

BOARD OF SUPERVISORS
Agenda Item

Meeting Date:	March 20, 2018
Title:	Consider an Amendment to the Subdivision and Zoning Ordinances to Repeal the Cluster Development Standards
Department:	Planning and Zoning
Staff Contact:	Jeffrey Harvey
Board Committee/ Other BACC:	Community and Economic Development Committee
Staff Recommendation:	N/A
Fiscal Impact:	N/A
Time Sensitivity:	N/A

ATTACHMENTS:

1.	Background Report	4.	Citizen's Correspondence
2.	Proposed Ordinance O18-13	5.	PC Minutes dtd 2/28/2018
3.	Virginia Code § 15.2-2286.1	6.	Resolution R18-39 dtd. 1/23/18

Consent Agenda		Other Business		Unfinished Business
Discussion		Presentation		Work Session
New Business	X	Public Hearing		Add-On

REVIEW:

X	County Administrator	<i>Thomas C. Foley</i>
X	County Attorney <i>(legal review only)</i>	<i>Rysheda M. Millerston</i>

DISTRICT:	N/A
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BACKGROUND REPORT

The Board is asked to consider proposed Ordinance 018-13 which would amend the County's Subdivision and Zoning Ordinances to repeal regulations concerning cluster subdivisions and cluster development. Proposed Ordinance 018-13 would repeal the following County Code sections as they pertain to cluster subdivisions: Sec. 22-58(13), "Open space land in a cluster subdivision;" Sec. 22-77(m), "Open space land in a cluster subdivision;" and Article IX, "Cluster Subdivisions," in its entirety. Proposed Ordinance 018-13 would also remove clustering provisions regarding by-right and conditional uses, and intensity, lot area, yards, and lot width requirements from County Code Sec. 28-35, Table 3.1 District Uses and Standards, as applied in the A-1, Agricultural; A-2, Rural Residential; R-1, Suburban Residential; R-2, Urban Residential-Medium Density; and R-3, Urban Residential-High Density Zoning Districts.

BACKGROUND:

Cluster development is a form of development that allows for reduced lot sizes to preserve open space and has long been considered an option for residential development in lieu of conventional residential development layouts. Cluster development is a form of performance based zoning where the ordinance allows for certain "benefits" to a developer in exchange for specified amenities. Reduced lot size is allowed when open space is provided. The County's cluster development authority is pursuant to Virginia Code § 15.2-2242, and more specifically in legislation passed by the General Assembly in 2006, Virginia Code § 15.2-2286.1 (Attachment 3).

The County first established cluster development standards on May 5, 1987, pursuant to Ordinance 087-05. Cluster development was initially allowed in the R-1, R-2, and R-3 residential Zoning Districts, upon approval of a cluster concept plan by the Planning Commission. Concerned with inconsistencies with State law and other development issues, on March 20, 2012, the Board adopted Ordinance 012-30 repealing the cluster development standards, and new cluster development regulations were adopted on June 19, 2012, pursuant to Ordinance 012-17. Ordinance 012-17 provided for cluster developments in the A-1, A-2, and R-1 Zoning Districts. The regulations have been modified over the years to address items such as minimum tract size for a cluster development, percentage of required open space, requirement for usable open space, exclusions for floodplains and powerline easements from counting towards minimum open space requirements, and use of pipe stem (flag) lots. The cluster development standards were last modified in 2015.

At the Board's annual planning retreat on January 20, 2018, the Board discussed potential future growth management strategies for the County. Citizen complaints received about cluster subdivision developments were brought up. There was an expressed community perception of overcrowded developments and the loss of the rural character in the rural areas of the County. The Community and Economic Development Committee (CDEC) of the Board further discussed concerns with cluster developments at the March 6, 2018 meeting. The following concerns have been expressed or observed:

- Cluster subdivisions are configured such that lots front on existing roads giving the perception of overcrowding in rural areas.
- Open space configured such that it is not visible by the public creating a perception overcrowding and loss of rural character.
- Increases lot yield for properties with substantial environmental constraints that would normally not support that level of development.

- Open space areas not being suitable for farming or forestry due to configuration.
- Open space is not contiguous with other open space areas within the subdivision or adjacent open space areas outside of the subdivision.
- Open space is configured such that there are no usable areas or usable areas that can be accessed safely.
- Lack of recreational amenities being provided in open space areas of the community.
- Open space areas being sold off to lot owners or other parties.
- Lack of specific standards for the various forms of open space – observed small remnant open space parcels that are not usable or functional.
- Open space substantially comprised of stormwater management facilities and utility easements.

The Board, through the County's Comprehensive Plan, is committed to ensuring quality development practices and believes that cluster development, if done correctly, can result in neighborhoods that preserve farmland, forestland, and natural resources, provide areas for recreation, and maintain rural landscapes. The Board is concerned that the current cluster development regulations do not promote the intended goals and objectives for land preservation and good subdivision practices as envisioned in the Comprehensive Plan.

Staff supports the creation of new regulations that better meet the goals and objectives of the Comprehensive Plan, including preserving the rural character in the rural areas of the County. It may take several months to develop new regulations and go through the public hearing process for adoption of new regulations. As a result, staff believes that it is important to consider repealing the current regulations in order to assure that development inconsistent with the Comprehensive Plan is not encouraged.

The Board approved Resolution R18-39 (Attachment 6) at its meeting on January 23, 2018, to refer proposed Ordinance 018-13 to the Planning Commission for a public hearing and to provide its recommendation. The Planning Commission held a public hearing on February 28, 2018 and voted 5-2, to recommend repealing the cluster development regulations.

PROPOSED

BOARD OF SUPERVISORS
COUNTY OF STAFFORD
STAFFORD, VIRGINIA

ORDINANCE

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, Stafford County Administration Center, Stafford, Virginia, on the 20th day of March, 2018:

MEMBERS:

Meg Bohmke, Chairman
Gary F. Snellings, Vice Chairman
Jack R. Cavalier
Thomas C. Coen
L. Mark Dudenhefer
Wendy E. Maurer
Cindy C. Shelton

VOTE:

On motion of , seconded by , which carried by a vote of , the following was adopted:

AN ORDINANCE TO REPEAL STAFFORD COUNTY CODE ARTICLE IX, "CLUSTER SUBDIVISIONS"; AND AMEND AND REORDAIN SEC. 22-58, "CONTENT"; SEC. 22-77, "CONTENT"; AND SEC. 28-35, TABLE 3.1 DISTRICT USES AND STANDARDS, TO REMOVE CLUSTER REGULATIONS

WHEREAS, pursuant to Virginia Code § 15.2-2286.1 certain localities provide for cluster development; and

WHEREAS, Stafford County has provisions for cluster development; and

WHEREAS, cluster development is currently permitted in the A-1, Agricultural; A-2, Rural Residential; and R-1, Suburban Residential Zoning Districts; and

WHEREAS, the Board carefully considered the recommendations of the Planning Commission and staff, and the testimony of the public, if any, at the public hearing; and

WHEREAS, the Board desires to repeal the cluster development regulations, while working on new regulations that ensure quality development, address citizen's concerns, and better meet the goals and objectives of the Comprehensive Plan; and

WHEREAS, the Board finds that public necessity, convenience, general welfare, and good planning and zoning practices require adoption of this ordinance;

NOW, THEREFORE, BE IT ORDAINED by the Stafford County Board of Supervisors on this the 20th day of March, 2018, that Stafford County Code Sec. 22-58, "Content;" Sec. 22-77, "Content;" and Sec. 28-35, Table 3.1. District Uses and Standards, be and they hereby are amended and reordained as follows, and Stafford County Code, Article IX, Cluster Subdivision, be and it hereby is repealed, all other portion of the County Code remaining unchanged:

Sec. 22-58. - Content.

The preliminary plan shall include the following:

~~(13) Open space land in a cluster subdivision:-~~

- ~~a. The use, method of maintenance, and ownership of the dedicated open space land shall be specified on the preliminary subdivision plan and recorded subdivision plat. The use shall comply with the regulations of the underlying zoning district and shall be subject to guidelines as set forth by the appropriate state agency or department.~~
- ~~b. If the open space land is dedicated to park or recreational use, the use shall conform to the policy guidelines for parks and recreation in Stafford County.~~

Sec. 22-77. - Content.

~~(m) Open space land in a cluster subdivision:-~~

- ~~(1) The use, method of maintenance, and ownership of the dedicated open space land shall be specified on the construction plan and recorded subdivision plat. The use shall comply with the regulations of the underlying zoning district and shall be subject to guidelines as set forth by the appropriate state agency or department.~~
- ~~(2) If the open space land is dedicated to park or recreational use, the use shall conform to the policy guidelines for parks and recreation in Stafford County.~~

ARTICLE IX. -- CLUSTER SUBDIVISIONS

~~Sec. 22-266. -- Legislative intent. ---~~

~~The purpose of the cluster development provision is to encourage housing developments that concentrate the location of dwellings in specific areas on a site to allow the remaining land, designated as open space land, to be preserved for park or recreational purposes; conservation of land or other natural resources; historic or scenic purposes; assisting in the shaping of the character, direction, and timing of community development; wetlands; or agricultural and forestal production.~~

~~Sec. 22-267. -- Open space land regulations.~~

~~The percentage of land required as open space for a cluster subdivision is stated in the zoning ordinance (County Code, chapter 28), within the districts in which cluster subdivisions are permitted. The required open space land shall be used as defined in the definitions, and owned and maintained by~~

~~a home owners association, a conservation association, an individual or any entity that can comply with the regulations of this chapter and chapter 28 of the County Code. The required open space land for a cluster subdivision shall not be used to satisfy any buffer requirements.~~

~~All cluster subdivision plans shall be reviewed by the subdivision agent or his designee for compliance with the provisions of this chapter and chapter 28 of the County Code. This shall include review of the open space land and its designated use for compliance with applicable industry and county standards for minimum area, configuration, functionality, and other requirements for such use and to ensure it furthers the goals, policies and objectives of the comprehensive plan.~~

~~Sec. 22-268. – Maintenance and ownership of open space land.~~

- ~~(a) *Homeowners' association or conservation association.* If either of these associations is to assume ownership of the open space land, then it shall bear all responsibility for maintenance of the land and all structures thereon. There shall be restrictive covenants recorded which prohibit the use of the subject land for any purpose other than what is designated as open space land in this chapter. Such covenants shall run with the land and shall become part of the deed to each lot or parcel within the development. Such covenants shall be recorded in the county land records simultaneously with, or prior to, the recordation of the subdivision plat.~~
- ~~(b) *Individual property owner.* If the open space land is to be owned by an individual, then he or she shall bear all responsibility for maintenance of the land and there shall be restrictive covenants recorded which prohibit the use of the subject land for any purpose other than what is designated as open space land in this chapter. Such covenants shall run with the land and shall become part of the deed to each lot or parcel within the development. Such covenants shall be recorded in the county land records simultaneously with, or prior to, the recordation of the subdivision plat.~~

~~Sec. 22-269. – Access requirements for a cluster subdivision plan.~~

~~Any access through the dedicated open space land may be mitigated to lessen the impact on the open space land.~~

~~Sec. 22-270. – Review and approval of cluster subdivision plans.~~

~~The review and approval of a developer's plans for a cluster subdivision shall follow the following steps:~~

- ~~(1) *Concept plans:* The applicant shall submit a concept plan of the proposed cluster subdivision for development proposals creating fifty one (51) or more lots, and may submit a concept plan of the proposed cluster subdivision for development proposals creating fifty (50) or fewer lots showing the designated open space land, the intended use for the open space land, and the lot and street layout. The plan shall comply with the submission requirements as stated in the checklist included in the department of planning and zoning application for cluster subdivision concept plan and all other applicable County Code requirements. The plan will be reviewed by the subdivision agent or his designee for compliance with the cluster provisions of this chapter and chapter 28 of the County Code. If the concept plan is approved, the applicant must then submit a preliminary subdivision plan~~

~~for review for development proposals creating fifty one (51) or more lots, or may submit a preliminary subdivision plan for development proposals creating fifty (50) or fewer lots.~~

- ~~(2) *Preliminary plan:* Following the endorsement of the cluster concept plan by the subdivision agent or his designee, the applicant shall submit a preliminary subdivision plan under the requirements of article III of chapter 22 of the County Code.~~
- ~~(3) *Construction plans:* The requirement for the submission and approval of construction plans shall be the same as in article III of chapter 22 of the County Code.~~
- ~~(4) *Final plats:* The requirement for the submission of final plats shall be the same as in article III of chapter 22 of the County Code. On a cluster subdivision plat, the required open space land shall be clearly marked, the use stated, and the party responsible for owning and maintaining the open space be provided.~~

Sec. 28-35. - Table of uses and standards.

Table 3.1. District Uses and Standards

A-1 Agricultural.

(d) *Requirements:*

(1) *Intensity:*

~~Open space requirement for cluster subdivision = fifty (50) percent of total subdivision tract.~~

(2) *Minimum lot area (acres):*

~~Cluster subdivision 1.5~~

(4) *Minimum yards: (Feet)*

~~Cluster subdivision:~~

~~Front 40~~

~~Side 10~~

~~Rear 35~~

(6) *Minimum lot width (in feet):*

~~Cluster subdivision 100~~

A-2 Rural Residential.

(c) *Requirements:*

(1) *Intensity:*

~~Open space requirement for cluster subdivision = thirty (30) percent of total subdivision tract.~~

(2) *Minimum lot area (acres):*

~~Cluster subdivision 0.7~~

(3) *Minimum yards: (Feet)*

~~Cluster subdivision:~~

~~Front 30~~

~~Side 10~~

~~Rear 25~~

(5) *Minimum lot width (in feet):*

~~Cluster subdivision: 80~~

R-1 Suburban Residential.

(b) *Conditional use permit:*

~~Cluster subdivision, maximum density 2.25 du/acre.~~

(d) *Requirements:*

(1) *Intensity:*

~~Allowable density for cluster subdivision (see conditional use permit) 1.5 du/ae~~

~~Open space requirement for cluster subdivision = thirty (30) percent of total subdivision tract.~~

(2) *Minimum yards: (Feet)*

~~Cluster subdivision:~~

~~Front 30~~

~~Side min. 8 total 18~~

~~Rear 25~~

~~Minimum lot size 8,000 s.f.~~

(4) *Minimum lot width (feet):*

~~Cluster subdivision: 60~~

R-2 Urban Residential—Medium Density.

(a) *Uses permitted by right:*

~~Cluster development.~~

R-3 Urban Residential—High Density.

(a) *Uses permitted by right:*

~~Cluster development.~~

§ 15.2-2286.1. Provisions for clustering of single-family dwellings so as to preserve open space.

A. The provisions of this section shall apply to any county or city that had a population growth rate of 10% or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census. However, the requirements of this section shall not apply to any such county or city that has a population density of more than 2,000 people per square mile, according to the most recent report of the United States Bureau of the Census.

B. Any such locality shall provide in its zoning or subdivision ordinances, applicable to a minimum of 40% of the unimproved land contained in residential and agricultural zoning district classifications, standards, conditions, and criteria for the clustering of single-family dwellings and the preservation of open space developments. In establishing such standards, conditions, and criteria, the governing body may, in its discretion, include any provisions it determines appropriate to ensure quality development, preservation of open space, and compliance with its comprehensive plan and land use ordinances. A cluster development is otherwise subject to applicable land use ordinances of the locality; however, the locality shall not impose more stringent land use requirements for such cluster development.

The locality shall not prohibit extension of water or sewer from an adjacent property to a cluster development provided the cluster development is located within an area designated for water and sewer service by a county, city, or town or public service authority.

For any "open space" or "conservation areas" established in a cluster development, the locality shall not (i) require in such areas identification of slopes, species of woodlands or vegetation and whether any of such species are diseased, the locations of species listed as endangered, threatened, or of special concern, or riparian zones or require the applicant to provide a property resource map showing such matters in any conservation areas, other than that which may be required to comply with an ordinance adopted pursuant to § [15.2-961](#) or [15.2-961.1](#) or applicable state law; (ii) require such areas be excluded from the calculation of density in a cluster development or exclude land in such areas because of prior land-disturbing activities; (iii) prohibit roads from being located in such areas for purposes of access to the cluster development, but the locality may require such roads be designed to mitigate the impact on such areas; (iv) prohibit stormwater management areas from being located in such areas; or (v) require that lots in the cluster development directly abut such areas or a developed pathway providing direct access to such areas.

For purposes of this section, "open space" or "conservation areas" shall mean the same as "open-space land" in § [10.1-1700](#).

The density calculation of the cluster development shall be based upon the same criteria for the property as would otherwise be permitted by applicable land use ordinances. As a locality provides for the clustering of single-family dwellings and the preservation of open space developments, it may vary provisions for such developments for each different residential zoning classification within the locality. For purposes of this section, "unimproved land" shall not include land owned or controlled by the locality, the Commonwealth or the federal government, or any instrumentality thereof or land subject to a conservation easement.

If proposals for the clustering of single-family dwellings and the preservation of open space developments comply with the locality's adopted standards, conditions, and criteria, the development and open space preservation shall be permitted by right under the local subdivision ordinance. The implementation and approval of the cluster development and open space preservation shall be done administratively by the locality's staff and without a public hearing. No local ordinance shall require that a special exception, special use, or conditional use permit be obtained for such developments. However, any such ordinance may exempt (a) developments of two acres or less and (b) property located in an Air Installation Compatible Use Zone from the provisions of this subdivision.

C. Additionally, a locality may, at its option, provide for the clustering of single-family dwellings and the preservation of open space at a density calculation greater than the density permitted in the applicable land use ordinance. To implement and approve such increased density development, the locality may, at its option, (i) establish and provide, in its zoning or subdivision ordinances, standards, conditions, and criteria for such development, and if the proposed development complies with those standards, conditions, and criteria, it shall be permitted by right and approved administratively by the locality's staff in the same manner provided in subsection A, or (ii) approve the increased density development upon approval of a special exception, special use permit, conditional use permit, or rezoning.

D. Notwithstanding any of the requirements of this section to the contrary, any local government land use ordinance in effect as of June 1, 2004, that provides for the clustering of single-family dwellings and preservation of open space development by right in at least one residential zoning classification without requiring either a special exception, special use permit, conditional use permit, or other discretionary approval may remain in effect at the option of the locality and will be deemed to be in compliance with this section. Any other locality may adopt provisions for the clustering of single-family dwellings, following the procedures set out in this section, in its discretion.

(2006, c. [903](#); 2011, cc. [519](#), [549](#).)

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February 15, 2018

VIA EMAIL

Rysheda McClendon, County Attorney
County of Stafford
1300 Courthouse Road
Stafford, Virginia 22554

Re: Proposed Repeal of Stafford County's Cluster Development Regulations

Dear Rysheda:

My firm represents numerous Stafford County property owners, builders, and developers, specifically with regard to the Stafford County Board of Supervisors' ("Board") proposed repeal of the County's Cluster Development Ordinances as applied to the agricultural and residential zoning districts (Stafford County Code Section 22-266 et seq.). On January 23, 2018, the Board adopted R18-266 directing the Planning Commission to "hold a public hearing and issue a recommendation regarding the repeal of the current cluster development regulations." The Resolution further states that the "Board desires to consider repealing the cluster development regulations while working on new regulations " The Staff Report accompanying the Resolution states that "it is more important to repeal the regulations on an interim basis in order to assure that undesirable development practices are discontinued."

As the Board considers its options regarding the state mandated cluster provisions, I advise on behalf of my clients that while the Board can amend its cluster provisions consistent with the authority delegated to the locality by the General Assembly at Virginia Code Section 15.2-2286.1, I can find no lawful authority suggesting that the Board has the discretion to repeal the cluster ordinances on an interim basis or otherwise. Such repeal violates the very mandate imposed by State law.

Virginia law follows "the general principles that the powers of boards of supervisors are fixed by statute and are only such as are conferred expressly or by necessary implication." Gordon v. Board of Sup'rs of Fairfax County, 207 Va. 827, 832 (1996). "When a local ordinance exceeds the scope of this authority, the ordinance is invalid." City Council of Alexandria v. Lindsey Trusts, 520 S.E.2d 181, 183 (1999).

Rysheda McClendon
February 15, 2018
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In 2006, the Virginia General Assembly enacted Virginia Code § 15.2-2286.1 which mandates that all high growth localities,¹ such as Stafford County, provide for the clustering of single-family dwellings in its zoning and/or subdivision ordinances. See 2006 Virginia Acts of Assembly, Chapter 903. Virginia Code § 15.2-2286.1 states in pertinent part (emphasis added):

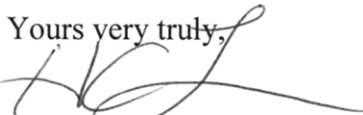
Any such (high growth) locality **shall provide in its zoning or subdivision ordinances**, applicable to a minimum of 40% of the unimproved land contained in residential and agricultural zoning district classifications, **standards, conditions, and criteria for the clustering of single-family dwellings** and the preservation of open space developments.

The statutory mandate of Virginia Code § 15.2-2286.1 replaced the discretionary authority for localities to adopt cluster provisions in former Virginia Code § 15.2-2286(A)(12), which stated in pertinent part (emphasis added):

A locality **may, at its option, provide in its zoning or subdivision ordinance standards, conditions, and criteria for the clustering of single-family dwellings** and the preservation of open space developments.

The plain language and import of Virginia Code § 15.2-2286.1 makes clear that Stafford County **must** have provisions for the clustering of single-family dwellings in its zoning and subdivision ordinances. Any repeal of the Cluster Development Regulations without a simultaneous replacement exceeds the Board's statutory authority and is invalid. Lindsey Trusts, 520 S.E.2d 181 at 183. Moreover, it is no consolation that the Board intends to repeal the Cluster Development Regulations "on an interim basis," as the Virginia Supreme Court has expressly held that localities have no express or implied authority to adopt "interim development ordinances," which temporarily suspend land use provisions mandated by statute. Board of County Supervisors of Fairfax County v. Horne, 215 S.E.2d 453 (1975) ("The enabling subdivision legislation requires prompt action on subdivision plats and site plans by local officials . . . there is no statutory authority for the enactment of an interim development ordinance which suspend the submission of plats and site plans for a specified period of time.")

The Board's proposed repeal of the Cluster Development Regulations violates State law. I am hopeful you will advise the Board accordingly. In the event you believe there is some lawful basis for an interim repeal I would appreciate your advising me to that effect.

Yours very truly,

H. Clark Leming

¹High growth localities are defined as any locality who have experienced a population growth rate of 10% or more between 2000 and 2010 (as measured by the US Census). Stafford County's growth rate during this period was 39%.

PARRISH SNEAD FRANKLIN SIMPSON, PLC

ATTORNEYS AT LAW

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February 19, 2018

By First-Class U.S. Mail & Email

Members of the Stafford County Board of Supervisors
P.O. Box 339
Stafford, VA 22555-0339

Re: Proposed Repeal of Stafford County's Cluster Development Regulations

Dear Members of the Board,

I hope this letter finds you well. I am writing in regards to the Stafford County Board of Supervisors' (the "Board") proposed amendment to the subdivision and zoning ordinances set forth in Proposed Ordinance O18-13. My firm represents several individuals and entities holding significant interests in the ultimate outcome of this proposed ordinance.

It is our understanding that the Board, County staff, and several citizens have expressed concern that the current cluster development ordinances fall short of meeting the County's standards as set forth in the Comprehensive Plan. My clients and I admire and fully support the desire of the Board, staff and concerned citizens to discuss, debate, and possibly refine the current ordinances. We believe that such discussions will only help to maintain the good zoning practices and intelligent land preservation initiatives for which the County is well known. However, we also feel that Proposed Ordinance O18-13 fails to consider a large and important contingent of stakeholders who will be adversely affected if the Board passes Proposed Ordinance O18-13 in its current form. Specifically, Proposed Ordinance O18-13 fails to protect the interests and property rights of those who have submitted subdivision applications in reliance on the current cluster development ordinances, and those whose property will decline in value if the Board passes Proposed Ordinance O18-13.

In addition, Proposed Ordinance O18-13 violates the provisions of Virginia Code § 15.2-2286.1, which mandates that all high growth localities (including Stafford County) provide for the clustering of single-family dwellings in the applicable ordinances. The Board's passage of Proposed Ordinance O18-13, without simultaneously enacting a suitable replacement would be in direct contravention of § 15.2-2286.1.

While the Proposed Ordinance O18-13 may appear on its face to offer a quick and easy solution to the concerns raised by certain constituents, my clients and I fear that the Board's passage of Proposed Ordinance O18-13 would ultimately have the opposite effect. Specifically, given that Proposed Ordinance O18-13 clearly impinges on the interests and property rights of those with pending applications, and that the proposed ordinance directly contravenes the

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existing laws of the Commonwealth, we believe that Proposed Ordinance O18-13, if enacted, would ultimately be overturned or repealed.

As previously mentioned, my clients and I understand and appreciate the desire of the Board, County staff, and citizens to refine the cluster subdivision ordinances. We are committed to working with everyone involved to find mutually agreeable, legally defensible, and logical common ground. Based on the foregoing, my clients and I respectfully request that the Board *defer action* on Proposed Ordinance O18-13 and convene a work group to study the issues and begin working on amendments to the cluster development ordinances, which will give equal consideration to the County's concerns and the rights of property owners.

With kind regards,


Landon C. Davis, III

cc: Members, Planning Commission
Charles L. Shumate, County Attorney
Rysheda M. McClendon, Deputy County Attorney



Fredericksburg Area Builders Association

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February 20, 2018

VIA EMAIL

Meg Bohmke, Chairman
Stafford County Board of Supervisors
1300 Courthouse Road
Stafford, Virginia 22554

Re: FABA Proposal for Cluster Ordinance

Dear Ms. Bohmke:

On behalf of the Fredericksburg Area Builders Association (“FABA”) Board of directors, I offer the following for the Board of Supervisors’ (“Board”) consideration to address the Board’s concerns about the County’s cluster ordinance, as well as our own concerns about the current process for revising the ordinance. In our view, an orderly process and transition from the present ordinance to a new one is highly preferable and in everyone’s best interest.

Here is what we propose:

- (1) Public hearings on the repeal of the cluster ordinance on an interim basis would be cancelled.
- (2) Board representatives and FABA representatives would meet forthwith to discuss and draft revisions to the cluster ordinance. FABA representatives would act in an advisory capacity, with the objective of having a new cluster ordinance ready to proceed to public hearing in three months and having a final ordinance in six months. FABA representatives would include a builder, engineer, and developer. FABA would also solicit the expertise and participation, as needed, from the Home Builders Association of Virginia.
- (3) All pending cluster applications, submitted prior to March 20, 2018, whether cluster concept plans or construction plans, would be processed to completion in a timely manner by staff and applicant. Language would be included in any new ordinance permitting such applications to be processed to completion. Any project with an approved cluster concept plan or construction plan would carry lawful vesting rights, as authorized by state law.

Meg Bohmke, Chairman
February 20, 2018
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- (4) Any application for a new project submitted after March 20, 2018 would be processed in the ordinary course of business, but any such application would have to comply with revisions to the cluster ordinance if not completed prior to the adoption of a revised ordinance.

We sincerely hope that the foregoing will provide a framework to address the County's concerns about the present cluster ordinance while protecting the significant and lawful investment of funds and time in reliance on the present ordinance that has been made by the building and development community, as well as those landowners with whom we have contracted. If a meeting to discuss this proposal would be helpful we will make ourselves available.

Sincerely,



Gene Brown
President

cc:

Members, Board of Supervisors
Rysheda McClendon, County Attorney
FABA Board Members
Andrew Clark, Home Builders Association of Virginia

From: Charlie Payne <cpayne@hf-law.com>
Sent: Wednesday, February 21, 2018 8:12 PM
To: Jeff A. Harvey
Cc: Rysheda M. McClendon
Subject: Re: Repeal of Cluster Ordinance
Attachments: Cluster Ordinance Notice.PDF

Jeff,

I hope this finds you well. I did not see any language in the attached that exempted pending cluster CUP applications. For example, Cardinal Meadows was filed close to a year ago, paid applicable fees and has incurred cost relating to the CUP application process, and remains pending before the planning commission. In my opinion, it would be inequitable not to exempt this application since much of the delay in proceeding forward is not per se the fault of the applicant. I believe this is my only pending R-1 cluster application and not aware of any other similar applications. Just seems to me the county should consider this reasonable modification to the draft ordinance change.

Appreciate your time and attention to this matter.

Thanks

Charles W. Payne, Jr.
Hirschler Fleischer
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2. Amendment to Subdivision and Zoning Ordinances - Proposed Ordinance O18-13 would amend the Subdivision and Zoning Ordinances to repeal all regulations concerning cluster subdivisions and cluster development. The proposed Ordinance would repeal the following Stafford County Code Sections as they pertain to cluster subdivisions: Sec. 22-58(13), "Open space land in a cluster subdivision;" Sec. 22-77(m), "Open space land in a cluster subdivision;" and Article IX, "Cluster Subdivisions," in its entirety. The proposed Ordinance would also remove clustering provisions regarding by-right and conditional uses, and intensity, lot area, yards, and lot width requirements from County Code Sec. 28-35, Table 3.1 District Uses and Standards, as applied in the A-1, Agricultural; A-2, Rural Residential; R-1, Suburban Residential Zoning Districts. **(Time Limit: February 28, 2018)**

Mr. Harvey: Thank you, Madam Chairman. For this presentation, Susan Blackburn will be giving the staff report.

Ms. Blackburn: Good evening, Madam Chair, Planning Commissioners. This evening, you are asked to consider proposed Ordinance O18-13, which would amend the Subdivision and Zoning Ordinances to repeal regulations concerning cluster subdivisions and cluster development. The proposed ordinance would repeal the following County code sections as they pertain to cluster subdivisions: Section 22-58(13), Open Space Land in a Cluster Subdivision; Section 22-17(m) [sic], Open Space Land in a Cluster Subdivision; and Article IX, Cluster Subdivisions, in its entirety. The proposed ordinance would also remove clustering provisions regarding by-right and conditional uses, and intensity, lot area, yards, and lot width requirements from County code Section 28-35, Table 3.1 District Uses and Standards. The cluster development is a form of development that allows for reduced lot sizes to preserve open space. On this slide on the left-hand side, you can see the layout of the conventional subdivision where all the land is included in the individual lots. On the right-hand side, the cluster subdivision design is grouping of lots providing non-developed land. These are some photos of what we would hope that it would look like. Suburban Residential subdivision development, as you can see on the left, is conventional subdivision. Again, all the land is included in the lots. In the cluster subdivision, it's where the lots are grouped providing non-developed land. These are photos of that type of development, conserving land and, of course, provisions for recreational space. You can also do this in regards to historic sites and scenic vistas. And this can be done both in the rural and suburban open-space land. The Clusters Development Authority comes from the Virginia Code, Sections 15.2-2242 and 15.2-2286.1 states:

- Cluster development regulations must be applicable to 40 percent of the unimproved land in agricultural and residential districts.
- Land use requirements for cluster development shall not be more stringent than that of the zoning district.
- Limits and prohibits the localities that may consider regarding open spaces, as defined by the state code.
- Density calculations for cluster developments shall be based upon the same criteria for the property as would be applicable to the zoning district.
- Proposals for clustering must be approved by right and implemented administratively.

The Comprehensive Plan Objective 1.6 also states "preserve rural and agricultural areas of Stafford County and establish mechanisms for ensuring their continued protection from development." And policy 1.6.5, that the County supports the preservation of rural County through the clustering of residential development. And cluster development would permit smaller lots in exchange for preservation of open space, farmland, and sensitive resource areas. We have had in Stafford County clustering provisions that

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were originally adopted in 1987. That group of regulations was amended in 1993, 1994, 2000, 2005, and 2007, and was repealed on March 20, 2012. New regulations were adopted in June of that same year. Those regulations were amended in 2013 and 2014. And those amendments addressed things such as lot size, shape, use, and use of open-space land. Now the current cluster regulations are allowed in the A-1, A-2, and the R-1 zoning districts. In the A-1 zoning district, the minimum lot area is 1.5 acres with open-space requirement of 50 percent of the total development. A-2 is Rural Residential District, and that minimum lot area is .7 acres. Open-space requirement is 30 percent of the overall development. R-1, we go to density, and that is 1.5 dwelling units per acre. And you can have up to 2.6 dwelling units per acre with the approval of a conditional use permit. And the open-space requirement is 30 percent. Now the subdivision regulations are that open-space maintenance, design, and use standards, and review and approval process is for clustered subdivisions. At the Board's annual planning retreat in January of this year, they had discussed various growth management strategies and also voiced citizen concerns about clustered subdivision developments. These concerns were:

- not promoting the intended goals and objectives for land preservation and good subdivision practices as envisioned in the Comprehensive Plan;
- open-space land configuration such that was not visible by the public, creating a perception of overcrowding in rural areas and loss of rural character;
- increased number of lots and driveway accesses on existing rural roads, also creating a perception of overcrowding and loss of rural character;
- increased development in rural areas of the county where less development is desired and less County services exist to support the development; and,
- more lots are being created through cluster development than could be obtained by conventional subdivision development on the same properties.

The Board, through the County's Comprehensive Plan, is committed to ensuring quality development practices and believes the cluster development, if done correctly, can result in neighborhoods that preserve farmland, forestland, and natural resources, and provide areas for recreation, and maintain rural landscapes. There is concern that the current cluster development regulations may not promote the intended goals and objectives for land preservation and good subdivision practices as envisioned in the Comprehensive Plan. And the Planning Commission's consideration is that you have been requested to hold a public hearing and provide its recommendation back the Board on the repeal of the cluster development regulations per Resolution R18-39. And just in summary, proposed ordinance O18-13 would repeal County Code Article IX, Cluster Subdivisions, amend to remove cluster development regulations in County Code Sections 22-58, 22-77, and County Code Section 28-35, Table 3.1, Districts and Uses. Do you have any questions?

Ms. Vanuch: Mr. Apicella?

Mr. Apicella: Thank you, Madam Chairman. Is it fair to say, then, that the Cluster Ordinance has been revised several times as issues and concerns have been raised?

Ms. Blackburn: Yes sir.

Mr. Apicella: And you mentioned some of the current issues. What were some of the previous issues?

Ms. Blackburn: The previous issues that were amended?

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Mr. Apicella: So you went through kind of the history of the Cluster Ordinance.

Ms. Blackburn: Right.

Mr. Apicella: You mentioned that it was in place back in the '80s, and it's been modified multiple times. So I would presume that it was modified because at each interval, and as this ordinance has evolved, some issues were raised that were presumably addressed and incorporated into those revised versions.

Mr. Harvey: Mr. Apicella, the number of the changes that occurred prior to 2012 dealt with usable open space within a cluster subdivision. Also the use and number of pipe stem lots, which are also known as flag lots, issues involving shared driveways and those accesses for the flat lots. There were also amendments throughout time regarding the use of power line easement and floodplains counting towards the required amount of open space. Those were the types of amendments that occurred prior to 2012. And those were under the old code prior to the current state legislation.

Mr. Apicella: Okay. Can you bring back up the slide about the Board's concerns? Presumably, these were issues that either weren't fully addressed or didn't arise at the point in time that previous modifications were made.

Ms. Blackburn: Yes, that appears so.

Mr. Apicella: In 2012 when the ordinance—I think you said it was repealed and replaced?

Ms. Blackburn: Yes sir.

Mr. Apicella: So there is a precedent for repealing and replacing this ordinance.

Ms. Blackburn: We have done it before, yes.

Mr. Apicella: Okay. Okay. When it was going through its revision process, were stakeholders from all sides at least invited, if not having had an opportunity to participate in those revisions?

Ms. Blackburn: Yes sir.

Mr. Apicella: And how long did it take from the time that it was repealed to the time that it was reinitiated?

Ms. Blackburn: We initiated a new ordinance in June, and we repealed it in March. So it was March to June.

Mr. Apicella: So it was a grand total of three months.

Ms. Blackburn: Yes.

Mr. Apicella: From repeal to replace.

Ms. Blackburn: Mmm-hmm.

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Mr. Apicella: So we're not talking about years; we're talking about months.

Ms. Blackburn: Not at that time, no.

Mr. Apicella: Okay. There's been a lot of advertising that's been circulated both in the paper and online. I've got two kind of cover pages from some of the websites. There's a website called Be Smart Stafford. I think this might be FABA's website?

Ms. Blackburn: I don't know.

Mr. Apicella: You don't know? Okay. And then there was another website called nodownzoning.com. Have you seen this?

Ms. Blackburn: No, I haven't looked at those.

Mr. Apicella: Okay. Do we know who owns or created this website?

Ms. Blackburn: No, I am not aware.

Mr. Apicella: Okay. Well I'm just going to talk about this one, because I think the folks from FABA can probably talk about the issues and such that they raised on their website. Since this is anonymous, I don't know if anybody's going to come up and speak to it. Can you explain what *downzoning* is?

Ms. Blackburn: Ms. McClendon, can you help with that one? I'm not sure I would get it perfectly correct.

Mr. Harvey: Or I can assist. *Downzoning* is often referred to when a locality changes its zoning scheme and reduces densities and intensities that were previously allowed in the zoning category.

Mr. Apicella: With this initiative—and that's what I'll call it—does the Board propose that this Cluster Ordinance, its repeal and replacement involve a downzoning?

Mr. Harvey: No sir. In fact, the way the cluster regulations are required based on state law, we cannot require any less density through a cluster development plan than we can under the normal zoning category requirements. So if a new Cluster Ordinance is adopted, it must comply with the underlying density and intensity requirements of the zoning districts that apply.

Mr. Apicella: Okay. And the normal type of zoning, that's called *conventional zoning, traditional zoning*?

Mr. Harvey: Yes, conventional zoning is indicative of one of the examples Ms. Blackburn showed that basically the subdivision is primarily lots and streets.

Mr. Apicella: Okay. And should the Board decide that it wants to repeal and replace this current Cluster Ordinance, would folks still be able to do conventional subdivisions during that period?

Mr. Harvey: Yes. Conventional subdivisions would still be permitted.

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Mr. Apicella: So it's simply untrue that this initiative involves downzoning. Is that correct? It's one of the statements that's made in that website.

Mr. Harvey: Yes sir.

Mr. Apicella: Is it true that this initiative is aimed at—or Stafford County is planning to reduce land values by 50 percent as part of this initiative?

Ms. Blackburn: Not to my knowledge, no.

Mr. Apicella: Okay. That's one of the other assertions. What are the rules regarding the building of homes on wetlands?

Ms. Blackburn: You're not allowed to construct homes on wetlands.

Mr. Apicella: So whether there's a cluster ordinance or there's not a cluster ordinance, you can't build on a wetland.

Ms. Blackburn: No.

Mr. Apicella: Or you have to mitigate it.

Ms. Blackburn: You can go through permit processes to do various things. But they're land that you don't just get to build on.

Mr. Apicella: So wetlands wouldn't be any better protected if we had a cluster ordinance than if we had just a conventional zoning.

Ms. Blackburn: As I said, you can get permits to do certain things in wetlands. And you're right; it probably wouldn't be any different.

Mr. Apicella: So another one of the assertions on that website—I think it's what you're saying—it's untrue that this initiative would force development to occur on wetlands.

Ms. Blackburn: Correct.

Mr. Apicella: How many approved but undeveloped lots are there in Stafford County at the moment?

Ms. Blackburn: I don't know.

Mr. Apicella: Hundreds, thousands?

Mr. Harvey: Mr. Apicella, when we look at the active residential development list that the County has on our Planning and Zoning webpage—we track all residential developments whether it's through a rezoning or a submitted development plan. We track the number of lots that have been approved, ones that have been recorded for development. In other words, the lots are available to build a house on. And then of those, how many have been built. When we look at the difference between what's been approved and

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what's been built—in other words, what's eligible to be built,—we have about approximately 8,000 dwelling units that could occur based on what's already been approved.

Mr. Apicella: So there are eight thousand potential buildable lots in Stafford County.

Mr. Harvey: Yes sir.

Mr. Apicella: Okay. And is it fair to say that now that the economy is starting to be on a roll that that construction is starting to flourish throughout Stafford, I suspect throughout the region because of the economic changes? Are we seeing an increase in building permit requests?

Mr. Harvey: Well Mr. Apicella, building permit activity has been stronger in the last few years. Our overall Comprehensive Plan anticipates an average annual growth of a thousand new homes a year through 2026. It does vary a bit, as you can look at some of the charts in the Comprehensive Plan. We have tracked development on the previous twenty years, and it generally follows a bell curve. The bell curve would indicate if all things were similar to past trends. I believe around the year 2024 is when we'd hit the peak, and then it would start slowly going back down as far as an overall height of development.

Mr. Apicella: But based on that average that you just mentioned, we have an inventory—I'll call it an inventory—of buildable lots, a thousand a year, that could last us for eight years whether or not there's a cluster ordinance in place.

Mr. Harvey: Correct. Regardless of approving any additional development.

Mr. Apicella: So in theory, if the ordinance were repealed and replaced, especially if it's just a couple of months, probably would have that big of an impact given that there's conventional zoning subdivision opportunities and already—I'll call a surplus of buildable lots in Stafford County. Is that a fair statement?

Mr. Harvey: Mr. Apicella, I can't really speak to impacts because there are a variety of ways you could look at it. If you look at a total number of development units that could be approved, a three-month window is probably not a big number of dwelling units. But it depends on the size of the project. If a really large project is approved, that could have a significant—

Mr. Apicella: Right. But I guess what I'm trying to say is that with inventory of available lots, there are lots of opportunities if someone wanted to start building and hire people to help build those houses. There's an inventory out there already that exists for them to do that. Is that correct?

Mr. Harvey: Correct. These that approximately eight thousand units that could be built based on prior approvals.

Mr. Apicella: Okay. And again, I'm just going to some of the claims made on this website. Regarding affordable housing, is there any evidence that clustering on its own has led to significantly reduced home prices compared to conventional zoning?

Mr. Harvey: Mr. Apicella, I'm not familiar with the assessments of cluster homes versus conventional homes, if there's a price difference.

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Mr. Apicella: But we just had a project, the one before this, where the homes were going to be priced around 525,000. That doesn't sound like what I would consider a target for affordable housing. I mean normally it would be much less than that. And this was a proposed cluster development, right?

Mr. Harvey: I guess affordable housing can be relative. If you're looking at workforce housing, the price of the house would be less than the price that was quoted in the previous public hearing.

Mr. Apicella: Okay. So again, just going back to this one website, I feel like it made some claims that weren't true, so I'm just going to summarize. And we're only making a recommendation. We don't have any ability on our own to make the final decision here, so ultimately the Board is going to decide what it wants to do with regard to repealing and replacing.

Mr. Harvey: That's correct.

Mr. Apicella: So should the Board decide to go down that path, and it's a process that could take three or four months based on recent history, with all the available lots in this County, this initiative, it doesn't involve a downzoning. It won't lead to construction on environmentally sensitive lands. It won't affect conventional zoning. Probably won't have a significant loss of construction jobs, especially if the window is fairly narrow. And it probably won't have a big impact on affordable housing opportunities in Stafford. Is that kind of a fair summary?

Ms. Blackburn: I think you could say that.

Mr. Apicella: Okay, thank you.

Ms. Vanuch: Any other questions. Mr. Randall?

Mr. Randall: I have one quick question. Regarding the coverage of the Cluster Ordinance today, the requirement is 40 percent. Is that correct?

Ms. Blackburn: Yes sir.

Mr. Randall: And currently our Cluster Ordinance covers how much of Stafford County?

Ms. Blackburn: It is allowed in all the A-1 zoning classifications.

Mr. Randall: So 100 percent of the A-1—

Ms. Blackburn: Yes.

Mr. Randall: —it covers when the requirement is only 40 percent.

Ms. Blackburn: Yes. It's 40 percent of unimproved land that is agricultural, residentially zoned.

Mr. Randall: Okay, thank you.

Ms. Vanuch: Ms. Blackburn, it's my understanding that the Cluster Ordinance actually pertains to A-1, A-2, and R-1 land?

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Ms. Blackburn: Yes ma'am.

Ms. Vanuch: Okay. All right. Any other questions from the Commission. Mr. Apicella.

Mr. Apicella: I'm trying to interpret what the question is aimed at. The way our current ordinance is structured, what percentage of unimproved land is covered by that ordinance? So if the floor is 40 percent based on the state code, do we know what percentage is actually covered by our ordinance today?

Mr. Harvey: Well Mr. Apicella, there is no limitation in our current ordinance. Any unimproved agricultural—A-1-, A-2-, or R-1-zoned property could be eligible for cluster. There is, I believe, an exception in the state code that allows localities to not permit clusters on parcels less than two acres in size. But from a practical standpoint, it may not be cost effective for someone to try to do a cluster in the R-1 zone on two acres because that would only yield three lots.

Mr. Apicella: Thank you.

Ms. Vanuch: Ms. Blackburn, I do have a couple of questions. The first is, is a power line easement buildable? Can you build on top of power line easement?

Ms. Blackburn: Not according to our ordinance. We do have a provision that you can build on easements if you get permission from the easement holder.

Ms. Vanuch: So in the Cluster Ordinance, is there a provision or whether or not the power line easement is allowed to be included in the open space?

Ms. Blackburn: It can be included in the open space, yes.

Ms. Vanuch: But that's typically something like in the Cardinal Meadows' project you saw that wasn't being built on because it was a power line easement.

Ms. Blackburn: Correct.

Ms. Vanuch: Are community drain fields included in open space?

Ms. Blackburn: They can be.

Ms. Vanuch: And are there any requirements in the current Cluster Ordinance for contiguous open space?

Ms. Blackburn: No.

Ms. Vanuch: So it could be ten feet here, ten feet here, as long as you get to 50 percent.

Ms. Blackburn: We have provisions in the code that do state that you have to state the use of the open space, and you have to state who is going to own it, and how it is going to be maintained. If how you are going to use it is conducive to that kind of configuration, then it would be permitted.

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Ms. Vanuch: What if I bought a 100-acre parcel and wanted to do clusters off of let's just say a long strip of road. So it was a very narrow lot, but very, very long. Could I essentially put forty-eight, forty-nine driveway entrances right off the main road to access the homes based on the current Cluster Ordinance?

Ms. Blackburn: Based on our current Cluster Ordinance, it would also depend if VDOT would permit it. Depending on the road.

Ms. Vanuch: Okay. That's all my questions.

Mr. English: Ms. Blackburn, I have one question. Retention ponds on this, would that be considered open space?

Ms. Blackburn: They could be in the open space, yes.

Mr. English: So retention ponds, power lines are considered open space.

Ms. Blackburn: They could be in the open space, yes.

Mr. English: Thank you.

Ms. Vanuch: Any other questions? Okay, seeing no questions, since there is no applicant for this, we can move on to the public hearing. Now is the time we're going to move forward with the public hearing. If you do wish to speak regarding the proposed repeal of the cluster regulation/ordinances, we will call you down based on when you signed in. We'll call three at a time. If you wouldn't mind lining up, it'll help move things along much quicker. This is not a public hearing on downzoning. So if your comments about downzoning, I'll remind you one time that that's not a covered issue for tonight's public hearing. When you come to the podium, you'll have three minutes to speak. When the green light comes on, please state your name, address, and district. When the yellow light comes on, you'll have one minute. And when the red light comes on, please conclude your comments. Again, please no applauding or speaking when someone is at the podium or at the conclusion of their comments, as it will help us get through all of the speakers much easier. Please address your comments to the Commission as a whole and not to any individual members. And as a reminder, this is not a back-and-forth conversation; we cannot answer any of the questions you might have during this portion of the meeting. So at this time, if you've signed in, I'm going to call you down. And if you do want to be a little quick than three minutes, that would be great, especially if others have comments. We have a big stack, probably about fifty when I last counted. So the first speaker, Israel Villatoro, George Anderson, and Alane Callander.

Mr. Anderson: George Anderson in Rock Hill District. My question is, what are we wanting to change it to? What is the intention? Okay, we suspend that cluster, what is the intention to get out of it and how is going to benefit the County to do so, the landowners, etcetera? How is this going to benefit us? That's what I'd like to actually see published somewhere so I can actually see what we're going from and what we intend to go to. That's all.

Ms. Vanuch: Thank you. Israel Villatoro, are you here? Come on down. And then next would be Alane Callander. And if you guys could line up here, it'll help make things go much, much quicker.

Mr. Villatoro: My name is Israel Villatoro with Corinto Construction. I just wanted to see what we can do to—

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Ms. Vanuch: I know you gave me your name and address, but can you just state it for the record?

Mr. Villatoro: What did you say?

Ms. Vanuch: Your address.

Mr. Villatoro: I own my own business, so I want to see if we can keep on building following the codes. That's all I got.

Ms. Vanuch: Okay. Thank you. I like his timing. Alane? And then after that, we'll have Hunter Simpson and Tim Reffner.

Ms. Callander: Good evening. I'm Alane Callander, in the Falmouth District. I've been around a while. I've seen some of these cluster ordinances come up before here at the Planning Commission. I remember it was intended that clustering lead to smarter use of our rural lands, to better manage growth, and to protect our environment. So now we know that some changes need to be made. That really hit home with me when I started hearing about wells running dry out in the Hartwood District. There was a concern that placing houses close together, as is done in clustering, was putting much demand on groundwater in that part of the county where we don't have public water and sewer. I was hearing about people building beautiful new homes and not having enough well water to serve the needs of the home. Can you imagine being in such a situation? So then when word got out that the County recognized a need for some changes with the Cluster Ordinance to protect consumers and our natural resources and for other reasons, I'm sure, the building industry decided that they might not fully be able to exploit the value of the land. So at least one group I'm aware of—Stafford Property Rights LLC—started buying ads on the front page of the newspaper with the purpose of frightening landowners, claiming that their agricultural land would be devalued. Clearly it was scare tactics. It shows no concern whatsoever for the quality of life in Stafford. I'd like to thank Mr. Apicella for his on-point questions that helped dispel a lot of the myths that are being spread around our community. So I think it's appropriate for you to repeal the current ordinance, correct it, and come back and pass a new ordinance. Thank you.

Ms. Simpson: Good evening. Ann Hunter Simpson is my name. Hartwood District. Thank you very much, Madam Chairman, members of the Commission, and County attorney, and the Planning Director. I own 235 acres in Hartwood Magisterial District on which I raise cattle and hay. My farm, or a portion of it, has been in my family for since about 1906. My next comment, I apologize for, but I'm required to make it according to the Code of Ethics that govern me. I am a retired circuit court judge. Sat is this county for years. I am subject to recall, so I am required to state whenever I address the public in any fashion that I am making these comments on my own behalf and not on behalf of anyone else or in any official capacity. It seems to be, Madam Commissioner and fellow commissioners, that the question is, can you repeal an ordinance that I understand is mandated by state law, a law higher than our local legislative ability? I come to not on any particular position for or against the Cluster Ordinance. I come to you out of a concern that this County not take any action that is intentionally or unintentionally in derogation of state law, which I understand requires a Cluster Ordinance. It would seem to me that an orderly fashion of transition or modification to address some of the issues that you have raised tonight before the public hearing started would be to offer to the public, as well as to yourself and to the Board, any recommendations for replacement simultaneously with any repeal of the existing ordinance you might make this evening. I applaud you for reviewing this ordinance. I applaud the staff for making the

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recommendations. It is important that we follow planned development in this county. It is also important that we follow the state law. Thank you very much for the opportunity.

Ms. Vanuch: Thank you. After Tim we have Justine Stonehill and David Stewart.

Mr. Reffner: Hi. My name is Tim Reffner. I live in Fredericksburg, Virginia. I'm not sure what the name of the district is, but I voted Dickson Smith. Okay? And I sure wasn't hoping to be this early in this conversation. I've read the ordinance. I've called my supervisor and spoke with her. What I want to say is the building industry is my livelihood. If for some reason a decision is made that would stop the building industry, that directly affects my abilities to earn an income. I understand that you have to look at what the laws are. I understand that you have to be concerned about maybe somebody hasn't done what they're supposed to do regarding the way that they have developed the land. I'm asking that all the elected officials, all the government officials take time to listen to the builders, the builders' association, and work together that makes it a feasible thing for Stafford County. I've been in Stafford County now for twenty-six years. I love Stafford County. It's the best place I've ever lived. It's a great place. I'd like to see it continue to be a great place. I understand there's a big decision to be made, but make it for all the people. That's all I have to say.

Mr. Stonehill: Justin Stonehill. I think I'm in the Falmouth District; I'm not sure, though. I'm going to be real quick. Like someone previously said, the state code says you guys have to have the cluster ordinance. If you're going to repeal it, at least have something in place already. It's not fair to just repeal it, and wait six months, and then have something in place then. Also, if you're going to repeal it, there should be some sort of a grandfather rule also because people are out there buying land and making deals based on the code. If you change it in the middle of a deal and you have a project already in the county, it should be grandfathered. That's all it got. Thanks.

Ms. Vanuch: Thank you. David Stewart, Michael Stonehill, and Mike Swick. Any of you guys here? Okay, I'm going to put them off to the side then and give you time. Alex McCallister. Ruth Carlone, and Paul McKinney.

Mr. Stonehill: Hi, my name is Michael Stonehill, Jr. I live in the Rock Hill District. I'm proud to say that I'm not only born and raised in Stafford, but my wife and I just bought our first home in Stafford last year. I was informed of this meeting by reading the proposed resolution from the January 23rd Board of Supervisors' meeting where the Board adopted the following resolution, and I quote: "A resolution to request that the Planning Commission hold a public hearing and make a recommendation regarding the repeal of the current cluster development regulations." I found this request puzzling, honestly, in its essence. Because in the Virginia State Code, Section 15.202286.1, it says, "Any locality within Virginia shall provide a cluster ordinance to its citizens." So it just doesn't make any sense to me how you can repeal something without having an immediate replacement in place to replace it with. All I would ask of you is can you explain to me and everybody else in the community why would you repeal the ordinance without having a replacement ready for it. The County needs to take the proper channels to revise any law or ordinance, and this one is no different. US-appointed members of this Planning Commission, I request that you make a recommendation to the Board of Supervisors to not illegally repeal this ordinance and take the proper channels to revise it as they have done in the past. Thank you for your time.

Ms. Vanuch: While Ruth is coming down, we have Paul McKinney, Alex McCallister, Mike Swick, and David Stewart.

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Ms. Carlone: Ruth Carlone, Mt. Olive Road. I've rewritten this about twenty times while we've gone through the others, so excuse me for errors here. There is no valid reason to ignore the financial, educational, and environmental protection of the County's Comprehensive Plan to continue with the cluster zoning as it is. An example with the by right of one house with three acres. That's adequate to have for chickens, a horse, children, trees, and even a profit for the developers. On the site plans, I hope you take a look at Saratoga Woods and the Kellogg Mill site. They are riddled—in each of those lots, there are wetlands, there are RPAs. This is not the way you're supposed to do it. When you take out—and this is an example. It's so disgusting the way they've been set up. When you have a lot on 1.5 acres, you have to allow for the footprint of the house, driveway, garage, the primary, and the 100 percent septic field backup, setbacks, and the RPAs, now, and wetlands that have been added. What space is left for the purchaser of a 1.5-acre to be able to build a patio, a deck, swimming pool, or permanent sheds? Anyway, I want you to take a look at that. Now, there is so much more to say, but everybody's getting tired here, and I understand. In our area in Hartwood, we have a tremendous problem of water availability. Excuse me. Well, I'll send you an email, guys. But anyway, please remove the cluster development zoning in non-USAs. That means where there's no water and sewer lines available. Okay. Because who's going to pay for the trucking in and out of septic and bringing in drinking water. Okay, thank you. And welcome new members.

Mr. McCallister: Alex McCallister, Richmond, Virginia. My company's Eastern Virginia Land Company. I want to take this time to thank you all for the service to the county and for listening to my comments tonight. I have developed several cluster subdivisions over the past years, largely due to the encouragement I received from the Planning Commission when I came before them for approval. Based on how well received my projects were by the Planning Commission, I continued to develop cluster subdivisions rather than conventional subdivisions. Many of the subdivisions that I've done lately I could have done as conventional subdivisions and gotten the same density as I've gotten from cluster. Based on what I'm seeing from the County or their feelings about the clusters, I wish I had done some of those as conventional subdivisions. I currently have one cluster subdivision construction plan submitted under review at the County. Repealing the existing cluster regulations without having a replacement ordinance will hurt my company, my employees, and many of the small businesses that I hire. A repeal without replacement will require work on my project to immediately stop, and some of my employees I will have to lay off until a new cluster ordinance could be adopted. Let me ask you to put yourself in my shoes. It's really going to be tough for me to tell these employees that I'm going to have to lay them off while we wait for a replacement. Repeal of the cluster regulations is a massive change that was just announced in January. The proposed repeal of the cluster regulations can take less than sixty days, but my planning for a cluster subdivision can take over a year. My employees and I have been working on a construction plan that I have submitted to the County for over a year that is currently being reviewed by the County. A huge amount of time and resources have been expended in the development of this plan. All that was done in good faith and reliance upon the current Cluster Ordinance. As I've said before, a repeal without replacement will have huge consequences on my company, as well as the building community. I very much hope you will not repeal the current cluster ordinance without a replacement or, at the very least, I strongly request that you consider protecting the plans that have already been submitted to the County and that are currently under review. Thank you.

Ms. Vanuch: Thank you. We have David Stewart, Mike Swick. Are you guys coming down? Okay. Jenny Lowe, Amy Hall are next. And then Jay Brown.

Ms. Lowe: Good evening. My name is Jenny Lowe. I live in the Rock Hill District. I am speaking to you tonight about my concerns over the Stafford County Cluster Development Ordinance. According to

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Virginia law, a cluster subdivision must have common, open space that can be used for recreation while preserving sensitive areas. A developer has recently proposed a cluster development called Cardinal Meadows in our county. The development would be built on approximately forty-eight acres. The application claims twenty-eight acres of open space. This is misleading. If most of the open spaces are occupied by environmentally sensitive areas, the parcel should not be allowed to be considered a cluster development. The land targeted for development is covered by a massive Critical Resource Protection Area, also known as a CRPA, and a power easement that should not be considered open space. CRPAs are supposed to be protected from stormwater and pollutants. If approved, stormwater would dump into the protected CRPA. Stafford County needs to change its ordinances to provide protection for our wetlands and perennial streams from further harm. It is absurd to think that no harm will come to these vulnerable areas with homes so close by. The power easement on this particular property has lines that were buried in 2008. Power easements should not count towards open space percentages either. At any time, Dominion Power reserves the right to replace those lines above ground to meet the demands of our power grid. Would you consider playing under power lines, a County-approved recreational area? The developers do. Stafford County should repeal their ordinances and replace them with more specific guidelines that will protect environmentally sensitive areas while truly requiring open space for residents to enjoy outdoor activities and protect the environment. I urge this Commission to repeal our existing ordinance and replace it with more specific guidance which prevents developers from counting environmentally sensitive areas and power easements as open space for recreation. This commonsense planning and changes we need immediately to improve our county for the next generation. Thank you.

Ms. Hall: Amy Hall, in the Rock Hill District. Cluster developments done well are an asset to our community. As Jenny just told you, Cardinal Meadows is the perfect example of a cluster development done poorly and is not an asset to our community. It demonstrates exactly what's wrong with our ordinance. In the interest of time, I won't repeat what she said; she was perfect. I'd also like to add that I find it very distressing that for some we've chosen to include 100 percent of our A-1, A-2, and R-1 parcels in this. We're required to do 40 percent. For some reason we've sent 100 percent. There's no question in my mind why we're all now feeling the pinch over overdevelopment; that's it. So tonight I'd like to ask you to recommend the repeal. And then let's get busy and let's fix this, because it can be an asset to our community if it's done correctly.

Mr. Graham: Good evening. My name is Jay Graham. I live in Fredericksburg. I'm an architect that works with several developers and builders in this area—Fredericksburg, Stafford County, Spotsylvania County, and others. Cluster zoning I understood as an architect. Cluster zoning I looked up today for what it does for the community. You saw slides of what it looked like when cluster zoning was done correctly. Surely there have been mistakes. Surely things have been done incorrectly. But to completely say that all zoning changes have to be made, all housing is bad—housing is going to happen in Stafford County. We live in an area that is growing. We live in an area that is well desired, and an area that will grow. We can't stop growth. As long as people are raising babies and turning into adults, they're going to have to have a house. And housing will grow. So we need to do it right. I don't even think from what I read that we can do away with cluster zoning without some type of replacement. And maybe what we really need to do is adjust some of the things that we're doing that aren't right so that we can improve cluster zoning because it's part of our world, it's part of our future. Thank you.

Mr. McKinney: I may be going out of turn; I stepped out for a second. My name is Paul Kenney.

Ms. Vanuch: Yes, you are on the list.

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Mr. McKinney: Okay. My understanding of cluster development is if you have like ninety acres you get 33 acre lots or 31-1/2 acre lots. The other forty-five acres goes into a reserve. It may be all one big parcel or it may be several small parcels, a little bit adjoining each parcel. Or in some cases they have a pond or something. They may do the pond open that up for the residents. It makes sense to me if it doesn't increase the density and you have something that looks like there's forty-five acres over here that's not developed and will never get developed. So I just want to say—I'll make it short and sweet—it makes sense to me to do it, but do it right. So I also recommend not repealing it unless you have a replacement. It almost makes me think of some of what's going in the White House with the dreamers. Hopefully, you'll think it through and consider either not repealing or having a replacement with the repeal. Thank you.

Ms. Vanuch: Mike Swick, David Stewart, if you're out in the foyer, come on in. Next up is Kristen Barnes, Antoinette Frank, and David Coleman.

Ms. Barnes: Hello again, everyone. Kristen Barnes. This is a subject which I hadn't really considered immensely until . . . Cardinal Meadows. It became very clear to somebody who's not involved in this business that this Cluster Ordinance is a cluster all of its own. It needs to be fixed. We need to repeal this cluster; we need to replace it; we need to do it now. If you do not repeal this cluster, I wish you luck because the flood of applications that you're going to get is going to be overwhelming. Find a way to get this repealed. Be creative. I know you can do it. Thank you.

Ms. Vanuch: After David Coleman will be John Loving.

Ms. Frank: Hello, I'm Antoinette Frank from the Hartwood area. As that man said before, growth is inevitable in Stafford County. But we had a Planning Commission designed to make it smart growth. The Board of Supervisors could repeal the Cluster Development Ordinance temporarily while considering how to best fulfill the County goals. Stafford officials said that the Cluster Development Ordinance does not appear to be meeting the intended goals for land preservation and subdivision practices as envisioned by the Comprehensive Plan. Cluster developer in rural areas does not keep rural areas rural. The best thing that the County can do is to raise the cluster standards and require that all clusters be in the urban service areas or the targeted growth areas of the county.

Ms. Vanuch: David Coleman, John Loving, Henry Thomassen. After that it Tommy Franklin and Danny Hatch. And it's okay to form a line in the aisle way. Are you going to speak?

Mr. Thomassen: I'm Henry Thomassen.

Ms. Vanuch: Okay. Go ahead, speak.

Mr. Thomassen: Thank you. I'm Henry Thomassen in the Aquia District. I'd just like to reiterate and support what our esteemed retired judge earlier said. Why do something that's against the law? What she didn't say was what will happen if you do. We've had several people up here who have spoken as contractors and owners of businesses who've said their business would be impacted. Well I guarantee you the minute that this is repealed and not replaced immediately, they will contact their lawyers and sue the County. And they will win. I know the Board of Supervisors has had two closed sessions with council. I have no idea what they said. But if I was council, I'd say don't do it until you actually have a replacement. It's perfectly fine to modify the rules and regulations if you have something for the contractors to go by. And I hope you work with them to make sure it's something that will not impact their businesses adversely. These projects cost millions of dollars. What the County would do, and what the Board of

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Supervisors would do if they repealed this, is subject the County to tens of millions of dollars in legal fees. That is not something that my tax-payer dollars should towards. Thank you very much.

Mr. Franklin: My name is Tommy Franklin, Hartwood District. I'm a resident, landowner, and business owner of eighty-plus employees in the construction industry. I asked the question of how can the Board repeal something with such short notice and not take into account the people that will be out of work either temporarily or possibly permanently. The cluster zoning law is not what's creating the extra housing. A strong economy is doing that, so why punish the companies and employees of these companies because of the lack of planning up to this point. Has there been any thought as to what this will do to the land values, because the companies that have purchased based on the current cluster law. I personally bought a 37-acre parcel and had intentions to utilize the 1-1/2-acre cluster law to create five lots, leaving myself with 15+ acres to build a home for my family. Under the 3-acres structure, I'll be forced to create more lots in order to get the value out of the land, to make sense out of my investment. This will in turn create more households or rooftops, so I personally don't feel the current cluster law creates more households in the county. Anyone that's opposed to current law because of the belief that it'll add additional homes, currently lives in the county, and probably moved here from another county. So what gives them the right to tell new people that want to move into the county that they're not wanted are allowed? If you do feel a change is imminent to the current law, I feel like more time should be given to the companies that have plans in process and allow for preparation of new laws. If we all operate our companies on sporadic decisions, the outcome would not be very good. So why should be allow the County to operate in that manner. Thank you for your service. I look forward to your decision.

Ms. Vanuch: Danny Hatch, Linda Mueller, Jerry Trickett.

Mr. Hatch: Madam Chair, members of the Commission, my name's Danny Hatch. I live in downtown Goldvein, Virginia. So I'm just across the line from you there. My company, Dominion Soil Science, we do a lot of work in Stafford County. I am a soil scientist. Worked many years for Virginia Tech mapping soils throughout the state of Virginia. What I'd like to add to this conversation is I have worked up front with many homeowners, many landowners like this gentleman that just spoke, as they do things with their property to get their value out of it. What I do and my company does is to go in there and make a detailed soil map of the property and identify these sensitive areas that have been spoken about here a lot tonight. I've done a lot of work with the conventional subdivisions that we've heard a lot about and with the clusters as well. It is my opinion that the cluster subdivision allows us to do good planing where we can isolate these sensitive areas—wetlands, [unintelligible] soils, erosive soils, shallow bedrock. We can isolate these areas, put them in the 50 percent open space, and not have them to where individual homeowners can go in there and abuse these areas. So in my opinion, to repeal this, go back to even conventional, is a huge step backwards for Stafford County. Many people have said about repealing it, not having something in place. I certainly do agree with that. I am working with many homeowners and landowners and developers right now that have projects in midstream, if you will, as we move forward to get these reviewed by the County and approved. The ones that we've worked with, the thing that impresses me the most as we work with the developers and the landowners of these properties is that you do have the open space that is set aside. I've heard all of the discussion out here as it's not up front. It is there. I think it's much better planning today than we had back in the day. I continue to ask, like the other folks have, have something in place. It certainly will affect my business if things did slow down even for a short period of time. So again, thank you for your time. If you have any questions, I'd be happy to answer those. But let's get something in—let's keep this in place until something is looked at. Thank you so much.

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Ms. Vanuch: Linda Muller, Jerry Trickett, Jim Fry.

Ms. Muller: Good evening. My name's Linda Muller, and I reside in the Aquia District. I want to thank Madam Chairman for holding a very well-regulated meeting despite the numbers we have. I've lived in Stafford County for twenty-eight years, and I have attended numerous public hearings, meetings, and a variety of other gatherings on proposed zoning ordinances, recreational business zones, urban development areas, which I believe are now called *targeted growth areas*. They come and they go, but remains is the consistent increase in traffic congestion, jammed neighborhood subdivision roads that are used as shortcuts, and an overwhelming impact on our school resources. But something I did notice within the last four years is that the development around where I live—which is near the Brooke Point High School—has been in hyper-growth. There are developments that literally line the entranceways to the Stafford Middle School, as well as the Brooke Point High School. A recent development filed about 2-1/2 weeks ago, I guess the developers know that something's going on, so they're filing their plans. One particular cluster development would add thirty-eight houses right behind Brooke Point High School and use the high school entrance as the entrance to the development. To me, that's mixing up a lot of different types of traffic, school traffic with development traffic. This is not planning. It's more akin to jamming. It's like you're trying to jam as much as you can in the little space you have available. To me that's not thoughtful planning. I do support the repeal of the existing ordinance. If there can be improvements made, so be it. But I do support the repeal of the current ordinance. Thank you.

Ms. Vanuch: Thank you.

Ms. McClendon: Madam Chairman, if I may interject, I believe the Planning Commission should take a vote to extend the meeting past 10 p.m.

Ms. Vanuch: Okay. Does anybody have a motion?

Mr. Apicella: Madam Chairman, I move that we continue with our public hearing past the ten o'clock hour and potentially take a break maybe at about a half hour.

Mr. English: Second.

Ms. Vanuch: Okay. Maybe after him we'll take a quick break? Is that okay? All right. Just so everybody knows, our meetings in our bylaws, at ten o'clock we have to take a vote to continue the meeting, and so that's what we're doing now is to take a vote to continue the meeting, and then take a quick recess, and then reconvene the public hearing. So that's what the motion is on the floor. Cast your votes, yes. Okay, motion passes 7 to 0. Go ahead, Mr. Fry.

Mr. Fry: Cluster subdivisions. Is it a good ordinance or a bad one? I guess that all depends on your point of view and how you look at things. Madam Chair, commissioners, staff, my name is Jim Fry. I in the Quail Run subdivision, Aquia District. I'm here for two reasons, as a property owner and as a real estate agent. I am a member of FAAR, the Fredericksburg Area Association of Realtors. There are a lot of plots in the county that could qualify under the current Cluster Ordinance. If there were a mad rush to buy up these properties, can you imagine what the county would start to look like? Can you imagine what kind of traffic issues we would have and the kind of demand on county services? What would it do to the value of our current real estate. It's basically Business 101, supply and demand. If we oversupplied a community and there's no increase demand, then it's going to decrease the value of properties. We have a Planning Commission and Board of Supervisors that we have elected. They've come up with a five-year

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Comprehensive Plan. It identifies the targeted growth areas, the urban service areas, and those areas of agricultural concern, and open spaces. There is already a limit in the A-1 area of one house per three acres. What I'm concerned about as a realtor and selling property, especially cluster property, is when you're clustering this stuff up and it has no services—no water, no sewer—and you have the cluster the homes together, and you need well and septic. You need a primary perk site and a secondary perk site. What happens if the well gets contaminated? You have this small lot, and you have issues trying to find another well. You have issues trying to get another septic field when these things get contaminated. So it does impact the value of this real estate, and we're already experiencing that in the County. The second thing is, I believe that the Board already has a lot of authority. They can go from 100 percent of allowing clusters down to 40 percent, and I don't think you need approval from anybody. Thank you very much.

Ms. Vanuch: Thanks. We talked amongst the Commission. We're going to do a break at ten thirty, so we're going to continue with the public hearing. Robert Gollahon, Bruce Reese, and Gene Brown.

Mr. Gollahon: Good evening, Chairwoman and Board members here. My name is Robert Gollahon. I've been here about thirty years. I am a property owner. My concern is that I am opposed to this ordinance for all the reasons that you're hearing here tonight. But my main concern is the leadership—or should we say the lack of leadership with the Board of Supervisors in the way they want to handle this. It's sort of like going to the doctor with a cut on your arm, and the doctor wants to cut the arm off. I think their plan is a little drastic for whatever it is they're trying to accomplish. When I read the paper, I used to hear an old saying that the real story was that you had to read between the lines. When I read the story in the *Freelance Star*, it appears to me that the supervisors were kind of baffled and surprised as to what was going on in the cluster zoning subdivisions. They appeared to be surprised that wetlands and storm ponds are all included in that save area, the 40 or 50 percent of what's to be saved was included in that. Well I say that's good. Make sure that they're going to be protected. That's all in the development plan. Then we had one supervisor that said that he was really surprised that the land that was set aside suddenly had a value to it. It was an asset I guess as opposed to a liability. So that seems to be a good thing. So I think that the Board of Supervisors should not take such drastic actions to cure some of what they perceive to be problems. I think they should isolate and decide what is wrong, if anything, and offer solutions to the public, and do not stop what is proven so far to be a good thing. We're getting land preserved, we're putting the houses on less property. And my time is up. Thank you.

Ms. Vanuch: Thank you.

Mr. Brown: Good evening. My name is Gene Brown. I'll be speaking on behalf of the Fredericksburg Area Builders' Association. So could I get five minutes, please?

Ms. Vanuch: We're doing three-minute comments tonight.

Mr. Brown: The Fredericksburg Area Builders' Association is made up of many people from all walks of life—developers, builders, and trades people from ditch diggers to engineers and everything in between. We represent many businesses, but at the core of our association are local builders, trades, and small businesses. As a homebuilder, I have the unique privilege of knowing both the people who buy new homes, as well as those who build them. Our kids go to the same schools. They play on the same ball fields, they swim in the same pools. We worship together, and we sit in the exact same traffic together. As families grow, people age, families are transferred and relocated, the needs for housing change also. Our industry has no control over the demand for housing. We exist only because people need homes. Cluster development is a smart way to do this. It benefits land values, preservation, decreased infrastructure, and

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affordable housing are clear. I believe the County recognizes the benefits that clustering offers. We do not oppose revising the Cluster Ordinance to help Stafford County achieve its goals. But nobody has told us what the revisions will entail. And this has created a great amount of uncertainty. What we are opposed to is repealing the Cluster Ordinance, something that is overall good, smart, with tremendous benefits to so many, without taking the time it deserves to come up with a new ordinance that includes all stakeholders. And if the County repeals and does not grandfather projects already submitted to continue through under the current ordinance, this uncertainty will turn to fear. And let me explain why. Many of those projects are the livelihoods of many people and families, and every day without an ordinance will eventually turn into a day without pay for these families. Today it's landowners. Nobody is buying land. Tomorrow it will be engineers, surveyors, and environmentalists. And this will continue until it affects everyone in industry and community. A repeal without a replacement will cause lost pay. Now allowing the plans that are currently submitted to see their way through the process will absolutely cause layoffs. I realize that you as a Planning Commission are tasked with doing what is best for Stafford. I also ask that you do what is right. I ask that you please recommend to the Board not to repeal the Cluster Ordinance and take the time it deserves and include all stakeholders in developing a new ordinance that meets everybody's goals. Thank you.

Ms. Vanuch: Thank you. Bruce Reese, Jo Knight, Jay Jarrell.

Mr. Reese: Madam Chair, member of the Commission, my name is Bruce Reese. I'm a partner in a small firm, Legacy Engineering. We do land development and civil engineering in Stafford County. Thank you for bringing that graphic up. Is that something that everybody can see? This was a mandated requirement from the state. And not just for every County in the state; it was only mandated for those counties that are high-growth counties. And there's a reason for that. The reason was that this is a planning tool to help manage growth. Cluster is a benefit. It counters suburban sprawl and land-consuming development. Who has advantages to this? The landowner, because they get their by-right density. We don't get extra lots; we get the by-right density that that particular piece of property deserves. Why is that a good thing? It's because the more land, the more lots that we can get on any particular piece of property is fewer lots that have to go somewhere else. That's the benefit of the cluster, that you're not having to use up other land in other places. Maximize the use of every piece of property that you have so that you don't have to use property and sprawl. How does the county benefit? Again, the maximum number of lots per piece of property is a benefit to everyone in the county. Open space is a benefit to everyone in the county. It protects sensitive environmental areas, and it requires less infrastructure. That's good because we don't have to have school buses going up longer roads. We don't have to have VDOT maintaining longer roads. It benefits the homebuyer because of the open space. It benefits the homebuyer because—this is a little esoteric—high-speed internet is based on how many houses per linear mile. So the closer the houses are, the better change a particular neighborhood is going to have of getting high-speed internet. And I'm sure everybody understands that's literally critical nowadays. And it helps the developer because of reduced infrastructure cost. And if I could direct everybody to the screen very quickly in my extra ten seconds, I'm showing two layouts. One's a conventional subdivision and the other one is a cluster subdivision. I can tell you right away that the conventional was 4800 feet of road; the cluster was 2,000 feet of road. The conventional had two wetlands crossings; the cluster had no crossing. Same number of lots. And I think you'll agree that the footprint on the land is much lighter with the cluster than it is with the conventional. Thank you very much for your time. I would ask that you do not repeal without a replacement Thank you.

Ms. Vanuch: Thank you.

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Ms. Knight: Good evening. My name is Jo Knight. I took a drive through a lot of the communities, the newer ones in Stafford this past week after all this arose. And I'm telling you, the cluster developments in these agricultural areas and others are the crown jewels of our communities. They allow us to have single-family detached homes at an affordable price the way it's currently designed. And these homes are offered at prices that are generally no less than 450,000 and up to 700 and more. They pay their way plus boot [?]. They give us extra. When we say we're not downzoning, in all honesty, and I haven't done the advertising or anything else, it's the equivalent of downzoning when you take rights away and redefine what can be done in a use. It's downzoning in effect. It is technically not. I will tell you that this is something—as long as there's a demand for housing, that could go away with a hike in interest rates tomorrow. I have seen our economy up and down, up and down. We went for a dry period where houses were not even selling hardly. It was terrible as far as even existing homes because of interest rates. That's going to happen. Right now people can get into homes at a nice value that brings good revenue to our county. It pays their way, and then it even subsidizes some of the other. And they aren't future slums; they're going to be nice places that we'll remain proud of. And there will be a demand for housing because we're on this corridor to high-growth areas. You get off and away, and then you keep your open space. But we're getting it with 50 percent of the lot. If you build the regular development, three-quarters of a lot can be wetlands or RPA, as long as you've got the space to build your home without disturbing it. And that's not cluster. I think that we're making a bad mistake when we also hurt a lot of families who are depending on this for their livelihood and they're in midstream on certain properties. I would certainly encourage any changes to be with future development, if you must make them, and not in midstream. That hurts a lot of people. Thank you.

Ms. Vanuch: Jay Jarrell, Susan Stonehill, and Sherry Bailey.

Mr. Jarrell: Good evening. I'm Jay Jarrell. My address is in the city of Fredericksburg. I'm a landowner here in Stafford. I'm a real estate developer, both residential and commercial. With regard to the residential, it's pretty clear that there will be changes to the Cluster Ordinance. You and the Board are not happy with it. I would just caution you, every professional planner that you talk to across the United States, they'll tell you that cluster planning is smart planning. So you will tweak the ordinance, but I implore you don't cut off your nose to spite your face. The changes that you make must still make cluster zoning attractive to everyone. It has to be a win-win. Now with regard to my commercial development. I've made a pretty big investment here at Stafford Courthouse. I purchased some real estate right by Ms. Knight's office. I've talked to Mr. Harvey about coming in to do some pretty nice commercial office buildings. I've even got leases in the works. I'm talking to some pretty exciting businesses. And I'm afraid I've made a mistake. With a good conscience, I'm concerned about recommending people to bring their business to a county that doesn't obey the rule of law. You've had a circuit court judge come tell you that you cannot repeal this ordinance. You have had a judge tell you in court in 2012 that you cannot repeal the ordinance. There is no emergency in this situation that would cause any of you to breach your oath of office. I've taken a similar oath for another office. I've made a lot of decisions that I didn't like because the rule of law said A. I thought B would be better for the person in front of me. I thought B would be better for the community at large. But the law said A. The law says you must have a cluster ordinance. It doesn't say if you like it. It doesn't say if it's working perfectly. I implore you, let me have a good conscience with these businesses and tell them that Stafford County is a safe place to do business. Thank you very much.

Ms. Stonehill: Hi, my name is Sue Stonehill. I am a new homebuilder in Stafford and Fredericksburg. My home [?] is called Hermitage Homes. I've lived in the area for thirty years, and I've watched Stafford grow into a beautiful county with bountiful natures, small communities nestled in place, creating a great

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place to live and call home for so many families who discovered Stafford County. I've sold homes to close to a thousand families who want to live in Stafford and call it home. As time progressed, the trend to purchase new homes with acreage in Stafford County became prevalent. And the County requirements were for land to be developed with three-acre lots. This was a success as more families were able to move to Stafford and own homes on acreage. As land became less available and to preserve the beauty and to protect natural resources of Stafford, the County decided to consider doing cluster homes with requirements for large areas of open space and lot sized of 1-1/2 acres. This approach to zoning had a lot of benefits. Environmentally, only approximately one-half to two-thirds of the land was developed and built on, leaving an area of open space that had less erosion and development than if the entire piece was developed as three-acre lots. It yielded the same amount of homes as if there three-acre lots. Aesthetically, the neighborhoods were beautiful. There's plenty of space between homes and yards big enough to have privacy and recreation and open space to remain forever untouched. Finally, financially there is less development cost to put more road in than with cluster. And it allowed builders buy land at a reasonable price and build in the buildable areas and leave the wetlands and unbuildable areas untouched. The County benefits from the income and revenue of sales of homes. I know the County remembers the market dive from 2007 and 2008, which led to recession in the county, and in the country. Stafford County was affected dramatically. It has been ten years, and the housing industry it still healing after loss of value and real estate foreclosures. This proposal to repeal cluster subdivision and cluster development regulations will affect the ability of builders and developers to buy affordable lots, which will in turn affect the County's financial ability to not only survive but to thrive once again. The newest cluster community of Churchill Meadows is spacious and beautiful. It is a prime example of success resulting from the Stafford County Cluster Ordinance that is in effect. There are open spaces a mile long of nature trail reserve for future generations to enjoy. The homebuyers can afford to purchase homes in this community and live the American dream. Cluster development has allowed developers and builders to afford to purchase lots and build homes in quality neighborhoods in Stafford County today. It is not in anybody's best interest to remove clustering provisions from the Subdivision Ordinance temporarily or change in any way the current cluster regulations. This will have an impact and once again affect the ability of builders to buy affordable land and build affordable—

Ms. Vanuch: Thank you, Ms. Stonehill.

Mr. Stonehill: —quality homes for homebuyers to buy.

Ms. Vanuch: Sherry Bailey, Ryan Foroughi, and Angela Foroughi. After that will be Dan Hicks, and Selden Small, and Carol Master.

Ms. Foroughi: Madam Chair, members of the Commission, thank you for seeing us this evening. My name is Angela Foroughi. I reside here in Stafford County. I'm a licensed engineer, and I practice civil engineering in this area. As you all are aware, back in 2012, Stafford passed an ordinance enacting cluster subdivisions in the Agricultural District. Since then, it's been modified, it's been tweaked, it's been changed over time. But one thing that's remained consistent is the intent of the Cluster Subdivision Ordinance. I would like to read in part Stafford County's Subdivision Ordinance Legislative Intent. And I'm reading Section 22-266: The purpose of the Cluster Development Provision is to encourage housing developments that concentrate the location of dwellings in specific areas on a site to allow the remaining land designed as open-space land to be preserved for park or recreational purposes, conservation of land or other natural resources, historic or scenic purposes, assisting in the shaping of the character, direction, and timing of community development, wetlands, or agricultural and forestal production. That was a whole lot of verbiage I know I just spewed. But my main takeaway from that is that the purpose of the

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cluster development is to concentrate the lots to allow the remaining land, the open-space land, to be preserved for parks and recreational purposes, conservation of land, and historic or scenic purposes. Based on that definition, a practicing engineers such as myself have been submitting and processing plans to meet this intent. Can we pull up that exhibit that I have? Here you will see one of the first cluster subdivisions proposed in the Agricultural District of Stafford County, and it was Hartwood Landing. What I'd like to call your attention to quickly is the shaded green area, the hatched green area, which is a Hartwood Landing open space. You'll see there are red arrows through part of that. That was designed for the unobstructed wildlife corridor, which was important to the Planning Commission at the time. And it's important to me personally. You'll also see other areas of green, open space of Oakley Farms, as well as Royal Hills. This full meets the intent of the Cluster Ordinance of contiguous land. In fact, I would like to quickly read over comments made from two of the commissioners at the time at the December 11, 2013, meeting. In part, I applaud the applicant and their agent on this proposal. I think it is exactly what we're asking for when we talk about cluster subdivisions and trying to get contiguous open space. And in addition, they didn't have to, but they didn't increase the density, and I think that's a another win for the County. So this is a really great proposal, and I hope that it's a sign of proposals that we might get in the future. And hopefully developers who thinking about cluster subdivisions will look at this one as a model. Another commissioner at the time tagged onto that and said in part: "Just to echo that, the spirit of the law, not just the letter, is excellent. The planning. I just think this is excellent. This is exactly what the County is looking for, as well as having the neighbors who would come in who would be adjacent to it being support. So hurray." So in summary, I would just like to say if there's a problem, please let the development community partner with the County to achieve mutually beneficial goals. Thank you.

Ms. Vanuch: Thank you. Ryan Foroughi, Dan Hicks, and Selden Small.

Mr. Foroughi: Hi, my name's Ryan Foroughi, a Stafford County resident. I live in Aquia Harbour. I wanted to expand on some of the remarks from the previous speakers. The building and development community are absolutely baffled and surprised by this proposal for repeal, especially without a replacement. Furthermore, the development community has not heard any negative feedback from the public of the Planning Commission. What we have been told, as the previous speak just said, is that simply these are great proposals, and hopefully future developers will consider cluster subdivisions. Now that isn't to say there isn't a lot of misinformation being verbalized to the public from un-credible sources. The main misconception we hear is that clusters produce more lots. Or better yet, that builders and developers are exploiting a loophole to create more lots as a result of cluster subdivisions. Let me be the first to tell you this is patently false, just absolute incorrect. As a matter of fact, not one cluster subdivision, not one, as produced the maximum number of lots permitted by right. Not one. Now you may ask how I can make such an assertive statement. Well let me give you my résumé. Since 2012, I've produced fourteen cluster subdivision projects in Stafford County. Not one has achieved the maximum number of lots. Not one. Hartwood Landing, 40 by-right lots, 36 platted. Saratoga Woods, 66 lots by right, 58 lots platted. Overlook at Hickory Hill, 22 lots, 20 lots platted. Saddle Ridge, 21 lots, 18 lots platted. Reserve at Hartwood, 20 lots, 17 lots platted. Crane's Corner, 29 lots permitted, 21 platted. Spartan Oaks, 17 lots permitted, 15 lots platted. The list goes on and on and on. I implore the public to go look at any of the plans that I have approved. And not only that, this requirement, what I just stated, is required on all plans by Planning staff. We have to demonstrate that we are not generating more lots that what is permitted by right. So, let me dispel one other misconception is that the clusters are benefiting from unusable area. Again, the fact that the cluster subdivisions are benefiting from unusable area is just inaccurate. Slide 1 represents Kellogg Mill. There's been discussion about this. Kellogg Mill was recently approved within the last thirty days. As anyone can see, there is large contiguous loss of open space. Tremendous amounts of open space. That open space backs up to Saratoga Woods. From there there's

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thirty-six lots. The next slide illustrates that, again, as a conventional subdivision, three-acre subdivision, that we can generate the same number of thirty-six lots with an extra 500 feet of road. Let me explain to you what cluster subdivisions allow. It allows flexibility, flexibility in development, flexibility in the community, flexibility to the builder. It does not create more lots. Thank you.

Ms. Vanuch: Thank you. Dan Hicks, Selden Small, and Carol Masters.

Mr. Hicks: I'm Dan Hicks. Homeowner. I think I'm voting to repeal. I'm a little confused. When I got here tonight, I thought one way. And then I've listened to everybody else that's been talking. But it seems like this is a debate between builders, developers, realtors and then homeowners. The way I see this, right? All I do know is that we've lived here now since 1986. And for the first twenty years, living in Stafford was great. Brought my kids up. Schools were great. It was a nice place to live. But recently, I can't say that. Congestion is bad. Houses are going up next to each other. Just totally dominating the area. And of course that causes congestion on the highway. It causes problems. But where I'm confused is in 1987 when we first started this regulation, it went for twenty-five years pretty much unchanged. There were some modifications along the way to stay in line and step with the Commonwealth. That I understand. But then something happened. In 2012, it was repealed. In then about two or three months later, they adopted a new regulation. And then again in 2015, it was modified yet again to stay on concert with the state. Okay, no problem. So now here we are, 2015 was modified. And then here we are in 2018, and you want to repeal it again. What I'm trying to figure out is what's happened. What are we getting wrong here? Why makes the repeal and the follow-on regulation is going to be right? What are we doing wrong? What have we done wrong, and what do we want to change? At this point, I'm for repealing the current regulations. And if it means stopping all construction, legality, whatever, I think we need to take a breath, figure it out, get it right this time, and then talk to the homeowners and the residents. Again, I understand where the developers and the builders are coming from. But, you know, I live here, and my kids live here, my grandkids live here. And I'd like to try to retain what it was in the 1980s, and we've lost that. Again, I'll defer to the commissioners. You guys know a lot more about this than I do. But please let's do what's best for Stafford County and the residents that are currently here. Thank you.

Mr. Small: All right. Selden Small, Fredericksburg. I'm a thirty-year Navy veteran, and I've heard "pull up the ladder; I'm aboard" type thing, which I hope you don't listen to. I would like to say two things that have already been said, really. One of them is that the current ordinance may or may not be what it's supposed to be. But I don't see any reason that it should be cancelled and then another one inserted later on. Why don't we modify the current one and then replace—or modify the current one, replace it with the modification—the current one with the modification. You've already been told by a Stafford judge that you're in jeopardy for the law of not having something in place. That's the essence of my remarks. Thank you.

Ms. Vanuch: Carol Masters. She'll be the last speaker before we take a ten-minute recess. No Carol? Okay. So we're going to adjourn for ten minutes. We'll reconvene at 10:40.

[Ten-minute break]

Ms. Vanuch: Okay, we're going to reconvene and move on with the public hearing. We have about thirty cards left. But I see lots of people have left, so hopefully we get through this pretty quickly. I'm going to call five up at a time since we've been missing several people. Will Carmene, Marina Solomon, Dirk or Isaac Avery, and John Angelo.

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Ms. Vanuch: All right. Raymond Loving, Doug Sims, and Bill Decourcey.

Mr. Decourcey: I'm Bill Decourcey, Rock Hill District. I'll just reiterate what the judge said to have a replacement before the repeal.

Ms. Vanuch: Raymond Loving, Doug Sims. Lee Murray, Margaret Carver.

Mr. Murray: Good evening. Lee Murray, George Washington District. I'm not a developer. I'm not a homebuilder. I don't have a predisposition. I don't have a dog in the fight. But I do have a true concern with . . . I think it's willful blindness, just willfully breaking the law of the Commonwealth. I can't speak to whether it makes sense to repeal or not. But if you're going to repeal, make it open, make it a conversation, people do it together. And I think at the end of the day, if you can figure that out, do it collectively, and the modify. Don't say we're going to repeal it, figure it out six, nine, twelve months from now. Do it so it's continuous. I think that's fair. Thank you for your time.

Ms. Vanuch: Raymond Loving, Doug Sims, Margaret Carver, Jeremiah Horstick. Okay, Raymond's gone. Donald King. D. R. Hall. John Howell. Shawn Halsey. Stacie Lampman.

Mr. Howell: My name's John Howell, and I live in Fredericksburg, Virginia. Madam Chair, committee members, I'm here this evening to encourage you to probably modify the Cluster Ordinance as it is now written. I think we need to take some time to review the effectiveness of the ordinance as it now stands. I would like the working group to address some of the following items: We need to ensure that some land remains available for farm and forest or timber production. I would encourage you not to allow counting as open space drainage area and retention ponds and other such areas that are necessary to develop land. And then in addition, I think we need to ensure that environmental concerns or issues related to septic systems and wastewater disposal. And then ensuring sustainable water supplies are addressed in this process. In conclusion, I think it's a sound action to modify or consider modifying the Cluster Amendment [sic] as it now exists. Thank you for your time.

Ms. Vanuch: Thank you.

Mr. Halsey: Hello, my name's Shawn Halsey. I live in the Hartwood District. I've lived in Stafford County for twenty-eight years. My wife and I raised our two grown children here. We shop in Stafford County. We worship in Stafford County. We both work in Stafford County. We love where we live. What we don't love is our Board of Supervisors considering making rash decisions that are potentially going to cost the taxpayers of Stafford County a lot of time, money, and aggravation. Each of you knows that the County's required by state law to allow cluster developments. You also know that these developments help preserve open space and minimize the road infrastructure that we, the county residents of Stafford County, ultimately pay to maintain and send our schools buses down. These cluster developments help maintain open and green spaces. It's not a matter of how this green space is derived. Homebuyers decide what kind of communities they want to live in. Developers don't design not to attract people. The marketplace decides what is attractive and what is not. You talk about green space and not wanting wetland and other areas to be counted toward the 50 percent rule. That is ridiculous. One of the best filters the Chesapeake Bay and our Earth have are wetlands. Look at any study. Why shouldn't the owner of the property be able to count this acreage towards their yield? It is the best filter there is. I have several green building designations. I do know what I'm talking about in this area. My firm does not develop land. I generally build on a client's land or one spec at a time. But I do know that when you start making it more and more difficult for landowners and developers to develop properly the use of the land they own, then

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you start raising the price of the land for everyone else in the county. When this happens, it makes people look into further areas of the county for affordability. This encourages sprawl. It also starts driving out any chance or providing any affordable housing in our county. Our teachers, firefighter, and law enforcement find it hard enough to find affordable places to live in Stafford County. Forcing land prices up by eliminating the Cluster Ordinance or repealing it, even for a short period of time, will only make it worse. Yes, I know you only want to revise it. I know the local building and realty community have offered their support in working with the Board of Supervisors in revising the ordinance. They have not accepted the building community's input. Please allow the Board of Supervisors and the building community the opportunity to work together to save us residents the expense and headache of paying our way out of a lawsuit that is inevitable if this ordinance is revoked. Do not repeal the ordinance. Thank you.

Ms. Lampman: My name is Stacie Lampman. I'm a Falmouth District. I've been a resident for fifteen years. I have three children in the Stafford County school system. I am a small business owner with a local architecture and design firm that has employees from the area that have gone to school at Virginia schools and decided to come back, luckily. And live, work in the area. I absolutely support smart design and development. I spend every single day designing residential and commercial spaces that currently adhere to well-thought-out codes. I appreciate why codes are in place and why they exist. I'm concerned about the short period of time that this emerged and the lack of input from residents and businesses. And the short period of time to amend—which at hopes would be three months, but there's no designed time for that period—is concerning to me because we get plans through the department in four to six weeks, which does seem like a long period of time when you have clients that are waiting and have invested in properties. My recommendation is to take the time and research and provide a replacement before you completely repeal and sort of put a pause button on everything that has been submitted. We spend a lot of time and effort trying to adhere to the codes necessary. And then to sort of just stop everything for a three—or we're-not-sure undetermined period of time is detrimental. It's detrimental to a small business like myself who depends on small development and the builders in the community and all of the subs that we work with. So I recommend moving forward after you have replaced and find the proper replacement Thank you.

Ms. Vanuch: Thank you. I'm going to go over the names of the folks who didn't come down. Doug Sims, Margaret Carver, Jeremiah Horstick, Donald King, D. R. Hall. Now we can move on to Everett Obenhein, John Schindel, and Christopher Burns.

Mr. Horstick: Good evening. My name is Jeremiah Horstick. I'm a local builder. I live in Spotsylvania, Virginia. Currently working in Stafford County building homes. When I heard about repealing the Cluster Ordinance completely, my first question was why. What are we addressing? I understand the Cluster Ordinance is a . . . well-thought-out development strategy that makes sense for the county, it makes sense for the state. It makes sense to do developments this way for economical and environmental reasons. With that being said, we're better off with this ordinance in place. On top of that, obviously the legality of repealing it is illegal. I know a lot of the people in this room tonight. Highly intelligent people willing to contribute to improve the law of Stafford County, to contribute to the welfare of the residents of Stafford County, as I'm sure every one of you wish to do. It makes sense to work together on this to do what makes sense. That's all I have. Thank you.

Ms. Vanuch: Thank you.

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Mr. Obenheim: Good evening. My name is Everett Obenheim. I'm in the Rock Hill District. I live in the Hidden Lake subdivision. My concern over whichever ordinance you decide to look at is you focus in on the existing wells that people have. We in the neighborhood, as an older neighborhood, we have people who have been affected by the new neighborhoods, and the development, and the water that is being pulled. My neighbor here behind me has demonstratives to show you, what is coming out of his—what his well looks like after a new development that moved in directly behind us. I'm not exactly sure how I stand on this proposed ordinance right now to repeal and replace. But I definitely think that it needs to be thought through and that existing homes in the neighborhoods needs to—you need to take into account our water. I have children. And I tell you what, when you see what John has here, I don't want my children's well—my water, what he has happening at his house. I'll just let him show you. Thank you.

Ms. Vanuch: Stacie, you want to restart the light?

Mr. Schindel: My name is John Schindel. I live in Hidden Lake. We're a service district back there, by the way. I'm sure a lot of you know it. I've been back there nineteen years. And they built a subdivision right behind my house. We live on the same street. There are like eight or nine other neighbors back there. Their water has been affected the same way. This is a before picture of a water filter. This is my water filter after changing it two weeks ago. That is just one year of water filter. Sometimes I have to change it twice a month. Sometimes within a couple of days. From the new subdivision. I can't have any white clothes. I have to buy bottled water. I have a handful of receipts on my grocery store. I have to buy bottled water every time I go to the grocery store. I work construction too. But like my neighbor says, we have to start thinking about our groundwater. I've already had to change out my expansion tank. The one I have now is virtually new. It's full of mud. I've had one neighbor on the end of Hidden Lake Drive who has already had to change his well out two times this year. Just from that one subdivision. So if the powers that would be would think about water and not just building and open spaces and things like that, it's really . . . what is my well going to look like five years from now if it's that bad already? Wendy knows about this too. We missed her at our last annual meeting. We were hoping she was going to show up. She actually had someone from the County come out and test my water, and the guy was just . . . you drink this? And I'm like, no. I wouldn't even let my dog drink it. But yes, I just changed this filter two weeks ago, and that's what it looked like before. And that's a whole bagful. And if you want me to, I'll spread them across the floor as per date.

Ms. Vanuch: I think we're good. We get the point.

Mr. Schindel: Okay. All right. Thank you very much.

Ms. Vanuch: Christopher Burns, Richard Gray, Clark Lemming, and Greg Gray.

Mr. Burns: Hi, good evening. My name is Christopher Burns. I'm a resident of the Hartwood District. I actually have the pleasure and enjoyment of living in one of these cluster communities. One of the examples that was given was Hartwood Landing, and that's where I live. We have approximately fifty-four acres of conservation space that entails a pond that our families fish in. We have trails, beaver ponds, beautiful hardwoods that'll be disturbed, never been developed, and they'll always stay in the ownership of our community. With the Cluster Ordinance being to protect spaces like this, I can guarantee our community was designed and it's being lived in with the intention of the Cluster Ordinance. There were a lot of great points that were made today, a lot of support that I feel that was in this group to keep our ordinance, whether it's in its current form or in a new form. What I fear is the unknown. We've seen words as the use of this ordinance, and it hasn't met our perception. That's vague. We're going to repeal.

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We've replaced it in the past. That's vague too. It's not very transparent. Communities that have growth with businesses, these businesses make decisions based on risk, things that happen, and that are long-term plans well in advance more than a month or two. I think it's appropriate and responsible for our Board of Supervisors to have a plan in place on how we're going to revise our Cluster Ordinance before repealing it. Thank you.

Ms. Vanuch: Thank you.

Mr. Gray: Good evening. My name is Richard Gray. I reside in Oakton, Virginia. I'm the trustee and co-owner of 168.45 acres located on Kellogg Mill Road at Abel Lake. We've owned this land for over thirty years, and it's zoned A-1. The issues, with all due respect to a comment made at the beginning of this hearing, is not the eight thousand lots that may exist already. It's fine if you're one of the eight thousand lot owners. The issue is what a property owner can do with a finite asset to maximize the value to the owner. As the trustee, I have a fiduciary duty to the beneficiaries of the trust to maximize the value of the land we own. We have explored several options to develop our land. Cluster development may be the only viable option for our land. As property owners, we need certainty in what can be done, not changing the rules without knowing what's coming next. The existing three-acre lots would, in my opinion, in the majority or our land result in being wasted from a valuation standpoint. From an aesthetic standpoint, a cluster plan with 60 percent set aside means the majority of the land can be left undisturbed. This land was timbered forty years ago and is all second growth. The final point I would like to make is I listened closely to the staff claims at the beginning of this hearing that the development may violate the Comprehensive Master Plan. As a trial attorney in this Commonwealth, I can tell you that claim would never survive a motion to dismiss in any of our circuit courts. For those reasons, I think the plan is ill advised, and the proposal should be dismissed. Thank you.

Mr. Leming: Madam Chair and members of the Commission, I'm Clark Leming. I'll be brief tonight because I have to. The only real issue at this point at least is the interim repeal. There's no question that the Board of Supervisors can amend its ordinances, the Cluster Ordinance, as long as it's consistent with state law. But can it repeal its ordinance without having any ordinance in effect? In my view the answer to that is no, absolutely not. I don't envy your position. You've been asked by the Board of Supervisors—actually directed by the Board of Supervisors—to give them a recommendation tonight on this complex issue. What do you know about it? What statistics do you have from your staff? How many cluster lots are out there? How much open space has been saved? How many conventional lots are out there? A little bit of history. I know some of you are brand new. In 2006, the General Assembly adopted the statute that says you gotta have a cluster ordinance. It took Stafford six years to come up with a cluster ordinance. In 2012, initially it included what we call a *density bonus*. You actually got more density if you would cluster in that agricultural areas. A year of that and the Board said, oops, shouldn't have done that. Repeal that. So now you're working with the by-right density. And that's what this is all about. As some of you have learned—and Ms. McClendon can certainly advise you about—Virginia is a Dillon state. That means localities do what is delegated to them—can do what it is delegated to them by the General Assembly. And that's it. There is no provision in state law for an interim repeal of an ordinance where it's mandatory. Those jurisdictions that have tried to do that have not been successful. Those are the cases that have been in court. And Ms. McClendon can acquaint you with those particular cases. Now, I've tried to imagine what in the world the Board could have been advised. That you can get away with this if you move fairly quickly? Because before any court can make a decision, we'll have a new ordinance in place and everything will be moot? That doesn't change the illegality of what's being done, and don't count on how quickly somebody can get to court. Number one. Are you being told that well maybe if you're moving in the right direction it's okay? No, I don't think so. In my view, the law is black and while on

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this. You have to have an ordinance, it's mandatory, and what the Board is proposing is to repeal it and leave no ordinance in place. It's illegal. Thank you. And good luck with your decision tonight.

Ms. Vanuch: Thank you, Mr. Leming. Greg Gray, Jeff Liller [sp], S. Gayle Powell, Debbie Bruens, and Paul Waldowski. If you get there first, you can talk.

Mr. Waldowski: I believe you lost my slip. I was here way before these people. But now you're going to get a mouthful. Paul Waldowski. Clark, you said it perfectly. It's illegal what you're doing. It's rule of law. You are supposed to follow commonwealth law, because we're a high-growth community. Nineteen sixty to 1980 is the first time the population doubled since 1900 to 1960. Then it doubled again from '70 to '90, '80 to 2000, 1990 when I arrived here and I took an oath of office. Oh, that was before that. But beware, you have taken an oath of office, and there is rule of law. In 1990, let's see, 61,000 people; 2010, 128,961. And in 2020, the population will not double. You have heard all the good things about the Cluster Ordinance. It's great. This whole public hearing is based off one thing: your repealing all regulations, which is illegal. You are illegally doing it. The Board of Supervisors does not have the authority to tell you to repeal these ordinances. They don't have the authority. It's in black and white. You already heard a couple lawyers. I got a good one too. We already went through this illegality that came through in the lame duck session when the bylaws were broken by the Board of Supervisors. But we just let it slide away when you're trying to do your CUPs and your other aspects. There are a lot of people out here who really know the laws. You all are appointed. You get your nice 10K stipend. And like I said earlier, if you were a true giver of service, there are a lot of hungry kids that go to Mountain View High School and Margaret Brent across the street from me that could use your donation. Now, let me give you a few more acronyms of stuff that's going on. I'll tell you another thing that's wrong so the citizens know. The Comp Plan is inaccurate. You're fighting things because you're letting people get TIAs, and you're letting a lawyer sit here and tell you, "Oh, I don't have to get one of those." Well, then contact Bob Thomas. He's on the wall. You have Dudenhefer who's been in the delegates. And let's get the laws changed. It's pretty simple. I've said before we have people that are representatives in this county, and they don't even have 50 percent of the vote. We have a school board members with less than 40 percent of the vote. That means 60 percent of them didn't vote for you. And guess what? We gotta elect some people in 2019. So I hope you're all listening. Change the Board.

Ms. Vanuch: Robert Gollahoan, John Waters. Michael Stonehill, I pulled yours out of the previous because you marked both of the boxes. And Samer Shalaby.

Ms. Bruce: Hi, I'm Debbie Bruce. I live in Hartwood. I moved to Stafford County is 2016. We used to live in a high-rise in Alexandria. We craved a better quality of live, green space, and affordable housing. We found that here in Stafford County. At that time, I was still working and commuting to Northern Virginia. Last year I was blessed to start working for a local builder. My commute time is a fraction of what it was. The time with my family has increased. By making this decision quickly without compromise to benefit the County and those who work and live here, you jeopardize the employment of myself, my coworkers, and the trades who work with us. My family's quality of life is at stake if I need to find work outside of Stafford County. I don't want to do that; I love it here. Please be smart in your decision.

Mr. Stonehill: Hello, I'm Mike Stonehill. I live in Augustine North community. I have a little handout I'd like to hand out to all the members. It's out marketing plan for Avalon, one of our current communities. It pretty much outlines and shows what a nice cluster development could look like. I purchased this land in June from another developer, engineer, and he got it through the County last year, February of last year

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through Jeff. It consists of approximately 55 acres of land and 25, approximately, in open space. By right is approximately 17.33 lots, 3 acres each if you do the math correctly, minus the roadway. So he probably could have gotten 16 lots. It was approved for 16 lots. So anybody who says that you can get more lots on this cluster is not telling the truth, as Ryan Foroughi said earlier. He's done the most cluster plans in the history of this county, and he's saying every single one of his plans, the density is the maximum density or less. Actually less than he could have if he went out—as one of the largest developers in the history of this county. It just bothers me that the Board can just change their mind so quickly without any input from residents, builders, developers, engineers. It's just not fair to pull out the rug from all of us just because there's something wrong, that you all crave it. You all did the zoning back in 2012, the cluster. You all made the rules. We're just following the rules. And then all of a sudden they're bad. Well what's bad about them? I'd like to know. No one's told me about anything bad. Ryan Foroughi, no one told him. He's been in the county with Jeff a hundred million times. Jeff hasn't said a word that something's wrong with the Cluster Ordinance. And then all of a sudden there's something wrong with it. This is what's wrong with it: You all are just trying to stop growth. It's that simple. Right? Just admit it. That's fine. Just tell us. We'll work with you to try to get some proffer money to you or something. But just to pull out the rug from all of us? I look at my employees like family. I don't want to have to lay them off. I look at my sons here. I don't want to have to tell them to go to a different county. But we will if we have to. Thank you very much for your time. I appreciate it.

Mr. Shalaby: Good evening, Madam Chair, members of the Planning Commission. My name's Samer Shalaby. I live in the Hartwood District. I've been in the county for about twenty-nine years, and I've developed property, predominantly commercial. And I've done also some residential subdivisions. I just want to give a slight example, because I happened to developed two subdivisions side by side. One was by right three-acre lots, and the other one is a cluster. The one that's three-acre lots used about 60 acres, about 5400 feet of road, and basically wetlands, etcetera, is on the properties of the owners, the lots themselves. The other subdivision next to that was built on about 50 acres also, of which 25 of it is basically preserved forever. We did not cross a single wetland crossing. And there are a lot of wetlands on the site, but we left them all basically together, contained in a preservation area. The road was about 2,000 feet. And they both are 18 lots. So exact same number of lots, complete different scenario. There are possibly some subdivisions that have a few things that could be tweaked, and there's nothing wrong with that. In the twenty-nine years I've been here, a lot of ordinances have changed, a lot of things modified. And modifying this, there's nothing with that. But repealing it seems to be a little drastic. If we can go back and look and see what are the issues, what are the concerns and try to get them modified, I think that will work a lot better for everybody. Besides, of course, being the legality issue. Just a couple other quick items. Cost. The subdivisions again. I'm saying these are perfect examples because they're there and they can go look at them. They both were built about two years apart from each other. The one that was cluster, cost of lots is 20 percent cheaper than the other one. And mainly because there were lets roads, no wetland crossings, etcetera. So that again affords better pricing for builders, which affords lower prices and lower house costs. Again, I hope you guys will reconsider. I hope the county will look at this a little different. And let's, again, come up with some [unintelligible] that we can all sit down and come up with a plan that makes sense instead of just drastic repealing. Thank you very much.

Ms. Vanuch: Robert Gollahon and John Waters. That's the last of the sheets. So if you planned to make comments and we haven't called your name, please just line up in the aisle way now.

Mr. Gollahon: Good evening, Madam Chairman. My name is Robert Gollahon, George Washington District. I know that to be true because it's in my notes. When you get old, you have to write down your notes where you live and what your name is. Years ago I was on the board of directors for the Builders'

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Association. I was also on the board of directors for Stafford Council for Progress, and I actually also served on the Stafford Council Comprehensive Plan Committee with Jeff Arby [sp]. And my hair was darker than his back then. One of the problems here is we don't know what the problem really is. We passed a Cluster Ordinance to build less roads, save the environmentally sensitive areas. And amazingly what happened was we built less roads, made more open space, and saved more environmentally sensitive areas. This is the problem with this knee-jerk stuff from the Board. We have a great Planning staff here, but they haven't had any chance to prepare for this. They have no idea how many lots have been created under the cluster, how much open space we have saved, and how much critical area we have saved. So if the staff doesn't know these problems, I'm confident the Board doesn't know these problems. So we don't know what we don't know. So what we need to do is let's get the facts and fix the problems, if there is a problem. Say no to the repeal.

Ms. Vanuch: If you want to speak, come on down.

Mr. Michael: Madam Chairman and members of the Planning Commission, my name is Gary Michael. I think the cluster development is a good thing because you build less roads and have a lot of open space. And it's a homerun, basically. A cluster development is a homerun. About the only thing I could recommend you to do is listen to that judge. If you want to tweak on it, tweak on it. And the people that have jobs in the county now at the Planning Department, they should be grandfathered or vested. Thank you for your time.

Ms. Vanuch: Thank you.

Ms. McWhirt: Good evening. My name is Bettina McWhirt. I live on Poplar Road in Hartwood, and I'm also speaking on behalf of my father, George McWhirt. We are lifelong residents of the county. You can't stop growth. We're in a great geographical location on the East Coast. We have good jobs, good schools, and just a good quality of life in the county. I also feel you have a good Cluster Ordinance and a good Comprehensive Plan on the books. Sometimes you have a few occasions in which you might need a little bit more oversight or enforcement of some of the developments coming on. But other than that, I think you have a good, sound ordinance. In the staff presentation tonight, I didn't hear specifics on why the ordinance needs to be repealed. The chart did say that there are perceptions of problems. Currently on our farm, the wetlands, the easements, or other types of undevelopable land on the farm are assessed, and we pay taxes on it. And trust me, we pay taxes on it. If you're going to have changes to the Cluster Ordinance, I feel it will lower our property values. If there are dramatic changes as to what is or isn't counted now in any new proposed cluster development or ordinance, I feel you also need to make changes the Commissioner of Revenue on how they do assessment. Because then that land needs to come out of the assessment for landowners. Another option you should also consider pushing within the county or hopefully some of the people that want the no growth in the county, you gotta get extra funding for the PDR program so people can purchase the land, so it can just be pushed aside if they don't want growth. I still say that if people don't want growth, let them buy the land themselves. Just take it off the books. And also, I think you have a lot of people of a certain generation that didn't come out because of driving and dark. They're the generation also where their land is their 401K plan. So be very careful and do due diligence on any changes you have to the cluster development. I still say you have a good development program. Sometimes it just needs to be a little bit more oversight or enforcement of it. Thank you.

Ms. Vanuch: Thank you. Would anyone else like to come down and speak?

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Ms. Maxin: My name is Kristen Maxin [sp]. I moved in Stafford in 2002, and it was the largest growing county in Virginia when I moved here. And it still now rated the largest. Some say it's been ten years; I say it's been fifteen years in the running. I've been here in front of the Board to hear that one day will cost them \$4,000 if they stop a project or delay a project. I know that's very difficult for the Board. I know that sometimes it ties their hands on good decision making. I would just like to ask if we slow down the growth, slow it down so that people can have their well waters clean, that they can drive safely on the roads, and that it is safe on the legal side. Thank you very much.

Ms. Vanuch: Thank you. Would anyone else like to come down? Anyone else? Seeing no one else coming, I'm going to close the public hearing and bring it back to the Commission. Ms. Blackburn, would you stand up, and we'll maybe have some questions to ask you based on what we heard from the public hearing. Does anybody on the Commission have questions? No questions? Okay. I have one question. I'm sorry. I do have one question. Do we get proffers on a cluster development?

Ms. Blackburn: Only if it is rezoned.

Ms. Vanuch: Okay. Thank you. All right. Before we take a vote, I just want to let the audience know that this is not the end of our meeting. So once we vote and we strike the gavel, this is not the end. So if you guys want to stay and quietly observe the rest of the meeting, you are more than welcome to do so, as I'm sure most of you will stay. We're not going to take a recess because we just have a couple of items, and we're going to try to power through it. So if you would be mindful of that and leave quietly and discuss out here. If you want to do discussion or talk to your neighbors, if you could move out to the lobby as quickly as possible so we can keep going with the meeting. I really appreciate everyone's participation tonight. I've been on the Commission for three years now, and this is definitely the largest turnout we've ever seen. It's always great to get to meet my neighbors and get to hear from the community. And I really, really appreciate that. This is not an ordinance repeal in any particular district, so it's really up to the Commission as a whole to take any action. With no one having additional questions, does anyone have any comments before we make a motion? No comments? Okay. So I'm going to open the floor for a motion on what we'd like to do tonight.

Mr. English: I understand and hear everybody's complaints. I hear what we're going through. But I think the way to get to where we need to be is I'm going to make a motion to repeal this and then also come with a committee to try to look at the problems. So my motion is to repeal the Cluster Ordinance.

Mr. Randall: And I second that motion.

Ms. Vanuch: Okay, just to summarize for everyone. We have a motion on the floor by Commissioner English with a second by Mr. Randall to recommend to repeal—to recommend to the Board of Supervisors—now remember, this is only a recommendation—to recommend to the Board of Supervisors the repeal of the current Cluster Ordinance. Mr. English, do you have any discussion?

Mr. English: No, nothing at all.

Ms. Vanuch: Mr. Randall.

Mr. Randall: Just to note that the Cluster Ordinance obviously has proven to be beneficial. It would be nice if all of them looked like this. But the fact is they don't. That's the only comment I have. Thank you.

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Ms. Vanuch: Mr. Apicella.

Mr. Apicella: Madam Chairman, I wrote myself some notes, and unfortunately I can't even read my own handwriting, which is worse than a second grader. So bear with me here.

Ms. Vanuch: Sure.

Mr. Apicella: As you said, we're only making a recommendation. It's up to the Board to deal with any legal issues that I heard some folks talk about when they came up today. So the real question in my mind before us is whether the current ordinance is working as intended or it's flawed. And it needs to be fixed. We've gotten some good plans, and we've gotten some plans that have not been so good. I think we've seen some examples shown tonight that show the perfect clustering that is possible. Unfortunately, folks haven't seen some of the bad examples of what's come before the County. And I'll give some examples. Unfortunately, the way the process works is for most of the zoning areas in the county, it's approved administratively by the Planning director. And the only time the Planning Commission gets to see a cluster plan is when it's in the R-1 zoning district and it's proposed for a maximum density of 2.25 acres, and we see it as a CUP. For plans that have come forward under that construct, I would say every single project that's come in front of us as a Planning Commission they've scattered the open space throughout the parcel, kind of ignoring what I think was the intended purposes, which was to provide usable open space. So when you scatter bits and pieces throughout the parcel, it doesn't really kind of jive with what was intended. And as we saw tonight in the previous application, a big portion of the open space was under a power line. In that case, it's buried under a power line, and that's a good thing. Nonetheless, it is a power line. And as someone said, at any point in time whoever owns that power line could put it above ground. But we have seen examples or where open space is actually under a real power line. Again, I don't think that's what was hoped for intended by this locality or by the state. I don't believe this initiative is about stopping growth. And I definitely don't believe it's about downzoning. I think it's about getting a real, workable cluster ordinance that does serve as a win-win. I don't think we're there yet. We weren't there in 2012 when we repealed and replaced, so there is precedent for doing that on this particular ordinance. I think we've actually done that on other ordinances. And we still aren't there. As one speak said, when done right, clustering a really good thing. And I'm supportive of clustering. And when done wrong, it is not a good thing. I've seen it in both circumstances. I'm hopeful that if the Board chooses to repeal and replace, it'll be done quickly and with stakeholder input, like it was done last time. Again, I think it took all of three months to go from the point where it was repealed to when it was replaced. So for those reason, and ultimately to get a good cluster ordinance that works for everybody, I'm going to support the motion.

Ms. Vanuch: Thank you, Mr. Apicella. Any other comments from any of the other commissioners? Mr. Boswell.

Mr. Boswell: Yes, thanks, Madam Chairman. I am going to oppose the motion because it's the law; we have to have a cluster ordinance. So without one ready to go, I'm going to oppose recommending repeal.

Ms. Vanuch: Okay. I just quickly have a couple of comments on my position. I am actually going to vote with Mr. English, and Mr. Randall, and Mr. Apicella tonight. The reason the repeal of this ordinance is a good public policy is that basically unless and until we do something with this ordinance, we're going to continue to get some of the flawed development plans. Mr. Stonehill, I love that development plan. I wish they all looked like that, as I think somebody else said. But the bottom line is that they don't. And there are a lot of issues. And we want to work with the builder community. We don't want to argue with you;

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we want to work together and come up with a cluster ordinance that's the best ordinance for Stafford County. I heard you guys talk about what are the problems. In my opinion—and these are the things that I've heard that we need to look into. There is clear overcrowding on our roads and stress on our infrastructure, so I would like to see us look at being able to bring the Cluster Ordinance closer to the urban service area and reduce some of the taxpayer funding to service things that are so far out that require buses, public safety, ambulances, and rescue to go to the outer parts of the county. I would also like to address, if we can, the access points into a subdivision when they cut through a neighborhood or if there are fifty separate access points off of a particular road or fifteen or twenty driveways. I do believe that in a lot of the cluster plans the open space is not being configured in a way that the ordinance was intended to meet the land conservation goals. Power line easements wouldn't be built on anyway, so why should they technically be considered open space. The way the ordinance is being used by a lot of developers clearly doesn't match the intended use for the preservation of the rural character outlined in our Comprehensive Plan. And currently, and probably the most important, is that the current ordinance sits on 100 percent of all A-1, A-1, and R-1 land. It's only required to sit on 40 percent. So we need to really look at this and decide where does it make sense. And the water quality. I have been a huge proponent of water quality since the minute I came onto this Planning Commission. I'm on a well; I'm on a septic. Those people that live in Lake Arrowhead, I feel for them. I can't believe that that guy has to change his water filter. And that's just what we have to look at for all of the public citizens in the county. And using mass drainfields. Does it make it sense to require that the clusters be closer into the urban services area so that we don't have to deal with so many mass drain fields and more homes being on well and septic when we know that there are clear water quality concerns, specifically in the Rock Hill District. So I'm going to support the repeal tonight because I think it's irresponsible and reckless to not end this immediately. We clearly have a crisis, especially when it comes to water quality. In a crisis, it's our responsibility to work quickly and as efficiently as possible as public servants to address the issues to our community. However, I heard you guys loud and clear. And I understand. And we will work diligently with you to come up with a replacement. And that is my recommendation to the Board, that we work as quickly as possible with public hearings, whether the Planning Commission or CEDC or the Board of Supervisors sets up a subcommittee to come up with a cluster ordinance that works so that you don't have to lay people off or abandon your businesses from Stafford. That's the conclusion of my comments. I think we can move forward with a vote. It's the worst ten seconds. Okay. The motion passes 5 to 2.

R18-39

BOARD OF SUPERVISORS
COUNTY OF STAFFORD
STAFFORD, VIRGINIA

RESOLUTION

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, George L. Gordon, Jr., Government Center, Stafford, Virginia, on the 23rd day of January, 2018:

<u>MEMBERS:</u>	<u>VOTE:</u>
Meg Bohmke, Chairman	Yes
Gary F. Snellings, Vice Chairman	Yes
Jack R. Cavalier	Yes
L. Mark Dudenhefer	Yes
Wendy E. Maurer	Yes
Cindy C. Shelton	Yes
George Washington District	VACANT

On motion of Mr. Snellings, seconded by Mrs. Maurer, which carried by a vote of 6 to 0, the following was adopted:

A RESOLUTION TO REQUEST THAT THE PLANNING COMMISSION HOLD A PUBLIC HEARING AND MAKE A RECOMMENDATION REGARDING THE REPEAL OF THE CURRENT CLUSTER DEVELOPMENT REGULATIONS

WHEREAS, Virginia Code § 15.2-2286.1, requires certain localities to make provisions for cluster development; and

WHEREAS, Stafford County has provisioned for cluster development; and

WHEREAS, Cluster development are currently permitted in A-1, Agricultural; A-2, Rural Residential; and R-1, Suburban Residential Zoning Districts; and

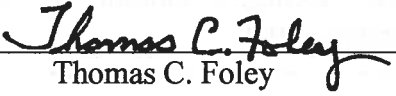
WHEREAS, the Board desires to consider repealing the cluster development regulations, while working on new regulations that ensure quality development, address citizen's concerns, and better meet the goals and objectives of the Comprehensive Plan;

NOW, THEREFORE, BE IT RESOLVED by the Stafford County Board of Supervisors on this the 23rd day of January, 2018, that it be and hereby does request the Planning Commission to hold a public hearing and make a recommendation regarding the repeal of the cluster development regulations; and

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BE IT FURTHER RESOLVED, that the Planning Commission is hereby requested to conduct its public hearing and make its recommendation to the Board by the end of February, 2018.

A Copy, teste:


Thomas C. Foley
County Administrator

TCF:JAH:dfk