

VIRGINIA: At a Regular Meeting of the Board of Supervisors for the County of Accomack held in the Cafetorium of Metompkin Elementary School in Parksley on the 18<sup>th</sup> day of February, A.D., 2009.

Members Present: Steve D. Mallette, Vice Chair  
Laura Belle Gordy, Vice Chair  
Ron S. Wolff  
Wanda J. Thornton  
Grayson Chesser  
Sandra Hart Mears  
John Charles "Jack" Gray  
Donald L. Hart, Jr.  
E. Philip McCaleb

Others Present: Steven B. Miner, County Administrator  
Yvonne N. Pennell, Administrative Assistant  
Mark B. Taylor, County Attorney

### **Call to Order**

The meeting was called to order by the Chair and opened with a Prayer by Mr. Wolff after which, the Pledge of Allegiance to the Flag was recited.

### **Adoption of Agenda**

Mr. Hart made a motion to adopt the Agenda as amended. Mrs. Mears seconded the motion. The motion passed unanimously.

### **Public Comment**

The County Attorney read the rules governing conduct during the public comment period.

The following persons offered comments:

Toni Trepanier – Public forums  
Billy Graham – Chesapeake Atlantic Preservation Area and a filing of Conflict of Interest by the Chair

### **Chair's Comments**

The Chair commented on issues related to:

- Recognized Finance Director Michael Mason and Treasurer Dana T. Bundick in their efforts in collecting delinquent tax payments
- Economic Development prospects
- Tax collections
- Northrup-Grumman and Orbital Sciences projects
- Utility Cost Committee issues

**Certification of Recognition**

The Chair recognized James M. McGowan, Director of Planning and Barbara Haxter, Airport Manger, as recent recipients of a Advanced Customer Service Training Certification.

**Minutes**

Mrs. Mears made a motion to approve the Minutes of the January 14, and 21, 2009, meetings. Mr. Wolff seconded the motion. The motion passed unanimously.

**Declaration of No Conflict of Interest**

Following comments by the Chair in response to the concerns of Mr. Billy Graham, Mrs. Mears made a motion to include an item on the Consent Agenda at the March 4, 2009, work session to correct the Minutes of the November 12, 2008, meeting, to include the oral statement of the Chair relative to his filing of a Declaration of a No Conflict of Interest Statement. Mr. Wolff seconded the motion. The motion passed unanimously.

**Consent Agenda**

Mrs. Gordy made a motion to approve the following item under the Consent Agenda with the exception of Items 8-d – recommendation related to Edgewater Subdivision and 8-g – Resolution recognizing the Hoof Beats by the Beach Drill Team.

- a. To award IFB #620 for the purchase and removal of scrap metal,
- b. To schedule a Public Hearing to receive public comment concerning a proposed 5% increase in Building,
- c. To adopt the following Resolution recognizing the continued service of the Bloxom Volunteer Fire Company,

**RESOLUTION OF THE BOARD OF SUPERVISORS OF ACCOMACK, VIRGINIA  
REGARDING THE CONTINUED SERVICE  
OF THE BLOXOM VOLUNTEER FIRE COMPANY**

**WHEREAS**, on February 18, 2009, the Accomack County Board of Supervisors recognized the need of fire and EMS service in Accomack County; and

**WHEREAS**, the Bloxom Volunteer Fire Company has provided fire and EMS service to Accomack County since February, 1954, without a formal agreement; and

**WHEREAS**, the Bloxom Volunteer Fire company will continue to provide fire and EMS service to Accomack County; and

**WHEREAS**, the Bloxom Volunteer Fire Company will serve the Towns of Bloxom, Hallwood, Hopeton, Guilford, Nelsonia, Modest Town, Mapps ville, and Mears; and

**WHEREAS**, the Bloxom Volunteer Fire Company will serve all areas in Accomack County through mutual and automatic aid:

**NOW, THEREFORE, BE IT RESOLVED** that the Accomack County Board of Supervisors expresses the needed service of the Bloxom Volunteer Fire company; and

**BE IT FURTHER RESOLVED**, that the Accomack County Board of Supervisors recognizes that the Bloxom Volunteer Fire Company will continue to serve Accomack County with Fire Protection and Emergency Medical Service.

- d. To approve a Memorandum of Understanding with the Town of Parksley, and
- e. To approve a Memorandum of Understanding with the Town of Onley.

**Edgewater Subdivision**

Following a brief discussion, Mr. McCaleb made a motion to approve a recommendation from the Director of Building and Zoning to afford Mr. George McMath the opportunity, in a timely manner and with an updated engineer's written construction cost estimates, to provide a substitute agreement (with performance security or subdivision bond) and allow him to continue to develop the Edgewater Subdivision, as approved and recorded and that he be granted a sixty (60)- day period from February 18, 2009, to obtain the engineers estimate and furnish a substitute performance agreement. Mrs. Thornton seconded the motion. The motion passed unanimously.

**Highway Matters**

Mr. R. E. (Bobby) Isdell, Acting Residency Administrator, reported on various road projects and responded to questions.

**Watch for Children Signs**

Mr. Hart made a motion to approve the following Resolution. Mr. Wolff seconded the motion. The motion passed unanimously.

**RESOLUTION**

**BE IT RESOLVED** that the Accomack County Board of Supervisors hereby request the Commissioner of the Virginia Department of Transportation or his representatives to provide, in accordance with Section 33.1.210 of the Code of Virginia, and install ***Watch For Children*** signs in the Town of Melfa at the described locations shown below:

- Phillips and West Main Street*
- Fair Oaks and West Main Street*
- East Main Street by the Incorporated limits sign*
- Main Street and Railroad Avenue*
- Railroad Avenue by Church*
- Railroad Avenue on the North side*
- Woodland Avenue and Myrtle Avenue*
- Ridge Avenue and Virginia Avenue*
- Bull Street and Lee Avenue*
- Lee Avenue and Virginia Avenue*

*Martin and Spruce Street*

The Accomack County Board of Supervisors also requests that these signs should be paid out of the secondary construction allocations allotted to Accomack County.

**Public Service Authority**

Mr. Bruce Paone, Mayor, Town of Onancock, offered the following comments:

- Support for the establishment of a Public Service Authority
- The Town's willingness to work with the County to address sewer needs

A general discussion took place with County Attorney Mark B. Taylor responding to questions related to appointments to the PSA, scheduling of a Public Hearing.

By consensus, the Board postponed action on the establishment of a Public Service Authority until after 5:00 at the March 4, 2009 work session.

**Chesapeake/Atlantic Preservation Area Ordinance Amendments**

Mr. McCaleb made a motion to adopt the following Ordinance. Mr. Chesser seconded the motion.

A discussion took place with Planning Director James McGowan and County Attorney Mark B. Taylor responding to various questions.

The vote on the motion. Ayes: Mr. Wolff, Mr. Chesser, Mrs. Mears, Mr. Mallette, Mrs. Gordy, Mr. McCaleb. Nays: Mrs. Thornton, Mr. Gray, Mr. Hart.

ARTICLE XVI. CHESAPEAKE **BAY / ATLANTIC** PRESERVATION OVERLAY DISTRICT\*

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\***Editor's note:** An ordinance of Nov. 19, 2003(3), amended art. XVI §§ 106-376--106-389, to read as herein set out. Formerly, said article pertained to similar subject matter as enacted by the original Accomack County Zoning Ordinance, as amended. See the Code Comparative Table for a detailed analysis.

**Cross references:** Waterways, ch. 102.

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Sec. 106-376. Purpose and intent.

(a) This article is enacted to implement the requirements of Code of Virginia section 10.1-2100 et seq. (The Chesapeake Bay Preservation Act) and amends this chapter. The intent and the purpose of the Chesapeake **Bay / Atlantic** Preservation Overlay District is to:

- (1) Protect existing high quality state waters;
- (2) Restore all other state waters to a condition or quality that will permit all reasonable public uses and will support propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them;
- (3) Safeguard the clean waters of the commonwealth from pollution;
- (4) Prevent any increase in pollution;
- (5) Reduce existing pollution; and
- (6) Promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the county.

(b) This overlay district shall be in addition to and shall overlay all other zoning districts where they are applied so that any parcel of land lying in the Chesapeake **Bay / Atlantic** Preservation Area overlay district shall also lie in one or more of the other zoning districts provided for by this chapter. Unless otherwise provided for in the overlay district, the review and approval procedures provided for in all other ordinances of the county shall be followed in reviewing and approving development, redevelopment, and uses governed by this article.

(c) This article is enacted under the authority of Code of Virginia, section 10.1-2100 et seq. (The Chesapeake Bay Preservation Act) and Code of Virginia, Section 15.2-2283. Code of Virginia, Section 15.2-2283 states that zoning ordinances may, "also include reasonable provision, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in Code of Virginia, Section 62.1-255.

(Ord. of 11-19-2003(3))

Sec. 106-377. Definitions.

For purposes of this article the following words and terms have the following meanings, unless the context clearly indicates otherwise. Words and terms not defined in this article but defined elsewhere in this chapter shall be given the meanings set forth therein.

*Agricultural lands* means those lands used for the planting and harvesting of crops or plant growth of any kind in the open; pasture; horticulture; dairying; floriculture; or raising of poultry and/or livestock.

*Best management practices* or *BMP's* means a practice, or a combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

*Buffer area* means an area of natural or established vegetation managed to protect other components of a resource protection area and state waters from significant degradation due to land disturbances.

**Building Envelope means the area formed by the front, side, and rear building restriction or setback lines of a lot within which the principal buildings must be located.**

*Chesapeake Bay / Atlantic Preservation Area* or *CABPA* means any land designated by the board of supervisors pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, VAC 10-20 et seq. and Code of Virginia, § 10.1-2107. A Chesapeake **Bay / Atlantic** Preservation Area shall consist of a resource protection area and a resource management area.

*Construction footprint* means the area of all impervious surface including but not limited to, buildings, roads and drives, parking areas and sidewalks, and includes the area of land disturbance necessary for construction and installation of such improvements.

*Development* means the construction, or substantial alteration, or expansion, of residential, commercial, industrial, recreation, transportation, or utility facilities or structures.

*Diameter at breast height* or *DBH* means the diameter of a tree measured outside the bark at a point of four and one-half feet above ground.

*Drip line* means a vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy.

*Impervious cover* means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to: roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

**Intensely Developed Area or IDA means a portion of RPA or RMA designated by the Board of Supervisors where development is identified that meets any one of the three following criteria:**

**(1) Development has severely altered the natural state of the area such that it has more than 50 percent impervious surface;**

**(2) Public sewer and water systems, or a constructed stormwater drainage system, or both, have been constructed and served the area by the original program adoption date in the Chesapeake Bay watershed, or February 19, 2009 in the Seaside watershed. This condition does not include areas planned for public sewer and water or constructed stormwater management drainage systems;**

**(3) Housing density is equal to or greater than four dwelling units per acre.**

*Land disturbance* means any activity causing a land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto other lands,

including but not limited to: clearing, grading, excavating, transporting and filling of land; except that this term shall not apply to minor activities such as home gardening, individual home landscaping, and repairs and home maintenance.

*Nonpoint source pollution* means pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agriculture and urban land development and use.

*Nontidal wetlands* means those wetlands other than tidal wetlands that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adopted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to Section 404 of the Federal Clean Water Act, in 33 CFR 328-.3b.

*Noxious weeds* means weeds that are difficult to control effectively such as Johnson Grass, Kudzu, **and** multi flora rose.

*Plan of development* means the process for site plan or subdivision plat review to ensure compliance with Code of Virginia, § 10.1-2109 and this article, prior to any clearing or grading of a site or the issuance of a building permit.

*Public road* means a publicly-owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the state department of transportation, including regulations promulgated pursuant to the state erosion and sediment control laws and the state stormwater management act. This definition includes those roads where the state department of transportation exercises direct supervision over the design or construction activities.

*Redevelopment* means the process of developing land that is or has been previously developed.

*Resource management area* or *RMA* means the component of the Chesapeake ~~Bay~~ / **Atlantic** Preservation Area that is not classified as the resource protection area. Resource management areas include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area.

*Resource protection area* or *RPA* means that component of the Chesapeake ~~Bay~~ / **Atlantic** Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

*Silvicultural activities* means forest management activities, including but not limited to the harvesting of timber, the construction of roads and trails for best management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-115 of the Code of Virginia and are located on property defined as real estate devoted to forest use under § 58.103-230 of the Code of Virginia.

*Substantial alteration* means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2,500 square feet in the Resource Management Area only.

*Tidal shore* or *shore* means land contiguous to a tidal body of water between the mean low water level and the mean high water level.

*Tidal wetlands* means vegetated and nonvegetated wetlands as defined in Code of Virginia, § 28.2-1300.

*Water-dependent facility* means a development of land that cannot exist outside of the resource protection area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to:

- (1) Ports;
- (2) The intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers;
- (3) Marinas and other boat docking structures;
- (4) Beaches and other public water-oriented recreation areas;
- (5) Fisheries or other marine resources facilities; and
- (6) Aquacultural activities and facilities, including storage that requires immediate access from the site to the water.

*Wetlands* means tidal and nontidal wetlands.

(Ord. of 11-19-2003(3))

**Cross references:** Definitions generally, § 1-2.

Sec. 106-378. Areas of applicability.

The Chesapeake ~~Bay~~ / Atlantic Preservation Area overlay district shall apply to all lands identified as CBAPAs as designated by the Accomack County Board of Supervisors and as shown on the official zoning map. CBAPAs include Resource Protection Areas and Resource Management Areas. The official zoning map, together with all explanatory matter, thereon, is hereby adopted by reference and declared to be a part of this article.

(1) The Resource Protection Area (RPA) includes:

- a. Tidal wetlands;
- b. Nontidal wetlands connect by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
- c. Tidal shores;
- d. A 100-foot vegetated buffer area located adjacent to and landward of the components listed in subsections (1)a. through c. of this section, and along both sides of any water bodies with perennial flow.

(2) The Resource Management Area (RMA) is composed of those lands lying within the Chesapeake Bay Watershed and the Atlantic Ocean Watershed, as determined by topographical and hydrological survey finds, and as delineated on the official zoning map.

**(3) Portions of RPAs and RMAs designated by the Board of Supervisors as Intensely Developed Areas (IDAs) shall serve as redevelopment areas. Areas so designated shall comply with all erosion and sediment control requirements and the performance standards for redevelopment in Section 106-384, Performance Standards.**

~~(34)~~ The official zoning map shows the general location of CBAPAs and should be consulted by persons contemplating activities within the county prior to engaging in a regulated activity. The specific location of RPAs shall be delineated on each site or parcel through the review and approval of the plan of development process or as required through the review and approval of a water quality impact assessment.

~~(45)~~ If the boundaries of a CBAPA include a portion of a lot, parcel, or development project, the entire lot, parcel or development project shall comply with the requirements of the overlay district. The subsequent division of property shall not constitute an exemption from this requirement.

(Ord. of 11-19-2003(3))

Sec. 106-379. Interpretation of resource protection area boundaries.

(a) *Delineation by the applicant.* The site-specific boundaries of the RPA shall be determined by the applicant through the performance of an environmental site assessment, subject to approval by the Administrator and in accordance with the development plan review and approval provisions of section 106-38 5 or through the review and approval of a water quality impact assessment in accordance with the provisions of section 106-386. The official zoning map shall be used as a guide to the general location **of** RPAs.

(b) *Delineation by the Administrator:* The Administrator, when requested by an applicant wishing to construct a single-family residence, may waive the requirement for an environmental site assessment and perform the delineation. The Administrator may use remote sensing, hydrology, soils, plant species, and other data, and consult other appropriate resources as needed to perform the delineation.

(c) *Where conflict arises over delineation.* When the applicant provides a site-specific delineation of the RPA, the Administrator will verify the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the Administrator may render adjustments to the applicant's boundary delineation, in accordance with the development plan review and approval provisions of section 106-386. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief in accordance with the provisions of section 106-389, "Exceptions."

(Ord. of 11-19-2003(3))

Sec. 106-380. Use regulations.

Permitted uses, special permit uses, accessory uses, and special requirements in the Chesapeake ~~Bay~~ / Atlantic Preservation Overlay district shall be as established by the underlying zoning district, unless specifically modified by the requirements of this article.

(Ord. of 11-19-2003(3))

Sec. 106-381. Lot size.

Lot size in the Chesapeake **Bay / Atlantic** Preservation Overlay district shall be subject to the requirements of the underlying zoning district, provided that any lot shall have sufficient area outside the RPA to accommodate an intended development, in accordance with the performance standards in section 106-384, when such development is not otherwise allowed in the RPA.

(Ord. of 11-19-2003(3))

Sec. 106-382. Conflict with other regulations.

In any case where the requirements of this article conflict with any other provision of the County Code or existing state or federal regulations, whichever imposes the more stringent restrictions shall apply.

(Ord. of 11-19-2003(3))

Sec. 106-383. Required conditions.

(a) All development and redevelopment in the Chesapeake **Bay / Atlantic** Preservation Overlay District exceeding 2,500 square feet of land disturbance shall be subject to a plan of development process, including the approval of a site plan in accordance with the provisions of this chapter or a subdivision plat in accordance with chapter 78 (the Accomack County Subdivision Ordinance).

(b) Development in RPAs may be allowed only if it is water-dependent, as defined; constitutes redevelopment; or is a road or driveway satisfying the conditions set forth below; and complies with the performance standards set forth in sections 106-384 and 106-385.

(1) A new or expanded water-dependent facility may be allowed provided that:

- a. It does not conflict with the comprehensive plan;
- b. It complies with the performance criteria set forth in this part;
- c. Any non water dependent component is located outside the RPAs;
- d. Access will be provided with the minimum disturbance necessary. Where possible, single access point will be provided.

(2) Redevelopment shall be permitted within the RPA only if it creates no increase in the amount of impervious cover and no further encroachment within the RPA, and it conforms to applicable stormwater management and erosion and sediment control criteria in this part.

(3) Roads and driveways not exempt under section 106-388 may be constructed in or across RPAs only if each of the following conditions are met:

- a. The local government makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the RPA;
- b. The alignment and design of the road and driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and adverse effects on water quality.
- c. The design and construction of the road or driveway satisfy all applicable criteria of these regulations, including submission of a complete water quality impact assessment by the applicant;
- d. The local government reviews the plan for the road or driveway proposed in or across a RPA in coordination with local government site plan, subdivision and plan of development approvals.

(c) A water quality impact assessment shall be required for any proposed land disturbance, development, or redevelopment within RPAs.

(Ord. of 11-19-2003(3))

Sec. 106-384. Performance standards.

(a) *Purpose and intent.* The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential. The purpose and intent of these requirements are also to implement the following objectives:

- (1) Prevent a net increase in nonpoint source pollution from new development;
- (2) Achieve a ten percent reduction in nonpoint source pollution from redevelopment; and
- (3) Achieve a 40 percent reduction in nonpoint source pollution from agricultural uses.

(b) *General performance standards for development and redevelopment.*

- (1) Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
  - a. In accordance with an approved site plan, the limits of land disturbance, including clearing or grading shall be strictly defined by the construction footprint. These limits shall be clearly shown on submitted plans and physically marked on the development site.
  - b. Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the Administrator.
- (2) Indigenous vegetation except noxious plants shall be preserved to the maximum extent practicable consistent with the use or development permitted in the underlying zoning district and in accordance with the Virginia Erosion and Sediment Control Handbook.
  - a. Existing trees over six inches in diameter (at breast height) shall be preserved outside the construction footprint, and shall be protected from construction activities. Diseased trees and trees weakened by age, storm, fire, or other injury may be removed.
  - b. Clearing shall be allowed only to provide necessary access, positive site drainage, water quality best management practices and the installation of utilities, as approved by the Administrator.
- (3) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development proposed. Total impervious cover resulting from development shall not exceed 60 percent of the site. Surfaces and materials which promote infiltration shall be used where feasible for any required parking area, alley, or other low traffic driveway, unless otherwise approved by the Administrator.
- (4) Notwithstanding any other provisions of this article or exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, septic tanks and drainfields, shall comply with the requirements of chapter 38, article III (The Accomack County Erosion and Sediment Control Ordinance).
- (5) All on-site sewage disposal systems not requiring a VPDES permit shall be pumped out a least once every five years, or have a plastic filter installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system, or provide certified documentation every five years from a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.
- (6) A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system which operates under a permit issued by the state water control board, until the structure is served by public sewer.
- (7) For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices, consistent with the water quality protection provisions (4 VAC 3-20-71 et seq.) of the Virginia Stormwater Management Regulations, that achieve the following:
  - a. For development, the post-development nonpoint source pollution runoff load shall not exceed the predevelopment load, based on the existing average land cover condition of the subwatershed area as calculated by the Eastern Shore Soil and Water Conservation Service.
  - b. For redevelopment, both the pre- and post-development loadings shall be calculated by the same procedures. Post redevelopment nonpoint source pollution loading shall be at least ten percent less than the existing loading. However, where the design data is available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.
- (8) Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the Administrator, pursuant to section 106-386.
- (9) Land in CBAPA's upon which agricultural activities are being conducted shall have a soil and water quality conservation assessment. Such assessment [shall] evaluate the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrition management and management of pesticides, and where necessary, results in a plan that outlines additional practices need to ensure that water quality protection is accomplished consistent with this article.

(c) *Buffer area requirements.*

(1) To minimize the adverse effects of human activities on the other components of resource protection areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist.

Such vegetation includes a mixture of groundcovers, grasses, shrubs, and trees identified by:

- a. Reference lists available from the Administrator;
- b. Appropriate state or local agencies; or
- c. A qualified landscape professional applying the standards and objectives cited in this section.

(2) The buffer area shall be located adjacent to and landward of other resource protection area components and along both sides of any water body with perennial flow. Generally, the buffer area shall be measured 100 feet landward from that point where there is a distinct change from predominantly wetland vegetation to non-wetland vegetation (such as the saltbush line), or from the mean high water point, or the top of a stream bank (See "buffer area" defined). The full buffer area shall be designated as the landward component of the resource protection area.

(3) The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients.

(4) The buffer area shall be maintained to meet the following additional performance standards:

a. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval by the Zoning Administrator, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices including those that prevent upland erosion and concentrated flows of stormwater, as follows:

1. Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff by preventing the channeling of water through the buffer. (If desired, lists of suggested replacement vegetation may be obtained from the Administrator).
2. Any path shall be constructed and surfaced so as to effectively control erosion, and prevent channeling through the buffer.
3. Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed pursuant to sound horticultural practice.
4. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

b. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Administrator may permit encroachments into the buffer area in accordance with section 106- 385 and the following criteria:

1. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structures and necessary utilities;
2. Where practical, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel. and
3. In no case shall the encroachment extend into the waterward 50 feet of the buffer area.

c. On agricultural lands within the RPA the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer as follows:

1. Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice, which, in the opinion of the Eastern Shore Soil and Water Conservation District, addresses the more predominant water quality issue on the adjacent land - erosion control or nutrient management - is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominate water quality issue, a nutrient

management plan, including soil test, must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15 et seq. administered by the Virginia Department of Conservation and Recreation.

2. Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and chemical pest control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T", as defined in the "National Soil Survey Handbook" of November 1996 in the Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil test, must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15 et seq.) administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

3. The buffer area is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has in place at least one best management practice as considered by the Eastern Shore Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land -either erosion control or nutrient management.

(5) When agricultural or silvicultural uses within the buffer area cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer area shall be re-established. In re-establishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions are maintained or established. (Ord. of 11-19-2003(3))

Sec. 106-385. Development plan review and approval.

Any development or redevelopment, expansion or alteration, exceeding 2,500 square feet of land disturbance in CBAPA's shall be accomplished through a plan of development process prior to any clearing or grading of the site or the issuance of any building permit, to assure compliance with all applicable requirements of this article. There shall be two levels of development plan review: a minor review shall be required for land disturbance exceeding 2,500 square feet, but less than 10,000 square feet, including individual single-family construction; a major review shall be required for land disturbance over 10,000 square feet.

(1) *Required Information--Minor development.* For land disturbance exceeding 2,500 square feet, but under 10,000 square feet, including single-family home construction, the following plans and information shall be submitted by the applicant prior to the issuance of a building permit:

a. A plan, plat or sketch in accordance with section 106-253, which requires the following information to be shown:

1. The size and shape of the lot or parcel of land on which the proposed building is to be built;
2. The location of all existing and proposed structures and uses in relation to the property lines of the parcel, and to the right-of-way of any adjoining street or highway;
3. All rights-of-way and easements, including utility and drainage easement;
4. All watercourses, creeks, streams and drainage patterns on or adjoining the property;
5. The zoning classification of the parcel, and of all adjoining parcels.

b. The plan shall also show:

1. The landward boundary, if applicable, of the RPA. The applicant may request assistance from the Administrator in locating this boundary.
2. Existing vegetated and wooded areas to be cleared and areas to be preserved. Existing vegetation and trees outside the areas to be cleared, and within the buffer area, shall be protected and preserved to provide maximum erosion control and runoff benefits. The thinning or removal of dying or diseased trees shall require replacement with equivalent vegetation, living and in healthy condition, equally effective in controlling run-off and erosion, and maintained in a healthy condition. (If desired, lists of suggested replacement vegetation may be obtained from the Administrator).
3. The plan shall show the total square footage of impervious surface resulting from the proposed construction, which shall not exceed 60 percent of the total lot area.
4. A soil erosion and sediment control permit shall be obtained, prior to start of any land-disturbing activities.

5. A permit for the installation of a septic system shall be obtained from the local health department, prior to the issuance of a building permit, and show both primary drainfield and reserve area locations.
6. A water quality impact assessment, if building in a RPA.
  - (2) *Required information--Major development.*
    - a. General requirements.
      1. In addition to other requirements of this chapter or the requirements of chapter 78 (of the Accomack County Subdivision Ordinance), the plan of development process shall consist of the plans and studies identified below, for development resulting in land disturbance greater than 10,000 square feet.
      2. These required plans and studies may be coordinated or combined, as deemed appropriate by the Administrator. The Administrator may determine that some of the following information is unnecessary due to the scope and nature of the proposed development. For any of the following requirements the Administrator will, upon request of the applicant prior to submitting a final proposed plan or plat, review a sketch or preliminary plan to advise the applicant on the specific requirements and procedures of this article and other applicable ordinances. (Submission of sketches, preliminary, tentative or partial plans shall not constitute the filing of a final complete site development plan for review and approval).
      3. Seven copies of the following plans or studies shall be submitted, unless otherwise provided for:
        - i. A site plan, in accordance with subsection (2)b. of this section, or a subdivision plat in accordance with the provisions of chapter 78 (The Accomack County Subdivision Ordinance).
        - ii. An environmental site assessment;
        - iii. A landscape plan;
        - iv. A stormwater management plan;
        - v. An erosion and sediment control plan in accordance with chapter 38, article III (the Accomack County Erosion and Sediment Control Ordinance);
        - vi. A water quality impact statement, as required by subsection 106-385(b)
      - b. Subdivision plat or site plan. Subdivision plats will be prepared and submitted in accordance with chapter 78. A site plan, for purposes of this article, shall be prepared to the scale of one inch equals 100 feet, or larger. The plan shall show the name and address of the owner or developer, the magisterial district in which the property is located, the base zoning district and any other rezoning overlay districts in which the parcel is located, the date, north point, scale of the drawing and number of sheets, the names of all adjacent property owners and the zoning classifications of all adjoining parcels. A blank space of at least four inches by four inches shall be provided on the plan for use by the approving authorities. The site plan shall clearly show the same information required in subsection 106-226.
      - c. Environmental site assessment. An environmental site assessment shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval.
        1. The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:
          - i. Tidal wetlands;
          - ii. Tidal shores;
          - iii. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
          - iv. A 100 foot buffer area located adjacent to and landward of the components listed in subsections (2)c.1.i through iii. of this section, and along both sides of any water body with perennial flow.
        2. Wetlands delineations shall be performed consistent with the methods and procedures used and accepted by the U.S. Army Corps of Engineers.
        3. The environmental site assessment shall delineate the site specific geographic extent of the RPA
        4. The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plat.
      - d. Landscape plan. A landscape plan shall be submitted in conjunction with site plan approval or as part of a subdivision plat approval. No clearing or grading of any lot or parcel shall be permitted without an approved landscape plan.
        1. *Contents of the plan.*

i. A drawing to scale showing the general limits of clearing for all proposed improvements, and clearly delineating the location, size, and description of existing and proposed plant material. All existing trees on the site six inches or greater in diameter (measured at breast height above ground level) shall be shown. Where there are groups of trees, stands may be outlined instead. The specific number of trees six inches or greater to be preserved outside of the construction footprint shall be indicated on the plan. Trees to be removed to create a desired construction footprint, and trees within the buffer area to be removed for sight lines, vistas, access paths, and best management practices, and shoreline erosion control as provided for in this article, shall be shown on the plan and shall be clearly delineated.

ii. A replanting schedule for trees and other significant vegetation removed for construction, including a list of possible replacement plants and trees that includes indigenous plants to the greatest extent possible. (If desired, listed of suggested replacement vegetation may be obtained from the Administrator).

iii. Delineation of any required buffer area and any plant material to be added to establish or supplement the buffer area, as required by this article, shall be shown.

iv. Grade changes or other work adjacent to trees which would affect them adversely. Specifications for the protection of existing trees during clearing, grading, and all phases of construction, showing that significant trees and vegetation will be preserved to the greatest extent possible to provide maximum erosion control and runoff benefits.

2. *Plant specifications.*

i. All plant materials necessary to supplement the buffer area or vegetated areas outside the construction footprint shall be installed according to standard planting practices and procedures, in accordance with the American Standards for Nursery Stock.

ii. All supplementary or replacement plant material shall be living and in a healthy condition. Plant materials and handling shall conform to the standards of the most recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.

iii. Where areas to be preserved, as designated on an approved landscape plan, are encroached, replacement of existing trees and other vegetation will be achieved at a ratio of two planted trees to one removed. Replacement trees shall be a minimum of two inches (DBH) at the time of planting.

3. *Maintenance.*

i. The applicant shall be responsible for maintenance and replacement of all vegetation as may be required by the provisions of this article.

ii. In buffer areas and areas outside the construction footprint, plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris. Unhealthy, dying, or dead plant material shall be replaced during the next planting season, as required by the provisions of this article.

e. Stormwater management plan. A stormwater management plan shall be submitted as part of the plan of development process required by this article and in conjunction with site plan or subdivision plan approval.

1. Contents of the plan. The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, and citations to supporting reference as appropriate to communicate the information required by the article. At a minimum, the stormwater management plan must contain the following:

i. Location and design of all planned stormwater control devices;

ii. Procedures for implementing nonstructural stormwater control practices and techniques;

iii. Pre- and post-development nonpoint source pollutant loadings with supporting documentation of all utilized coefficients and calculations;

iv. For facilities, verification of structural soundness, including a professional engineer or class IIIB surveyor certifications.

2. Site specific facilities shall be designed for the ultimate development of the contributing watershed based on zoning, comprehensive plans, local public facility master plans, or other similar planning documents.

3. All engineering calculations must be performed in accordance with procedures outlined in the current edition of state stormwater management handbook, state erosion and sediment control handbook, or any other good engineering methods deemed appropriate by the Administrator.

4. The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with

a party other than the county then a maintenance agreement shall be executed between the responsible party and the county.

f. Erosion and sediment control plan. An erosion and sediment control plan shall be submitted that satisfies the requirements of this article and in accordance with chapter 38, article III (the Accomack County Erosion and Sediment Control Ordinance), in conjunction with site plan or subdivision plan approval. In lieu of other development plan requirements, agricultural irrigation ponds, ditches, and dams may be developed in accordance with standards as determined by the soil and water conservation district which show compliance with the performance criteria of this chapter and other applicable state or federal regulations.

g. Water quality impact assessment. If required by subsection 106-386(d), a major water quality impact assessment shall be submitted and reviewed, in accordance with that section, as part of a complete development plan.

(3) *Development plan review process and administration.*

a. No permit shall be issued by any administrative officer or agent of the county for the construction of any building or improvement requiring a permit in any area covered by the development plan except in conformity to the provisions of this chapter and after approval of a complete development plan.

b. The Administrator shall review all components of the proposed development plan, consult as necessary or as requested with the applicants, visit the site, request opinions, and/or decisions from other county or commonwealth departments or agencies, determine other additional information necessary for consideration of the proposed developments, and consult on all matters herein with the planning commission of the county.

c. No change, revision, or erasure shall be made on any pending or final site development plan, or on any accompanying data sheet, where approval has been endorsed on the plan or sheets unless authorization for such changes is granted in writing by the approving body or the agent.

d. Approval, modifications and approval, or disapproval, of a complete development plan by the Administrator shall occur within 90 days of filing of all required documents in the office of the agent, unless abnormal circumstances exist in which case the time may be extended by action of the governing body.

e. Approval of a development plan pursuant to this chapter shall expire 12 months after the date of approval, unless building permits have been obtained for construction. One extension not to exceed 12 months may be granted upon written request. Justification by the applicant to the agent for the county prior to lapse of approval, and extension of all bond and surety agreements, shall be provided in the request.

f. County and state agencies responsible for the supervision and enforcement of this chapter shall periodically inspect the site during the period of construction, as they may require.

g. Installation and bonding requirements.

1. Where buffer areas, landscaping, stormwater management facilities or other specifications of any approved plan are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed, in accordance with the approved site plan.

2. When the occupancy of a structure is desired prior to the completion of the required landscaping, stormwater management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides to the county a form of surety satisfactory to the Administrator in amount equal to the remaining plant materials, related materials, and installation costs of the required landscaping or facilities and/or maintenance costs for any required stormwater management facilities during the construction period.

3. All required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety may be forfeited to the county.

4. All required stormwater management facilities or other specification shall be installed and approved within 18 months of project commencement. Should the applicant fail, after proper notice, to initiate, complete or maintain appropriate actions required by the approved plan, the surety may be forfeited to the county. The county may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of the surety held.

5. After all required actions of the approved development plan have been completed, the applicant must submit a written request for final inspection. If the requirements of the approved plan have been completed to the satisfaction of the Administrator such unexpended

or unobligated portion of the surety held shall be refunded to the applicant or terminated within 60 days of following the receipt of the applicant's request for final inspection. The Administrator may require a certificate of substantial completion from a professional engineer or class IIIB surveyor before making a final inspection.

h. Any development plan may be revised, provided request for revision shall be filed and processed in the same manner as the original.

i. Upon compliance with the terms of this chapter and the satisfactory completion of construction, the agent of the county shall furnish a certificate of approval. Certificates of approval, upon ratification by the governing body shall release all the bonds which may have been furnished.

j. The board of supervisors shall establish from time to time a schedule of fees for the examination and processing of development plans.

(Ord. of 11-19-2003(3))

Sec. 106-386. Water quality impact assessment.

(a) *Purpose and intent.* The purpose of the water quality impact assessment is to:

(1) Identify the impacts of proposed development or land disturbance on water quality and lands within resource protection areas and other environmentally-sensitive lands;

(2) Ensure that, where development does take place within resource protection areas and other sensitive lands, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of resource protection areas and other sensitive lands;

(3) To protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high groundwater, erosion, or vulnerability to flood and storm damage; and

(4) Specify mitigation which will address water quality protection.

(b) *Water quality impact assessment (WQIA) required.* A water quality impact assessment is required for any:

(1) Proposed development within a RPA, including any buffer modification or encroachment as provided for in section 106-384 "Performance Standards".

(2) Development in a RMA as deemed necessary by the Administrator due to the unique characteristics of the site or intensity of the proposed development.

There shall be two levels of water quality impact assessments: A minor assessment and a major assessment. The applicable water quality impact assessment, if required, will be submitted as part of a complete proposed development plan, and reviewed in accordance with the criteria cited in the following appropriate subsections.

(c) *Minor water quality impact assessment.*

(1) A minor water quality impact assessment pertains to land disturbances and development within RPAs which causes no more than 10,000 square feet of land disturbance and requires any encroachment into the landward 50 feet of the 100-foot buffer area. A minor assessment must demonstrate that the remaining buffer area and required best management practices will achieve sediment and pollutant reduction and erosion prevention equivalent to the full undisturbed buffer area. A minor assessment shall include a site drawing which shows the following:

a. Location of the components of the resource protection area, including the 100-foot buffer area and any water body with perennial flow.

b. Location and nature of the proposed encroachment into the buffer area, including: areas of clearing or grading; location of any structures, drives, or other impervious cover; type of surfacing or paving to be used, and location of sewage disposal systems or reserve drainfields.

c. Type and location of proposed best management practices to mitigate the proposed encroachment, including soil erosion and sediment control and stormwater runoff management.

d. Location of existing vegetation onsite and the location of trees and other vegetation to be removed from the buffer to accommodate the buffer encroachment or modification;

e. Re-vegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.

(2) Upon the completed review of a minor water quality impact assessment, the Administrator will determine if the proposed encroachment into the buffer area is consistent with the provisions of this article and make a finding based upon the following criteria in conjunction with subsection 106-386(1), "Required information--Minor Development:"

- a. The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance to the buffer area;
- b. Impervious surface is minimized;
- c. Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
- d. The development, as proposed, meets the purpose and intent of this article;
- e. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

(d) *Major water quality impact assessment.* A major water quality impact assessment shall be required for any development which exceeds 10,000 square feet of land disturbance within RPAs and requires any encroachment into the 100-foot buffer area; causes less than 10,000 square feet of land disturbance and requires any encroachment into the waterward 50 feet of the 100-foot buffer area; disturbs any portion of any other component of RPA; or is located in a RPA and is deemed necessary by the administrator . Such assessment shall be prepared and submitted for review in conjunction with subsection 106-386(2), or with any request for rezoning or special use, as deemed necessary by the Administrator. The information required in this section shall be considered a minimum, unless the Administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land. All information required in this section should be certified as complete and accurate by a professional engineer or a certified land surveyor, or other person qualified to do such work. The following elements shall be included in the preparation and submission of a major water quality assessment:

(1) All of the information required in a minor water quality impact assessment as specified in subsection (c) of this section.

(2) A hydrogeological element that:

a. Describes the existing topography, soils, hydrology and geology of the site and adjacent lands.

b. Describes the impacts of the proposed development on topography, soils, and hydrology on the site and adjacent lands.

c. Indicates the following:

1. Disturbance or destruction of wetlands and justification for such action;

2. Disruptions or reductions in the supply of water to wetlands, or connect streams, creeks, ponds, or other waterways;

3. Disruptions to existing hydrology including wetland and stream circulation patterns;

4. Source location and description of proposed fill material;

5. Location of dredge material and location of dumping area for such material;

6. Estimation of pre- and post-development pollutant loads in runoff.

7. Estimation of percent increase in impervious surface on-site and type of surfacing materials used;

8. Percent of site to be cleared for project;

9. Anticipated duration and phasing schedule of construction project;

10. Listing of all requisite permits from all applicable agencies necessary to develop project.

d. Describes the proposed mitigation measures for the potential hydrogeological impacts.

Potential mitigation measures include:

1. A soil erosion and sediment control plan or agreement explaining proposed erosion and sediment control concepts; concepts may include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection;

2. Proposed stormwater management system.

(3) The landscape element/plan required by subsection 106-385(2)d.

(4) In reviewing a major water quality impact assessment, the Administrator will determine if the proposed development is consistent with the purpose and intent of the article. The Administrator may request **the Virginia Department of Conservation and Recreation (DCR)** ~~CBLAD~~ to review such assessment and respond with written comments, which will be incorporated into the Administrator's final review provided that such comments are provided by **DCR** ~~CBLAD~~ within 90 days of the request. The Administrator's findings shall be based upon the following criteria:

a. Within the RPA, the proposed development is water-dependent, redevelopment, or a road or drive permitted under section 106-383(b);

- b. The disturbance of wetlands will be minimized;
  - c. The development will not result in significant disruption of the hydrology of the site.
  - d. The development will not result in unnecessary destruction of plant materials on-site;
  - e. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentation;
  - f. Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required objectives and standards for pollutant control;
  - g. Proposed revegetation of disturbed areas will provide runoff control and pollutant removal equivalent to the full 100-foot undisturbed buffer area.
  - h. The design and location of any proposed drainfield will be in accordance with the requirements of section 106-384;
  - i. The development, as proposed, is consistent with the purpose and intent of the overlay district;
- (5) A completed water quality impact assessment shall include evidence that all wetlands permits required by law have been obtained.  
(Ord. of 11-19-2003(3))

Sec. 106-387. Nonconformities.

The lawful use of a building or structure which existed on the effective date of the ordinance from which this article derives or which exists at the time of any amendment of this article, and which is not in conformity with new provision of this overlay district may be continued in accordance with the following provisions, and the provisions in this chapter for nonconforming uses:

- (1) No change or expansion of use of an existing nonconforming structure shall be allowed with the exception that the Administrator may grant a waiver for the expansion of an existing principal structure on a legal nonconforming lot or parcel to provide for remodeling and alterations or additions to such nonconforming structures in accordance with article XII of this chapter, provided that:
- a. The waiver request is the minimum necessary to afford relief;
  - b. The waiver is not based on conditions or circumstances which are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or nonconforming that are related to adjacent parcels;
  - c. The waiver is in harmony with the purpose and intent of this article; and is not substantially detrimental to water quality.
  - d. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality.
  - e. Granting the waiver will not confer upon the applicant any special privileges that are denied by this article to other property owners in the overlay district.
- (2) Unimproved nonconforming lots of record at the time of the effective date of the ordinance from which this chapter is derived which are of insufficient size to meet the minimum requirements of this chapter regarding area, frontage, setbacks, width, depth, side and rear yards, or buffer area requirements may be used as permitted by this article or the regulations for the underlying district in which the lot is located, through an administrative process and subject to the following:
- a. Lots must comply with all minimum zoning requirements, provisions, and other applicable ordinances in effect on the date such lot was recorded;
  - b. When the application of the full 100 foot buffer would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Administrator may permit encroachments into the buffer area in accordance with the following:
    - 1. Encroachments into the buffer area shall be the minimum to achieve a reasonable buildable area for the principle structure and necessary utilities;
    - 2. Where practicable, an area equal to the area of encroachment into the buffer shall be established elsewhere on the lot or parcel in a way to maximize water quality protection and mitigate the effects of the buffer encroachment; and
    - 3. In no case shall the encroachment extend into the waterward 50 feet of the buffer. In any case where a 50 foot buffer area cannot be maintained, an applicant may request an exception in accordance with section 106-389.
- (3) An application to alter or expand a nonconforming use shall be made to and upon forms furnished by the Administrator and shall include for the purpose of proper enforcement of this article, the following information:
- a. Name and address of applicant and property owner;

- b. Legal description of the property and type of proposed use and development;
  - c. A sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the resource protection area;
  - d. Location and description of any existing private water supply or sewage system.
- (Ord. of 11-19-2003(3))

Sec. 106-388. Exemptions.

(a) *Exemptions for public utilities, railroads, and public roads.*

(1) Construction, installation, operation, and maintenance of electric, natural gas, fiber optic and telephone transmission lines, railroads, and public roads and their appurtenant structures: in accordance with regulations promulgated pursuant to the state erosion and sediment control law, (Code of Virginia, § 10.1-560 et seq.) and the Stormwater Management Act (Code of Virginia, § 10.1- 603.1 et seq.): an erosion and sediment control plan and stormwater management plan approved by the Virginia Department of Conservation and Recreation; or local water quality protection criteria at least as stringent as the above state requirements will be deemed to constitute compliance with these regulations. The exemption of public roads is further conditioned on the following:

a. Optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize encroachment in the resource protection area and adverse effects on water quality;

b. Public roads shall include those roads which satisfy all the same construction, siting, and water quality standards applicable to roads built by the state department of transportation.

(2) Construction, installation, and maintenance of water, sewer, natural gas, and underground telecommunications and cable television lines owned, permitted, or both, by a local government or regional service authority shall be exempt from the overlay district provided that:

a. To the degree possible, the location of such utilities and facilities should be outside RPAs;

b. No more land shall be disturbed than is necessary to provide for the desired utility installation;

c. All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner than protects water quality; and

d. Any land disturbance complies with all the county erosion and sediment control requirements.

(b) *Exemptions for silvicultural activities.* Silvicultural activities are exempt from the requirements of this article provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the most recent edition of its Forestry Best Management Practices for Water Quality in Virginia Technical Guide.

(c) *Exemptions in resource protection areas (RPAs).* The following land disturbances in RPAs may be exempted from the overlay district: water wells; passive recreation facilities such as boardwalks, trails, and pathways; and historic preservation and archaeological activities, provided that it is demonstrated to the satisfaction of the Administrator:

(1) Any required permits, except those to which this exemption specifically applies, shall have been issued;

(2) Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;

(3) The intended use does not conflict with nearby planned or approved uses; and

(4) Any land disturbance shall comply with all the county erosion and sediment control requirements.

(Ord. of 11-19-2003(3))

**(d) *Partial Exemptions for vested intense seaward development in resource protection areas (RPAs).***

**(1) The following land development in RPAs shall be exempted from the buffer area requirements of the overlay district, to the extent necessary to provide a minimum building envelope of 3,500 square feet, provided that all of the following is demonstrated to the satisfaction of the Administrator:**

**(a) The development is located to the east and seaward of the Chesapeake Bay / Seaside watershed divide.**

**(b) The development is on a parcel with vested rights established prior to February 19, 2009.**

**(c) The development is on a parcel demonstrated to lack a minimum building envelope of 3,500 square feet outside the RPA. Development shall be permitted to encroach into the RPA only to the extent necessary to provide a building envelope of 3,500 square feet.**

**(d) The development preserves all existing vegetation, within the yard setback areas required for main structures by the underlying zoning district, that is located in the RPA and seaward (waterward) of the proposed construction.**

**(e) Any land disturbance exceeding 2,500 square feet shall comply with all county erosion and sediment control requirements.**

**(f) Compliance with all other requirements of the overlay district is demonstrated (buffer area requirements exempted per (c) above).**

Sec. 106-389. Exceptions.

(a) If an applicant contends that the strict application of this article would result in severe hardship, a request for an exception to the requirements of this overlay district shall be made in writing to the Administrator. It shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a water quality impact assessment which complies with the provisions of section 106-385.

(b) The Board of Zoning Appeals shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this article if it is determined that:

(1) Granting the exception will not confer upon the applicant any special privileges that are denied by this article to other property owners in the overlay district;

(2) The exception request is not based upon conditions or circumstances that are self created or self imposed, nor does the request arise from conditions or circumstances either permitted or nonconforming that are related to adjacent parcels;

(3) The exception request is the minimum necessary to afford relief;

(4) The exception request will be consistent with the purpose and intent of the overlay district, is not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not substantially detrimental to water quality; and

(5) Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.

(Ord. of 11-19-2003(3))

Secs. 106-390--106-400. Reserved.

## **APPOINTMENTS**

### **Accomack County Building & Fire Code Board of Appeals**

Mrs. Mears made a motion to appoint Michael A. Starling to the Accomack County Building & Fire Code Board of Appeals to fill the unexpired term of William Brown who has resigned, the term to begin immediately and end on March 31, 2011. Mr. Wolff seconded the motion. The motion passed unanimously.

### **Agricultural & Forestal District Advisory Commission**

Mr. Hart made a motion to appoint Danny Mills and Douglas Evans to the Agricultural & Forestal District Advisory Commission. Mrs. Gordy seconded the motion. The motion passed unanimously.

**Eastern Shore Community Services Board**

Mrs. Thornton made a motion to appoint Sallye Dukes to the Eastern Shore Community Services Board for a three-year term beginning immediately and ending on December 31, 2011. Mrs. Mears seconded the motion. The motion passed unanimously.

**Eastern Shore Disabilities Services Board**

Mrs. Thornton made a motion to appoint Linda Lust to the Eastern Shore Disabilities Services Board to fill the unexpired term Patricia Smith beginning immediately and ending on December 31, 2009. Mr. Wolff seconded the motion. The motion passed unanimously.

**Eastern Shore Public Library Board**

Mr. Wolff made a motion to appoint Betty Cross to the Eastern Shore Public Library Board for a three-year term beginning immediately and ending on June 30, 2012. Mr. Chesser seconded the motion. The motion passed unanimously.

Mrs. Mears made a motion to appoint Arthur K. Fisher to the Eastern Shore Public Library Board for a three-year term beginning immediately and ending on June 30, 2011. Mr. Chesser seconded the motion. The motion passed unanimously.

**Eastern Shore Resource Conservation and Development Council**

Mrs. Mears made a motion to appoint Barry L. Brooks to the Eastern Shore Resource Conservation and Development Council to for a 4-year term beginning immediately and ending on December 31, 2012. Mrs. Thornton seconded the motion. The motion passed unanimously.

**County Administrator's Report**

County Administrator Steven B. Miner presented and commented on the FY-2009 Financial Report.

**County Attorney's Report**

County Attorney Mark B. Taylor told the Board he would have information related to the Wallops Research Park Project at the next work session.

**Board of Supervisors Comment Period**

- Mrs. Mears asked that appointments to be considered include the expiration dates
- Mr. Wolff reported on proposed launches from NASA and issues at Captain's Cove
- Mrs. Thornton inquired how votes were cast on the Community Services Board and requested a financial improvement report at the next work session
- Mr. Hart informed the Board of the following:

- His visits to 21 counties
- VACo and VML work with the General Assembly on budget issues
- Stimulus Plan
- Requested that at the next regular meeting to abolish health insurance for supervisors and to look at salary increases;
- Mr. Mallette offered the following comments:
  - To look at the whole insurance package
  - in addition to look at the whole insurance package
  - State stimulus package
  - Requested that clearer motions be made
  - At the next work session to address the way Resolutions are presented

County Administrator Steven B. Miner informed the board and identified Accomack County's stimulus projects were submitted to the State on Friday, February 13<sup>th</sup> and responded to questions.

**Budget and Appropriation Items**

Mrs. Mears made a motion to approve the following budget and appropriation items. Mrs. Thornton seconded the motion. The motion passed unanimously.

**FISCAL YEAR 2009**

**Grants, Etc.**

<b>Increase Revenues</b>	
From the Federal Government	\$ 37,412
<b>Increase Expenditures</b>	
Sheriff	\$ 37,412
Award of Department of Justice grant for mobile data computers	
<b>Increase Revenues</b>	
From the Federal Government	\$ 2,524
<b>Increase Expenditures</b>	
Sheriff	\$ 2,524
State Criminal Alien Assistance Program grant award	
<b>Increase Revenues</b>	
From the Commonwealth	\$ 1,571
<b>Increase Expenditures</b>	
Planning	\$ 1,571
Seaside water quality grant additional allocation	
<b>Increase Revenues</b>	
From the Commonwealth	\$ 49,699
<b>Increase Expenditures</b>	
Clerk of Circuit Court	\$ 49,699
Technology trust funds available	

***From Contingencies (\$20,759 remaining in operating contingency as of 02/04/09***

<b>Decrease Expenditures</b>	
Contingencies	\$ 5,202

**Increase Expenditures**

Planning	\$ 5,202
ArcGIS technical support and software upgrades (vital to Maintaining GIS software)	

**Decrease Expenditures**

Contingencies	\$ 416
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**Increase Expenditures**

Planning	\$ 416
Office building rent increase effective 01/01/09	

<b>Other</b>
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**Increase Revenues**

Miscellaneous Recoveries	\$ 25,274
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**Increase Expenditures**

Treasurer	\$ 25,274
Recovery of costs associated with delinquent tax collection (i.e. court Costs, attorney fees, etc). Expenditures for such are paid out of Treasurer's Department budget	

**Increase Revenues**

Miscellaneous Recoveries	\$ 2,564
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**Increase Expenditures**

Sheriff	\$ 2,564
Vehicle insurance recoveries	

**Increase Revenues**

Erosion & Sediment Control Fees	\$ 600
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**Increase Expenditures**

Planning	\$ 600
Additional plan review costs paid by Wal-Mart	

**Payables**

Mrs. Thornton made a motion to authorize the payment of invoices. Mr. Wolff seconded the motion. The motion passed unanimously.

**Closed Meeting**

Mrs. Gordy made a motion that the Board go into closed meeting for the following purposes pursuant to Section 2.2-3711 of the Code of Virginia of 1950, as amended. Mr. Wolff seconded the motion. The motion passed unanimously.

1. Pursuant to subsection (A) (1) for discussion of specific assignment of possible appointments to a Public Service Authority, and
2. Pursuant to subsection (A) (3) for the purpose of discussion or consideration of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy.

**Open Session**

The Chair declared the meeting open to the public.

**Certification of Closed Meeting**

Mr. Hart made a motion, seconded by Mr. Wolff, to reconvene in Open Meeting and to Certify by roll call vote, pursuant to Section 2.2-3712 (D) of the Code of Virginia, that to the best of each member's knowledge the only matters heard, discussed, or considered during the Closed Meeting were (i) public business matters lawfully exempted from Open Meeting requirements under this chapter and (ii) such public business matters as were identified in the motion by which the Closed Meeting was convened.

Aye:	Mrs. Thornton	Mrs. Mears	Mrs. Gordy
	Mr. Wolff	Mr. Gray	Mr. Hart
	Mr. Chesser	Mr. Mallette	Mr. McCaleb

**Recess**

By consensus of the Board, the Chair declared the meeting in recess for dinner until 7:30 p.m.

**Call to Order**

The Chair called the meeting back to order.

**Public Hearings**

County Attorney Mark B. Taylor read the rules governing conduct during Public Hearings.

The Chair opened a Public Hearing to afford interested persons to be heard or to present written comments concerning Proposed Amendment to Accomack County Code, Chapter 70, Solid Waste, To Reduce the Fee Exemption for Household Waste from 400 Pounds to 200 Pounds.

No public comments were offered and the Chair closed the Public Hearing.

Mrs. Gordy made a motion to adopt the following amendment to the Ordinance. Mr. Wolff seconded the motion. Ayes: Mrs. Thornton, Mr. Wolff, Mr. Chesser, Mr. Gray, Mrs. Mears, Mr. Mallette, Mrs. Gordy, Mr. McCaleb. Nays: Mr. Hart.

**ACCOMACK COUNTY, VIRGINIA, ORDINANCE AMENDMENT TO  
CHAPTER 70, SOLID WASTE, ARTICLE II., SOLID WASTE  
MANAGEMENT, SECTION 70-44.  
COUNTY SANITARY LANDFILL FACILITIES,  
(3) WEIGHT BASED FEE EXCLUSION**

WHEREAS, there has been a decline in revenue from landfill operations which has created a budget shortfall; and

WHEREAS, landfill fees must be collected in order to fund future costs of closing landfills in compliance with the law; and

WHEREAS, the County finds it necessary to reduce the fee exemption for household waste from 400 pounds to 200 pounds; and

WHEREAS, the Accomack County Convenience Centers accept most all forms of household waste with no fee to serve the citizens, the Board of Supervisors must amend the Accomack County Code accordingly.

NOW, THEREFORE, BE IT ENACTED by the Accomack County Board of Supervisors that the Accomack County Code, Chapter 70, Solid Waste, Article II. Solid Waste Management, Sec. 70-44. County sanitary landfill facilities (3) Weight based fee exclusion, be amended as follows:

Sec. 70-44. County sanitary landfill facilities.

(a) *Sanitary landfill.* Sanitary landfill facilities shall be owned and operated by the county for the use of the general public. Such facilities shall be operated under permit from the department of environmental quality and in accordance with rules and regulations promulgated by said department. The term "general public" as used in this section shall mean persons or businesses within the county. Only solid waste generated and originated within the county will be accepted.

(b) *Hours of operation.* Sanitary landfill facilities shall be open to the general public on a regular schedule. The county administrator is authorized to set the days and hours of operation. Said operating schedule shall be conspicuously posted at the entrance to sanitary landfill facilities.

(c) *Landfill attendants.* Sanitary landfill activities and persons using the facilities shall be supervised and controlled by county employees at all times. It shall be unlawful for any person to willfully disobey, ignore, or improperly carry out any legal and proper order or direction of any such employee directed toward the proper use of the sanitary landfill facilities.

(d) *Unacceptable wastes.* Except as hereinafter provided, the following wastes are unacceptable at county sanitary landfill facilities:

- (1) Hazardous waste including asbestos material and regulated medical waste.
- (2) Animal carcasses, including fowl, other than pets (i.e., cats and dogs) and road killed animals.
- (3) Liquid. Liquid is the solid waste that qualifies as liquid under the Environmental Protection Agency Paint Filter Test. Any solid waste containing less than 25 percent solids, by weight, is also considered a liquid.
- (4) Vehicles. Automobiles, trucks, buses, trailers, farm equipment, construction vehicles such as bulldozers, cranes and other like motorized vehicles and equipment.
- (5) Closed drums.
- (6) Slaughterhouse waste.
- (7) Unapproved seafood by-product waste.
- (8) Unapproved industrial process waste.
- (9) Unapproved sewage sludge.
- (10) Improperly prepared containers such as paint cans and pesticide containers.

(e) *Unapproved solid waste.* The county administrator is authorized to establish procedures for application, review and evaluation of requests from persons wishing to dispose of unapproved wastes such as industrial process waste and sewage sludge. Persons wishing to dispose of unapproved waste shall make application for same to the county administrator or his designee.

(f) *Material separation.* For acceptance at sanitary landfill facilities various waste types shall be separated from other acceptable waste. Waste types requiring separation include, but are not limited to: Household waste, debris waste, demolition waste, construction waste, yard waste, tires, white goods, metal, lead acid batteries and such other waste materials as may be necessary for efficient and legal operation of the facility.

(g) *Fees.* The board of supervisors may by resolution, establish and from time to time change user fees for disposal of solid waste, or any class or type of solid waste, at county landfill facilities. Any such fees collected shall be deposited with the county treasurer. The county shall use the fees for procuring, constructing, developing, maintaining, improving and/or operation of its landfill and for such reserves as may be necessary for the capping and

closing of such landfill in the future. The county is expressly authorized to increase user fees in the event that the Commonwealth of Virginia or the federal government imposes any additional fees upon the county's landfill operations.

(1) Fee applicability. With the exception of the exclusions in subsection (g) (2) below, a fee for the use of the county sanitary landfill facilities shall be charged for all solid waste entering the facility in accordance with the provisions set forth herein. Said fees for material accepted other than tires and lead acid batteries shall be determined on weight of material accepted and shall be at rates set forth from time to time by the board of supervisors.

(2) Exclusions.

1. County of Accomack.

2. Accomack County School System when collected and transported in or on vehicles owned and operated by the school system or the county.

3. Municipalities collecting and transporting only Household Waste when transported in or on vehicles owned and operated by the municipality.

For the purposes of this article, the term household waste excludes construction waste, debris waste, demolition waste and yard waste that may be generated as the result of general maintenance, construction, reconstruction or demolition of single or multifamily dwelling units or the property on which they are situated.

4. Virginia Department of Transportation when disposing of litter collected along the highways, road-killed animals, gutter pulling (ditch cleaning) and debris such as limbs and brush removed from rights-of-way after a storm.

5. Virginia Division of Game and Inland Fisheries when disposing of road-killed animals.

6. Specific activities or waste types for which the board of supervisors may from time to time suspend fees.

(3) Weight based fee exclusion. Persons disposing of solid waste in sanitary landfill facilities, the weight of which does not exceed 2400 pounds, will not be charged. Should the weight of solid waste exceed 200 ~~400~~ pounds, the rates set by the board of supervisors shall apply to the excess over 200 ~~400~~ pounds.

This waiver of fee and weight shall be limited to the first entrance per customer per day and shall not apply to persons transporting solid waste for hire or to credit customers.

This waiver of fee and weight shall be applicable to residents of the county and non-residents owning property in the county. Residency will be determined at the sanitary landfill facility by the locality vehicle registration tag. Non-residents owning property in the county must have purchased a landfill use decal from the Treasurer and affix said decal on the vehicle windshield to qualify for this waiver of fee and weight. The cost of the landfill use decal will be as set from time to time by the board of supervisors.

(4) Tires. There shall be a per tire fee for tires disposed of at county sanitary landfill facilities, as established from time to time by the board of supervisors.

Such fees will be waived for residents of the county and non-residents owning property in the county for the first four car/small truck tires brought to the sanitary landfill facility in a single load per customer per day as long as said tires are not on the rim. Residency will be determined at the sanitary landfill facility by the locality vehicle registration tag. Non-residents owning property in the county must have purchase a landfill use decal from the Treasurer and affix said decal on the vehicle windshield to qualify for this waiver of fee. The cost of the landfill use decal will be as set from time to time by the board of supervisors.

(5) Lead acid batteries. There shall be a per battery fee for lead acid batteries disposed of at county sanitary landfill facilities, as established from time to time by the board of supervisors.

Such fees will be waived for residents of the county and non-residents owning property in the county for the first lead acid battery brought to the sanitary landfill facility per customer per day. Residency will be determined at the sanitary landfill facility by the locality vehicle registration tag. Non-residents owning property in the county must have purchase a landfill use decal from the treasurer and affix said decal on the vehicle windshield to qualify for this waiver of fee. The cost of the landfill use decal will be as set from time to time by the board of supervisors.

(h) *Credit accounts.* The county administrator, or his designee, is authorized to arrange credit accounts for persons making regular use of county sanitary landfill facilities.

(1) Credit accounts may be established by making application at the office of the director of public works. Cash payment will be required until the credit application has been approved. The county will bill the credit accounts each month. Credit accounts must be bonded in an amount of \$5,000.00 each or by an appropriate security deposit equal to the

tipping fee due for two months estimated tonnage as established in the application for credit account. Fire companies, municipalities, and churches shall be exempt from bonding or security deposit requirements as provided in this section. The security deposit is refundable upon closing the account and payment of all balances due.

(2) Landfill credit account bills are due, in full, upon receipt. If payment is not received within 30 days of billing, the maximum late fee allowable by state code will be charged until such time the delinquent account is paid in full.

(3) Upon the first occurrence of a credit account holder failing to make payment on time, the director of public works will make written notification to that account holder informing them of such, and requesting full payment within five days of receipt of that written notification. If full payment is not made within that five-day period, the account will be suspended until full payment is received. Nothing in this provision precludes charging the aforementioned late fee until the overdue balance is paid in full.

(4) Upon the second occurrence of a credit account holder failing to make payment on time, the director of public works will make written notification to that account holder informing them of such and that their credit account is being permanently closed. Nothing in this provision precludes charging the aforementioned late fee until the overdue balance is paid in full.

(5) Upon the first occurrence of a credit account holder's personal check for payment being returned for insufficient funds, the director of public works will make written notification to that account holder informing them of such and that all future payments for account billing will be made in cash, with a cashiers' check, or by United States Postal Service money order. Nothing in this provision precludes charging the aforementioned late fee until the overdue balance is paid in full.

(i) *Vehicle identification tag.* Commercial solid waste permit holders and credit customers must display a vehicle identification tag on each solid waste transport vehicle entering sanitary landfill facilities. The vehicle identification tag shall be prominently displayed on the driver's side of the vehicle on or immediately forward of the driver's door. Vehicle identification tags are available in the public works office for a fee sufficient to cover replacement cost.

Vehicles operated by the county, Accomack County School Board and municipal corporations shall be provided vehicle identification tags at no charge. The Virginia Department of Transportation and the Virginia Division of Game and Inland Fisheries are not required to display vehicle identification tags.

(j) *Permit.* It shall be unlawful for any person engaged in the business of collecting, transporting, and/or disposing of solid waste in the county to use the county's sanitary landfill facilities without first obtaining a commercial solid waste use permit.

(1) *Permit application.* Application for a commercial solid waste use permit shall be made to the director of public works. Such application shall be accompanied by a non-refundable processing fee of \$25.00. Only one permit is necessary per company. One individual vehicle identification tag will be provided upon permit approval. Additional and replacement vehicle identification tags are available for a fee sufficient to cover the county's purchase cost.

(Ord. of 10-20-1999(2), art. 10; Ord. of 12-18-2002(1); Ord. of 9-17-2003)

This Ordinance is effective upon adoption.

### **Text Amendments to Flood Ordinance Overlay District**

The Chair opened a Public Hearing to afford interested persons to be heard or to present written comments concerning Proposed Amendment to Text Amendments to Flood Hazard Overlay District.

No public comments were offered and the Chair closed the Public Hearing.

Mr. McCaleb made a motion to adopt the following amendments to the Flood Hazard Overlay District. Mrs. Mears seconded the motion. The motion passed unanimously.

**ARTICLE XV. FLOOD HAZARD OVERLAY DISTRICT\*  
TEXT AMENDMENTS**

Sec. 106-351. Statement of intent.

(a) The flood hazard overlay district is established pursuant to the authority of the Code of Virginia, §§ 15.2-2283 and 15.2-2284 for the purposes of providing safety from floods, prevention of property damage and loss and all other related dangers; and of promoting the health, safety and general welfare by regulating and restricting areas in the tidal floodplains of the Chesapeake Bay, the Atlantic Ocean, and all creeks and streams which are subject to overflowing of their banks.

(b) The flood hazard districts created and described herein shall be overlays to the existing underlying districts as shown on the official zoning ordinance map, and as such, the provisions for the floodplain districts shall serve to supplement or qualify the underlying zoning district provisions. Any conflict between the provisions or requirements of the flood hazard districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the flood hazard districts shall apply. In the event any provision concerning a flood hazard district is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

Sec. 106-352. Definitions.

For the purpose of this article words and terms used herein shall be defined as follows:  
Base flood/100-year flood means a flood that has a one percent chance of occurring each year.

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, the placement of manufactured homes, streets, and other paving, utilities, filling, grading, excavation, mining, dredging, drilling operations, or storage of equipment or materials.

Existing manufactured home park/subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the initial effective date of the ordinance from which this article is derived.

Expansion to an existing manufactured or mobile home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured/mobile homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

Flood means a general and temporary inundation of normally dry land areas.

Floodplain means:

- (1) A relatively flat or low land area adjoining a river, stream or watercourse which is subject to partial or complete inundation;
- (2) An area subject to the unusual and rapid accumulation or runoff of surface water from any source.

Floodprone area means any land area susceptible to being inundated by water from any source.

Historical structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the department of interior) or preliminary determined by the secretary of the interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminary determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminary determined by the Secretary of the Interior to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

- a. By an approved state program as determined by the Secretary of the Interior;
- b. Directly by the secretary of the interior in states without approved programs.

Manufactured or mobile home park/subdivision means a parcel (or contiguous parcels) of land divided into two or more lots for rent or sale.

New construction means, for the purpose of determining insurance rates, structures for which the start of construction commenced on or after the effective date of applicable flood hazard regulations adopted by the board of supervisors, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the start of construction commenced on or after the effective date of initial floodplain management regulations adopted by the county board of supervisors, and includes any subsequent improvements to such structures.

New manufactured or mobile home park/subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the initial effective date of these regulations.

Start of construction means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as pouring of slab and footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration on any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure of correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

Cross references: Definitions generally, § 1-2.

Sec. 106-353. Establishment of flood hazard districts.

(a) For the purpose of establishing the flood hazard districts and for delineation of such areas, the flood insurance study and flood insurance rate maps prepared for Accomack County dated March 16, 2009 by the Federal Emergency Management Agency establishing such zones and any subsequent revision, shall apply. The areas indicated on such maps as zones VE and zones AE shall constitute the flood hazard area for the purpose of this article. The coastal high hazard areas are designated as zones VE. The coastal floodplain areas are designated as zones AE. Any proposed changes in the delineation of the flood hazard areas are subject to approval by the Federal Insurance Administrator, Federal Emergency Management Agency.

(b) The boundaries of the flood hazard districts are established as shown on the above flood insurance rate map, which is declared to be part of this article, and which shall be kept on file at the Department of Building and Zoning. The provisions of this article, the official

zoning map, and the flood insurance rate maps shall be read and construed together in the application of this article.

(c) This article shall apply to all unincorporated areas of the county, including the barrier islands, identified as being in the 100-year floodplain by the Federal Insurance Administration.

Sec. 106-354. General regulations.

(a) Permitted uses, activities and development occurring within any floodplain district shall be as provided for in the underlying zoning district, and shall be undertaken only upon the issuance of a zoning and a building permit. Such development shall be undertaken only in strict compliance with the provisions of this chapter and with all other applicable codes and ordinances such as the Uniform Statewide Building Code. Prior to the issuance of any such permit, the building official shall require all applications to include compliance with all other applicable local ordinances and state and federal laws.

(b) Any proposed development in the flood hazard district requiring review and approval of a site plan or subdivision plat, in accordance with section 106-386, or chapter 78, shall include on such site plan or plat the following:

- (1) The established elevations of the 100-year floodplain;
- (2) The lowest and highest elevations above mean sea level for each proposed building site;
- (3) For structures to be elevated, the elevation of the lowest floor (including basement);
- (4) Topographic information showing existing and proposed ground elevations;
- (5) For nonresidential structures to be floodproofed, the elevation to which the structure will be floodproofed.

(c) In coastal high hazard areas, VE, all new construction shall be located landward of the reach of mean high tide.

(d) In coastal high hazard areas, VE, the manmade alteration of sand dunes which would increase potential flood damage is prohibited.

(e) Base flood elevation. Where a residential building is to be located in any flood hazard area, the lowest floor (including basement) of all new construction, or substantial improvements to existing buildings, shall be constructed to a minimum of one foot above the base flood level. "Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter. For all new residential construction and substantial improvements to residential buildings in flood zones, AE, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- (2) The bottom of all openings shall be no higher than one foot above grade.
- (3) Openings may be equipped with screens, louvers, or other coverings or devices provided they permit the automatic entry and exit of floodwater.

(f) All new or substantial improvements to non-residential buildings in AE must have the lowest floor (including basement) elevated or floodproofed to a minimum of one foot above the base flood elevation. Under the floodproofing option, structures must be made tight, with walls substantially impermeable to the passage of water and with structural components that are able to resist floatation, collapse, lateral movement, or other forces associated with a 100-year flood. Specific flood proofing plans must be submitted to the plan approving authority. Such plans must be certified by a registered professional engineer or architect as meeting the minimum requirements of the National Flood Insurance Program.

(g) All new construction and substantial improvements in VE shall be elevated on pilings and columns so that (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is a minimum of one foot above the base flood level; and (2) the pile column foundation and structure attached thereto is anchored to resist floatation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean

recurrence interval). A registered professional engineer or architect shall develop or review the structural design.

(h) All new construction and substantial improvements, within zone VE and shall have the space below the lowest floor either free of obstruction or constructed with nonsupporting breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than ten and no more than 20 pounds per square foot. Use of breakaway walls which exceed design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

(1) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood;

(2) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval); and

(3) Such enclosed space shall be designed and usable solely for parking of vehicles, building access, or storage.

(i) Manufactured and mobile homes.

(1) Manufactured and mobile homes that are placed or substantially improved on sites:

a. Outside of a manufactured home park or subdivision;

b. In a new manufactured home park or subdivision;

c. In an expansion to an existing manufactured home park or subdivision; or

d. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood;

shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to a minimum of one foot above the base flood elevation and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapses, and lateral movement.

(2) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions of subsection (i)(1), above, of this section shall be elevated so that either:

(i)(1), above, of this section shall be elevated so that either:

a. The lowest floor of the manufactured home is a minimum of one foot above the base flood elevation, or

b. The manufactured home chassis is supported by reinforced piers or other foundation elements of a least equivalent strength that are no less than 36 inches in height above grade and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(3) Recreational vehicles placed on sites shall either:

a. Be on the site for fewer than 180 consecutive days, and be fully licensed and ready for highway use; or

b. Meet the permit requirements for placement and all elevation and anchoring requirements for manufactured homes as above in this section.

(j) Mechanical and utility equipment. Electrical heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or located in conformance with the Virginia Uniform Statewide Building Code, as amended.

(k) Elevation certificate. A professional engineer, architect, or surveyor licensed by the Commonwealth of Virginia, shall be required to establish and certify the elevations above mean sea level at the property location where the building or manufactured home is to be constructed. He shall certify that the lowest floor of the building or manufactured home has been constructed to a minimum of one foot above the base flood level as established by the Federal Insurance Rate Maps. The engineer, architect, or surveyor, shall fill and execute the elevation certificate form and deliver it to the county building official.

(l) Alteration or relocation of watercourse. Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U.S. Corps of Engineers, the state water control board and the state marine resources commission (a joint permit application is available from any of these

organizations). Furthermore, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Division of Soil and Water Conservation (Department of Conservation and Recreation), and the Federal Insurance Administration.

Sec. 106-355. Existing structures in floodplain districts.

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to article XI of this chapter, and to the following conditions:

- (1) Any modifications, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain area to an extent or amount of less than 50 percent of its market value, shall be elevated and/or floodproofed to the greatest extent possible; or
- (2) The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its locations in a floodplain area, to an extent or amount of 50 percent or more of its market value shall be undertaken only in full compliance with the provisions of this chapter and the Uniform Statewide Building Code.

Sec. 106-356. Design criteria for utilities and facilities.

- (a) Sanitary sewer facilities. All new or replacement sanitary sewer facilities and private package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate the infiltration of floodwaters into the systems and discharges from the systems into the floodwaters. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.
- (b) Water facilities. All new or replacement water facilities shall be designed to minimize or eliminate the infiltration of floodwaters into the system and be located and constructed to minimize or eliminate flood damages.
- (c) Drainage facilities. All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and on-site waste disposal sites. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.
- (d) Utilities. All utilities, such as gas lines, electrical and telephone systems being placed in floodprone areas should be located, elevated (where possible), and constructed to minimize the chance of impairment during a flooding occurrence.
- (e) Streets and sidewalks. Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.

Sec. 106-357. Variances.

- (a) In reviewing and acting upon applications for variances, the board of zoning appeals shall satisfy all relevant factors and procedures specified in article XI of this chapter, as well as the following provisions:
  - (1) The board of zoning appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.
  - (2) Variances shall be issued only after the board of zoning appeals has determined that the granting of such will not result in unacceptable or prohibited increases in flood heights, additional threats to public safety, extraordinary public expense, and will not create nuisances, cause fraud or victimization of the public, or conflict with other local laws or ordinances.
  - (3) Variances shall be issued only after the board of zoning appeals has determined that variance will be the minimum required to provide relief from exceptional hardship to the applicant.
  - (4) The board of zoning appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the 100-year flood elevation increases the risks to life and property and will result in increased premium rates for flood insurance.
  - (5) In granting any variance, the board of zoning appeals may attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety and welfare and to achieve the objectives of this article.

(6) A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances which are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

(b) In its deliberations to dispose of variance requests under this article, the board of zoning appeals shall consider the following additional factors:

(1) The danger of life and property due to increased flood heights or velocities caused by encroachments.

(2) The danger that materials may be swept on to other lands or downstream to the injury of others.

(3) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

(4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

(5) The importance of the services provided by the proposed facility to the community.

(6) The requirements of the facility for a waterfront location.

(7) The availability of alternative locations not subject to flooding for the proposed use.

(8) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

(9) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.

(10) The safety of access by ordinary and emergency vehicles to the property in time of flood.

(11) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site that variance will be the minimum required to provide relief from any hardship to the applicant.

(12) The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(13) Such other factors which are relevant to the purposes of this article.

Sec. 106-358. Warning and disclaimer of liability.

The degree of flood protection required by this flood hazard overlay district is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by manmade or natural causes. This article does not imply that areas outside the flood hazard districts, or that land uses permitted within such districts, will be free from flooding or flood damage. This article shall not create any liability on the county or any officer, agency or employee thereof for any flood damage that may result from reliance on this article, or an administrative decision lawfully made thereunder.

Secs. 106-359--106-375. Reserved.

### **County Attorney Employment Contract**

Mr. Wolff made a motion to accept the amended Contract for the County Attorney.

Mr. McCaleb seconded the motion. Ayes: Mr. Wolff, Mr. Chesser, Mr. Gray, Mrs. Mears,

Mr. Mallette, Mrs. Gordy, Mr. Hart, Mr. McCaleb. Nays: Mrs. Thornton

### **Adjournment**

Mrs. Thornton made a motion to adjourn 9:30 p.m. Mrs. Mears seconded the motion. The motion passed unanimously.

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Chair