

Minutes
Essex County Planning Commission
Regular Meeting
October 3, 2023
7:00 P.M.

A regular meeting of the Essex County Planning Commission was held on September 5, 2023, at the Essex County School Board Office, Tappahannock, Virginia.

Present:

David Jones – Chairman
Angelo Stevens – Vice Chairman
Stephen Walters – via phone at 7:15 pm
Jean Segar
Trent Taliaferro
Benjamin Scott Mundie

Absent:

Wright Andrews

Also present:

Brian Barnes – Zoning Administrator
Kelly McKnight – Planning and Zoning Office Manager

CALL TO ORDER

David Jones, Chairman, called the regular meeting of the Planning Commission to order at 7:00 pm.

ROLL CALL

Chairman Jones asked Ms. McKnight to call the roll. A quorum was met.

MEETING AGENDA

Chairman Jones stated he would like to move the approval of the minutes to the end of the meeting.

PUBLIC COMMENTS

Jacon Carasella who is Director of Community Outreach which is for nonprofit energy rights and travels the state to educate community leaders and local officials on the best practices and benefits of energy projects. We do believe in all the above approaches and really capitalize on property rights with consideration of neighbor's rights as well and emphasize on economic

benefits of revolutionize what you can do in the world and Virginia. I am a lifelong Virginian from Williamsburg, and I am not too far from you all and would live an opportunity to come up and meet with you all and discuss how it looks like in Essex County and what you have learned and maybe we can collaborate to figure out better solutions from what you have heard from constituents. "Thank you very much and I am glad to be here."

PUBLIC HEARING

None

OLD BUSINESS

None

NEW BUSINESS

Discuss issues with Agricultural and Forestry language in the Essex County Zoning Ordinance

Mr. Barnes brought before the board the directive from the Board of Supervisors to discuss issues with Agricultural and Forestry language in the Essex County Zoning Ordinance. Mr. Barnes brought the new book and the old book if you would like to pass it around. Kelly sent via email a memo with the description of the directive as well as the staff findings. Including in the minutes is what Mr. Barnes, Zoning Administrator, presented.

Building & Zoning
Brian Barnes
Zoning Administrator
202 South Church Lane
P.O. Box 549
Tappahannock, Virginia 22560
(804) 443-4951



Established 1692

MEMORANDUM

Date: September 25, 2023
To: Essex County Planning Commission
From: Brian Barnes, Zoning Administrator
Subject: Board of Supervisors Directive Regarding Agriculture Zoning
Meeting: October 3, 2023

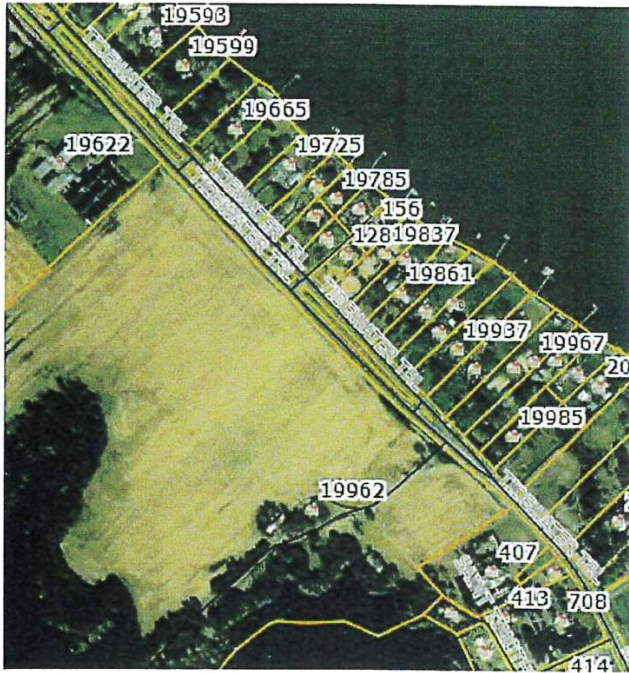
Issue: County staff have received a directive from the Board of Supervisors regarding the "by right" use of Agricultural Activities within Residential Zoned parcels including R-1, R-2, R-3, and R-4 districts. This item was scheduled to be discussed last month but due to a heavy workload, it was deferred to this meeting.

Staff are currently researching this subject, meeting with public stakeholders, industry experts, and developing a set of possible wording and language inserts for public hearing and recommendations to the Board of Supervisors. If the Commission desires to have time allotted for further discussion, staff are prepared to provide that when directed to do so.

Initial Staff Findings: This issue has several different components that involve agriculture and forestry in general as it relates to the zoning ordinance language. These involve, but may not be limited to:

1. Farming activities in districts zoned something other than A-1 or A-2 are not to be by-right. *What about lands in other districts that are being farmed or may need to be farmed in the future?*
2. The lack of specificity or mention of "Agriculture/Silviculture" in the Use Performance Standards. *Is this an omission needing clarification (other widely by-right uses have performance standards defined)?*
3. "Greenhouse, commercial" requires a Conditional Use Permit. *How does this affect or impact the use of covers, high tunnels, or hoop houses for horticultural operations?*

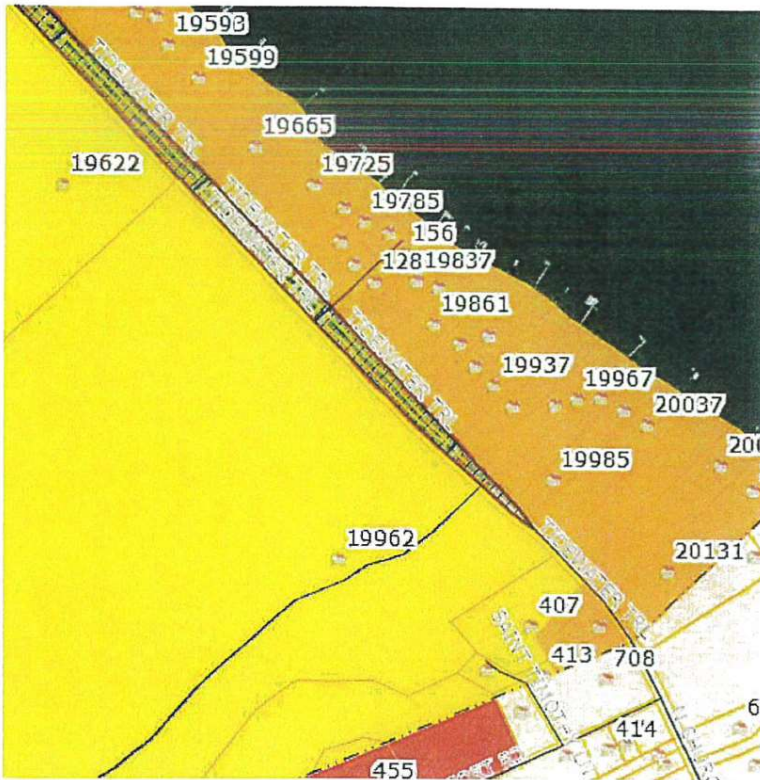
This issue is explored here using a few graphical illustrations:



AERIAL WITH LOT LINES

The area (above) near Route 17 northbound out of Tappahannock. Active agricultural fields to the left (west) with residential development to the right (east) along the Rappahannock River.

DR



SAME TO SCALE

This same area with the Zoning District layers applied. The agricultural field to the left is zoned R-1 and the residential area to the right is R-2.

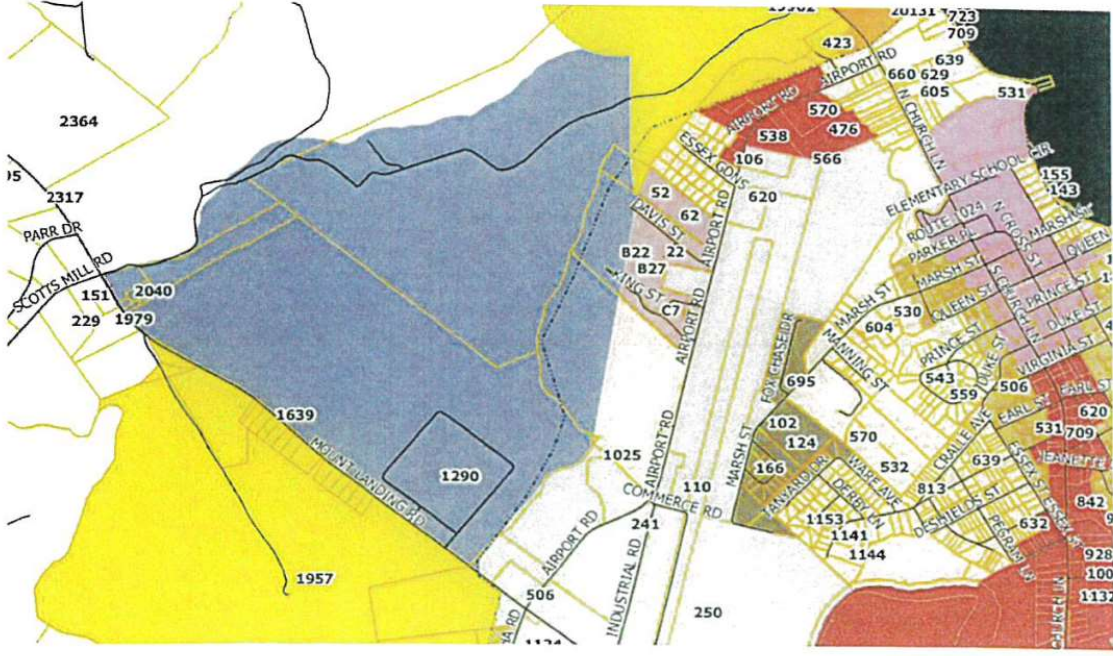
This area also borders Route 17 where it is four travel lanes wide and is immediately adjacent to Town boundaries.



Aerial Image of ag. land near the old airport NW of Town



Same parcel with zoning districts colored in. Ag. land is Industrial I-1, Light Ind.



These examples illustrate that some lands being farmed or timbered in Essex County are zoned something other than Agricultural. It is also possible that a property owner or manager may allow a parcel of land to continue to be managed for farming or forestry even after it has been rezoned and approved for a denser more intensive use. Changes in the economy and other forces occasionally dictate that a developer must wait until conditions are prudent for higher permitted uses to proceed.

Right to Farm Act:

Virginia has enacted several statutes that define and outline Agricultural operations and how a municipality may regulate these activities or who may own these lands. The simplest way to begin to understand this area of state code is to break it down into the three main areas of title that deal with this topic:

1. **Title 3.2 “Right to Farm Act”.**
2. **Title 15.2 “Counties, Cities and Towns”**
3. **Title 55.1 “Foreign Adversary ownership of Agricultural Lands”**

The “Right to Farm” Act was enacted by the Commonwealth of Virginia and became effective on April 1, 1995. This state code prevents localities from adopting an ordinance that requires a special use permit or special exception for any production agriculture or silviculture activity in an area zoned for agriculture and/or forestry.

§15.2-2288, Code of Virginia, 1950, as amended, prevents a local zoning ordinance from requiring a special use permit or special exception for production agricultural activities on agriculturally zoned property.

§55.1-507, Code of Virginia, 1950, as amended, deals with Foreign Adversary ownership of agricultural lands in Virginia. While not applicable to the purpose of this memorandum, this title has a good definition of “Agricultural land” and “Agricultural operation”. These definitions may be useful going forward.

“Agricultural land” means real estate in the Commonwealth used or zoned in a manner that would permit the use of real estate for an agricultural operation.

“Agricultural operation” means any operation devoted to the bona fide production of crops, animals, or fowl, including the production of fruits and vegetables of any kind; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silvicultural activity.

Agriculture Standards:

“Agriculture, intensive” is defined but is very broadly written and could include many operations that may keep animals under cover at certain times of inclement weather or other times of the year. This definition seems to intend to address Confined Animal Feeding Operations or CAFOs. Whereas, §3.2-300, Code of Virginia, 1950, as amended, states that “*Agricultural operation*” also includes any operation devoted to the housing of livestock as defined in §3.2-

6500.”, it may be important to make a distinction in the language so that the covered keeping of animals is not automatically an “intensive” use if the animals are not only kept in confinement and the lands associated with the operation allow them to graze and move around.

Greenhouses versus High tunnels:

The Essex Zoning and Subdivision Ordinance requires a Conditional Use permit for a “Greenhouse, commercial”. This use is only allowed in the A-1 and A-2 district with a CUP. Some farmers in Essex County have begun to use a structure called a “high tunnel” (sometimes also called a “hoop house” or “caterpillar tunnel”) to produce crops in seasons of the year where such production might otherwise be difficult or impossible due to cold weather. High tunnels generally have no floor and the crops are grown in the native soil beneath the poly covered structure. Some may have ventilation fans but are generally taking advantage of solar gain and natural ventilation using adjustment of the poly covering or doors and curtains. Many of these installations are temporary and may be in place for five years or less due to soil rotation needs.

Should high tunnels be considered the same as a Greenhouse, commercial, or should they be by-right? As the ordinance stands currently, a zoning complaint could trigger the need for a farmer to seek a Conditional Use Permit for a single high tunnel on A-1 or A-2 property. Was the intent of the ordinance to have some control over large greenhouse operations? If so, where should or could changes be made to prevent one or two small structures on a small farm from being onerous for the applicant and burdensome for the county?

Conclusion:

The Planning Commission has been tasked with making recommendations for changes that should or could be made to the Subdivision and Zoning Ordinance regarding the Agricultural Industry in Essex County. It is indisputable that farming activities do take and have taken place in zoning districts that are not agricultural. The Planning Commission should figure out exactly where conflicts may arise that run counter to the intent of the ordinance. An attempt should be made to address those conflicts with language additions or strikes that simply and efficiently mitigate those conflicts while serving to fulfill the intent of the ordinance and the Comprehensive Plan.

Any proposed language amendment shall be advertised and heard in public hearing. Following public hearing, the Commission will need to make a recommendation to the Board of Supervisors.





Virginia Agricultural Operations Right to Farm Act

Virginia's Right to Farm Act is intended to protect farmers from nuisance suits if they follow the law and best management practices. The Act is a prohibition on nuisance lawsuits against responsible farmers by ensuring that such farms are appropriately protected from baseless claims of nuisance and from significant and unfair judgments, when such claims may be appropriate. The Act limits the local government from requiring restrictive zoning practices and special permits for farms.

Concerning local government and restrictive ordinances

- A locality cannot adopt any ordinance that requires that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification.
- Localities may adopt setback requirements, minimum area requirements, and other requirements that apply to land on which agriculture and silviculture activity is occurring within the locality that is zoned as an agricultural district or classification.
- No locality shall enact zoning ordinances that would unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district or classification unless such restrictions bear a relationship to the health, safety, and general welfare of its citizens.

When agricultural operations do not constitute nuisance

- Protects a farm unless it has failed to substantially comply with best management practices and with laws and regulations. This protects farmers from legal exposure due to insignificant or unrelated mistakes.
- Protects farmers, contract growers, and other contract partners of the farming operation.
- **Does not** protect farms from claims other than nuisance, such as negligence.
- Act does have exceptions allowing nuisance suits in certain cases of pollution or a change in condition of waters.

Parameters for Appropriate Nuisance Claims against Farms

- Only individuals with an ownership interest in the impacted property can bring a nuisance suit.
- Property owners that knew or should have known they are moving next to a farming operation cannot sue for a perceived nuisance related to the farming operation.

Damages in Nuisance Suits to be focused on Property Value

- For a permanent nuisance, compensatory damages are measured by the reduction in fair market value of the property.
- For a temporary nuisance, compensatory damages are measured by the reduction in the fair rental value of the property.
- Damages cannot exceed the fair market value of the property, even in multiple suits.

Right to Farm Statutes



Title 3.2. Agriculture, Animal Care, and Food Chapter 3. Right to Farm

§ 3.2-300. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agricultural operation" means any operation devoted to the bona fide production of crops, or animals, or fowl including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity.

"Production agriculture and silviculture" means the bona fide production or harvesting of agricultural or silvicultural products but shall not include the processing of agricultural or silvicultural products or the above ground application or storage of sewage sludge.

§ 3.2-301. Right to farm; restrictive ordinances.

In order to limit the circumstances under which agricultural operations may be deemed to be a nuisance, especially when nonagricultural land uses are initiated near existing agricultural operations, no locality shall adopt any ordinance that requires that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. Localities may adopt setback requirements, minimum area requirements, and other requirements that apply to land on which agriculture and silviculture activity is occurring within the locality that is zoned as an agricultural district or classification. No locality shall enact zoning ordinances that would unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district or classification unless such restrictions bear a relationship to the health, safety, and general welfare of its citizens. This section shall become effective on April 1, 1995, and from and after that date all land zoned to an agricultural district or classification shall be in conformity with this section.

§ 3.2-302. When agricultural operations do not constitute nuisance.

A. No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, if such operations are conducted in substantial compliance with any applicable best management practices in use by the operation at the time of the alleged nuisance and with any applicable laws and regulations of the Commonwealth relevant to the alleged nuisance. No action shall be brought by any person against any agricultural operation the existence of which was known or reasonably knowable when that person's use or occupancy of his property began.

The provisions of this section shall apply to any nuisance claim brought against any party that has a business relationship with the agricultural operation that is the subject of the alleged nuisance.

The provisions of this section shall not apply to any action for negligence or any tort other than a nuisance.

For the purposes of this subsection, "substantial compliance" means a level of compliance with applicable best management practices, laws, or regulations such that any identified deficiency did not cause a nuisance that created a significant risk to human health or safety. Agricultural operations shall be presumed to be in substantial compliance absent a contrary showing.

B. The provisions of subsection A shall not affect or defeat the right of any person to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person.

C. Only persons with an ownership interest in the property allegedly affected by the nuisance may bring an action for private nuisance. Any compensatory damages awarded to any person for a private nuisance action not otherwise prohibited by this section, where the alleged nuisance emanated from an agricultural operation, shall be measured as follows:

1. For a permanent nuisance, by the reduction in fair market value of the person's property caused by the nuisance, but not to exceed the fair market value of the property; or
2. For a temporary nuisance, by the diminution of the fair rental value of the person's property.

The combined recovery from multiple actions for private nuisance brought against any agricultural operation by any person or that person's successor in interest shall not exceed the fair market value of the subject property, regardless of whether any subsequent action is brought against a different defendant than any preceding action.

D. Notwithstanding subsection C, for any nuisance claim not otherwise prohibited by this section, nothing herein shall limit any recovery allowed under common law for physical or mental injuries that arise from such alleged nuisance and are shown by objective and documented medical evidence to have endangered life or health.

E. Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void.



Title 15.2. Counties, Cities and Towns
Chapter 22. Planning, Subdivision of Land and Zoning

§ 15.2-2288. Localities may not require a special use permit for certain agricultural activities.

A zoning ordinance shall not require that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. For the purposes of this section, production agriculture and silviculture is the bona fide production or harvesting of agricultural products as defined in § 3.2-6400, including silviculture products, but shall not include the processing of agricultural or silviculture products, the above ground application or storage of sewage sludge, or the storage or disposal of nonagricultural excavation material, waste and debris if the excavation material, waste and debris are not generated on the farm, subject to the provisions of the Virginia Waste Management Act. However, localities may adopt setback requirements, minimum area requirements and other requirements that apply to land used for agriculture or silviculture activity within the locality that is zoned as an agricultural district or classification. Nothing herein shall require agencies of the Commonwealth or its contractors to obtain a special exception or a special use permit under this section.

§ 15.2-2288.6. Agricultural operations; local regulation of certain activities.

A. No locality shall regulate the carrying out of any of the following activities at an agricultural operation, as defined in § 3.2-300, unless there is a substantial impact on the health, safety, or general welfare of the public:

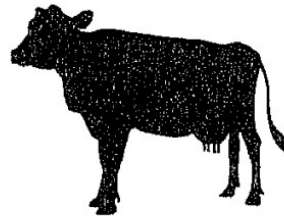
1. Agritourism activities as defined in § 3.2-6400;
2. The sale of agricultural or silvicultural products, or the sale of agricultural-related or silvicultural-related items incidental to the agricultural operation;
3. The preparation, processing, or sale of food products in compliance with subdivisions A 3, 4, and 5 of § 3.2-5130 or related state laws and regulations; or
4. Other activities or events that are usual and customary at Virginia agricultural operations.

Any local restriction placed on an activity listed in this subsection shall be reasonable and shall take into account the economic impact of the restriction on the agricultural operation and the agricultural nature of the activity.

B. No locality shall require a special exception, administrative permit not required by state law, or special use permit for any activity listed in subsection A on property that is zoned as an agricultural district or classification unless there is a substantial impact on the health, safety, or general welfare of the public.

C. Except regarding the sound generated by outdoor amplified music, no local ordinance regulating the sound generated by any activity listed in subsection A shall be more restrictive than the general noise ordinance of the locality. In permitting outdoor amplified music at an agricultural operation, the locality shall consider the effect on adjoining property owners and nearby residents.

D. The provisions of this section shall not affect any entity licensed in accordance with Chapter 2 (§ 4.1-200 et seq.) of Title 4.1. Nothing in this section shall be construed to affect the provisions of Chapter 3 (§ 3.2-300 et seq.) of Title 3.2, to alter the provisions of § 15.2-2288.3, or to restrict the authority of any locality under Title 58.1.



Farm Wineries

§ 15.2-2288.3. Licensed farm wineries; local regulation of certain activities.

A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia wine industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth, and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and events of farm wineries licensed in accordance with Title 4.1 to market and sell their products shall be reasonable and shall take into account the economic impact on the farm winery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for farm wineries throughout the Commonwealth. Usual and customary activities and events at farm wineries shall be permitted without local regulation unless there is a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at farm wineries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at a farm winery, the locality shall consider the effect on adjacent property owners and nearby residents.



Related Code Sections

Chapter 64. Agritourism Activity Liability

§ 3.2-6400. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agricultural products" means any livestock, aquaculture, poultry, horticultural, floricultural, viticulture, silvicultural, or other farm crops.

"Agritourism activity" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity. "Agritourism professional" means any person who is engaged in the business of providing one or more agritourism activities, whether or not for compensation.

"Farm or ranch" means one or more areas of land used for the production, cultivation, growing, harvesting or processing of agricultural products.

"Inherent risks of agritourism activity" mean those dangers or conditions that are an integral part of an agritourism activity including certain hazards, including surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.

"Participant" means any person, other than an agritourism professional, who engages in an agritourism activity.

§ 3.2-6401. Liability limited; liability actions prohibited.

A. Except as provided in subsection B, an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities, so long as the warning contained in § 3.2-6402 is posted as required and, except as provided in subsection B, no participant or participant's representative is authorized to maintain an action against or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities; provided that in any action for damages against an agritourism professional for agritourism activity, the agritourism professional shall plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

B. Nothing in subsection A shall prevent or limit the liability of an agritourism professional if the agritourism professional does any one or more of the following:

1. Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant;

2. Has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facilities or equipment used in the activity, or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant; or

3. Intentionally injures the participant.

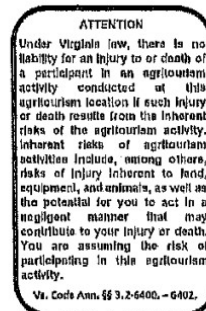
C. Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

§ 3.2-6402. Notice required.

A. Every agritourism professional shall post and maintain signs that contain the notice specified in subsection B. The sign shall be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The notice shall consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity, shall contain in clearly readable print the notice specified in subsection B.

B. The signs and contracts described in subsection A shall contain the following notice: "WARNING" or "ATTENTION" followed by "Under Virginia law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity."

C. Failure to comply with the requirements concerning signs and notices provided in this section shall prevent an agritourism professional from invoking the privileges of immunity provided by this chapter.



Code of Virginia
Title 3.2. Agriculture, Animal Care, and Food
Chapter 3. Right to Farm

§ 3.2-300. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agricultural operation" means any operation devoted to the bona fide production of crops, animals, or fowl, including the production of fruits and vegetables of all kinds, meat, dairy, and poultry products, nuts, tobacco, nursery, and floral products and the production and harvest of products from silviculture activity. "Agricultural operation" also includes any operation devoted to the housing of livestock as defined in § [3.2-6500](#).

"Production agriculture and silviculture" means the bona fide production or harvesting of agricultural or silvicultural products but does not include the processing of agricultural or silvicultural products or the above ground application or storage of sewage sludge.

1981, c. 384, §§ 3.1-22.28, 3.1-22.29; 1991, c. 293; 1994, c. [779](#); 2007, c. [444](#); 2008, c. [860](#); 2022, c. [487](#).

DRY

Code of Virginia
Title 3.2. Agriculture, Animal Care, and Food
Chapter 3. Right to Farm

§ 3.2-302. When agricultural operations do not constitute nuisance.

A. No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, if such operations are conducted in substantial compliance with any applicable best management practices in use by the operation at the time of the alleged nuisance and with any applicable laws and regulations of the Commonwealth relevant to the alleged nuisance. No action shall be brought by any person against any agricultural operation the existence of which was known or reasonably knowable when that person's use or occupancy of his property began.

The provisions of this section shall apply to any nuisance claim brought against any party that has a business relationship with the agricultural operation that is the subject of the alleged nuisance. The provisions of this section shall not apply to any action for negligence or any tort other than a nuisance.

For the purposes of this subsection, "substantial compliance" means a level of compliance with applicable best management practices, laws, or regulations such that any identified deficiency did not cause a nuisance that created a significant risk to human health or safety. Agricultural operations shall be presumed to be in substantial compliance absent a contrary showing.

B. The provisions of subsection A shall not affect or defeat the right of any person to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person.

C. Only persons with an ownership interest in the property allegedly affected by the nuisance may bring an action for private nuisance. Any compensatory damages awarded to any person for a private nuisance action not otherwise prohibited by this section, where the alleged nuisance emanated from an agricultural operation, shall be measured as follows:

1. For a permanent nuisance, by the reduction in fair market value of the person's property caused by the nuisance, but not to exceed the fair market value of the property; or
2. For a temporary nuisance, by the diminution of the fair rental value of the person's property.

The combined recovery from multiple actions for private nuisance brought against any agricultural operation by any person or that person's successor in interest shall not exceed the fair market value of the subject property, regardless of whether any subsequent action is brought against a different defendant than any preceding action.

D. Notwithstanding subsection C, for any nuisance claim not otherwise prohibited by this section, nothing herein shall limit any recovery allowed under common law for physical or mental injuries that arise from such alleged nuisance and are shown by objective and documented medical evidence to have endangered life or health.

E. Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void.

1981, c. 384, § 3.1-22.29; 1994, c. [779](#); 2008, c. [860](#); 2018, cc. [147](#), [677](#).

Code of Virginia
Title 15.2. Counties, Cities and Towns
Chapter 22. Planning, Subdivision of Land and Zoning

§ 15.2-2288. Localities may not require a special use permit for certain agricultural activities.

A zoning ordinance shall not require that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. For the purposes of this section, production agriculture and silviculture is the bona fide production or harvesting of agricultural products as defined in § 3.2-6400, including silviculture products, but shall not include the processing of agricultural or silviculture products, the above ground application or storage of sewage sludge, or the storage or disposal of nonagricultural excavation material, waste and debris if the excavation material, waste and debris are not generated on the farm, subject to the provisions of the Virginia Waste Management Act. However, localities may adopt setback requirements, minimum area requirements and other requirements that apply to land used for agriculture or silviculture activity within the locality that is zoned as an agricultural district or classification. Nothing herein shall require agencies of the Commonwealth or its contractors to obtain a special exception or a special use permit under this section.

Code 1950, § 15-968.5; 1962, c. 407, § 15.1-491; 1964, c. 564; 1966, c. 455; 1968, cc. 543, 595; 1973, c. 286; 1974, c. 547; 1975, cc. 99, 575, 579, 582, 641; 1976, cc. 71, 409, 470, 683; 1977, c. 177; 1978, c. 543; 1979, c. 182; 1982, c. 44; 1983, c. 392; 1984, c. 238; 1987, c. 8; 1988, cc. 481, 856; 1989, cc. 359, 384; 1990, cc. 672, 868; 1992, c. 380; 1993, c. 672; 1994, c. 802; 1995, cc. 351, 475, 584, 603; 1996, c. 451; 1997, c. 587; 2012, c. 455; 2014, c. 435.

Code of Virginia
Title 3.2. Agriculture, Animal Care, and Food
Chapter 3. Right to Farm

§ 3.2-301. Right to farm; restrictive ordinances.

In order to limit the circumstances under which agricultural operations may be deemed to be a nuisance, especially when nonagricultural land uses are initiated near existing agricultural operations, no locality shall adopt any ordinance that requires that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. Localities may adopt setback requirements, minimum area requirements, and other requirements that apply to land on which agriculture and silviculture activity is occurring within the locality that is zoned as an agricultural district or classification. No locality shall enact zoning ordinances that would unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district or classification unless such restrictions bear a relationship to the health, safety, and general welfare of its citizens. This section shall become effective on April 1, 1995, and from and after that date all land zoned to an agricultural district or classification shall be in conformity with this section.

1981, c. 384, § 3.1-22.28; 1991, c. 293; 1994, c. 779; 2007, c. 444; 2008, c. 860; 2014, c. 246.

Code of Virginia
Title 15.2. Counties, Cities and Towns
Chapter 22. Planning, Subdivision of Land and Zoning

§ 15.2-2288.6. Agricultural operations; local regulation of certain activities.

A. No locality shall regulate the carrying out of any of the following activities at an agricultural operation, as defined in § [3.2-300](#), unless there is a substantial impact on the health, safety, or general welfare of the public:

1. Agritourism activities as defined in § [3.2-6400](#);
2. The sale of agricultural or silvicultural products, or the sale of agricultural-related or silvicultural-related items incidental to the agricultural operation;
3. The preparation, processing, or sale of food products in compliance with subdivisions C 3, 4, and 5 of § [3.2-5130](#) or related state laws and regulations; or
4. Other activities or events that are usual and customary at Virginia agricultural operations.

Any local restriction placed on an activity listed in this subsection shall be reasonable and shall take into account the economic impact of the restriction on the agricultural operation and the agricultural nature of the activity.

B. No locality shall require a special exception, administrative permit not required by state law, or special use permit for any activity listed in subsection A on property that is zoned as an agricultural district or classification unless there is a substantial impact on the health, safety, or general welfare of the public.

C. Except regarding the sound generated by outdoor amplified music, no local ordinance regulating the sound generated by any activity listed in subsection A shall be more restrictive than the general noise ordinance of the locality. In permitting outdoor amplified music at an agricultural operation, the locality shall consider the effect on adjoining property owners and nearby residents.

D. The provisions of this section shall not affect any entity licensed in accordance with Chapter 2 (§ [4.1-200](#) et seq.) of Title 4.1. Nothing in this section shall be construed to affect the provisions of Chapter 3 (§ [3.2-300](#) et seq.) of Title 3.2, to alter the provisions of § [15.2-2288.3](#), or to restrict the authority of any locality under Title 58.1.

2014, cc. [153](#), [494](#); 2022, c. [204](#).



Code of Virginia
Title 55.1. Property and Conveyances
Chapter 5.1. Foreign Entities and Property Ownership

§ 55.1-507. Definitions. (2023 updated section)

As used in this chapter, unless the context requires a different meaning:

"Agricultural land" means real estate in the Commonwealth used or zoned in a manner that would permit the use of the real estate for an agricultural operation.

"Agricultural operation" means any operation devoted to the bona fide production of crops, animals, or fowl, including the production of fruits and vegetables of any kind; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silvicultural activity.

"Department" means the Department of Agriculture and Consumer Services.

"Foreign adversary" means any foreign government or nongovernment person determined by the U.S. Secretary of Commerce to have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons, as set forth in 15 C.F.R. § 7.4 or such successor regulation, declaration, or statute as may exist from time to time.

"Interest in agricultural land" means any right, title, or interest, direct or indirect, in and to (i) agricultural land or (ii) any entity or other organization that holds any right, title, or interest, direct or indirect, in and to agricultural land. For purposes of this definition, any interest that taken on its own or together with any other interest held in common or under common control does not give the holder of the interest the ability to possess or occupy the agricultural land in any manner or the power or authority to direct the conduct of the agricultural operation being conducted on the agricultural land.

2023, cc. 765, 796.

9/13/202

Mr. Barnes stated that it would ever you do with the ordinance whatever kind of amendments that you propose to take your time, think about it and maybe make it a one and done approach. Just take your time because there is not any pressure to get it done in a month or two.

Chairman David Jones asked the question "what is the downside to having it in every district?" In other words what is the negative if we had it in R1, R2, A1, A2 or industrial or whatever if we have it in all of it and it looks like we do, and it has not been a problem so what is the downside?

Mr. Barnes stated that it is the complaints from folks that may be taking it and abusing it. If you have AG and by right, it is also by right residential, and someone says I am not clearing land for a shed without permits says I am farming it. I have seen it in my career that a guy with a one-acre waterfront lot claiming it is a farm.

Chairman Jones asked if that can be corrected with a size like residential. There seems to me that we can put some conditions on it, and I am just making it up like proximity to X conditions or whatever> Chairman Jones said that right behind the waterfront is corn fields wheat fields, bean fields except a lot of our waterfront is agricultural. Chairman Jones said that he wants them to think about that.

Mr. Barnes said that one of the things he used to do as a staff guy with that problem especially if it was a zoning complaint that you are investigating, I would say sir I don't think you are a farm, do you file a schedule F every year? Anyone that has a farm would file a schedule F with their taxes which is a profit and loss statement from farming. That is a great advantage if you are doing that because you can write off a lot of things that other businesses cannot. If they say "what is that" then they are not a farmer. I think that would hold up in court if a zoning case did go to court, but different counties do things differently. You really need to have your ducks in a row in case someone comes in with their lawyer because you are pretty much done unless you appeal it. I think that size limit might be ok, and I think that is worthy of discussion. I seriously think as you amend the comp plan things that you put in there that encourage people. You don't want to discourage gardening; you don't want to discourage people using as anybody in forestry might own a ten-acre wood lot knows sometimes getting somebody out to look at a piece of land like that to market that timber is hard because it is too small to justify cutting. If you go in there and use alternate methods maybe merchandise that timber sometimes a neighbor perceives that as a violation. As important as agricultural and forestry is important in this county you need to have AG by right as broadly as you can.

Chairman Jones said does one thing that helps us under the definition that you gave us says quote unquote says agricultural land needs real estate in the Commonwealth used or zoned in a manner that permits the use of real estate for an agricultural operation. So, when I read that today I thought used means that is what is being used for or was used for. It doesn't say zoned for it says used for. If I come in and have three acres and I lived beside somebody doesn't want me there but that piece of property but what is that property used for. I think that can help us in the sense that is what it is being used for. If I have one acre on the water and I say I am going to strip it for silviculture to one acre that property has not been used for silviculture or agriculture.

Mr. Taliaferro said he read it twice and tried to understand it and if it is zoned A1 or A2 or agricultural in any fashion then the county cannot prohibit any agricultural use so that is by right, any other zoning designation can be regulated it is not by right. So, what we have at the moment are a lot of nonconforming geese. If someone has a piece of property zoned I1 or B1 or B2 and it has been farmed

forever but along comes a government use program, what happens if the land is left fallow for one year? Or the forestry department has deal and they plant trees in it then fifteen years you get pulp wood and then you plant corn back. Same piece of property.

Mr. Mundie said that it has still been used.

Mr. Barnes said that in general zoning in Virginia you are prior nonconforming use is good for two years. If that use ceases for two years or more, it's over. I will give you a for instance. Say my granddad had a little restaurant on the side of the road, sold a little bit of gas, had a restaurant there and over the years he added to it is probably a twenty-table café, but it is still zoned A2, and it was that way forever. Comes along 2023 let's say 2020 granddad said COVID and everything shuts down forget it I'm done, and it sits there and especially he says lets go ahead and demolish the place because it is all old and rotten and twenty four months go by and he comes back and his nephew or niece say that they want to build the cafe back better than it was before or maybe even the same size county staff is going to tell them no that you have to reapply or rezone.

Mr. Taliaferro is forestry, timber, cropping considered interchangeable with row cropping, cultivating cropping?

Mr. Barnes said yes, AG and forestry are generally zoned together. Through the economic crisis in 2008, 2009 you may have seen land that were rezoned or maybe subdivided to an area you saw it all across the Commonwealth and they become fallow and maybe the subdivider becomes bankrupt, and it comes under a new ownership what are we going to do let it grow up in weeds? So, they let someone farm it for a while. Places like that are still being farmed. Even though they might be platted for subdivision underneath so rather than letting the place become unkept or wild again the property owner will let someone farm it again.

Mr. Taliaferro said in your conversation with Tommy Blackwell, the I2 or the I1 property that farmed and been farmed is that being taxed for land use or being taxed for zoning.

Mr. Barnes said that is being taxed at the lower land use rate.

Mr. Taliaferro said so if someone wants to come in a build an industrial building and so by right, they have an industrial building and they convert the use then they still have to pay the five years of back taxes.

Mr. Barnes stated that was correct.

Chairman Jones gave an example of the little tower he has on his farm 100 x 100 feet they taxed it at the commercial rate because of the use that is on it.

Mr. Barnes handed out what Mr. Stephen Walters wrote up about the current zoning ordinance vs the old zoning ordinance.

Current zoning ordinance defines two types of agricultural activity:

Agriculture/silviculture means any operation devoted to the bona fide production of crops, or animals, or fowl including, but not limited to, the production of fruits and vegetables of all kinds, and the production and harvest of products from silvicultural activity. This use does not include *Agricultural, intensive* (Code of Virginia § 15.2-2288.6).

Agriculture, intensive means the commercial, covered confinement, keeping of animals, with litter/manure storage, excluding pastureland having at least 90% of the total area with vegetative cover.

Sections 36.320-324 covers restrictions on agricultural uses (including Agricultural, Intensive). These other uses, along with the ones listed in the use matrix on page 69, should be reviewed to see if they are unreasonably restricted, but that should wait until a determination is made on the main agricultural uses.

Focusing on these two Agricultural definitions, the first is allowed “by right” in both A1 and A2, but is not allowed (even as a conditional use) in any other district. The second is only allowed as a conditional use and only in A1 and A2 districts, and nowhere else.

The old zoning ordinance was much more accommodating to agriculture. A1 & A2 permitted “by right” the following:

“Agriculture, including horticultural, or general farming, truck gardens, cultivation of field crops, orchards, groves or nurseries for growing or propagation of plants, turf, trees, and shrubs, and including use of heavy cultivating machinery, spray planes, or irrigating machinery, dairy farming, keeping or raising of large or small animals, fish, birds, or poultry, and including structures for processing and sale of products raised on the premises”

Which is very similar to the Agriculture/silviculture definition in the current ordinance, except for the “structures for processing and sale of products raised on the premises” part. One could argue that the “Wayside stand” (another “by right” use) could cover this; and therefore the two ordinances are fundamentally in agreement for A1 and A2.

In the R1, R2, R3 and PUD districts, the following is allowed as a “by right” use:
“The tilling of the soil, raising of crops, forestry and reforestation.”

Note this definition removes the raising of animals and sale of products on site, one may assume the intent was to eliminate the more noisy/objectionable aspects of farming.

In the B1, B2 and M2 (now I1, light industrial) districts, this definition of the “by right” use is expanded: “The tilling of the soil, raising of crops, truck gardening, temporary open air stands, not exceeding two hundred (200) square feet in area for seasonal sales.”

Note this definition adds back in the ability to sell products on site; and truck gardening.

In the M1 (now I2, industrial) district allows “by right” the following:
“Agriculture, forestry and reforestation”

One may assume that the it didn’t need to get more specific since these uses would be less objectionable than other industrial uses.

Given the above, the old ordinance allowed agricultural/silviculture activities of various intensities in almost all districts. Tailoring of these activities on a per district basis was facilitated by the structure of the document, which listed out each allowed use by district. The new ordinance took a use matrix approach, which may be clearer if you are looking for where a particular use is allowed, but doesn’t allow for tailoring by district unless you generate more granular definitions to put into the matrix.

Mr. Barnes stated that it worked for Essex County for a long time. He doesn’t have the benefits of asking a staff person who has been here for twenty-five years to ask if there have been as many AG complaints now as there were in the past. I have asked citizens and listened to comments. When I have looked through old files, I don’t see many AG complaints coming in. Mr. Barnes stated that we do receive some AG zoning complaints. Since I have been here, we have fielded three.

Chairman Jones asked what were they?

Mr. Barnes stated they had one was agricultural aviation. People were having cover crop over flown. People don’t understand that they could be dropping clover seed and not chemicals. We looked into it and Tim Smith looked at it together. Another complaint was about farming where farming has been going on for years, the corn was tall, and they didn’t like that.

Chairman Jones asked the question if we could look at other counties in the state on how they do things.

Mr. Barnes said that he has already started looking at other counties such as Surry County, Northumberland County.

Mr. Taliaferro asked the question; how do you classify agritourism?

Mr. Barnes said that is a good question and should put it on your to do list and discuss that as well.

Ms. Seagar said that Wind Farms is agriculture because someone said that he can put a restaurant in, and some say that he can't. The way he built it, it can't be a restaurant.

Mr. Barnes said that you can provide food sales to the public in some kind of threshold but then at some point you will become a restaurant and no longer a farm.

Ms. Seagar added be smart for everybody to build agricultural because it would save people a lot of money.

Mr. Barnes said that is a danger too because then people will say all I have to have my restaurant is to call it a farm and then I can become a restaurant.

Ms. Seagar said it is really against the law unless you find some kind of loophole.

Chairman Jones said if you read what is under farm winery it says title 4.1 to market and sell their product shall be reasonable and shall take into account the economic impact of the farm winery and such restrictions that are agricultural in nature shall take into effect and events and whether such activities are usual, and customary are for farm winery throughout the Commonwealth. They give them a lot of latitude. Where they want to give them a threshold where they go from the wine to the alcohol.

Mr. Barnes said where that threshold is that is more of a Building Official question and Ernie Sadler would be able to spit that right out.

Chairman Jones said that when the state first introduced the winery they didn't come in and asked the jurisdictions, they told you that you would incorporate that into your ordinance and told you what you would say. Same way with the oyster trail. I know that Wind is in communication with the County.

Mr. Barnes said that we are not calling anybody out, we are just talking about a local issue.

Ms. Seagar said that the restaurant part they can have food there but cannot prepare it there. He can get food from other places.

Chairman Jones said that he has a food truck there.

Ms. Seagar said that is legal for him.

Mr. Barnes said that you have your mind right on this. You don't want to cut people off because there can be a lot of fun things and beneficial and keep land in a natural use and live next door to.

Mr. Mundie said that what better way to preserve the rural character and scenic beauty, open spaces, green spaces so many people say that they are drawn to this area for. I don't think there is any better where to preserve that than to allow it to continue to happen throughout the county. I do see where it could be abused but I don't see any language that we could use to completely rule out any abuse. I do feel like it was no one's intent to make this sort of change for the old ordinance to this ordinance. I believe it just slipped by.

Chairman Jones said that the use matrix that I never liked what we went along with, but we allowed it to happen. Like Brian said there are other things found in there. When we were going through, the motions I said this would not be perfect and things will come up. Once we enacted it things will come up.

Mr. Taliaferro said I remember you saying that the Board of Supervisors is breathing down our neck, it's not going to be perfect, but we need to get it passed.

Mr. Mundie said this is not just about someone that farms for a living or has land that they want someone to take care of. This includes the person that builds a house and wants a family garden. This can fall under this category.

Chairman Jones asked how do we want to move forward. One suggestion is that we can get some information from other jurisdictions that are about our size.

Mr. Mundie asked Brian if he had any information on the AG and forestry.

Mr. Barnes said that he met with the AG and Forestry, and he gave them the memo that he gave the Planning Commission. They are interested in seeing the Planning Commission's work on this.

Mr. Bates said he would like to have a joint meeting.

Mr. Mundie said what if we can provide the comps and then provide that information to the AG and Forestry Board.

Mr. Barnes said that the AG and Forestry Board can be used more in this county for various issues. Mr. Barnes said when he gets back to the office, he will begin working on this and getting comps and lay it out in chart form with documentation. I look at that and will bring it back to the board.

Mr. Mundie asked the question what does some of the other matrixes look like?

Mr. Barnes said take your time.

Ms. Segar said Surry County is a large County.

Mr. Barnes said yes, it is.

Mr. Mundie said he would like to see Isle of Wright's Ordinance.

Mr. Barnes said he knows that Isle of Wright did a lot of innovated stuff with solar when that was coming around with making sure their AG industry was ready for that and not adversely impact it. It's not a huge hurry, just think about it and that is what we will work on.

Chairman Jones said so you will have stuff for us next month.

Mr. Barnes said yes. As far as other business there are things floating around but I don't have anything that are not rezoning. Mr. Barnes is going to work on putting things on the website.

Barry Bates spoke and said that the new zoning ordinance is not in accordance with the zoning ordinance 15.228 localities may not require a special use permit for certain agricultural activities. A zoning ordinance shall not require that a special use permit be obtained for any production agricultural that is zones agricultural district for classification. We now have conditional use in the new matrix for

intensive AG and that is not legal in the Commonwealth of Virginia. Your setbacks we will talk about later. We need to get it right because we are not in compliance right now.

Mr. Mundie showed his certificate from the Planning Commission class that he took. He said he and Mr. Walters networked with other people in their class and they all had ideas and that is why he mentioned Isle of Wright. He said that Isle of Wright has county emails and business cards. One of the best parts of the course is that we are not doing a bad job. It was good to get to know fellow Commissioners.

Mr. Walters said that it was a lot of fun and they gave a good overview of the process we are going to be going through with the comprehensive plan. What data we need to get, what you need to think about and how you need to structure it. It really prepared us for the next cycle.

APPROVAL OF MINUTES

Chairman Jones asked if there were any corrections or additions needed for the September 5, 2023, minutes? Commissioner Taliaferro made a motion to approve the minutes as presented. Commissioner Segar seconded the motion. AYES: 6 NAYES: 0 ABSENT:

ADJOURN

Having no further discussion, a motion to adjourn was made and seconded. AYES: 6, NAYES: 0, ABSENT:1

David Jones, Chairman