

A regular meeting of the Westmoreland County Board of Supervisors was held Monday, November 9, 2009, in the auditorium of the A. T. Johnson Alumni Museum, located at 18849 Kings Highway, Montross, Virginia. Those members present were Darryl E. Fisher, W. W. Hynson, Russ Culver, and Larry Roberson. Lynn C. Brownley was absent from the meeting. Also present were Norm Risavi, County Administrator; Karen Lewis, Assistant County Administrator; LaToya Ball-Tate, Administrative Assistant; and Tom Bondurant, County Attorney.

## CALL TO ORDER

Chairman Fisher called the meeting to order at 9:50 a.m.

### 1. APPROVAL OF MINUTES

Chairman Fisher stated that all members had received draft minutes of the regular/land use meeting held on October 14, 2009, and the special called meeting held October 2, 2009, and asked if there were any additions or corrections to these minutes.

On motion by Mr. Hynson, second by Mr. Roberson and carried with a unanimous vote, the Board approved the minutes with any necessary typographical corrections. (Mr. Brownley was absent from the meeting.)

Chairman Fisher announced that Supervisor Brownley was absent from the meeting due to his participation in the Virginia Association of Counties annual conference at the Homestead.

Chairman Fisher stated that the Board would need to modify the agenda under Old Business to consider the adoption of a resolution regarding the Northern Neck Regional Enterprise Zone.

### 2. APPROVAL OF ACCOUNTS PAYABLE LIST AND PAYROLL REGISTER

Upon motion by Mr. Hynson, second by Mr. Roberson, and carried unanimously, the Board approved the accounts payable list and payroll register as submitted by the Finance Department for the month of October 2009. (Mr. Brownley was absent from the meeting.)

### 3. APPROVAL OF APPROPRIATION INCREASE/DECREASE REQUESTS

Dr. Elaine Fogliani, Superintendent, was present to request the Board's consideration of a supplemental appropriation in the amount of \$516,058.25 to be added to the Instructional, Transportation, and Technology categories. These funds will come from the following Federal grants: Reading First (Cople Elementary – staff development, materials); Community Learning Center (Montross Middle – tutoring, materials, supplies, materials, technology equipment, food

service, bus drivers, transportation costs, buses); and Gear Up (promotes more students to attend college); Title IIA (staff development); and Title IID (technology).

Mr. Culver expressed concern about using one-time grant money to hire additional personnel, since that money will not be available next year. Dr. Fogliani indicated that no positions will be added with these funds.

Upon motion by Mr. Roberson, second by Mr. Hynson and carried unanimously with Mr. Hynson, Mr. Roberson, Mr. Culver, and Mr. Fisher voting "aye", the Board approved an appropriation increase under Fund #205 in the amount of \$516,058.25, in the following categories: Instructional (\$456,183.87), Transportation (\$32,996.00), and Technology (\$26,878.38). The monies requested will come from the Reading First Grant, Community Learning Center Grant, Gear Up, Title IIA and Title IID Grant. (Mr. Brownley was absent from the meeting.)

Mr. Roberson commented that the Community Learning Center Grant is a worthwhile program. It is well organized and has proven helpful to the students.

Dr. Fogliani then requested the Board's approval of a supplemental increase in the amount of \$148,573.00, which is necessary in order to meet the required local effort for the current year. The current budget was based on an ADM (Average Daily Membership) of 1692.05 and the current ADM is 1722.

Mr. Roberson asked if the net increase of 30 students is across the board from K-12, and if it will be necessary to hire additional staff.

Dr. Fogliani stated that the final ADM is not calculated until March 31<sup>st</sup>. It could change between now and then.

Mr. Risavi advised the Board that a preliminary ADM has to be submitted to the State in the fall. He and Dr. Fogliani held a conference call last week with Brian Logwood, Assistant Budget Director for the Department of Education. Such adjustments have been necessary in the past; however, for the past six or so years, the County has had a declining student population. This increase could possibly be attributable to the declining use of private schools, such as Woodland Academy and others, due to the economy.

Mr. Roberson remarked that most other counties tend to go with the projected ADM and wait until

April to make any necessary adjustments.

Dr. Fogliani pointed out that most other localities receive more than the required local effort.

Mr. Risavi explained the process by which funds are dispersed to the school system from State and Federal sources, noting that there is typically a two-month delay in receiving those funds. The County cannot spend the money until those funds are in hand.

Mr. Roberson stated his concerns with how the County would get those funds back if the School Board has already spent it.

Dr. Fogliani suggested that the problem is that Westmoreland County schools only receive the minimum required local effort. According to state regulations, the school system has to spend to those funds. Dr. Fogliani commented that, in the categories that count, Westmoreland County is one of the poorest funded school divisions in the state. The Department of Education has recommended that the County establish the ADM now instead of waiting until March. It takes 60 days to get that money into the school system's coffers. These funds have to be spent before June 30<sup>th</sup> in order to protect Westmoreland County from having to send money back to the state because the required local effort was not met.

Mr. Risavi commented on the School Funding Formula and how it impacts the school system's budget. He informed the Board that BAI Municipal Software is in the process of modifying the County's accounting system to add a field to allow the Finance Director to indicate whether or not an expenditure counts toward the required local effort. This will allow Dr. Fogliani to run a report from the Bright system at anytime to track these expenditures. This is currently being tracked manually by staff.

After further discussion, upon motion by Mr. Hynson, second by Mr. Culver and carried with Mr. Hynson, Mr. Culver, and Mr. Fisher voting "aye" and Mr. Roberson voting "no", the Board approved a supplemental appropriation under Fund #205 in the amount of \$148,573.00, to be placed in the following categories: Instructional (\$104,085.00); Administration (\$19,766.00); Pupil Transportation (\$13,006.00); Maintenance (\$10,290.00); and Technology (\$1,426.00). (The purpose of this supplemental appropriation is to add to the FY 2009-2010 budget in order to meet the required local effort, due to an increase in the ADM.) (Mr. Brownley was absent from the meeting.)

Dr. Fogliani then distributed copies of the *Transportation Department Efficiency Study* previously

requested by Mr. Roberson. She also presented a resolution adopted by the Westmoreland County School Board on October 19, 2009 supporting the establishment of the Northern Neck Regional Broadband Authority.

Chairman Fisher expressed the Board's appreciation for the School Board's support of this effort.

4. TOWN OF COLONIAL BEACH/CORRESPONDENCE

There was no correspondence from the Town of Colonial Beach. Mr. Roberson noted that the annual Rockfish Tournament was held last weekend. A 47-pound fish took the prize. He also announced that Mayor Fred Rummage has been hospitalized due to complications involving his gall bladder.

5. TOWN OF MONTROSS/CORRESPONDENCE

There was no correspondence from the Town of Montross.

6. PUBLIC HEARING – TO RECEIVE PUBLIC INPUT REGARDING A REQUEST TO ESTABLISH A NO WAKE ZONE IN BARNES CREEK WITHIN WESTMORELAND COUNTY.

R. Donald Hood was present to represent this request. Mr. Hood displayed a sketch of the proposed area to be impacted by the creation of the no wake zone and expressed concerns that the area has become a race track on weekends. Mr. Hood stated that he has had no problems with the local watermen who use the creek. Other individuals using personal watercrafts create a lot of wake which is undercutting the bank where his property is located. There is essentially a 30-foot drop from his property to the water. The property does not lend itself to doing rip rap, as it would have to be done by barge. The undercutting of the bank has occurred in two spots. Mr. Hood expressed fear that the bank will fall, taking his home with it. Mr. Hood also pointed out that, in the last couple of years, the tides have been considerably higher than they have been in the past. The area floods at high tide. As a result, trees have begun to fall on the mud flats. If the soil continues to erode, the existing 16-foot road bed (which is the only barrier that separates Barnes Creek from the Nomini) will disappear and Vaughn's Landing will become an island. Mr. Hood requested the Board's authorization to establish a no wake zone in this area to stop the land erosion and mitigate the likelihood of the cliff collapse and the loss of the road bed.

Sgt. Richard Goszka was present on behalf of the Virginia Department of Game & Inland Fisheries.

Mr. Roberson asked how long the proposed no wake zone would be. It was noted that the proposed length is less than ½ mile. Mr. Roberson also inquired as to the distance from the Nomini

to the proposed location of the no wake zone. Sgt. Goszka estimated that distance to be about 1,000 feet. Mr. Roberson asked if other property owners in the area are experiencing similar problems. Mr. Hood stated that he is aware of at least one other property owner that is having problems with erosion.

Mr. Culver requested the approximate depth of the creek. Sgt. Goszka stated that at high tide, the depth is approximately five feet; at low tide it is less than two feet. Mr. Culver asked if most of the problems are a result of skiing activity on the creek. Mr. Hood indicated that jet boats present the greatest problem.

Mr. Roberson asked if Mr. Hood has spoken with his neighbors regarding this proposal. Mr. Hood stated that he had not done so.

Sgt. Goszka advised the Board that if the no wake zone is established based on erosion, the signs can be installed, but the State cannot enforce it. The State has the authority to approve the establishment of the zone, but the County would have to enforce it. If the zone is established for the protection of public safety, the State can enforce the zone.

Chairman Fisher commented on the potential threat to public safety presented by irresponsible watercraft operators speeding in that area, particularly in the vicinity of the dock(s) where boats may be moored.

Mr. Hood pointed out that the area is full of submerged rocks, which also present a safety issue.

Mr. Roberson asked how many other lots there are past Mr. Hood's property. Mr. Hood stated that those lots are all occupied. Mr. Roberson suggested extending the no wake zone out to the Nomini.

Sgt. Goszka recommended beginning the no wake zone at the mouth of creek, noting that this would make it easier to enforce.

Mr. Hood stated that he would still pay for the markers if the zone is extended out to the mouth of the creek.

Mr. Hynson agreed that if the creek silts in, it will become a navigable danger to those that use the creek. It would probably be wiser to expand the zone to the mouth of the creek.

Sgt. Goszka confirmed that aerial photographs have revealed that the creek is beginning to silt in. He noted that “no wake” means having enough speed to maintain headway and steer.

Mr. Risavi pointed out that the concerns raised by Mr. Hood would be a secondary benefit to this.

Mr. Culver stated that, in looking at the photographs, the creek does not lend itself to a lot of rip rap. He suggested that a sign at the mouth of the creek would be sufficient and he would be in favor of such.

At this time, Chairman Fisher opened the public hearing and asked if anyone was present with questions or comments for or against this proposal. The following persons spoke:

Myrtle Lee France – Ms. France stated that she lives on Nomini Creek, just up from Mr. Hood's property. Ms. France asked if the no wake sign will be placed at the mouth of Barnes Creek. The Board confirmed that this is the proposed location.

Bill Alverson – Mr. Alverson agreed with Mr. Hood's concerns regarding erosion. He stated that most people who live along the creek respect it; that is not so much the case with weekenders. Mr. Alverson indicated his support for a no wake zone all the way up the creek.

Bob Quinn – Mr. Quinn commented in favor of this proposal.

There being no further comments, Chairman Fisher closed the public hearing at this time.

Upon motion by Mr. Culver, second by Mr. Roberson and carried unanimously with Mr. Hynson, Mr. Roberson, Mr. Culver, and Mr. Fisher voting “aye”, having deemed the establishment of such No Wake Zone necessary to protect public safety, the Board endorsed the establishment of a No-Wake Zone extending the length of Barnes Creek, beginning at the mouth of the creek's intersection with Nomini Creek. (Mr. Brownley was absent from the meeting.)

Chairman Fisher clarified that there are some instances where it is not required that adjacent landowners be notified. He went on to say that it is important for the public to read the local newspaper. The Board has met its obligation by advertising this public hearing in the newspaper.

## 7. VIRGINIA DEPARTMENT OF TRANSPORTATION

Clifton Balderson and Michael Parker were present to update the Board on the following:

Cabin Point (Revenue Sharing Project) – All roads in Cabin Point to be completed under the Revenue Sharing Program should be complete as of tomorrow.

Santa Maria Avenue – This road has been taken into the State secondary system. The signs will be installed soon.

Maintenance – VDOT crews continue to address maintenance needs as they arise.

Snow Removal – VDOT is making preparation for the upcoming snow removal season.

Supervisors reported the following concerns:

District 5 – Mr. Roberson stated that he was glad to see that Santa Maria Avenue has been taken into the State secondary system. Mr. Roberson asked if the Town has contacted VDOT about borrowing equipment for snow removal within the Town. Mr. Balderson indicated that they are in the process of working out the arrangements.

District 2 – Mr. Culver asked if the issue involving the end portion of Silverleaf Drive has been resolved. Mr. Balderson indicated that it has not. VDOT has addressed what needs to happen; however, he does not know where the funds will come from to complete the project.

Mr. Risavi stated that VDOT representative Clyde Hathaway has estimated the project cost to be \$220,000.00. The County's available match funds have steadily declined. In addition, the rules have changed for the Revenue Sharing Program. Funds now have to be spent within two years. The County is unable to accumulate enough matching funds for this project. This road only serves a few homes. The road portion that was completed serves the predominant share of homes. There is a significant amount of flooding along the remaining portion.

Mr. Culver commented on the need to better control the storm water along that road and suggested that, perhaps, it would be effective to direct the drainage toward the creek.

Mr. Balderson advised the Board that the major issues are the alignment of the road, as well as the drainage.

Mr. Risavi pointed out that the County would have to come up with local funds of \$110,000.00 to match the Revenue Sharing funds.

Mr. Culver suggested that a drain might be installed under the road to address the immediate drainage problems.

Mr. Risavi indicated that VDOT cannot do that until the road is taken into the State system.

John Krainock was recognized and stated that there are three houses along the straight portion of the road, and three houses after the curve. Those residents access the property from Wilton Road.

District 4 – Mr. Hynson requested VDOT's assistance in repairing a pothole along Route 628, between Joan Powell's gate and DeAtley's. He has also received a request for street lights along this road. The road has an unusual canopy of trees. Mr. Risavi noted that there is a program available for streetlights, if the property owners are interested. Mr. Balderson stated that the arbor standards under which VDOT operates require the canopy over the road. VDOT will take a look at trimming the trees where possible.

District 1 – Mr. Fisher reported no new concerns at this time. He thanked VDOT for removing the honeysuckle to make the Kremlin sign more visible.

Mr. Risavi stated that there is a pothole at the turnoff going into the Food Lion parking lot that needs to be repaired.

Chairman Fisher asked if any member of the public had any concerns to bring to VDOT's attention.

John Krainock thanked VDOT for patching the potholes along Wilton Road last week.

## 8. OLD BUSINESS

Resolution: Amendment to Northern Neck Regional Enterprise Zone – Chairman Fisher read the proposed resolution aloud. Upon motion by Mr. Roberson, second by Mr. Hynson and carried unanimously by those present, the Board adopted the following resolution:

## RESOLUTION

### AMENDMENT TO NORTHERN NECK REGIONAL ENTERPRISE ZONE

**WHEREAS**, the Counties of Lancaster, Northumberland, Richmond and Westmoreland, and the Towns of Kilmarnock and Warsaw (known as the localities) comprise the Northern Neck Regional Enterprise Zone; and

**WHEREAS**, the localities have designated and authorized the Northern Neck Planning District Commission to serve as Enterprise Zone (EZ) Program Administrator and to carry out all program administration and reporting requirements on their behalf; and

**WHEREAS**, Westmoreland County and the Town of Warsaw propose to amend their enterprise zone areas to include additional property as outlined on Attachment 1 & 2 to this resolution; and

**WHEREAS**, Westmoreland County and the Town of Warsaw have conducted the required public hearings and adopted resolutions endorsing and authorizing the proposed amendment.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Board of Supervisors for Westmoreland County hereby endorses and approves of the proposed amendment to the Northern Neck Regional Enterprise Zone and authorizes the County Administrator to execute FORM EZ-2-JA.

\*\*\*end of resolution\*\*\*

Mr. Roberson inquired regarding the status of the special tax district ordinance that has been proposed to assist with road improvements. Mr. Risavi stated that the County Attorney is waiting to receive a response back from the Town Attorney regarding this matter. Mr. Bondurant indicated that he would make contact with the Town Attorney to determine the status of this proposal.

#### 9. NEW BUSINESS

There was no new business to be discussed at this time.

#### 10. PUBLIC COMMENT PERIOD

Chairman Fisher reminded those persons present of the procedure for addressing the Board during the public comment period. The following persons spoke:

Bonnie Balderson – Ms. Balderson presented additional concerns regarding the O’Gara project, referencing a recent newspaper article which reports that a noise level has not been met. Ms. Balderson asked what progress has been made to correct that. Ms. Balderson stated that she would hope Chairman Fisher and the other Board members have access to visit the site and monitor what’s going on. Referring to an article in last weeks Northern Neck News, Ms. Balderson commented that she is concerned about the County’s image and stated that she hopes

Westmoreland is not becoming the laughing stock of the Northern Neck. She hopes O’Gara will be good neighbors and suggested that consideration be given to setting up something to make the citizens feel more protected and safe. Ms. Balderson stated that the Board as the governing body owes this to the public. Ms. Balderson went on to say that she is concerned for every citizen in this county. She then inquired as to whether there will actually be 200 students shooting guns at one time and suggested that is enough to warrant the citizens of the county some information.

Chairman Fisher complimented Ms. Balderson for the kind manner in which she has consistently presented her concerns to the Board. With respect to the issues and concerns relating to noise, Chairman Fisher assured Ms. Balderson that the County Administrator and experts have been involved to see that any necessary adjustments are made to comply with the noise requirements. The County is on top of that to make sure O’Gara does what they have said they would do. The site access is not open to the public; however, O’Gara has been extremely accommodating and has encouraged the Board to visit the site. They have been open in their response to concerns relating to the project. Chairman Fisher stated it is his desire that, at such time as may be appropriate, the project can be opened to some degree of public viewing. Perhaps a tour of the facilities (in controlled numbers) would provide a first-hand opportunity to clear up some of the misconceptions about the project. Chairman Fisher stated his wish that reports that have gone out were more factual than speculative.

Ms. Balderson stated that she hopes it will not take long for O’Gara to employ folks and improve the local economy. She spoke to the importance of making sure O’Gara upholds what they have said they would do. Her main concern at this point is that the project is closely monitored by the County.

Mr. Roberson commented that noise is a concern for a lot of people. The County Administrator has secured the services of competent sound engineers to represent the County. Mr. Risavi has done an outstanding job to making sure the County’s interests are protected.

Bob Quinn – Mr. Quinn suggested that as the County considers new IPUD (Industrial Planned Unit Development) areas, there should also be a review of the local noise ordinance. According to the ordinance, there appears to be no noise restriction on a shooting range. Mr. Quinn suggested that there needs to be some room for control over these things, especially for future industrial parks. Mr. Quinn indicated his plans to contact O’Gara to find out when they will run their next test. He has heard some of their firing tests from his property which is over two miles away from the site.

Myrtle Lee France – Ms. France stated that she has attended the Planning Commission meetings and work sessions during which they have been working on the directive issued by this Board with respect to the by-right issue. The Planning Commission has looked at a portion of the ordinance, but has not yet completed its review of the entire zoning ordinance. Ms. France encouraged the Board to approve the recommendations that are brought forth from the Planning Commission at the December meeting, instead of waiting until they receive a complete package.

Colston Newton – Mr. Newton commented that the City of Boston has a similar problem with its noise ordinance as it relates to the firing of salutes along Old Ironsides. Mr. Newton remarked that noise is a pervasive difficulty for us all.

Chairman Fisher pointed out that some of the shooting that folks are hearing lately could possibly be from the turkey shoots held in the Montross area. It is also black powder season for deer hunting.

Bill Alverson – Mr. Alverson stated that he is in agreement with comments presented by both Ms. Balderson and Mrs. France. Anything that can be done in the mean time (with respect to the zoning ordinance) will be helpful.

There being no further comments, Chairman Fisher closed the public comment period at this time.

#### LUNCH RECESS

Upon motion by Mr. Roberson, second by Mr. Hynson and carried unanimously, the Board recessed for lunch at 11:35 a.m. (Mr. Brownley was absent from the meeting.)

#### RECONVENE

Chairman Fisher reconvened the meeting at 1:40 p.m.

11. PUBLIC HEARING – CASE #0911-RZ-01 - REQUEST BY AMY JO REAMY, P.O. BOX 206, HAGUE, VA 22469 - PURSUANT TO ARTICLE 10-3.9 OF THE ZONING ORDINANCE, THE OWNER REQUESTS A CHANGE IN ZONING DISTRICT CLASSIFICATION FROM BUSINESS OPEN LAND(B-3) TO RURAL RESIDENCE (RR) FOR THE PURPOSE OF CONSTRUCTING A SINGLE-FAMILY DWELLING. THE PROPERTY IS LOCATED ON STATE ROUTE 701, CALAIS ROAD, ALSO DESCRIBED AS LOT 199H, FORMERLY PART OF LOT 199D, AS SHOWN ON ZONING DISTRICT MAP 38, COPLE MAGISTERIAL DISTRICT.

Beth McDowell, Planner, was recognized and summarized the staff report for this case. She also displayed images of the tax map, aerial photograph, and plat.

Mr. Culver asked if the adjacent lots (199A, 199B, and 199C) were included in the rezoning. He also asked how those lots are zoned. Ms. McDowell stated that those lots are not being rezoned. They are zoned A-1 (Agricultural).

Mr. Culver inquired as to the size of the lot in question. Ms. McDowell stated that it is a 3.2 acre lot. The lots above it are roughly 6 acres.

Mr. Culver asked how the property owners access the storage shed. Ms. McDowell advised there is a 50-foot right-of-way which provides access to that structure.

Mr. and Mrs. Reamy were present to represent this request and were given an opportunity to speak at this time.

Chairman Fisher opened the public hearing and asked if anyone was present with questions or comments for or against this request. No one spoke. Chairman Fisher closed the public hearing.

On motion by Russ Culver, second by Larry Roberson and carried unanimously with Mr. Hynson, Mr. Roberson, Mr. Culver, and Mr. Fisher voting "aye", the Board approved this request by Amy Jo Reamy, P. O. Box 206, Hague, VA 22469, pursuant to Article 10-3.9 of the Westmoreland County Zoning Ordinance, for a change in zoning district classification from Business Open Land (B-3) to Rural Residence (RR) for the purpose of constructing a single-family dwelling on property located on State Route 701 (Calais Road), described as Lot 199H, formerly part of Lot 199D, as shown on Zoning District Map 38, Cople Magisterial District, with the following conditions:

1. The property, known as Tax Map 38-199H, shall be rezoned to Rural Residential (RR) with the terms as given in Article 2 of the Westmoreland County Zoning Ordinance; and
2. No materials or equipment related to a business on Lot 199D shall be stored on Lot 199H.

(Mr. Brownley was absent from the meeting.)

RECESS