

Remarks of the James City County Economic Development Authority to the James City County 2008 Comprehensive Plan Steering Committee In the Matter of: Environment

December 1, 2008

Good afternoon Mr. Chairman and members of the Steering Committee. The last time we were together, the EDA shared a lengthy commentary on wide-ranging topics that related to a positive economic climate and the opportunities to address critical economic development issues in the County's Comprehensive Plan. We are gratified that continued effort to address some of those considerations is ongoing.

It has long been recognized by local and regional economic developers that the abundant natural beauty and resources, enduring historic charm, exceptionally high standard of living and uniquely rich quality of life in the Historic Triangle are key components of the attractiveness of our area to prospective businesses. Of course, relatively favorable taxation rates, proximity to the ports, high educational attainment and the quality of the labor supply as well as household disposable wealth characteristics also contribute to our attractiveness to business and industry. But for today, we wish to focus our remarks on the environment as it relates to economic development.

Last time, we talked about the importance of confirming that we have adequate land designated and planned for our future economic development needs. We spoke about some of the ways in which adequacy can be determined and aided. But we waited to address another key determinant of the adequacy of land designated for various uses until the environment section, and that determinant is the regulatory framework that specifies how a particular parcel of land can be developed. Land development regulations (like zoning, subdivision, Chesapeake Bay Act, erosion and sediment control, etc.) are legitimate uses of the police power of the State in ensuring the public's health, safety and welfare. However, specific regulations can only be justified when they achieve a legitimate public purpose. If the legitimate public purpose of a regulation cannot be defined precisely by its authors and enforcers, or if its ability to effect the stated outcomes cannot be substantiated by empirical data, then the regulation should be reviewed for both intent and efficacy. Two cases are offered as examples.

A case in point can be made with respect to the County's Chesbay Ordinance. JCC is the only locality in the state that sets an arbitrary maximum impervious surface standard in its Chesapeake Bay Preservation Ordinance. The State law, the Chesapeake Bay Preservation Act, does not require such a cap. And the existence of such a cap represents a potentially significant deterrent to the types of quality economic development the County wishes to attract. While unable to attend in person, members of the EDA observed the discussion last Monday through the magic of video recording and streaming internet video regarding this topic and we offer the following additional observations:

1. The impervious cap is apparently intended to address both water quality and water quantity considerations. However, last week it was acknowledged that no empirical data exists to confirm that either water quality or water quantity are better managed under JCC's framework than in other jurisdictions across the Commonwealth.
2. Are land development regulations which affect land use efficiency justified by anecdotal inferences alone? Or should we require more empirical data when the consequences of guessing can be so significant?

3. Let's consider what is at stake:

- a. Arbitrary thresholds of maximum impervious cover are an outright prescription for sprawl. Specifically, mandating less than optimal land use efficiency within the PSA, for example, will result in the premature consumption of PSA lands and an accelerated schedule of predictably increasing pressures for more intense development outside the PSA. Over the long term, using lands designated for development wisely affords more opportunities to preserve, into perpetuity, those types of lands the community believes should be preserved.
- b. Water quality leaving a site is measurable by standards established at the Federal and State level. Water quantity leaving a site is similarly measurable. However, the effects of watershed-wide imperviousness on the quality of water resources are less well established and understood. If we accept the recently described "controversial findings" of the various watershed plans as fact, we must then share a more thorough understanding of how parcel-specific limits of imperviousness will lead us to a sustainable watershed imperviousness ratio. If the math does not compute from parcel to watershed, the regulation deserves a fresh look.
- c. And from a purely economic development perspective, precluding optimal land use efficiency makes JCC less competitive for economic development prospects. This is because for a given physical plant (building, parking, etc.), a prospective business will have to purchase more land in JCC than in neighboring jurisdictions to accommodate the imperviousness required to build the physical plant. Land economics cannot be ignored by many quality businesses seeking to locate or expand in the Hampton Roads region. And for small businesses, the incremental cost of additional land acquisition brought about by such regulations becomes an especially difficult barrier to moving forward.

A second case is offered by the example of the Builders for the Bay process undertaken by JCC some 3 or more years ago. Builders for the Bay identified a number of other regulatory impediments to achieving improved water quality. It was a consensus process where builders/developers, the environmental community and all levels of government responsible for regulations affecting land use worked together to identify regulations which appeared to serve a lesser purpose than water quality or an unjustified purpose altogether. While focused primarily on residential development, similar revisiting of regulations as applied to business uses could increase the efficiency with which land is developed for the entire range of land uses in JCC and result in improved overall water quality. Using land efficiently, particularly within the PSA, can decrease pressure on more rural vacant properties and result in increased efficiencies in the provision of infrastructure and local government services. The EDA respectfully recommends two action items for this Comp Plan, including (1) swift implementation of the Builders for the Bay recommendations and (2) immediately following adoption of the Comp Plan, establish a complementary working group charged with expanding the analysis to non-residential uses and subsequent recommendations to the PC and BOS of the regulatory changes necessary to address the findings of the group.

On a related but slightly tangential note, the EDA sees opportunities in redevelopment as both a viable economic development tool and a means of improving overall water quality in the County. Perhaps this Comp Plan can include language which specifically encourages and incentivizes redevelopment that effectively addresses existing inadequacies in water quality protection from surrounding development that offers little or no stormwater management protections.

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Finally, the EDA wishes to express a concern with the language of GSA 1.3.9 related to requiring environmental site assessments based on the anticipated use of the property. It is not altogether clear how this will or should be used in development review. For any bank-financed development project, which represents the vast majority of development activity in JCC and elsewhere in the Commonwealth, Phase 1 Environmental Site Assessments are a customary pre-requisite to loan approval. So most businesses and developers conduct them as a matter of course. For those entities who are self-financing their development activities, conducting such a pre-development assessment is simply a prudent measure to safeguard their investment. As it is now written, it is not clear how the existence of a required Phase 1 ESA, and the data it reveals, would be used any differently by the County or by the developer than is currently the case. What is the underlying public purpose served by such a requirement? How will this information be utilized in the development review process?

Thank you for your time and consideration. We are available to respond to any questions the Steering Committee might have.

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