so that it could be moved when need be. The County is recommending two chicken coops at \$175.00 each and he believes a dog kennel would work just fine. A net gun is being requested for \$2,000 and Dr. Pattie believes a fish net would be sufficient. It is recommended to go as needed on supplies. Given the lack of chickens taken into the system, it would not be beneficial to purchase these items.

Dr. Pattie moved, seconded by Mr. Garber, that the Board adopt the following ordinance with an amendment to state no annual inspection will be necessary:

**AN ORDINANCE TO AMEND
SECTIONS 25-123, 25-133, and 25-134
OF THE AUGUSTA COUNTY CODE
TO PROVIDE FOR
KEEPING DOMESTIC CHICKENS IN
RURAL RESIDENTIAL AND SINGLE FAMILY RESIDENTIAL
DISTRICTS**

WHEREAS, the Augusta County Board of Supervisors has deemed it desirable to enact an ordinance to add provisions to the County Code to allow for the keeping of chickens in residentially zoned areas in Augusta County; and

WHEREAS, the Augusta County Board of Supervisors seeks to protect the residential integrity of the surrounding neighborhood and the health and safety of the chickens and other poultry, including the poultry that is a vital part of the agribusiness economy of the County.

NOW THEREFORE be it resolved by the Board of Supervisors for Augusta County that §25-123 is amended by adding a new Paragraph E to read as follows:

E. Domestic Chickens.

The keeping of no more than four (4) chicken hens shall be permitted by Administrative Permit provided:

1. No more than four (4) chicken hens shall be allowed per parcel and will be accessory to a single-family dwelling. Chickens shall not be permitted on any parcel of land that is within five hundred (500) feet of any poultry house. Chickens shall only be raised for domestic purposes. No commercial on-site use on the property such as selling eggs or selling chickens for meat shall be allowed.
2. No roosters, capons, or crowing hens shall be allowed.
3. There shall be no outside slaughtering of birds.
4. All chicken hens must be kept at all times in an enclosed and covered, at a minimum with wire mesh, secure movable or stationary pen that contains at a minimum four (4) square feet of roost space per bird, with an additional five (5) square feet of run space per bird. The maximum total area of the coop and chicken enclosure shall not exceed one hundred fifty (150) square feet nor a height of ten feet (10').
5. All coops and enclosed pens must be located behind the front building line of the principal structure and may not be erected, altered, located, reconstructed, or enlarged nearer than twenty-five feet (25') from any property lines or thirty-five feet (35') from any stream or any river and shall not be located in any storm water management area, flood plain, or Source Water Protection Area 1.
6. All enclosed pens must be kept in a neat and sanitary condition at all times, and must be cleaned on a regular basis so as to prevent odors perceptible at the property boundaries.
7. All feed for the chickens shall be kept in a secure container or location to prevent the attraction of rodents and other animals.
8. Provisions shall be made for the storage and removal of chicken litter and chicken waste (manure). Chicken litter and chicken waste shall not be disposed of by composting on-site, but shall be collected by a bona-fide litter service, or bagged and taken to the county landfill. In no case shall such chicken litter and chicken waste be allowed to create a nuisance or health hazard to adjoining property owners.
9. Any dead bird shall be taken to the county landfill. Further all unexplained bird deaths shall be reported to the Virginia Department of Agriculture and Consumer Services prior to transport to the county landfill.
10. Persons wishing to keep chicken hens pursuant to this subsection must file an application with the Department of Community Development, which application shall include a sketch showing the area where

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CHICKEN ORDINANCE (CONT'D)

11. the chickens will be housed and the types and size of enclosures in which the chickens shall be housed along with the fee for a Keeping of Poultry Permit. The sketch must show all dimensions and setbacks. As
12. part of the application process all persons must complete the Virginia Livestock Premises Registration with the Virginia State Veterinarian's Office prior to the issuance of a permit. If the applicant is not the property owner, property owner consent is required.
13. Upon receipt of an application for a Keeping of Poultry Permit, the Director of the Community Development Department shall send by first class mail written notice of such application to all adjoining property owners as shown on the current real estate assessment books.
 - A. Action if objection received.
 - i. If written objection is received from an adjoining property owner within twenty-one (21) days following the mailing of said notice, the application shall be denied, and the applicant advised that the keeping of chickens may be allowed only upon approval of a Special Use Permit by the board of zoning appeals.
 - ii. If the Special Use Permit is granted by the board of zoning appeals, the keeping of chickens shall be permitted provided all terms and conditions of the Special Use Permit are satisfied.
 - B. Action if no objection received. If no written objection is received from an adjoining property owner within twenty-one (21) days following the mailing of said notice, the keeping of chickens may be permitted by a Keeping of Poultry Permit.
 - C. In all cases, the permit to keep chickens is issued non-transferrable and does not run with the land.
14. Once the permit has been issued, the site and enclosures shall be inspected and approved by the Director of the Community Development Department within thirty (30) days of construction of the pens. Permits shall be valid for one (1) year. Each existing permit must be renewed annually by filing a renewal application with the Community Development Department along with the payment of an annual license fee established in Section 19-53 of the Augusta County Code. Notification of adjacent property owners is not required for permit renewals.
15. Each chicken will be tagged with an identification band provided by the county at the time the permit is issued, which shall be attached to either leg or wing.
16. The permit applicant must be the owner of the property or must have and submit written consent of the owner of the property as part of the Keeping of Poultry Permit application to keep chickens on the property. Upon written notice of the property owner's withdrawal or cancellation or termination of such approval, the permit shall be revoked by the Director of Community Development.
17. If the permit holder is convicted of any county or state code violation associated with the keeping of chickens, the permit shall be revoked.
18. In the event of the Department of Community Development receiving and verifying three substantial and credible complaints of violation of any provision of this chapter and after notice given of such to the permit holder, the permit shall be revoked.
19. Upon revocation of the permit, chickens must be removed within 30 days or be subject to removal. Any person(s) so having a permit revoked shall not be allowed, at any time, to make application for another permit for five years.
20. Upon a finding by the zoning administrator that there is warning or equivalent notice or advisory or guidance issued by federal or state authorities regarding a present or forecasted substantial threat of the potential transmission or spread of avian influenza or other poultry disease, no further permits shall be issued until such time that, by similar notice or advisory or guidance, the threat has been recognized by federal or state authorities as having been eliminated.

BE IT FURTHER RESOLVED by the Board of Supervisors for Augusta County that §25-133 is amended by adding a new Paragraph D to read as follows:

D. Domestic Chickens.

The keeping of no more than four (4) chicken hens shall be permitted by Administrative Permit provided:

1. No more than four (4) chicken hens shall be allowed per parcel and will be accessory to a single-family dwelling. Chickens shall not be permitted on any parcel of land that is within five hundred (500) feet of any poultry house. Chickens shall only be raised for domestic purposes. No commercial on-site use on the property such as selling eggs or selling chickens for meat shall be allowed.
2. No roosters, capons, or crowing hens shall be allowed.
3. There shall be no outside slaughtering of birds.
4. All chicken hens must be kept at all times in an enclosed and covered, at a minimum with wire mesh, secure movable or stationary pen that contains at a minimum four (4) square feet of roost space per bird, with an additional five (5) square feet of run space per bird. The maximum total area of the coop and chicken enclosure shall not exceed one hundred fifty (150) square feet nor a height of ten feet (10').

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CHICKEN ORDINANCE (CONT'D)

5. All coops and enclosed pens must be located behind the front building line of the principal structure and may not be erected, altered, located, reconstructed, or enlarged nearer than twenty-five feet (25') from any property lines or thirty-five feet (35') from any stream or any river and shall not be located in any storm water management area, flood plain, or Source Water Protection Area 1.
6. All enclosed pens must be kept in a neat and sanitary condition at all times, and must be cleaned on a regular basis so as to prevent odors perceptible at the property boundaries.
7. All feed for the chickens shall be kept in a secure container or location to prevent the attraction of rodents and other animals.
8. Provisions shall be made for the storage and removal of chicken litter and chicken waste (manure). Chicken litter and chicken waste shall not be disposed of by composting on-site, but shall be collected by a bona-fide litter service, or bagged and taken to the county landfill. In no case shall such chicken litter and chicken waste be allowed to create a nuisance or health hazard to adjoining property owners.
9. Any dead bird shall be taken to the county landfill. Further all unexplained bird deaths shall be reported to the Virginia Department of Agriculture and Consumer Services prior to transport to the county landfill.
10. Persons wishing to keep chicken hens pursuant to this subsection must file an application with the Department of Community Development, which application shall include a sketch showing the area where the chickens will be housed and the types and size of enclosures in which the chickens shall be housed along with the fee for a Keeping of Poultry Permit. The sketch must show all dimensions and setbacks. As part of the application process all persons must complete the Virginia Livestock Premises Registration with the Virginia State Veterinarian's Office prior to the issuance of a permit. If the applicant is not the property owner, property owner consent is required.
11. Upon receipt of an application for a Keeping of Poultry Permit, the Director of the Community Development Department shall send by first class mail written notice of such application to all adjoining property owners as shown on the current real estate assessment books.
 - A. Action if objection received.
 - i. If written objection is received from an adjoining property owner within twenty-one (21) days following the mailing of said notice, the application shall be denied, and the applicant advised that the keeping of chickens may be allowed only upon approval of a Special Use Permit by the board of zoning appeals.
 - ii. If the Special Use Permit is granted by the board of zoning appeals, the keeping of chickens shall be permitted provided all terms and conditions of the Special Use Permit are satisfied.
 - B. Action if no objection received. If no written objection is received from an adjoining property owner within twenty-one (21) days following the mailing of said notice, the keeping of chickens may be permitted by a Keeping of Poultry Permit.
 - C. In all cases, the permit to keep chickens is issued non-transferrable and does not run with the land.
12. Once the permit has been issued, the site and enclosures shall be inspected and approved by the Department of Community Development within thirty (30) days of construction of the pens. Permits shall be valid for one (1) year. Each existing permit must be renewed annually by filing a renewal application with the Community Development Department along with the payment of an annual license fee established in Section 19-53 of the Augusta County Code. Notification of adjacent property owners is not required for permit renewals.
13. Each chicken will be tagged with an identification band provided by the county at the time the permit is issued, which shall be attached to either leg or wing.
14. The permit applicant must be the owner of the property or must have and submit written consent of the owner of the property as part of the Keeping of Poultry Permit application to keep chickens on the property. Upon written notice of the property owner's withdrawal or cancellation or termination of such approval, the permit shall be revoked by the Director of Community Development.
15. If the permit holder is convicted of any county or state code violation associated with the keeping of chickens, the permit shall be revoked.
16. In the event of the Department of Community Development receiving and verifying three substantial and credible complaints of violation of any provision of this chapter and after notice given of such to the permit holder, the permit shall be revoked.
17. Upon revocation of the permit, chickens must be removed within 30 days or be subject to removal. Any person(s) so having a permit revoked shall not be allowed, at any time, to make application for another permit for five years.
18. Upon a finding by the zoning administrator that there is warning or equivalent notice or advisory or guidance issued by federal or state authorities regarding a present or forecasted substantial threat of the potential transmission or spread of avian influenza or other poultry disease, no further permits shall be

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CHICKEN ORDINANCE (CONT'D)

19. issued until such time that, by similar notice or advisory or guidance, the threat has been recognized by federal or state authorities as having been eliminated.

BE IT FURTHER RESOLVED by the Board of Supervisors for Augusta County that §25-134 is amended to read as follows:

§ 25-134. Uses permitted by Special Use Permit.

The uses listed in this section shall be permitted within Single Family Residential Districts only upon the issuance of a Special Use Permit by the board of zoning appeals pursuant to the provisions of article LVIII of division I of this chapter.

E. Farms and agriculture of a limited nature.

Limited agriculture, **not including swine and poultry, except for domestic chickens as provided for in §25-133**, may be permitted by Special Use Permit provided:

1. The tract or parcel is at least five (5) acres in size; and
2. The property is not part of a platted residential subdivision; and
3. The tract or parcel fronts on and has access from a state maintained road, or, if it fronts on a private road, the applicant has demonstrated that the private road is constructed and maintained to adequate standards so as to accommodate the anticipated traffic; and
4. Traffic generated by the proposed farming operation will be compatible with the roads serving the site and other traffic utilizing said roads; and
5. There shall be no accessory business use of the property that will generate additional traffic.

This ordinance shall become effective six months after adoption.

Mr. Garber stated that the budget part of the ordinance concerns him. 90% of the County can have backyard chickens right now. No trouble is anticipated. Mr. Garber does support the ordinance, however he does not support buying anything at this point and there is no need for the annual inspection. If it's not bothering anyone and it's not bothering a neighbor, it is not necessary to make sure everyone covers every base and checks every box every day. Someone that wants four chickens would also make a good neighbor.

Mr. Pyles grew up in Deerfield and the houses were very close together. Everyone around him had chickens and dogs and there were no problems. As the County has evolved, the good hearted people that have always dealt with each other in good way seem to be getting more uptight. The things that we most complain about are our neighbors. Their dog is noisy, their lights are too bright or they make too much noise. We need to have more consideration for our neighbor. There is over kill with this ordinance. There is not a need for an annual inspection or expensive tools. These are not farm animals they are pets. Mr. Pyles is hopeful the votes are in favor this time. The ordinance will probably have to change over time but he supports this.

Mr. Shull is not in favor of the ordinance because agriculture is the number one industry in Augusta County. There was a mention of factory farms and big corporations. Mr. Shull spoke with some poultry producers and they are everyday people. They are not part of big corporation. They borrow money to build their poultry houses and they are still paying for them over the years. A company may supply the poultry to them, but it's not the company that owns the house. They are making their living from these poultry houses. The Board represents those people just as well as the ones that want the backyard chickens. Diseases have been a problem and continue to be problem. Just as the flu bug that human have, there are flus in the chickens that didn't use to be there. Cargill recommends for their poultry producers not to go in the houses when they have the flu themselves. Mr. Shull asked some of the producers what the impact would be if one of their houses contracted a disease. They said it would be approximately \$50,000 that is lost and 6 months or more that they are not in business. This not only effects the house itself, it's quarantined three miles around because the diseases can go through the air from one farm to another. We are trying to help people out and try to protect our industry and we are not looking at the entire aspect. Look at the families and family farms that are involved. Once the poultry is dead, they used to bury them or take them to the landfill, but now they compost them and then it goes out on the ground. Are we cleaning up the ground when that is done? Mr. Shull realizes that citizens can have chickens in general agriculture district, but the poultry producers would like to see that be more constrictive. They know the zoning has been this way for

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CHICKEN ORDINANCE (CONT'D)

years and they are not going to try to change it. This is not actually a chicken ordinance, this is zoning.

You can't have everything you want in general agriculture, we are restricted from doing what we want to do. If you are going to let everything go, there is no point in having zoning, a Board of Zoning or anything. Let everybody do what they want to do. Mr. Shull hopes the Board will consider this with the producer in mind. If he were a poultry producer and this ordinance passes and then he lost a flock of birds, he would say to the Board that they voted for this and a significant amount of money was lost. A poultry producer loses more than the person with the four chickens if there is a disease. This needs to be seen from the farmer's aspect.

Ms. Bragg thinks a lot of the issues the County deals with do come from the neighbors; the grass is too long or the cars are piled up. These are things that the Board in the past have always done ordinances to protect property rights of the person and the neighbors. The complaints we hear today are very different than they were a long time ago. Ms. Bragg took a non-official survey within her district. This time around it was more of an even split. If this ordinance was strictly rural residential there would be no issues. Property sizes and lot setbacks are looked at because there are neighbors. Not everybody moves to a residential area and expects to have chickens around them. They have a right to some degree to live the way they want to also. This particular ordinance contains setbacks and she is going to support the ordinance, but she expects the people that are asking for this will not be satisfied. There could be a house that qualifies to have backyard chickens and the one next to them may not. If your lot size is not the correct size, even if you support the ordinance, you still will not be allowed to have chickens. That is something to consider.

Mr. Kelley is on the Ordinance Committee. These stipulations are in place because a lot of people are not good neighbors. Mr. Kelley lives in a subdivision and he listens to dogs barking all night long. Looking at this ordinance, the goal is to protect the neighbors and keep it off of the property boundaries. That is why some properties will not be able to have chickens. The hope is that citizens will understand why this was done the way it was. There are a lot of regulations, but it is needed. Mr. Kelley supports the ordinance with the stipulations because stipulations make good neighbors.

Mr. Coleman does not support the chicken ordinance. One of the things that is dealt with continuously is incompatible land use. There are people that live in the County for different reasons. He often receives calls from citizens complaining about turkey litter being spread on the fields. Augusta County is the second largest agriculture County in the State of Virginia. As Board members, they will do what needs to be done to work with this. His preference would have been that the Planning Commissions second option be incorporated if the board was so inclined. A lot of what is done has unanticipated consequences and that will happen with this ordinance. This ordinance subjects the urban area of his district to something he feels should not be. As previously mentioned, 95% of Augusta County is zoned agricultural and you can have all of the chickens you want. Mr. Coleman prefers to keep chickens out of a residential area. The ordinance restrictions that the Ordinance Committee proposed are appreciated.

Mr. Garber addressed the disease concerns that have been brought up. It shouldn't be a problem, because of the layout of Augusta County. If Mr. Garber thought in any way allowing backyard chickens would ruin the poultry industry he would absolutely be opposed to it.

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BOY SCOUTS OF AMERICA-TIRE DISPOSAL
account.

Vote was as follows: Yeas: Pyles, Kelley, Coleman, Bragg, Garber, Shull,
and Pattie

Nays: None

Motion carried.

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WAIVERS/VARIANCES – NONE

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MATTERS TO BE PRESENTED BY THE BOARD

The Board discussed the following issues:

Mr. Shull asked if staff found out whether the pipeline going through Roanoke and Franklin County was able to get taxes off of the line.

Mr. Fitzgerald spoke with the Dominion representative and will look into it further.

Dr. Pattie mentioned that a street in his district is upset about a poultry house being built. It is in general agriculture so the County has no right to change the zoning law. They are in the process of getting a petition signed.

* * * * *

MATTERS TO BE PRESENTED BY STAFF

Timothy Fitzgerald, County Administrator discussed the following:

- 1) There was a request several years ago from a developer to build some VHDA housing on a piece of property that Country Side owns. They asked the County for a CEO Letter of Support and also a Board Resolution of Support. At the time it was looked at and determined that area did not qualify for what they were looking for. A new letter of request was received from another VHDA project. Mr. Fitzgerald showed a picture on the screen of the area being requested. The piece of property has been zoned multi-family since 1996. VHDA would like the County to consider providing support and a resolution to go along with the property. Mr. Fitzgerald suggests not doing that at this time. From a CEO perspective it does not meet the requirements for support. This is an Urban Service Area and there is construction taking place by private industry to provide housing going forward.

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ADJOURNMENT

There being no other business to come before the Board, Mr. Coleman moved, seconded by Dr. Pattie, the Board adjourned subject to call of the Chairman.

Vote was as follows: Yeas: Pyles, Kelley, Coleman, Bragg, Garber, Shull and
 Pattie

 Nays: None

Motion carried.

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Chairman

County Administrator