



MEMORANDUM

To: Board of Supervisors' Rural Areas Subcommittee

CC: Board of Supervisors and Planning Commissioners
John R. Riley, Jr. County Administrator

From: Eric R. Lawrence, AICP, Planning Director

Subject: RA Subcommittee Meeting and Agenda

Date: November 17, 2008

The Board of Supervisors Rural Areas Subcommittee (RA Subcommittee) will be meeting on **Thursday, November 20, 2008 at 7:30 p.m.** in the first floor conference room (purple room) of the County Administration Building, 107 North Kent Street, Winchester, Virginia. The RA Subcommittee will discuss the following agenda items:

AGENDA

1. **Transfer of Development Rights (TDR) Program** (page 2)
 - a. Scenario RA to residentially planned areas within the UDA
 - b. Scenario RA to TNDB
2. **Community Meeting Summary** (page 6)
 - a. Review meeting surveys and comments
 - b. Decide on next course of action
3. **Next Meeting Topic, Date, and Time**
 - a. First and Third Thursday of the month @ 7:30 P.M.
 - b. Next meeting: tentatively December 4, 2008
4. **Adjourn by 9 P.M.**

Please contact this office if you will not be able to attend the meeting. Thank you.

Attachments: RA Meeting Survey and Comments

Agenda Item #1: Transfer of Development Rights (TDR)

TDR, or transfer of development rights, is a concept in which some or all of the rights to develop a parcel of land in one district (the sending district) can be transferred to a parcel of land in a different district (the receiving district). The TDR is a tool used to preserve open space, farmland, water resources and other resources in areas where a locality wishes to limit or curtail development.

In a classic TDR system one or more sending districts are identified as well as one or more receiving districts. "Development rights" are assigned to landowners in the sending district, typically on the basis of a certain number of permitted dwellings per acre. Owners of land in the sending district are not allowed to develop at the full level of their development rights, but instead may sell their development rights to owners of land in the receiving district, who may then use the newly acquired development rights to build at higher densities than normally allowed by existing zoning (without further legislative approval). TDR systems are intended to maintain designated land in open or non-developed uses and to compensate owners of the preserved land for the loss of their rights to develop it.

For the RA Subcommittee's discussion, staff assembled two potential scenarios for which TDR might be applied within Frederick County. Scenario #1 identifies a receiving area that is zoned Rural Areas with a 1 unit per 5 acre density. Scenario #2 identifies a receiving area that is zoned TNDB (Traditional Neighborhood Design-Business) Overlay District. The TNDB district is predominantly B1 or B2 commercial use with the ability to have 2nd and 3rd floor residential units. Below are details on how the scenarios might be applied.

For this discussion, each scenario would designate the sending area as RA zoned properties, located outside of the SWSA and/or the UDA. Properties within adopted Agricultural and Forestal Districts could be allocated a 50% TDR density bonus as an incentive to participate in the program.

Scenario #1: RA to the residentially planned land uses in the UDA

In this potential scenario, a land owner in the county's rural areas (sending areas) could sell his by-right residential development rights for use within the identified receiving area. The receiving area would be RA Zoned property located within the UDA and identified by the Comprehensive Policy Plan for planned residential use. This TDR

concept would remove the dwelling rights from the rural landscape and place them within the residentially planned area of the County.

Potential Advantages

- (1) Housing units are not constructed in the rural areas, but are constructed within the UDA. County services may be more efficiently provided when the homes are located in a concentrated area such as the UDA.
 - a. Houses are placed closer to Schools. Reducing demands on bus transportation. Keeps schools on public water and sewer, reducing needs for package plant construction and maintenance.
 - b. Houses are placed closer to fire and rescue facilities. Generally resulting in decreased response distances and times.
 - c. Houses are placed closer to road networks designed to accommodate the increased transportation demands. The transportation system is better prepared to accommodate the additional residences, and state and federal funding assistance is generally more readily available for the suburban (UDA) portion of the county.
- (2) Rural Landowners are able to continue to enjoy the benefits of their rural land, for continuing agricultural pursuits or simply the natural scenery, whichever they so chose, while also receiving payment for the development rights/values of the property. Additionally, landowner would not need to conduct engineering and soil scientist activities to determine the usability of the property, nor design and construct required subdivision roads. Preliminary cost estimates suggest a savings potential to the rural landowner of \$25,000 per lot. This estimate projects that it will cost about \$25,000 per lot for a rural preservation subdivision, including application fees, roads, engineering, surveying, and soil scientist.
- (3) Developer could gain an economic advantage as he would not have to enter the uncertainty of the rezoning process, saving on application fees, engineering analysis, transportation impact analysis, wetland studies, and proffered efforts to mitigate impacts to roads, schools, fire and rescue, etc. Preliminary cost estimates suggest a savings potential to the developer of \$8,000 per acre for a 5 acre project, and this does not include the expected impact mitigation projected by the Development Impact Model.

Potential Disadvantages

- (1) Current TDR enabling legislation does not allow the county to recover impacts generated by the residential unit's construction. Neither Impact Fees nor proffers are allowed. Therefore, impacts to county services (schools, Fire and Rescue) and on the transportation system are not mitigated.

Scenario #2: RA to the TNDB Zoning District

In this potential scenario, a land owner in the county's rural areas (sending areas) could sell his by-right residential development rights for use within the identified receiving area. The receiving area would be land zoned TNDB (Traditional Neighborhood Design-Business) or other similar future districts. Through the purchase of the TDR, a developer could increase the residential component above the residential density limits of the site's proffered limitations so long as they do not exceed the district's maximum residential density.

Potential Advantages

- (1) Housing units are not constructed in the Rural areas, but are constructed within the UDA. County services may be more efficiently provided when the residences are located in a concentrated area such as the UDA.
 - a. Houses are placed closer to Schools. Reducing demands on bus transportation. Keeps schools on public water and sewer, reducing needs for package plant construction and maintenance.
 - b. Houses are placed closer to fire and rescue facilities. Generally resulting in decreased response distances and times.
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- (2) Rural Landowners are able to continue to enjoy the benefits of their rural land, for continuing agricultural pursuits or simply the natural scenery, whichever they so chose, while also receiving payment for the development rights/values of the property. Additionally, landowner would not need to conduct engineering and soil scientist activities to determine the usability of the property, nor design and construct required subdivision roads. Preliminary cost estimates suggest a savings potential to the rural landowner of \$25,000

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(3) Developer could gain an economic advantage as he would not have to enter the uncertainty of the rezoning process, saving on application fees, engineering analysis, transportation impact analysis, wetland studies, and proffered efforts to mitigate impacts to roads, schools, fire and rescue, etc. Preliminary cost estimates suggest a savings potential to the developer of \$8,000 per acre for a 5 acre project, and this does not include the expected impact mitigation projected by the Development Impact Model. The TDR units would be bonus residential density for the project and would be exempt from proffered contributions to mitigate the DIM and TIA modeled transportation impacts.

(4) County would create additional incentives to implement the Urban Center policies of the Comprehensive Policy Plan

Potential Disadvantages

(1) County would not receive impact mitigation from the developer. Therefore, impacts to county services (schools, Fire and Rescue) and on the transportation system are not mitigated.

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Rural Areas Subcommittee
Re: November 20, 2008 Meeting Agenda
November 17, 2008

Agenda Item #2: Rural Areas Community Meeting Summary

The Rural Areas Subcommittee sponsored three Rural Areas Community Meetings to solicit community input and response to various available improvements to the rural areas growth management policies of the County. These community meetings were held: November 3, November 6, and November 13, 2008 from 7PM to 9PM at three locations through the rural community of Frederick County.

The meetings were utilized to educate the community about why the RA Subcommittee was created, their charge, their findings regarding state enabling legislation that the County might more effectively utilize, and the community's reaction. A survey was distributed at the meetings as well as via the RA study's webpage. All in all, through these community meetings the county received comments (written and verbal) from 39 people.

The survey findings and participant comments are on the attached pages.

Note, 38 people filled out a survey during one of the three events, one survey was submitted at the office. Responders, on the whole, represent the most vocal members of the community with a vested interest in the outcome of this analysis and the subsequent recommendations to the Board. Of the 39 responses, 6 surveys (23%) were photocopies already filled-in and then signed by different individuals. The copied responses were each counted, but where the tallies include these 6 responders, the total has been italicized.

3-Nov 6-Nov 13-Nov Other Total

Subdivision Layouts: Preservation Tracts & Cluster Lots

Further promote the County's cluster-style ('Rural Preservation') subdivision option.

Responders that said: <i>I think this would be effective and that it's a good idea.</i>	9	8	14	1	32
Responders that said: <i>I think this might be effective, but it's a bad idea.</i>	2	1			3
Responders that said: <i>I don't think this would be at all effective.</i>	1		1		2
No response.	1	2	1		4

Lot Sizes: Minimum & Maximum Acreages

Require a larger set-aside or 'preservation tract' lot.

Responders that said: <i>I think this would be effective and that it's a good idea.</i>	12	6	3	1	22
Responders that said: <i>I think this might be effective, but it's a bad idea.</i>		1	1		2
Responders that said: <i>I don't think this would be at all effective.</i>		4			4
No response.	1		12		13

How large should the set-aside tract be?

Responders who selected 40%					0
Responders who selected 60%	8	4	6	1	19
Responders who selected 80%	3	1			4
No response.	2	6	10		18

Establish a maximum lot size for cluster subdivision lots.

Responders that said: <i>I think this would be effective and that it's a good idea.</i>	6	8	2		16
Responders that said: <i>I think this might be effective, but it's a bad idea.</i>	1		1		2
Responders that said: <i>I don't think this would be at all effective.</i>	1	3		1	5
No response.	5		13		18

Lot Sizes: Minimum & Maximum Acreages *Continued*

What should the maximum cluster lot size be?

Responders who selected 2 acres	5	5	3		13
Responders who selected 3 acres	2				2
Responders who selected 4 acres	1				1
No response.	4	4	13	1	22

TDR's & PDR's: Transfer of Development Rights & Purchase of Development Rights

Implement a Transfer of Development Rights Program.

Responders that said: <i>I think this would be effective and that it's a good idea.</i>	6	10	4	1	21
Responders that said: <i>I think this might be effective, but it's a bad idea.</i>	1		1		2
Responders that said: <i>I don't think this would be at all effective.</i>	1		2		3
No response.	5	1	9		15

Continue to promote and/or expand the County's Purchase of Development Rights Program

Responders that said: <i>I think this would be effective and that it's a good idea.</i>	4	10	8		22
Responders that said: <i>I think this might be effective, but it's a bad idea.</i>	1				1
Responders that said: <i>I don't think this would be at all effective.</i>	3		2	1	6
No response.	5	1	6		12

Should the County and State use tax dollars to help purchase development rights?

Responders who selected yes	3	7	6		16
Responders who selected no	2		1	1	4
No response.	8	4	9		21

3-Nov

6-Nov

13-Nov

Other

Total

Tax Programs: Sliding Scale & Land Use

Add the Sliding Scale Land Use tax deferral program to the existing Land Use tax program.

Responders that said: <i>I think this would be effective and that it's a good idea.</i>	8	5	3	1	17
Responders that said: <i>I think this might be effective, but it's a bad idea.</i>		1			1
Responders that said: <i>I don't think this would be at all effective.</i>	1	4	4		9
No response.	4	1	9		14

Would you consider a 20 year land use contract in exchange for a reduction (99%) in real estate taxes?

Responders who selected yes	3	3	3	1	10
Responders who selected no	1	4	3		8
No response.	4	4	10		18

Residential Density: Reducing 'By-Right' Housing Density

Reduce the 'by-right' residential density allowed in the Rural Area zoning district

Responders that said: <i>I think this would be effective and that it's a good idea.</i>	3	5	1	1	10
Responders that said: <i>I think this might be effective, but it's a bad idea.</i>	5	0	1		6
Responders that said: <i>I don't think this would be at all effective.</i>	3	5	4		12
No response.	2	1	10		13

What should the Rural Area's by-right density be?

Responders who selected 1 unit per 7 acres					0
Responders who selected 1 unit per 10 acres	1		1	1	3
Responders who selected 1 unit per 20 acres	2	1			3
Responders who wrote in 1 unit per 5 acres or less	8	4	12		24
No response.	2	6	3		11

3-Nov

6-Nov

13-Nov

Other

Total

Approval Process: Administrative Approvals & Rezonings

Require a rezoning to subdivide land at a density that exceeds the 'by-right' density.

Responders that said: <i>I think this would be effective and that it's a good idea.</i>	2	2	2		6
Responders that said: <i>I think this might be effective, but it's a bad idea.</i>	2	1			3
Responders that said: <i>I don't think this would be at all effective.</i>	3	7	11	1	22
No response.	6	1	3		10

What should a rural property's density be after it's approved for residential development?

Responders who selected 1 unit per 3 acres		3			3
Responders who selected 1 unit per 5 acres			1		1
Responders who selected 1 unit per 7 acres	3	1	1		5
No response.	10	8	14	1	33

Private Health Systems: Private Health System Types & Design Standards

Increase regulations related to Private Health Systems.

Responders that said: <i>I think this would be effective and that it's a good idea.</i>	4	4	2	1	11
Responders that said: <i>I think this might be effective, but it's a bad idea.</i>	2	3	2		7
Responders that said: <i>I don't think this would be at all effective.</i>	2	2	4		8
No response.	5	2	8		15

Should the County limit approvals of experimental and provisional health systems?

Responders who selected yes	4	3	1	1	9
Responders who selected no	8	4	11		23
No response.	1	4	4		9

3-Nov

6-Nov

13-Nov

Other

Total

Private Health Systems: Private Health System Types & Design Standards *Continued*

Should the County require a 100% reserve area for drainfields?

Responders who selected yes	3	6	2	1	12
Responders who selected no	8	4	10		22
No response.	2	1	4		7

Should the County require more distance between wells and drainfields?

Responders who selected yes	5	6	1	1	12
Responders who selected no	7	4	10		21
No response.	1	1	5		7

Should the County stop approving off-site drainfield easements?

Responders who selected yes	6	5	4		15
Responders who selected no	6	5	9	1	21
No response.	1	1	3		5

Should the County require Operation and Maintenance agreements for alternative systems?

Responders who selected yes	11	7	11	1	30
Responders who selected no		2	1		3
No response.	2	2	4		8

Community Systems: Rural Community Systems

Allow the Use of Community Systems in Rural Community Centers.

Responders that said: <i>I think this would be effective and that it's a good idea.</i>	9	9	9		27
Responders that said: <i>I think this might be effective, but it's a bad idea.</i>	1		1		2
Responders that said: <i>I don't think this would be at all effective.</i>	2		1	1	4
No response.	1	2	5		8

Comments:

Developers should be required to upgrade roads etc. in rural areas to accommodate the extra traffic their projects create & prove water resources are adequate.

The rural areas of the County vary greatly and I think there should be a range of lot densities.

I would have been interested to know some of the discussions / comments the County has had on the above, rather than the County relying on our feedback. A constructive conversation would have been nice. (thinks maintenance of systems should be done by the county)

Look 20 years ahead not just next year, water quality and quantity are going to be a future concern, new ideas, new practices without damaging our children's environment and our land values are the obvious issues.

No Houses and No Strip malls for 10 years (moratorium)

Farming since 1952. Allow Community systems throughout the county, and have them be managed / maintained by the County.

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County should allow experimental and provisional systems; how else do we find improvements? This is free enterprise. - Alternative Systems are a joke, people don't know what the red light means.

Regarding agricultural economy & viewshed protection, there was no mention of the path of 765K Power Towers which will greatly impact both farming value & view. We're looking for a measure of support in resisting proliferation of power lines through Frederick Co., NW & SE.

5 acre density should be retained, smaller minimum lot sizes & community systems are ideal if development occurs. We are happy staying a farm but do not want to lose value or be subjected to rezonings. Rezoning are a very bad idea and grossly unfair. (Survey did not provide enough answers to answer truthfully.)

Protect Frederick County, we are a rural county. We do not want to be part of Northern Virginia.

Implement a TDR program only with proper planning / infrastructure. Thanks for the open process and excellent advice.

Put preservation tracts in permanent conservation easements. Set lot sizes at 2 acres, but limit the number of houses.

Need to use community systems in RA

Implement a TDR (1 unit per each 5 acres the farmer has); allow cluster density of 1 unit per 10 acres; and make by-right traditional subdivisions 1 unit per 20 acres. Only allow off-site systems in subdivisions with an HOA. Have owners submit O&M receipt with their tax bill on 3rd year.

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Preserve the Land Use tax incentive

Comments:

This form explained very little. Wording was difficult for “Joe-farmer” to understand. Also, it didn’t discuss provisions for assisting or compensating farmers who live off the land and need the flexibility to sell in order to afford their way of life. The sliding scale 20 year contracts would be fine as long as the contract allowed for a way to get out of the contract for hardship or in order to sell. Would like more explanation of sliding scale program. (Negative rating of rezoning option: “only some adjoining property owners would consent, others might deny just because they can, or to run people out of business.”)

Cluster on ¾ acre lots with community waste systems. By-right residential density should be one unit per 3 acres. Maximum cluster lot size should be less than 2 acres.

Any density decrease will take away land value for farmers & their business. How do any of these suggestions support our local farmers? While worrying about urban development, you are making rural life more difficult and less prosperous. We are smothering, please help us. - Cluster lots are a bad idea, should be less than 40%. Maximum lot sizes for cluster should be less than 2 acres. By-right density should be 2 acres per unit or less. Rezoning is a very bad idea, but if done, density should be increased to ¼ or 1.2 acre lots. What about community drainfields?

What are the overall long-term goals from these changes? Given the current economic climate, there should be no hurry to change anything. (Offer sliding scale contracts for 10 and 30 years as well.)

You are Killing us. Set-aside tracts for cluster lots should only be required for developers, not farmers on their own land. By-right residential density should be 1 unit per 2 acres.

Questions presume that responder is familiar with the terminology, very select audience. A distance of 100 feet between wells and drainfields is good. Would prefer a maximum lot size of 1 acre in the cluster subdivision option, and would like to keep 1 unit per 5 acre density.

The cluster option style should be more 'equal' between rural & Urban areas. Need more open / green space in UDA as well. - Does not think the TDR program will be effective because the County will still have to provide infrastructure somewhere. County should encourage reductions in density with incentive but don't require by law with no incentive for landowner.

Implement TDR program in conjunction with PDR. Should allow 4 lots by-right per every 100 acres, with a minimum lot size of 2 acres. This will give farmers a financial tool to work with. With a rezoning, density should be 1 unit per 5 acres. - County should continue to approve provisional systems. Use alternative septic systems to reduce lot sizes.

More time is needed to look at the long term solution to the problem. More than a few weeks to look at 10 - 15 years down the road. Maximum lot size should be 1 acre for cluster lots. By-right density should be 1 unit per 1 or 2 acres

Comments:

Keep our 5 acre by-right density. Development needs to occur where there is a proper water resources and not approved until this has been researched. - Use of tax dollars for PDR is a good idea but will probably not happen due to the economy.

Require a 60% set-aside IF you require cluster and IF you establish minimum lot sizes of 1/2 to 3/4 acre. Cluster subdivision pattern is very important. By-right density should stay at 1 unit per 5 acres. - Should the County move out of the 18th century and into the 21st Century? Yes, so do not limit the use of community systems to community centers. be Progressive, encourage and reward the use of modern technology.

Promote & preserve the agricultural industry. Let our farming community use open space for best production - not just 'pretty viewsheds.' Minimum lot sizes should be 1/2 acre for clustering. - Keep density at 1 unit per 5 acres. Don't bankrupt farmers that are try to survive by requiring them to apply for a rezoning approval to subdivide their land. Keep local government out of health system standards. Allow Community Health Systems with Health Department Regulations.

The Boundaries of the UDA need to be finite and inflexible. The same goes for the access to public water, it needs to remain finite. Also, help farmers and landowners develop income streams, (i.e. aquaculture, treefarms etc.) so they can maintain their property and not develop it or sell it. - The "Rural Preservation" cluster subdivision option isn't rural preservation. How can you talk about cluster subdivisions AND rural preservation? Only use PDR programs if it will prevent development. O&M contracts should not be required for alternative systems.

One idea is to create another category of UDA for the rural community centers (RCC) then allow TDRs from the RA to this new RCC UDA. Could create enough density for community septic systems & eventually commercial in RCC which would reduce traffic to Winchester. Also, RCC's are already transportation nodes.

6 Photocopied surveys: Keep 5 acres By-Right. Leave Health System Requirements to the Health Department. Allow Community Systems throughout the RA.

One unit for every ten acres is not a good idea.

Sliding scale implementation. Any density reductions should only apply to properties over a certain acreage. For instance, properties less than twenty acres shall maintain the existing density of one unit for every five acres. Properties over twenty acres shall be subject to a reduced density requirement of one unit for every ten acres. Such an approach could also be considered for other proposed requirements

Comments:

Existing properties should be grandfathered from the proposed regulations. An existing property exemption should apply until the transfer of the property. At such time the property is transferred, new regulations should be applicable.

PDR's and TDR's are options that would help address our concerns that we would lose the economic value of our property with the proposed new requirements that take lots away from our land.

Do not see justification to change density to 1 unit per 10 acres

Do not understand sliding scale density; Do not believe it would work to better manage growth.

Support for lot sizes from 3 to 7 acres.

Let market forces drive changes.

TDRs are a good resolution to the growth issues.

The County should use Impact Fees to mitigate the impacts of rural area development.

There is no demand for housing in today's market, so the County should not be changing any requirements.

Concern about community systems as it would result like the Summit; who's going to pay for the upkeep

Let the health system requirements determine the minimum lot sizes.

No RA rezoning should be necessary to develop houses.