

Enclosure to FOLC letter dated July 5, 2006

Issue 1: Pages 4 and 5 of LandDesign Recommendations re “Rural Character and Heritage”; Section 2; “Preserving Undeveloped Open Space and Views Along Major Roads”

Comment: LandDesign’s “draft” recommendations did not include a significant recommendation that was made by numerous citizens at every Input Session. That recommendation addressed a concern that recent “clear-cuts”, or timbering activities, within the County had adversely impacted residentially zoned areas as well as Historic Christ Church and the Sharon Baptist Church. Such activities are not regulated by the County, or State, and have resulted in the unsightly blighting of parcels due to the lack of any clean-up requirement for the left-over “slash”, no requirement to re-seed timbered areas, and no requirement to leave a protected “buffer” area along public roads. In addition to comments at County-sponsored input sessions, the Foundation for Historic Christ Church wrote a letter to the County, as did many individual citizens, requesting that the County adopt some form of protection, or ordinance, against such unsightly timbering activities at least within residential areas.

Finally, the clear-cuts impacting Historic Christ Church and the historically African-American Sharon Baptist Church (at intersection of VSH 646 and VSH 202) resulted in strong citizen support for a buffer ordinance. As a result, the Board of Supervisors (in October 2005) directed the Planning Commission to consider a buffer ordinance during Comprehensive Plan process to protect historic sites and residential communities from timbering activities within residentially zoned areas.

Recommendation: That the LandDesign “draft” be modified to add wording addressing this issue as follows:

The Planning Commission should carefully evaluate the need for a buffer ordinance, and hold a public hearing on the subject prior to making a recommendation to the Board of Supervisors. Based on citizen input, consideration should be given to adopting a buffer ordinance that applies only to residentially zoned parcels and which protects open space and views along public roads within residentially zoned areas from the unsightly impacts of timbering activities. A requisite ordinance should contain the following characteristics: 1) applies only to parcels that are zoned residential so as to not impact timbering industry operations in agricultural, or other non-residentially zoned areas; 2) requires a 50’ to 75’ buffer area along public roads where timbering activities are not permitted; 3) permits limited timbering within the buffer area on an exceptional basis based on approval by the County Planning and Land Use Director; and 4) provides for enforcement actions including fines for unlawful timbering activities. In developing this protective ordinance, consideration should be given to adopting approaches that have proven successful in other Counties within the area, or state. One such successful timbering ordinance that could be considered as a model is the one adopted in nearby James City County. That ordinance has been in place since 1996 and has been modified several times to enhance its effectiveness.

In addition, the draft LandDesign Goals and Objectives should be modified to include a new Goal pertaining to this issue.

Recommendation: The County should consider revising its Zoning Ordinance to include a modest (50' to 75' wide) buffer area requirement along all public roads that are located within residentially zoned areas where timbering activities are not permitted. The County should provide for approval of applications to perform limited timbering within the buffer in instances where adverse impacts are minimal.

Issue 2: Pages 10 and 11 of LandDesign Recommendations re “Shoreline Protection”

Comment: LandDesign’s draft recommendation that the County “*follow up on its proposed Commercial Waterfront Zoning approach . . .*” does not recognize that the existing Comprehensive Plan passages from Chapter 9, Section II, Paragraph 6 on pg 9-9, and copied for reference below, resulted in the County’s proposing a Waterfront Commercial/Residential Zoning Ordinance in 2003. That proposed ordinance was the subject of considerable controversy and was abandoned by the County as a result of very strong citizen opposition during the public hearing process.

“encouragement will be given to waterfront property owners who wish to develop residential high-density or cluster projects. This would be preferable to breaking this property up into lots for single family residences. Property suitable for this type of development includes seafood processing plants that are inactive or may become inactive due to reduced catches. Such properties exist on Little Bay, Fleets Bay and tributary waters and in Morattico. Given the poor suitability of soil for conventional septic systems in both of these areas, sewage treatment facilities will likely be required as a condition of development.” A more comprehensive approach for land planning associated with clustering or a master-planned development can be an effective tool to achieve a “wide-scale, coordinated approach to shoreline protection” than individual dwellings on two-acre parcels. The County should identify locations along the waterfront most appropriate for clustered development and identify those locations on the Future Land Use Map. Any clustered development should result in a higher level of open space than required by the current by-right development and should be well-buffered from the shoreline.”

Opposition to the proposed Waterfront Commercial/Residential Zoning concept was largely based on concerns that it would cause intensive commercial development in waterfront areas thereby posing environmental risks, may require supporting extensive infrastructure developments in residential areas, and could change the rural character of those areas selected to be re-zoned.

Hence, the draft LandDesign Recommendation for the County to “follow up on this recommendation” does not recognize the strong public opposition to this concept. This recommendation was likely made because LandDesign was unaware of the County’s 2003 proposed Commercial Waterfront Zoning Ordinance and its abandonment based on citizen opposition.

Recommendation:

Based on the above, the County should not include this recommendation in the revised Comprehensive Plan and should delete the existing Chapter 9, Section II, Paragraph 6 on pg 9-9.

Also, since the County represented that the proposed Waterfront Commercial/Residential Zoning Ordinance would accomplish a much-needed increase in public access to water, which did not occur, the County should consider other means to accomplish that objective. A recommended approach to achieving that goal and objective is as follows:

Recommendation:

The County should give consideration to other alternatives to providing enhanced public access to water areas. These alternatives should include the development of public boat ramps and/or park areas as well as the identification and selection of areas/sites where rezoning for commercial water uses is feasible based on a careful consideration of site-specific factors. Factors that could be used in the evaluation of areas/sites for potential rezoning include: (1) location in proximity to existing population centers, (2) availability of requisite infrastructures, (3) potential to adversely impact environmentally sensitive areas and resources, and (4) potential impacts on existing residential properties in the area.

Issue 3: Page 11 of LandDesign Recommendations re “Shoreline Protection”

Comment: LandDesign’s draft recommendation for “*A more comprehensive approach for land planning associated with clustering, or a master-planned development . . . The County should identify locations along the waterfront most appropriate for clustered development and identify those locations on the Future Land Use Map,*” does not recognize that the County has already proposed such a clustering approach in 2004—labeled as a Planned Unit Development (PUD) ordinance. That ordinance was abandoned in early 2005 as a result of strong citizen opposition to the proposed introduction of “by right” high density PUD developments within the County. Citizen opposition to the proposed ordinance was exceptionally strong during the public hearing process as well as in the local media for several months preceding the hearings. Most of the citizen opposition to the PUD ordinance was centered around four primary concerns: (1) it would result in extensive high density development that was not consistent with the character of the County; (2) the permitted three-fold increase in the density of waterfront development and the associated expansion of more intensive waterfront uses, would result in degraded water quality and was inconsistent with the County’s Chesapeake Bay Preservation Ordinance; (3) the proposed “by right” nature associated with PUD development would circumvent the public hearing process and deny citizens the ability to oppose developments that could potentially impact them; and (4) it would reduce the County’s ability to control growth and likely result in greatly accelerated growth especially in waterfront areas. In addition, the County’s unfortunate choice of language associated with the proposed Waterfront Residential PUD that was touted as offering a “greater return on investment than traditional development” was offensive to citizens and immediately labeled it as too developer friendly.

Based on the above, the draft LandDesign Recommendation for the County to consider clustered development along waterfront areas does not recognize the strong public opposition to this concept. This recommendation, too, was likely made as a result of LandDesign’s lack of

awareness of the County's 2004 proposed Planned Unit Development (PUD) Ordinance and its abandonment because of citizen opposition.

Recommendation:

As a result of the previous failed attempt to introduce clustered development approaches within waterfront areas, and based on the strong citizen opposition to that concept, the County should not include this recommendation in its revised Comprehensive Plan.

Recommendation:

An alternative approach to the LandDesign recommendation which is more effective in promoting "shoreline protection" and achieving that goal and objective is as follows: **The County should consider developing additional protective land use policies and zoning regulations that will ensure continued controlled growth in shoreline areas. These new ordinances should be consistent with those existing regulations that have already proven successful in protecting shoreline areas and associated water quality. Specifically, any proposed new ordinances should be consistent with and supplement the requirements of both the Chesapeake Bay Preservation Act and the County's Waterfront Overlay District. Consideration should be given to extending the area included within the existing Waterfront Overlay District from 200 feet to up to 800 feet from the shoreline as a means of enhancing shoreline protection and improving water quality within the Chesapeake Bay and its tributaries. In addition, areas targeted for high density development should be restricted to outside the Waterfront Overlay District and include only those areas that are located in close proximity to existing population centers, possess requisite supporting infrastructures, and where development can be accomplished with minimal adverse environmental impact.**

Issue 4: Page 13 of LandDesign Recommendations re "Economic Development"

Comment: LandDesign's "draft" recommendation reiterates the existing plan provision "*to create a new mixed use Waterfront Commercial/Residential Zone that would allow for new uses such as condominiums, townhouses, marinas, etc.*" and recommends "*that such development be compatible with other goals to protect aesthetic and environmental resources of the waterfront*" as well as recommending that, "*studies would be required to evaluate the potential impact of any development occurring in a Waterfront Commercial/Residential Zone including, but not limited to, traffic . . .*" This is simply the Waterfront Commercial/Residential Zoning Ordinance as proposed by the County in 2003, but with a new requirement to conduct impact studies. Although some citizen opposition to the proposed ordinance was based on the lack of sufficient impact studies having been performed, the strongest opposition was the result of concerns that the ordinance would result in intensive commercial development in waterfront areas. This was seen by citizens as incompatible with the rural nature of the County and offered the likely impacts of: (1) increased environmental risks in waterfront areas; (2) required extensive supporting infrastructure developments within residential areas, and (3) would change the rural character of those areas selected to be rezoned.

Hence, the “draft” LandDesign Recommendation for the County to continue with a modified approach to its 2003 Waterfront Commercial/Residential Zoning Ordinance fails to recognize the strong citizen opposition to the concept of intensive development within waterfront areas. This recommendation, too, was likely made as a result of LandDesign’s failing to take notice of the County’s 2003 proposed Commercial Waterfront Zoning Ordinance and its abandonment based on citizen opposition.

Recommendation:

As a result, the County should not include this recommendation in the revised Comprehensive Plan resulting in the deletion of existing Chapter 9, Section II, Paragraph 6 on pg 9-9.

Issue 5: Page 7 of LandDesign Recommendations re “Quality Growth”

Comment: LandDesign’s draft recommendations in this area listed and supported the County’s existing goals and objectives from the current Comprehensive Plan including the following statement from the existing Plan, “*The County will review alternative methods of providing the central sewer service needed for stimulating new development in the area.*” This statement from the existing plan likely provided the impetus for the County’s decision to fund an Industrial Development Authority (IDA) study which recommended that a county-wide Public Service Authority (PSA) be established to provide centralized sewer and water services in the County. In 2005, that recommendation became a proposal to establish a county wide PSA which subsequently was rejected by a unanimous vote of the Board of Supervisors in October 2005. That vote was based on strong opposition to the concept as voiced by citizens at several public hearings and by the 712 citizens who signed a petition opposing the PSA. Although the need for improved sewer and water services in certain areas within the County (e.g., White Stone and Irvington areas) is acknowledged by many citizens, opposition to the PSA was largely based on concerns that county-wide sewer and water services would accelerate increased development and jeopardize the County’s existing rural character.

Hence, the draft LandDesign Recommendation for the County to continue along its path to “*review alternative methods of providing the central sewer service needed for stimulating new development in the area*” fails to recognize the strong citizen opposition to the concept of providing centralized sewer and water services. This recommendation was likely made as a result of LandDesign not being aware of the County’s 2005 proposed PSA concept that was denied by the Board of Supervisors based on strong citizen opposition.

Recommendation:

As a result, the County should use different wording in the new Comprehensive Plan to reflect that the county government supports alternate methods of providing improved sewer and water services on a localized basis within those areas where improved sewer and water services are needed.

Recommendation:

An alternative to the County's existing statement concerning sewer and water services is as follows:

The County will work with local jurisdictions and consider financially supporting engineering feasibility studies aimed at identifying viable localized solutions (e.g., package plants, etc.) within those areas that need improved sewer and water services.

Issue 6. Rural Character and Heritage

Comment: In general, cluster development in an Agricultural Preserve district is contrary, for the most part, to the idea of encouraging development to proceed outward from the towns. Any "by-right" higher density in agricultural areas would encourage sprawl. However, if it were clear what the average density were to be in the agricultural preserve then maybe there would be benefit to this suggestion. For instance, if the intent is to allow a 250 acre farm to be partitioned into 10 farmettes "by right" in the agricultural preserve or say 12 homes in a 10 acre cluster leaving 240 acres of the farm in agriculture but deeded to the 12 homes in the cluster with a restriction on further subdivision of the farm then it would be worth considering.

Recommendation:

Paragraph 1 (p.3), which states, in part, as follows: "One dwelling unit per 10 acres to one dwelling unit per 25 acres . . . One option is that owners of land in the Agricultural Preserve district would be allowed the potential to develop their land at a higher density than "by-right" through clustered development, with requirements for a significant amount of open space. Those proposing any development in the Agricultural Preserve district would be required to go through a plan review process and also provide documentation on potential impacts. Proposals for clustered development in the Agricultural Preserve should undergo a public review process to ensure that the design of the project meets the intent of the district."

Issue 7: Same section, under "Objectives":

Objective number 1: "Consider creating an 'agricultural preserve' zoning district with very low density. Landowners can apply voluntarily for the designation in return for potentially higher density than permitted under existing zoning."

Comment:

This is not clear. In the "agricultural preserve," the zoning suggested would be, "One dwelling unit per 10 acres to one dwelling unit per 25 acres". What does the objective mean?

Recommendation:

LandDesign should review the recommendation and prepare clearer wording.

Issue 8:

"Revise the County's zoning ordinance to allow for cluster development in rural areas."

Comment:

None

Recommendation:

Cluster development should not be allowed as it leads to higher density.

Issue 9. Objective 9 (the last one): “Preserve the rural character of the county by discouraging rural large-lot subdivisions that encroach upon agricultural lands, forest lands and open spaces.”

Comment: None**Recommendation:**

Change “large-lot” to “small-lot” or be precise. Forty-acre lot sizes (i.e. large lot subdivisions) would be OK and should be encouraged whereas two acre lots are too small and should be forbidden.

Issue 10: Quality Growth (around page 7).

Comment: Objective 3 reads “Permit commercial and industrial development only in authorized districts and then only if adequate facilities are provided or available.” This statement is meaningless, and would allow for almost anything, unless the term “adequate facilities” is carefully defined.

Recommendation:

This wording should be reworded by LandDesign or by the County in the review process. Clearer, more easily understood wording should be provided.

Issue 11: Shoreline Protection (around page 9) Goal 3

Objective 1 “Propose changes to the Subdivision Ordinance that would encourage submission of a shoreline management plan.”

Objective 2: “Propose changes to the Subdivision Ordinance which would offer incentives such as density credits to developers who initiate appropriate coordinated on-site shoreline protective measures.”

Comment: Language is vague and would open the door to high density development on the waterfront overlay.

Recommendation:

Density on the shoreline should not be increased for any reason, and density credits should not be considered.

Issue 12: Affordable Housing (around page 11)

Comment: As a preliminary matter, the desire for affordable housing is certainly laudable, but it would be more meaningful if there were some attempt to define what constitutes affordability and if there were some actual data on the number of houses in the county that are, in fact

affordable. This issue seems to be somewhat of a straw man, because the only place that we can pretty much assume that there is, in fact, no affordable housing is in the waterfront overlay, and it is highly unlikely that that will change. There are many houses outside the waterfront that appear to be affordable, depending on how affordability is defined. It may be that there are too few apartments or too few other types of housing that, based on free market economics, are not likely to be built without public funds. Encouraging the construction of affordable housing without addressing how to make that encouragement meaningful is pretty much just public feel-good fluff.

Recommendation:

See comment above.

Issue 13: Objective 8: “Allow increased densities in development proposals that address the need for affordable housing.”

Comment: Higher density housing is not necessarily more affordable and increasing density does not necessarily make the price lower.

Recommendation:

See comment above.

Issue 14: Objective 9: Discourage deterioration of the County’s housing stock through its land development code.

Comment: How does it happen now? Why isn’t that working (or is it)?

Recommendation: Not applicable

Issue 15: Recreational Opportunities:

Comment: Change title to encompass the following: Recreational Opportunities: Hunting, Biking, Walking, and public access to water.

Change the recommendation to add “Hunting” as a principal recreational activity in Lancaster County. Not only is hunting currently an important recreational activity but hunting also supports agricultural activities by controlling the deer population.

Comments on “Draft” LandDesign Recommendations

Issue: Page 10 of LandDesign Recommendations re Shoreline Protection

Discussion: For more effective shoreline erosion prevention, the 2000 Comprehensive Plan concluded, after some discussion, that “*encouragement will be given to waterfront property owners who wish to develop residential high-density or cluster projects. This would be preferable to breaking this property up into lots for single family residences.*” Whereas there may be merit to having integrated shoreline protection, this verbiage and that which follows runs totally counter to shoreline development desired by county residents. As evidence to support this assertion, I cite the battle waged unsuccessfully to oppose the High Banks development. This subsequent development is widely felt to be a major blight on the landscape of the County, even though it fronts on the river and not a creek where boat traffic would be immensely increased. The developers and the county pointed out that there was “adjacent” commercial development (namely the restaurant on the west side of Route 3. In fact, there is no proximate connection between the two parcels.

A better approach to shoreline protection would be simply to prohibit bulkheads and similar stiff structures in high-energy shoreline zones in favor of revetments sufficient to withstand wave action.

Recommendation: The Goal and Objectives on page 10 should be deleted, as leans in favor of high density and cluster developments and against single-family dwellings when most of the county ‘s undeveloped shoreline is zoned R-1. It should be replaced with a simple statement such as:

Goal. Shoreline protection should be paramount for all county land-water boundaries. All waterfront developments should adhere to good hydraulic engineering practice as outlined in regulations and guidance of the county wetlands board.

Objective. The county shall undertake to delineate all shorelines within the county as high-energy, low-energy, or wetland. It should then prescribe the types of shoreline protection appropriate for each type and lay down regulations and practice to be followed by the county wetlands board for their approval of applications.

Objective. The county shall discuss and decide appropriate courses of action for waterfront properties which are unprotected and which have been and are suffering erosion, particularly in cases where adjacent property is suffering because of it.

Issue: Not addressed in LandDesign Recommendations: Sewage Disposal.

Discussion. Sewage disposal throughout the county has been effected by individual conventional systems with a few exceptions, namely “community” engineered systems serving a small number of adjacent properties; and, developments and properties which are tied into Kilmarnock’s municipal facility. As far as we know, these exceptions are performing according

to state regulations. However, some individual systems are found to be ineffective, requiring remedial actions. According to Virginia Shellfish Sanitation personnel, the deficient systems are routinely those in low-lying areas whose drainage is marginal. In addition, some areas have experienced drain field failure, necessitating installation of new drainfields, or in cases where suitable soil is not available, engineered systems costing some \$15,000 for a residence.

The foregoing situations coupled with projected growth and, in particular, with growth pressures in the lower eastern county whose soils often will not perk have led to the suggestion of adopting a Public Service Authority for the purpose of establishing and operating a municipal treatment facility. Such action would have the effect of transferring the cost burden of sewage treatment from owners of problem properties to county residents at large, and has been widely opposed and currently rejected by the county. Moreover, establishing a point source discharge into the surrounding Bay and its tributaries is environmentally unsound compared with distributed systems. And State regulations governing them will get tighter and more costly through the years.

A better and more equitable solution for sewage disposal would be the encouragement of engineered systems where needed, coupled with tight monitoring of their performance. Although the installation costs appear to be high, they are in fact: small compared to waterfront property values where undeveloped properties won't perk; comparable for already developed properties, in most cases, to air-conditioning, roofs, etc, which must also be replaced periodically; but larger in proportion to undeveloped upland properties whose owners should not be given benefits at taxpayers' expense.

Recommendation. LandDesign should undertake to address this problem thoroughly with the Planning Commission to develop a plan suitable for county action. It is strongly suggested that the Planning Commission discuss this topic in open meetings, since there is high interest in it and because there are likely to be county residents with experience and expertise in it.