

**Chesapeake Bay Local Assistance Board
Tuesday, October 31, 2006
Richmond, Virginia**

Chesapeake Bay Local Assistance Board Members Present

Donald W. Davis, Chair
Gregory C. Evans
Walter J. Sheffield, Vice Chair
John J. Zeugner

William E. Duncanson
Gale A. Roberts
Richard Taylor

Chesapeake Bay Local Assistance Board Members Not Present

Michael V. Rodriguez

DCR Staff Present

Joseph H. Maroon, Director
Russell W. Baxter, Deputy Director
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
Shawn W. Smith, Principal Environmental Planner
Daniel Moore, Principal Environmental Planner
Nancy L. Miller, Senior Environmental Planner
Carolyn Elliott, Administration Specialist
Roger Chaffe, Office of the Attorney General
Ryan Brown, Office of the Attorney General

Others Present

James Freas, City of Hampton
Stuart Leeth, McGuire, Woods
Joe Lerch, Chesapeake Bay Foundation
Tyla Matteson, Sierra Club, former Hampton resident
Judy Pantelides and Tom Pantelides, residents of the Salt Pond area of Hampton

Chairman Davis called the special meeting of the Board to order and declared a quorum present.

The Chairman asked Mrs. Salvati to provide the status of Hampton's IDA designation.

Ms. Salvati gave an overview of the City's IDAs, including the original IDA adopted in the 1990s, the expanded one adopted in 2004 and the proposed 2006 IDA. She also gave some statistics regarding the proposed IDA that were provided by the City of Hampton staff: the proposed IDA is 27% less than the 2004 IDA, it encompasses 58.5% of the City's shoreline as opposed to the 2004 IDA which encompasses 80% of the shoreline. She also compared some statistics between Norfolk and Hampton; Norfolk is 56%

impervious whereas Hampton is 34%, Norfolk removed the IDA along areas where large areas of tidal wetlands were present.

James Freas, representing Hampton, then gave a presentation. He also briefed the Board on Hampton's enhanced IDA criteria, which attempt to ensure that any new project, whether principle structure or accessory structure, limits the encroachment into the RPA to the maximum extent possible, and that they will apply the 10% reduction for all such projects in the IDA, including payment in lieu of program that will apply for all structures in the IDA/RPA, not just accessory structures.

Mr. Freas indicated that he felt that the City's enhanced IDA criteria would be the best in Tidewater Virginia.

Mr. Evans asked if the City had defined maximum extent possible, and Mr. Freas replied they had not yet done so.

Mr. Duncanson asked what the City's current setbacks were.

Mr. Freas said that they are 30 feet for rear yard and between 5-20 feet for side yard.

Mr. Davis asked where they intended to spend the fees collected from the payment in lieu of program.

Mr. Freas said that they intended to develop buffer enhancement projects on public lands that had been removed from the IDA designation. The City has plans for a omprehensive greenway plan for such lands that would involve buffer restoration in previously cleared RPAs.

Mr. Freas said that they worked with Ms. Salvati and her staff to remove IDA designations. They took out all public lands, large, relatively developable properties, areas of the New Market Creek where the City has plans for development of a greenway and that is under public ownership, and a property owned by the Hampton Redevelopment Authority as it was large and slated for development.

Mr. Maroon asked about the New Market Creek area, and why some areas remained in the IDA designation while others were out.

Mr. Freas spoke of allowing redevelopment in these areas, and that the housing stock was older and undesirable; therefore, the City wanted to allow additions to these homes, or tear-downs and rebuilds.

Mr. Duncanson asked if there was activity in the City for people to buy 2 parcels, and vacate the property line to create one larger parcel, and Mr. Freas stated that this was not common.

Mr. Freas stated that Hampton's approach was to provide for flexibility.

Mr. Maroon asked how much development had occurred in the IDA in the past 2 years? Mr. Freas responded that they had been applying the proposed IDA as much as they can in the last few months, but that for most of the past 2 years, they had used the 2004 IDA.

Mr. Freas noted that the City had required the full 100-foot buffer as part of a proffer on a project along Queen Street because it had sufficient area for the buffer.

Ms. Roberts asked about how many single family homes had been changed or altered, and Mr. Freas said that he did not know, but that projects included decks, additions and accessory structures.

Mr. Davis moved to the public comment portion.

Mr. Joe Lerch of the CBF had some comments and indicated that he felt the Board was faced with a problematic issue as it relates to the IDA language in the Regulations and how to define one of the IDA designation criteria related to having a density of 4 units per acres. He asked if it was determined based on net or gross area? He also said that he had some questions relative to redevelopment and mixed use, and that localities should look at waivers of local zoning setbacks and other requirements before one looks permitting encroachments or further encroachments into the RPA. Mr. Lerch said that to clarify a point, that it was his understanding that the Regulations permit the expansion of principle structures through an administrative process as they are currently written.

Tom Pantelides spoke of issues surrounding proposed development near his community, which is within a designated IDA and what criteria will be implemented for that area. He also raised an issue relating to stormwater drainage ditches in his private, gated community and his concern that the City was not taking an aggressive enough position in assisting homeowners in situations like that.

Tyla Matteson, representing the Sierra Club spoke of her concern for the wetlands and that she agreed with previous comments by Joe Lerch and Tom Pateldes and that she wanted the environment to be protected before things got too bad, and further that the Board should be making decisions not on economics, but on protecting the environment.

Mr. Davis closed the public comment portion.

Mr. Davis asked Mr. Freas whether the City has BMP maintenance agreements.

Mr. Freas responded that the City's Department of Public Works does, and that they track and inspect BMPs on an annual basis.

Mr. Maroon asked Mr. Freas to explain his characterization of Hampton's IDA program being the most stringent.

Mr. Freas explained that as compared to Norfolk's program, Hampton was more stringent because Hampton requires the 10% reduction for stormwater, whereas Norfolk exempts single-family homes and subdivisions under 4 lots from all stormwater management criteria.

Mr. Zeugner asked if the City was pushing to have single-family properties soften their shorelines in accordance with the living shoreline concept.

Mr. Freas said that he and other staff had attended workshops and that the City's Wetlands staff had also attended such workshops.

Mr. Davis asked if Mr. Freas had provided written documentation regarding their proposed fee-in-lieu of program.

Mr. Freas responded that their approach was modeled after Norfolk's but that the enhanced IDA criteria are not currently being implemented.

Closed Meeting: Consultation with Counsel Regarding legal matters.

MOTION: Mr. Sheffield moved that the Board convene a closed meeting pursuant to §2.2-3711(A) (7) of the Code of Virginia for the purpose of consultation with legal counsel regarding specific legal matters requiring the provision of legal advice, namely the pending litigation against the Board by the City of Hampton, styled *City of Hampton v. Commonwealth of Virginia ex rel. Chesapeake Bay Local Assistance Board*, Circuit Court of Hampton, Chancery No. 65CH05000731-00.

This closed meeting will be attended only by members of the Board. However, pursuant to § 2.2-3712(F) of the Code, the Board requests counsel, the Director of the Department of Conservation and Recreation (DCR), the Director of the Division of Chesapeake Bay Local Assistance of DCR and Mr. Baxter, Ms. Smith, Ms. Miller and Mr. Moore to attend because it believes that their presence will reasonably aid the Board in its consideration of the topic that is the subject of this closed meeting.

SECOND: Ms. Roberts

ROLL CALL VOTE: *Aye*

Donald W. Davis
William E. Duncanson
Gregory C. Evans
Gale A. Roberts
Walter J. Sheffield
Richard Taylor
John J. Zeugner

Nay

None

Motion Carried

Certification after voting to go back into Open Meeting

MOTION: Mr. Evans moved the following certification:

WHEREAS, the Board has convened a closed meeting on October 31, 2006 pursuant to and affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3712(D) of the Code requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, the Chesapeake Bay Local Assistance Board hereby certifies that, to the best of each member's knowledge, only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification applies, and only such public business matters as were identified in the motion convening the close meeting were heard, discussed or considered by the Board.

SECOND: Ms. Roberts

ROLL CALL VOTE: *Aye*

Donald W. Davis
William E. Duncanson
Gregory C. Evans
Gale A. Roberts
Walter J. Sheffield
Richard Taylor
John J. Zeugner

Nay

None

Motion Carried

Mr. Davis remarked that the Board was pleased with progress made by Hampton to revise its program to address earlier Board concerns and that he and the Board appreciated the hard work of Hampton.

MOTION: Mr. Duncanson moved that the Chesapeake Bay Local Assistance Board request the City of Hampton to provide additional information relative to the following:

1. Details of the enhanced IDA criteria and other criteria;
2. What additional categories of land could be removed from the proposed IDA, specifically, private educational institutions and hospitals;
3. Rationale for keeping the IDA along the far western portion of New Market Creek, excluding the areas characterized as drainage ditches; and
4. Time table for adopting the enhanced criteria and IDA designation.
5. Further that this information be provided to staff by December 1, 2006 and to be considered by the Board at their December 11, 2006 meeting.

SECOND: Ms. Roberts

DISCUSSION: None

VOTE: Motion carried unanimously.

There being no further business, the meeting was adjourned.

Respectfully, submitted,

Donald W. Davis
Chair

Joseph H. Maroon
Director